CHAPTER IV

CHILD LABOUR AND LAW

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CHAPTER 4. CHILD LABOUR AND LAW

4.1 INTRODUCTION

While child labour is a complex problem that is basically rooted in poverty, there is unwavering commitment by the Government and the people of India to combat it. Success can be achieved only through social engineering on a major scale combined with national economic growth. International policies and actions, therefore, must support and not hamper India's efforts to get rid of child labour.

India has all along followed a proactive policy with respect to the problem of child labour, and has stood for constitutional, statutory and developmental measures to combat child labour. Six ILO conventions relating to child labour have been ratified, three of these as early as the first quarter of this century.

The first Act in India relating to child labour was the Enactment of Children (Pledging of Labour) Act of February 1933. Since then there have been nine different Indian legislations relating to child labour. The strategy of progressive elimination of child labour underscores India's legislative intent, and takes cognizance of the fact that child labour is not an isolated phenomenon that can be tackled without simultaneously taking into account the socio-economic environment that is at the root of the problem.

The Government of India is determined to eradicate child labour in the country. The world's largest child labour elimination program is being implemented at the grass roots level in India, with primary education targeted for nearly 250 million. In this a large number of non-
governmental and voluntary organizations are involved. Special
investigation cells have been set up in States to enforce existing laws
banning employment of children in hazardous industries. The
International Program on Elimination of Child Labour (IPEC) has the
world's largest international initiative on child labour in India. India has
all along followed a proactive policy in the matter of tackling the problem
of child labour. India has always stood for constitutional, statutory and
development measures required to eliminate child labour. The Indian
Constitution has consciously incorporated provisions to secure
compulsory universal elementary education as well as labour protection
for children. Labour Commissions in India have gone into the problems
of child labour and have made extensive recommendations.

In India, the post-independence era has seen an unequivocal
commitment of the government to the cause of children through
constitutional provisions, legislation, policies and programs. The
Constitution of India in Article 39 of the Directive Principles of State
Policy pledges that "the State shall, in particular, direct its policy towards
securing ...... that the health and strength of workers, men and women,
and the tender age of children are not abused, and that citizens are not
forced by economic necessity to enter avocations unsuited to their age or
strength, that children are given opportunities and facilities to develop in
a healthy manner, and in conditions of freedom and dignity, and that
childhood and youth are protected against exploitation, and against moral
and material abandonment."

As a follow-up of this commitment, and being a party to the UN
Declaration on the Rights of the Child 1959, India adopted the National
Policy on Children in 1974. The policy reaffirmed the constitutional
provisions and stated that "it shall be the policy of the State to provide
adequate services to children, both before and after birth and through the period of growth to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that within a reasonable time all children in the country enjoy optimum conditions for their balanced growth."

India has also ratified on December 2, 1992, the Convention on the Rights of the Child which came into force in 1990. This ratification implies that India will ensure wide awareness about issues relating to children among government agencies, implementing agencies, the media, the judiciary, the public and children themselves. The Government's endeavor is to meet the goals of the Convention and to amend all legislation, policies and schemes to meet the standards set in the Convention.

India is also a signatory to the World Declaration on the Survival, Protection and Development of Children. In pursuance of the commitment made at the World Summit, the Department of Women and Child Development under the Ministry of Human Resource Development has formulated a National Plan of Action for Children. Most of the recommendations of the World Summit Action Plan are reflected in India's National Plan of Action.

India's policy on child labour has evolved over the years against this backdrop and its present regime of laws relating to child labour has a pragmatic foundation, consistent with the International Labour Conference resolution of 1979. This ILO resolution calls for a combination of prohibitory measures and measures for humanizing child labour, wherever such labour cannot be eliminated altogether in the short turn. It should also be mentioned that India is second to none in its
commitment to and in the upholding of the core international labour standards such as freedom of association, collective bargaining, non-discrimination, etc. India is signatory to a record 36 ILO labour conventions.

The announcement by the Prime Minister on India's Independence Day in 1994 that child labour would be abolished in hazardous occupations by the year 2000 reflects a national consensus and commitment. After this declaration, several far-reaching initiatives have been taken by the Government to effectively tackle the problem.

4.2 HISTORICAL REVIEW OF CHILD LABOUR LAWS IN INDIA

The development of Child labour legislation in India can be divided in two periods

I. Pre Independence Period
II. Post Independence Period

4.2.1 Pre Independence Period

Near the middle of 19th century, the mechanized large scale production came into existence. That time, state regulations were lacking over the conditions of employees in any industry. The employers were free to bargain with labour. Therefore, the labour in this majority was exploited by the employers for their benefits. Many children were employed in cotton and jute mills and coal mines. They were even employed for underground work. With the advent of factory organization, some public attention was drawn towards the existing evils of child labour in spite of active opposition for the employers.
First, protective legislation for child labour was enacted in 1881. This Act was known as the Indian Factories Act, 1881. This Act provided some protection of the children firstly forbidding employment of children less than seven years of age in factories and also in two separate factories on the same day. Secondly, by limiting their working hours to nine hours a day and thirdly, by making it compulsory that four holidays in a month and rest intervals should be given to them. In addition, the Act made the provisions for safety such as fencing of dangerous machines.

However, this Act covered only factories employing 100 or more persons. The evils continued due to the lack of enforcement machinery. In addition to these defects, the coverage was quite inadequate as it did not pay any attention to the agriculture and unorganized sectors of industries. The result of this was that child labour continued as a means of cheap labour.

In 1891, the Indian Factories Act was enacted on the recommendations of a factory commission which was appointed by the government of India in 1890. This step was an advance over the Act of 1881. Under the Act of 1891, the lower age was extended from 7 to 9 years. The upper age also exceeded from 12 to 14. Working hours were reduced from 9 to 7 hours per day. The children were not allowed to work at night. However, the exploitation increased because the attention was not paid due to the provisions of the Act due to the inadequate enforcing machinery.

Children's position in mines was also not different. Their condition was very bad. In 1900 about 5000 children were those child workers who had not completed their 12 years. In 1901, Mines Act was passed which prohibited the employment of children less than 12 years of age. The
Chief Inspector of mine was empowered by the Act, to prohibit the employment of children to certain level if he was satisfied that the employment conditions were dangerous to children's health and safety. This defective position continued because no improvement was made to the provisions of this Act till the next Mines Act.

Soon, the employers started work in factories for whole day and night because they started to use electric power in their factories. In addition to this factor the plaque which probe out for the first time in the industrial towns also compelled the workers not to surrender to the old conditions of work. This position continued as there was no improvement inside the factories. But ultimately government felt that it was impossible to leave the matter in the hands of employers. It, therefore, appointed the Freer Smith Committee in 1906 and a factory Labour Commission in 1907 to make inquiries on labour conditions in factories. Thereafter, a New Factory Bill was introduced in 1909 which was enacted into law in 1911.

The Factories Act of 1911 reduced the working hours of children in factories to 6 hours a day. The Act further provided that all child workers should have in procession a certificate of age and fitness for employment. The children were not allowed to work at night, i.e., between 7 p.m. and 5.30 a.m. and they were also prohibited to work in certain dangerous process.

The next step in the history of child labour law was the Indian Factories (Amendment) Act of 1922 which was enacted to give effect to the International Labour Conventions on the minimum age for admission of children into employment, hours of work and night work of young persons and women. The scope of factory was extended to cover any
premises where 20 or more persons were employed and mechanical power was used. The local Governments were empowered to extend the provisions to any premises where 10 or more persons were employed. For the purpose of this Act, child has been defined as a person who had not completed his 15 years of age. The children under 12 years were prohibited to enter into labour market. The children were required by this Act, to have a medical certificate as to their age and physical fitness for the employment. These working hours were fixed by this Act to 6 hours a day with an interval of half an hour to the children employed for more than 5 ½ hours. The inspectors were empowered to enquire from children a certificate of re-examination for continuing work. This Act also prohibited the employment of women and young person under 18 in certain processes. Some minor changes in this Act were introduced by an amendment in 1923.

