4.1 Introduction

India has all along followed a pro-active policy in the matter of handling problem of child labour. The Constitution of India, both in the Directive Principles of State Policy and as a part of Fundamental Rights, has laid down that the state shall direct its policy towards securing the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength. The children must be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

Childhood and youth are to be protected against exploitation, and no child below the age of 14 years shall be employed to work in any factory, mine or many hazardous employment. The framers of the Indian Constitution incorporated relevant provisions in the directive principles of constitution to secure compulsory universal elementary education.

4.2 Constitutional Provisions and Protection of Children

Since the enactment of the Indian Constitution, many rules and regulations have been framed for protecting the children and the youth of our country. This chapter discusses the laws and regulations framed by the government, the amendments for labour laws and regulations, the action plan of the Centre and

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124 Article 39 (e) of the Constitution of India.
125 Article 39 (f).
State governments and other recent developments to tackle the problem of child labour. The study makes an humble attempt to highlight some of the recent developments and activities pertaining to child labour to focus on the scope, applicability and limitations of various rules and regulations.

One of the major areas of protection relating to children is child laws. The main objectives of our Constitution is the protection of children from adverse, effects of their employment on their physical and mental development.

Article 15(3)\(^\text{126}\) enables the State to make special provisions for women and children. Women and children require special treatment on account of their very nature. This Article empowers the state to make special provisions for them.

Article 21

**Protection of life and personal liberty:**- No person shall be deprived of his life or personal liberty except according to procedure established by law.

The Constitution (86\(^\text{th}\) Amendment Act) 2002, (w.e.f. 1.4.2010) proposed a new clause Article 21A after Article 21 of the Constitution which provided - “The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the State may, by law determine”.

Article 23 (1)

**Prohibition of traffic in human beings and forced Labour :-**

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

‘Traffic in human beings’ means selling and buying men and women like goods, and it also includes immoral traffic in women and children for depraved or other purposes. This Article protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take

\(^{126}\) Article 15 (3) of the Constitution of India lays down that, “Nothing in this Article shall prevent the State from making any special provision for women and children”.

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steps to abolish evils of “traffic in human beings” and forced labour in all its forms wherever they exist. It also prohibits the system of ‘bonded labour’ because it is a form of forced labour within the meaning of this Article.

**Article 24**

*Prohibition of employment of children in factories, etc.* - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

This provision is certainly in the interest of public health and safety of life of children. This Article however, does not prohibit their employment in any harmless job or work.

**Article 39**

*Certain principles of policy to be followed by the State* - The State shall, in particular, direct its policy towards securing -

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) That there is equal pay for equal work for both men and women;

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Thus, **Article 39(e)** makes it a duty of the state to prevent the children from entering into jobs unsuited to their age. It seeks to prevent health and strength of workers and tender age of children being exploited.

**Article 39 (f)** recommends the protection of childhood and youth against exploitation moral and material abandonment. It also affirms to make sure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

**Article 39 A Equal Justice and free legal aid**-

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

**Article 41 Right to work, to education and to public assistance in certain cases** –

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

**Article 42 Provision for just and humane conditions of work and maternity relief** –

The State shall make provision for securing just and humane conditions of work and for maternity relief.
Article 43 Living wage, etc., for workers –

The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

Article 43 ensures the State to try to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. It refers to a ‘living wage’ instead of a ‘minimum wage’. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provision for education of children and insurance etc.

Article 45 Provision for free and compulsory education for children –

The State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 46 Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections –

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 23 is also relevant for present purposes. It says that traffic in human beings and beggar and other similar forms of forced labour are prohibited. Any contravention of this provision is an offence punishable in accordance with law thus, Article 23 confers a fundamental right against certain forms of exploitation. The provisions of the Indian Penal Code provide the
punishment for such exploitation and Article 23 gives a constitutional sanction to punishments.

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

The ‘abuse’ and ‘exploitation’ under Article 39 (e) and 39 (f) respectively indicate that these articles are wider in social content than Article 42 which relates only to working class. This will not apply to cases where a self-employed man takes the help of his family members including children, for gainful activity because of economic pressure. This problem can be solved only by a faster rate of economic growth and social justice.

Hence, as per Article 24 of the Constitution, no child below the age of 14 years is to be employed in any factory, mine or any hazardous employment. Further, Article 39 requires the States to direct its policy towards ensuring that the tender age of children is not abused and that they are not forced by economic necessity to enter avocations unsuited to their age or strength. Recently, with the insertion of Article 21-A, the State has been entrusted with the task of providing free and compulsory education to all the children in the age group of 6-14 years. Consistent with the Constitutional provisions, Child Labour (Prohibition and Regulation) Act was enacted in 1986, which seeks to prohibit employment of children below 14 years in hazardous occupations and processes and regulates the working conditions in other employments. In the last 10 years, the number of hazardous processes listed in the schedule or the Act has increased from 18 to 57 and occupations from 7 to 13.

4.3 Laws and Regulations regarding Child Labour

In terms of statutory prescriptions, India has, by and large evolved a wide range of laws seeking to protect and promote the rights of child. There are more than 250 central and state Laws in India, applicable to children in various spheres of life, which are regulatory, protective or correctional in nature, To mention some of them –
The first protective legislation for child labour was enacted in 1881. The Indian Factories Act of 1881 introduced by the British, restricted the employment of children. This Act imposed an age of seven years as a minimum to join work force. In 1920s and 1930s a series of Acts were passed for the protection of children. The Factories Act which was amended in 1922, raised the age limit to fifteen years. Similarly, the Indian Mines Act of 1923 raised the minimum age of employment in mines to thirteen years.

The Royal Commission on Labour, appointed in 1933, examined the practice of parents pledging the labour of their children by taking advances in return of bonds. The Government of India had not banned the pledging of child labour by parents, but it had eliminated the system of indenture, under which adults pledge their own labour on contract.

**The Employment of Children Act, 1938** was the first Act introduced to regulate child labour. This Act enumerates the occupations and processes in which children could be employed. They were later incorporated into the 1986 legislation.

**The Factories Act, 1948**

**The Employment of Children (Amendment) Act, 1949**

**The Employment of Children (Amendment) Act, 1951**

**The Plantations Act, 1951**

**The Mines Act 1952**

**The Factories (Amendment) Act, 1954**

**The Merchant Shipping Act, 1958**

**The Motor Transport Workers Act, 1961**

**The Apprentices Act, 1961**

127 The Factories (Amendment) Act, 1922.
The Beedi and Cigar Workers (Conditions of Work) Act, 1966


Employment of Children (Amendment) Act, 1978

The Child Labour (Prohibition & Regulation) Act, 1986

In addition to the Central Government Acts, State Governments also passed Acts regulating the conditions of work for young people in restaurants, hotels and shops, setting age limits ranging from twelve to fifteen.

In response to a United Nations Assembly resolution proclaiming 1979 as the International year of the child, the Government of India appointed a committee on child to review existing legislation. The committee concluded that the minimum age for entry into any employment should be fifteen years, that existing laws be consolidated and that the ministry should enforce legislation relating to the employment of children. But, the Government rejected the recommendation that the minimum age of entry into employment be fifteen years.

The Factories Act, 1948

The Act extends to whole of India except the State of Jammu and Kashmir. It applies to establishments employing 10 or more workers with power or 20 or more workers without power.

The Act prohibits the employment of children below the age of 14 years. An adolescent aged between 15 and 18 years can be employed in a factory only if be obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

A ‘Child’ under the Act, is defined as a person who has not completed the fifteenth year of age. A ‘young person’ is defined as either a child or an adolescent, who has completed his fifteenth year but not eighteenth year. Thus, “young persons” may be divided into three categories.\(^{128}\)

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\(^{128}\) Factories Act, 1948.
As per this Act, children below the age of 14 were prohibited to work in hazardous conditions or environment. Hazardous process, means any process or activity in relation to an industry specified in the first schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents there of would:

1. cause material impairment to the health of the persons engaged in or connected therewith, or
2. result in the pollution of the general environment.

(A) Those who are under fourteen years of age –

Sec. 67 provides that no child who has not completed his fourteenth year shall be required or allowed to work in any factory.

They are totally prohibited by this Act from entering into employment in factories. It was held that the prohibition is absolute and not restricted to employment in one of manufacturing process; thus a child employed as a sweeper to clean the floor of a factory is in contravention of the provisions of the section, even though he is not employed in any of the manufacturing process.

Persons who are between 14 and 15 years: They can be employed under the following restrictions provided under sections 68, 69 and 71 to 75 of the Act

1) Such persons should have a certificate of fitness issued by a surgeon and should carry a token of such certificate.

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68. Non-adult workers to carry tokens. A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless—
(a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and
(b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

69. Certificates of fitness. (1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.
2) The certifying surgeon should follow the procedure laid down in section 69.

3) They should not work at night i.e., twelve consecutive hours including the period from 10.00 p.m. to 6.00 a.m.

4) They should work not more than four and a half hours a day.

5) The period of work is to be limited to two shifts.

6) The shifts should not overlap.

7) Each child has to be employed in one relay.

8) The spread over is not to exceed five hours and should also not change except once in 30 days.

9) They should not be employed in two separate factories on the same day.

10) The employer should display a notice regarding the periods of work for such children.

11) The manager of the factory should maintain a register in respect of such child-workers.

12) No such child be employed except in accordance with the notice of Periods of work displayed and the entries against his name in Register of child workers.

Section 75 empowers the inspectors to require any such person for re-examination by Surgeon and he may prohibit the employment till the examination is made.

**The Mines Act, 1952**

This Act also defines child as a person who has not completed his fifteenth year. This Act not only prohibits the employment of children in mines, but also prohibits the presence of children in any part of a mine that is below ground or in any open cast working in which any mining operation is being carried on. Even an adolescent is not allowed to work in part of a mine, which
is below ground. Unless he has completed his 16\(^{th}\) year and he has a medical
certificate of fitness for work. A certificate is valid only for 12 months. The Act
also says that adolescent is allowed to be employed in any mine except between
6 a.m. and 6 p.m.

