6.1 INTRODUCTION

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 details 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.

In consonance with the above approach, a National Policy on Child Labour was formulated in 1987. The Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance. The Action Plan outlined in the Policy for tackling this problem is as follows.

**Legislative Action Plan** – For strict enforcement of Child Labour Act and other labour laws to ensure that children are not employed in hazardous employments, and that the working conditions of children working in non-hazardous areas are regulated in accordance with the provisions of the Child Labour Act. It also entails further identification of additional occupations and processes, which are detrimental to the health and safety of the children.
Focusing of General Developmental Programmes for Benefiting Child Labour

As poverty is the root cause of child labour, the action plan emphasizes the need to cover these children and their families also under various poverty alleviation and employment generation schemes of the Government.

**Project Based Plan of Action** envisages starting of projects in areas of high concentration of child labour. Pursuant to this, the National Child Labour Project (NCLP) scheme was launched in 9 districts of high child labour indemnity in the country. The Scheme envisages running of special schools for child labour withdrawn from work. In the special schools, these children are provided formal/ non-formal education along with vocational training, a stipend of Rs. 100 per month, supplementary nutrition and regular health check ups so as to prepare them to join regular mainstream schools. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the NGOs in the district.

Government has accordingly been taking proactive steps to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations. Since poverty is the root cause of
this problem, and enforcement alone can not help solve it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families.

The coverage of the NCLP scheme has increased from 12 district in 1988 to 100 district in the 9th Plan to 250 district during the 10th Plan.

The coverage of the NCLP Scheme has increased from 12 district in 1988 to 100 districts in the 9th Plan to 250 district during the 10th Plan.

6.2 LABOUR LEGISLATION AS PROTECTIVE MEASURE

1. Section 2 (iv) defining "ESTABLISHMENT" may be amended to extend the scope of protective provisions to progressively cover additional activities in which child labour is likely to be engaged by issuing notification by appropriate Government. This enable quicker and faster inclusion of additional types of work places as and when the need arises without having to amend the Act.

2. Section 2 (vi) of the Child Labour (P & R) Act may be amended to cast the responsibility on the principla employer/ manager/ or persons actually in control of
establishment/workshop by amplifying the definitions of the term "OCCUPIER."

3. The provision to Section 3 that "nothing the section shall apply to any workshop wherein any process carried on the occupier with the aid of this family" may be deleted. This would avoid shifting of activity from Factories/occupations to house holds.

4. Section 10 may be amended to shift the proof of the age of the Child Labour from the prosecution to the employer. For such proof the Birth Certificate issued by the Register of Births and Deaths shall be conclusive evidence. Thus the onus shall be on accused to prove that the Child Labour working with the accused are not under the prescribed age.

5. The concept of continuing offence may be introduced and section 14 maybe modified.

6. For more effective implementation of Child Labour (P&R) Act, violation of Section of the Act may be made cognizable offence.

7. Under the Factories Act, the Labour Departmental Officials should also be declared as inspectors only with respect to Child Labour prohibition.

8. The Inspector should serve a demand notice on the employer found to be employing child labour in
contravention of the Act for remittance of compensation amount of Rs. 20,000/- to the Child Labour Welfare-cum-Rehabilitation Fund within a period of 30 days from the date of issue of such notice, failing which the said amount should be recoverable as arrears of land revenue under Revenue Recovery Act. The Act may be amended accordingly.

9. Section 4 of the Act relates to amendment to the schedule. The power of amendment of schedule may be given to the State Government instead of Central Government, so that the State should be enabled to include any industry/process which they considered hazardous to the schedule.

10. Penalty for violation of Act should be enhanced as against the existing provisions under Section 14, i.e.

a. To Cease plant and machinery.
b. Cancellation of all licences
c. Closure of establishment.
d. Enhancement of Existing imprisonment period and fine amount.
e. Disconnection of power and water.

10. (a) Penalty under Section 14 (1) should not be less than one year imprisonment which may extend to three years with a fine not less than Rs. 20,000/- which may extend to Rs. 50,000/- or with both.
10. (b) Penalty under Section 14 (2) should be less than two years imprisonment which may extend to five years with a fine not less than Rs. 50,000/-. 

10. (c) Penalty under Section 14 (3) should not be less than three months imprisonment with a fine not less than Rs. 20,000.

11. The Regulatory provisions may be deleted wherever exists under various enactments, mainly the provisions of Child Labour (P & R) Act, 1986.

12. A comprehensive Legislation, prohibiting Child Labour in any form and in any manner may be brought into force in place of multitude of ambiguous and conflicting enactments in force.

13. All offences involving Child Labour should be made non compoundable and any including the parents of the child in commission of offence shall be specifically made punishable.

14. The Laws relating to financial institutions should be amended to extend to credit/loan facilities only to child labour employment free institutions.

15. To examine the uniformity and contradiction of National and State laws.
16. To amend conduct rules of publish servants not to make employment of child labour in their households. They should furnish year-wise undertakings during their entire service.

17. Definition of occupier, owner, establishment, workshop, etc. shall be re-defined.


6.3 NEED FOR PROTECTIVE LABOUR LEGISLATION

An evaluation of the Scheme was carried out by independent agencies in coordination with V.V. Girl National Labour Institute in 2001. Based on the recommendations of the evolution and experience of implementing the Scheme since 1988, the strategy for implementing the scheme during the 10th Plan was devised. It aimed at greater convergence with the other developmental schemes and bringing qualitative changes in the Scheme. Some of the salient points of the 10th Plan Strategy are as follows:

Focused and reinforced action to eliminate child labour in the hazardous occupations by the end of the plan period.
• Expansion of National Child Labour Projects to additional 150 districts.

• Linking the Child Labour elimination efforts with the Scheme of Sarva Shiksha Abhiyan of Ministry of Human Resource development to ensure that children in the age group of 5-8 years get directly admitted to regular schools and that the older working children are mainstreamed to the formal education system through special schools functioning under the NCLP Scheme.

• Convergence with other Schemes of the Departments of Education, Rural Development, Health and Women and Child Development for the ultimate attainment of the objective in a time bound manner.

The Government and the Ministry of Labour & Employment in particular, are rather serious in their efforts to fight and succeed in this direction. The number of districts covered under the NCLP Scheme has been increased from 100 to 250. In addition, 21 districts have been covered under INDUS, a similar Scheme for rehabilitation of child labour in cooperation with US Department of Labour. Implementation of this Project was recently reviewed during the visit of Mr. Steven Law, Deputy Secretary of State, from the USA. For the Districts not covered under these two Schemes, Government is also providing funds directly to the NGOs under the Ministry Grants-in-aid Scheme for
running Special Schools for rehabilitation of Child Labour, thereby providing for a greater role and cooperation of the civil society in combating this menace.

Eliminating of child labour is the single largest programme in the Ministry's activities. Apart from a major increase in the number of distracts covered under the scheme, the priority of the Government in this direction is evident in the quantum jump in budgetary allocation during the 10th Plan. Government has allocated Rs. 602 crores for the Scheme during the 10th Plan, as against an expenditure of Rs. 178 crores in the 9th Plan. The resources set aside for combating this evil in the Ministry is around 50 per cent of its total annual budget.

The implementation of NCLP and INDUS Schemes is being closely monitored through periodical reports, frequent visits and meetings with the District and State Government officials. The Government's commitment to achieve tangible results in this direction in a time bound manner is also evident from the fact that in the recent Regional Level Conferences of District Collectors held in Hyderabad, Pune, Mussoorie and Kolkata district wise review of the Scheme was conducted at the level of Secretary. These Conferences provided an excellent opportunity to have one-to-one interaction with the collectors who play a pivotal role in the implementation of these Schemes in the District. Besides, these Conferences also helped in a big way in
early operationalization of Scheme in the newly selected 150 districts.

The Government is committed to eliminate child labour in all its forms and is moving in this direction in a targeted manner. The multipronged strategy being followed by the Government to achieve this objective also found its echo during the recent discussions held in the parliament on the Private Member's Bill tabled by Shri Iqbal Ahmed Saradgi. It was unanimously recognized therein that the problem of child labour, being inextricably linked with poverty and illiteracy, can not be solved by legislation alone, and that a holistic, multipronged and concerted effort to tackle this problem will bring in the desired results.