The existing law in the area of mines was considered as inadequate and a new Mines Act was enacted in 1923 to give effect to the hours of work conventions of International Labour Organisation. This Act fixed the working hours for above ground work at 60 hours in a week, and for underground at 54 hours a week. This Act raised the minimum employment age from 12 to 13 years. Three years later the Indian Factories Act of 1911 was further amended in 1926 for some administrative purpose. After two years the mines Act, 1923 was amended for regulating the hours and working condition in mines.

Again, in 1931, the Indian Factories Act was further amended. This Act imposes certain penalties on the parents and guardians for allowing their children to work in two separate factories on the same day. Provincial governments were empowered under this Act, to make certain regulation for taking precautions against fire. In the same year the Indian
Ports (Amendment) Act, 1931, provided a minimum age of 12 years for the employment of children in the handling of goods in ports. The year 1931, was also important in the Indian Legal History because in this year the report of Royal Commission on Labour was published. This commission was appointed under the compulsion of intensive agitation to improve the condition of labour, to investigate and report on the existing condition of labour in industrial undertaking and plantations, and on the health and standard of living of workers in British India. This Commission found that the children as young as five years were employed to do work for 10 to 12 hours daily for very few wages. They were not provided adequate meal interval or weekly rest. Therefore, the Commission recommended: that children under 15 years should not be allowed to work as adult without a certificate of physical fitness. It also recommended the fixation of minimum working-hours for children at 5 hours a day. It further recommended to limit the spread over for children at 7 ½ hours, and to prohibit work by children between 7 p.m. and 5.30 a.m.

The area of plantation was touched by the government of India only in 1933 when it enacted the Tea District Emigrant Labour Act. The only provision relating to children in the Act is one requiring that no child under 16 shall be employed and immigrated to the district unless accompanied by his parent or adult relative on whom the child is dependent. In 1933, one more step was taken to prevent the exploitation of child when children (Pledging of Labour) Act, 1933 was enacted by the Government of India on the recommendation of the Royal Commission on labour. The main aim of this act was to eliminate the evils arising from the pledging of the labour of young children by their parents for a loan or an advance.
One year after this Act, the Factories Act was completely overhauled on the basis of recommendation of Royal Commission on Labour. A new consolidated and amended Act was enacted in 1934, which was enforced from January 1, 1935. This Act prohibited the employment of children under 12 years. The children between 15 and 17 years were defined as adolescent. The maximum working hours for children between 12 and 15 years were five hours a day.

In 1935, Indian Mines (Amendment) Act, 1935 was regulating the working conditions and hours of work in mines. This amendment prohibited the employment of children under 15 in mines. This Amendment Act further laid down that adolescent, i.e., the young between 15 and 17 years could be employed in underground work as adult on the production of certificate of physical fitness issued by recognized medical authorities. The working hours for such workers, according to this amendment, were 10 hours, a day and 54 hours a week and 9 hours a day were fixed for underground work.

The Factories Act was subsequently amended by Factories Amendment Act, 1935 and Repealing and Amending Act, 1937 which did not alter the general provision of the Act.

In 1938, the Employment of Children Act, 1938 was enacted in order to prevent the evils of employment of children in workshops which were not covered by Factories Act. The provision of this Act continues till now. This Act prohibits the employment of children under 15 in Railway and Port. By the amendment of 1939 the children under 12 are prohibited to work in workshop connected with bidi-making, carpet-weaving, cement manufacturing, cloth printing, dyeing and weaving,
manufacturing of matches, explosives and fire works, mica cutting and splitting, soap manufacture, tanning and wool cleaning.

It is fruitful to note that before independence the law relating to the employment of children in various sectors failed to achieve its goal—the elimination of the evils of child labour. The labour investigating committee, in its report in 1946 pointed out that the main cause of this was the inadequacy of the inspecting staff to enforce the provisions of law.

4.2.2 Post Independence Period

The first step after independence in this regard was the amendment of the Factories Act in 1948, which raised the minimum age for entering into employment in factories to 14 years. A new section was added which specifies that the provisions of chapter, dealing with employment of young persons, are in addition to and not in derogation of the employment of Children Act, 1938. The minimum age for admission to the employment in workshops was also raised from 12 to 14 by an amendment in the employment of Children Act, 1938. Regarding the verification of child's age in case of dispute between employer and the inspector, provisions 32 were introduced in 1949 under the employment of children Act.

The Indian Constitution, which came into force on January 26, 1950, laid down special protective measures, for children, from exploitation. The International Labour Organization Convention relating to night work for young person was responsible for an amendment in 1951 in the Employment of Children Act which prohibits the employment of children between 15 and 17 years at night in Railway and Port. The
employers were required to maintain a register for children under 17 years. In 1951, Plantation Labour was passed in order to prevent the employment of children under 12 years in plantation. Next year, the Mines Act, 1952 was enacted. This Act prohibits the employment of children under 15 years in mines. Adolescent could be employed for underground as adult upon the satisfactory of two conditions - firstly, he must have completed his 16 years, and secondly, he must have a certificate of physical fitness from a Surgeon.

In 1954, the Factories Act was again amended by the Factories (Amendment) Act, 1954 to prohibit the employment of adolescent under 17 years at night. Night means, under this Act, a period of 12 consecutive hours which include hours between 10 p.m. to 7 a.m. Again the children under 15 are prohibited to be engaged or carried to sea to work in any capacity in any ship except in certain specific cases by an Act known as Merchant Shipping Act which was passed in 1958.

In 1961, two important Acts were passed in order to provide a large protection to children, one, the Motor Transport Workers Act, 1961, Prohibits the Employment of children under 15 in Motor Transport Undertakings. Second, the Apprentice Act, 1961, provides for regulating and controlling of trainees.

One of the important steps was taken in 1966 to protect the children in Bidi industries when the Bidi and Cigar Workers (Conditions of Employment), Act, 1966 was passed. This Act prohibits the employment of children under 14 years, in any industrial premises young persons between 14 years and 18 years are also prohibited to work at night between 7 p.m. to 6 a.m.
A report of National Commission Labour Published in 1969 observed that child labour persists in varying degree in the unorganized sector such as small plantations, restaurants and hotels, cotton ginning and weaving, carpet-weaving, stone-breaking, bricklaying, handicrafts and road building. To regulate the labour of unorganized sector as shown by National Commission on Labour the Government of India passed an Act in 1970, known as the Contract Labour (Regulation and Abolition) Act, 1970, this Act covers all the establishments and contractors employing 20 or more workers in the whole of India. As there is no specific provision relating to child work, many children can be seen in building the house, road, etc. under contractors.

In 1973, the Apprentice Act, 1961 was amended by Apprentice (Amendment) Act, 1973 to protect the rights of apprentice trainees. The Act prohibited undergoing apprenticeship trainees of a person under 14 years. In addition to these legislative protective to child the state passed various shops and commercial establishments Acts for their respective state. In these Acts the minimum age of employment on shops and commercial establishments under the respective state enactments is 12 years in Assam, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Karnataka, Orissa, Rajasthan, West Bengal and Delhi and 14 years in Andhra Pradesh, Kerala, Tamilnadu, Punjab, Uttar Pradesh, Himachal Pradesh and Pondicherry.

The National Policy for children regulation, adopted in August, 1974 developed the idea that childhood and youth are to be protected against exploitation and no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment and set out a policy framework and measures aimed at providing adequate service for children. These were to form a
prominent part of the Nation's Plan for development of human resources. The policy provides as one of its objectives that no child under the age of 14 years shall be permitted to be engaged in hazardous occupations or to be made to undertake heavy work.

The Committee on Child Labour (Gurupadswamy Committee) which submitted its report in 1979, examined the problems of child labour in India. India is one of the countries where the problems of child labour are quite openly manifest, and the widespread existence of child labour has been viewed by the government of India with concern. The Gurupadswamy Committee recognized that a distinction had to be made between child labour and the exploitation of child labour as, though both are problem, they are of different orders. It had underlined that in all future, action dealing with child labour this basic aspect would have to be taken note of, i.e., that "Labour becomes an absolute evil in the case of child" when he is required to work beyond his physical capacity, when hours of employment interfere with his wages are not commensurate with the quantum of work done, and when the occupation he is engaged endangers his health and safety," i.e. when he is exploited.