Likely the Factories Act the provisions of canteen, wholesome food and rest
shelters, etc. have also been made under this Act.

**The Plantation Act, 1951**

This Act covers all tea, coffee, rubber, cinchona and cardamory plantations,
and using areas 10.117 hectares or more, in which 30 or more persons are
employed. The Act prohibits the employment of children less than 12 years. An
adolescent between 15-18 years cannot be employed for work unless he is
certified fit for work by a surgeon. Such certificate is valid only for one year.
Use of a false certificate of fitness is punishable by imprisonment, which may
extend to one month, or with fine or both.

This Act is, however, more comprehensive in the sense that this act alone
makes the provisions for education as a responsibility of the employer and so is
for the housing and medical and recreational facilities. Perhaps the legislators
were moved to make all these provisions in this Act because of the fact that
Plantation is commonly known as ‘family ’ as against ‘individual’ child.

**The Merchant Shipping Act, 1958**

This Act applies to ships registered in India. The Act prohibits the
employment of children under 15 subject to certain exceptions. It also prohibits
the employment of young persons under 15 as trimmers and stokers except under
certain specific conditions. Such persons, if employed, are required to produce a
certificate of fitness. Further the Act empowers the Government to make
necessary rules regarding employment of young persons as and when the occasion
demands.
Motor Transport Workers Act, 1961

This Act applies to the whole of India; it covers every motor transport undertaking employing five or more transport workers. The State Governments are authorized to apply all or any of the provisions of this Act to any motor transport undertakings employing less than five workers. This Act also prohibits the employment of children less than fifteen years in any capacity in the motor transport undertaking. The adolescents are prohibited to work unless a certificate of fitness is granted, which is valid only for 12 months. An adolescent can work only for 6 hours including a rest interval of half an hour and between 10 a.m. and 6 p.m. only.

The Children (Pledging of) Act, 1933

The Act declares an agreement, oral or written, to pledge the labour of children, whereby the parent of the guardian of a child, in return of any payment or benefit to be received, undertakes to cause or allow the services of a child to be utilized in any employment, to be void.

Child means, under this Act, a person who has not completed the age of 15 years. The penalty provided for the breach of the Law is a fine up to Rs. 200/- on the employer and Rs. 50/- on the parents.

The Employment of Children Act, 1938

This Act is also applied to the whole of India. It prohibits the employment of children under 15 in any occupation connected with the transport of passenger, goods or mails by railways or connected with the port authority within the limit of any port.

With the exception of children employed as apprentices or trainees, no child between the ages of 15-17 can be employed or permitted to work in these occupations unless he is allowed a rest interval of at least 12 consecutive hours in a day. The period of rest is to include at least 7 consecutive hours between 10 p.m. to 7 a.m. as may be prescribed by the appropriate Government.
The Act further prohibits the employment of children below the age of 14 in workshops connected with beedi making, carpet weaving, cement manufacturing including bagging of cement, cloth printing, dyeing, weaving, manufacturing or matches, explosives and fire work, mica cutting and splitting, shellac manufacturing, soap manufacturing, tanning and wool cleaning. These provisions, however, do not apply to workshops where work is done with the help of occupier’s family or to any school established, aided or recognized by any State Government. State Governments are empowered to extend the scope of the Act to cover any other employment.

The Act also required the Railway and port authorities to maintain registers showing names, date of birth, rest intervals, etc. of children under 17.

**The Apprentices Act, 1961**

The Act extends to the whole of India and provides for the regulation and control of training of apprentices in trades and for matters connected therewith.

The Act provides that no person shall be qualified for being engaged as an apprentice or to undergo apprenticeship training in any designated trade unless he is at least 14 years of age and satisfies such standard of education and physical fitness as may be prescribed.

If he is a minor, his guardian is required to enter into a contract of apprenticeship with the employer and it should be registered with the Apprenticeship Advisor.

**The Beedi and Cigar Works (Conditions of Employment) Act, 1966**

This Act also extends to whole of India. The Act provides that no child should be required or allowed to work in any industrial premises; the Act defines the child as a person who has not completed his fourteen years of age. The employment of young persons between 14 to 18 years is prohibited between 7 p.m. to 6 a.m. Provisions for canteens, first aid, cleaning and ventilation are also made under the Act.
The Contract Labour (Regulations and Abolition) Act, 1970

This Act also extends to the whole of India. The Act applies to Establishments and Contractors employing 20 or more workers. It is not applied to establishment in which work only of an intermittent or casual nature is performed. There are no specific provisions under the Act permitting to employment of children.

Bonded Labour Act of 1976

The Bonded Labour Act came in to force on 9 February 1976. According to this Act the bonded labour system would stand abolished and every bonded labour shall on such commencement of the Act, stand freed and discharged from any obligation to render, any bonded labour. All the bonded labour agreements would become void, which would mean that the bonded labourer is freed from repaying any amount / obligation towards his bonded labour agreement. Apart from the bonded labour contract even the property of the bonded labour would be freed from mortgage etc. More over, no person who has been freed and discharge under this Act from any obligation to render any bonded labour shall be evicted from any homestead or other residential premises which he was occupying immediately before the commencement of this Act as part of the consideration for the bonded labour.

Any person, who enforces bonded labour, peruses bonded debt or extracting the bonded labour contract is punishable under this Act for imprisonment for a term which may extend up to 3 years and also with a fine of Rs. 20,000/-.

4.4 Child Labour (Prohibition and Regulation) Act, 1986

Object and Purpose of the Act

Enactment of Child Labour (Prohibition and Regulation) Act 1986 is the culmination of the process of legislative action of child labours. The Child Labour (Prohibition and Regulation) Act, 1986 (CLARA) is an outcome of various
recommendations made by a series of Committees.\textsuperscript{130} On the basis of recommendations made by various Committees, there was a national consensus in favour of a uniform comprehensive legislation, to prohibit the engagement of children in certain other employment. To achieve this goal, Parliament enacted the Child Labour (Prohibition and Regulation) Act, 1986 which came into force on December 23\textsuperscript{rd}, 1986.

The object of the Act is to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

\textbf{Statement of Objects and Reasons}

There are a number of Acts which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions.

The objectives of the Child Labour (Prohibition and Regulation) Act 1986 are:

- Banning the employment of children, i.e. those who have not completed their fourteenth year, in specified occupations and processes,

- Laying down procedures to decide modifications to the schedule banned occupations or processes; and

- Regulating the conditions of work of children in employment where they are not prohibited from working.

- Laying down enhanced penalties for employment of children ii. violation of the provisions of this Act, and other Acts which forbid the employment of children;

\textsuperscript{130} National Commission on Labour, 1969, the Committee on Child Labour, 1979, the Gurupadswamy Committee on Child Labour, 1979, and the Sanat Mehta Committee, 1984.
to obtain uniformity in the definition of “child”, in the related laws.

The Preamble to the Act states that it is an Act to prohibit the employment of children in certain works and to regulate the conditions of working children in certain other employment. The Act prohibits the employment of any person who has not completed his fourteenth year of age in occupations and processes set forth in Part A and Part B of the Schedule of Act.131

Sailent features of the 1986 Act

The Child Labour (Prohibition and Regulation) Act 1986 is made for obtaining uniformity in the definition of ‘child’ in various laws relating to child labour because the term 'child' is defined in different Acts in different ways. The Act defines the term "child" under section 2(ii) as a person who has not completed 14 years of age. It classifies occupations into ‘hazardous’ and ‘non-hazardous’ in nature. In states (Part. II, Sec. 3) that no child under 14 may work in any of the occupations listed in part A of the Schedule or in any workshop where any of the processes set forth in part B of the Schedule is carried on.

Part III of the Act regulates child labour in those establishments where none of the occupations or processes listed in the Schedule (Part. A and B.) are carried on. However, it stipulates conditions such as wage structure, working hours, etc., for employment of children in such non-hazardous occupations. Section 7 of the Act specifies that the period of work for a child in any establishment on each day is fixed so as to exceed 6 hours. This includes interval and the time spent in waiting for work on any day. Section 7(4) prohibits night work between 7 p.m. and 8 a.m. and section 7(5) prohibits double employment of a child in any establishment.

131 Child Labour (Prohibition and Regulation) Act, 1986, Section 3.

Section 3. Prohibition of employment of children in certain occupations and processes. — No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on: Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.
The Act also provides for inspection by inspectors appointed by the state government to look into effective implementation of the Act and on contravention of any of the provisions of the Act or rules made thereunder, it provides with stringent punishment which is simple imprisonment extending upto one month or five which may extend to Rs. 10,000 or both under section 14. The penalty is greater for those who employ or permit any child to work in contravention of the provisions of section 3. The punishment is between three months and one year or with fine between Rs. 10,000 and 20,000 or with both and for a subsequent offence the imprisonment is enhanced for a term not less than six months extending upto two years.\(^{132}\)

It has been provided in Section 3 that the children shall not be employed or permitted to work in any of the occupations set-forth in Part-A of the Schedule. This part includes occupations connected with (a) Transport of passengers, goods or mails by railway; (b) Cinder picking, clearing of an ash pit or building operations in the railway premises; (c) Catering establishments at railway station which may involve the movement of vendor or any other employee of the establishment from one platform to another or movement of a person into or out of a moving train; (d) It also includes doing of a work in connection with the construction of a railway station or any other incidental work where it requires some work to be done in close proximity to or between the railway lines and (e) such occupations would also include a Port authority within the limits of any port.\(^{133}\)

\(^{132}\) Sec. 14. Penalties.-- (1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

Such prohibited employments shall also include any workshop wherein any of the processes set-forth in Part-B of the schedule are carries on. The Term ‘Workshop’ has been defined under this Act any premises wherein any industrial process is being carried on but it shall not include any premises wherein prohibition is inforce with regard to employment of young children under Section 67 of the Factories Act which explicitly provides that no child who has not completed his 14 years shall be required or allowed to work in any factory. Part-B of the Schedule includes following processes:

(a) Beedi making
(b) Carpet weaving;
(c) Cement Manufacture including bagging of cement;
(d) Cloth painting; dyeing and weaving;
(e) Manufacture of matches, explosives and fireworks;
(f) Mica cutting and splitting;
(g) Shallac manufacture;
(h) Soap manufacture;
(i) Tanning;
(j) Wool cleaning;
(k) Building and construction industry.

