7.1. **Need for protective child labour:**

Different branches of labour and industrial relations are dealt with by different statues in absence of single labour code in India and elsewhere. Child labour, the greatest blot of civilised society with devilish character and deleterious effects is a problem that needs fair deal and care under special legal provisions. With this rationale, some protective legislations have been enacted in India during pre and post independence era. The evils of the child labour such as that it deprives the children of their primary education, good health and results in moral deprivation have influenced the framers and architects of our constitution. One of the main objectives of our constitution, therefore, is the protection of children from adverse effects of their employment and on their physical and mental development. The protective measures that are reflected in the provisos of different Articles of Indian constitution are enumerated and analysed here under:

7.2 **Constitutional provisions:**

*Article 15(3)* of Indian constitution underlies in its provision that ‘nothing in Article shall prevent the state from making any special provision for women and children’.

*Article 24* provides that ‘no child below the age of 14 shall be employed to
work in any factory or mine or engaged in any other hazardous employment’.

Relevant to the present analysis, the Article 23 says that traffic in Human being and beggars and other similar forms of forced labour are prohibited. Any contravention of this provision is a punishable offence in accordance with law. The provisions of India penal code provide the punishment for such exploitation and Article 23 gives a constitutional sanction to such punishments.

Article 39 requires the state to ensure for protection of children and child care. Right to live with human dignity free from exploitation enshrined in Article 21 derives its life breath from the Directive principles of state policy and particularly clauses (e) and (f) of Articles 41 and 42 of the constitution.

The 42nd amendment of Indian constitution pertaining to Article 39, further, directs to play and ascertain the constructive role of the state in relation to children. Article 39 provides that ‘the state shall, in particular, direct its policy towards ensuring the fact that children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and further, the children and youth are protected against exploitation and against moral and material abandonment.’

Articles 42 and 43 also provide for securing just and human conditions of work and hold out a promise that the state shall endeavour to secure by suitable legislation, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities etc.

Article 45 of the constitution makes provision for free and compulsory
education for children. It states that ‘the state shall endeavour to provide, within a period of ten years from the commencement of the constitution, for free and compulsory education for all children until they complete the age of 14 years’. The right to education flows directly from the right to life declares the Apex court of the nation.

**Article 32** is the direction for protection and rehabilitation of the children of prostitutes. Article 32 of the constitution further, imparts the right to constitutional remedies.

The Supreme court has the power to lay down guidelines for effective enforcement of fundamental rights of children of prostitutions and the law declared by the Supreme court under Article 141 of the constitution to be treated as the law relating to that particular field.

7.3 Legislative enactments:

Based on the constitutional provisos, during post independence era and even in the pre-independence days i.e. prior to the framing of constitution a good number of legislative enactments providing the legal protection to children in various occupations were made. A brief analysis of the acts relevant to the issue is embarked upon in the following.

i) **Children (Pledging of labour) Act, 1933** extended to the whole of India by 1971. The Act provides an agreement oral or written for pledging the labour of children by parent in return of payment of benefit. It tends to cause or allow the services of child who have not completed the 15 years of age in any employment to
ii) **The Employment of children Act, 1938** applied to the whole of India. It prohibits employment of children under 15 in any occupations connected with transport of passengers, goods or mails by railways or connected with port authority. The Act prohibits the employment of children below 14 years in workshops connected with bidi making, carpet weaving, cement processing, cloth printing/dying/weaving, matches/fireworks/explosive making, mica cutting, shellac and soap manufacturing, tanning and wool cleaning etc. The state Govt are empowered to extent the scope of the Act to cover any other employments.

