CHAPTER-IV

CONSTITUTIONAL
AND
STATUTORY PROVISIONS
ON CHILD LABOUR
UN declaration on the 'Rights of the Child', ILO conventions and recommendations relating to children besides the National Policy, Five-year Plans etc. have much impact on Indian labour legislation which seek the protection and welfare of the employed children. Indian Constitution makers realised the need for putting curbs on child labour and thus it carries important expression of the government policies against the abuse of child labour in India. Still, the research findings and reports as well as observational studies reveal that in almost every field the child labourers are exploited to a large extent as "they are not aware of their rights and legal provisions meant for their protection". This Chapter therefore aims at discussing mainly the constitutional and statutory provisions on child labour in India.

4.1 CONSTITUTIONAL PROVISIONS FOR WELFARE OF THE CHILD

A Constitution of a country is expected to represent the aspirations and to solve the problems of the people of that country. Interpretation of its provisions should therefore always fit in with the social set up of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the

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increasing needs of the nation, the burning problems of the day and the complex issues facing the people.........\textsuperscript{2} Indian Constitution provides Fundamental Rights to ensure that the liberty of the citizens of India would be reality and not merely a promise. The Directive Principles of State Policy as enshrined in the Constitution assures the citizens a better life where in social and economic justice will be available. These two together constitute the conscience of the Constitution and represent the basic rights inherent in human being in this country. They are equally relevant to promote the aims and objectives of the Constitution as fully explained in the preamble.

The Preamble of our Constitution declares to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation.

The inclusion of the expression 'social justice' in the Preamble is the recognition of the greater good to a larger number without depriving accrued rights to anybody. This social justice demands equality along with liberty. In a developing country like ours, the State must try to improve the lot of the downtrodden and weaker sections including children and accordingly the provisions have been made in the Constitution. A socialistic pattern of society is the main intention that hides behind the concept of 'economic justice'. By this, it seeks to feed the starving people, cloths the naked masses, housing facilities and all manner of opportunities for progress of Indian people, especially of weaker sections. The equality of status and opportunity is mainly provided by the prohibition of artificial restrictions on the grounds of religion, race, sex, colour, place of residences etc. The Preamble secures to all its citizens fraternity, assuring the dignity of the individual and unity and integrity of the nation. It is the principle which gives unity and solidarity to social life without which both liberty and equality will have no meaning. The Preamble thus embodies and expresses the hopes and aspirations of the people and the Directive Principles only set out proximate goals3. The main objects intended to be secured by the Constitution are thus expressed by the words 'justice',

'Liberty', 'Equality' and 'Fraternity'. For the welfare of the children, for their protection from exploitation, for eradication of the problem of child labour from the society, the Constitution provides certain provisions which are given due weightage from time to time while deciding various labour problems on the basis of principles of socio-economic justice and social security.

Fundamental Rights represent the basic values cherished by the people of this country and are aimed at protecting the dignity of the individual and creating conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions.

Article 15(3) of the Constitution enables the State to make special provisions for women and children which indicates that it seeks to protect the interest of women and children and nothing else. The word 'and' in the above clause may be interpreted as both 'and' 'or'. This should be kept in mind that the language of Article 15(3) is in absolute terms and the special provisions need not be restricted to measures which are beneficial in its strict

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sense. Such special provision may be made either by legislation or by executive order.

Article 21 speaks that "no person shall be deprived of his life or personal liberty except according to the procedure established by law". It is really difficult to define the terms 'right to life' as it is not only confined to the taking away of life. It means something more than just physical survival, not merely the right to the continuance of a person's animal existence. It would include the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living. It has been decided in Sunil v. Delhi Administration that "the word 'protection of life' implies the right to live consistently with human dignity and decency". It would also include:

(a) the right of a person not to be subjected to bonded labour or to any other unfair conditions of labour;

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10 AIR 1978 SC 1675.
(b) the right to rehabilitation of a bonded labourer after release\(^{13}\);

(c) right to livelihood by means which are not illegal, immoral or opposed to public policy\(^{14}\).

Thus Article 21 imposed a limitation that while prescribing a procedure for depriving a person of his life or personal liberty, it must prescribes a procedure which is just, fair and reasonable\(^{15}\). So, the State is under obligation to see that there should not be any violation of fundamental rights of any person - adult or child. Because, Article 21 is not the solo respiratory of the right to life and personal liberty. Even in the absence of this Article, the State has no power to deprive a person of his life and liberty without the authority of law.

The 'Right Against Exploitation' as provided under Articles 23 and 24 has much importance which aims at recognition of restoration of the dignity of a person crystallises the philosophy of child welfare. Clause (1) of Article 23 incorporates two declarations:


\(^{15}\)Supra note 8.
(a) Traffic in human beings and 'begar' and other similar forms of forced labour are prohibited; and

(b) Any contravention of the prohibition shall be an offence punishable in accordance with law.

The term 'traffic in human beings' generally means to deal with men, women and children just like goods. It would include traffic in women and children for immoral and other purposes. The expression 'traffic in human beings' also cover 'slavery' though not expressly mentioned. The term 'forced labour' have a wide meaning and it means that any type of work which is done forcefully i.e against the will, either physically or mentally for which remuneration may or may not be paid. Thus 'begar' is a clear form of forced labour without remuneration or if some payment is made, it is grossly inadequate. Similarly, when a labourer is made to provide forced labour, there is a presumption that such a labourer is a bonded labourer and he has to work against his will. Actually this Article strikes at forced labour in whatever forms it may manifest itself because it is violative of

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16 Raj Bahadur v. Legal Remembrancer; AIR 1953 Cal. 522 (DB); See also Shama Bai v. State of Uttar Pradesh; AIR 1959 All. 57.
17 Dubar v. Union of India; AIR 1952 Cal. 496.
18 Suraj Narain v. State of Madhya Pradesh; AIR 1960 M.P.
19 Supra note 11: See also (1984) 3 SCC 161.
human dignity and is contrary to basic human values. But a voluntary agreement to do extra work for payment is not 'begar' or forced labour\textsuperscript{20}. Also, compulsory services for public purposes is excluded from the operation of this principle\textsuperscript{21}. The term 'begar' or 'forced labour' are different forms of exploitation and thus both adults and children are exploited by their employers.

Taking the essence of Article 23, the Suppression of Immoral Traffic in Women and Girls Act, 1956 and the Bonded Labour System (Abolition) Act, 1976 were passed.

Article 24 under "Right Against Exploitation" contained in part III provides the most relevant provisions which are directly connected with child labour. It prohibits employment of children below the age of fourteen years, in any factory, mine or any other hazardous employment which involves danger or risk to the physical or mental health of children. As such, Supreme Court was of the view that construction work is a hazardous employment and no child below the age of fourteen years can be allowed to be employed in any construction work\textsuperscript{22}. The expression any other hazardous employment must be understood \textit{ejusdem generis} with work in

\textsuperscript{20}Supra note 16 (In re Shama Bai).
\textsuperscript{21}Article 23 (2).
a factory or mine. Thus Article 24 leaves a wide scope to bring a number of cases of child labour to the notice of judiciary. In pursuance of this article a number of labour legislation have prohibited the employment of children below a certain age group depending upon the nature of work as it does not prohibit the child labour in general.

Under Part IV of the Constitution, several important provisions are also embodied for the welfare of children. This part of the Constitution mainly imposes the duty on the State to follow the directives to give economic and social justice to the common man in general and to weaker sections including children in particular. The essence of the Directive Principles lies under Article 38 which requires the State to promote the welfare of people by securing and protecting as effectively as it may, a social order in which justice - social, economic and political shall inform all the institutions of national life\(^2\). Indian Constitution further directs the State to adopt protective measures so that, the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength\(^2\). Thus, it imposes a ban on the employment of children in any occupation injurious to the lives of tender aged children.