6.4 THE FACTORIES ACT 1948

The factories Act 1948 is the principal legislation for regulating various aspects relating to safety, health and welfare of workers employed in factories. This Act is a central enactment which aims at protecting workers employed in factories from industrial and occupational hazards. State Governments and union territory administrations runs under the Act and enforce provisions of the Act and rules through their factory inspectorates. The Directorate General, Factory Advise Service and Labour Institute (DGFASLI), Mumbai, an attached office of the Ministry of labour renders technical advice to the state/union
territories regard to administration and enforcement of the factories Act, with four regional labour institutes at Mumbai, Calcutta, Kanpur and Chennai under its control, the DGFASLI also undertakes support research facilities and carries out promotional activities through education and training in matters concerning occupational safety and health.

1. Prescribing a 48 hour week for adult workers. The Factories Act forbids employment of children under 14 years of age in any factory.

2. Minimum standards of lighting, ventilation, safety and welfare services which employers must provide in their factories have also been laid down.

3. Factories employing over 30 women workers are required to provide a crèche for their children.

4. Shelters, rest-rooms and lunch-rooms are required to be provided by factories employing over 150 workers.

5. Factories with 250 workers or more have to appoint welfare officers.

The factories act was amended in 1987 in order to impose a general duty on occupies to ensure health and safety of workers and on design manufactures, importers and suppliers to ensure the articles designed, manufactured etc are without risk to health and safety of workers.
A new chapter for regulating safety and health aspect in hazardous industries are incorporated in the Act SAFETY IN PORTS AND DOCKS.


Recreation

Recreation is one of the important means not only for relaxation of the human being but also for education mental growth and development. For Children the importance of recreation is further more important than for adults. Most of the employers are not providing any recreation amenities of any kind for their child workers. The children have their recreation in the work only. Their recreation is their gossip during their work with the fellow child workers.

The children informed that sometimes they escape from the work and watch movies. A few employers, who have child workers staying at the work place itself, arrange video shows for popular films once or twice a year. The child workers forming part of family work force do get time of recreation within the family at the time of family functions, festivals and celebrations.
Recreation Habits in Child Workers

<table>
<thead>
<tr>
<th>Means of recreation</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Films</td>
<td>20</td>
<td>20%</td>
</tr>
<tr>
<td>Television Show</td>
<td>16</td>
<td>16%</td>
</tr>
<tr>
<td>Radio &amp; Music</td>
<td>18</td>
<td>18%</td>
</tr>
<tr>
<td>Sports and Play</td>
<td>12</td>
<td>12%</td>
</tr>
<tr>
<td>Play Cards</td>
<td>9</td>
<td>9%</td>
</tr>
<tr>
<td>Reading</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>None</td>
<td>23</td>
<td>23%</td>
</tr>
</tbody>
</table>

In some work places Radio Transistor is allowed to listen even during work time and that is recreation. Reading habits are the least popular means among the children, the reason being lack of education amongst the children. The sports and play is also one of the least popular extra working activity. Some child workers do play

Safety

Safety from Occupational Hazards and machinery is very important. Factories Act 1948 lays down certain specific requirements to be complied within various satiations. In the organized sector follow up of safety rules is, of course, seen now days with some violations here and there due to the enforcement
practices and labour resentment. But in the unorganized sector, where the child workers are engaged, no rules of safety are followed in any manner. The children are exposed to a variety of unsafe conditions of work as well as occupational diseases.

(Section 23) Provides provisions for employment of Young Persons on Dangerous Machines

1. No young person (shall be required to be allowed to work) at any machine to which this Section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and has received sufficient training in work at the machine or is under adequate supervision by a person who has a full knowledge and experience of the machine.

2. Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are compiled with.

General Penalty for Offences

Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each
be guilty of an offence and punishable with imprisonment for a term which may extend to (two years) or with fine which may extend to (one lakh rupees) or with both, and if the contravention is continued after conviction, with a further fine which may extend to (one thousand rupees) for each day on which the contravention is so continued.

Provided that where contravention of any of the provisions or any rules made there under or under section 87 has resulted in an accident causing death or serious bodily injuries, the fine shall not be less than (twenty five thousand rupees) in the case of an accident causing death, and (five thousand rupees) in the case of an accident causing serious bodily injury.

**Employment of Young Persons**

**Prohibition of Employment of Young Children**

No children who has completed his fourteenth year shall be required or allowed to work in any factory.

**Non-adult Workers to Carry Tokens**

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless.

a. A certificate of fitness granted with reference to him under Section 69 is in the custody of the manager of the factory.

b. Such child or adolescent carries while he is at work a token giving a reference to such certificate.
Certificate of Fitness

1. A Certifying surgeon shall, on the application of any young person or his person or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

2. A certifying surgeon shall, on the application of any young person, in the prescribed form, or may renew—

   a. A certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work.

   b. A certificate of fitness to work in a factory as an adult,. If he is satisfied that the young person has fifteenth year, and is fit for full day's work in a factory.

Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.
3. A certificate of fitness granted or renewed under sub section (2) –

a. Shall be valid only for a period of twelve months from the date thereof

b. May be made subject to conditions in regard to the nature of the work in which the young person may be employed, or/ requiring re-examination of the young person before the expiry of the period of twelve months.

4. A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in this opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

5. Where a certifying surgeon refuses to grant or renew a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reason in writing for doing so.

6. Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.
7. Any fee payable for a certificate under this section shall be paid by the occupier and shall be recoverable from the young person, his parents or guardian.

**Effect of Certificate of Fitness Granted to Adolescent**

1. An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub section (2) of section 69, and who wishes to work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes.

(1-A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 am and 7 p.m.

Provided that the State Government may, by notification in the official Gazette, in respect of any factory or group or class or description of factories.

i. Vary the limits laid down in this sub-section so, however, that no such section shall authorize the employment of any female.

ii. Grant exemption from the provisions of this sub section in case of serious emergency where national interest is involved.
2. An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

Working Hours for Children

1. No Child shall be employed or permitted to work, in any factory.

For more than four and a half hours in any day.

During the night.

Explanation: For the purpose of this sub-section "night" shall mean a period of at least twelve consecutive hours which shall include the interval between 10 pm and 6 am.

2. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

3. The provisions of Section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.
4. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

5. (No female child shall be required or allowed to work factory except between 8 a.m. and 7 p.m.).

**Scope**: This section prohibits its employment in a factory of children during the night absolutely. Even during the day time their working hours are restricted to 4 ½ hours and their shifts, if any must be limited to two. No child can be required or allowed to work in any factory. On any day on which he ah{s already been working in another factory.

**Notice of Periods of Work for Children**

1. There shall be displayed and correctly maintained in every factory in which children are employed; in accordance with the provisions of sub-section (2) of section 108 a notice of periods of work for children showing clearly for everyday the periods during which children may be required or allowed to work.

2. The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be
working in contravention of any of the provisions of section 71.

3. The provisions of sub-section (8), (9) and (10) of section apply also to the notice required by sub-section (1) of this section.

Register of Child Workers

1. The manager of every factory in which children are employed shall maintain a register of child workers to be available to the inspector at all times during working hours or when any work is being carried on in a factory, showing –

a. The name of each child worker in the factory.

b. The nature of his work.

c. The group, if any, in which he is included.

d. Where his group works on shifts the relay to which he is allotted.

e. The number of his certificate of fitness granted under Section 69.

(1-A) No child workers shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.
2. State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

**Hours of Work to Correspond with Notice under Section 72 and Register under Section 73**

No child shall be employed in any factory, otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

**Power to Require Medical Examination**

Where an Inspector is of opinion –

That any person working in a factory without a certificate of fitness is a young person.

That a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein.

He may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the inspector so directs, be employed or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be under Section 69, or has been certified by the certifying surgeon examining him not be a young person.
Power to Make Rules

The State Government may make rules –

a. Prescribing the forms of certificates of fitness to be granted under Section 69, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charge for such certificates and renewals there of and such duplicates.

b. Prescribing the physical standards to be attained by children and adolescents working in factories.

c. Regulating the procedure of certifying surgeons.

d. Specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

Annual leave with Wages

1. Every workers who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of.

i. If an adult, one day for every twenty days of work performed by him during the previous calendar year.
ii. If a child one day for every fifteen days of work performed by him during the previous calendar year.