iii) **Factories Act, 1948** Jurisdiction covers whole of India except J.&K. It applies to establishments employing 10 or more workers with power and 20 or more workers without power. The child below 14 years are absolutely prohibited from entering into employment in factories. Young persons between 14 and 15 years can be employed under the restrictions provided in sections 68, 69, 71-75 of the Act. The child employed should have a certificate of fitness to be issued by surgeon. Section 69 debars the child to work at night. Work is limited to two shifts, each child is to be employed in single relay exceeding not more than 5 hours. Occupier maintain a register of child worker. The section 75 empowers the inspectors to require any such person for re-examination by surgeon. The Act provides for safety and prevention of young workers from exploitation.

iv) **The Plantation labour Act, 1951** applicable to the whole of India except J&K. The plantation means tea, coffee, rubber, cinchona and cardamom in an area
of 10 hectares or more with 30 or more persons employed. It prohibits employment of children under 12 years. Adolescents between 15-18 years cannot be employed unless certified fit for work by surgeon. Certificate is valid for 1 yr. use of false certificate is punishable. The Act has made provision for education as a responsibility of the employer. The other provisions made are for housing, health and recreation facilities. Since plantation, labour is a 'family labour' rather than 'individual child labour' it provides for weekly rest day, leave with wage for 1 day after 15 working days. Rest during working hours of the day are also provided with.

v) **The Mines Act, 1952** extended to the whole of India. Excavations for the purpose of searching for or obtaining minerals are under the purview of this Act. It prohibits employment of children below 15 years in mines. It restricts working of children in any part of mine which is below ground or in any open-cast mining. Adolescents of 16 years age on obtaining fitness certificate is permitted to work below ground. Wholesome food canteen and rest etc. are some good provisos of the Act.

vi) **The Merchant shipping Act, 1958** Prohibits the employment of children below 15 years except under the condition that the employees are required to provide the certificate of fitness on employment.

vii) **The Motor transport workers Act 1961** has the jurisdiction all over India. Transport undertaking employing 5 or more workers are covered by this Act. State Govts are authorised to apply the entire provisions or any of the provisions to ensure employment less than 5 workers in any undertaking. It prohibits employment of
children under 15 years of age (later on in 1986 amendment it was reduced to 14 yrs). Adolescents can work with certificate of fitness valid for 12 months. Working hours spreaded over 6 hours with recess in between 10 am to 6 pm only.

viii) "Apprentices Act, 1961" extending to the whole of India the Act provides for the regulations and control of training of apprentices in trade. Person who is atleast 14 years of age and satisfies the required standard of education and physical fitness can undergo apprenticeship training in designated trade. For minor the guardian is to enter into a contract of apprenticeship with the employer.

ix) "Bidi and cigar works (condition of employment) Act, 1966" extended to whole of India. No child below 14 years could be allowed to work. Young person of 14-18 years of age are prohibited to work between 7 p.m to 6 a.m. The administration of the Act rests with the state.

x) "Child labour (prohibition and regulation) Act, 1986" prohibits employment of child not completed fourteenth year of his age. It restricts the engagement of children in certain employments and regulates the conditions of work of children in certain other employments. The children are debarred from serving in occupations like transport of passengers, goods or mails of railway, building operation in railway premises, work in railway catering involving movement, work in railway construction, part work, selling of crackers/fireworks, work in slaughter houses, work in workshop related to bidi making, carpet weaving, cement processing, cloth printing/dying/weaving, match manufacturing, mica cutting, soap making, tanning, wool cleaning, building construction, state/pencil making. The dangerous operations
are as defined in rules under section 87 of Factories Act 1948. Regulations of work condition include 6 hourly work with 1 hour recess, weekly holiday, prohibition of overtime work at night beyond 7 p.m. to 8 a.m.

xi) **Shops and commercial establishment Act, 1940** under different nomenclatures in state is legislated for grant of protection to the workers employed in shops and small commercial establishments in 1940 in the spirit of I.L.O convention, 1930. It also covers banking, firms, restaurants, hotels and places of amusements - theatres, cinemas allowing the states to extend its scope. The Act interalia allows to regulate the daily and weekly hours of work, rest, opening and closing hours of establishments, payment of wages, holiday with pay, annual leaves, employment of children and young persons etc.

xii) **The Bonded labour system (abolition) Act, 1979** extended to the whole of India. The Act provides for the abolition of bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections. On the commencement of the Act, the bonded labourer stand free and discharged from obligation to render any bonded labour. The usual practice of payment of advance to labourer is abrogated. Agreement, customs concerning to such system stand void and inoperative. The district magistrate is the implementing authority at state level. The Act provides the constitution of village and district/sub divisional level vigilance committees for overseeing the rehabilitation works of freed bonded labourers.