\(^2\)Ins. by the Constitution (44th Amendment) Act, 1978, s.9.(w.e.f. 20.6.1979)

\(^2\)Article 38(e).
The provision contained in Article 39(f) urges upon the State to see that "children are given opportunities and proper facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment". This idea seems to be inspired by the provision contained in Article 41 of the Constitution of the Internation Labour Organisation.

It is also intended that the State within the limits of its economic capacity and developments, make effective provision for securing the right to education.

Article 42 indirectly aims at the healthy and favourable atmosphere in which the children may work as Article 24 does not prohibit their employment totally.

Article 43 seeks that the State shall endeavour to secure by suitable legislation etc. to all workers (which also includes child labourers), not only work, but living wages, conditions of work ensuring a decent standard of

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25Subs. by the Constitution (42nd Amendment) Act, 1976 (w.e.f 3.1.1977).
26Constitution of ILO, dated 28th June 1919 reads as follows:- "The abolition of child labour and imposition of such limitation on the labour of young persons as shall permit the Constitution of their education and secure their proper physical development".
27Article 41.
life and full enjoyment of leisure and social as well as cultural opportunities.

Further under Article 45, the State is obliged to provide free and compulsory education to the children until they complete the age of fourteen years. The main aim of this Article is to provide compulsory education along with eradication of illiteracy. Therefore, to achieve this goal, a greater attention is to be paid on primary education than on higher education in the present context.

Article 46 directs the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of exploitations. This provision, therefore, automatically applicable to the children of such class among which a sizable number of child labourers are found in India.

4.2 STATUTORY PROVISIONS TO PROTECT CHILD LABOUR

Law is an instrument of social change. It aims at rendering social justice to all the citizens of the land by protecting the interests and rights of each individual. Hence for the welfare of the children; to protect them
from the present exploitative set up; to eradicate child labour from the society; in India, a number of legislative enactments are there besides the constitutional safeguards. The extent of protection available for the children under various laws may be discussed in two phases:

(i) Comparative study of the Central Acts and Rules,

and

(ii) Study of the provisions under Orissal Local Acts and Rules, as this study is concerned with special reference to the State of Orissa.

4.2.1 Central Acts and Rules on Child Labour: A Comparative Study.

<table>
<thead>
<tr>
<th>Sl.No.</th>
<th>Legislation</th>
<th>Minimum age prescribed for employment (in years)</th>
<th>Working hours for children</th>
<th>Prohibition of night employment (during)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Apprentices Act, 1961</td>
<td>14</td>
<td>42 to 48 hrs. a week</td>
<td>10 p.m. to 6 a.m. (as per Apprenticeship Rules 1991).</td>
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<tr>
<td>No.</td>
<td>Act Title</td>
<td>Hours</td>
<td>Time</td>
<td>Remarks</td>
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<td>-----</td>
<td>---------------------------------------------------------------------------</td>
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<tr>
<td>2</td>
<td>Beedi and Cigar Workers (Conditions of Employment) Act, 1966</td>
<td>Totally banned</td>
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<td>-</td>
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<td>3</td>
<td>Children (Pledging of labour) Act, 1933</td>
<td>-do-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4</td>
<td>Child Labour (Prohibition and Regulation) Act, 1986</td>
<td>14</td>
<td>6 hrs. a day</td>
<td>10 p.m. to 6 a.m.</td>
</tr>
<tr>
<td>5</td>
<td>Dangerous Machines (Regulation) Act, 1983</td>
<td>Totally banned</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>6</td>
<td>Factories Act, 1948</td>
<td>14</td>
<td>4 ½ hrs. a day</td>
<td>i. 10 p.m. to 6 a.m.</td>
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<td></td>
<td>ii. 7 p.m. to 8 a.m. (Only for female child)</td>
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<tr>
<td>7</td>
<td>Merchant Shipping Act, 1958</td>
<td>15</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>8</td>
<td>Mines Act, 1952</td>
<td>18</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>(16 for apprentices)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Minimum Wages Act, 1948</td>
<td>14</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>10</td>
<td>Motor Transport Workers Act, 1961</td>
<td>Totally banned</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>11</td>
<td>Plantation Labour Act, 1951</td>
<td>14</td>
<td>27 hrs. a week</td>
<td>7 p.m. to 6 a.m.</td>
</tr>
</tbody>
</table>
4.2.1.1. Minimum age for employment of children

In order to fix the minimum age for employment of children different statutes prescribe different ages depending upon the nature of work. There was no statutory provision regulating the employment of the children in industry till 1881, the year in which first Indian law defining 'child' was passed\(^2\), besides prescribing prohibitory regulations for employment of children below seven years of age. But its provisions were inadequate to protect child labour and was therefore amended several times to meet the new needs which arose from time to time and specifically with an intention to protect child labour. In 1947, the Government of India frames a Bill for a radical overhaul of the existing law which was passed into an Act on 23rd September, 1948\(^2\) and was put into force on 1st April, 1949\(^3\) with an object to ensure adequate safety measures to promote health and welfare of the workers employed in factories\(^3\). This Act defines a 'child' as a person who has not completed his fifteenth year of age\(^4\), but the minimum age for employment of children in any factory has been fixed at fourteen\(^5\).

\(^2\) Act No. XV of 1881 which prescribes a person below the twelve years of age to be called as 'child'.

\(^3\) Factories Act, 1948 (Act No. LXIII of 1948).

\(^4\) Section 1 (3)

\(^5\) For details, see Gazette of India, 1947, part V, pp.580-581.

\(^6\) Section 2(c)

\(^7\) Section 67.
Under Apprentices Act, 1961\textsuperscript{34}, a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he has completed fourteen years of age\textsuperscript{35} where as Beedi and Cigar Workers (Conditions of Employment) Act, 1966\textsuperscript{36}, Children (Pledging of Labour) Act, 1933\textsuperscript{37}, Dangerous Machines Regulation Act, 1983\textsuperscript{38} and Motor Transport Workers Act, 1961\textsuperscript{39} have totally banned the child labour as shown in Table-4.1.

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 envisages that a 'child' means a person below fourteen years of age\textsuperscript{40} and under this Act, "no child shall be required or allowed to work in any industrial premises"\textsuperscript{41} where any manufacturing process connected with making of beedi or cigar is carried on. But children (Pledging of Labour) Act, 1933 was passed with an object to prohibit the pledging of labour of the children\textsuperscript{42} and

\begin{itemize}
  \item \textsuperscript{35}Section 3.
  \item \textsuperscript{36}Act No. 32 of 1966, published in Gazette of India, Extra, Part II, Section 1, dated 1st December, 1966.
  \item \textsuperscript{37}Act No. II of 1933.
  \item \textsuperscript{38}Act No. 35 of 1983, published in Gazette of India, Extra, Part II, Section 1, dated 14th December, 1983.
  \item \textsuperscript{39}Act No. 27 of 1961.
  \item \textsuperscript{40}Section 2(b)
  \item \textsuperscript{41}Section 24.
  \item \textsuperscript{42}See Preamble of the Act.
\end{itemize}
accordingly it declares void\textsuperscript{43}, an agreement to pledge the labour of 'children' below fifteen years of age\textsuperscript{44}, by the 'parent' or 'guardian' of a child in return for any payment or benefit\textsuperscript{45}.

Both Dangerous Machines (Regulation) Act, and the Motor Transporters Workers Act, 1961 define a child as a person below fourteen years of age\textsuperscript{46}. The former one not only prohibits the employment of any child for the operation of dangerous machines, but also their presence near these machines under section 31(b) whereas the Motor Transport Workers Act, 1961 speaks that no child shall be required or allowed to work in any capacity in any motor transport undertaking\textsuperscript{47}.

