CHAPTER III
LEGISLATIVE MEASURES AND JUDICIAL RESPONSE TO CHILD LABOUR

3.1 INTRODUCTION

Children are valuable assets on which a nation’s progress depends. If there is no proper
growth of children today, the future of the country will be in dark. It is thus, an obligation
of generation to bring up children who will be citizens of tomorrow in a proper way.
Today’s children will be the leaders who will hold country’s banner and maintain
prestige of the nation. If a child goes wrong for want of proper attention, training and
guidance, it will indeed be a deficiency of the society and of government of the day.
Every society, thus, must devote full attention to ensure that children are properly cared
for and brought up in a proper atmosphere where they would receive adequate training,
education and guidance in order that they may be able to have their rightful place in
society when they grew up.¹

But the child cannot develop into a full blown human being, unless constructive and
congenial environment is assured for child’s development. The child is to be provided
planned care and adequate socialization opportunities in order to enable him/her to attain
human status. A child is vulnerable to environment threats so his/her survival and health
needs must be met first. A child’s cognitive and emotional development has to be
strengthened with stimulus surroundings, love, affection, human warmth and security.²

Child is the father of man. To enable father of a valiant and vibrant man, the child must
be groomed well in the formative years of his life. He must receive education, acquire
knowledge of man and materials and lesson in such an atmosphere that on reaching adult
age, he is found to be a man with a mission, a man who matters so far as the society is
concerned.³ In India, child labour is an incessant problem which is a challenge before the

¹ Ashhad Ahmad, Child Labour in India, Kalpaz Publications, Delhi, 2004, p. 20.
² Chandragupt, S. Sanon, Working Children: A Sociological Analysis, APH Publishing Corporation,
xxxxix (1)2012, pp. 59-72.
nation. Government has taken various protective measures to deal with this problem through strict enforcement of assorted legislative provisions along with simultaneous rehabilitative policies. Several committees, sub-committees and commissions have been appointed from time to time by the government to find out ways and means to prevent child labour. Besides it Judiciary has played a wonderful role against child labour. Supreme Court has clarified its vision in its various judgments. But socio-economic conditions are responsible for the existence of such problem and this problem cannot be eradicated only with the help of legislations, Government efforts and judiciary till every person will adopt the attitude of responsibility towards this problem.

3.2 CONSTITUTIONAL PROVISIONS

The Constitution of India, which came into effect from 26th, Jan, 1950, introduced a revolutionary chapter on the rights of the child. The framers of the Indian Constitution incorporated various important provisions for the betterment for children in view of the dictum “Children are the wealth of a nation.” Such provisions of the Constitution are expressly or impliedly, directly or indirectly related with the protection of childhood, child education and elimination of child labour system in India.4 Before its enactment, there were bits and pieces of various legislations which had dealt with the child and child labour. The implementation of those was not tardy but half hearted. The Constitution of India recognized the right of the child for the first time and included several articles dealing with their liberty, livelihood, development of childhood, non-discrimination in educational spheres, compulsory and free education and prohibition of their employment in factories, mines and hazardous employment.5

A Constitution is the documentation of the founding faiths of a nation and the fundamental directions for their fulfillment.6 After Independence, however, the State has become fully conscious of its responsibility towards children. Consequently this consciousness is reflected in some of the Constitutional provisions passed for protecting

5 Id., p. 61.
the rights and well-being of children.\textsuperscript{7} The Constitution of India is primarily a social document which aims at evolving a just social order covering all facts of the society.\textsuperscript{8} The Constitution of the country includes very valuable directions for the protection of the future of the country i.e. children. The Constitution makers were wise enough to understand this problem which the country is facing after its independence. That is why Constitution includes these provisions for the welfare of children.

The Constitutional philosophy should be allowed to become a part of every man’s life in this country and then only the constitution can reach everyone and the ideals of the constituent framers would be achieved since the people would be nearer the goal set by the Constitution—an ideal situation but a far cry presently.\textsuperscript{9} The Constitution of the country includes the rights of the children in part III and Part IV of the Constitution. Part III of the Constitution of India deals with the Fundamental Rights, and is termed as a great chapter of liberty. It has made the Constitution sublime by guaranteeing against State interference certain rights vital to the freedom and well being of the people.\textsuperscript{10} Fundamental Rights are enforceable in courts. Article 32 provides remedy to file writs before the Supreme Court for enforcing the Fundamental Rights. Similarly the Article 226 provides remedy to file writs before High Courts of various States for the enforcement of Fundamental Rights.