7.4 **Legislative enactment in operation to deal with child labour in Assam:**

Theoretically most of the Acts on child labour legislated at national level are
in operation in Assam along with the rest of India. But, some Acts which have either no relevance or very little relevance in the context of Assam are inoperative. Among these Acts are Merchant Spinning Act, 1958, the Mines Act 1952, Shops and commercial establishment, Act, 1940 etc. (inoperative since 1948).


The states' own enactments on the issue of child labour are Assam shops and establishments Acts and rules, 1948, 1971 and ‘The Assam Children Act 1970’ that aim to provide care, protection, maintenance of health, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the state of Assam. While the former is designed to consolidate and amend the law relating to the regulations of conditions of work and employment of child below fourteen year in shops and commercial establishments and establishments for public entertainment or amusement in the state, the latter one is rightly construed as legal device to deal with the ‘young’ and the ‘Adolescents’ i.e. children beyond 14 years of age. The ‘child’ here in this Act means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. The ‘neglected child’ means in this Act, the children found begging, found without home or settled place of abode or any ostensible means of subsistence or is found
destitute, whether is an orphan or not or has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child or lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life.

7.5 **Efficacies of child labour legislations in Assam:**

'Laws not enforced cease to be laws and right not defended wither away'. This popular saying partly holds good in the context of application and enforcement of the child labour laws or Acts and rules legislated at national and state level to prevent and protect the children from child servitude in the state of Assam.

The Assam shops and establishment Act 1948, The Assam shops and establishment Act and the rules, 1971 and the Assam children Act 1970 though have relevance and understood to have played fair role in dealing with the matter of child labour in the state yet in practice the provisos endorsed in these Acts were seen not adequately and effectively enforced. Infact, it is found that the state is not sticking to the letter of the laws on many scores. The reasons for non-efficacy of the laws are too many. The Act wise brief analysis in this regard is made which is based on the findings of the survey conducted for.

The Factories Act 1948 absolutely prohibited the child below 14 years from entering into employment in factories and it made no bar to the ‘young’ and ‘adolescents’ in entering into such employments. But more often the under aged ones found certified ‘young’ or ‘adolescents’, none-the-less, there was the provision
under section 75 of the Act for enquiry and re-examination by surgeon on demand from inspectors for determining the age of child worker. Thus it exposed the hollowness of some provisos of factories Act.

The ineffective supervision and inspection by inspecting staff and their inadequate knowledge as to the statutory restrictions, provisos for safety and welfare measures incorporated by amendments have made the Act inefficacious to deal with the problem of child labour in the state.

There are certain instances where minors or children in between 12-13 years are working in dangerous operations such as stone quarry, steel fabrication, electrical works, mechanical works, welding, soldering through gas and electrical devices, coke making, dyeing of wool etc. This fact often remain unheeded to the labour inspector. The occupiers utilise the services of underaged cheap child labourers beyond the specified time (5 hours) even under the nose of inspecting staff. The findings of the survey indicate that the child workers are compelled to work for 8 hours inclusive of recess period. Though unbelievable, but it is a fact that a few migrant children working in stone quarries of interior and inaccessible areas of the district (at Amsing 25 kms away from Guwahati city) are even below to 12 years in age (Table 4.6).