The Minimum Wages Act, 1948\textsuperscript{48} defines a 'child' as a person who has not completed his fourteenth year of age\textsuperscript{49} which is the minimum age for employment by any child. Mines Act, 1952\textsuperscript{50} provides that, no person below the age group of eighteen years shall be allowed to work\textsuperscript{51} or to be

\textsuperscript{43}Section 3.
\textsuperscript{44}Section 2. Because a 'child' under this Act is defined as a person who is under fifteen years of age.
\textsuperscript{45}Ibid.
\textsuperscript{46}Section 2(c) and section 3(a) of the Motor Transport Workers Act, 1961 and The Dangerous Machines (Regulation) Act, 1983 respectively.
\textsuperscript{47}Section 21.
\textsuperscript{48}Act No. 11 of 1948.
\textsuperscript{49}Section 2(bb), Ins. by Act No. 61 of 1986.
\textsuperscript{50}Act No. 35 of 1952 as amended upto Act No. 42 of 1983 (w.e.f. 31.5.1984).
\textsuperscript{51}Section 41(1).
present\textsuperscript{52} in any mine or part thereof. But the apprentices and other trainees not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof, by the manager\textsuperscript{53} and the trainee have to obtain the prior approval of the Chief Inspector or an Inspector before they are allowed to work.

Table-4.1 depicts that the Merchant Shipping Act, 1958 prohibits the employment of children under fifteen years of age\textsuperscript{54} as trimmers or stockers in any ship where as the employment of children below fourteen years of age in any type of plantation has been prohibited\textsuperscript{55} by the Plantations Labour Act, 1951\textsuperscript{56}.

The Child labour (Prohibition and Regulation) Act, 1986\textsuperscript{57} which aims at removing the loopholes of the earlier Acts regarding the protection of child labour and specifically with an intention to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments\textsuperscript{58}, also defines a 'child' as a person below the age group of fourteen years\textsuperscript{59} and thus prohibits their

\textsuperscript{52}Section 45.
\textsuperscript{53}Section 40 (2)
\textsuperscript{54}Section 109.
\textsuperscript{55}Section 26.
\textsuperscript{56}Act No. 69 of 1951 as amended upto Act No. 61 of 1986.
\textsuperscript{57}Act No. 61 of 1986.
\textsuperscript{58}See Preamble of the Act.
\textsuperscript{59}Section 2 (ii).
employment under this age in certain occupations and processes\textsuperscript{60}.

4.2.1.1.1 Exceptions

Though the above statutes have prohibite the employment of children under the prescribed age in different processes of work, still at places they provide some exceptions for entering into the employment or apprenticeship by the children.

Apprentices Act, 1961 clarifies that the minimum qualification for engagement as an apprentice not only depends upon the age, but on the minimum standard of education and physical fitness also, as may be prescribed\textsuperscript{61}; provides that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices\textsuperscript{62}. The minimum educational qualification and minimum standard of physical fitness are specified\textsuperscript{63} in Schedule I\textsuperscript{64} and II\textsuperscript{65} respectively. Further, it provides an exception for the minors who are interested to undergo the

\textsuperscript{60}Section 3.
\textsuperscript{61}Section 3(b).
\textsuperscript{62}Added by Act No. 27 of 1973
\textsuperscript{64}Apprenticeship Rules, 1991, Rule 3.
\textsuperscript{65}Ibid, Rule 4.
apprenticeship training that they may be allowed for the same only after their guardians have entered into a contract with the employer.\footnote{66}{Section 4(1).}

The Child Labour (Prohibition and Regulation) Act, 1986 while in its Part II prohibits the employment of children in certain occupations and processes, at the same time lays down the broad regulations of conditions of work of children which are applicable to only permissible occupations and processes of juvenile employment.\footnote{67}{See part III.}

In Merchant Shipping Act, 1958 section 109 prohibits the employment of children in first phase, but in the second phase it allows their employment in a school ship or training ship, in accordance with the prescribed conditions or in a ship in which all persons employed are members of the family, or in a home trade ship of less than two hundred tonnes or where such person is to be employed on nominal wages and will be in the charge of his father, or other adult near male relations. Further, it gives permission to the employment of young persons under section 111 requiring the production of the certificate of fitness granted from an authorised surgeon.
Like other statutes, the Plantations Labour Act, 1951 provides that "no child and no adolescent shall be required or allowed to work in any plantation unless:

(a) a certificate of fitness granted with the reference to him under section 27 is in the custody of the employer; and

(b) such child or adolescent carries with him while he is at work a token giving a reference to such certificates".  

4.2.1.2 Working hours and periods of work for children:

The apprentices are trainees and not workers and thus the provision of any labour law do not apply to them unless they are specifically made applicable to them. The weekly and daily hours of work of an apprentice while undergoing practical training are therefore prescribed in the Apprenticeship Rules, 1991 as per the provision of section 15(1) of the Act. According to this rule, the total number of hours per week shall be forty two to forty

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68Section 26.
69Section 18(a).
70Section 18(b)
71Therefore a paid apprentice is not an 'employee' under the Employee's State Insurance Act and the stipend that he receives during the period of his apprenticeship is not wages. For details, See E.S.I. Corporation, Bombay v. Indian Hume Pipe Co. Ltd., (1963) 2 LLJ 104 (Bom.): See also (1975) 2 SCC 835.
72See Rule 12.
eight hours including the time spent on Related Instructions\textsuperscript{73}.

Child Labour (Prohibition and Regulation) Act, 1986 does not allow any child to work on each day for more than three hours without being given an interval for minimum one hour\textsuperscript{74}. The period of work is fixed as not exceeding six hours a day including the interval for rest and time spent in waiting for work\textsuperscript{75}.

In Factories Act, 1948 the working hours of the children are restricted to four and a half hours in any day\textsuperscript{76} and their shifts, if any, must be limited to two, which shall not overlap or spread over more than five hours each\textsuperscript{77} where as in a week, a child is not allowed to work in any plantation for more than twenty seven hours\textsuperscript{78} as provided under the Plantation Labour Act, 1951\textsuperscript{79}. The period of work on each day is required to be fixed not exceeding five hours and no worker shall work beyond this time period before he has had an interval for rest of

\textsuperscript{73}Rule 12(1)(a). But the trade apprentices undergoing basic training shall ordinarily work for 42 hours per week including the time spent on Related Instruction as specified in Rule 12(1) (b).
\textsuperscript{74}Section 7(2)
\textsuperscript{75}Section 7(3).
\textsuperscript{76}Section 71(1)(a)
\textsuperscript{77}Section 71(2)
\textsuperscript{78}Subs. by Act No. 58 of 1981 (w.e.f. 26.1.1982).
\textsuperscript{79}Section 19(1).
half-an-hour minimum\textsuperscript{80}. This provision is proportionately applicable to child workers also.

\textbf{4.2.1.3 Employment of children during night hours}

The labour laws which permit or allow to some extent the employment of children or young persons, strictly prohibit their employment during night hours.

Apprenticeship Rules, 1991 provides that during 10 p.m. to 6 a.m. no trade apprentice shall be engaged while undergoing practical training. But they may be allowed for the same only after obtaining the prior approval\textsuperscript{81} of the Apprenticeship Advisor.

Factories Act, 1948, under section 71(b)\textsuperscript{82} prohibits child labour absolutely during night hours, that means a period at least twelve consecutive hours which shall include the interval between 10 p.m. and 6 a.m. Further, specifically a female child is prohibited to work in any factory between 7 p.m. to 8 a.m.\textsuperscript{83}.

