CHAPTER-VIII

LEGAL REGULATION OF CHILD LABOUR IN INDIA
AND THE JUDICIAL RESPONSE: A CRITIQUE

"Bestow blessings on those
Little, innocent lives
Bloomed on Earth,
Who have brought the message
of joy from heavenly garden".

-Rabindranath Tagore

8.1 Introduction

The Child has been the subject of special laws and legal provisions. Because of its tender years, weak physique, and inadequately developed mind and understanding, every child needs protection against moral and physical harm and exploitation by others. In the formative years of its life, the child needs special care service to realize its full potential for growth and development. There are about 300 Central and State Statutes concerning children. These have been enacted with an intention to protect and help children and achieve the goal of child labour welfare enshrined in our National charter.\(^1\) Further these laws are applicable to children in various spheres of life, which are regulatory, protective and correctional in nature. Laws are seeking to protect and promote the rights of child. Under the law, children are entitled to special care, assistance and essential needs and they should be given the highest priority in the allocation of resources. In this chapter the main focus is on the analysis of post independence laws.

8.1.1 Constitutional Provisions

Our Constitution makers were wise and sagacious to provide, that children should receive distributive justice in free India. The rights against exploitation were mentioned in the draft proposed by Dr. B.R. Ambedkar, K.M. Munshi and K.T. Shah. While Dr. Ambedkar’s draft simply provided that subjecting a person to forced labour or involuntary servitude would be an offence, K.M. Munshi’s draft article suggested for abolition of all forms of slavery, child labour, traffic in human beings and compulsory labour.²

Constitution of India contains provisions for survival, development and protection of children; these are mainly included in Part III and Part IV of the Constitution, i.e., fundamental rights and directive principles of state policy. India follows pro-active policy towards tackling child labour problem. The concern for children in general and child labour in particular is reflected through the Articles of the Constitution of India. In Article 23, it prohibits traffic in human being and begar and other similar forms of forced labour. Under Article 24 it has laid down that “no child under the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment”. Article 39(e) and (f) requires the State and secure that the tender age of children are not abused and to ensure that they are not forced by economic necessity to enter avocations unsuited in their age or strength. Those children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected

against exploitation and against moral and material abandonment. Article 45 provides, for free and compulsory education for all children until they complete the age of 14 years. Article 51A(k) makes it a fundamental duty of the parent or Guardian to provide opportunities for education to the child or ward between the age of 6 and 14 years. Art. 21-A recognizes that the Right to Education as fundamental right and it mandates that, the state shall provide free and compulsory education to all children of age of six to fourteen years in such manner as the state may, by law, determine.³

Legislation to control and regulate child labour in India has existed for several decades. Legislations have sought to address two broad concerns; (1) Prescribing minimum age limit for employment of children and regulation of working hours for children; and (2) Ensuring the health and safety of the child labourers by prohibiting the employment of children in hazardous work. Several statutory provisions prohibiting child labour and protecting interests of children of tender age working as a child labour have been enacted before and after independence to fulfill the commitment to international community and to oblige the mandate provided under Constitution to eradicate the evil of child labour.

There are number of child labour legislations prohibiting the employment of children below 14 years and 15 years in certain specified employments. However, contrary to our international commitment and all proclamations in the country’s Constitution, and despite all the legislative measures, child labour is a harsh reality. Due to lack of political will and in absence of realistic measures to tackle the problem,

³ Article 21A inserted by the Constitution (Eighty Sixth Amendment) Act, 2002, Sec.2
the percentage of child labour in the total labour force of the country kept on increasing over the years. In fact, the evil of child labour has not only survived but has become deep rooted and multi-dimensional.

8.2 Indian statutory provisions

In order to implement the constitutional and international obligation towards eradication of child labour in different occupations, the following legislative enactments have been in force, and continue after the Child Labour (Prohibition and Regulation) Act, 1986.

It would be better to appraise various statutes and statutory provisions enacted in the existing labour laws to tackle the problem of child labour.

8.2.1 The Children (Pledging of Labour) Act, 1933

Historical Background

The Royal Commission on Labour was established in 1929 to inquire into various matters relating to labour in this country. The Report of the Commission was finalized in 1931. The Commission had examined the conditions of the child labour in different industries and had found that children had been obliged to work for any number of hours per day as required by their masters. Further it found that, children were subjected to corporal punishment. The Commission had felt great concern at the pledging of children by parents to employers and return for small sums of money; and this system was found to be worst and exploitative of children. So the Commission recommended that any bond pledging a child should be regarded as void. The recommendations of the Commission was discussed in the Legislative Assembly and
the Children (Pledging of Labour) Act, 1933 came to be passed, which may be said to be the first statutory enactment dealing with child labour. The main object of this Act was to eradicate the evils arising from the pledging of labour of young children by their parents to employers in lieu of loans for advances. The statement of objects and reasons provides⁴: "The Royal Commission of Labour found evidence in such widely separated areas as Amritsar, Ahmedabad and Madras of the practice of pledging child labour, that is, the taking of advances by parents or guardians on agreements, written or oral, pledging the labour of their children. In some cases, the children so pledged were subjected to particularly unsatisfactory working conditions. The Commission considering that the state would be justified in adopting strong measures to eradicate the evil, and the Bill seeks to do so by imposing penalties on parents by agreements pledging the labour of children and on person knowingly employing children whose labour has been pledged. Previously, the Act extended to whole of India except Jammu and Kashmir but after 1st September 1971, it has also been extended to Jammu and Kashmir.⁵ The Act declares that an agreement, oral or written, express or implied to pledge the labour of child below 15 years of age by the child's parents, guardians as void and makes the contracting parties, liable for penalties.⁶ Under this Act, 'Child' means a person who has not completed the age of 15 years.⁷ This Act was passed with an intention to protect child from exploitation in various hazardous occupations but it

⁴ Gazette of India, 1932, Part V, p.195
⁵ The Children (Pledging of Labour) Act, 1933, Sec. 1(2).
⁶ Ibid, Sec.4 and 5 the penalty for breach of law is fine upto Rs. 50/- for parents/ guardians and a fine upto Rs.200/- for a employer Sec. 2.
⁷ Supra note 4.
remained a dead letter. No judicial efforts were made to protect the child from exploitation.

8.2.2 The Employment of Children Act, 1938

The Employment of Children Act, 1938 which had been in force till repealed and replaced by Child Labour (Prohibition and Regulation) Act, 1986. The main object of the Act was to prevent exploitation of child labour in workshops and other specified occupations and to regulate the employment of children in certain industrial employments. The Act was passed to implement the Convention adopted by the 23rd Session of International Labour Organization (1937), which inserted a special Article on India. Children under the age of 13 years shall not be employed or work in the transport of passengers, or goods or mails by rail, or in the handling of goods at docks, quays of wharves, but excluding transport by hand. Children under the age of 15 years shall not be employed to work in occupations to which this Article applies which are scheduled as dangerous or unhealthy by the competent authority.

The Statement of objects and reasons of the repealed Act stated;8 "The twenty-third session of the International Labour Conference adopted a Convention in which a special Article for India was inserted fixing the minimum age at which children may be employed or may work in the transport of passengers, goods or mails by rail, or in the handling of goods at docks wharves or quays at 13 years. This Bill provides for prohibiting the employment of children under 15 in occupations connected with the transport of goods passengers or mails on railways and for raising the minimum age

---

8 Gazette of India, 1938 Part V, p.284
fixed by section 6 (1A) of the Indian Ports Act, 1908, to 14 the age recommended by the Royal Commission of Labour. A simple procedure enabling employers to safeguard themselves against transgression of the Act by furnishing themselves with or requiring candidates for employment to possess, certificate of age is provided in the Bill." The key points of this Act are;

(a) Prohibited the employment of children under 15 years in occupations connected with transport of goods, passengers, mail or railways;\(^9\) (b) Raised the minimum age for handling goods on docks from 12 to 14 years; (c) Provided for the requirement of a certification of age; (d) In pursuance of the International Labour Conference at its 31\textsuperscript{st} session held in 1948 adopted a Convention (No.90) concerning night work of young persons employed in industry. Accordingly in 1951, a provision was added for prohibition of the employment of the children between 15 and 17 years at night in railways and ports and also provided for requirement of maintaining register for children under 17 years; and (e) In 1978, a provision was added for prohibition of employment of a child below 15 years in occupations in railway premises such as under picking or cleaning of ash pit or building operations, in catering establishment and in any other work, which is carried on in close proximity to or between the railway lines. The penalty for the breach of the Act, punishable with simple imprisonment extending to one month or fine up to Rs. 500/- or both \(^{10}\) One of the draw backs of the Act is that it has not provided any provision in regard to the

\(^9\) The Employment of Children Act, 1938, Section 3(3).
\(^{10}\) \textit{Ibid.}, Sec.4.
health, safety, medical examination and welfare of children. This Act was amended as many as 5 times during the year 1939, 1948, 1949, 1951 and 1978 only to ameliorate better working conditions to children.