In the district under study, the Guwahati is the only metropolitan city. Most of the factories, industrial workshops and manufacturing units and commercial establishments are localised in the city. The random samplings have been carried out to identify the nature of works done by children and the time span for which the child labourers work per diem along with other dimensions of child labour system prevailing
in the city. The findings of the survey reflect the ineffectiveness of implementation of the Factories Act and other rules pertaining to the child labour prohibition and regulation in the district.

**The Motor transport workers Act 1961**, an Act of Govt of India which is in vogue in the state nay the district, prohibits employment of children below 15 years (later amended it to 14 years as per 1986 amendment) in any transport undertakings with 5 or less than 5 employees. But the survey conducted in the Guwahati metropolitan city with 22 child workers working in buses and trekker stationed at Airport, Railway and Bus terminals indicates that 50 p.c of them are below 14 years of age and they are as such child labourers as per estimation. The average age of child workers is 13 years 5 months. The child working in private undertakings daily for the period which is much higher than the specified one. As per provision of the Act only adolescents can work for 6 hours per day. The underaged child workers, most of them are plying on the foot board risking their lives. 81.8 p.c of total child workers enrolled as transport workers are casual and getting nominal wage on daily basis.

The wage, actually depends mostly on the number of passengers they can manage to get boarded in owner’s vehicle. These findings are the ample indicators of the inefficacies of legislation enacted to prohibit and protect the child labour and regulate the condition of the child workers as well.

**The Apprentices Act, 1961** extending to the whole of India deemed to have covered the state and the district under study as well. The Act provides scope for
apprenticeship to minor if his guardian enter into the contract with the employer for that matter. These provisos of the Act, however, are hardly known to the occupiers and the parents. The most of the apprentices working are without required or even a minimum of education and physical fitness certificates. Apprentices are mostly illiterates. They have education of lower primary and primary standard. Apprenticeship is not contractual and based on any kind of agreement.

The Bonded labour system (abolition) Act 1976 promulgated throughout India apparently has the coverage of the district under study. The Act prohibits all forms of forced labour like manner the Article 35(f) of constitution of India prohibiting it and any contravention of the provision contained in the said Article is treated to be an offence punishable under law. The Act, further, prohibits any kind of payment to be made as advance to the parents for forced labour. The Act provides for the constitution of district or sub-divisional and village level vigilance committees for the purpose. But contrary to the provision in the Act the system for advance payment to parents for pledging the labour of children to the employer found prevalent and the district or sub-divisional and village vigilance committees in this regard found non-existent.

The fact that a few child workers are found working in some well-to-do families of rural area for adjustment of parental debt and some domestic servants are working in the urban area against the advance money taken by parent of child labourers from employers indicate the prevalence of illegal Bonded system in the area.
The 'Assam shops and establishments Act 1948' and 'Assam shops and establishment Act and rules 1971' legislated, pursuant upon the enactment of 'shops and commercial establishment Act 1940 of Govt of India aiming at the amendment of the law relating of the regulations of conditions of work and employment of child below 14 years in shops and commercial establishments for public entertainment or amusement in the state. These Acts have the coverage of areas under municipalities, town and urban, semi-urban area as notified by the Govt of Assam vide no GLR 365/88/67 dt 18.12.93. The Acts cover the shops and establishments of unorganised sector. The Acts prohibit the employment of children in any establishments except as apprentices. The survey carried out in the Metropolitan city reveals the fact that is repugnant to the provisions. The child below 14 years are employed in grocery shops, tea stalls, restaurants, dhaba, chicken slaughter houses etc. at a nominal wage. They are deprived of privileged leave with pay except weekly leave since most of them are casual workers. They are found working beyond specified period. These happen even under the nose of inspecting staff. There is a provision in chapter V of the Act to produce age proof record of child worker either from school record or from birth register of local authority. But none bothers to produce the documents for age verification hence the cheap underaged child labourers continue to work. Most of child workers working in shops and establishments are not apprentices, rather they are found as paid workers. The efficacy of the Act, therefore, is opened to question.
7.6 **Summary conclusion and reasons for ineffectiveness of child labour legislations:**