Government has given consideration to these aspects of the problem of child labour from exploitation or from being subjected to work in hazardous conditions which endanger such children's physical and mental development, the need to ensure safety and ensure that children are not employed in factories or mines or in any other hazardous employment, and when they are employed in non-hazardous employment, or occupation, to ensure that the work is regulated in accordance with Part III of the Child Labour (Prohibition and Regulation) Act, 1986 where it is necessary for the state governments to make rule under Child Labour Act, 1986 or under any other legislation so as to
protect the interests of child labour, they will be so required to undertake reviews and frame rules as necessary.

The leaders of Indian movement for independence were aware of this history as also the sad plight of children in India. They knew very well that during colonial era legislative and other measures adopted for the welfare of children were wholly inadequate to improve their lot. That is why, as makers of constitution of free India, they incorporated a number of provisions therein for securing the well-being of children.

4.3 CONSTITUTION OF INDIA AND CHILD LABOUR

In a civilized society the importance of child welfare cannot be over emphasized, because welfare of the whole community, its growth and development, depends upon the health and well being of its children. Children are supremely important national assets and the future well being of the nation depends on how its children grow and develop. In India this consciousness is reflected in the provisions enacted in the constitution.

Adequate discussion on the status of children is significantly absent in the debates of the constitution. The reason can be that this matter might have been taken for granted during deliberations. However, when the constitution was adopted, the preamble unequivocally states that social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation will be secured to all the citizens. It recognizes the need for granting special protection to children. The founding fathers were wise
enough to provide that the children should also have their distributive justice in future in free India. Therefore, special provisions ensuring justice to children have been incorporated in Part-III with Fundamental Rights and Part IV devoted to Directive Principles of State Policy.

The study reveals that the very preamble of Indian constitution witnesses the presence of philosophy of socio-economic and political justice. The opening words of the Preamble show beyond the shadow of doubt that the people of India have solemnly committed themselves to rescue all the citizens. Justice, social, economic and political, liberty of thought, expression belief, faith and worship, equality of status and opportunity, and to promote among them all; fraternity assured the dignity of the individual and unity and integrity of the nation.

In order to achieve goals of social, economical and political justice, the constitution of India guarantees special protection to the children against exploitation. To import justice to them, the state has been empowered to make special provisions to their welfare so as to bring them at par with other sections of the society. There are various provisions in the constitution which put the state under duty to ensure that the tender age of children is not abused and they are not exposed to economic necessity to enter avocation unsuited to their age and strength.

The constitutional provisions dealing with welfare of children are explicit and are directly categorized into two categories. The explicit provisions dealing with the child welfare are:

1. Article 15(3), It empowers the state to make special provisions for women and children,
2. Article 21A, It provides right to education as a fundamental right.
3. Article 24, It prohibits the employment of children in factories, etc.,
4. Article 39(e) and (f), It obligates the state to safeguard the health of children and afford opportunities to grow with dignity, and
5. Article 45, It provides for free and compulsory education for children.

The implicit provisions dealing with the welfare of children may be mentioned as under:

1. Article 14, Equality before law,
2. Article 23, Prohibition of traffic in human beings and forced labour,
3. Article 38, It endeavors to secure a social order for the protection of welfare of the people,
4. Article 41. Right to work, to education and to public assistance in certain cases,
5. Article 42, Provisions for just and humane conditions of work and maternity relief,
6. Article 46, Promotion of educational and economic interests of Schedule Castes, Schedule Tribes and other weaker sections, and
7. Article 47, It obligates the state to raise the level of nutrition and the standard of living and to improve public health.

4.3.1 CHILD LABOUR WELFARE UNDER FUNDAMENTAL RIGHTS

Part III of the Constitution of India contains a long list of fundamental rights. This chapter has very well been described as the Magna Carta of India. Fundamental Rights are limitations upon all the
powers of the Government, executive as well as legislative and they are essential to the preservation of public and private rights, notwithstanding the representative character of political institutions. The rights are regarded as fundamentals because they are most essential for the individual for the development of his full intellectual, moral and spiritual potentialities. The negation of these rights will keep the individual's personality undeveloped. The declaration of fundamental rights in the constitution limits the range of government activity in appropriate directions in the interest of the liberty of the citizens.

There are some fundamental rights expressly provided for children and applicable for them. Article 14 guarantees equality before law and equal protection of laws to all persons within the territory of India. The Article 14 states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This is one of the important explicit provisions constituted under the provision which gives the equal rights to every one without the discretion of caste, creed, race, sex and age. Hence children also posses the same rights as an adult member of the society may enjoy.

Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, class or place of birth or any of them. The Article can be read as follows:

Article 15 : Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

a) access to shops, public restaurants, hotels and places of public entertainment; or

b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

3) Nothing in this article shall prevent the State from making any special provision for women and children.

4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

But Article 15(3) enables the state to make special provisions in its laws for giving favourable treatment to children and women. Though, no ground is mentioned, preferential treatment is permitted on consideration of inherent weakness of children. Article 15(3) serves as an exception to Article 15(1) and 15(2). Article 15 in general prohibits the discrimination on the ground of religion, race, caste, sex or place of birth. Mr. H.M. Seervai is of the view that since Article 15(1) does not make age a prohibited ground of discrimination the reference to children in Article 15(3) appears to be pointless. It is submitted that a specific positive provision serves the purpose of avoiding any controversy and demonstrates the concern, however, inadequate of the framers of the Constitution that the state shall strive to promote the welfare of the people.
including children. Our solicitude for children and repulsion for the exploitation of children of tender age, impelled our founding fathers to make a specific mention of them, the state can make law for welfare of children, giving them preferential treatment over other persons in the society.

Article 21 is also an explicit provision included in the Indian Constitution. Article 21 states, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21 is to provide for the protection of life and personal liberty of the people including children. “Right to Life” in the context has been held to be not a mere animal existence but it is to be with human dignity and values.

Article 21 mandates that no person shall be deprived of his life or personal liberty except according to the “procedure established by the law” which the court has interpreted to mean “due process of law”. The bane of the poverty is the root of the child labour and they are being subjected to deprivations of their meaningful right to life, leisure, food, shelter, medical aid and education. Every child shall have without any discrimination on the ground of caste, birth, colour, sex, language, religion, social origin, property or birth alone, in the matter of right to health, well being, education and social protection.

Article 23 of the constitution prohibits traffic in human beings, beggar and other similar forms of forced labour and exploitation. Article 23 can be read as follows:

Article 23. Prohibition of traffic in human beings and forced labour.
(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 23(1) prohibits not only forced labour but also 'traffic in human beings'. 'Traffic in human beings' is a wide term, it includes prohibition of child labour, prohibition of slavery, trafficking of women for illegal and immoral purposes and forced labour. Although the Article does not specifically underscore child labour, the interpretation of word 'traffic in human beings' strongly supports prohibition of child labour. The Article also talks about the punishment for these acts. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most valuable section of the society. It is a known fact that many children are exploited even by the parents who allows their exploitation because of their poverty and in the absence of parents their exploitation by close relatives still deeper. They are deprived of education, made to do all sorts of work injurious to their health and personality. In rural areas children are pledged by destitute parents to the landlords as full-time servant or part-time worker to look after both domestic and agricultural operation. In urban areas, the exploitation of children in myriad form exists such as helpers to artisans and skilled workers and also as domestic servants. Millions of children are exploited in violation of this fundamental right and no adequate legislature and administrative measures have been taken by the state.
In reference to children the word "begar" can be given a wide connotation. Begar does not require total absence of payment. Even inadequate payment for the work rendered by the child amount to begar or forced labour. The most atrocious and heinous crime against helpless children is that they are captured and maimed by criminal gangs to indulge them in begging business. Sometimes, the children of tender age are enticed for the flesh trade thus all in violation of Article 23.5

Article 24 prohibits the employment of children below the age of 14 years in factories, mines or hazardous employment. But in the context of the prevailing poverty in the country it would be extremely difficult to implement the above provision. Article 24 reads: "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

Employment of children below a particular age is also prohibited so also hazardous or injurious work may be prohibited to children taking into consideration their physical structure.19 This article does not create an absolute bar to the employment of children below the age of 14 years. Moreover, it does not prohibit their employment altogether. The employment is prohibited only in factory or mine or in any other hazardous occupation. However, this provision is to be understood in the light of realities and economic need of parents and children in our society. As Article 24 prohibits the employment of children below the age of 14 years, it is submitted that even with respect to children above the age of 14 years, all agreements either express or implied are voidable and are of doubtful validity in case of exploitation. Further, Article 24 is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a 'hazardous employment'. This provision raises a question as to
what are the 'hazardous' employments. Hazardous employment of children below 14 years is a constitutional prohibition which even if not followed up by the appropriate legislation, must operate proprio-vigore. It is therefore, necessary to identify the employment which may be called 'hazards' employment. Thus Article 24 is an additional precautionary measures securing distributive justice to children.