8.2.3 Factories Act, 1948

The Factories Act, 1948 prohibits employment of a child below 14 years in any factory. This Act, extends to the whole of India except the state of Jammu and Kashmir. Section 67 of the Act, enacts an absolute prohibition of employment of a child in any factory. It means no child below the age of 14 years can be asked to work or if he himself wants to work can be permitted to work in any factory. The provision is intended to safeguard the needy children who may like to work at the cost of their health and life. The Act distinguishes between ‘child’, ‘adolescent’ and ‘adult.’ ‘Child’ is a person who has not completed the age of 15 years; an ‘adolescent’ is a person who has completed age of 18 years and an ‘adult’ is a person who has completed the age of 18 years. The Act defines a ‘young person’ as one who is either a child or a adolescent. A child below the age of fourteen is not allowed to work in a factory. A child above the age of fifteen and below the age of eighteen

11 The Factories Act, 1948, Sec. 1(2).
12 Ibid. Sec 2.
13 Ibid. Sec 2(c).
14 Ibid. Sec 2(b).
15 Ibid. Sec 2(a).
16 Ibid. Sec 2(d).
17 Ibid. Sec 67.
cannot be employed to work for more than four and half hours and cannot be employed during the night.\textsuperscript{18}

In \textit{M.C. Mehta v. State of Tamil Nadu,}\textsuperscript{19} it was held that children can be employed in the process of packing, but the packing should be done in an area away from the place of manufacture to avoid exposure to accident. The minimum wages for child labour should be fixed. The tender hands of the young workers are more suited to sorting out the manufactured product and processing it for the purpose of packing.

In \textit{Walker T.Ltd. v. Martindale,}\textsuperscript{20} the court held that, prohibition is absolute and not restricted to employment in one of the manufacturing process. Thus a child employed as a sweeper to clean up the floor of a factory is also in contravention of provisions of Factory Act, even though he is not employed in any of the manufacturing process. See 68, provides that non-adult workers have to carry tokens. The children who are of 14 years but those are below 18 years can be allowed to work in any factory if the child concerned has been given certificate of fitness by a certifying surgeon and the said certificate is in the custody of the manager of the factory and the child so employed carries a token with him while he is at work in which a reference of such certificate has been made. Section 69 deals with the manner in which the fitness certificate is issued and the procedure to be followed by a certifying surgeon in case the certificate is to be issued, renewed or revoked. Under

\begin{flushleft}
\textsuperscript{18} \textit{Ibid}, Sec 71(i), & 71(i)\textsuperscript{(a)}
\textsuperscript{20} (1916) 85 F.L.K.B. 1543.
\end{flushleft}
this Act, there is a provision for a weekly day of rest, every child worker who has worked for a period of 240 days or more in a factory during a calendar year is entitled during the subsequent year for leave with wages at the rate of one day for every 15 days of work as against every 20 days in the case of a child worker\textsuperscript{21}

\textbf{8.2.4 The Minimum Wages Act, 1948}

The Act extends to the whole of India except the State of Jammu and Kashmir.\textsuperscript{22} The Minimum Wages Act was enacted for the improvement of the economic conditions of the working people in industries in our country. It provides for fixing minimum rates of wages in certain employment to which provisions of this Act applies. It intended to prevent exploitation of labour and for the purpose it authorizes the appropriate government to take steps to prescribe minimum rates of wages in the scheduled industries. The Act was enacted with the objectives of fixing, reviewing, revising and enforcing the minimum rates of wages relating to scheduled employments to the notified under the law by the appropriate government, \textit{i.e.} Central/state. The intention of the Act is to fix minimum rates of wages in which the labour force is vulnerable to exploitation \textit{i.e.} is not well organized and has no effective bargaining power. It provides for an institutional mechanism and procedure for fixation, review, revision and enforcement of minimum rates of wages. ‘Minimum Wage’ has not been defined in the Act. In essence, the minimum wage represents the basic subsistence wage below which no employer can go, although nothing prevents

\textsuperscript{21} Factories Act, 1948 Sec. 79.
\textsuperscript{22} Minimum Wages Act, 1948, Sec. 1(2).
him from paying above this statutorily notified wage. According to the Judgment of the Supreme Court, an industry or industrial establishment does not have the right to exist if it cannot guarantee payment of the minimum wage. However, the following five norms recommended by the Indian Labour Conference in its 15th session held at Nainital in 1957 are kept in view by the appropriate government for fixation and revision of minimum wages: (1) Three consumption units for one earner; (2) Minimum food requirement of 2700 calories per average Indian adult; (3) Clothing requirements of 72 yards per annum per family; (4) Rent corresponding to the minimum area provided for under the government's Industrial Housing scheme; and (5) Fuel, lighting and other miscellaneous items of expenditure to constitute 20 percent of the total minimum wage.

The Supreme Court of India in its Judgment in the case of Reftakes Brett and Co. v. others, held that the children's education; medical requirement; minimum recreation; provision for old age; and marriage, should be added to the norms and criteria already recommended by Indian Labour Conference.

The Act defines a child as a person below 15 years. It provides for minimum wages for children and apprentices. It also has provision regarding hours of work and physical fitness. Under this Act, adult means a person who has completed the age of 18 years and adolescent means a person who has completed the age of 14 years but less than 18 years.

---

23 Civil Appeal No. 4336 of 1991.
24 Supra note 21, Sec. 2(aa)
25 Ibid, Sec. 2 (a).
There are however two provisions in the law that have a direct relevance to child labour, which appears that the Act did not have any objective of elimination of child labour. Sub-section 3 of section 3(A) read as follows. In fixing or revising minimum rates of wages under this section:

(a) Different minimum rates of wages may be fixed for: (i) different scheduled employments; (ii) different classes of work in the same scheduled employment; (iii) adults, adolescents, children, and apprentices; Rule 24 says, Number of working hours which shall constitute a working day.

(1) The number of hours which shall constitute a normal working day shall be (a) in the case of the adult, nine hours; (b) in the case of a child, four and half hours; and

(2) The working day of an adult worker shall be so arranged that inclusive of the intervals of rest, if any, shall not spread over more than twelve hours on one day.

There are two anomalies arising out of the above provision. One is that, in rural areas and in the unorganized and informal sectors of employments it is extremely difficult to fix the hours of work and also to enforce the hours so fixed. Even though children are barred from working for over four and a half hours a day, in actual practice they work for over eight hours and sometimes even more than ten and twelve hours. A recent study conducted by UNICEF of children employed in brick kilns in Thane district of Maharashtra confirms this. Even when children actually work for more than the stipulated hours of work they are not paid overtime. The provision of 'spread over', as in rule 24(2) is invariably, honoured in the breach.
Such unduly long hours of work are not in the interest of children and are likely to cause irreparable damage to their health, psyche, and overall development.\textsuperscript{26}

The second anomaly arises from a bare reading of sec.11. Section 11, deals with payment of wages. Ordinarily under sec. 11(1) such wages shall be paid in cash, sec. 11(2) however, permits payment of wages either wholly or partly in kind where it has been the custom to pay wages in kind after satisfying itself that it is necessary in the circumstances of the case to do so.\textsuperscript{27}

8.2.5 The Plantation of Labour Act, 1951

This Act extends to whole of India except the State of Jammu and Kashmir.\textsuperscript{28} It applies to plantations in Tea, Coffee, Rubber or Cinchona, etc in which 30 or more persons are employed. It prohibited the employment of children less than twelve years in plantation.\textsuperscript{29} The child worker (A person who has completed 15 years) can be allowed to work if employed only between 6 am. and 7 pm. The total maximum working hours in a week for a child and an adolescent prescribed under the Act, are 40 hours. A child who has completed his twelth year and adolescent will not be allowed to work in any plantation unless he is certified to be fit by a duly appointed certifying surgeon and such a child or adolescent is required to carry with him while he is at work a token giving a reference of such certificate. The certificate granted under section 27 of this Act, remains valid for a period of one year. The Act, prescribed a few welfare measures in the nature of suitable rooms for the use of

\textsuperscript{26} Bharat Singh, "Crime Against Child Labour" p.256.
\textsuperscript{27} Ibid.
\textsuperscript{28} The Plantation of Labour Act, 1951, Sec. 1(2)
\textsuperscript{29} Ibid, Sec. 24.
children below the age of 6 years and education for the children of worker employed in plantation.

There is also a provision for penalty for using false certificate of fitness under the Act. The Plantation Labour Act, 1951 has now been amended by sec. 24 of Child Labour (Prohibition and Regulation) Act, 1986 to bring the age of the child in line with the definition under the said Act. Now under the amended sec. 2(a) and (c) child means a person who has not completed his fourteenth year of age. Section 24 has been omitted and in section 26, in the opening portion, the words "who has completed this twelfth year" have been omitted.