The child labour with myriad evils and deleterious effects needs a fair deal and care under special legal provisions. With this rationale in view some protective legislations have been enacted in the country during pre and post independence era. The Articles 15(3), 24, 32, 39, 42nd, 43 and Article 45 incorporated in the Indian constitution are the reflections of the nation’s concern for child labour and children’s welfare. Based on these constitutional provisos various legal enactments have been made to deal with the issue of child labour and other issues relating to children in post independence era which interalia including **Factory Act, 1948, plantation labour Act, 1951 Motor transport workers' Act, 1961, Apprentices Act, 1961, Bidi and cigar works Act, 1966, child labour (prohibition & regulation) Act, 1986, Bonded labour system (abolition) Act, 1976 and the states’ own enactments - ‘Assam shops and estt Act, and rules, 1948, 1971 and the Assam children Act 1970 etc.**

These legislations enacted at national and state level to deal with the problems of child labour have come to the fore in the process of inddepth analysis of child servitude in the foregoing paragraphs. While some of these enactments aim to prohibit and abolish the child labourers of specific age (below 14 years) altogether, some others with various legal provisions aim to control, regulate protect and care the child workers from exploitation of the employers. The latter enactments also incorporate safety and welfare measures of various natures to the child labourers.

Notwithstanding these enactments, the child labour today stands as an issue
that concerns all. This issue though not is uncommon and a peculiar phenomenon to the district yet in comparison to most of the areas of the state it is peculiar and alarming. This indicates the hollowness of the prevailing enactments and its ineffectiveness, inefficacies and inadequacies too.

Of the reasons for prevalence of child labour, the raison d’etre, is the poor and inefficacious implementation of the prevailing Acts and rules dealing with child labour. There are volley of reasons for ineffectiveness of the legislations. Based on the survey some reasons have been identified. These are placed as follows.

I) The child labour prevail mostly in unorganised and informal sectors of the district. Its incidence, therefore, is high in private sector. The implementation of various Acts which are meant for organised sector mostly poise to be a problem for their working in private sector.

II) The employers of unorganised and private sectors, most of them, are unaware of the enactments and legal provisions incorporated therein.

III) The employers and occupiers are found non-cooperative with the implementing agencies even though some of them are conversant with the legal provisions.

IV) The officers on whom the duties of supervision and inspection are entrusted with, even remain unacquainted with the provisos of the Acts/rules and amendments thereof, hence the implementation or operationalisation seem to be difficult.

V) The parents of the child labourers being illiterate and uneducated their response towards authority for implementation of the Act appears to be negative.
VI) The inspecting staff or implementing authority are busy in registration of the shops and establishments but they hardly can afford to inspect the establishments to ascertain the adoption and implementation of safety and welfare measures and implementation of all other legal provisions etc.

VII) Insufficient network of labour inspecting staff has caused ineffective implementation of legislation because of inadequate supervision.

VIII) Necessity knows no as laws, the adage goes. In case of child labour it is the poverty that has over ruled everything. The area being poverty stricken, the child labour has become a reality in rural area. The survey estimates that 36.26 p.c of the rural population remain below to poverty line. Had there been no child worker or labourers the magnitude of poverty stricken people would have gone up further. The 80 p.c of the families above poverty line found to have bettered their economic condition only through the absorption of their children. Almost 21 p.c of total family income are deduced from child workers, none-the-less, there are enactments prohibiting the child servitude.

IX) Effective implementation of legislation on child labour depends on cooperative efforts and co-ordination of implementing agencies, employers and parents. In absence of such situation prevailing in the area the laws seem to be inadequately enforced and implemented.

X) Lastly, it is the head not the heart i.e. the logical thoughts rather than emotions that should play the determining role to tackle and abate any situation leading to implementation of child labour legislations. In the present context the implementation has been ineffective as the heart overrated head in the process.

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