Workshop wherein any process is carried on by the occupier with the aid of his family or if the process is carried on in any school established by or receiving assistance or has recognition from the Government are excluded.

This list of hazardous industries provided in the schedule is not comprehensive one due to the fact that many industries which expose child labour to hazardous working such as glass; slate and pencil industries etc., have not been included in the schedule inspite of the fact that in glass industry
children are required to work at a high temperature which some times is in between sixteen to eighteen hundred degree centigrade. At the same time while they are working in slate and pencil industry they inhale dust and lead particles which adversely affect in an injurious manner their lungs thereby endangering even their life. Surprisingly children are made to work in their own home as well as children are made to work in their own home as well as children working in family employments which means that children working in schools which receive assistance from the Government are not included within the purview of this Act inspite of the fact that such children are exposed to same type of hazardous working as the common child labour exemption provided to home industries in this manner adversely affect the interest of such children who are being exploited by their own parents. This problem is more common, particularly, in case of child labour working in their own agricultural forms. Keeping in view all these factors, it would not be wrong to state that this legislation mainly, Child Labour (Prohibition and Regulation) Act, 1986 has limited scope rather than having extensive application as intended by the legislature at the time of the enacting and enforcing this statutory enactment. Therefore, an urgent need is being felt to amend this legislation extensively.\textsuperscript{134}

Although, under section four of the Act the Central Government has been empowered to add any occupation or process to the Schedule providing for the list of hazardous establishment after issuing official notification in the official Gazette and giving notice of three month to the concern party before adding any occupation or process to the schedule but for the last so many years, it has been experienced that only few industries have been included in this schedule for the last seven years as provided in the Section 4 of the Act.

Child Labour Technical Advisory Committee (Sec. 5)\textsuperscript{135}

Power is vested in the Central Government to constitute an Advisory Committee to be called the Child Labour Technical Advisory Committee for the purpose of rendering advice to the Central Government in respect of inclusion of more occupations and processes to the Schedule providing a list of hazardous industries. Thus committee is to comprise of a chairman and members not exceeding ten who may be appointed by the Central Government, as provided in section 5 of the Act. The Term of Office of the members of the Committee is for a period of one year from the date on which notification for their appointment is made in the official gazette. The Central Government has been empowered to extend the term of office of the members of the committee for a maximum period of two years but a member continue to hold office unless his successor is

\textsuperscript{135}Sec. 5. \textit{Child Labour Technical Advisory Committee}.-- (1) The Central Government may, by notification in the Official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereafter in this section referred to as the Committee) to advise the Central Government for the purpose of addition of occupations and processes to the Schedule. (2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government. (3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure. (4) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee. (5) The term of office, of the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its subcommittees shall be such as may be prescribed.
appointed. The Secretary of the Committee is to be appointed by the Central Government who should be a Government official not below the rank of an Under Secretary to the Government of India.

The Child Technical Advisory Committee is expected to play a significant role, particularly, by declaring from time to time different occupations or processes is as hazardous one on the basis of nature of the work to be done by the child labour over there and the impact of working conditions on the health and development of the children working over there in order to protect the health of such children. But the committee had not been in a position to play this role to the desired extent.

Section 6 of the Act provides that children can be employed in an establishment or class of establishments in which none of the hazardous occupations or processes are carried on as explicitly provided in Section 3 and the Schedule to the Act. On interpreting Section 6 in context of Section 3 of Act it could be inferred that on the one hand employment of children in hazardous occupation or processes is totally prohibited while their employment in other establishment is permitted subject to regulation of conditions of work such children. The term ‘establishment’ has been provided liberal meaning as defined in under the act sec. 2(iv) “appropriate Government” means, in relation to an establishment

136 Rule 3: Term of office of the members of the Committee – (1) The term of office of the members of the Committee shall be one year from the date on which their appointment is notified in the official Gazette; Provided that the Central Government may extend the term of office of the member of the Committee for a maximum period of two years; Provided further that the member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. (2) The members appointed under sub-rule (1) shall be eligible for re-appointment.

137 Rule 4: Secretary to the Committee – The Central Government may appoint an officer not below the rank of an Under-Secretary to the Government of India as Secretary of the Committee.
under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government; “child” means a person who has not completed his fourteenth year of age; “day” means a period of twenty-four hours beginning at midnight; “port authority” means any authority administering a port; “prescribed” means prescribed by rules made under Sec.18; “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector; “workshop” under sec 2(x) means any premises (including the precincts thereof) wherein any industrial process in carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply. defines establishment includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment; “family” in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual; “occupier”, in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop.  

On the one hand this definition is quite exhaustive and on the other hand it is intended to cover within its purview all such establishments wherein employment of the children is quite common and the employees of such establishments are not having effective Trade Unions in order to ensure admissibility of proper working conditions to them or in other words majority of such establishments and the employees engaged therein do not constitute part of the organized labour. Therefore, the legislature at the time of enactment and enforcement of this Act intended to provide protection to such child labour. At

3. Prohibition of employment of children in certain occupations and processes – No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on : Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from, Government.

6. Application of Part – The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in Sec. 3 is carried on.
the same time from the definition of the ‘establishment’ it could be conveniently inferred that the child labour engaged in factories, plantations, motor transport, etc., would not be covered within the ambit of Child Labour (Prohibition and Regulation) Act, 1986, but it would not be improper to infer that this Act, 1986 would be supplemental to the Factories Act, 1948, Plantation Labour Act, 1951, Motor Transport Workers Act, 1961. Particularly, in such circumstances where these legislations are silent in respect of regulation of terms and conditions of the employment of child labour.\textsuperscript{139}

**Regulation of Working Conditions of Child Labour (Sec. 7)**

Section 7 of the Act explicitly provide that no child shall be required or permitted to work in any establishment in excess of prescribed number of working hours for the child labour. The children will not be required to work at a stretch for a period exceeding three hours and in case he is required to work on any working day for more than three hours he should be compulsorily provided with rest intervals for atleast one hour. The total daily working period of the child labour should not exceed and spread over more than six hours inclusive of permissive waiting period for which he is not provided any work but the time is spent by him while waiting to get work. Child Labour shall neither be permitted nor be required to work between 7 p.m. at night and 8 a.m. in the morning. From this provision it may be presumed that the child labour can be engaged only during normal working hours in between 8 a.m., in the morning and upto 7 p.m. in the evening.

Child Labour can be required or permitted to do work after normal working hours as overtime. If a child has already been working in one establishment he shall not be required or permitted to work in another establishment on the same day. It means a child labour can be engaged for

work on any day only in one establishment and not in two or more establishments.\textsuperscript{140}

Under section 8 of the Act obligation has been imposed on the occupier to provide a holiday of one whole day to child labour in each week and he is required to specify holiday of each child in a notice which may be displayed permanently in conspicuous part of the establishment and such holiday so specified by the occupier can’t be altered by the occupier more than once in three months.\textsuperscript{141} In Part III of the Act which deals with Regulation of Conditions of work of children the legislature has used the term ‘occupier’ instead of employer so as to impose liability on the person who may be having ultimate control over the establishment. The term ‘occupier’ has been defined in Section 2 clause (vii) in relation to an establishment on workshop, as the person who has ultimate control over the affairs of the establishment or workshop.

**Service of Notice to Inspector**

(a) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall within a period of 30 days from such commencement, send to the inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely.

\textsuperscript{140} Sec. 7. Hours and period of work – (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments. (2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour. (3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section(2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day. (3) No child shall be permitted or required to work between 7 p.m. and 8 a.m. (4) No child shall be permitted or required to work overtime. (5) No child shall be permitted or required to work in any establishment on any day on which he has already been working in another establishment.

\textsuperscript{141} Sec. 8. Weekly holidays – Every child employed in an establishment shall be allowed in each week, a holiday or one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.
(i) The name and situation of the establishment
(ii) The name of the person in actual management of the establishment.
(iii) The address to which communications relating thereof should be sent; and
(iv) The nature of the occupation or process carried on in the establishment.

(b) Every occupier, in relation to an establishment, in which a child has been employed or had been permitted to work prior to the date of commencement of this Act would be required to send the Inspector within whose local limits the establishment is situated, a notice in writing specifying the name and situation of the establishment, the name of the person having actual control or management of the establishment, communicating address of the establishment and the nature of the occupation or the process being carried out in that establishment within a period of 30 days. This obligation is imposed on the employer under Section 9 of the Act.\(^\text{142}\) Clause 2 of Section 9 imposes obligation on each employer employing or permitting to work any child after the enforcement of this Act all the aforesaid particulars to the inspector within whose local limits the establishment is situated.

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\(^{142}\) Section 9 Notice to Inspector – (1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely: (a) the name and situation of the establishment; (b) the name of the person in actual management of the establishment; (c) the address to which communications relating to the establishment should be sent; and, (d) the nature of the occupation or process carried on in the establishment.

(2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars as are mentioned in sub-section (1).

**Explanation** – For the purposes of sub-sections (1) and (2), “date of commencement of this Act, in relation to an establishment” means the date of bringing into force of this Act in relation to such establishment.

(3) Nothing in Secs. 7,8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any schools established by, or receiving assistance or recognition from, Government.
Exemption to Family Occupation and Schools

Relevant provisions relating to working hours, holidays and other procedural formalities required to be complied with by the occupier as laid down in Section 7, 8 and 9 of the Act would not be applicable in case of occupations carried on by the members of the family including the children as well as by any school established or receiving assistance from the Government or having its recognition. Although legislature intended to exempt aforesaid occupations and establishments to encourage such activities keeping in view peculiar nature but in reality children working over there are subjected to similar type of harassment and exploitation as is applicable in their case in other occupation engaging them. If basic object of this legislation is to prevent their misuse then it is imperative that this exemption should be withdrawn by deleting clause (3) of Section 9 of the Act.