8.2.6 The Mines Act, 1952

This Act extends to the whole of India.\textsuperscript{30} This Act defines child as a person who has not completed his 15 years.\textsuperscript{31} The Act not only prohibits the employment of children in mines, but also prohibits the presence of children in any part of a mine which is below ground or in any open cast working in which any mining operation is being carried on.\textsuperscript{32} Even an adolescent is not allowed to work in any part of a mine which is below ground, unless he has completed his 16\textsuperscript{th} year and has a medical certificate of fitness for work.\textsuperscript{33} A certificate is valid only for twelve months.\textsuperscript{34} Under the Act, adolescent is allowed to be employed in any mine except between 6 am and 6 pm. The provision with respect to employment of children under Mines Act, 1952 are

\begin{footnotesize}
\begin{enumerate}
\item[30] The Mines Act 1952 Sec. 1(2)
\item[31] Ibid, Sec 2(2).
\item[32] Ibid, Sec 45(i).
\item[33] Ibid, Sec 40(i).
\item[34] Ibid, Sec 41(i).
\end{enumerate}
\end{footnotesize}
more stringent than those under the Factories Act, 1948. It prohibits the employment of person below 18 years to work in any mine.

The Act, stipulated two conditions for underground work in a mine, (i) requirement to have completed 16 years of age and (ii) requirement to obtain a certificate of physical fitness from a surgeon. Apprentices and other trainees, not below 16 years of age, may be allowed to work, under proper supervision, in a mine by the manager, provided that in case of trainees other than apprentices, prior approval of the Chief Inspector or an Inspector is required to be obtained before they are allowed to work.

The Central Government is the administrative authority under the Mines Act and it administers the Act and through inspectors having usual powers. Under section 48 of the Act, provisions of maintaining register of all those person employed in the mine, has been made showing – (a) The age and sex of the employee; (b) The nature of the employment (whether above ground or below ground, and if above ground whether is open cast working or otherwise) and the date of commencement thereof; (c) In the case of an adolescent, reference to certificate of fitness granted under section 40.

The Act also contains the provisions related to the powers of inspectors and maintenance of records. Section 87 of this Act, further lays down "No suit, prosecution or other legal proceeding whatever shall lie, against any person for anything which is in good faith done or intended to be done under this Act."
There are penal provisions to ensure observance of the provisions of the Act. If a person below 18 years of age is employed in a mine in contravention of section 40, the owner, agent or manager of such mine shall be punishable with fine upto Rs. 500/- However, it is obvious that, the relevant penal provisions are not adequate.

8.2.7 The Merchant Shipping Act, 1958

The Act, prohibits the employment of children in any capacity, who are below 14 years of age on sea-going ships, except (a) in a scholarship or training ship; or (b) In a ship in which all persons employed are members of one family; (c) In a homemade ship of less than two hundred ton gross; or (d) Where such person is to be employed on nominal wages and will be in the charge of his father or other adult or a male relative. Similarly, employment of young persons under 18 years of age as trimmers and strikers is also made conditional in any ship to the extent of production of medical fitness certificate from a competent authority. Further the Act empowers the government to make necessary rules regarding employment of young person as and when the occasion demand. The Act also makes provision for modest penalty of a fine of Rs. 50/- for violating these provisions.

8.2.8 The Motor Transport Workers Act, 1961

This Act applies to whole of India. Minimum age required for employment in every transport undertaking employing five or more workers is 15 years. The

---

35 Merchant Shipping Act, 1958, Sec 109. The age of the child which was earlier 15 in Sec. 109 is now amended and brought down to 14 by sec.25 of the Child Labour Act, 1986.
37 Ibid, Section 1(4).
38 Ibid, Section 21.
State Governments are authorized to apply all or any of the provisions of the Act to any motor transport undertakings employing less than 5 workers.³⁹ Now as amended by section 26 of the Child Labour (Prohibition and Regulation) Act, 1986, by which word 'fifteenth' in clauses (a) and (c) of section 2 has been substituted by word 'Fourteenth'. Thus the Act prohibits employment of children below 14 years. The adolescents are prohibited to work unless a certificate of fitness is granted⁴⁰ which is valid only for one year.⁴¹ An adolescent can work only for 6 hours including a rest interval of half an hour and between 10 am and 6 pm only.

8.2.9 The Apprentices Act, 1961

There is no comprehensive law dealing with matters relating to training of apprentices and their service conditions before this Act was passed. The only statutory provisions regarding apprentices were found in the model standing orders framed under the Industrial Employment (Standing Orders) Act, 1946. The Government of India appointed an expert committee to examine this matter and to recommend for undertaking a separate legislation regulating the training of apprentices in the industries. Consequently, the parliament enacted Apprentices Act, 1961.

This Act extends to the whole of India.⁴² Under this Act, no person shall be eligible for being engaged as an apprentice, or to undergo apprenticeship training

³⁹ Ibid, Section 1(4).
⁴⁰ Ibid, Section 22.
⁴¹ Ibid, Section 23(2).
⁴² The Apprentices Act, 1961, Section 1(2).
unless he is at least 14 years of age. The main objective of the Act is to regulate and control the training of apprentices and supplement the availability of trained technical personnel for the industrial concerns. It provides for practical training to the graduate and diploma engineers. Any person who is not less than 14 years of age and satisfies the prescribed standards of education and physical fitness can undergo apprenticeship training in the designated trade under an employer. The Act applies to only designated trade notified by the Central Government after consultation with the Central Apprenticeship Council.

The Act deals with matters such as qualifications for being engaged as an apprentice, contract of apprenticeship, period of apprenticeship, termination of apprenticeship contract, number of apprenticeship for a designated trade, practical and basic training, payment of apprentices, health safety and welfare of apprentices, hours of work, overtime, leave and holidays, conduct and discipline obligations of employers and apprentices, offer and acceptance of employment etc.

The Act enjoins upon the employer to pay compensation to apprentices in accordance with the provisions of Workmen’s Compensation Act, 1923, if personal injury is caused to them by accident arising out of and in the course of their training between 10 p.m. and 6 a.m. except with the approval of the Apprenticeship Advisor. Thus, the Act, adopts a flexible approach and leaves most of the matters to be decided by the executive and other authorities. Violation of the provisions of this Act on the

43 Ibid, Section 3.
part of the employer is punishable for a term which may extend to six months or with fine or with both.

Thereafter the Apprentice Act, 1961 was amended by Apprentices (Amendment) Act, 1973 to protect the Rights of Apprentice trainees. The Act prohibited undergoing apprenticeship training of a person under 14. Apart from legislative protection provided to the children, the various State Governments enacted shops and commercial establishments Acts, suitable for their respective states. In these Acts, minimum age of employment was quite different. To mention few, the age of employment is 12 years in Assam, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Karnataka, Orissa, Rajasthan, West Bengal and Delhi. It is 14 years in Andhra Pradesh, Kerala, Tamilnadu, Punjab, Uttar Pradesh and Pondicherry.

8.2.10 Beedi and Cigar Workers (Conditions of Employment) Act, 1966

This Act extends to the whole of India.\textsuperscript{44} This is a special legislation for regulating conditions of work of Beedi and cigar workers. Although the Factories Act, applies to such workers but the employers intentionally split the concerns into small units to escape the provisions of the Factories Act. Further, a special feature of this industry is that the manufacturers of Beedis get the work done through contract labour and also in private dwelling houses which again leads to avoidance the provisions of the Factories Act. This Act tries to meet such difficulties.

Section 24 of the Act enacted for the welfare of labour and for regulating and enforcing better conditions of labour, amongst those who are engaged in the

\textsuperscript{44} Beedi & Cigar Workers (Conditions of Employment) Act. 1966, Section 1(2).
manufacture of Beedis and cigars, prohibits employment of children in industrial premises, where any process connected with the manufacture of Beedis and cigars takes place. "Child" for the purpose of this Act, means a person who has not completed fourteen years of age.\textsuperscript{45} The employment of young persons between 14 and 18 years is prohibited between 7 pm and 6 am.\textsuperscript{46} Provisions for canteen\textsuperscript{47}, first aid,\textsuperscript{48} ventilation\textsuperscript{49}, and cleanliness\textsuperscript{50} are made under the Act. The administration of the Act rests with the State who appoint. Chief Inspector or Inspector for the purpose. The Act provides for penalties for breach, which may be imprisonment up to three months or a fine up to Rs. 500/- or both.\textsuperscript{51}

The Supreme Court in the case of \textit{M/s P.M. Patel and Sons v. Union of India},\textsuperscript{52} has held that the terms of the definition of employee are very wide. They include not only persons employed directly by the employer but also employed through a contractor. Moreover, they include persons employed in connection with the work of the factory engaged in the task of rolling Beedis. Therefore, the home workers rolling Beedis are employees under this Act.