6.5 THE MINIMUM WAGES ACT 1948

On 11\textsuperscript{th} April, 1946, Dr. B.R. Ambedkar, the then Labour Member in the Government of India, introduced a Minimum Wages Bill, but the passage of the Bill was considerably delayed by the political changes in India. It was passed in March 1948, known as the Minimum Wages Act of 1948, and with amendments from time to time is applicable at present.

The main provisions of the Act are

- The act empowers the central or the State Government as the case may be to fix within a specified period, minimum rates of wages payable to employees, including clerks working in certain schedule employments.

- Employees have been defined as persons "employed for hire or reward to do any work, skilled or unskilled manual or clerical etc.

- Minimum rates of wages need not be fixed in respect of any employment in a state, if it employs less than 1,000 employees.

- The employment include, woolen carpet making or shawl weaving establishments, tobacco, including bidi making,
rice mills, flour mills, dal mills, oil mills, plantations; employment under any local authority; road construction or building operations, stone breaking or stone crushing mica works; public motor transport; tanneries and leather manufacturing and agriculture.

❖ The Act authorizes the appropriate Government to extend its application to any industry whereas in their opinion, statutory minimum wages should be fixed.

**The Act provides for the fixation of**

1. A minimum time-rate
2. A minimum Piece-rate
3. A guaranteed time-rate
4. An overtime rate

It is considered appropriate in respect of different classes of work and workers, occupations and localities and for adults, adolescents, children and apprentices.

**A minimum rate is to consist of**

a. A basic rate of wages and a cost of living allowance.

b. A basic rate with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates.

c. An all-inclusive rate:
The Act lays down that all wages should be paid in cash, though the appropriate Governments can authorize payments of minimum wages, wholly or partly, in kind. The appropriate Governments can appoint Committees to hold inquiries and advice in fixing rates of minimum wages. Advisory committees can also be appointed to receive these rates, and there is provision for appointing advisory board for co-ordinating the work of committees and for advising the Government in the matter of fixing and revising the minimum rates of wages.

A Central Advisory Board is to be set up the Central Government for advising the Central and state Governments and for co-ordinating the works of the state Advisory Board. These bodies are to consist of and equal number of employer's and employees representatives the of independent persons not exceeding one-third of the total number of members. The government can also fix the daily hours of work, provide for a weekly holiday and the payment of overtime wages etc, in the kept and inspectors and Authorities can be appointed to check hear and decide claims arising out of payment of less than the minimum rates of wages, and penalties for offences have been prescribed.

**Amendments of Minimum Wages Act**

From time to time amendments have been made in Minimum Wages Act as per the demands of industry. The 1st and
30th clause of Minimum Wages Act were amended to make room for Central Advisory Wages Act were amended to make room for Central Advisory committee (1949) and minimum wages byelaws (Central Govt.) 1950. The Central Advisory Committee (CAC) had representatives from Govt. (Central and state) as well as industrial workers. In its 2nd meet on April 1954, CAC suggested national minimum wages of Rs. 1 and 2 anas to Rs. 2/- per workers. On the recommendation of CAC, Government of India made suitable amendment in MWA in 1961.

Assessment of Minimum Wages

The Labour Ministry of North Zone held convocation on 7th June 1979 in which minimum wages for agricultural workers and labourers in some nondescript trades were discussed. Wage for agrarian workers were subsequently updated in 1982.

In 36th Convention of labour ministers held on 20th May 1987, it was proposed to link minimum wages with poverty line. Establishment of a central statue for agrarian workers, and minimum wages not less than Rs. 35/- per day also put on record.
6.6 EMPLOYEES STATE INSURANCE ACT 1948

Definitions

Section 13. (6-A) Provides "Dependent" means any of the Following Relatives of a Deceased Insured Person, Namely

1. A widow, minor legitimate or adopted son, an unmarried mate or adopted daughter or a widowed mother.

2. If wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is inform.

3. If wholly or in part dependent on the earnings of the insured person at the time of his death.

   a. A parent other than a widowed mother.

   b. A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate of married and a minor or if widowed and a minor.

   c. A minor brother or an unmarried sister or a widowed sister if a minor.

   d. A widowed daughter-in-law.

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e. A minor child of a pre-deceased daughter where no parent of the child is alive.

f. A paternal grand parent if no parent of the insured person is alive.

**Dependant's Benefit**

If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependents' benefit shall be payable in accordance with the provisions of the First Schedule to his dependent specified in sub-clause (i) and sub clause (ii) of clause (6-A) of Section 2.

In case the insured person dies without leaving behind him the dependents as aforesaid, the dependents benefit shall be paid to the other dependents accordance with the provisions of the First Schedule.

**6.7 MOTOR TRANSPORT WORKERS ACT 1961**

**Note**: In my synopsis there was a printing mistake due to which it was given Motor Transport workers Act, 1966. As there is no law as 1966, I would like to give the details of 1961. I request you to please excuse me for the mistake.
The Motor Transport Workers Act, 1961

The Motor Transport Workers Bill received the assent of the President on 20th May, 1961 after being passed by both the Houses of Parliament and came into force as the Motor Transport Workers Act, 1961 (27 of 1961).

1. Short title, extent, commencement and application

a. This act may be called the Motor Transport Workers Act, 1961.

b. It extends to the whole of India.

c. It shall come into force on such date, not being later than the 31st day of March, 1962, as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

d. It applies to every motor transport undertaking employing five or more motor transport workers.

Provided that the State Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply all or any of the provisions of this Act to any motor transport undertaking employing less than five motor transport workers.
Definitions – In this Act,

a. "Adolescent" means a person who has completed his fifteenth year but has not completed his eighteenth year.

b. "adult" means a person who has completed his eighteenth years.

c. "Child" means a person who has not completed his fifteenth year.

d. "Day" means a period of twenty four hours beginning at midnight.

Provided that where a motor transport workers duly commences before midnight but extends beyond midnight, the following day for him shall be deemed to be the period of twenty four hours beginning when such duty ends and the hours she has worked after midnight shall be counted in the previous day.

e. "Employer" means, in relation to any motor transport undertaking, the person who, or the authority which, has the ultimate control over the affairs of the motor transport undertaking and where the said affairs are entrusted to any other persons whether called a manager, managing director, managing agent or by any other name, such other person.
f. "Hours of work" means the time during which a motor transport worker is at the disposal of the employer or of any other person entitled to claim his services and includes –

i. The time spent in work done during the running time of the transport vehicle.

ii. The time spent in subsidiary work.

iii. Period of mere attendance at terminals of less than fifteen minutes.

Explanation – For the purposes of this clause –

1. "Running time" in relation to a working day means the time from the moment a transport vehicle starts functioning at the beginning of the working day until the moment when the transport vehicle ceases to function at the end of the working day, excluding any time during which the running of the transport vehicle is interrupted for a period exceeding such duration as may be prescribed during which period the persons who drive or perform any other work in connection with the transport vehicle are free to dispose of their time as they please or are engaged in subsidiary work.

2. "Subsidiary work" means work in connection with a transport vehicle, its passengers or its load which is done outside the running time of the transport vehicle, including in particular.
a. Work in connection with accounts, the paying in of cash, the signing of registers, the handing in of service sheets, the checking of tickets and other similar work.

b. The taking over and garaging of the transport vehicles.

c. Travelling from the place where a person signs on the place where he takes over the transport vehicle and from the place where he leaves the transport vehicle to the place where he signs off.

d. Work in connection with the upkeep and repair of the transport vehicle.

e. The loading and unloading of the transport vehicle.

3. "Period of mere attendance" means the period during which a person remains at his post solely in order to reply to possible calls or to resume action at the time fixed in the duty schedule.

4. "Motor transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier.

5. "Motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in professional
capacity on a vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time keeper watchman or attendant, but except in section 8 does not include.

a. Any such person who is employed in a factory as defined in the Factories Act, 1948 (63 of 1948).

b. Any such person to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishment apply.

c. "Prescribed" means prescribed by rules made under this Act.

d. "Qualified medical practitioner" means a person having a certificate granted by a authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under section 3 of that Act or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956), and includes any person having a certificate granted under any provincial or State Medical Council Act.
e. "Spread over" means the period between the commencement of duty on any day and the termination of duty on that day.

f. "Wages" has the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936).

g. "Week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

h. All other words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1939 (4 of 1939), shall have the meanings respectively assigned to them in that Act.