Dispute as to Age

Section 10 of the Act has been enacted with an object to prevent employment of the children in hazardous establishments and to regulate their employment in other occupations. For this purpose age of the child in question operates as a basic factor. Many a time employers procure wrong medical certificates with regard to the age of the children engaged by them with the object of minimizing such misuse power has been conferred on the concerned inspector of the area to challenge such medical certificate by referring the same to the prescribed medical authority so that wrong certification regarding the age of the child could be deleted in a desired manner.143

Exclusion of children of the aforesaid category from the purview of the Act operates as serious lacunae due to the fact that children working over there are not protected under the umbrella otherwise extending over child of same category but employed in other occupation. In no respect it could be stated that

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143 Section 10 - Disputes as to age – If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed authority, be referred by the Inspector for decision to the prescribed medical authority.
they are comparatively subjected to less degree of rigorous and adverse working conditions.

Maintenance of Record of Each Child in Register

An obligation has been imposed on every occupier to maintain a register in respect of children employed or permitted to work in any establishment providing the particulars regarding the name and date of birth of every child, hours and periods of work of each child and the intervals of rests admissible to them in the register and the particular regarding the nature of work done by each child has to be mentioned. The occupier has to make these registers available for inspection at all times during working hours to an inspector for the purpose of inspection by him. It is mandatory for the occupier of each establishment Section 11\textsuperscript{144} of the Act to maintain complete record of each child in the aforesaid manner as provided in section 11 in respect of each child employed in such establishments.

Obligation has been imposed on every occupier of each establishment including every railway administration, every port authority to display in a conspicuous and accessible place at every station on it railway or within the limits of a court or at the place of work of an establishment in local language as well as in the English language which should contain an abstract of Section 3 and Section 14 of the Act.\textsuperscript{145}

\textsuperscript{144} Sections 11 Maintenance of register – There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –
(a) the name and date of birth of every child so employed or permitted to work;
(b) hours and periods of work of any such child and the intervals of rest to which he is entitled;
(c) the nature of work of any such child; and
(d) such other particulars as may be prescribed.

\textsuperscript{145} 14. Penalties – (1) Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.
Health and Safety of the Child Labour

Appropriate Government has been empowered under Section 13 of the Act to make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishment by issuing notification in the official gazette. The rules made by the appropriate Government are mainly intended to protect health and to provide safety to the child labour working in such establishments and clause (2) of Section 13 provides that such rules would be on the matter mainly relating to cleanliness in the place of work and its freedom from nuisance, disposal of wastes and effluents; proper ventilation and maintenance of optimum temperature; prevention of dust and fumes inhalation; artificial humidification; lightning; availability of drinking water; construction and maintenance of latrine and urinals under hygienic conditions, availability of spittoons; fencing of machinery; work at or near machinery in motion; prevention of employment of children on various machines; instructions; training and supervision in relation to employment and doing work at or near machinery in motion, fencing of machinery, use of proper device for cutting of power, self acting machines; easing of new machinery; provision for floors, stairs and means of access to the place of work; prohibition for lifting of excessive weights by the child labours; prevention of occurrence of accidents due to explosive of inflammable material and their proper handling as well as proper control of dust and gas produced by such material; use of requisite devices for protection of eyes; requisite precautions in case of occurrence of fire maintenance and safety of buildings and machinery. It may not be out of place to mention that rules framed by the appropriate Governments are on the same pattern as that of health and safety provisions including in the Factories Act, 1948 for the protection of health and safety of industrial workers.

Penalties for Violation of Provisions of the Act

Any occupier employing any child or permitting any child to work in contravention of the provisions of Section 2 is liable to be punished with imprisonment for a term which may be between three months to one year or fine may be imposed on him which shall not be less than Rs. 10,000 but it could also extend to Rs. 20,000 or conviction as well as fine could be imposed against
the defaulting occupier as provided in Section 14 of the Act. In case of repeated default, conviction is the only penalty and it shall be for a period of not less than 6 months and could extend to two years.\textsuperscript{146}

Section 14 clause (3) of the Act provides for penalties for the violation of obligation imposed upon the employer or occupier being incharge of the establishment in case of non-compliance of procedural obligations imposed under Part III of the Act. For that purpose it is explicitly provided in clause (3) of Section 14 that in case any occupier or person acting on his behalf fails to give notice as required under Section 9 or fails to maintain a register as provided under Section 11 or makes any falls entry in any such register or fails to display notice containing an abstract of Section 3 and Section 14 as required by the occupier under Section 12 or the occupier contravenes any other relevant provision of this Act or the Rules made thereunder such person shall be punished with simple imprisonment extending to one month or fine may be imposed against him upto Rs. 10,000. Penalty in terms of conviction as well as imposition of fine could also be imposed under Section 14 against the defaulting occupier.

\textbf{Imposition of Penalty for Contravention of other Related Legislations}

Section 15 of the Child Labour (Prohibition and Regulation) Act, 1986, provides that in case any person is found guilty of contravention of section 67 of the Factories Act, 1948 which explicitly prohibits employment of children of less than fourteen years of age in any factory or any person incharge of the mine engages any person below the age of 18 years to work in any mine or any part thereof in contravention of Section 40 of the Mines Act, 1942, or if any person violates Section 21 of the Motor Transport workers Act, 1961 which prohibits

\textsuperscript{146} \textit{Ibid.}, Section 14. Penalties – (2) Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever – (a) fails to give notice as required by Sec. 9, or (b) fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or (c) fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or (d) fails to comply with or contravenes any other provisions of this Act or the rules made there under; shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.
employment of the children in any capacity in any motor transport under taking or if any person violates Section 109 of the Merchant Shipping Act, 1958 which prohibits the employment of the children in merchant shipping in all such cases the defaulting occupier shall be liable for the penalty in the same manner and to the same extent as provided under Section 14 of the Act and not under the Acts in which those provisions are contained. From Section 15 of the Act it is quite evident that Section 14 is having wide implications in terms of imposition of penalties due to the fact that relevant provisions of other legislations which pertain to prohibition of employment of children in factories, plantation, motor transport undertaking, etc. In this regard, it would not be wrong to say that Child Labour (Prohibition and Regulation) Act, 1986, operates as basic legislation in terms of prohibition of employment of children in hazardous establishments and regulate there working conditions and other terms of employment in order to prevent their exploitation but the intended object is not being achieved due to lack of coordination for implementing this legislation in case violation of other aforesaid legislations prohibiting employment of the children. For that purpose it is imperative that a comprehensive legislation on child labour be enacted which should include within its purview not only the child labour employed in unorganized sector rather child employed in organized Sector also such as factories, plantation, motor transport undertaking, Dock Yard works. It would be convenient to ensure effective implementation of the comprehensive legislation if all child labour are covered under the single umbrella of comprehensive legislation and panel provisions could be enforced in an effective manner.

Another basic drawback with regard to penal provisions of the Act is that conviction and fine are the alternative penalties and generally employer is in a position to get rid of the problem with which he is confronted with on account of violation of statutory provisions simply by paying the fine and so far as the memory goes there is hardly any case where an employer has been convicted for the serous violation of the statutory obligations. An occupier or who is incharge of an establishment has also been rarely convicted for such statutory violation with regard to misuse and exploitation of child. There is an urgent need that an
amendment should be introduced in Section 14 and 15\textsuperscript{147} wherein so far serious violation conviction of the occupier of the establishment should be the mandatory penalty so that it may have deterring effect on all such occupiers who employ child labour and exploit them excessively with the sole object of earnings more profits and have scant regard for the statutory obligations imposed upon them. This rampant exploitation of child labour particularly in unorganized sector is undoubtedly an outcome of ineffective implementation of the existing legislation on the subject as well as lacunae and deficiencies involved therein.\textsuperscript{148}

**Inspection Machinery under the Act**

Under section 17\textsuperscript{149} of the Act, the appropriate Government has been empowered to appoint inspectors who shall be deemed to be public servants within the meaning of Section 45 of the Indian Penal Code of 1860. Under this provision wide powers have been conferred on inspecting officials in terms of visiting the establishments collecting evidence against defaulting occupiers and detaining them within the premises of the establishment or preventing them from going to other part of the establishment for fleeing the child labour from the place of employment or to temper with the register and other records to be

\textsuperscript{147} Section 14 Refer note 30 supra.

\textsuperscript{148} Sections 16 - Procedure relating to offences – (1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction. (2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates. (3) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

\textsuperscript{149} Section 17. Appointment of Inspectors – The appropriate Government may appoint inspectors for the purposes of securing compliance with the provisions of this Act and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).
maintained by them in respect of child labour but all these vast powers prove to be futile in terms of prevention of exploitation of the child labour.

Under Section 6 of the Act any person, police officer or inspector as the case may be is required to file a complaint of the commission of an offence under this Act in a court of competent jurisdiction. With regard to age of a child the certificate granted by prescribed medical authority is treated as conclusive evidence as to the age of the child.

The lower courts do not have jurisdiction to try any offence under this Act and only a Metropolitan Magistrate or a Magistrate of the 1st class has jurisdiction to try offences committed by the occupier as provided in Section 17-clause (3) of the Act.