\textsuperscript{45} \textit{Ibid}, Section 2(b).
\textsuperscript{46} \textit{Ibid}, Section 25.
\textsuperscript{47} \textit{Ibid}, Section 16
\textsuperscript{48} \textit{Ibid}, Section 15
\textsuperscript{49} \textit{Ibid}, Section 9
\textsuperscript{50} \textit{Ibid}, Section 8
\textsuperscript{51} \textit{Ibid}, Section 32.
\textsuperscript{52} \textit{AIR 1987 SC} 447.
8.2.11 Contract Labour (Regulations and Abolition) Act, 1970

The Act also extends to the whole of India.\textsuperscript{53} The Act applies to establishment and contractors employing 20 or more workers.\textsuperscript{54} It is not applied to establishment in which work only of an intermittent or casual nature is performed.\textsuperscript{55} There are no specific provisions under the Act pertaining to employment of children.

8.2.12 Shops and Commercial Establishment Act, 1969

Different states have enacted their own laws regulating employment of children in shops and establishments, restaurants and hotels and places of amusements and notified urban areas etc., to which the Factories Act, 1948 does not apply. Time to time these Acts had been amended to meet the need of situation. These provisions regulate the daily and weekly hours of work, rest intervals, payment of wages, overtime pay, holidays with pay, annual leave, employment of children and young persons, etc. These Acts prohibits the employment of child in shops and establishments and he cannot be employed even as the family member of the employer. Generally speaking, a child is a person who has not completed the age of 12 years. However, the age requirement varies from 12 to 15 years in states. The minimum age for employment in shops and commercial establishments is 12 years in Bihar, Gujarat, Jammu and Kashmir, Madhya Pradesh, Karnataka, Orissa, Rajasthan, Tripura, U.P. West Bengal, Goa, Daman and Diu and Manipur, and 14 years in Andhra Pradesh, Assam, Harayana, Himachal Pradesh, Kerala Tamil Nadu, Punjab,

\textsuperscript{53} Contract Labour (Regulation & Abolition) Act, 1970 Sec. 1(2).
\textsuperscript{54} Ibid, Section 1(4).
\textsuperscript{55} Ibid, Section 1(5).
Delhi, Chandigarh, Pondichery and Meghalaya. The minimum age of employment is 15 years in Maharashtra. Now after the insertion of Act.21A no child under the age of 14 years can be employed in an work, in this light, an Act which permits employment of children under the age of 14 years becomes unconstitutional. There is no separate shops and commercial establishments Act in Andaman and Nicobar, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshdweep, Nagaland and Sikkim.56

The working hours for children are generally from 6 am to 7 pm. The maximum hours of work for children are usually 5 per day for young person or 30 per week for adolescents (Young Persons) they may be higher i.e. 7 per day and 42 per week in Andhra Pradesh, Bihar, Tamil Nadu, Tripura, West Bengal, Pondichery; 6 hours per day in Jammu and Kashmir, Maharashtra, Uttar Pradesh, Karnataka, Madhya Pradesh, Orissa, Punjab, and three hours per day in Rajasthan.

All the states prohibit the employment of children and young person in shops and commercial establishments during night.

8.2.13 Radiation Protection Rules, 1971

Children below 18 years of age are not to be employed at places where radiation takes place.

8.2.14 The Child Labour (Prohibition and Regulation) Act, 1986

Plethora of legislations were enacted since 1881 for progressively extending legal protection to the working children. Provisions relating to child labour under

---

various legislations have concentrated mainly on aspects such as minimizing working hours, increasing minimum age and prohibition of employment of children in occupation and processes detrimental to the health and welfare of children of tender age.\textsuperscript{57} The Children (Pledging of Labour) Act, 1933 followed by the Employment of Children Act, 1938 was the first statutory enactment dealing with child labour, was repealed by the Child Labour Act, 1986. The Child Labour (Prohibition and Regulation) Act is an outcome of various recommendations made by a series of Commissions.\textsuperscript{58} This legislation was enacted to reform the legal measure, as the policy of both Prohibition and Regulation.

All the recommendations made by various Committees created a National consensus in favour of bringing a uniform comprehensive legislation to prohibit employment of children in certain other employments. To achieve this goal, the Child Labour (Prohibition and Regulation) Bill was introduced and passed in both houses of parliament in August 1986 with a view to prohibiting employment of children in certain types of jobs and regulating the conditions of employment of children in certain others.

\textbf{8.2.14.1 The statement of objects and reason in the Bill reads}

There are a number of Acts which prohibit 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 Bill seeks to achieve the following objects;

(1) Ban the employment of children, i.e. those who have not completed their fourteenth year in specified occupations and processes; (2) Lay down a procedure to decide modifications to the schedule of banned occupations or processes; (3) Regulate the conditions of work of children engaged in forms of employment in which they are permitted to work; (4) Prescribe enhanced penalties for employment of children in violation of the provisions of this Act and other Acts that forbid the employment of children; and (5) Establish uniformity in the definition of child in laws concerning them.

The introduction of the Bill generated a lively debate in the Indian Parliament in which members cutting across party affiliation debated and provided rare insights into this age-old social issue. In course of the debate the members in particular took exception to the following:

The proviso in clause 3, part 2 of the Bill which says, “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 members had also expressed apprehensions and reservations regarding the following:
(i) Past experience shows that labour laws are never implemented. The Child Labour (Prohibition and Regulation) Act will become yet another exercise in futility; (ii) Hazardous work does not become safe merely because it is performed at home; (iii) Any scheme of exemption provided in a law is bound to be misinterpreted and misused; (iv) The intention of government should not be to regularize child labour merely because it exists; and (v) A one-sided and half-hearted approach of banning child labour in few establishments and regulating it in few others without adopting a holistic or integrated approach, without solving the problem of poverty and economic deprivation, without enforcing the Minimum Wages Act, without resolving the problem of universal enrolment and retention of all children of school-going age in the formal school system will serve little purpose.\textsuperscript{59}

The apprehension and reservations expressed by the members were genuine and continue to be valid to this day.

\textbf{8.2.14.2 The main features of the present Act are}\textsuperscript{60}

(i) It prohibits employment of children in most employments as detailed in the Schedule as Processes and Occupations. Most of them are hazardous in nature but the term hazardous has not been defined; (ii) It intends to regulate employment of children in all establishments except those prohibited ones; (iii) It provides for a Child Labour Technical Advisory Committee to advise the Central Government in matters of further prohibition, regulation etc.; (iv) Regulatory provisions made fixing

\textsuperscript{59} Supra note 26, cited in legal aspects pp.243-244.
\textsuperscript{60} Jose Verghese, Law on Employment of Children, New Delhi: Capital Foundation Society, pp.16 - 17.
the number of hours, period of work, prohibition of overtime, double employment, provision of weekly holidays etc; (v) Requirement of the employer to give notice to Inspectors, maintenance of register, display of notice; provision for health and safety are also in Part III; (vi) It provides for minimum penalty of imprisonment for 3 months and maximum one year and minimum fine of Rs. 10,000 and maximum fine of Rs. 20,000. Almost all the violations of the regulatory and mandatory provisions are declared as offence under the Act; (vii) Any person can file a complaint but only a Metropolitan Magistrate can take cognizance of any offence; and finally; and (viii) The provisions made under the present Act is declared to be in addition to the provisions and protections of children already existing in other enactments.

8.2.14.3 Significant provisions of the Child Labour (Prohibition and Regulation) Act, 1986

The Act is divided into IV parts and contains 26 sections with one Schedule consisting of Part-A for Occupations and Part-B for Processes. The preamble to the Act, states that it is “An Act to prohibit the employment of children in certain employments and to regulate the conditions of work of the 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 process set forth in Part-A and Part-B of the Schedule of the Act. The prohibition under Part II, section 3 is

---

61 Child Labour Act, 1986; Sec. 3, “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”.

62 There are 15 occupations set forth in part-A of the schedule under section 3. Further, employment of child as servants or workers and employment of children in Dhabas, (roadside Fattehais), restaurants,
not absolute as it does not 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. Section 5 of the Child Labour (Prohibition and Regulation) Act provides for the constitution of a Child Labour Technical Advisory Committee to advise the Central Government for the purpose of addition to the schedule of the Act.

The Act thus classifies all establishments in two categories.

(i) The Act in which employment of child labour is prohibited; and

(ii) Those in which the working conditions of child labour shall be regulated.

If we analyze the preamble of the Child Labour (Prohibition and Regulation) Act, 1986 the intention of the parliament is not at all to prohibit the child labour altogether, rather they are permitted to work in a regulatory manner. Had it been the intention of the parliament to abolish the system of child labour then the nomenclature of the legislation would be the Child Labour Abolition Act in the form of Bonded Labour Abolition Act.