Plantations Labour Act, 1951 forbids the employment of children except with the permission of the State Government, in any plantation otherwise than between the

\textsuperscript{80}Section 21.
\textsuperscript{81}The Apprenticeship Advisor shall give it under Rule 12(2) if he is satisfied that it is in the interest of the training of the trade apprentice or in public interest.
\textsuperscript{82}Subs. by Act No. 25 of 1954, Sec. 19.
\textsuperscript{83}Section 71 (5). Ins. by Act 20 of 1987, sec.23 (w.e.f.1.12.1987).
hours of 6 a.m. and 7 p.m.\textsuperscript{84} whereas in Child Labour (Prohibition and Regulation) Act, 1986, it is provided that, "no child shall be permitted or required to work between 7 p.m. and 8 a.m.\textsuperscript{85} (Table-4.1).

4.2.1.4 Overtime for any employed children

Apprentices Act, 1961 does not allow the apprentices to work overtime except with the approval of the Apprenticeship Advisor, provided, that over time must be in the interest of the training of the apprentice or in the public interest\textsuperscript{86}.

As per the provision laid down in the Mines Act 1952 under section 40(2) read with section 35\textsuperscript{87} and section 33(i)\textsuperscript{88}, it is implied that only at the time of emergency or when required, the young persons above the sixteen years of age like apprentices or trainees may be allowed to work overtime subject to different conditions. But the

\textsuperscript{84}Section 25.
\textsuperscript{85}Section 7(4)
\textsuperscript{86}Section 15(2)
\textsuperscript{87}Subs. by Sec 19, Act No. 62 of 1959 (w.e.f.16.1.1960) which reads as follows: “Save in respect of cases falling within clause (a) and clause (e) of section 39, no person employed in a mine shall be required or allowed to work in the mine for more than ten hours in any day inclusive of overtime”. Clause (e) of section 39 concerned with the persons employed in any work in the mine which for technical reason must be carried on continuously and the term ‘persons employed in any work’ in the said clause may include the apprentices or trainees.
\textsuperscript{88}The term ‘a person’ as mentioned in this Article may be interpreted as an young person like an apprentice or a trainee besides an adult worker. Subs. by sec.17, Act No. 62 of 1959 (w.e.f.16.1.1960).
Act is silent about the direct provisions regarding their 
overtime work.

But "no child shall be required or permitted to work 
overtime" under the Child Labour (Prohibition and 

4.2.1.5 Shift duties and double employment of the 
children

The Factories Act, 1948 in its Chapter VII clearly 
envisages that if any shift work is provided for the child 
labourers under section 71(2), then it must be limited to 
two shifts which should not overlap or spread over more 
than five hours each. Again it has mentioned that the 
employed child is eligible to work only in one shift. Even 
"no child shall be required to allow to work in any 
factory on any day on which he has already been working in 
another factory".

Further, the Child Labour (Prohibition and 
Regulation) Act, 1986 puts a bar on double employment of a 
child. It provides that, a child can never be allowed to 
work in two establishments on the same day even if the 
shifts of both the establishment are in different time.

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89 Section 7(5) 
90 Section 71(4). 
91 Section 7(6)
The other statutes are silent about the shift duty or provisions regarding double employment of child labourers in different establishments.

4.2.1.6 Maintenance of registers concerned with the employment of children.

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Legislation</th>
<th>To be Maintained by</th>
<th>Custodian</th>
<th>Information to be maintained</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Child Labour (Prohibition and Regulation) Act, 1986</td>
<td>Occupier</td>
<td>Employer</td>
<td>Name, date of birth, permanent address, hours and period of work, nature of the work, rest intervals, wages paid, date of joining etc.</td>
</tr>
<tr>
<td>2</td>
<td>Factories Act, 1948</td>
<td>Manager</td>
<td>Silent</td>
<td>Name, nature of work, group if any, group work on shifts, relay to which allotted, no. of certificate of fitness etc.</td>
</tr>
</tbody>
</table>
According to the Child Labour (Prohibition and Regulation) Rules, 1988, a register should be maintained in respect of children employer or permitted to work in any establishment by the occupier of that establishment in Form-A92 which is appended to the said Rule. This register is to be maintained yearly, and the employer shall be the custodian of the same for a period of three years even after the date of the last entry made therein93. This register should be available for inspection by an Inspector whenever required for the informations94 as stated in Table - 4.2.

Factories Act, 1948 under section 71 (1-A) provides that "no child worker shall be required or allowed to work in any factory unless his name and other particulars have

92Rule 16(1).
93Rule 16 (2).
94Section 11 of the Child Labour (Prohibition and Regulation) Act, 1986.
been entered in the 'register of child workers'\textsuperscript{95} and the manager is only entitled to maintain this register as per section 73(1). 'State'\textsuperscript{96} Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be prescribed\textsuperscript{97}.

Mines Act, 1952 has the provision for maintainance of a register in the prescribed form in every mine\textsuperscript{98}. No person can be permitted to work in a mine if all the particulars as shown in Table 4.2 have not been recorded in the register\textsuperscript{99}. It seems that these provisions are also accordingly applicable to the apprentices or trainees who are below eighteen years of age.

The provision to maintain the list or register of children employed in a ship with the particulars of the dates of their birth and other relevent biodata is also there in Merchant Shipping Act, 1958 and the master of the ship shall be the custodian of this register\textsuperscript{100}.

\textsuperscript{95}Ins. by Act No.94 of 1976 (w.e.f. 26.10.1976).
\textsuperscript{96}Subs. by the A.O. 1950 for "Provincial".
\textsuperscript{97}Section 73(2).
\textsuperscript{98}Section 48(1)
\textsuperscript{99}Section 48(3).
\textsuperscript{100}Section 112.
4.2.1.7 Health, Welfare and safety measures provided for the child labourers

In Child Labour (Prohibition and Regulation) Act, 1986 the appropriate Government may make rules regarding health of the employed children or of those children who are permitted to work in any establishment or class of establishments and these rules must be notified in the Official Gazette. As shown in the Table-4.3 the said rules may be made regarding cleanliness in the place of work which must be free from nuisance, disposal of wastes and effluents, proper ventilation and temperature, dust and fume, artificial humidification, lighting, facilities for drinking water, adequate latrines and urinals etc.

The Factories Act, 1948 prescribes certain provisions regarding health measures for the workers, including children and apprentices if employed, like cleanliness of the premises, adequate ventilation by circulation of fresh air and maintenance of reasonable temperature in the work place, restriction on overcrowding in any room, sufficient and suitable lighting system - natural or artificial or both, facilities for drinking water,

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101 Section 13(1).
102 Section 13(2).
103 Section 11.
104 Section 13.
105 Section 16.
106 Section 17.
107 Subs. by Act No. 20 of 1987, sec.8. (w.e.f 1.12.1987). See Section 18(2), Section 18(3) and Section 18(4).
adequate numbers of latrines and urinals\textsuperscript{108} etc. (Table-4.3.).

TABLE-4.3 HEALTH, WELFARE AND SAFETY MEASURES PROVIDED FOR THE CHILD LABOURERS:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Legislation</th>
<th>Health measures includes</th>
<th>Welfare measures includes</th>
<th>Safety measures includes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Child Labour (Prohibition and Regulation) Act, 1986.</td>
<td>Cleanliness, disposal of wastes and effluents, proper ventilation and temperature, lighting, drinking water facility, adequate nos. of latrines and urinals etc.</td>
<td>Silent</td>
<td>Safety of building and machinery, precautions in case of fire, protection of eyes, fencing of machinery, work at or near machinery in motion, employment of children on dangerous machines etc.</td>
</tr>
<tr>
<td>2</td>
<td>Factories Act, 1948</td>
<td>Cleanliness of the premises, adequate ventilation and reasonable temperature on the work place, restriction on overcrowding, sufficient and suitable light, facility for drinking water, latrines and urinals etc.</td>
<td>Washing facility, first aid and canteens, suitable shelters, rest rooms and lunch rooms with drinking water facility, suitable arrangements etc.</td>
<td>Prohibition to work near cotton openers and on any dangerous machines, cleaning, lubricating and adjusting any parts of a prime mover while in motion etc.</td>
</tr>
</tbody>
</table>

\textsuperscript{108} Section 19.
<table>
<thead>
<tr>
<th></th>
<th>Mines Act, 1952</th>
<th>Suitable drinking water facility, adequate nos. of latrines and urinals etc.</th>
<th>First aid facility</th>
<th>Silent</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Plantations Labour Act, 1951</td>
<td>-do-</td>
<td>Readily available medical facilities, canteen, recreational and educational facilities, housing accommodation for the workers, issue of umbrellas, blankets and main coats for protection etc.</td>
<td></td>
</tr>
</tbody>
</table>

While Mines Act, 1952\textsuperscript{109} and Plantation Labour Act, 1951\textsuperscript{110}, have the provisions regarding suitable drinking water facilities and adequate numbers of latrines and urinals with proper sanitary condition etc., Apprentices Act, 1961 and other labour laws meant for the welfare of the child labourers are silent on this point.