**Registration of Motor Transport Undertakings**

Every employer of a motor transport undertaking to which this Act applies shall have the undertaking registered under this Act.

An application for the registration of a motor transport undertaking shall be made the employer to the prescribed authority in such form and within such time as may be prescribed. Where a motor transport undertaking is registered under this Act, there shall be issued to the employer a certificate of registration containing such particulars as may be prescribed.
Inspecting Staff

Chief inspector and inspectors

The State Government may, by notification in the Official Gazette, appoint for the State a duly qualified person to be the chief inspector and as many duly qualified persons to be inspectors subordinate to the chief inspector as it thinking. The chief inspector may declare the local limits within which inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such local Limits as may be assigned to him by the State Government. The chief inspector and all inspectors shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Powers of the inspectors

1. Subject to such conditions and restrictions as the State Government may by general or special order impose, the chief inspector or an inspector may –

   a. Make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made there under are being observed in the case of any motor transport undertaking, and for that require the driver of a transport vehicle to cause the transport
vehicle to stop and remain stationary so long as may reasonably be necessary.

b. With such assistance, if any, as he thinks fit, enter, inspect and search any premises which he has reason to believe is under use or occupation of any motor transport undertaking at any reasonable time for the purpose of carrying out the objects of the Act.

c. Examine any motor transport workers employed in a motor transport undertaking or require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act.

d. Seize or take copy of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer.

Facilities to be afforded to inspector

Every employer shall afford the chief inspector and an inspector all reasonable facilities for making any entry, inspection, examination or inquiry under this Act.
Certifying Surgeons

The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such motor transport undertakings or class of motor transport undertakings as it may assign to them respectively.

a. The examination and certification of motor transport workers.

b. The exercise of such medical supervision as may be prescribed where adolescents are or are to be, employed as motor transport workers in any work in any motor transport undertaking which is likely to cause to cause injury to their health.

Welfare and Health

Canteens

1. The State Government may make rules requiring that in every place wherein one hundred motor transport workers or more employed in a motor transport undertaking ordinarily call on duty during everyday, one or more canteens shall be provided and maintained by the employer for the use of the motor transport workers.

2. Without prejudice to the generality of the foregoing power, such rules may provide for –
a. The date by which the canteens shall be provided.

b. The number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteens.

c. The foodstuffs which may be served therein and the charges which may be made therefore.

d. The constitution of a managing committee for a canteen and the representation of the motor transport workers in the management of the canteen.

3. The State Government may, subject to such conditions as it may impose, delegate to the chief inspector the power to make rules with reference to clause (c) of sub-section (2).

Rest Rooms

1. In every place wherein motor transport workers employed in a motor transport undertaking are required to halt at night, there shall be provided and maintained by the employer for the use of those motor transport workers such number of rest rooms or such other suitable alternative accommodation.

2. The rest rooms or the alternative accommodation to be provided under sub-section (I) shall be sufficiently lighted
and ventilated and shall be maintained in a clean and comfortable condition.

3. The State Government may prescribe the standards in respect of construction, accommodation, furniture and other equipment of rest rooms or the alternative accommodation to be provided under this section.

**Hours of work for adolescents employed as motor transport workers**

No adolescent shall be employed or required to work as a motor transport workers in any motor transport undertaking –

a. For more than six hours a day including rest interval of half an hour.

b. Between the hours of 10 pm and 6 am.

**Daily intervals for rest**

1. The hours of work in relation to adult motor transport workers on each day shall be fixed that no period of work shall exceed five hours and than no such motor transport worker shall work for more than five hours before he has had an interval for rest for at least half an hour.

2. The hours of work on each day shall be so fixed that a motor transport worker is, except in any case referred to in the second proviso to section 13, allowed a period of rest of
at least nine consecutive hours between the termination of duty on any one day and the commencement of duty on the next following day.

**Employment of Young Persons**

**Prohibition of employment of children** – No child shall be required or allowed to work in any capacity in any motor transport undertaking unless –

a. A certificate of fitness granted with reference to him under section 23 is in the custody of the employer.

b. Such adolescent carries with him while he is at work a token giving a reference to such certificate.

**Certificate of fitness**

A certifying surgeon shall, on the application of any adolescent or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed as a motor transport worker in a motor transport undertaking if certified to be fit for that work, or on the application of the employer or any other person on his behalf with reference to any adolescent intending to work, examine such person and ascertain his fitness for work as a motor transport worker.
A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof but may be renewed.

Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the adolescent, his parent or guardian.

Wages and Leave

**Act 4 of 1936 to apply to payment of wages to motor transport workers.**

The Payment of Wages Act, 1936, as in force for the time being, shall apply to motor transport workers engaged in a motor transport undertaking as it applies to wages payable in an industrial establishment as if the said Act had been extended to the payment of wages of such motor transport workers by a notification of the State Government under sub-section (5) of section 1 thereof, and as if a motor transport undertaking were an industrial establishment within the meaning of the said Act.

Penalties and Procedure

Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or will fully neglects to afford the inspector any reasonable facility for making any inspection, examination or inquiry authorized by or under this Act in relation to any motor transport undertaking shall be punishable with
imprisonment for a term which may extend to three months, or
with fine which may extend to five hundred rupees, or with both.

Whoever willfully refuses to produce on the demand of a
inspector any register or other document kept in pursuance of
this Act, or prevent or attempts to prevent or does anything which
he has reason to believe is likely to prevent any person from
appearing before or being examined by an inspector acting in
pursuance of his duties under this Act, shall be punishable with
imprisonment for a term which may extend to three months, or
with fine which may extend to five hundred rupees, or with both.

**Use of false certificate of fitness**

Whoever knowingly uses or attempts to use as a certificate
of fitness granted to himself under section 23 a certificate granted
to another person under than section, or having been granted a
certificate of fitness to himself, knowingly allows it to be used, or
an attempt to use it to be made, by another person, shall be
punishable with imprisonment which may extend to one month,
or with fine which may extend to fifty rupees, or with both.

**Other Offences**

Whoever will fully disobeys any direction lawfully given by
any person or authority empowered under this under this Act to
give such direction or contravenes any of the provisions of this
Act or of any rules made there under for which no other penalty
is elsewhere provided by or under this Act shall be punishable with imprisonment for term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

6.8 CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

Legislative Framework

The Government of India has been deeply concerned about the exploitation of workers under the contract labour system. The Contract Labour (Regulation and Abolition) Act was enacted in 1970. This Act seeks to regulate the employment of contract labour in certain establishments and to provide for its abolition under certain circumstances.

Contract Labour, by and large, is neither borne on pay roll or muster roll nor is paid wages directly. The establishments, which form out, work to contractors, do not own any direct responsibility in regard to their labourers. Generally, the wage rates to be paid and observance of working conditions are stipulated in agreements but in practice they are not strictly adhered to.
The Main Features of the Act

The main features of the Act can be summarized as:

The Act supplies to every establishment in which 20 or more workmen are employed or were employed on any day on the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. It does not apply to establishments were the work performed is of intermittent or casual nature. The Act also applies to establishments of the Government and local authorities as well.

The Central Government and the State Governments are required to set up Central Advisory Board and State Advisory Boards, which are authorized to constitute Committees as deemed proper. The functions of the Boards are advisory, on matters arising out of the administration of the Act as are referred to them. The Boards carry out the functions assigned to them under the Act.

The establishments covered under the Act are required to be registered as the Principal Employer. Likewise, every contractor to whom the Act applies is required to obtain a license and not to undertake or execute any work through contract labour except under and in accordance with the license issued.
The Act has provided for establishment of canteens. For the welfare and health of contract labour, provision is made for restrooms, first aid, wholesome drinking water, latrines and urinals: In case of failure on the part of the contractor to provide such facilities, the Principal Employer is made liable to provide the amenities.

The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorized representative of the Principal Employer. In case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. In case the contract labour perform same or similar kind of work as regular workmen, they will be entitled to the same wages and service conditions as regular workmen as per the Contact Labour (Regulation and Abolition) Central Rules, 1971.