This article is inserted with the view that the health and strength of workers, men and women and the tender age children are not abused and that citizens are not forced by economical necessity to enter avocations unsuited to their age and strength. With this article it is assumed that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.

There was a very famous case in the supreme court of India which gave the directions to the legislations to change their course of action. Main features of the directions of Supreme Court in their Judgment dated 10.12.96 in M. C. Mehata case

On 10th December 1996 in Writ Petition (Civil) No.465/1986 the Supreme Court of India, gave certain directions on the issue of elimination of child labour. The main features of judgment are as under:

- Survey for identification of working children;
- Withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions;
- Contribution @ Rs.20,000/- per child to be paid by the offending employers of children to a welfare fund to be established for this
Employment to one adult member of the family of the child so withdrawn from work and if that is not possible a contribution of Rs.5,000/- to the welfare fund to be made by the State Government;

Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs.20,000/25,000 deposited in the welfare fund as long as the child is actually sent to the schools;

Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer.

The implementation of the direction of the Honourable Supreme Court is being monitored by the Ministry of Labour and compliance of the directions have been reported in the form of Affidavits on 05.12.97, 21.12.1999, 04.12.2000, 04.07.2001 and 04-12-2003 to the Honourable Court on the basis of the information received from the State/Union Territories Governments.

The 86th Constitutional Amendment Act, better known as the Education Bill has now been enforced in India. Under the new Act, education has been made a fundamental right. It is now a cognizable offence to deprive a child of education - parents having to ensure that their child is at school.

Article 21A reads as “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”
On the face of it, the Bill has made free and compulsory education available to all children between six and fourteen years an obligatory function of the State in such manner as the State may by law determine. From an endeavour it has become a commitment. An additional clause inserted in article 51(A) exhorts parents or guardians to ensure appropriate opportunities for the education of their children.

Proponents of the Bill say it is a milestone, and enthusiastically spell out its very optimistic features. For the first time, it makes it constitutionally binding upon the Government to provide services for all children between six and fourteen, a task that it set out to achieve in the fifties but failed. It also sets out a conceptual framework within which this function of the State would be accomplished.

Organizations that work at the grassroots however, say that it is a fallacy to call the Bill a milestone. It is not even a yard stone! The Bill's complete silence on the matter of minimum quality education has left the whole issue of excellence wide open to a range of interpretations, particularly in that it has pushed the onus of curriculum and classroom process management to the vagaries of the State. By doing this it has offered the states a clear escape route through the passage of low-grade education or cheap alternatives where quantity will be traded off for quality.

One of the major sore points in the Bill say experts is the insertion of an additional clause that transfers responsibility of guaranteeing education to children on to parents and guardians. While there is no denying that parents need to be made conscious of the value of education for their children, it is often their economic conditions and lack of child
care services in the communities that prevents them from sending their children to school.

4.3.2 CHILD LABOUR WELFARE PHILOSOPHY UNDER DIRECTIVE PRINCIPLES OF STATE POLICY

Through social revolution the constitution seeks to achieve the objectives of the child welfare. To achieve the goals of child welfare, the constitution has some provisions in Part IV of the Indian Constitution. The Directive Principles of State Policy have been designed with an earnest zeal to strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social, economical and political shall inform all the institutions of national life. Naturally, an effective implementation of this principle result, in promoting the welfare of the people through social, economic and political justice and in this turn is expected to promote proportionately, the child welfare also.

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 father of the constitution, Dr. B. R. Ambedkar, was for ahead of his time in his wisdom projected the rights in directive principles including the children as beneficiaries. Their deprivation has deleterious effect on the efficiency of the democracy and the rule of law.7

Article 39(e) and (f) direct the state to evolve a policy eliminating the abuse of tender age and to free children from the circumstances forcing them to enter into avocations unsuited to their age or strength.
The state is also directed to create social and economical conditions and infrastructure for the healthy development of children and to provide facilities and climate for exercise of freedoms and maintenance of dignity. The State is further directed to protect the children against exploitation and moral and material abandonment.

*Article 39(e) and (f) deal with certain principles of policy to be followed by the state. According to Article 39(e) and (f):*

*e) that the health and strength of workers, men and women and tender age of the children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength*

*f) that childhood and youth are protected against exploitation and against moral and material abandonment”*

Article 39(e) and (f) of the Constitution are the provisions under the directive principle of the state policy which stipulates that the tender age of the children should not be abused and children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth should be protected against exploitation and against moral and material abandonment.

In the case of *Sheela Bares v. Union of India (AIR 1986 SC 1773)*, the former Chief Justice of India P. N. Bhagwati had observed, after noticing the provision in Article 39(e) and (f) of the Constitution of India, "If a child is a national asset, it is a duty of the state to look after the child with a view to ensure full development of its personality."
He further said, "The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation"

The Article emphasized the duty of the states to protect the health and strength of children from unsuitable avocation due to economic necessity. The Article also assigned the duty to state to protect the child from exploitation.

Article 41 deals with the right to work, to education and public assistance in certain cases. Though it does not mention children, the ending words "... and in other cases of, undeserved want. The article reads as:

*Article 41 Right to work, to education and to public assistance in certain cases.* - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

It covers the children as the suffering children deserved the least fate as in no case they can be held responsible for their past sins. Hence it is the duty of state to provide social assistance to all the children who suffer for want of basic necessities of life. The implementation of this provision is also expected to promote the welfare of the children proportionately and to ensure distributive justice to them.

The Article recommends the state to make necessary provision within their economic limits and capacity to safeguard the right to work,
to education and to public assistance. Right to work help the families to be economically sound and eliminates poverty which is a root cause of child labour. Right to education helps children to grow and develop and public assistance helps under the condition of unemployment, sickness and disablement.

Article 42, requires the state to make provisions for securing just and humane conditions of work and for maternity relief. The measures for maternity relief are meant for expectant mothers and mothers during the period of pregnancy and after the child birth. These measures meant for providing proper health care and other facilities to the mothers before and after the child birth are expected to promote the health of children and to provide healthy environments for their bringing up.

Now we will see one of the most important provisions of the Constitution which shows the vision of our wise constitution makers. Article 45 which deals with 'free and compulsory education' reads as follows:

Article 45. Provision for free and compulsory education for children.-

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

Our constitution makers have a vision. They knew that dreams of the nation cannot become a reality unless children of the country are protected and educated. Therefore Article 24 was included by the constitution in fundamental rights by prohibiting children from work. Constitution makers were aware of the fact that only the prohibition of children for work is not enough. As they are national asset they should at
least receive basic education and hence Article 45 was given a place in the constitution. The constitution has assigned the state to provide free and compulsory education to the children. But in reality it is yet to be achieved. The period of ten years provided in the Article is already and even today millions of children below the age of 14 years are without basic education.

In the case of *Bundhua Mukti Morcha v. Union of India (AIR 1997 SC 2218)* Supreme Court while talking about child labour specifically stated: "Illiteracy has many adverse effect in a democracy governed by rules of law. A free educated citizen could meaningfully exercise his political right, discharge social responsibility satisfactorily and develop spirit of tolerance. Therefore education is compulsory. Primary education to children, in particular, to the child from poor, weaker section, dalits, tribes and minorities is mandatory". Again in the case of *J. P. Unnikrishnan v. State of Andhra Pradesh [(1993) 1 SCC 645 : (1993) AIR SCW 863]* a Constitutional Bench had held education up to the age of 14 years to be a fundamental right.