According to the Act child means a person who has not completed his fourteenth year of age\textsuperscript{64} and the establishment for the purpose of this Act includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.\textsuperscript{65} The expression
“Occupier” in relation to the establishment or a workshop, means the persons who has the ultimate control over the affairs of the establishment or workshop\(^\text{66}\) and “Workshop” means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of section 67 of the Factories Act, 1948 (63 of 1948) for the time being, apply.\(^\text{67}\) The word workshop is controversial and problematic found under section 3 because if the prohibited work is done in an informal place other than workshop it will not attract legal prohibition. Thus Child Labour (Prohibition and Regulation) Act corresponds the Employment of Children Act, 1938 and lacunae in the present enactment continued so.

Part-III of the Act runs from section 6 to 13 deal with regulation of conditions of work of children. This part prescribes the norms for working hours and period of work, weekly holidays, guidelines to deal the disputes as to age, imposed legal responsibility to maintain the register on the occupation and health and safety of the working children. The policy of regulation of child labour in circumstances other than those where it is prohibited is a major component of the Act. However, regulatory provisions granting permission for child labour involves compromise with the interest of children and has far reaching effect on their career.

The Act, in its Part III regulates the conditions of work of children in establishments in which none of the occupations or processes referred to in section 3

\(^{66}\) Ibid, Section 2 (vi)
\(^{67}\) Ibid, Section 2(x)
is carried on.\textsuperscript{68} It provides that no child shall be required or permitted to work between 7 pm and 8 am and to work overtime. The period of work shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. The total working hours including interval for rest and the time spent in waiting for work shall not be spread over more than 6 hours per day. It is also provided that no child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.\textsuperscript{69}

The Act prescribes that every occupier in relation to an establishment in which a child was employed or permitted to work is required to give a written notice to the inspector containing certain particulars within whose local limits the establishment is situated within a period of 30 days from the date of the commencement of the establishment.\textsuperscript{70}

According to section 10, in the event of any dispute regarding the age of a child, between the inspector and the occupier, the question should be decided on the basis of a certificate of age provided by the prescribed medical authority to whom such an issue has to be referred for decision. The Act under section 12 requires that, every occupier who employs children shall maintain 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:

\textsuperscript{68} Ibid, Section 6,
\textsuperscript{69} Ibid, Section 7.
\textsuperscript{70} Ibid, Section 9.
(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.

The Act further prescribes that every railway administration, every port authority and every occupier shall display a notice containing abstracts of section 3 and 14 in the local language and in the English language in a conspicuous place.\textsuperscript{71}

The Act also empowers the appropriate Government to make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

Part-IV of Child Labour (Prohibition and Regulation) Act deals with procedure for prosecution of offences and penalties under the Act. It provides a procedure relating to the offences. A positive feature of the Act under sec. 16 is that: (a) 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; (b) 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; and (c) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try any offence under this Act.

\textsuperscript{71} Ibid, Section 12.
8.2.14.4 Penalties under the Child Labour Act

The penalties under this Act are relatively more stringent than the earlier Acts and violating the provisions relating to child labour in certain other Acts results in a penalty under this Act.\textsuperscript{72}

The penalties\textsuperscript{73} under this Act are as follows:

(i) Whoever employs any child or permits any child to work in a hazardous employment 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;\textsuperscript{74} (ii) For a repeated offence, the punishment is imprisonment for a term which shall not be less than six months but which may extend to two years;\textsuperscript{75} and (iii) For failing to give notice to the inspector as required by section 9, or failing to maintain a register as required by section 11, or making any false entry in the register, or failing to display an abstract of section 3, or of failing to comply with any other provisions of this Act or rules, the punishment is imprisonment which may extend to one month, or with fine which may extend to ten thousand rupees or with both.\textsuperscript{76}

It is to be noted that the Act provides for both fine as well as imprisonment. But in practice, in those few instances where the employer is prosecuted, he is generally fined.

\textsuperscript{72} Ibid, Section 15, Modified applications of certain laws in relation to penalties.
\textsuperscript{73} Ibid, Section 14.
\textsuperscript{74} Ibid, Section 14(1)
\textsuperscript{75} Ibid, Section 14(2)
\textsuperscript{76} Ibid, Section 14(3)
8.2.14.5 Critical Analysis of Child Labour (Prohibition and Regulation) Act, 1986

There are certain shortcomings in the Act. The Child Labour Act was passed with the object of achieving two contradicting goals, viz; prohibition and regulation of child labour which is not in conformity with Article 24 of Constitution and the Act is in favour of regulation rather than abolition of Child Labour.77 There is another major lacuna in the Act, i.e. the absence of any measures for rehabilitation of the child. The proviso annexed to section 3 is abused by employing children in respect of families and work experience acquired by children. This proviso helps employers to pose as family members of the children working in their premises and thus continued to exploit the children, this is how the employer escapes from prosecution. Hence burden of proof is to be fixed on the occupier to prove that the child is a member of his or her family.78 Further the age of the child has been differently defined in different laws. There is no a criterion or scientific parameters for defining the age of the child. Thus laws leads to confusion and uncertainty.


77 PP Jayanti, “Child Labour – A Socio –Legal Study” KUJLS 143 to 158 (1988)
78 Supra note 63, Section 3 proviso: provided that nothing in the 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.
“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”. By reading above Article 24 it is observed that Constitution of India does not create an absolute bar to the employment of children below the age of 14 years. Their employment is prohibited only in factory or mine or in any other hazardous employment. Child below the age of fourteen years shall be employed to work in all establishments other than factory or mine or hazardous employment. Various laws and policies relating to child labour and child rights appear to work in isolation. There is no nexus between each other. The right to education did not have direct bearing upon the child labour law. Policy perspectives relating to children and childhood are confused. The Right of Children to Free and Compulsory Education Act, 200979 intended to provide free and compulsory education all the children of the age 6-14 years. But under Child Labour (Prohibition and Regulation) Act, 1986 laying down that children below fourteen years can work in non-hazardous occupations and processes is a mockery in providing justice to the children. The Chairperson of National Commission for Protection of Child Rights said “The child labour policy itself is flawed and existing child labour law was violating the fundamental right to education. Thus there is a need to amend the Act to make it in consonance with the Right to Education.80 The definition of child labour needs to include children working in the farm-lands. The

---

79 The Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) received the Assent of the President on 26.8.2009 and came into force w.e.f. 1.4.2010 Sec. 2(c).
National Policy on Children 1974 is now outdated. It should be more children oriented and Rights based in order to be effective. The laws and policies now have to confirm to the international standards laid down in the U.N. Convention on the Rights of the Child.

8.2.14.6 An Analysis of the 2006 Amendment to the Child Labour (Prohibition and Regulation) Act

The Child Labour (Prohibition and Regulation) Act, 1986 does not ban child labour per se, and leaves the millions of child labourers in the domestic and unorganized sectors, outside its purview. According to extremely conservative Governmental estimates, about 1,85,595 children are estimated to be engaged in domestic work and roadside eateries,81 which have been refuted by the statistics compiled by NGOs, which estimate the number at around 20 million.82 On August 01, 2006, the Government imposed a ban on employment of children as domestic servants or servants in dhabas (road side eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centers.83 The ban has been imposed under the Child Labour (Prohibition and Regulation) Act, 1986 on the recommendation of the Technical Advisory Committee on Child Labour headed by the Director General, ICMR, and has become effective from 10th October, 2006.84 The Ministry of Labour has recently issued a notification to this effect giving three-month mandatory notice. Employing children in these categories would make the offender liable to prosecution,

82 The Hindu, “Ban on Domestic Child Labour came into Effect” October 11, 2006.
84 The Provision of Constitution of the Technical Advisory Committee has been laid down in Section 5 of the Child Labour (Prohibition and Regulation) Act, 1986.
and may result in imprisonment up to two years and/or fine shall not be less than Rs. 10,000 but may extend to Rs. 20,000.\textsuperscript{85}

The Technical Advisory Committee while recommending a ban on employing children in these occupations had said that although these occupations are not capable of being classified as per se hazardous, there is a high risk that children may be subjected to physical violence, psychological traumas, and at times, even sexual abuse. Such incidents being committed in the close confines of the households or dhabas or restaurants, often go unnoticed and unreported. Being kept out of the regulation mechanism inbuilt in the original 1986 Act, children employed in these sectors are made to work for long hours and are made to undertake various hazardous activities severely affecting their health and psyche. The Committee has said that the children employed in road-side eateries and highway dhabas were the most vulnerable lot and were easy prey to sex and drug abuse as they come in contact with all kinds of unscrupulous people. This recent measure initiated by the Central Government takes care of a major criticism against the 1986 Act, and is expected to go a long way in ameliorating the condition of helpless working children.

\textbf{8.2.14.7 Abolition of Child Labour Bill, 2006 - An Analysis}

Despite prohibition imposed by the Constitution on employment of children below fourteen years of age in any hazardous employment, millions of children are forced by their parents to work in different establishments, which have not already been classified within the prohibited sectors, including employment as domestic help.