One basic reason is that the inspectors operate as hand in gloves with the employers engaging child labour for getting personal gain either in cash or in kind at the same time such employers including occupations of such establishments particularly in unorganized sector operate in organized manner and offer stiff resistance to the Inspectors or persons working on their behalf and in some cases they even turn violent thereby endangering their lives. Such attitude creates demoralizing impact on inspecting officials, it becomes essential at the first instance to provide requisite safeguards to them in order to enable them to work effectively and at the same time serious action which may even amount to dismissal of corrupt officials should be taken so that they may work efficiently and sincerely for providing requisite protection to the child labour in consonance with the statutory provisions of the Act. Under Section 17 (3) jurisdiction for the trial of defaulting occupiers has been conferred only on the Metropolitan Magistrate or a Magistrate of 1st class thereby. Sub-Judge and other lower courts and Munsiffs are not having jurisdiction to try offences committed against child labour, this provisions creates working difficulties for the inspecting staff in the sense that for statutory violations committed by the occupiers of establishments engaging child labour who face much difficulties for initiating criminal proceedings and waste much time and energy in proceeding against the employers during their trial in the courts of Metropolitan Magistrate or Magistrate of 1st class.
Power for Making Rules

At the time of enactment of Child Labour (Prohibition and Regulation) Act, 1986 the legislature was fully aware with the fact that this Act has not covered all the aspects relating to employment of the children. Therefore, the legislature under Section 18 of the Act has conferred wide powers to the appropriate Government for making rules with regard to such matters on which the Act has failed to provide specific provisions.

Laying of Rules and Notifications before Parliament or State Legislature

Obligation has been imposed on the Central Government for laying every notification issued under section 4 as soon as it is made before each House of Parliament while it is in Session for a period of 30 days which may be comprised in one Session or in two or more successive sessions. In case both Houses agree ill making any modification in the Rule or modification or both Houses agree that the Rule or Notification should not be made or issued, in such a situation the concerned Rule or Notification shall thereafter have effect only in such modified form or it may be of no effect, as the case may be; so, however, that any such modification or annulment may be without prejudice to the validity of anything previously done under the Rule or Notification.

Sub-Section (2) of section 19 provides that every rule made by State Government under this Act shall be laid as soon as such rule has been made before the legislature of each concerned State. In the context of validity of the rules framed by the appropriate Government it was held by the Supreme Court in the case of Jon Mohammad vs. State of Gujrat\(^{150}\) that the relevant Rules framed by the appropriate Government would be valid from the date on which they were made and failure to place the rules before the Houses of Legislature did not effect the validity of the Rules in terms of their enforcement. It means that rules framed by the appropriate Government would be enforceable from the date on which they are made and not from the dates on which approval of the Houses of the Legislature is accorded to the Rules so made.

\(^{150}\) AIR 1966, S.C, p. 385.
Power for Removing Difficulties

The Central Government has been authorized under Section 21 of the Act to make provisions which should not be inconsistent with the provisions of this Act already existing under this Act for the purpose of removing difficulties which may arise while giving effect to the existing provisions of this Act, whenever it is felt to be necessary or expedient for removal of the difficulties which could arise while interpreting any provisions of the Act. At the same time it has been explicitly provided in Section 21\textsuperscript{151} that no such order or provisions for the aforesaid purpose shall be made by the Central Government after the expiry of a period of three years from the date on which this Act receives the assent of the President.

It means that section 21 of the Act had validity only for a period of three years or in other words upto only the year 1986 as the Child Labour (Prohibition and Regulation) Act was enacted and enforced in the year 1986. It may be inferred from the contents of Section 21 that interpreting provisions in the context of existing provisions of the Act were needed to be enacted only at the initial stage of enforcement of this legislation for a initial period of three years only and the legislature did not feel its relevance or necessity after words.

Supplemental Effect of Provisions of this Act in Context of other Concerned Legislations

It has been explicitly provided in Section 20\textsuperscript{152} of the Act that subject to the provisions contained in section 15 which deal with modified application of

\begin{itemize}
  \item [\textsuperscript{151}] The Child Labour (Prohibition and Regulation) Act, 1986, Section. 21.
  \item [\textsuperscript{152}] Section. 20 - Certain other provisions of law not barred – Subject to the provisions contained in Sec. 15, the provisions of this Act and the rules made thereunder shall be in addition to, and not in derogation of, the provisions of the Factories Act, 1948 (63 of 1948), the Plantations Act, 1951 (69 of 1951) and the Mines Act, 1952 (35 of 1952).
\end{itemize}
certain laws in relation to imposition of penalties with reference to Section 14 of the Act that the provisions of this Act and the Rules framed under it are required to be interpreted in addition to and not in contravention with or derogation of the relevant provisions of the Factories Act, 1948 such as Section 67 which provides that no child below the age of 14 years should be required or allowed to work in any factory and it imposes duty on the employer or occupier of the Factory to ascertain the age of the child who may be allowed to work in any factory and he can’t totally rely on the statement of the child in question or his parents in this regard. It means concerned provisions of these two legislations dealing with child labour have to be interpreted in consonance with each other and in no case or in no respect none of the two legislations should contravene the other concerned legislation.

Similarly in the same manner relevant provisions of this Act are required to be interpreted in consonance with the relevant provisions of the Plantation Labour Act, 1951, such as Section 24 of this Act provides that a child who has completed the age of 12 years only can be employed to work in any plantation. It means in the context of children working in plantations the minimum prescribed age would be 12 years only.153

In the same manner relevant provisions of the Mines Act are to be interpreted in consonance with the relevant provisions of this Act. In this context section 40 of the Mines Act, 1951 explicitly provides that a child who has not completed the age of 15 years would be presumed to be a child within the meaning of this Act and only an adolescent who has completed the age of 16 years could be employed in any part of the Mine which is under the ground. On the same pattern and in order to ensure that a child is not permitted to work under the ground in a mine it is provided under section 43 of the Mines Act that if any inspector is of opinion that any person employed in a mine other than an apprentice or trainee is not an adult person or is either below 16 years


24. Amendment of Act 69 of 1951 – In the Plantations Act, 1951 – (a) in Sec.2 in Cls.(a) and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted; (b) Sec. 24 shall be omitted; (c) in Sec. 26, in the opening portion, the words “who has completed his twelfth year” shall be omitted.
of age, the inspector is empowered to serve on the manager of the mine a notice requiring that such person shall be examined by a medical surgeon in order to ascertain his exact age so as to ensure that he is an adult person and in case of an apprentice or trainee he is not below the age of 16 years and is otherwise fit to work therein. These powers have been conferred on an inspector in order to ensure that only adult person should work under ground in a mine and apprentice or trainee should also not be below 16 years of age.\textsuperscript{154}

Section 21 of the Motor Transport Workers Act, 1961 also explicitly provides that no child shall be required or allowed to work in any capacity in any Motor Transport under taking. At the same time it is provided in Section 22 of the Act that no adolescent may be required or allowed to work as Motor Transporter worker in any Motor Transport undertaking unless certificate of fitness is obtained by the employer and which is in his custody in which it should have been certified by the certifying surgeon that concerned adolescent is fit for doing work as Motor Transport Worker, such Certificate of fitness would be valid for a period of 12 months.\textsuperscript{155}

On the basis of language used in section 20 of the Child Labour (Prohibition and Regulation) Act, 1986 it may be inferred that there should not be any conflict between section 15 and other concerned provisions of this Act and related provisions of other legislation dealing with child labour and for that purpose they are required to be interpreted in consonance with each other and not in conflict with each other. Rather contents of section 15 of this Act would be

\textsuperscript{154} The Mines Act, 1951, Section 40.

\textsuperscript{155} The Motor Transport Workers Act, 1961, Sections 21 & 22.
taken into account in addition to the relevant provisions of their concerned legislation as discussed above.

It is quite apparent that the legislature while enacting section 20 of the Act has kept in view corresponding provisions of other related legislations dealing with child labour and has quite appropriately laid down in an explicit manner that this provision would not have dominating effect rather it would be interpreted in consonance with corresponding provisions of other related enactment. It is mainly due to the fact that each type of establishment employing a child namely, factory, plantation, Motor Transport undertaking or a mine has its own peculiar features as well as intricacies involved therein. Accordingly, the relevant provision of the concerned legislation should regulate the employment of the child labour and Section 20 of the Child Labour (Prohibition and Regulation) Act, 1986 should operate as an additional provision for protecting the interest of the children and adolescents employed therein. It would not be out of place to mention that uniform pattern could be evolved by enacting comprehensive legislation on child labour which may provide for basic requisite conditions for the employment as well as in respect of working conditions admissible to such persons keeping in view the nature of the work required to be done by the child labour as well as the degree of risk involved in the work required to be done by them.

Amendments in Section 2 of the Minimum Wages Act, 1948

Section 23 of the Child Labour (Prohibition and Regulation) Act, 1986 explicitly provides the necessary amendments which are to be incorporated in Section 2 of the Minimum Wages Act, 1948 in order to interpret both these legislations in consonance with each other. In Section 2 clause (a) the word ‘Adolescent’ would mean a person who has completed his 14 to 16 years of age but has not completed his 18 years or in other words unadolescent means a provision who is between 14 to 16 year in age while in clause (bb) child means a person who has not completed his 14 years of age. This provision which is required to be interpreted in consonance with each other in both related legislations, it could accordingly it may be inferred that a child below the age of 15 years can’t be employed in any establishment irrespective of the nature of the
work required to be done therein and special protection laid down relevant provisions of the concerned legislation has to be extended to an adolescent who has completed his age of 14 years but is below 18 years.¹⁵⁶

In the same manner in section 24 of the Child Labour (Prohibition and Regulation) Act, 1986 it has been explicitly provided that in section 2 of the Plantation Labour Act, 1951 for the word 15 years 14 years shall be substituted and in section 26 of the Act the words who has completed his 12th years shall be omitted. By the aforesaid amendment introduced in the Plantation Labour Act, 1951³⁷ (The Plantation Labour Act, 1951, Section 2) in order to remove discrepancy and to bring infirmity the prescribed age for the employment of the child is 14 years rather than 12 years as prescribed prior to this amendment.¹⁵⁷

In the same manner by virtue of Sections 25 of the Child Labour (Prohibition and Regulation) Act, 1986 in Section 209 of the Act which prescribed earlier the age of 15 years for the employment of the child the word 14 years has been substituted. In the same incorporated in Sections 26 of the Child Labour (Prohibition and Regulation) Act, 1986 in Section 2 clauses (a) and (c) of the Act.¹⁵⁸

¹⁵⁶ The Child Labour (Prohibition and Regulation) Act, 1986, Sections 23 (a), 23 (bb).
23. Amendment of Act 11 of 1948 – In Sec. 2 of the Minimum Wages Act, 1948 – (i) for Cl. (a), the following clauses shall be substituted, namely : “(a) ‘adolescent’ means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) ‘adult’ means a person who has completed his eighteenth year of age;”; (ii) after Cl.(b), the following clause shall be inserted, namely :

“(bb) ‘child’ means a person who had not completed his fourteenth year of age;”.