Under Article 45 a duty is imposed upon the state to provide free and compulsory education within a period of ten years of the commencement of the constitution for all the children until they complete the age of 14 years. This Directive signifies that it is not only confined to primary education, but extends to free education whatever it may be upon the age of 14 years. Article 45 is thus supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clauses (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education. It is suggested that Articles 24 and 45 should be amended so as
to raise that age limit from 14 to 16 years. By doing so the children's education at least up to matriculation, would be ensured or the proper growth and development of their personality. There are various state Acts, which stipulate the upper age limit of 16 years.  

Article 46 provides that the state shall promote with special care, the educational and economic interests of the weaker section of the people, and in particular, of scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation. The Article is read as

*Article 46 - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.*- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

The implementation of this principle, while promoting the economic and educational interests of the weaker section of the people particularly those of scheduled castes and scheduled tribes, will indirectly promote the welfare of the children of these sections of the society need the welfare measures most because of the appealing poverty and backwardness of their parents.

Article 47 imposes a primary duty upon the state to raise the level of nutrition and the standard of living of its people and improvement of public health. Thus it is the responsibility of the state to provide nutritious food to the children as the word "people" includes not only adults but children as well as perhaps this provision becomes more relevant in case...
of children as the malnutrition can cause irreparable danger to the personality of the children though mental retardation and blindness. The article is read as –

Article 47 - Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Though these directives are not enforceable by the Court, yet these have been declared to be fundamental in the governance of the country. It is the obligation of the state to apply these principles in making laws. If the government ignores them it will certainly have to answer for them before the electorate at the time of the election. Thus, it will not be correct to say that there is no sanction of enforceability behind these directives. In our democratic setup, vigilant public opinion is the real force behind the political institution which stands for the benefit of individual. The actions of the government are subject to scrutiny by the masses and distinguished leader of the different parties. If the government pursues a policy in accordance with the principles of the constitution, people tolerate it, otherwise they lost it in the next election. Since these directives relating to the welfare of children have also been embodied in the constitution, the government is apt to implement them. Though they do not have legal force behind them but the highest tribunal, i.e., public opinion behind them. Furthermore, Article 31-C gives precedence to all the directive principles over the fundamental rights. According to this
Article, if a law is enacted for giving effect to any of the directive mentioned in Part IV its validity cannot be challenged in the courts of Law on the ground that it is inconsistent with or takes away or abridges any of the rights guaranteed by Article 14 or 19 of the constitution. This position has now been altered by the Supreme Court in Minerva Mills case in which the Court held that Article 31-C to the extent it was amended by 42nd amendment Act is unconstitutional. It is now confined to directives contained in Article 39(a) and (c) however, the court will have power to examine whether the law is really intended to give effect to directives or it is intended, in the guise of giving effect to directives, to achieve some other purpose.10

4.4 OTHER INDIAN LEGISLATIONS ON CHILD LABOUR

The child has been subject of special laws and legal provisions. Because of its tender age, weak physique, and inadequately developed mind and understanding, it 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.11

The constitution makers were conscious of the need for special care for children and, therefore, provisions to the welfare of children dealing specially with the protection of child labour have been envisaged in our
National Charter. Accordingly, our National Policy resolution for children, 1974, lays special stress on the responsibility of the nation for physical, mental, moral and special development of children. All this calls for great deal of legislative activity. The subject of "child" does not fall exclusively either in the Union (Central) or the State field. Different matters related to child care and developments are distributed among the Union; state and concurrent list of the constitution. It is not only in India but in other industrialized countries including those developed ones that the present labour legislation is aimed to provide legal protection to child labour who constitute an important section of wage-earning population. The underlying conviction of all labour legislations is that it is one of the principal duties of the state to protect and safeguard the interest and well-being of workers, irrespective of their age, caste, creed and colour.\textsuperscript{12}

It may be submitted that the labour legislation in India including protective legislation for children has been greatly influenced and is the result of various conventions and recommendations adopted by International Labour Organisation. Besides constitutional provisions, there are at present 13 major legislative enactments which provide legal protection to children in various occupations. These are:

(i) The Children (Pledging of Labour) Act, 1933;
(ii) The Employment of Children Act, 1938;
(iii) The Factories Act, 1948;
(iv) The Plantation Labour Act, 1951;
(v) The Mines Act, 1952;
(vi) The Merchant Shipping Act, 1958;
(vii) The Apprentices Act, 1961;
(viii) The Motor Transport Workers Act, 1961;
(ix) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
(x) Contract Labour (Regulation and Abolition) Act, 1970
(xi) The shops and Commercial Establishments Act 1969
(xii) Child Labour (Prohibition and Regulation) Act, 1986

From time to time, amendments have been made in most of the above statutes, because of the progressive outlook of the governments for improving the conditions of the important legislations which regulate the working conditions of child workers and mitigate the adverse effect of employment on their health, education and training, etc.

4.4.1 The Children (Pledging of Labour) Act, 1933

The main object of this Act is to eradicate the evils arising from the pledging of labour of young children by their parents employers in lieu of loans or advances. Previously, the Act extended to whole of India except Jammu and Kashmir, but after September 1, 1971, it has been extended to the Jammu and Kashmir also.

The Act declares an agreement, oral or written, to pledge the labour of children, whereby the parents or the guardian of a child, in return of any payment or benefit to be received, undertakes to cause or allow the services of a child to be utilized in any employment, to be void. However, according to Section 2 of the Act an agreement made without-detriment in a child and not made in consideration of any benefit other than reasonable wages to be paid for the child's service and terminable at more than a weeks notice is not to be deemed to be an illegal agreement. A person who knowingly enters into an agreement with a parent or guardian of a child whereby such parent or guardian pledges the labour of child, or an
employer who knowingly employs such a child is liable to a fine up to Rs. 200. A parent or a guardian who knowingly pledges the labour of his child is liable to be wished with a fine which may extend up to Rs. 50.

According to Section 2 of the Act, Child means a person who has not completed the age of 15 years.

4.4.2 The Employment of Children Act, 1938

This Act is also applied to the whole of India. To prevent employment of children in hazardous employment and certain categories of unhealthy occupations, the Act prohibits the employment of children below 15 years of age in any occupation connected with the transport of passengers, goods or mail by railway, or a port authority within the limits of a port. With the exception of children employed as apprentices or trainees, no child between the age of 15-17 can be employed or permitted to work in these occupations unless he is allowed a rest interval of at least 12 consecutive hours in a day. The period of rest is to include at least 7 such consecutive hours between 10 P.M. and 7 A.M. as may be prescribed by the appropriate government.

The Act also prohibits the employment of children below the age of 14 in workshops connected with bidi-making; carpet-weaving; cement manufacture including bagging of cement, cloth printing; dyeing and weaving; manufacture of matches; explosives and fire works; mica cutting and splitting; shellac manufacture; soap manufacture tanning and wool cleaning. These provisions, however, do not apply to workshops where the work is done by the occupier with the aid of his family only or to any school established, aided or recognized by any state government. The State governments are empowered to extend the scope of this
provision of the Act to any other employment also. In exercise of this power the Government of Madras has extended the Act to children working as cleaners in workshops attached to motor transport companies. The Government of Uttar Pradesh has also extended this provision of the Act to brassware and glass bangle industries. The penalty for the breach of the Act is imprisonment up to one month or fine up to Rs. 500 or both. The Act also require the Railway and port authorities to maintain registers showing names, date of birth, rest intervals, etc. of children under 17. It is however, imperative to mention here that this Act has been repeated to the extent it is in consistent with the child labour (Prohibition and Regulation) Act, 1986.

4.4.3 The Factory Act, 1948

The Act extends to the whole of India except the state of Jammu and Kashmir. It applies to establishments employing 10 or more workers with power or 20 or more workers without power. A child under the Act is defined as a person who has not completed the fifteen years of age. A 'young person' is defined as either a child or an adolescent, who has completed his fifteen years but not eighteen years. Thus, "young person" may be divided into three categories:

a. Those who are under fourteen years. They are totally prohibited by this Act from entering into employment in factory.