The Child Labour (Prohibition and Regulation) Act, 1986 is silent on welfare measures, but Factories Act, 1948 contains the provisions like washing facilities\textsuperscript{111},

\textsuperscript{109}Under Sections 19 and 20 of Mines Act, 1952.
\textsuperscript{110}Under Sections 8 and 9 of Plantations Act, 1951.
\textsuperscript{111}Section 42.
first-aid, and canteens, suitable shelters, rest rooms and lunch rooms with drinking water facilities, suitable sitting arrangements etc. and Mines Act, 1952 mainly gives emphasis on first-aid facilities under welfare measures. For the welfare of the child workers, the Plantations Labour Act, 1951 prescribes various measures which includes readily available medical facilities, canteen, recreational and educational facilities, housing accommodation for every workers etc. But the Act is silent on whether this educational facilities shall be provided to the employed children or not because this Act speaks that, where the children, between the ages of six and twelve, of workers, employed in any plantation exceed twenty five in number, every employer is required to provide the educational facilities for these children. This act also requires the employer to provide umbrellas, blankets and rain coats etc. for protection.

\[112\text{Section 45}\]
\[113\text{Section 46.}\]
\[114\text{Section 47.}\]
\[115\text{Section 44.}\]
\[116\text{Section 58(ff).}\]
\[117\text{Section 10.}\]
\[118\text{Section 11.}\]
\[119\text{Section 13.}\]
\[120\text{Section 14.}\]
\[121\text{Section 15.}\]
\[122\text{Section 17.}\]
Child Labour (Prohibition and Regulation) Act, 1986 when provides various safety measures as shown in Table 4.3 which includes safety of building and machinery, precautions in case of fire, protection of eyes, fencing of machinery, work at or near machinery in motion, employment of children on dangerous machines etc., Factories Act 1948 prohibits the employment of children near the cotton openers and on any dangerous machines. Also, the children are prohibited from lubricating, cleaning and adjusting any part of a prime mover while in motion etc. Under this Act, suitable precautions must also be taken by the employer against dangerous fumes, gasses as well as explosive for inflammable dusts, vapour, gasses etc. which may cause injury to the working children. But both Mines Act, 1982 and Plantations Labour Act, 1951 are silent on the provision of safety measures for the employed children. Other labour laws relating to protection of the working children are silent on health, welfare and safety provisions.

123Section 13.
124Section 27.
125Section 23.
126Section 22(2)
127Section 36.
128Section 37.
4.2.1.8 Holidays and leave with wages under different laws

So far as the provisions of leave with wages for the child labourers are concerned, the Apprentices Act, 1961 prescribes that an apprentice undergoing training in an establishment is entitled to avail leave as prescribed under Rule 13 of the Apprenticeship Rules, 1991 and holidays as are observed by that establishment\textsuperscript{129}.

Child Labour (Prohibition and Regulation) Act, 1986 allows a holiday of one whole day in every week for the child labourers employed in an establishment\textsuperscript{130}. But the Act is silent about the provision of leave for the child labourers.

Chapter VIII\textsuperscript{131} of the Factories Act, 1948 deals with the provision of annual leave with wages. According to this Act, every child worker is entitled to one day leave with wages for every fifteen days of work performed by him during the previous calendar year and he must have worked for not less than a period of two hundred and forty days during that previous calendar year\textsuperscript{132}. If a child does not take any leave allowed to him in any of calendar year, that leave shall be added to the leave to be allowed to

\textsuperscript{129}Section 15(3)
\textsuperscript{130}Section 8.
\textsuperscript{131}Subs. by Act No. 25 of 1954, Sec.20.
\textsuperscript{132}Section 79(1)(ii)
him in the succeeding calendar year and the total number of such leave must not exceed forty days\textsuperscript{133}.

Mines Act 1952 provides that, "every person employed in a mine who has completed a calendar year’s service therein, shall be allowed during the subsequent year, leave with wages, calculated:

(a) in the case of a person employed below ground at the rate of one day for every fifteen days of work performed by him, and

(b) in any other case, at the rate of one day for every twenty days of work performed by him\textsuperscript{134}.

As this Act allows the apprentices and other trainees to work in the mine who are below the eighteen years of age, the above said provision may also proportionately applicable for them.

According to Plantations Labor Act, 1951 every young person which includes either a child or an adolescent as specified in section 2(1) of the Act, is entitled to avail leave with wages at the rate of one day in every fifteen days of work performed by him\textsuperscript{135}. So far as holidays are concerned, this Act allows to all its workers a day of

\textsuperscript{133}Section 79(i)(ii)

\textsuperscript{134}Section 52(i)

\textsuperscript{135}Section 30 (1) (b)
rest in every seven days as per the rules made by the State Government under section 20(1)(a).

4.2.1.9 Penal Provision

The Apprentices Act, 1961 provides punishment with imprisonment for a term which may extend to six months or with fine or with both on an employer, if he employs a disqualified person as an apprentice or fails to carry out the terms and conditions of a contract of apprenticeship or contravenes the provisions of this Act relating to the number of apprentices to be appointed by him. Further, the employer or even any other person shall also be punishable with imprisonment for a term which may extend to six months or with fine or with both if he requires the apprentice to work overtime without approval of the Apprenticeship Advisor, or employs an apprentice on any work which is not connected with his training. If any employer or any other person contravenes any provision of this Act for which no punishment is provided in section 30, he shall be punishable with fine which may extend to five hundred rupees.

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136Section 30(1)
137Section 30(2)(c)
138Section 30(2)(d)
139Section 31.
Beedi and Cigar Workers (Condition of Employment) Act, 1996, disallows child labour and prescribes\textsuperscript{140} that if any offense is charged against a person that he has employed a person less than the prescribed age, burden lies on the accused to prove that such person is not under such age, otherwise the accused is punishable under the provisions of the Act. In such a case the declaration in writing of an authorised Medical Officer is only admissible as evidence of the age of that employee.

In part IV of the Child Labour (Prohibition and Regulation) Act, 1986, Section 14 prescribes certain penal provisions for contravening other provisions of the Act. Thus, whoever employs any child or permits any child to work in contravention of the provisions of section 3 which prohibits the employment of children in certain occupations and processes, shall be punishable with imprisonment for a term not less than three months and it may extend to one year or with fine not less than ten thousand rupees which may also extend to twenty thousand rupees or with both\textsuperscript{141} and whoever having been convicted of an offense under section 3 commits a like offence afterwards, he shall be punishable with imprisonment for a term not less than six months which may also be extended

\textsuperscript{140}Section 30.
\textsuperscript{141}Section 14(1)
to two years\textsuperscript{142}. Further section 14 (3) warns that if any employer or occupier of an establishment where child labour is permitted, fails to give notice to Inspector within whose local limits the establishment is situated by section 9; or fails to maintain a register in respect of children employed or permitted to work in any establishment as required by section 11 or makes any false entry in any such register; or fails to display a notice containing an abstract of section 3 and section 14 as required by section 12; or fails to comply with or contravenes any other provisions like section 7, 8, 13 etc. of this Act or the rules made thereunder shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

Children (Pledging of Labour) Act, 1933 imposes punishments on the employer and the parent or guardian who is responsible for making agreements with an employer to pledge the labour of the child. It provides the penalty of fifty rupees for the parent or guardians of a child making agreement to pledge the labour of that child\textsuperscript{143}. Whoever makes with the parent or guardian of a child an agreement whereby such parent or guardian pledges the labour of the child, shall be punishable with fine which may be extended

\textsuperscript{142}Section 14(2).
\textsuperscript{143}Section 4.
to two hundred rupees\textsuperscript{144}. Further, the Act prescribes punishment\textsuperscript{145} with fine which may extend to two hundred rupees for employing a child whose labour has been pledged.