Constitution recognizes the need for granting special protection to children. The founding fathers were wise enough to provide that the children should also have their distributive justice in future, in free India. Therefore, special provisions ensuring justice to children have been incorporated in Part III with Fundamental Rights and Part IV devoted to Directive Principles of State Policies.\textsuperscript{11} Constitution of the Country includes some provisions deal expressly with the protection of children and some deals indirectly with

\begin{itemize}
\item\textsuperscript{8} Austinn, Granville, “The Indian Constitution Cornerstone of a Nation” \textit{Punjab University Law Review} (Special Number), March 30, 1974, p. 50.
\item\textsuperscript{9} \textit{Balbir Kaur v. Steel Authority of India Ltd.}, AIR 2000 SC 1596.
\end{itemize}
children. Both forms of provisions are related with welfare of children. The implicit provisions dealing with welfare of children may be mentioned as under:12

- The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.13

- It endeavors to secure a social order for the protection of welfare of the people.14

- Right to work, to education and to public assistance in certain cases.15

- Promotion of educational and economic interests of Schedule Castes, Schedule Tribes and other weaker sections.16

- It obligates the state to raise the level of nutrition and the standard of living and to improve public health.17

The explicit provisions of the Constitution dealing with the child welfare are as follows:

**3.2.1 Protection Guaranteed under Article 15(3)**

According to Article 15(3), the State can make special provisions for children.18 It shows the concern of the framers of the Constitution that the State strives to promote the welfare of the children without any discrimination. It means the founding fathers add this positive provision enabling the State to make law for the welfare of children and to give them preferential treatment over other persons in the society.19 The objective to incarnate Article 15(3) is to avoid any controversy and demonstrate the concern of the framers of the Constitution that the State shall strive to promote the welfare of children. Frankly admitting the solitude for children and repulsion for the exploitation of children of tender age impelled that founding fathers to add such a specific positive provision enabling the State to make law for the welfare of children and given them preferential treatment over

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13 *Article 14, Constitution of India.*
17 *Ibid*, Article 47.
18 *Article 15(3) explains as follows: “It empowers the state to make special provisions for women and children”*
19 *Id*, p. 64.
other persons in the society.\textsuperscript{20} This point was confirmed by judicial pronouncement in the case of \textit{Dattatraya Moti Ram v. State of Bombay}\textsuperscript{21} Chagla, CJ held that the State could discriminate in favour of women and children against men. The State also held that the State could not discriminate in favor of men against women and children.\textsuperscript{22} In \textit{Smt. Choki v. State of Rajasthan},\textsuperscript{23} Hon’ble Court upheld Section 497 of Criminal Procedure Code 1898 which prohibits release of a person accused of a capital offence on bail except women and children less than 16 years of age and sick men. The Court held that the State can make special provision for the benefit of women and children.

### 3.2.2 Child’s Right to Education

Article 21\textsuperscript{24} is very much important Article regarding children because while interpreting Article 21 Supreme Court in 1993 has declared right to education is a Fundamental Right. The Constitutional (86\textsuperscript{th} Amendment) Act, 2002 added a new Article 21A\textsuperscript{25} which makes education is a Fundamental Right for all children between ages 6-14. Actually Child (labour & prohibition) Act,1986 does not talk about the complete prohibition of child labour rather it regulate child labour in certain premises and Article 21 is talking about compulsory schooling and if Article 21 is read with child (labour & prohibition) Act, both cannot move together. So, it is better to amend child (labour & prohibition) Act in the light of Article 21. In \textit{Unni Krishnan v. State of Andhra Pradesh}\textsuperscript{26}, the Supreme Court has recognized education as a Fundamental Right for all children between 6-14 years.