In Walker T. Ltd., v. Martindale it was held that the prohibition is absolute and not restricted to employment in one of manufacturing processes; thus a child employed as a sweeper to clean the floor of a
factory is in contravention of the provisions of the section, even though he is not employed in any of the manufacturing processes.

The following employments are also prohibited by the court:

1. Shorting of groundnuts in a courtyard near the machinery room for decorticating Ramanathan v. KE.
2. To employ children under 7 years in plating straw in a workroom, the benefit of which goes to the mother, was held liable to penalty—Beedon v. Parrot.
3. Oiling of parts of machinery of the spinning mill by a young person during meal time, though done without orders and for workers own amusement was held in Prior v. Slaith-Waite Spinning Co. Violation of law making the occupier liable to fine.

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

(i) According to Section 68 of this Act, such persons should have a certificate of fitness issued by a surgeon and should carry a token of such certificate.

(ii) The certifying surgeon should follow the procedure laid down in Section 69 of this Act.

(iii) They should not work at night, i.e., twelve consecutive hours including the period from 10 P.M. to 6 A.M.

(iv) According to Section 71 (i) (a) of the Act, they should work not more than four and half hours a day.

(v) According to Section 7(2) of this Act, the period of work is to be limited to two shifts. The shift should not overlap. Each child has to be employed in one relay. The spread over is not to
exceed five hours and should also not change except once in 30 days.

(vi) According to Section 71(4) of this Act, they should not be employed in two separate factories on the same day.

(vii) According to Section 72 of this Act, the employer should display a notice regarding the periods of work for such children.

(viii) According to Section 73 of this Act, the manager of the factory should maintain a register in respect of such child-workers.

(ix) According to Section 74 of this Act, no such child be employed except in accordance with the notice of periods of work displayed at the entries against his name in register of child workers.

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

c. Persons between 15 and 18:

According to Section 68 of this Act, they are employed as adults if they possess a certificate of physical fitness issued by the certifying surgeon and they also carry a token of such certificate. According to Section 70 of this Act, the adolescents under 17 are not allowed to work at night.

The object of these statutory restrictions over the employment of young person is to prevent exploitation of young labourers and to provide for their safety. This was the view expressed by Chief Justice Narasimha, Orissa High Court in *Jhunjhunwala v. B.K. Patnaik* case where the occupier of a glass factory was severely punished for employing 14 adolescent in blowing section of the factory, which is a hazardous
occupation, without a certificate of fitness required under sections 68 and 69 of the Factories Act.

In *Mechnitoosh v. First Brook Book Co.*, it was observed that it was the duty of the employer to ascertain by reasonable means that the applicant was of requisite age and merely the statement of child about his age should not be treated as correct.

The Act also prohibits the employment of children to any part of the factory for pressing cotton in which a cotton opener is at work, except where the feed end of a cotton opener is in a room separated from the delivery end.

The state government is empowered by this Act to make rules prescribing the maximum weights which may be lifted by adolescents and children. Besides a weekly day of rest, every child worker who has worked for a period of 240 days in a factory during a calendar year is entitled during the subsequent year of leave with wages at the rate of one day for every 15 days of work as against every 20 days in the case of an adult worker. Rest shelters, canteens, etc. are also to be provided to all workers including children.

### 4.4.4 The Plantation Labour Act, 1951

The Act covers in the first instance all tea, coffee, rubber, cinchona, cardamom plantation and areas 10.117 hectares or more, in which 30 or more persons are employed, or were employed on any day of the preceding 12 months. Further the state government is, however, empowered to extend, all or any of the provisions of this Act to any land
used or intended to be used for growing and plantation even if it measures less than 10.117 hectares and the number of persons employed therein is less than thirty, provided that land which measured less than 10.117 hectares or in which measured less than 30 persons are employed immediately before the commencement of the Act would not be covered.

According to Section 24, the Act prohibits the employment of children under 12 years. According to Section 26, an adolescent between 15-18 years cannot be employed for work unless he is certified fit for work by a surgeon. Such certificate is valid only for one year. Use of a false certificate of fitness is punishable by imprisonment which may extend to one month, or with fine or both. This Act is, however, more comprehensive in the sense that this Act alone makes the provisions for education as a responsibility of the employer and so is for the housing and medical and recreational facilities. Perhaps the legislators were moved to make all these provisions in this Act because of the fact that plantation labour is commonly known as "family labour" as against 'individual' child labour.

4.4.5 The Mines Act, 1952

This Act also extends to the whole of India and includes all excavations where any operation for the purpose of searching for or obtaining minerals is carried out. According to Section 2(e), this Act also defines child as a person who has not completed his fifteen years. This 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. Even an adolescent is not allowed to work in part of a mine which is below ground, unless he has completed his 16th year and
has a medical certificate of fitness for work. A certificate is valid only for 12 months. The Act also says that adolescent is allowed to be employed in any mine except between 6 AM and 6 PM. This act also includes:

i. All bearing, bore holes and oil well;

ii. all shafts, in or adjacent to and belonging to mine, whether in the course of being sunk or not;

iii. all levels and inclined planes in the course of being driven;

iv. all converse or railways provided for the bringing into or removal from mine of minerals or other articles or for the removal of refuse there from;

v. all adits, levels, planes, machinery, works, railways, tramways, and riding;

vi. in or adjacent to and belonging to a mine;

vii. all workshops situated within the precinct of a mine and under the same management and used solely for purposes connected with that mine or a number of mines under the same management;

viii. all power stations for supplying solely for the purpose of working the mines or a number of mines under the same management;

ix. any premise exclusively occupied by the owner of the mines and for the time being used for depositing refused from a mine or in which any operation in connection with such refuse is being carried on; and

x. unless exempted by the central government by notification in the official gazette, any premises or part thereof in or adjacent to and belonging to a mine, on which any process ancillary to getting, dressing or preparation for sale of minerals or of coke is carried on.
4.4.6 The Merchant Shipping Act, 1958

The Act prohibits the employment of children in any capacity, who are below 15 years of age, on sea-going ships. This Act applied to ships registered in India. It also prohibits the employment of young persons under 15 as trimmers and stakers except under certain specific conditions. Such persons, if employed, are required to produce a certificate of fitness. Further the Act empowers the government to make necessary rules regarding employment of young persons as and when the occasion demands.

4.4.7 The Apprentices Act, 1961

The main object of the Act is to provide for the regulation and control of training of apprentices in trades and for matters connected therewith. The Act extends to the whole of India and provides for the regulations and control of training of apprentices in trade and for matters connected therewith. Under the Act, an apprentice has been defined "as person who is undergoing apprenticeship training in a designated trade in pursuance of control of apprenticeship." According to Section 3, the Act provides that no person shall be qualified for engaged as an apprentice or to undergo apprenticeship training in any designated trade unless he is atleast 14 years of age and satisfies such standards of education and physical fitness as may be prescribed. If he is a minor, his guardian is required to enter into a contract of apprenticeship with the employer and it shall be registered with the Apprenticeship Advisor.

Initially the Act was enforced in 12 industries but in order to meet the growing and changing demands of all skilled workers in other industries, the coverage of the Act has been extended to 195 industries.
The central government has also specified 56 designated trades for the purpose of the Act.

4.4.8 The Motor Transport Workers Act, 1961

This Act applies to the whole of India. It covers every motor transport undertaking employing 5 or more transport workers. The state governments are authorised to apply all or any of the provisions of this Act to any motor transport undertakings employing less than 5 workers. According to Section 21, this Act also prohibits the employment of children under 15 in any capacity in the motor transport undertakings. The adolescents are prohibited to work unless a certificate of fitness is granted, which is valid only for 12 months. An adolescent can work only for 6 hours including a rest interval of half an hour and between 10 AM and 6 PM only.