The Factories Act, 1948 prescribes general penalty\textsuperscript{146} for the offenses regarding contravention of any of the provisions of this Act or any rules made thereunder or of any order in writing given thereunder. In that case both the occupier and Manager of the factory shall be guilty of the offense and punishable with imprisonment for a term which may extend to 'two years'\textsuperscript{147} or with fine which may extend to one lakh rupees\textsuperscript{148} or with both and if the contravention is continued after conviction, they shall be punishable with a further fine which may extend to one thousand rupees\textsuperscript{149} for each day on which the contravention is so continued. Section 92 again imposes penalty against a person whoever contravenes any of the provision of Chapter IV i.e. regarding safety.

There is also the provision of penalty with imprisonment maximum for two months or with fine upto one thousand rupees or with both for using false certificate

\textsuperscript{144}\textsuperscript{Section 5.}  
\textsuperscript{145}\textsuperscript{Section 6.}  
\textsuperscript{146}\textsuperscript{Section 92.}  
\textsuperscript{147}\textsuperscript{Subs. by Act No. 20 of 1987, sec.30 (w.e.f.1.12.1987).}  
\textsuperscript{148}\textsuperscript{Ibid.}  
\textsuperscript{149}\textsuperscript{Ibid.}
of fitness granted to him under section 70\textsuperscript{150} and with fine which may extend to one thousand rupees on parent or guardian for permitting double employment of a child\textsuperscript{151}.

For the effective implementation of the provisions, a number of penal provisions are also provided under the Mines Act, 1952. Section 65 of this Act imposes punishment on any person who knowingly allows to use or attempts to use a false fitness certificate granted to him under section 43, with imprisonment not exceeding one month or with fine not exceeding two hundred rupees\textsuperscript{152} or with both. If a person below eighteen years of age is employed in a mine in contravention of section 40, the person contravening the provision shall be punishable with fine which may extend to five hundred rupees\textsuperscript{153}. Where an Inspector opines that any person employed in a mine without fitness certificate who is below eighteen years of age or sixteen years of age in case of an apprentice or a trainee, he may serve a notice and refer such person for medical examination by a Certifying Surgeon\textsuperscript{154}.

A person who uses false fitness certificate or who allows such certificate shall be punishable with

\begin{itemize}
\item\textsuperscript{150}Section 98.
\item\textsuperscript{151}Section 99.
\item\textsuperscript{152}Subs. by sec.36, Act No. 62 of 1959 (w.e.f.16.1.1960).
\item\textsuperscript{153}Section 68, Subs. by Act No. 42 of 1983 (w.e.f.31.5.1984).
\item\textsuperscript{154}Section 43.
\end{itemize}
imprisonment not exceeding one month or with fine not exceeding fifty rupees or with both is suggested under Motor Transport Workers Act, 1961\textsuperscript{155} where as under Plantation Labour Act, 1951 for the said offense, the punishment\textsuperscript{156} is either imprisonment for maximum one month or fine upto fifty rupees, these two Acts speak that for subsequent offence involving a contravention of the same provision for which the person had been convicted earlier, shall be punishable with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both\textsuperscript{157}.

Merchant Shipping Act, 1958 speaks that the Central Government may make rules regarding the condition of employment of young persons in school ship, training ship as trimmers and stokers in coasting ship, certificate of fitness and register of young persons etc.\textsuperscript{158}. Thus, if any person is carried to sea, to work in contravention of sections 109, 110 or 111; or is engaged to work in any capacity in a ship in contravention of sections 109, 110 or 111 on a false representation by his parent or guardian that the young person is of an age at which such engagement is not in contravention of these sections, both

\textsuperscript{155}See Section 33 of Motor Transport Workers Act, 1961 and Section 37 of Plantation Labour Act, 1951.
\textsuperscript{156}See Section 33 of Motor Transport Workers Act, 1961 and Section 37 of Plantation Labour Act, 1951.
\textsuperscript{157}See Section 33 of Motor Transport Workers Act, 1961 and Section 37 of Plantation Labour Act, 1951.
\textsuperscript{158}See Section 113.
the master and the parent or guardian shall be liable for fine which may extend to fifty rupees\textsuperscript{159}. Further, if a master refuses or neglect to produce for inspection any certificate of physical fitness delivered to him under section 111 when required to do so by a Shipping Manager, such a refusing person may be punishable with fine not exceeding fifty rupees\textsuperscript{160}. If the master of this ship, where there is no agreement with the crow, fails to keep the register of young persons required to be kept under section 112 of refuses or neglects to produce such register for inspection when required to do so by a Shipping Manager, he shall be punishable with fine not exceeding two hundred rupees\textsuperscript{161}.

\textbf{4.2.2 Study of Different Provisions Under State Acts and Rules Relating to Child Labour.}

\textbf{4.2.2.1 The Children Act, 1982\textsuperscript{162}.}

The Children Act, 1982 which extends to the whole State of Orissa\textsuperscript{163}, mainly aims at the proper care protection, welfare, education and rehabilitation of neglected children seeking the state to provide all these

\textsuperscript{159}Section 436, Offence, S.No. 25(a),(b).
\textsuperscript{160}Ibid. S.No. 26.
\textsuperscript{161}Ibid. S.No. 27.
\textsuperscript{163}Section 1(2).
facilities\textsuperscript{164}. It defines a child as a boy below the age of sixteen years and a girl who has not attained the age of eighteen years\textsuperscript{165}. Section 49 of this Act provides about the exploitation of child employees which speaks that "whoever ostensibly procures a child for the purpose of any employment and withholds the earnings of a child or uses such earnings for his own purposes shall in conviction, be punishable with fine which may extend to one thousand rupees".

4.2.2.2 The Orissa Factories Rules, 1980\textsuperscript{166}

As per the provisions provided under the Orissa Factories Rules, 1950 a child must be over fourteen years of age\textsuperscript{167}. The notice of periods of work for children as prescribed under section 72(3) of the Factories Act, 1948 shall be in Form No. 13\textsuperscript{168} and the register of child workers prescribed under sub-section 2 of section 13 of the Act, shall be in Form No. 14\textsuperscript{169}. According to the Rule 87-A and 14(2), the Certifying Surgeon who is entitled to issue the certificate of fitness to the qualified children or adolescents for undergoing employment in any factory

\textsuperscript{164}See Preamble of the Act. Also see Statement of Objects and Reasons as published in Orissa Gazettee, Extra Ordinary, No. 1284, dated 30.9.81.
\textsuperscript{165}Section 2(d)
\textsuperscript{166}Published in the Orissa Gazettee, Extra Ordinary, No. 189 of 1950.
\textsuperscript{167}Rule 87-B(1).
\textsuperscript{168}Rule 86.
\textsuperscript{169}Rule 87.
after examination or re-examination\textsuperscript{170} shall issue such certificate in Form No. 5. The Orissa Factories Rules, 1950 also prescribes the facilities like drinking water\textsuperscript{171}, latrine\textsuperscript{172}, urinal\textsuperscript{173}, washing\textsuperscript{174}, first-aid\textsuperscript{175}, ambulance room\textsuperscript{176}, canteens\textsuperscript{177}, dining hall\textsuperscript{178}, shelter, rest room and lunch room\textsuperscript{179} etc. along with the provision of leave with wages (as prescribed under section 83 and 112) for the workers.