24. Amendment of Act 69 of 1951 – In the Plantations Act, 1951 – (a) in Sec.2 in Cls.(a) and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted; (b) Sec. 24 shall be omitted; (c) in Sec. 26, in the opening portion, the words “who has completed his twelfth year” shall be omitted.

25. Amendment of Act 44 of 1958 – In the Merchant Shipping Act, 1958, in Sec. 109, for the word “fifteen”, the word “fourteen” shall be substituted.
26. Amendment of Act 27 of 1961 – In the Motor Transport Workers Act, 1961 in Sec.2, in Cls.(a), and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted.
The aforesaid amendment introduced an intended to bring uniformity in respect of employment of the children in various establishments. Prior to those amendments for the purpose of employment of the children in the Plantations the Minimum prescribed age was 12 years which has been raised to 14 years. On the same pattern minimum prescribed age for the employment of the children under the Merchant Shipping Act, 1958 was 15 years which has been reduced to 14 years. In consonance with this approach the Minimum age for employment in Motor Transport Workers Act, 1961 has been reduced to 14 years instead of 15 years. It may be rightly pointed out that after the aforesaid amendments disparity with regard to employment of the child in various establishment, processes or avocations has been done totally away and now the minimum prescribed age for the employment of children has been uniformly prescribed to be that of 14 years and employment of the children below the age of 18 years has been prohibited in absolute terms in hazardous occupations or processes involving work of hazardous nature.

Repeal of the Employment of Children Act, 1938

It is explicitly provided in section 22 of the Act that the Employment of the Children Act, 1938 is replaced and replaced after the enforcement of the Child Labour (Prohibition and Regulation) Act, 1986 as it is intended by the legislature that the latter legislation should be substituted in place of former legislation. At the same time it has been provided in Sub-Section 2 of Section 22 that anything done or any action taken under the Employment of the Children Act which is not inconsistent with the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 would be deemed to have been done or taken under the corresponding provisions of this latter Act. This explicit provision has been incorporated in Section 22 of the Act with the sole object of avoiding causation of loss or harassment to the concerned parties on account of introduction of the new Act in place of the earlier Act provided that there is no conflict between the two corresponding provisions and their impact on both the parties to the dispute is the same.\(^\text{159}\)

\(^{159}\) The Child Labour (Prohibition and Regulation) Act, 1986, Sections 22 - Repeal and savings – (1) The Employment of Children Act, 1938 (26 of 1938) is hereby repealed. (2) Notwithstanding such
It would not be out of context to state that the Employment of the Children Act, 1938 regulates the terms and conditions of the employment as well as the working conditions admissible to the child but due to drastic changes taking place in respect of the nature and the mode of doing work by the children in various types of establishments this earlier Act failed to keep pace with the sole object of protecting the interest of the child labour and due to this fact it was felt necessary to replace this old legislation with the suitable new legislation. This object has been to some extent served by the enactment and enforcement of the Child Labour (Prohibition and Regulation) Act, 1986. Undoubtedly this legislation has introduced uniformity in terms of minimum prescribed age for the employment in terms of minimum prescribed age for the employment of the child labour and the working conditions available to them in order to ensure their safety at the place of the work but it may be pertinently highlighted that there are many lacunae and deficiencies involved in this legislation which are being confronted with in its day today working.

After making an exhaustive analysis of the relevant provisions of the Child Labour (Prohibition and Regulation), Act 1986 it could be stated with certainty and full confidence that object and purpose of the Act is laudable and its scope in terms of coverage of child labour engaged in different types of establishments is quite extensive. At the same time it could be pointed out that some of the provisions incorporated in last part of the Act as discussed above are intended to bring uniformity in terms of minimum prescribed rates for the employment of the child labour under the existing labour legislation on the subject. But in spite of all these positive aspect of this Act it could be safely commented in the context of scheme of the Act that this Act has been enacted in hasty and peacemeal manner and many provisions laid down in the Act are not well drafted and they lack cohesion and nexus with each other. Therefore, in order to remove such flaws in the Act, the only feasible solution is to enact a comprehensive legislation on the subject of the child labour which should incorporate all the relevant provisions of the Factories Act, 1948, the Plantation Labour Act, 1951,
the Motor Transport Workers Act, 1961 and the Merchant Shipping Act, 1958 as a long term policy. At the same time the relevant provisions of the Act prescribing the minimum age of employment should be suitably amended in order to make them more clear and explicit one in order to put forth in clear terms their connection with the relevant provisions of the already existing legislation on the subject of the child, it would not be out of place to mention that the clear, explicit, extensive and self-explanatory language highlighting the intention of the legislature has to be used while drafting the relevant provisions of the Act only then it may be expected to accomplish the desired goal by ensuring effective enforcement of the proposed legislation on the subject of the child labour which should be duly and in an effective manner protect the working children.\textsuperscript{160}

\textbf{Review of Present Approach}

The Child Labour (Prohibition and Regulation) Act 1986 prohibits child labour in certain occupations and processes alone and their conditions of work are regulated in the rest. The law does not prohibit child labour if rendered for one’s own family in those areas of occupation that has been considered as hazardous. Likewise, it has no purview over regulating the conditions of work if children are engaged to work by the family. The law has also completely left out children working in agriculture. The first step is to clearly enunciate a policy that ‘no child must work and every child attends a full time formal school’ is not negotiable and that it is a goal that is possible to achieve.

\textbf{Defects in the Act of 1986}

A cursory glance at the said Act would also throw light on some of its major drawbacks. The Act does not abolish child labour \textit{per se}. The legislation is not in consonance with the true spirit of the Indian Constitution. For instance, while Article 24 prohibits employment of children below 14 years in all factories and mines irrespective of their hazardous nature, the Act does so only in a list of hazardous occupations. The Act is, therefore, passed with the object of achieving two contradictory goals, viz., ‘prohibition’ and ‘regulation’ of child labour.

Whatever the occupation may be, if once the Act permits child labour in such occupations, it is impossible to eradicate it completely. The object of the Act, therefore appears to be regulation rather than abolition of child labour. The argument given in favour of not banning child labour is that such a ban would affect industries employing child labour, as 95 per cent of the carpets exported, brought about 750 crores foreign exchange to India in the year 1991-92.161 The hazardous occupations and processes have not been defined in the Act and it is left to the Technical Advisory Committee to do so.

The Act, regulates child labour in establishments where children under 14 are permitted to work, namely in the glass, or slate-pencil industry, etc. or in other establishments where none of the occupations, or processes like transport of passengers, goods or mails by railway cinder picking, beedi making, carpet weaving, cement manufacture, etc. (as mentioned in the Schedule) are carried on. However, such regulation does not apply to any workshop where any processes are carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from the government. (See privios to 2.3). Since this prohibition does not apply to family workshops, the employers really make use of this escape clause. Prosecution becomes extremely difficult since there is no documentary evidence with the inspector to prove that the child has been working in a non-family unit.

Another deplorable omission is that no minimum age has been set for occupations permitted to children and even in specified permissible occupations, the minimum age of employment at 14 years contravenes the recommended International Labour Organisation standard which is 18 years.

The Act does not protect children working in the unorganised sector. The Ministry of Labour did not find it necessary to include the glass industry among the list of occupations hazardous to children even though there is enough evidence to prove that glass works are very dangerous for children. The slate and pencil industry where children succumb to respiratory ailments working under

unhealthy conditions was excluded from the purview of the Act. Similarly, lock industry was not included.

The onus of burden of proof of the age of a child rests on the prosecuting agencies when there is a dispute with regard to age. All this requires time and effort on the part of labour inspectors who are entrusted with the enforcement of child labour laws. But since they are usually burdened with various other kinds of work, they cannot devote time in gelling the age of the child verified.

The Act neither makes any reference to medical fitness of the children to be employed in any occupation or workshop, nor provides for the periodical medical examination of the children employed.

Although the Act provides for maintenance of a register with all the details of the child workers employed in any establishment, it is a matter of common knowledge that in reality no unit has maintained records or such registers of employment in connection with, salary paid or terms and conditions of employment, in order to prove their existence during inspection. Thus, prosecution under the Act becomes impossible.

The provision relating to punishment in respect of the employer's violating provisions of the Act is not deterrent as it may be imposed either in terms of imprisonment or fine. The penalty, moreover increases with a second offence only. This sort of option gives the employer a chance to escape from punishment by paying a fine in terms of money. Inspite of these explicit provisions, there are instances where the courts have imposed less than the statutory minimum penalty. It is revealed that the implementation and enforcement of provisions of the Act is not satisfactory. The information collected from Labour Ministry about the enforcement of Child Labour Act 1986 and section 67 of the Factories Act 1948 in various states gives a dismal picture. It states that though the States of Gujarat, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh have taken effective steps and launched prosecutions, other states have neither made any inspections nor launched any prosecutions. India, having 44 million child workers had only 3,488 prosecutions and 1,426 convictions between mid-1986 and mid-
1993 under the said Act. and the penalty is also between Rupees 50 and 5000 much less than that prescribed under the law.

The apathy and inability of the state machinery in tackling the problem are quite apparent. This discourages the enforcement machinery from taking up further prosecution and encourages the employer.

Although there are several laws and regulations regarding child labour, over the past years the government has maintained a firm stands over this problem. Initially there were several articles which covered hazardous form of work and stated the minimum age of employment as 14 years for such activities. The Factories Act of 1948 increased the minimum age of employment to 18 years for the above said activities and processes. After the child labour law of 1986 the scope was widened from hazardous work to several non hazardous process as well which included 14 industries and 52 processes. But still there are many neglected areas as well such areas include Agriculture sector and Domestic sector. The maximum incidence of child labour is in agriculture sector which is formally treated as work of light natured and harmless for the development of children. 69% of the overall incidence of child labour is prevalent in this sector which keeps them out of schooling system. The second largest employer of child labour is the domestic labourers and are significantly contributing to the informal economy. Besides the Bonded Act there is no law taking care of such children.