The Act make provision for the appointment of Inspecting staff, for maintenance of registers and records, for penalties for the contravention of the provisions of the Act and Rules made there under and for making Rules for carrying out the purpose of the Act. In the Central sphere, officers of the CIRM have been appointed as Inspectors.

A part form the regulatory measures provided under the Act for the benefit of the contract labour, the 'appropriate government' under section 10 (1) of the Act is authorized, after
consultation with the central Board of State Board, as the case
maybe, to prohibit, by notification in the official gazette,
employment of contract labour in any establishment in any
process, operation or other work.

Sub-section (2) of Section 10 lays down sufficient guidelines
for deciding upon the abolition of Contract labour in any process,
operation or other work in any establishment and the
'appropriate government' while taking action under this Section
will have to take an overall picture of the industry carrying on
similar activities. The guidelines furnished under subsection (2)
oblged the 'appropriate government' to consider, as relevant data,
the material to which it must have regard. The Central
Government on the recommendations of the Board has abolished
Contract labour system in a number of jobs in different industries
and so for 76 notifications have been issued.

Definitions:

(a) 'Appropriate Government' means:-

i. In relation to an establishment in respect of which the
appropriate Government under the Industrial Disputes At
1947 (14 of 1947) is the Central Govt, the central
government.

ii. In relation to any other establishment, the Government of
the State in which that other establishment is situate.
(b) A workman shall be deemed to be employed as "contract labour' in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

(c) "Contractor", in relation to an establishment, means a person, who undertakes to produce a given result for the establishment, other than a mere supply of goods of articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.

(d) "Controlled Industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest.

1. **Subs. By Act 14 or 1986, s. 2 (w.e.f. 28-1-1986).**

(e) "Establishment" means:-

(i) Any office or department of the Government or a local authority, or

(ii) Any place where any industry, trade, business, manufacture or occupation is carried on;

(f) "Prescribed" means prescribed by rules made under this Act;
(g) "Principal employer" means:-

i. In relation to any office or department of the Government or a local authority, the head of the office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.

ii. In a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act. 1948 (63 of 1948) the person so named.

iii. In a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named.

iv. In any other establishment, any person responsible for the supervision and control of the establishment.

**Explanation:** For the purpose of sub-clause (iii) of the clause the expression "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause (i) clause (l) and clause (c) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952).

(h) "Wages" shall have the meaning assigned to it in clause (vi) of section 2 of the payment of Wages Act, 1936 (4 of 1936).
"Workman" means any person employed in or in connection with the work of any establishment to do any skilled; semiskilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person.

(i) Who is employed mainly in a managerial or capacity; or

(ii) Who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensen or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, mainly of a managerial nature; or

(iii) Who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the Principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out worker or in some other premises, not being premises under the control and management of the principal employer.
Any reference in this Act to a law which is not in force in that State of Jammu and Kashmir shall in relation to that State, be construed as a reference to be corresponding law, if any, in force in that State.

**The Advisory Boards.**

**Central Advisory Board.**

(1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The Central Board shall consist of

a. A Chairman to be appointed by the Central Government.

b. The Chief Labor Commissioners (Central) ex-officer.

c. Such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Govern met, the Railways, the coal industry, the mining industry the contractors, the workmen and any other interests.
which, in the opinion of the Central Government, ought to represented on the Central Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies, among, the members of the central Board shall be such as may be prescribed. Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

State Advisory Board

(1) The State Government may constitute a board to be called the State Advisory Contract Labor Board (hereinafter referred to as the State Board) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this act.

(2) The State Board shall consist of:-

(a) A Chairman to be appointed by the State Government.
(b) The Labour Commissioner, ex officer or in his absence any other officer nominated by the State Government in that behalf;

(c) Such number of members, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed. Provided that the number of members nominated to represent shall not be less than the number of members nominated to represent the principal employers and the contractors.

**Power to Constitute Committees**

(1) The Central Board of the State Board, the case may be, may constitute such committees and for such purpose or purposes as it may think fit,
(2) The committee constituted under sub-section (1) shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed. Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

Appointment of Registering Officers

The appropriate Government may, by an order notified in the Official Gazette:-

(a) Appoint such persons, being Gazetted Officers of Government, as it thinks fit to be register officers for the purposes.

(b) Define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

Registration of Certain Establishments

(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, be notification in the Official Gazette, fix in this behalf with respect to establishment genially or with
respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment. Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars are may be prescribed.

Revocation of Registration in Certain Cases:

If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation suppression of any material fact, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.
**Effect of Non-registration**

No principal employer of an establishment, to which this Act applies, shall:-

(1) In the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section.

(2) In the case of an establishment the registration in respect of which has been revoked under section 8, employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may.

**Prohibition of employment of contract labour**

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board, or as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as:
a. Whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment.

b. Whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment.

c. Whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto.

d. Whether it is sufficient to employ considerable number of whole time workmen.

*Explanation*: If a question arises whether any process or operation or other work is of perennial nature the decision of the appropriate Government thereon shall be final.

**Registration of Establishments Employing Contract Labour**

**Licensing of Contractors**

**Appointment of Licensing Officers**

The appropriate Government may, by an order notified in the Official Gazette:-
(1) Appoint such persons, being Gazetted Officers of Government as it thinks fit to be licensing officers for the purposes.

(2) Define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

**Licensing of Contractors**

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provision of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.
Grant of Licences

(1) Every application for the grant of a licence, under sub-section (10 of section 12 shall be made in the prescribed for and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) A licence granted shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

Revocation, Suspension and Amendment of Licences

(1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that:

(a) A licence granted under section 12 has has been obtained by misrepresentation or suppression of any material fact, or
(b) The holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made there under, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence and opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

(2) Subject to any rules that maybe made in this behalf, the licensing officer may vary or amend a licence granted under section 15. Appeal. (1) any person aggrieved by an order made under section 7, section 8, section 12 or section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government. Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. On receipt of an appeal under sub-section (1), the appellate
officer shall, after giving the appellant an opportunity of being heard dispose of the appeal as expeditiously as possible.

**Welfare and Health of Contract Labour**

**Canteens**

(1) The appropriate Government may make rules requiring that in every establishment.

(a) To which this Act applies.

(b) Wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and.

(c) Wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contact labour.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for:-

(a) The date by which the canteens shall be provided;

(b) The number of canteens that shall be provided, and the standards in respect of construction,
accommodation, furniture and other equipment of the canteens; and

(c) The foodstuffs which may be served therein and the charges which may be made therefore.

**Rest Rooms**

(1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment.

(a) To which this Act applies, and

(b) In which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.

(2) The rest room or the alternative accommodation to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.
Other facilities:

It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain.

(a) A sufficient supply of wholesome drinking water for the contractor labour at convenient places.

(b) A sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and washing facilities.

First-aid facilities

There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first aid box equipped with the prescribed contents at every place where contract labour is employed by him.

Liability of principal employer in certain cases

(1) If any amenity required to be provided under section 16, section 17, section 18 or section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed.
(2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

**Responsibility for payment of wages**

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure that disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contact labour employed by contractor and
recover the amount so paid form the contractor either
deduction form any amount payable to the contractor under
any contract or a debt payable by the contractor.

6.9 THE CHILD LABOUR (PROHIBITION AND
REGULATION)ACT, 1986

This Act may be called the Child Labour (Prohibition and
Regulation) Act, 1986. It extends to the whole of India. In this
Act:-

(1) "Appropriate Government" means, in relation to an
establishment under the control of the Central Government
or a railway administration or a major Port or a mine or
oilfield, the Central Government, and in all other cases, the
State Government.

(2) "Child" means a person who has not completed his,
fourteenth year of age;

(3) "Day" means a period of twenty four hours beginning at
midnight.

(4) "Establishment" includes a shop, commercial
establishment, works-shop, farm, residential hotel,
restaurant, eating house, theatre or other place of public
amusement or entertainment;
(5) "Family" in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual.

(6) "Occupier", in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;

(7) "Port Authority" means any authority administering a port; "prescribed" means prescribed by rules made under Sec. 18.

(8) "Week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;

(9) "Workshop" means any premises (including the precincts thereof) wherein any industrial process in carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act 1948 (63 of 1948), for the time being, apply.

Prohibition of Employment of Children in Certain Occupation and Processes

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

**Power to amend the Schedule**

The Central Government, after giving by notification in the official Gazette, not less than three months notice of its intention so to do, may, by like notification add any occupation or process to the schedule and thereupon the schedule shall be deemed to have been amended accordingly.