4.4.9 Bidi and Cigar Works (Conditions of Employment) Act, 1966

The Act also extends to whole of India. The Act provides that no child should be required or allowed to work in any industrial premises. The Act defines the child as a person who has not completed his fourteen years of age. The employment of young persons between 14 to 18 years is prohibited between 7 PM to 6 AM. The Administration of Act rests with the state who appoints Chief Inspectors or Inspectors for the purpose. The Act provides the penalties for breach which may be imprisonment upto three months or a fine upto Rs. 500 or both. Provisions for canteen, first aid, cleaning and ventilation are also made under the Act.
4.4.10 Contract Labour (Regulations and Abolition) Act, 1970

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

4.4.11 Shops and Commercial Establishment Act, 1969

Provisions relating to minimum age also exist in different state shops and commercial establishments Acts. These acts applied to shops, commercial establishments, restaurants and hotels and place of amusement and notified urban areas, to which the Factories Act does not apply. Further the state governments are empowered to extend the coverage of the Act in any establishment.

The minimum age of employment in shops and commercial establishment is 12 years in Bihar, Gujarat, J&K, Madhya Pradesh, Karnataka, Orissa, Rajasthan, Tripura, Uttar Pradesh, West Bengal, Goa, Daman and Diu and Manipur, and 14 years in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Kerala, Tamil Nadu, Punjab, Delhi, Chandigarh, Pondicherry and Meghalaya. The minimum age of employment is 15 years in Maharashtra. There is no separate Shops and Commercial Establishment Act in Andaman & Nicobar, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshdweep, Nagaland and Sikkim.

4.4.12 The Child Labour (Prohibition and Regulation) Act, 1986
The problem of child labour continues to pose a challenge before the nation. Government has been taking various pro-active measures to tackle this problem. However, considering the magnitude and extent of the problem and that it is essentially a socio-economic problem inextricably linked to poverty and illiteracy, it requires concerted efforts from all sections of the society to make a dent in the problem.

Way back in 1979, Government formed the first committee called Gurupadswamy Committee to study the issue of child labour and to suggest measures to tackle it. The Committee examined the problem in detail and made some far-reaching recommendations. It observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that/a multiple policy approach was required in dealing with the problems of working children.

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted in 1986. The Act prohibits employment of children in certain specified hazardous occupations and processes and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

The Act states right in the beginning that its aim is to 'prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.'
According to this Act, the employment of Children Act, 1938 is repealed. All rules made in this Act will be in addition to the provisions of the Factories Act, 1948, the Plantations Labour Act, 1951 and Mines Act, 1952.

According to Section 5 of this Act "Child" means a person who has not completed his fourteen years of age. Again, family units and training centres are not included in the purview of the Act. The Act provides for the setting up of "Child Labour Technical Advisory Committee" for the purpose of addition of occupations and processes to the schedule. A notice of at least three months will be given by the Central Government before adding any occupation or process to the schedule. The Act clearly lays down that no child will be allowed to work for more than six hours per day with a rest period of one hour after three hours of work. According to Section 8, once a week he will be given a holiday. According to Section 7 (4) of this Act, no child will be allowed to work between 7 PM and 8 AM and no over time will be permitted.

According to Section 13 (1) of this Act clearly states that the government can make rules for the health and safety of children who are permitted to work in any establishment. These rules can provide for matters such as cleanliness, ventilation, dust and fumes, lighting, drinking water and sanitary facilities, etc. But there is no mention of nutrition or medical facilities. According to Section 14 of this Act, the penalty for violation of the Act will range from three months to one year of imprisonment with a fine of Rs. 10,000 to Rs. 20,000. If a person is found guilty he will be liable for punishment under the clauses given in Section 14 (1 & 2) and not under any of the previous Acts. According to Section 16 (1) of this Act, any person, police officer or an inspector can file a complaint of an offence under this Act in any Court of Competent
jurisdiction. Part "B" of the schedule has added one more process into existing list and that is "building and construction industry." All other provisions are similar to the ones already existing in the Act of 1938. The government proposes to bring in amendment to The Child Labour (Prohibition Regulation) Act, 1986, to make it more effective.

The government has decided to prohibit employment of children as domestic servants or servants or in dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centers. The ban has been imposed under the Child Labour (Prohibition & Regulation) Act, 1986 and will be effective from 10th October 2006. The Ministry of Labour has recently issued a notification to this effect giving three-month mandatory notice. The Ministry has warned that anyone employing children in these categories would be liable to prosecution and other panel action under the Act. It may be recalled that the government servants have already been prohibited from employing children as domestic servants. By issuing this notification, the Government has imposed these restrictions on everyone.

The decision has been taken on the recommendation of the Technical Advisory Committee on Child Labour headed by the Director General, ICMR. The Committee considers the occupations mentioned in the above notification as hazardous for children and has recommended their inclusion in the occupations which are prohibited for persons below 14 years under the Child Labour (Prohibition & Regulation) Act, 1986. The Committee while recommending a ban on employing children in these occupations had said that these children are subjected to physical violence, psychological traumas and at times even sexual abuse. It said that invariably such incidents go unnoticed and unreported as they take place in the close confines of the households or dhabas or restaurants. It
said that these children 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 came in contact with all kinds of people. The measure is expected to go a long way in ameliorating the condition of helpless working children. The Labour Ministry is also contemplating to strengthen and expand its rehabilitative Scheme of National Child Labour Project, which already covers 250 child labour endemic districts in the country.

4.5 OTHER INTERNATIONAL CONVENTIONS

A child by reason of his physical and mental immaturity needs special care and protection including adequate legal protection. The care and protection of children has always been a major preoccupation of human society. With increase of knowledge it has become evident that the social environment is a key factor in the all round development of the child. Therefore, there is the need for recognition of the rights of the child at international level in order to make the States to follow up the same.

In the beginning, States did not show any concern with the rights of the child. The beginning of the movement for the rights of the child can however, be traced back to the mid of the 19th century with the publication of an Article in June, 1852 by Slagvolk, "The Rights of the Children" followed by Kate Kliggin's "Children Rights" in 1892.

The Geneva Declaration on the Rights of the Child, 1924 which was adopted by the League of Nations was the first convention in which the rights of the child were considered. However, the rights of the child
were very narrowly interpreted as we find that provisions were made for the measures to be taken only against slavery, child labour, traffic and prostitution.

4.5.1 UN Charter, 1945 and Human Rights

The members of the United Nations affirmed their faith in fundamental human rights and in the dignity and worth of the human person in various provisions of the Charter. It is to be noted that the dignity and worth of the human person stated here also includes children.

4.5.2 Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights, 1948 embodies some more measures to protect the children through it, a ‘common standard’ of achievement for all people and all nations was adopted. It provides that everyone is entitled to all the rights and freedoms set forth in this Declaration without any distinction of any kind. Naturally the standards set forth include children too. Thus, the only conclusion is that the Declaration recognised several rights of the child including the right to life and liberty, prohibition of slavery, slave trade, torture and inhuman treatment, right to equality before law, right to work, free choice of employment, etc. The Declaration while dealing with the question of social security provided that the motherhood and childhood are entitled to special care and assistance. All children whether born in wedlock or out of wedlock shall enjoy the same special protection.

Similarly, the International Covenant on Civil and Political Rights, 1966 provides that in case of dissolution of marriage between the spouses provision shall be made for the necessary protection of the child. It also provides that every child shall have without any discrimination right to
such measure of protection as are required by his status as minor, on the
part of his family, society and State. The same article secures to a child
the right to name and confer upon him right to acquire a nationality.

4.5.3 UN Declaration of the Rights of the Child, 1959

The adoption of the Declaration of the Rights of the Child by the
G.A. of the U.N. on November 20, 1959 was indeed a very important
event as regards the international recognition of the right of the child. The
G.A. affirmed that the child has the rights to enjoy special protection and
to be given opportunities and facilities to be able to develop in a healthy
and normal manner.