Initially, we had several provisions of the Constitution which made primary education compulsory up to the age of 14 and supported to give a basic minimum environment to all children by the year 1960. But unfortunately even by the year 2009, the government has been quite unsuccessful in fulfilling the above said norms. Still we have 20,549,000 Children out of schooling system and there are many more that are unable to get a square meal per day as against the basic minimum environment which was granted by the legislation.

A few important suggestions came up during the consultation for effective implementation of the plan. One of them was to withdraw all concessions and incentives, granted to industries found employing child labour. It was also suggested that the District magistrate should be empowered to take action against
the units found violating the relevant laws. In addition, a National Child Labour Elimination Authority has been substituted to monitor the implementation of the multi crores scheme.

Endeavours such as the International Programme for Elimination of Child Labour (IPEC) and the Child Labour Action and Support Project (CLASP) designed to wean children from employment, need to be reinforced by an integrated national programme for elimination of child labour by 2001 A.D. The challenge is rather daunting, but the failure to accept it as a matter of national priority would be negation of all the civilising values of a democratic society.

It is expected in course of time that the Western nations will exert pressure on countries which have shown total inaction in dealing with child labour. India seems to be the prime target in this regard. The United States Child Labour Deterrence Act and the German determination to keep out imports of goods from industries employing child labour are pointers of how international action could force India to act with a great commitment to the liberation of children from the compulsions of involuntary labour. The special commission that has been headed by Dr. Subramanian Swamy to formulate India’s response to the ILO conventions regarding exploitative practices, would hopefully draw up a positive strategy to tackle the problem of child rather than coming with traditional excuses for inaction.

4.5 National Child Labour Programme

A National Policy on Child Labour was announced in 1987 which emphasised the need for strict enforcement measures in areas of high child labour concentration. In order to translate the above policy into action, the Government of India initiated the National Child Labour Project Scheme in 1988 to rehabilitate the working children starting with 12 child labour endemic districts of the country. Under the Scheme working children are identified through child labour survey, withdrawn from work and put into the special schools, so as to provide them with enabling environment to join mainstream education system. In these Special Schools, besides formal education, they are provided stipend @ Rs. 100/- per month, nutrition, vocational training and regular health check ups. In
addition, efforts are also made to target the families of these children so as to cover them under various developmental and income/employment generation programmes of the Government. The Scheme also envisages awareness generation campaigns against the evils of child labour and enforcement of child labour laws.

It is seen that the level of enforcement in the States of Tamil Nadu, Andhra Pradesh, Maharashtra & West Bengal is encouraging, whereas that in U.P., Rajasthan, Madhya Pradesh & Orissa it is very low. However, so far only 3,74,255 children have been mainstreamed under the Scheme.

The NCLP programme which is a consequence of the Child Labour (Prohibition & Regulation) Act, 1986 focuses on the release and rehabilitation of only such children who are employed in those industries as notified in the Act. It has so far been able to mainstream only about 3.75 lakh children. Children continue to be recruited to work in the “hazardous” sector. Many girl children are being left out of getting the benefit of the NCLP program. It is found that a new set of children have taken the place of those who have been withdrawn from work. Further it has been seen that for many practitioners on the ground it is impractical to refuse children from the same neighbourhood or the family, who are in work and out of school because they do not fall under the definition of child labour.

**National Child Labour Project in Tamil Nadu**

The National Child Labour Projects are functioning in following Districts in Tamil Nadu

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<tr>
<th>Coimbatore</th>
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<td>Salem</td>
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<td>Chennai</td>
<td>Erode</td>
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Salient Features of NCLP

- 20017 children are enrolled in 422 special schools
- 21352 children have been mainstreamed since 1996
- 7650 health camps have been conducted since 1995
- 893 self help groups have been formed for the mothers of the child labour families.
- 10320 awareness programmes have been conducted since 1995.
- Nutritious meal is provided to the children of the special schools in all the project
- Societies
- Stipend of Rs. 100/- p.m. has been given to each children in the project societies.
- Free bus passes and uniforms are also provided to special school children.
- Vocational Training is imparted to the special school children.

NCLP Project in Tirunelveli

- The Child Labour Project is functioning from 2000
- 4500 children were identified as child labourers by SSA survey
- 68 Special Schools are run for the child labourers
- 2475 children were enrolled in the special schools
- 1053 children were mainstreamed into formal schools
- 36 health camps were conducted for the benefit of the child labourers
- 125 Self Help Groups were formed.
4.6 National Consultation on Child Domestic Work and Trafficking on 09.12.14

A National Consultation on Child Domestic Work and Trafficking was organized in New Delhi by Save the Children to examine issues and concerns of Child Domestic Work and Trafficking with a view to suggest policy changes in specific reference to the Child Labour (Prohibition and Regulation) Amendment Bill, 2012. The Union Minister for State (IC) Labour in Employment, Shri Bandaru Dattatreya delivered the keynote address.

The Minister informed that amendments to the proposed Child labour Act has been introduced in Rajya Sabha and hoped that it will be passed. The amendment proposes to completely ban child labour upto the age of 14 years. The penalties for any violation of the provision of the proposed Law are being made more stringent.

The proposed amendments also provide for not allowing adolescent between the age 14 - 18 years to work in hazardous occupations and processes. He also emphasized on strict implementation of the law.

The Minister also informed that the rescued children between the age 9 - 14 will be rehabilitated by providing by them bridge education and skill training in special training centres. The children between the age 5 - 8 years are sent to main stream schools after being rescued.

The Minister exhorted the need for greater involvement of all including society, NGOs to eradicate child labour. He informed that the Government is determined to protect the interests of the children and ensure all the children go to schools.

The World over, around 15 million children work as paid or unpaid domestic workers, of which atleast 10.5 millions are below the legal minimum age, according to an ILO Report titled “Ending to Child Labour in Domestic Work” released on the occasion of world day Against Child Labour.
4.7 Salient features of the Child Labour (Prohibition and Regulation) Amendment Bill, 2012

The Child Labour (Prohibition and Regulation) Act, 1986 provides for prohibition of the engagement of children in certain employments and for regulating the conditions of work of children in certain other employments.

Ministry of Human Resources and Development has enacted RTE Act 2009. Under RTE Act, a child means male or female child of the age of six to fourteen years. It envisages that it shall be the duty of the State to ensure free and compulsory education to all children below the age of 14 years. The objective of the amendment of the Child Labour Act is also to ensure that all children between six to fourteen years are in schools rather than at workplaces.

Besides, India is a founder Member of International Labour Organization (ILO). ILO has passed Convention 138 and Convention 182. Conventions 138 provides that the minimum age for admission to employment or work shall not be less than the age of completion of compulsory schooling. Convention 182 provides employment of all the children below 18 years should be prohibited in worst forms of Child Labour. However, the main problem preventing Government of India from ratifying Convention 182 is that the Convention provides for prohibition of employment of children below 18 years in hazardous occupations & processes, whereas in India as per Child Labour (Prohibition & Regulation) Act, 1986 persons above 14 years can work in hazardous occupations and processes.

Through the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 it is proposed to prohibit employment of children below the age of 14 years in an occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibit employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with ILO Convention 138 and Convention 182, respectively.
The salient features of the Bill are as follows –

(i) It is proposed to prohibit employment of children below fourteen years in an occupations and processes and the proposed provision to prohibit employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes set forth in the proposed Schedule;

(ii) the amendment of the short title of the said Act in view of the insertion of the proposed new definition of "adolescent" whose employment in hazardous occupations and processes is also proposed to be prohibited;

(iii) the insertion of a new definition of "adolescent" that means a person who has completed his fourteenth year of age but not completed his eighteenth year in section 2 of the said Act;

(iv) the amendment of the definition of "child" to provide that child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more;

(v) the amendment of section 3 of the said Act to prohibit employment of children in all occupations and processes except where the child helps his family after his school hours or helps his family in fields, home-based work, forest gathering or attends technical institutions during vacations for the purpose of learning, but does not include any help or attending, technical institutions where there is subordinate relationship of labour or work which are outsourced and carried out in home;

(vi) the insertion of a new section 3A to prohibit employment of adolescents in any hazardous occupations and processes specified in the proposed Schedule;

(vii) the amendment of section 4 of the said Act to empower the Central Government to add or omit any hazardous occupations and processes from the Schedule to the proposed legislation;
(viii) the omission of Part III of the said Act in view of the prohibition of employment of children below fourteen years of age in all occupations and processes;

(ix) the amendment of sub-section (1) of section 14 to enhance the punishment from imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, to imprisonment for a term which shall not be less than but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both, for employment or permitting any children to work many occupations or processes in contravention of section 3. However, the parents or guardians of such children shall not be liable for such punishment unless they permit such children for commercial purposes.

(x) the insertion of new sub-section (1A) in section 14 to provide punishment of imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both, for employment or permitting to work any adolescent in any hazardous occupations or processes. However, the parents or guardians of such adolescents shall not be liable for punishment unless they permit such adolescents to work in contravention of the provisions of section 3A;

(xii) the amendment of sub-section (2) of section 14, which provides punishment for the convicted offender who commits a like offence afterwards, to enhance the minimum punishment existing therein from six months to one year and maximum punishment from two years to three years;

(xii) the insertion of a new section 14A to provide that the offences under the proposed legislation shall be cognizable notwithstanding anything contained in the Code of Criminal Procedure 1973;
(xiii) the omission of the provisions of clauses (a), (b) and (c) of sub-section (3) of section 14 of the Act in view of the prohibition of the employment of children below fourteen years in all occupations and processes;

(xiv) the insertion of new section 17 A to empower the appropriate Government to confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of the proposed legislation are properly carried out and to empower the District Magistrate to specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer in accordance with the rules made by the appropriate Government;

(xv) the insertion of new section 17B which empowers the appropriate Government to make periodic inspection or cause such inspection to be made, of the places at which the employment of the children is prohibited and the hazardous occupations or processes are earned out, at such intervals as it thinks fit, and monitor the issues, relating to the provisions of the Act, and

(xiv) the substitution of the existing Schedule to the Act by new Schedule in view of the prohibition of children in all occupations and processes and regulation of employment of adolescents in hazardous occupations and processes.