\textsuperscript{85} \textit{Supra} note 64, Sec. 14.
Hence, the Abolition of Child Labour Bill, 2006 has been placed before the Parliament which envisages a stricter regime, and includes sectors such as domestic work, agricultural operations, construction activities, transport industry etc. The greatest merit of the new Bill is that, apart from putting prohibitions on child labour, it also seeks to provide for their rehabilitation. Section 6 of the Bill has mandated that even if an employer employs a child, he should send him to school, failing which he will be punished with imprisonment for a term which may extend to three months and a fine of Rupees Ten Thousand. This provision while discouraging child labour, indirectly points at a policy of rehabilitation of child labour, the proposed Act, lays down a separate penalty for companies employing child labour. In case a company employs a child for remuneration without sending him to school, the person in charge of the company at that point of time, shall be held liable to be punished with imprisonment which may extend to six months, or with fine which may vary between Rs.1 lakh and Rs.5 lakhs. Moreover, the licence of the company shall be liable to be cancelled, and the company shall also be required to meet the educational and such other requirements of the child as may be necessary for his development and education upto graduation level. Section 7 says that if any child is found to be self employed and he has no parents or guardians to support him, he shall be immediately sent to a hostel for students by the Central Government and all expenditure on this account shall be met by the Central Government. Thus, the Bill of 2006 has a definite

---

policy towards rehabilitation of child labour, and is hence a welcome piece of legislation.

From the above discussion, it is clear that the Government has taken cognizance of child labour as a major social problem in India, and is taking a number of steps to eradicate it. Although nothing can be predicted about the potential success of this legislative intent, it must be admitted that the efforts are steps in the right direction. Unfortunately this bill is not yet passed.

8.3 Judicial Decisions and Child Labour

The response of the judiciary with regard to Child Labour in India is highly commendable. It has in real sense brought a revolution in the field of child labour in India. It has always endeavored to expand and develop the scope of law so as to respond to the hope and aspirations of the framers of the Constitution as well as the people of India. Time and again, it has pronounced glorious judgments for eliminating the problem of child labour in India. With regard to child labour in India, Justice Subba Rao, the former Chief Justice of India, rightly remarked; “Social justice must begin with the child. Unless a tender plant is properly nourished, it has little chance of growing into strong and useful tree. So, first priority in the scale of justice should be given to the welfare of children.”87 Supreme Court has played an important Role to control the problem of child labour and has shown its concern for child labour by bringing occupations or processes under the courts order by the direct application of constitutional provisions. Human Rights jurisprudence in India has a constitutional

status and sweep; Article 21 of the Constitution can be termed as ‘Magna Carta’ of human rights. This Article guarantees right to life and liberty to every human being. Right to life and liberty is a cherished and prized right under the Constitution.

Supreme Court replaced the liberal concept of Article 21 taken in Maneka Gandhi v. Union of India,\textsuperscript{88} and Francis Coralie Mullin v. Union Territory of Delhi,\textsuperscript{89} held that Article 21 included protection of health and strength of workers, men, women and tender age of children against abuse. According to the court, the opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity and educational facilities are included in Article-1.

In Peoples Union for Democratic Rights v. Union of India,\textsuperscript{90} commonly known as ‘Asiad workers case’, it was brought to the notice of the Supreme Court that children below 14 years of age employed in the construction work. It was held that construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. Referring to Article 24, Justice P.N. Bhagavathi and Justice Bahrul have held that “apart from the requirement of International Labour Organization Convention No.59, we have Article 24 of the Constitution which even if not followed up by the appropriate legislation, must operate “proprio vigore” and construction work plainly and indubitably a hazardous employment, it is clear that by a reason of constitutional prohibition no child below 14 years can be allowed to be

\textsuperscript{88} AIR, 1978, SC 597; 1978 (1 SCC 248)
\textsuperscript{89} (1981) I SCC p.608.
engaged in construction work”. And specifically in Employment of Children Act, 1938, no child below 14 years can be employed in construction work.91 The Supreme Court observed that “There can be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Employment of Children Act, 1938, no child below the age of 14 years can be employed in construction work and the Union as also every State Government must ensure that the constitutional mandate is not violated in any part of the country”. The Judgment was eye an opener about the lacunae of the law and the need to reform in order to be comprehensive. In accordance with this judgment, the construction work has been added item No.7 as prohibited, occupation in part ‘A’ of Schedule to the Child Labour Act of 1986.

In Labourers, Salal Hydro Project v. State of Jammu and Kashmir,92 Bhagavati J. with R.S.Pathak and Amarendra Nath Sen JJ., delivered another valuable decision to protect the interest of large number of child labourers working in the construction of Salal Hydro Project, a hazardous work. The court was constrained to remark that the problem of child labour is a difficult problem and it is purely an account of economic reasons that parents often want their children to be employed in order to be able to make both ends meet. The court said that this is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in the country, it will be difficult to eradicate child labour.93

91 AIR 1982 SCC 1481.
92 (1983)2 SCC 181; AIR 1984 SC.177.
93 Ibid, p.191
The Court conceded that having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact, any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments. The Central Government was directed to persuade the workmen to send their children to a nearby school and arrange not only for the school fees to be paid but also provide free of charge, books and other facilities such as transportation etc. The Court also suggested to the Central Government that "whenever it undertakes a construction project which is likely to last for some time it should provide that children of construction workers who are living at or near the project site should be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project work or any part thereof to a contractor, necessary provision to this effect may be made in the contract with the contractor".  

With regard to child labour in Beedi Industry, in Rajangam, Secretary, Dist. Beedi Workers Union v. State of Tamil Nadu and others, with K.C. Chandra Segaram v. State of Tamil Nadu and others, various allegations were made regarding failure to implement the provisions of the labour laws, manipulation of records regarding employees, non-payment of appropriate dues for work taken etc.

95 AIR 1993 SC 404; 1993 Lab IC 4.
96 Ibid.
including the child labour and specifically the non-implementation of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. To protect child labour, the Apex Court suggested that "tobacco manufacturing has indeed health hazards. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Governments........the provisions of the Child Labour Act, 1986 should be strictly implemented." The Court further admitted that the exploitation of labour is rampant in the beedi trade and suggested that 'in view of the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs. 50,000 and the premium should be paid by the employer.'

In M.C. Mehta v. State of Tamil Nadu and others, Supreme Court allowed children to work in a prohibited occupation like fireworks. Ranganath Mishra and M.H.Kania JJ. opined that "the provisions of Article 45 of Constitution in the Directive Principles of State policy still remained a far cry and through according to this provision", all children up to the age of fourteen years are supposed to be in the school, but economic necessity forces grown-up children to seek employment. Children can, therefore, be employed in the process of packing of fireworks but packing should be done in an area away from the place of manufacture to avoid

---

97 Ibid, at 405.
98 Ibid.
exposure to accident.\textsuperscript{100} It is a matter of surprise that the Supreme Court in this case allowed the children to be employed in match factories of Sivakashi in Madras and said that, the children must be provided basic diet during working period. This judgment is not in accordance with the constitutional spirit.

Further Supreme Court in \textit{M.C. Mehta v. State of Tamil Nadu and others,}\textsuperscript{101} popularly known as \textit{‘Child Labour Abolition case’} has held that the children below the age of 14 years cannot be employed in any hazardous industry, mines or other work. It would be appropriate to quote brief facts that, when news about an accident in one of the Shivakashi crackers factories was published in the media, wherein several children reported dead, the Supreme Court took \textit{“Suo motu”} cognizance of it. The Court gave certain directions regarding the payment of compensation. An Advocate’s Committee was also constituted to visit the area and report on the various aspects of the matter.\textsuperscript{102}

A three Judge Bench of the Supreme Court comprising Justice Kuldip Singh, Justice B.L. Hansaria, and Justice S.B. Majumdar delivered a land mark Judgement on 10 December 1996 in writ petition (Civil) No.465/1986. This Judgement is of considerable importance and is a progressive advancement in public interest litigation and child jurisprudence. The decision has attempted to tackle the problem of child labour.