### 3.2.3 Right against Exploitation

Although Article 23 (1)\textsuperscript{27} does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most valuable section of the

\begin{itemize}
  \item \textit{Id}, p. 108.
  \item \textit{55 Bombay, LR323}.
  \item \textit{Ibid}.
  \item AIR 1957 Raj.10.
  \item \textit{Article 21} provides for the protection of life and personal liberty of the people including children.
  \item \textit{Article 21A} explains that- the State shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the state may, by law, determine.
  \item AIR 1993 SC 2178.
  \item \textit{Article 23} explains- “Traffic in human beings and beggar and similar forms of force labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”.
\end{itemize}
society. It is a known fact that many children are exploited even by the parents who allow their exploitation because of their poverty and in the absence of parents their exploitation by close relatives still deeper. They are deprived of education, made to do all sorts of work injurious to their health and personality.\(^{28}\) It is clearly designed to protect the individual not only against state but also against other private citizens. Article 23 is not limited in its application against the state but it prohibits “traffic in human beings and begar and other similar forms of forced labour” wherever they are found. ‘Begar’ (labour or service which a person is forced to give without receiving any remuneration for it) is only a form of forced labour. What the article prohibits is not merely ‘begar’ but all other similar forms of forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.\(^{29}\)

### 3.2.4 Protection under Article 24

Under Article 24\(^{30}\), the Constitution of India makes a loud assertion for the protection of tender aged minors and gives them a fundamental right of education and well being. It says, “In peoples union for democratic rights v. union of India.\(^{31}\) The Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the schedule to the Act, yet, such construction was a hazardous occupation and under Art.24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Art.24 was enforceable even in the absence of implementing legislation, and in a public interest proceeding.\(^{32}\) The legislations such as Child Labour (Prohibition and Regulation) Act, 1986, Merchant Shipping Act, 1958, Motor Transport Act, 1961, Apprentices Act, 1961, Bidi and Cigar Workers Act, 1966, Plantation Labour Act, 1951, Factories Act, 1948, deal with employment and working conditions of workers and prescribed the eligible age as 14 for both the boys and girls will straight away contradict this fundamental right guaranteed under Article 24 and deserves to be declared


\(^{30}\) According to Article 24 - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

\(^{31}\) *(1982)*3 SCC 235; AIR 1982 SC1473.

\(^{32}\) Retrieved from [www.hr.cr.org](http://www.hr.cr.org), last visited on 24-5-2013.
unconstitutional. Article 24 read with Article 21A, also read with various judgments of Supreme Court on Right to Education of children and about the prohibition of child labour are totally violated by these legislations as they permit the children to be employed in factories and other areas of work. Argument that Article 24 permits employment of children in non-hazardous employment does not hold any water because that article says no child below the age of 14 years shall be employed to work in any factory or mine or in any other hazardous employment.

3.2.5 Special Protection under Directive Principles of State Policy

Initially it was thought that the Directive Principles of State Policy enshrined in Part IV was merely a pious obligation on the part of state and that they could not be enforceable in any courts. Article 37 itself states that these articles are not enforceable in any courts but nevertheless the principles laid down therein are fundamental in the governance of the country and it was felt that it was the duty of the state to apply these principles in making laws. Article 39(e) & (f) direct the state to evolve a policy eliminating the abuse of tender age to free children from the circumstances forcing them to enter into avocations unsuited to their age or strength. The State is also directed to create social and economic conditions and infrastructure for the healthy development of children and to provide facilities and climate for exercise of freedoms and maintenance of dignity. The state is further directed to protect the children against exploitation and moral and material abandonment. The Supreme Court in Sheela Barse v, Union of India held that Article 39(f) of the constitution provides that the state shall direct the policy towards securing the goal that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment. The Supreme Court further stated that though various States have enacted Children Act for the fulfillment of

33 Id, p. 62.
34 Article 39(e) of the Constitution enjoins that: The state shall direct its policy towards securing the health and strength of workers, men and women, and the tender age of children are not abused and the citizens by economic necessity to enter avocations unsuited to their age and strength. Article 39(f) states- That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment.
35 Id, p. 117.
36 AIR 1986 SCC 596.
constitutional obligation for welfare of children under Article 39(f), yet it is not enforced in some states and the Court directed that such beneficial statutes should be brought into force and administered without delay.37

Under Article 4538 a duty is imposed upon the state to provide free and compulsory education within a period of ten years of the commencement of the constitution for all the children until they complete the age of 14 years. This Directive Principle signifies that it is not only confined to primary education, but extends to free education whatever it may be upon the age of 14 years. Article 45 is thus supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions.39 Article 45 provides compulsory and free education for children up to the age of 14 years. One of the objectives of these Articles is that the State should provide free and compulsory education to all.