It is to be noticed that the Central Government has given its consent to place Bill before the Parliament on 13th May 2015.

4.8 Right to Free and Compulsory Education Act of 2009

The compulsory education at the primary level by law is equally important in relation to tackling the problem of child labour. A mixture of formal and non-formal education in schools is certainly one of the vital components in the task to tackle the problem. The Union Ministry of Education reviewed its
National Educational Policy at the end of 1994. Its emphasis seems to be shifting towards non-formalising the formal education rather than developing a parallel non-formal system for the poor and working children. A flexible, non-formal schooling is a supplement to the growth and development of these children. Adequate number of schools have to be established with infrastructural facilities with the result The Right of children to free and compulsory Education Act i.e. Right to Education Act, was enacted by the Parliament on 4th August 2009, emphasising the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one the 135 countries to make education a fundamental right of every child.

1. Right of child to free and compulsory education - (1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

2. For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

3. Provided that a child suffering from disability, as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 (1 of 1996), shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.

4. Special provisions for children not admitted to, or who have not completed, elementary education – Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age.

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed.
Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

At the world level Children who do not attend social accounts to 5.8 crores (UNESCO) and according to Ossie Fernandes, Advisor, CACL, in India more than 1.3 crore do not attend school. (The Hindu, Magazine Weekly Edn., 16.11.2014).

According to Dr. Shantha Sinha, Former Director, National Commission for Protection of Child Rights, Many promises were made by the Right to Education Act. However all that has been whittled down to mere cynicism today. The failure of yet another law to ensure the rights of children as gloriously envisioned by it is indeed disappointing. One crore children are now labourers in the country, while more than 1.3 crore do not attend school. Children are on the rolls, but out of school. This is because the school does not provide a satisfactory environment. (The Hindu Magazine, 16.11.2014) (Weekly Edition, Lost Childhood, Ramya Kannan.)

4.9 The National Charter for Children, 2013

fit, mentally alert and morally healthy, endowed with the skills and motivations provided by society. The Policy also laid emphasis on equal opportunities for the development of all children during the period of growth. The National Charter for Children, 2003 adopted on 9th February 2004, underlined the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation. To affirm the Government's commitment to the rights based approach in addressing the continuing and emerging challenges in the situation of children, the Government of India hereby adopted this Resolution on the National Policy for Children, 2013 dated 13.12.2014.

Salient Features of the National Charter for Children, 2003

The Government of India have had for consideration the question of adopting a National Charter for Children to reiterate its commitment to the cause of the children in order to see that no child remains hungry, illiterate or sick. After the consideration, it has been decided adopt the National Charter for Children.

Whereas the Constitution of India enshrines both in Part III and IV the cause and the best interest of children, under Articles 15 (3), 21(A), 24, 39, 45, 51A etc.

Through the National Policy for Children, 1974, it is committed to providing for adequate services to children, both before and after birth and throughout the period of growth, to ensure their full physical, mental and social development.

It is affirmed that the best interest of children must be protected through combined action of the State, civil society, communities and families in their obligations in fulfilling children’s basic needs.
It is affirmed that while State, Society, Community and Family have obligations towards children, these must be viewed in the context of intrinsic and attendant duties of children and inculcating in children a sound sense of values directed towards preserving and strengthening the Family, Society and the Nation.

And it is believed that by respecting the child, society is respecting itself,

Underlying this Charter is the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation.

The various measures to be taken by the State in this connection are:

1. Survival, Life and Liberty
2. Promoting High Standards of Health and Nutrition
3. Assuring Basic Minimum Needs and Security
4. Play and Leisure
5. Early Childhood Care for Survival, Growth and Development
6. Free and Compulsory Primary Education
   a. The State recognises that all children shall have access to free and compulsory education. Education at the elementary level shall be provided free of cost and special incentives should be provided to ensure that children from disadvantaged social groups are enrolled, retained and participate in schooling.
   b. At the secondary level, the State shall provide access to education for all and provide supportive facilities from the disadvantaged groups.
   c. The State shall in partnership with the community ensure that all the educational institutions function efficiently and are able to reach universal enrolment, universal retention, universal participation and universal achievement.
d. The State and community recognise that a child be educated in its mother tongue.
e. The State shall ensure that education is child-oriented and meaningful. It shall also take appropriate measures to ensure that education is sensitive to the healthy development of the girl child and to children of varied cultural backgrounds.
f. The State shall ensure that school discipline and matters related thereto do not result in physical, mental, psychological harm or trauma to the child.
g. The State shall formulate special programmes to spot, identify, encourage and assist the gifted children for their development in the field of their excellence.

7. Protection from Economic Exploitation and All Forms of Abuse

8. Protection of the Girl Child

9. Empowering Adolescents


11. Strengthening Family

12. Responsibilities of Both Parents

13. Protection of Children with Disabilities

14. Care, Protection, Welfare of Children of Marginalized and Disadvantaged Communities

15. Ensuring Child Friendly Procedures

All matters and procedures relating to children, viz. judicial, administrative, educational or social, should be child friendly. All procedures laid down under the juvenile justice system for children in conflict with law and for children in need of special care and protection shall also be child-friendly.
4.10 Object of National Commission for Protection of Child Rights, 2005

The National Commission for Protection of Child Rights, (NCPCR) emphasizes the principle of universality and inviolability of child rights and recognizes the tone of urgency in all the child related policies of the country. For the Commission, protection of all children in the 0 to 18 years age group is of equal importance. Thus, policies define priority actions for the most vulnerable children. This includes focus on regions that are backward or on communities or children under certain circumstances, and so on. The NCPCR believes that while in addressing only some children, there could be a fallacy of exclusion of many vulnerable children who may not fall under the defined or targeted categories. In its translation into practice, the task of reaching out to all children gets compromised and a societal tolerance of violation of child rights continues. This would in fact have an impact on the program for the targeted population as well. Therefore, it considers that it is only in building a larger atmosphere in favour of protection of children's rights, that children who are targeted become visible and gain confidence to access their entitlements.

Likewise, for the Commission, every right the child enjoys is seen as mutually-reinforcing and interdependent. Therefore the issue of gradation of rights does not arise. A child enjoying all her rights at her 18th year is dependent on the access to all her entitlements from the time she is born. Thus policies interventions assume significance at all stages. For the Commission, all the rights of children are of equal importance.

- Organisation Structure
- Constitution
- Functions and Powers
- Administration and Finance
- Responsibilities under other Acts

Activities

In order to attain the Commission’s Mandate of ensuring that each and every child has an access to all entitlements and enjoys all her rights, the Commission’s focus is on the following tasks:
The first is to build public awareness and create a moral force in the country to stand by children and protect their rights. A National Conscience has to be generated that captures the imagination of each citizen to take pride in the nation because it takes care of all its children.

Armed with this kind of a mood the Commission's task is to look at the gaps in the policy framework and the legal framework and make recommendations to see that rights-based perspective is adhered to by the Government, while it makes its policies.

Thirdly, the task of the Commission is to take up specific complaints that come up before it for redressal of grievances and also take up suo moto cases, summon the violators of child rights, get them presented before the Commission and recommend to the Government or the Judiciary, action based on an inquiry.

Finally, the role of the Commission is in arming itself with proper research and documentation. The legitimacy and credibility to what the Commission says and does is based on solid research and data. Though everyone in the country knows that the predicament of the majority of children in our country is vulnerable and that children are not treated well, this has to be substantiated by information; it cannot just be an emotional argument.

Constitution


1. The central government shall, by notification, constitute a body to be known as the National Commission for Protection of Child Rights to exercise the powers conferred on, and to perform the functions assigned to it under this act.

2. The commission shall consist of the following members namely:-

   A chairperson who, is a person of eminence and has done a outstanding work for promoting the welfare of children; and
Six members, out of which at least two shall be woman, from the following fields, to be appointed by the central government from amongst person of eminence, ability, integrity, standing and experience in,-

1. Education;
2. Child health, care, welfare or child development;
3. Juvenile justice or care of neglected or marginalized children or children with disabilities;
4. Elimination of child labour or children in distress;
5. Child psychology or sociology; and
6. Laws relating to children

3. The office of commission shall be at Delhi.

Functions and Powers

Function of the commission (1) the commission shall perform all or any of the following functions, namely :-

1. Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;
2. Present to be central government, annually and at such other intervals, as the commission may deem fit, reports upon working of those safeguards;
3. Inquire into violation of child rights and recommend initiation of proceedings in such cases;
4. Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;
5. Look into the matters relating to the children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles children without family and children of prisoners and recommend appropriate remedial measures;
6. Study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

7. Undertake and promote research in the field of child rights;

8. Spread child rights literacy among various section of society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminar and other available means;

9. Inspect or cause to be inspected any juveniles custodial home, or any other place of residence or institution meant for children, under the control of the central government or any other authority, including any institution run by a social organization; reformation or protection and take up with these authorities for remedial action, if found necessary;

10. Inquire into complaints and take suo motu notice of matter relating to

1. Deprivation and violation of child rights;

2. Non implementation of laws providing for protection and development of children;

3. Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and provide relief to such children;

4. Or take up the issues rising out of such matters with appropriate authorities and;

11. Such other functions as it may consider necessary for the promotion a state commission or any other commission duly constituted under any law for the time being in force.

Child Labour Complaints in National Commission for Protection of Child Rights (NCPCR) – out of 391 complaints, UP Stands first with 134 cases, Delhi with 65 and TamilNadu only with 16 cases.\textsuperscript{162}

\textsuperscript{162} Report of the NCPCR 2013.