\textsuperscript{100} \textit{Ibid.}
\textsuperscript{101} \textit{Ibid.}
M.C. Mehta, a environmentalist, lawyer, filed a writ under Article 32 of the Constitution of India, as the fundamental right of children against exploitation (Article 24) was being grossly violated in the match and fireworks industries in Sivakashi where children were employed. The Court then noted that the manufacturing process of matches and fireworks is hazardous, giving rise to accidents including fatal cases. Therefore, keeping in view the provisions contained in Article 39(f) and 45 of the Constitution, it gave directions as to how the quality of life of children employed in the factories could be improved. The Judges further observed that 'it is a stark reality that in our country like many others, children are exploited a lot.'\textsuperscript{103} Court had remarked that "child labour is a big problem and has remained intractable even after 50 years of country having become independent, despite various legislative enactments prohibiting employment of a child in a number of occupations and avocations."\textsuperscript{104} The Court said employment of the child below 14 years was unconstitutional in diction and if it had to be seen that all these children had a fundamental right for education, it seemed that the least the Court ought to do was to see the fulfillment of the legislative intent behind the Child Labour (Prohibition and Regulation) Act, 1986.\textsuperscript{105}

It was observed that every employer should be asked to pay a compensation for every child employed in contravention of the provisions of the Act, a sum of Rs. 20,000; while the state shall pay Rs.5,000/- if it failed to provide alternative

\textsuperscript{103} \textit{Supra} note 100, p.701.
\textsuperscript{104} \textit{Ibid.}
\textsuperscript{105} \textit{Ibid}, at 709.
employment to the adult member of the child's family. Both the amounts shall go to
the Corpus Welfare Fund, the income from which would be used for the education of
laid off children and their welfare.\textsuperscript{106}

The judges made it clear that the liability of the employer to contribute
Rs.20,000/- for each child to the Corpus Welfare Fund would not cease even if he
would desire to discharge the child currently employed. Since the income generated
from the Corpus would not be enough to dissuade the parents to seek employment of
the child, the state owes a duty to come forward and discharge its obligation by
providing a job for one adult member of each of the child's family in lieu of its job.
However, the judges made it clear that they were not issuing any direction to the state
to provide the jobs to the adult members presently. Instead they were leaving the
matter to be sorted out by the government.

Factory inspectors were directed to see that the working hours of the child in
non-hazardous industries were not more than four to six hours a day and that the child
receives education for at least two hours a day and the entire cost of education is
borne by the employer.\textsuperscript{107}

In the above said M.C. Mehta case,\textsuperscript{108} with regard to Sec. 14 of the Child
Labour (Prohibition and Regulation) Act, 1986 to apprise the developing restitutive
jurisprudence, the Supreme Court observed "Taking guidance there from, we are of
the view that the offending employer must be asked to pay compensation for every

\textsuperscript{106} Ibid, at 710.
\textsuperscript{107} Ibid, at 711
\textsuperscript{108} M.C Mehta v. State of Tamil Nadu and Other, (Child Labour Abolition Case) 6 SCC 756; 1997
SCC (L & R) 49; AIR 1997 SC 699.
child employed in contravention of the provisions of the Act a sum of Rs.20,000/- and the inspectors, whose appointment is visualized by section 17 to secure compliance with provisions of the Act, should do this job. The inspectors appointed under section 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/- which sum could be deposited in a fund to be known as “Child Labour Rehabilitation-cum-Welfare Fund”. The liability of the employer would not cease even if he would desire to disengage the child presently employed”. Karnataka High Court in Hayat Khan v. Deputy Labour Commissioner, Regional Office, Belgaum and others ¹⁰⁹ observed, offending employer must be asked to pay compensation of Rs.20,000/- for every child employed in contravention of the Child Labour Act.

In Sheela Barse v. Union of India, ¹¹⁰ it was held that child is a national asset, and it is the duty of the state to look after the child with a view to assuring full development of its personality. Judicial institutions have played a significant role not only for resolving disputes but also has always endeavoured to expand and develop the law so as to respond to the hopes and aspirations of the people who are looking to the judiciary to give life and content to law.

With a view to safeguard the interest of bonded child labourer Supreme Court delivered a judgment with important observation in a leading case in Bandhua Mukti

¹¹⁰ (1993) 4 SCC 204
Morcha v. Union of India and others.\textsuperscript{111} On behalf of the Court, Justice Bhagwati remarked that “it is a problem which needs urgent attention of the Government of India and the State Governments and when the Directive Principles of State Policy have obligated the Central and State Government to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and the handicapped. It is not right on the part of the concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected…….” It is therefore essential that which ever be the State Government it should, where there is bonded labour, admit the existence of such bonded labour, and make all possible efforts to eradicate it. By doing so, it will not only be performing a humanitarian function, but also discharging a constitutional obligation and strengthening the foundations of participatory democracy in the country.\textsuperscript{112}

Further, in the case of Neeraja Choudhary v. State of M.P,\textsuperscript{113} the Court said that ‘it is not enough merely to identify and release bonded labourers, but it is equally, perhaps more important that, after identification and release, they must be rehabilitated, because without rehabilitation, they would be driven by poverty, helplessness and despair into serfdom once again.\textsuperscript{114} Not only, that, ‘the Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded

\footnotesize
\textsuperscript{111} AIR 1984 SC 802.
\textsuperscript{112} Ibid.
\textsuperscript{113} AIR 1984 SC 1099
\textsuperscript{114} Ibid., See also P. Shiva Swamy v. State of A.P.; 1988 Lab IC 1680.
labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21, apart from Article 23 of the Constitution115 and, therefore the Apex Court directed the State Government to provide rehabilitative assistance to these freed bonded labourers within one month from the date of giving the decision. Because 'freedom from bondage without effective rehabilitation after such freedom will indeed be of no consequence and in the absence of proper arrangement for such rehabilitation being made, the entire purpose of the Act, will be frustrated'.116

The observation made by the Supreme Court in another judgment in *Bandhua Mukti Morcha v. Union of India and others* (II),117 a public interest litigation was filed alleging employment of children aged below 14 in the Carpet Industry in the State of Uttar Pradesh. Reports of a Commissioner/Committee appointed by the Supreme Court confirmed forced employment of a large number of children, mostly belonging to SCs and STs and brought from Bihar, in carpet weaving centers in the State. It was held by the Court that the State is obliged to render socio-economic justice to the child and provide facilitates and opportunities for proper development of his personality.

It was observed by the Court that, “The child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Neglecting

---

children means loss to society as a whole. If children are deprived of their childhood—socially, economically, physically and mentally—the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, social stability and good citizenry. The founding fathers of the Constitution, therefore, have emphasized the importance of the role of the child and the needs for its best development and projected the rights in the Directive Principles including the children as beneficiaries. Their deprivation has a deleterious effect on the efficacy of democracy and the rule of law."

The Supreme Court of India in *Rosy Jacob v. Jacob A, Chakramakkal*[^118] observed that “The children are not mere chattels; nor are they mere play things for their parents. Absolute rights of parents over the destinies and the lives of their children has in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society...”

With regard to the payment of wages to the child worker, the Child Labour Act is silent. Notifying under the Minimum Wages Act, 1948, some states have required payment to child workers, 60% of the wages payable to adults.[^119] Consequently this policy encourages prospective employer to employ child labour than an adult. The Karnataka High Court analyzing this policy in *A Srirama Babu v. Chief Secretary*,

[^118]: (1973) 1 SCC 840; at Para 15; AIR 1973 SC 2090.
Government of Karnataka,\textsuperscript{120} has observed, “This needs a re-look and an abolition of such difference would certainly go a long way in increasing employment potential for grown up and dissuade the employer from employing child labour”. So it is essential that the state should step in to retard the trend to employ child labour.

In \textit{M.C. Mehta and Bandhua Mukti Morcha cases}, Supreme Court, of course, delivered land mark judgments but while observing both the judgments it appears that full scale of abolition of child labour of all types was not aimed. The court was conscious about practicality. Supreme Court observed in Bandhua Mukti Morcha:

“Total banishment of employment may drive the children into destitution and other mischievous environment, making them vagrant, hard criminals and social risks etc. Therefore, while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Immediate ban of child labour would be both unrealistic and counterproductive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like”.\textsuperscript{121}

The idea of total prohibition of child labour was not endorsed by the conference of State Labour Ministers also in 1997 on the ground that this objective

\textsuperscript{120} ILR 1997 Kar. 2269.\textsuperscript{121} (1997) 10 SCC 549.
had to be realized progressively and could not be effected overnight. They agreed about the urgency of providing free, compulsory and universal primary education.\textsuperscript{122}

The High Court of Karnataka in \textit{A Srirama Babu case},\textsuperscript{123} looked to the issue of eradication of child labour in sericulture industry, especially weaving of silk sarees, where children in the age group of five to eight were engaged in huge numbers. While the schedule to Child Labour Act is silent about this industry, the court enunciated the criterion of hazardous work. To be hazardous, the work should be either inherently injurious to the children or the conditions of work are harmful to their health. The Court held that all employments which cripple the health of a child and which disable him from being a healthy member of the society should be treated as a hazardous industry. It directed the Commissioner of Labour to issue notices to the deviant establishments for appropriate action. One shocking disclosure made by the Court is with regard to improper use by the State Administration of funds released by the Central Government.\textsuperscript{124}

8.3.1 Judicial Response to Child Labour and Right to Education

Education develops the human personality. A right to education is indispensable in the interpretation of a development as a human rights\textsuperscript{125} This right to development is also considered basic human right.\textsuperscript{126} Education of children is an important right of a child. Education is critical for economic and social

\begin{footnotesize}
\begin{enumerate}
\item \textit{Supra} note 118 P.623.
\item \textit{A Sriram Babu} v. \textit{Chief Secretary, Govt of Karnataka}, ILR (1997) Kar, 2269.
\item \textit{Supra} note 118\textsuperscript{124}
\item Leyla Sahin V. Turkey, decided by the European Court of Human Rights on 10\textsuperscript{th} Nov.2005.
\item Election Commission of India. St. Mary’s School 2007 AIR SCW 7761.
\end{enumerate}
\end{footnotesize}
It is crucial for building human capabilities and for opening opportunities. The social benefits of education spread in many directions. Education leads to better health care, smaller family norms, greater community and political participation, less income inequality and a greater reduction of absolute poverty. The abolition of child labour must be preceded by the introduction of compulsory education, since compulsory education and child labour laws are interlinked. Article 24 of the Constitution bars employment of child below the age of 14 years Article 45 is supplementary to Article 24 for if the child is not to be employed below the age of 14 years he must be kept occupied in some educational institution. Now Article 45 is amended.