\textbf{4.2.2.3 The Orissa Minimum Wages Rules, 1984\textsuperscript{180}}

Rule 24 (i)(b) of the Orissa Minimum Wages Rules, 1954 declares that the number of hours of work which shall constitute a normal working day shall be four and half hours in the case of a child. In no circumstances he/she shall be employed or permitted to work for more than this on any day\textsuperscript{181}, which seems that no child shall be allowed for overtime and according to Rule 23, every worker, which

\begin{itemize}
\item Rule 87-C(i)
\item See Rule 34, 35, 36, 37 and 39.
\item Rule 40.
\item Rule 44.
\item Rule 63.
\item Rule 64.
\item Rule 65.
\item Rule 66.
\item Rule 67.
\item Rule 73.
\item Rule, 24(6).
\end{itemize}
automatically includes the child as well, shall be allowed weekly holidays.

4.2.2.4 The Orissa Shops and Commercial Establishments Act, 1956\textsuperscript{182}.

As there is no Central Act to regulate the working conditions of workers in the shops and commercial establishments, every state is therefore empowered to pass its own Act to regulate the working conditions of workers in this sector and the Orissa Shops and Commercial Establishments Act, 1956 was passed with an intention to achieve that goal\textsuperscript{183} which extends to the whole of the State of Orissa\textsuperscript{184}. This Act strictly prohibits the employment of children below the age of twelve years in any establishment\textsuperscript{185}, but allows the employment of a child above this age as an apprentice who is employed, whether on payment of wages or not for the purpose of being trained in any trade, craft or employment in any establishment\textsuperscript{186}. This Act is not applicable to other offices, establishments etc\textsuperscript{187}.

So far as working hour is concerned, no child is allowed to work in any establishment for more than five

\textsuperscript{182}Orissa Act 30 of 1956.
\textsuperscript{183}For Statement of Objects and Reasons in detail, See Orissa Gazette, Extra Ordinary, dated 5th September, 1956, P.25.
\textsuperscript{184}Section 1(2).
\textsuperscript{185}Section 22.
\textsuperscript{186}Section 2(1).
\textsuperscript{187}Section 3.
hours a day\textsuperscript{188}. He/She is neither required nor allowed to work whether as an employees or otherwise in any establishment during night\textsuperscript{189}.

According to section 12(1) of the Act, every establishment shall remain closed for one day in the week. It is illegal in the part of the employer to engage any employee, including apprentices, in any type of work in connection with the business of his establishment on a weekly holiday or on a day on which such establishment remains closed. But if the local custom so requires, an establishment may remain open for business on any such day and the employee shall be given equivalent leave in lieu of section 12(3) and no deductions shall be made from the wages of any employee in any establishment on account of the holiday given to him under section 12(1)\textsuperscript{190}.

Further, every employee who has worked for a period not less than two hundred and forty days in an establishment during a year shall be allowed during the subsequent year, leave with wages for a number of days calculated at the rate of one day for every fifteen days of work performed by him during the previous year if the employee is a child\textsuperscript{191}. As per section 14(3), every

\textsuperscript{188}Section 7(2).
\textsuperscript{189}Section 23.
\textsuperscript{190}Section 12(3).
\textsuperscript{191}Section 14(1)(ii)
employee which includes the apprentice above the age of twelve years as well, are entitled for sickness leave in any year not exceeding fifteen days in addition to any other leave granted by the Act, only after continuous employment for a period of one year. Also an employee who is a child above the age of twelve years and has been allowed leave for not less than five days before his leave begins, be paid the wages due for the period of leave allowed\textsuperscript{192}.

For the welfare of the employee, the Act prescribes under section 40 that the provision of the Workmen's Compensation Act, 1923 (VIII of 1923) and the rules made thereunder shall apply to each employee including the apprentices of a shop or commercial establishment. Section 35(1) of the Act provides that on contravention of the provisions of sections 4, 5, 7, 11, 12 and 14, directly and indirectly relating to the welfare of employed children, the person on conviction shall be punishable with fine which for the first offence shall not be less than twenty five rupees and for the second subsequent offence shall not be less than fifty rupees and may extend to five hundred rupees. Further, whoever contravenes any of the provisions of sections 8, 16, 22, 23, 33 and 38 (directly and indirectly related to the welfare of the employed

\textsuperscript{192}Section 16.
children) shall on conviction, be punishable with fine, which shall not be less than fifteen rupees and may extend to fifty rupees.

4.3 SOME OTHER ACTS INDIRECTLY RELATED TO CHILD LABOUR

Besides the above statutory provisions, some other Acts have also some implied provisions relating to child labour regarding their protection, welfare etc. as mentioned here under.

4.3.1. Bonded Labour System (Abolition) Act, 1976

This Act was passed with a view to preventing the economic and physical exploitation of the weaker sections of the people. Bonded labour is generally one type of 'forced labour' where a debtor (worker) enters into an agreement with the creditor (employer) in consideration of an advance taken by him or by any of his family members, or in pursuance of any customary or social obligation etc. to render labour or service to the creditor by the debtor himself or through any member of his family, or any person dependent on him for a specified or for an unspecified period, either without wages or for nominal wages. Thus, it not only implies that the children of the debtor’s family are even forced to do bonded labour as bonded child

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workers for the debts made by their parents, but the system itself implies the infringement of the basic human rights and destruction of the dignity of human labour. The Act, therefore, strictly prohibits the system of bonded labour under section 4 which reads that, "on the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour". Further, no person is eligible to make any advance under or in pursuance of the bonded labour system and compel any person to render any bonded labour or other form of forced labour. According to section 5 of the Act, any custom or tradition or any contract, agreement by virtue of which any person or any member of the family or dependent of such person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.

Like other labour legislation, the Bonded Labour System (Abolition) Act, 1976 prescribes certain penal provisions to punish a person contravening the provisions of the Act. Thus, whoever, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with

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194Section 2(g).
195Section 4(2).
fine which may extend to two thousand rupees\textsuperscript{196}. Even, for advancement of any bonded debt by any person\textsuperscript{197} or for extracting bonded labour under the bonded labour system\textsuperscript{198}, the punishment shall be the same as mentioned in the previous provision. Every offence under this Act is therefore made cognizable and bailable\textsuperscript{199}. The Act further provides the punishment of imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both, for omission of failure to restore possession of property to bonded labourers within a period of thirty days from the commencement of this Act and out of the fine, if recovered, payment shall be made to the bonded labourers at the rate of rupees five for each day during which possession of the property was not restored to him\textsuperscript{200}.

4.3.2 The Immoral Traffic (Prevention) Act, 1956\textsuperscript{201}

This Act was primarily known as the Suppression of Immoral traffic in Women and Girls Act, 1956 and after its amendment in 1986\textsuperscript{202} its title has been changed to the

\textsuperscript{196}Section 16.  
\textsuperscript{197}Section 17.  
\textsuperscript{198}Section 18.  
\textsuperscript{199}Section 22.  
\textsuperscript{200}Section 19.  
\textsuperscript{201}Act No. 104 of 1956. This is an Act to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950 for the prevention of immoral traffic.  
\textsuperscript{202}Act No.44 of 1986. The provisions of this amended Act have come in to force w.e.f. 26.1.1987.
Immoral Traffic (Prevention) Act, 1956. This Act provides punishment who ever engages or employs a child or a minor for the purpose of prostitution. Because Article 19(1)(g) of the Constitution does not mean that a citizen shall have the right to practise profession which he is not qualified to carry on in accordance with the laws that exist. But the Act does not apply to singers or dancing girls.