The Section empowers the Central Government to amend the schedule so as to include therein any occupation or process considered necessary. **Construction of a section**—it is elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For the principle that the statute must be read as a whole is equally applicable to different part of the same section.

**Child Labour Technical Advisory Committee**

(1) The Central Government may, by notification is in official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.
(2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.

(3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.

(5) The term of office of the manner of filling causal vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its subcommittees shall be such as may be prescribed.

Regulation of Conditions of Work of Children

The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in sec. 2 is carried on.
The section lays down that provisions of this Part shall apply to an establishment in which none of the prohibited occupations or processes is carried on.

**Hours and Period of Work**

No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments. The period of work on each day shall be so fixed that no period shall exceed three thus and that no child shall work for more than three hours before he has had no interval for rest for at least one hour. The period of work for a child shall be so arranged that inclusive of his interval for rest, under sub section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day. No child shall be permitted or required to work between 7 pm and 8 am. No child shall be permitted or required to work in any establishment on any day on which he has larded been working in another establishment.

**Weekly Holidays**

Every child employed in an establishment shall be allowed each week, a holiday or one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than one in three months.
Notice in Inspector

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

(a) The name and situation of the establishment;

(b) The name of the person in actual management of the establishment;

(c) The address to which communications relating to the establishment should be sent; and,

(d) The nature of the occupation or process carried on in the establishment.

(2) Every, occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation not such establishment, shall within a period of thirty day from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars are are mentioned in sub section (1).
For the purpose of sub section (1) and (2) date of commencement of this Act, in relation to an establishment' means the date of bringing into force of this Act in relation to such establishment.

**Maintenance of Register**

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing:-

(a) The name and date of birth of every child so employed or permitted to work.

(b) Hours and periods of work of any such child and the intervals of rest to which he is entitled;

(c) The nature of work of any such child; and

(d) Such other particulars as may be prescribed.

**Health and Safety**

(1) The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.
Without prejudice to the generally of the foregoing provisions, the said rules may provide for all or any of the following matters, namely: Cleanliness in the palace of work and the freedom for nuisance; disposal of wastes and effluents; Ventilation and temperature; Dust and fume; Artificial humidification; Lighting; Drinking water; Latrine and urinal; Spittoons; Fencing of machinery; Work at or near machinery in motion; Employment of children on dangerous machinery; Device for cutting of power self-acting machinery; Easing of new machinery; floor, stairs and means of access; Pits, sumps, openings in floors, etc; Excessive weight; Protection of eyes; Explosive or inflammable dust, as, etc; Precautions in case of fire; Maintenance of buildings; and Safety of buildings and machinery.

Miscellaneous

Penalties

Whoever employs and child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than then thousand rupees but which may extend to twenty thousand rupees or with both.
Whoever, having been convicted of an offence under Sec. 3 commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

Whoever:-

(a) Fails to give notice as required by Sec. 9, or

(b) Fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or

(c) Fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or

(d) Fails to comply with or contravenes any other provisions of this Act or the rules made thereunder; shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

**Procedure relating to offences**

Any person, police officer or Inspector may file a complaint of the commission of an offence under this act in any Court of competent jurisdiction. Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for purposes of this Act be conclusive evidence as to the age of
the child to whom it relates. No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

**Court Duty of**

The Court should meticulously consider all facts and circumstances of the case. The Cur is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is used as an instrument of oppression to have an unfair advantage to plaintiff.

**Appointment of Inspectors**

The appropriate Government may appoint inspectors for the purposes of securing compliance with the provisions of this Act and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

**Power to make rules**

The appropriate Government may, by notification in the official Gazette and subject to the condition of previous publication, make rules for carrying into effect the provisions of this Act.
In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.

(a) The term of the office of, the manner of filling casual vacancies of, and the allowances payable to, the Chairman and members of the Child Labour Technical Advisory Committee and the conditions and restrictions subject to which a non member may be appointed to a sub committee under subsection of Sec. 5;

(b) Number of hours for which a child may be required or permitted to work under sub section (1) Sec. 7;

(c) Grant of certificates of age in respect of young persons in employment or seeking employment, the medical authorities which may issue such certificate, the form of such certificate, the charge which may be made there under and the manner in which such certificate may be issued; Provided that no charge shall be made for the issue of any such certificate of the application is accompanied by evidence of age deemed satisfactory by the authority concerned.
Rules and notification to be laid before parliament or Stage legislature

Every rules made under this Act by the Central Government an every notification issued under Sec. 4, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised I one session or in two or more successive session, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both. Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification. Every rule made by a Stat Government under this Act shall be laid as soon as may be after it is made, before the Legislature of that State.

Power to remove difficulties

If any difficulty arises in giving effect of the provisions of this Act, the Central Government may be, order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient
for removal of the difficulty provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

Repeal and savings

(1) The employment of Children Act, 1938 (26 of 1938) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act so repealed shall, in so far as it is not in consistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

6.10 ROLE OF NGOS IN PROHIBITION OF CHILD LABOUR

"Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him".

Mahatam Gandhi

Human beings are born with some rights, demand some rights, get some rights and lose some. An NGO participates in the recognition, enforcement and regulation of rights of human beings. These rights include:
Civil and Political Rights:

Rights to life, liberty, free speech, movement, political thought, religious practice, fair trial, privacy, to raise a family, to vote;

Economic, Social and Cultural Rights:

Adequate food and water, health care, education, clean environment, respect for cultural practices, welfare assistance;

Humanitarian Rights:

Rights of those who are, affected by armed conflict, prisoners of war, wounded, women and children; for necessary care and treatment.

Rights of categories of people:

Workers' rights, women's rights, children's rights, minority groups, refugees, disabled.

Non Government Organizations:

The word NGO is an abbreviation of Non Governmental Organization. Any organization working for a social cultural place of birth, equality of opportunity in matters of public employment, freedom of speech and expression, right to assemble peacefully without arms, to form association, or unions, to move freely throughout India, to reside and settle in any part of India,
protection against deprivation of life and personal liberty, freedom of conscience and the profession, practice and propagation of religion. Additionally, Fundamental Duties include a duty to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem, to preserve our culture, protect national environment including forests, lakes, rivers and wild life and to have compassion for living creatures and to strive toward excellence in all spheres of individual and collective activity.

**User Friendly NGO:**

An NGO which has the following features is effective in achieving its objectives and long term goals.

1. Flexibility to modify objects and activities considering fluctuating needs and circumstances of people.

2. Certainty as to legal status and consequent adequate legal protection in international transactions.

3. Effective prevention of take over's.

**NGO Accountability:**

There is ample legislation to hold NGOs accountable for financial or other wrongdoings. The Indian regulatory and criminal justice procedures provide sufficient institutional checks to ensure or correct the deeds and mis-deeds of an NGO. While
strict and rigid financial reporting requirements for the NGOs serve legitimate governmental interests. However, politically disfavoured NGOs are sometimes harassed by heavy handed use of Foreign Contribution and Regulations Act provisions to restrict their legitimate practices.

An NGO can be formed under various legal identities


(2) Society registered under Societies Registration Act, 1860.

(3) Trust (Formed under a Trust deed and registered with income Tax Authority).

**NGOs in India:**

NGOs have reached out to all sections of the society including women, children, pavement dwellers, unorganized workers, youth, slum dwellers and landless labourers. NGOs are viewed as vehicles of legitimization of civil society. By giving legal implementation to our rights of freedom of expression and freedom of association, laws permitting the establishment and regulating the operation for NGOs create strong support for democracy in India.
Constitution of India and NGOs:

An Indian NGOs' source code is the Constitution of India, which intrinsically protects all human rights of all kinds. NGOs style their objectives along the Rights and Duties laid out in the Constitution, which prescribed Fundamental Rights such as equality before the law, freedom from discrimination on grounds of religion, race, caste or sex.

Who is a Child?

The law recognizes a male or female human being as a 'child' and not an adult person, where the boy is less than sixteen years of age or girl is less than eighteen years\(^1\) of age.

Rights to Survival

Includes the right to life, the attainable standards of health, and an adequate standard of living.