8.3.1.1 Importance of Education

In J.P. Unnikrishnan v. State of Andhra Pradesh, Supreme Court while dealing with education as a fundamental right has emphasized the importance of education by stating that; “The fundamental purpose of education is the same at all times and in all places; it is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotion and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter”. Further an old Sanskrit adage states; “That is education which leads to liberation” liberation from

---

129 Article 24 of Constitution: “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”
ignorance, which shrouds the mind, liberation from superstition, which paralyses effort, liberation from prejudices which blind the Vision of the Truth. Education is enlightenment. It is the one that lends dignity to a man as was held in University of Delhi v. Ramnath.\textsuperscript{131} The Supreme Court held that “Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development”.

In P.A. Inamdar \textit{v. State of Maharashtra},\textsuperscript{132} Supreme Court observed that; Education is “Continued growth of personality, steady development of character, and the qualitative improvement of life. A trained mind has the capacity to draw spiritual nourishment from every experience, be it defeat or victory, sorrow or joy. Education is training the mind and not stuffing the brain”.

Swamy Vivekananda has quoted “We want that education by which character is formed, strength of mind is increased, the intellect is expanded, and by which one can stand on one’s own feet”. “The end and aim of all education, all training should be man-making. The end and aim of the training is to make the man grow. The training by which the current and expression of will are brought under control and become fruitful is called education.”\textsuperscript{133} Planning Commission of India stated that\textsuperscript{134} education is an important input both for the growth of the society as well as for the individual. Properly planned educational input can contribute to increase in the Gross

\begin{footnotesize}
\begin{enumerate}
  \item AIR 1963 SC 1873 at p.1874.
  \item \textit{Ibid}, p.20
  \item India-Vision 2020 Published by Planning Commission of India at p.250.
\end{enumerate}
\end{footnotesize}
National products, cultural richness, built positive attitude towards technology and increase efficiency and effectiveness of the governance. Education opens new horizons for an individual, provides new aspirations and develops new values. It strengthens competencies and develops commitment. Education generates in an individual a critical outlook on social and political realities and sharpness the ability to self examination, self monitoring and self-criticism”.

“The term ‘Knowledge Society’, ‘Information Society’ and ‘Learning Society’ have now become familiar expressions in the educational parlance, communicating emerging global trends with far-reaching implications for growth and development of any society. These are not to be seen as mere cliché or fade but words that are pregnant with unimaginable potentialities. Information revolution, information technologies and knowledge industries, constitute important dimensions of an information society and contribute effectively to the growth of a knowledge society”.

“Alwin Toffler (1980) has advanced the idea that power at the dawn of civilization resided in the ‘muscle’. Power then got associated with money and in 20th century it shifted its focus to ‘mind’. Thus, the shift from physical power to wealth power to mind power is an evolution in the shifting foundations of economy. This shift supports the observation of Francis Bacon who said ‘knowledge itself is power’; stressing the same point and upholding the supremacy of mind power, in his characteristics expression, Winston Churchill said, ‘The Empire of the future shall be empire of the mind”. Thus, he corroborated Bacon and professed the emergence of the knowledge society”.

It could be seen that several international documents have recognized the right to education as a human right.\(^{135}\) The process of moulding the right to education as a fundamental right was triggered off by *Mohini Jain's case*\(^{136}\) and subsequently strengthened by *Unni Krishna's case*\(^{137}\) which ruled that right to education is a fundamental right that flows from the Right to life in Article 21 of the Constitution. Every child/citizen has a right to free education up to the age of 14 years thereafter the right would be subject to the limits of the economic capacity of the state. This decision was upheld and confirmed by the 11 Judge constitutional bench of the Supreme Court in *TMA Pai Foundation v. Union of India*.\(^{138}\) In the year 2002, the Indian Constitution through its 86\(^{th}\) Amendment Act, has made “Right to Education a Fundamental Right”.\(^{139}\) The State is obliged to duty bound to provide free and compulsory education to all children of age 6-14 years in such manner as the state may by law determine. It was also provided that, it is the fundamental duty of a parent or guardian to provide opportunities for education to his child between the age of 6 to 14 years.\(^{140}\) In pursuance of this development in the field of education


\(^{138}\) AIR 1996, SC 2652.

\(^{139}\) Article 21-A of Constitution.

\(^{140}\) Amendment of Article 51-A of the Constitution by inserting clause (K) by Constitution (86\(^{th}\) Amendment) Act, 2002, Sec. 4.
recognizing it as fundamental right, the Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009\textsuperscript{141} which provides for free and compulsory education to all the children of the age of 6 to 14 years. Chief components of the enactment were; (i) Adding Article 21-A in Part III (Fundamental Right); (ii) Modifying Article 45; and (iii) Adding a new clause (k) under Article 51-A (Fundamental Duties) making the parent or guardian responsible for providing opportunities for education to their children between 6 and 14 years.

8.4 Conclusion

In spite of several legislative measures by enactment of statutory provisions to curb employment of children in hazardous employment and those injurious to health, the exploitation of children by different profit makers for their personal gains continued unabated in utter disregard of constitutional injunction and statutory prohibition.

From the analysis of the relevant statutory provisions of the Indian laws relating to child labour, it has become abundantly clear that the statutes vary as to the age limit of a child employed or permitted to work in various occupations. There is no law fixing minimum age for employment of children in agriculture. The Factories Act, 1948, fixes minimum age of 14 whereas the International Labour Organisation Convention prescribes minimum age for any employment to be 15. In the case of plantations, the age of employment has been fixed at 12 years but in the case of non-

\textsuperscript{141} (Central Act, No.35 of 2009) received the Assent of the President on 26\textsuperscript{th} August 2009, came in to force w.e.f.1.4.2010.
industrial employment the minimum age varies from 12 to 14 years. Thus, Indian Laws relating to child labour are deficient from the international standards as laid down by the International Labour Organisation but even then they can be considered satisfactory in view of the prevalent economic conditions of the country. There are plethora of statutes\textsuperscript{142} to prevent the misuse of children in hazardous employment and to protect the general rights of the children. But sociological studies have revealed either the ineffective nature of these laws or their blatant violations.

Inspite of these legislative enactments and the pro-active role played by various agencies, child labour continues to be a major problem. A large number of children are exploited and deprived of what is due to them. Ironically total laxity prevails the enforcement of the provisions with not much evidence of conviction.

The complete Abolition of child labour and proper regulation thereof in accordance with the statutory provisions should be the cherished and prime objective of a civilized society. It is also pertinent to state that the Judiciary played a significant role in protection of child labours. Many path breaking judgments of the Supreme Court have done a great deal by expanding the human rights doctrine. It would not be out of place to mention the historic judgment of the Supreme Court on December, 10, 1996 banning child labour in non-hazardous industries. The judgment specified the hazardous and the most dangerous occupations from where child labour should be eliminated. Penalty to the employer at Rs.20,000/- per child be paid and a corpus to

\textsuperscript{142} The Children Act, 1960, Juvenile Justice Act, 1986, the Child Labour (Prohibition and Regulation) Act. 1986 etc.
be found through the amount so collected. This was to be spent on education and rehabilitation of the children. The court also ordered that the working hours of a child labour should not exceed 4-6 hours a day and not less than 2 hours a day should be set aside for the child’s education. The responsibility for imparting this education is that of the employer. Judiciary in India played a very significant role in promoting child welfare. It has taken the lead to save the child from exploitation and improve their conditions. Judicial mandate clearly demonstrates that right to education is necessary for the proper flowering of the children and their personality.

Thus, the judiciary has always made concrete efforts to safeguard them against the exploitative tendencies of their employers, by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities. The judiciary has even directed the states that it is their duty to create an environment where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consensus of the mandate of our Constitution.