According to this Act, a child as defined in section 2(aa) means, a person who has not completed the age of sixteen years; and the persons between the age group of sixteen to eighteen are 'minors' as defined in section 2(cb). Such classification has been introduced in order to make punishment for offences involving minors and children, more stringent, because using of children or minors for the purpose of prostitution is nothing but one type of forced labour from which such tender aged persons should definitely be protected.

Any person over the age of eighteen years, who knowingly lives, wholly or in part, on the earnings of the prostitution of a child or a minor, the punishment shall

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205 Ins. by Act No. 44 of 1986 (w.e.f. 26.1.1987).
206 Ibid.
be the imprisonment for a term of not less than seven years and not more than ten years\textsuperscript{207}. Where a child or a minor found in a brothel is on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purpose of prostitution or as the case may be, has been sexually exploited for commercial purposes. To check this evil practice and to protect the children and minors from being trapped from the hands of anti-socials, section 13 of the Act suggests for the appointment of a Special Police Officer 'not below the rank of an Inspector'\textsuperscript{208} and formation of an 'advisory board'. The Act further provides that the offence is a cognizable offence\textsuperscript{209} and according to section 22 of the Act, no court, inferior to that of metropolitan magistrate or a judicial magistrate of the first class\textsuperscript{210} shall try and offence under sections 4, 5 and 6.

\textbf{4.3.3 Indian Penal Code\textsuperscript{211}}

Indian Penal Code, 1860 also provides certain penal provisions against the employment of a child or a minor in different fields. For example, section 363-A\textsuperscript{212} provides

\textsuperscript{207}Section 4.
\textsuperscript{208}Subs. by Act No. 46 of 1978.
\textsuperscript{209}Section 14.
\textsuperscript{210}Supra note 208.
\textsuperscript{211}Act No. 45 of 1860.
\textsuperscript{212}Ins. by Act No. 52 of 1959, sec.2 (w.e.f. 15.1.1960).
punishment for kidnapping or maiming a minor for the purpose of begging. According to its provision, the person, not being the lawful guardian of a minor, if kidnaps or maims that minor to employ or use him for the purpose of begging, shall be punishable with imprisonment for a term which may extend to ten years, or for life respectively and shall also be liable to fine. For this purpose a 'minor' means, a person under sixteen years of age in case of a male and under eighteen years of age in case of a female. Similarly, selling or buying of any person under eighteen years of age for the purpose of prostitution or any other immoral purposes is a serious offence and whoever sells or buys such young persons with an intention to employ them as prostitutes etc. shall be punishable with imprisonment for a term which may extend to ten years and shall be liable to fine\textsuperscript{213}. Again, whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both\textsuperscript{214} and thus, this provision is accordingly applicable to the children and young persons also.

\textsuperscript{213}Section 372 and v 373.
\textsuperscript{214}Section 374.
4.4 FLAWS IN THE ENACTED LAWS

4.4.1 The Child Labour (Prohibition and Regulation) Act, 1986.

The first drawback of the Child Labour (Prohibition and Regulation) Act, 1986 is that, instead of abolition of child labour problem it aims at achieving two contradictory goals like prohibition and regulation at the same time. In certain occupations it prohibits the employment of children where as in some others it allows children to work, but provides certain regulations. This contravenes the provision of Article 24 of Indian Constitution which prohibits the employment of children under fourteen years of age in all factories and mines irrespective of their hazardous nature. Whatever be the nature of occupation, when the Act supports child labour in certain occupations, obviously it is impossible to eradicate the problem completely from the Indian society and it seems that the Act mainly aims at the regulation but not abolition of child labour.

Secondly, the Act of 1986 does not cover all the occupations in which children are employed. Children working in the agricultural sector constitute a remarkable percentage of juvenile employment, but the Act is totally silent in this regard.
Further, the word 'hazardous' is not clearly defined and it is left to the technical Advisory Committee to define the hazardous occupations and processes.

Part III of the said Act regulates the employment of children under fourteen years of age in establishments like glass or slate-pencil industry etc. or in other establishments where none of the occupations or processes like transport of passengers, goods or mails by railway, cinder picking, beedi making, carpet weaving, cement manufacture etc. are carried on. But such regulation does not apply to any workshop where any processes are carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from the Government. As the family workshops are not covered under the Act, the employers really make use of this escape clause and prosecution becomes extremely difficult due to lack of documentary evidence with the Inspector for proving the child has been working in a non-family unit.

Next major omission of the said Act is not specifying the minimum age of employment. While in specified permissible occupations the minimum age of employment has

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215 Provision to section 3.
been prescribed as fourteen years, it directly contravenes the ILO standard according to which this age should be eighteen years and thus, the onus of proving the age of the employed child rests on the prosecuting agencies.

Neither any reference to medical fitness of the children desirous of employment in any occupation are made in this Act nor periodical medical examination of the employed children are suggested. Moreover, the unorganised sector where high incidence of child labour is found in the society has been completely left out by the said Act.

The punishment as contained in the Act of 1986 in respect of violation of the provisions by the employers is not deterrent as it may be imposed either in terms of imprisonment or fine and thus the employers have a chance to escape from imprisonment by just paying some fine.

Due to the above lacunae, the implementation and enforcement of provisions of the Child Labour (Prohibition and Regulation) Act is far from satisfaction. According to a report from labour Ministry about the enforcement of Child Labour Act, 1986 and section 67 of the Factories Act, 1948 "in India, the states like Gurrat, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh have taken effective steps and launched prosecution where as other states have neither made inspections nor launched any
prosecutions. India, having 44 million child workers had only 3,488 prosecutions and 1,426 convictions between mid 1986 and mid 1993 under the said Act and the penalty is between only Rs. 50 and Rs. 5,000 which is much less than that prescribed under the law.217

Another major drawback of this Act is that it is also silent about the measures to be taken for the rehabilitation of the rescued child labourers.

4.4.2 Other Labour Laws

It has been pointed out that as regards minimum age for employment, none of the legislations meant for the protection of child labour is clear. If the 'child' as a unit can not be identified and the minimum age for employment can not be unanimously prescribed, what else be done for their well being.

Further, regarding the minimum wages, the Minimum Wages Act, 1948 provides for the fixation of minimum wage for various occupations. But it is a fact that children are paid less than the adult workers everywhere in India which also contravenes the provision of Article 14 concerned with the equality before law.

217Ibid.
So far as hazardous occupations are concerned, the term 'hazardous' has nowhere been defined satisfactorily in any of the labour laws concerned with the welfare of the children.

4.5 An Overview:

From the above discussion it may be concluded that for the protection of child labour, to safeguard their interests who work in various non-hazardous as well as in hazardous occupations which are unsuited to their age and injurious for their health and growth, there are several provisions provided under the Central and State Acts and Rules in relation to various important aspects like minimum age, working hours, fitness of persons for undergoing employment, night work, health, safety and welfare measures, leave with wages etc. The other noteworthy nature of these enactments is that, to protect the interests of the child labourers every such enactment prescribes penal provisions to punish the person whoever contravenes any of the provision of these Acts.

It is evident that the provisions relating to child labour are neither uniform nor do they cover all the employees in every specified industry. Specifically, provisions regarding hours of work, night work, rest of interval and even minimum age for employment also vary
from Act to Act. Even some Acts are also silent on some provisions. Its main cause is that the definition of a 'child' is not uniform in all these legislations. Small establishments are left out totally. For example, cottage industries, rural oriented production units, private industries and agricultural as well as unorganised sectors do not have any provision to prevent the child from being exploited. They are outside the ambit of protective legislation, Therefore, the legislations meant for the protection of child labour should have uniform provisions on the above aspects and it shall not be incorrect to say that the existing legal and constitutional safeguards on the subject are still inadequate to achieve the goal.

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