Right to Protection:

Includes freedom from all forms of exploitation, abuse and inhuman or degrading treatment (includes the right to special protection in an emergency).

Right to Development:

Includes the right to be educated, to receive support for development and care during early childhood (also includes the right to leisure, recreation, and to cultural activities);

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\(^1\) Section -2 (c) of Children Act, 1960.
Right to freedom of thought and expression

Which the constitution has provided in equal measure for children as well as adults.

Registration of birth

The UN emphasizes that lack of birth registration is a violation of the child's inalienable human right to be given an identity at birth and to be regarded as apart of society. Registration of a child's birth confirms his age and protects him from abuse and exploitation, (including military recruitment and involvement in armed conflict) child labour and early marriage. Registration gives a child his 'membership card' for participation in society, to enforce his rights including education and health care.

Legal Aspects

Juvenile Justice Act, 1986: It is the primary law for children in need of care and protection. The Act covers boys (up to 16 years of age) and girls (up to 18 years of age), and covers 'neglected' and 'delinquent juveniles (one who was committed an offence). A 'neglected' juvenile is one who is found begging, is homeless, lacks any proper means of subsistence, has parents who are unfit to care for him/her, lives in a brothel or with a prostitute, associates with those who lead immoral, drunken or depraved lives and is likely to be abused / exploited for immoral purposes.
Juvenile Welfare Boards (JWB) deal with matters relating to neglected juveniles.

**Begging:**

According to the UN, a street child is any child for whom the street is the habitual abode and/or a source of livelihood. The Children's Act of 196 describes 'begging' as an act of soliciting or receiving alms in a public place, entering private premises and soliciting or receiving alms under the pretence of singing, dancing, fortune telling, performing tricks, selling articles, exposing any sore, would, injury, deformity or disease, with the object of obtaining or extorting alms or even permitting oneself to be sued as an exhibit for the purpose of soliciting or receiving alms.

**Sexual Abuse**

While there is no specific provision in Indian law for sexual abuse of children by parents or teachers specific cases are covered by the general provisions relating to sexual abuse of children by their custodian, in whatever capacity they may be. Relevant laws are the (i) Indian Penal Code, 1860 ("PICP, 1860")

i. Offence of 'rape' of a child (section 376 (1)).

ii. 'Consent' of a child when not valid ground under section 90.

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iii. 'Carnal intercourse against the order of nature with a child' (Section 377);

iv. Sexual abuse is by a hospital worker (Section 376D). Sexual abuse is by the superintendent of a children's institution, remand home, jail (Section 376C); and the (ii) Immoral Traffic (Prevention) Act, 1986 ('Section of a person in custody' (Section 9).

**Child Prostitution and Trafficking:**

Section 366A¹ and 366B², IPC, 1860 cover the offence of child prostitution in and from India and punishment for the offenders thereof. Children are also trafficked into urban areas for begging.

**Child Pornography:**

Section 292, IPC, 1860 elaborately covers the offence of sale, letting on hire, distribution, public exhibition, circulation, import, export, possession or production for (the above purposes, receiving profits from the above acts of any obscene materials or object.

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¹ Section 366A deals with the procuring minor girls horn on part of India to another.
² Section 366B deals with the offence of importing in to India from any country outside India girls.
Child Education:

Education in India has a parallel nexus with poverty, social environment and political will (or adequacy of such will) of the government.

Child Labour

Child labour primarily exists because wages of a child labourer\(^1\) is a source of income to a poor family. Though even the expense of schooling leaves some children with no option but to work in order to develop skills useful in the job market, instead of taking advantage of a formal education\(^2\). Exploitation of the child is the foremost illegal issue because often children are paid less than their adult counterparts. India has world standard labour legislation, but in practice it has more slave and abused labourers than any other country. Indian legislation prohibits the employment of children below 14 years of age, in any industry or workshop. However, this blanket prohibition is tempered down in case where the workshop process involve only the family members without employing outside hired labourers\(^3\). In family workshop of beedi making, wool cleaning and soap manufacturing a child of the family can be employed without violating penal provisions of child labour.

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\(^1\)(Article 24 of the Constitution)- No child below the age of fourteen years shall be employed to working in any factory or mine or employed in any hazardous employment

\(^2\) In India, children are working mostly in export-oriented industries (carpets, diamonds, glassware, footwear) and tourist services (inducting sex work).

\(^3\) Refer Employment of Children Act, 1938 and Beedi and Cigar Workers. (Conditions of Employment Act), 1966
Supreme Court Directions on Child Labour

The Supreme Court In India¹, has provided direction for manner of withdrawal, rehabilitation of children working in hazardous occupations, as also directions for regulating and improving working conditions of children working in non hazardous occupations: They key directive include:

(a) Withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions;

(b) Contribution of Rs. 20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose;

(c) 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;

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

(e) Regulating hours of work for children working in 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;

(f) Planning and preparedness on the part of Central and State Governments in terms of strengthening of the existing administrative regulatory / enforcement framework (covering cost of additional manpower, training, mobility, computerization etc.) implying additional requirement of funds.

Also relevant under (the head are the provisions of (the Child Labour (Prohibition and Regulation) Act, 1986. The Act extends to all establishment where an industrial process is carried on including shops, commercial establishments, workshop, farm, residential hotel and restaurant; theatre, or other place of public amusement or entertainment. A child is a person who has not completed 14 years of age. A child who is engaged for wages, whether in cash or kind is a child worker. In terms of section 4 of the Children (Pleading of Labour) Act, 1933, the parent or guardian of a child is liable to penal consequences if he enters into an agreement to pledge the labour of the child.
Adoption

Effects of Adoption

From the date of adoption and adopted child is considered to be the child of his or her adoptive father or mother for all purposes. All the ties of the child in the family of his or her birth will be deemed to be served.

Who can give in adoption:

In the specifics prescribed for Hindus, only the father, mother, or guardian of child has the capacity to give the child in adoption. The father can give the child in adoption only with the consent of the mother and alternatively the mother can give up the child for adoption with her husband's consent. However 'consent' is not mandated in circumstances where the wife / husband has renounced the world, ceased to be a Hindu, is of unsound mind or deceased. The guardian would require the previous consent of a court.

Age Criteria

Normally, the couple must be under 40 years to adopt an infant under 12 months old and under 45 to adopt a toddler. Older couples are considered for school age children. By Hindu Couple - If a couple wants to adopt under Hindu law, it is necessary that the husband is a Hindu (then the status of wife vis-à-vis (i) nationality (whether Indian or not); (ii) religion does
not matter). Consent of the wife (or wives) to adopt is required (except in specified circumstances). An unmarried, divorcee or widowed Hindu woman can also adopt a child. A valid Adoption is final in India Hindu Adoption cases are heard in the District Courts; one cannot cancel a Valid Adoption and no person can consider an award for adoption.

**Suitable Child:**

Even a lunatic child can be validly adopted\(^1\). An adoption under Hindu law would require the child to be a Hindu, not already adopted, unmarried, below the age of 15 years.

**By Non Resident Indian (WRI) couples and Indian Non Hindus Couples**

One spouse must be of Indian heritage (lie spouse of his/her parents must have been born in India). An NRI couple will only receive guardianship of the child in India and must legally adopt him/her in the U.S. Muslims, Christians, Parsis and Jews in India can only 'adopt' a child with due permission of the Court in terms of the Guardianship and Wards Act, their personal laws do not provide for adoption like the Hindus.

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Relevant laws providing for adoption and guardianship of a child include Guardianship and Wards Act, Hindu Minority and Guardianship Act 1956, Hindu Adoption and Maintenance Act, 1956.

**Adoption by foreigners**

Foreigners find no mention in adoption laws of Indian Children. The standard practice for a foreigner to adopt an Indian child is to apply to an Indian District Court for legal custody of a child to be taken abroad for adoption in terms of the Guardian and Wards Act of 1890. Foreigners are to first approach an adoption agency in their home country approved by the Indian Government, thereafter an Indian agency recognized and listed by the Indian Government will arrange for children who are available for adoption by foreigners.

**Other Legal Points for NGOs**

**Trained Personnel**

For those NGOs working with juvenile delinquents, it is imperative that all staff members should be trained in working with children in conflict with the law (is conscious of the child's rights and the alleged wrong(s) committed by the child.)