4.5.4 Beijing Rules

In the field of Juvenile Justice, the General Assembly of U.N.
adopted U.N. Standard Minimum Rules, which is also known as Beijing
Rules, for the administration of Juvenile Justice on November 29, 1985.
They include rules relating to age of criminal responsibility, rights of
juveniles, etc. The adoption of the Beijing Rules by the General
Assembly was followed by the Declaration on Social and Legal
Principles relating to protection and welfare of children with special
reference to roster placement and adoption nationally which the U.N.
General Assembly adopted on Dec. 3rd, 1986. This Declaration puts the
States under an obligation to see that high priority is given to family and
child welfare and that the child welfare depends upon good family
welfare. The child welfare basically requires that the child should be
taken care of by his or her own parents and where they are not available
care should be taken by the relatives of the child's parents or another
substitute foster or adoptive family or if necessary by an appropriate
institution what is necessarily required is that while doing so the best interest of the child be given top priority.

4.5.5 U.N. Convention on the Rights of the Child, 1989

The convention provides for the right to like and that the States must ensure to the maximum possible the survival and development of the child. The right to access to health care services, and adequate standard of living including food, clean water and a place to live and to name and nationality have been recognised under the head of survival aspect whereas under the developmental aspect of the rights of the child the convention has guaranteed to every child the right to education, to rest and leisure, to freedom of expression and information and to freedom of thought, conscience and religion. The convention incorporates another important right of the child against his or her parents that they shall give "Due Weight" to the views of the child in accordance with their age and maturity. Regarding the protectional aspect the convention has extended protection to mentally and physically handicapped children, child refugees, or parentless children or children who are separated from their parents. All the above conventions focused on this 'silenced majority' is an attempt to ensure worldwide compliance with the rights of the child. The proclaimed rights of the children remain a dead letter. The international community must respond to the call of silenced majority ensuring the compliance of the rights of the child.

Convention on Rights of Child aims to address the problems arising out of abuses of the child rights and protection to their civil, political, economical, social and cultural rights. It intends to ensure that every child grows up "in the spirit of peace, dignity, tolerance, freedom, equity and solidarity". The rights of child are integral part of the human
rights. These rights of the children and the standard to which all Governments must aspire in realizing their rights are most concisely and fully articulated in the International Human Rights treaty.

This convention, uniquely places children at center-stage in quest for the universal application of human rights. The National Governments have committed themselves to protecting and ensuring children’s rights and they have agreed to hold themselves accountable for their commitment before the international community. Thus, built on varied legal system and cultural traditions, the Convention on rights of child is a universally agreed set of non-negotiable standards and obligations. It spells out in Articles that the rights of child are inherent to the human dignity in harmonious development of every child.

The convention draws attention to four sets of civil, political, social, economic and cultural rights of every child. These are:

The right to survival:

Which includes the rights to life, the highest attainable standard of health, nutrition, and adequate standards of living. It also includes the right to a name and a nationality.

The right to protection:

Which includes freedom from all forms of exploitation, abuse, inhuman or degrading right to special protection in situations of emergency and armed conflicts.

The right to development:
Which includes the right to education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.

The right to participation:

Which includes respect for the views of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

The Convention provides the legal basis for initiating action to ensure the rights of children in society. In the context of prohibition of child labour, under Article 32 the Convention states:

"State parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." Further the Convention states that the state shall set minimum ages for employment and regulate working conditions.

It is thus seen that more progress is made in realizing and protecting children's rights in the decade following adoption of the Convention on the Rights by the child than in any other favorable period in human history and children's right are now higher on public and political agenda than ever before.

"All of us are born with human rights", - a principle of the Convention on the Rights of Child makes very clear.
Table 4.1 International Conventions and its rectification

<table>
<thead>
<tr>
<th>Name of the Country</th>
<th>ILO Convention No.138</th>
<th>ILO Convention No.182</th>
<th>UN Convention on the Rights of the Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
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<td>Not Ratified</td>
<td>Ratified</td>
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<tr>
<td>China</td>
<td>Ratified</td>
<td>Ratified</td>
<td>Ratified</td>
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<tr>
<td>USA</td>
<td>Not Ratified</td>
<td>Ratified</td>
<td>Not Ratified</td>
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<tr>
<td>UK</td>
<td>Ratified</td>
<td>Ratified</td>
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<tr>
<td>Philippines</td>
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<tr>
<td>Australia</td>
<td>Ratified</td>
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<td>Ghana</td>
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<tr>
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<tr>
<td>Pakistan</td>
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<tr>
<td>Nepal</td>
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<td>Russia</td>
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<td>Sri Lanka</td>
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<tr>
<td>Germany</td>
<td>Ratified</td>
<td>Ratified</td>
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</table>

(Source: http://www.ucw-project.org)

4.5.6 ILO Convention No. 182: Worst Forms of Child Labour Convention, 1999

The General Conference of the International Labour Organization (ILO) convened at Geneva by the Governing Body of the International Labour Office met in its 87th Session on 1st June 1999. It was convened to consider the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour. It is the main priority for national and international action, including international cooperation and
assistance. It is to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour. It is considered that the effective elimination of the worst forms of child labour requires immediate and comprehensive action. It is taken into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education. Worst Forms of Child Labour Convention, 1999 was adopted by ILO on 17th June 1999 with its 15 Articles.

According to Article 1 of the convention each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The convention under its Article 2 defined the term 'child' as all persons under the age of 18.

According to Article 3 for the purposes of this Convention, the term 'the worst forms of child labour' comprises:

i. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
ii. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

iii. the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

iv. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

According to the Article 5 and 6, it is suggested to take help of government institutions, employers and trade unions to eliminate child labour.

According to the Article 7 of the convention each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

a) prevent the engagement of children in the worst forms of child labour;

b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

d) identify and reach out to children at special risk; and

e) take account of the special situation of girls.
4.5.7 ILO Convention No.138 Minimum Age Convention, 1973

The General Conference of the International Labour Organization had adopted the Minimum Age Convention, 1973 on the date 26 June 1973. Before adopting this convention there were other conventions were in existence dealing with the minimum age such as Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965. Hence the efforts were made to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour.

The convention with its Article 1 said that each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

With the Article 2 of the Convention it was suggested that the minimum age should not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.
Member whose economy and educational facilities are insufficiently
developed may, after consultation with the organizations of employers
and workers concerned, where such exist, initially specify a minimum age
of 14 years.

With the Article 3 of the Convention it was suggested that the
minimum age for admission to any type of employment or work which by
its nature or the circumstances in which it is carried out is likely to
jeopardize the health, safety or morals of young persons shall not be less
than 18 years. It was suggested to list out such employments by national
laws or regulations or by the competent authority, after consultation with
the organizations of employers and workers concerned, where such exist.

This Convention does not apply to work done by children and
young persons in schools for general, vocational or technical education or
in other training institutions, or to work done by persons at least 14 years
of age in undertakings, where such work is carried out in accordance with
conditions prescribed by the competent authority, after consultation with
the organizations of employers and workers concerned, where such exist,
and is an integral part of--

(a) a course of education or training for which a school or training
    institution is primarily responsible;

(b) a programme of training mainly or entirely in an undertaking,
    which programme has been approved by the competent authority; or

(c) a programme of guidance or orientation designed to facilitate
    the choice of an occupation or of a line of training.
According to the Article 7 of the convention National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--

a) Not likely to be harmful to their health or development; and

b) Not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

The convention under the Article 9 advised to take all the necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

Under the Article 10 this Convention revises, on the terms set forth in this Article, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965.
Table 4.2 Minimum ages to Work

<table>
<thead>
<tr>
<th>Hazardous work</th>
<th>The minimum age at which children can start work.</th>
<th>Possible exceptions for developing countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any work which is likely to jeopardize children’s physical, mental or moral health, safety or morals should not be done by anyone under the age of 18.</td>
<td>18 (16 under strict conditions)</td>
<td>18 (16 under strict conditions)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Basic Minimum Age</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The minimum age for work should not be below the age for finishing compulsory schooling, which is generally 15.</td>
<td>15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Light work</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training.</td>
<td>13-15</td>
</tr>
</tbody>
</table>
REFERENCES

1. In the case of Sheela Barse V. Union Of India, AIR 1986 SC 1773: 1986 Cr LJ 1736
8. Madhya Pradesh Bal Adhiniyam 1970, Sec.2(1); Uttar Pradesh Children Act, 1952 sec. 2(4).
10. In the case of Minerva Mills Ltd. v. Union of India. AIR 1980 SC 1789