**Custom:**

It is generally understood that a child (toddlers and small children) does not have the capacity to decide for himself.
Therefore in matters which involved the child's consent a trained discretion is to be practiced. Under no circumstances can an NGO compel a child to practice, participate in a welfare measure which is against his religion (thus basic concepts of vegetarianism, manner of prayer are all universally accepted as matters of personal choice).

No Discrimination:

Staff cannot discriminate a child for her/his gender, caste, religion, illegitimacy, physical deformity, mental state, family background (keeping in mind that some children participating in or availing a welfare scheme may have parents of ill-repute, criminal background).

Antecedents of child care workers:

Given the sensitive nature of working with a vulnerable section of society - it is increasingly encouraged that NGOs verify the background of volunteers for child care services to ascertain any previous offence involving a child, conviction for a sex, crime, consumption of drugs and related issues.

Privacy rights of the child:

In terms of the Children Act, 196 it is punishable if anyone makes any dispatch to any newspaper or magazine disclosing the name, address or school or any other particulars which may lead
to the identification of the child involved in any proceeding under the Act including the publication of his photograph.

**Laws relating to Children's Welfare**

- Family Courts Act, 1984;
- Hindu Minority and Guardianship Act, 1956.
- Child Labour (Prohibition and Regulation) Act, 1986;
- Industrial Employment (Standing Orders) Act, 1946.
- Industrial Disputes Act, 1947.
- Industrial Disputes (Central) Rules;
- Industrial Tribunal (Central Procedure) Rules;
- Payment of Wages Act, 1936.
- Workmen's Compensation Act, 1923.
- Indecent Representation of Women (Prohibition) Act, 1986;
- The Protection of Civil Rights Act, 1955;
- The Protection of Human Rights Act, 1993;
NGOs on Children's Rights

1. **HAQ Centre for Child Rights (Established in 199).**
   
   **Focus of activity / Objective**

   Realization of human rights of children through policy, law and action. Works with rights to survival and equal opportunity; Children in armed conflict; reporting and monitoring on the UNCRC; children and education; environment and habitat; sexual exploitation of children; Street children; child labour and working children.

2. **Children in Domestic Work (Established in 1996)**
   
   **Focus of activity / Objectives**

   Mainstream education, crisis intervention; sexual exploitation of children; children living with HIV/AIDS; participation of children in decision making; child labour and working children.

3. **Hamara Club (Established in 1989)**
   
   **Focus of Activity / Objectives:**

   Development and empowerment of street children and working children, protection and promotion of their rights, public awareness on related issues, networking with municipalities, judiciary, police and other NGOs.
4. NGO Forum for Combating Sexual Exploitation
(also know as Orissa State Volunteers and Social Workers Association) (established in 1988).

**Focus of activity/ Objectives**

Reporting and monitoring on the UNCRC, education; Sexual exploitation of children; children's health; children living with HIV/ AIDS; street children; child labour and working children; lobby governments and the United Nations; provide training or education on child rights; undertakes legal casework on behalf of children; research child rights; work in partnership with organizations; work with media and press.

5. VOICE (Stared in 1991; registered public trust)

**Focus of Activity / Objectives:**

Welfare of street children by educating them. Reaches out to shoe shine boys, rag pickers, coolies, flower sellers, sweepers, and beggars; aiming to mould them into responsible, integrated citizens.

6. People's Association for Rural Women Development Trust

**Focus of Activity / Objectives:**

To improve the lot of rural women and children; children with disabilities; children and education, children and health; participation of children in decision making; child labour and working children; provide training or education on child rights;
undertakes legal casework on behalf of children; research on child rights.

7. Delhi Council for Child Welfare
   Focus of Activity / Objectives:
   Creche facilities in slum areas; Mid day meal regular medical check ups and a non formal education; orthopedic centre for mentality and physically handicapped children; special education for mentally retarded and handicapped children; specialist training for 'Anganwadi' workers to help mothers and children in the community; home for abandoned children that locates adoptive families, finds placements and helps return children to their families.

8. National Association for the Blind
   Focus of Activity / Objectives:
   Works to integrate blind children into society by empowering them with relevant skills; educational facilities for blind children (talking book library; hostel; computer training); vocational training for the blind.

   Focus of Activity / Objectives:
   Development of disadvantaged children in child right issues like child labour, female infanticide, child abuse, early childhood care and education through direct intervention programmes with children training, advocacy and action oriented research.
10. Deepalaya

**Focus of Activity / Objectives:**

Integrated urban and rural development which focuses on children.

11. EWOTO - Each One Teach One Charitable Foundation

**Focus of Activity / Objectives:**

Working for underprivileged children from municipal schools focuses on their academic growth prevents dropouts from municipal schools; provides nutritious food, uniforms, books and basic computer training.

12. Children's Film Society (Founded in May, 1955)

**Focus of Activity / Objectives:**

Undertakes and organizes production, distribution and exhibition of feature films for children to provide them healthy and wholesome entertainment with an aim to enhance their knowledge, develop their character, broaden their perspective and help shape them into useful citizens of modern India.

13. Cry (Child Relief and You)

14. Central Adoption Resource Agency (CARA)

**Focus of Activity / Objectives:**

News, guidelines for child adoption and contacts.
15. **Children Toy Foundation**

**Focus of Activity / Objectives:**

Organization with an aim to develop toy library for the poor and deprived children.


17. **Child Workers in Nepal (Neapl) (Established in 1987)**

**Focus of Activity / Objectives:**

Main concerns - child labor, street children, child marriage, bonded labour, trafficking of children, children in armed conflict; sexual exploitation participation of children in decision making; legal cases on behalf of children; research on children's rights; lobby governments and United Nations.

18. **Defence of Children Internationals (Sri Lanka) (Established in 1993)**

**Focus of Activity / Objectives:**

Practical, systematic and concerted international action specially directed towards promoting and protecting the rights of children; reporting and monitoring on the UNCRC.
19. **Underprivileged Children's Educational Programmes:**

**Focus of Activity / Objectives: (Established in 1972)**

Focus on education and technical training assistance in job placement assistance for students; integrated support to underprivileged working children.

20. **Christian Children's Fund Inc. (Established in 1985)**

**Focus of Activity / Objectives:**

Children in armed conflict; Children with disabilities; education; environment and habitat; health; participation of children in decision making.

### 6.11 A CRITICAL OVERVIEW

15 million of India's child labourers are bonded that is their labour is pledged by their parents in return for a loan. For an average of Rs. 2,000 (£34), children's futures are sold, sometimes for life.

Child labour is lucrative, for a fraction of the cost of adult labour, employers can have a docile, vulnerable workforce with few rights. Girls, who are paid less than boys, are particularly valued in some industries. In bonded labour industries - bidi and synthetic gem manufacture and carpet weaving, for instance - children work to pay off debts with cumulative effective interest rates of up to 1,200 percent a year. The debts become so high...
that some never manage to settle up, simply passing them on the next generation.

Dr. Neera Burra, an Indian child labour expert, found in a study of five industries that "employers prefer child labour because it is cheaper than adult labour and because children, unlike adults cannot question the treatment meted out of them. Evidence indicates that the child wage is a third to a half that of adults for the same output, with the child working for as many, if not more, hours than the adults".

Legal Loopholes

Despite the wide range of legislation at the country's disposal, it is easy to circumvent the law. Not only is there no blanket prohibition on child labour, but loopholes exist in almost every important Act.

The Factory Act, for instance, allows for children to be employed in units of fewer than 10 or 20 employees, as does the 1986 Child Labour (Prohibition and Regulation) Act. The way to get around the legislation, points out UNICEF consultant R Vidysagar is to decentralize production - just as the football industry did ten years ago, when it removed child stitches from its factories and shifted production to the villages.

The Child Labour Act, designed to target children in hazardous industries, is so narrowly focused that it excludes
more children than it includes. Fully 92 percent of all working children in India are not covered by the Act, according to the Human Rights Watch researcher.

The problem of law enforcement is often greatest at state level. The Child Labour Act, for example, does not apply unless states formulate rules for its implementation. In other cases laws are applied selectively.

"We have very good labour laws but the implementation is lacking because of a lack of political will at state level" says a Punjab Labour department insider. It is a view shared by Jai Singh, Regional Co-ordinator for SACCS in Punjab. "There is very little faith left in the labour Department among the workers", he says.