3.3 STATUTORY PROVISIONS:

People gradually became conscious about the need to have some form of legislation which could lead to the abolition of the child labour. A number of Acts40 have been passed in India dealing with child labour problem. The legislative measures, which have been taken from time to time, have been discussed below in chronological order. The need for such revolution protective measures was felt when the industrial period started.

3.3.1 Legislative Framework before Independence

The Indian Government adopted constitutional, statutory and developmental measures to deal with the problem of child labour.41 During British Regime, the British Government established “Government Labour Commission” for the labourers. In it, the use of child labour was marked as an abuse in Indian industries. In the ‘Mining Act’ framed in 1901,
the British Government announced the use of children below the age of 12 years to be illegal. After that ‘The Factories Act’ was framed in the year 1922 in which the people below the age of 15 years were considered as children and their working hours were fixed for 6 hours with half an hour rest break. In these The Factories Act 1948, Plantations Labour Act 1951, Mining Act 1952, Motor Vehicles Act 1961, Bidi Cigarette Services Contract Act are main acts.\(^\text{42}\)

**3.3.1.1 The Indian Factories Act, 1881**

*The Indian Factories Act, 1881* was basically designed to protect children and to provide few measures for health and safety of the workers. This Act was milestone in the labour history as it was the first ever legal framework to bring production units/mines under the legal purview to check the exploitation of the labour in the country. This was also the first ever law in the Indian history to protect the child labour.\(^\text{43}\) This law was applicable to only those factories which employed 100 or more workers. It prohibited:

(a) The employment of children below 7 years of age in any factory,

(b) The employment of children in two separate factories in the same day,

(c) Not to employ a child not more than nine hours a day,

(d) Declaring four holidays in a month compulsorily,

(e) Adequate rest intervals between two periods,

(f) Ensuring safety from dangerous machines as it shall be fenced, etc.

In 1891, the Factories Act was revised. The new Act raised the minimum age for work to 9 years and reduced the working period to 7 hours in a day with a prohibition of work at night between 8 p.m. and 7 a.m.\(^\text{44}\) The major amendments\(^\text{45}\) affecting child labour incorporated in the Factories Act, (1881) till 1947 were as such:

\(^{42}\) *Id.*, p. 37.


(i) By its amendment in 1922, the minimum age for employment of a child in factories was raised to 12 years in order to give effect to the ILO (1919) Conventions.

(ii) Under the modified Factories Act (1922) a child was defined as a person who has not completed 15 years of age.

(iii) By its 1911 and 1922 amendments an employer was required to submit age and fitness certificate of the child labourers employed in her/his factories.

(iv) By the amendment in 1923, working of children at night was banned and employment of women below 18 years of age in certain process works was also prohibited.

(v) By its amendments in 1926 and 1931 certain penalties were imposed on parents and guardians for allowing their children to work in two separate factories on the same day.

(vi) Under the amendment of the Factories Act, 1934, the maximum working hours for a child labourer in the age group of 12-15 years were fixed at five hours in a day. The Act was further amended in 1935, 1936, 1940, 1941, 1944, 1945, 1946 and 1947. In post independence period this Act was again amended in 1948.

3.3.1.2 The Mines Act, 1901

In 1901, the Mines Act was enacted to regulate the employment of children in mines. The Act prohibited the employment of children in mines less than 12 years of age. This limit of minimum age was raised to 13 years by the Indian Mines Act, 1923 then followed the Indian Mines Act, 1935 which further raised the minimum age from 13 to 15.46 By the Mines Act, 1923, the child means a person who has not completed his fifteenth years of age.47

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47 Section 3(c) of the Act.
3.3.1.3 The Indian Ports Act, 1908

The third major legal provision was the passing of the Indian Ports and Docks Act, 1908. A series of legislations relating to docks and ports prohibiting employment of children had been passed since 1889. But a consolidated Act was brought into operation in 1908. By an amendment to the ports Act in 1922, employment of children below the age of 12 years in ships, ports and docks was prohibited. Since then a series of Acts came into operation. Most of these Acts were amended and consolidated again by passing “The Indian Merchant Shipping Act” in 1923. By this Act of 1923 the minimum age for employment of children was raised from 12 to 14 years. The Act was amended several times after India’s independence.48

3.3.1.4 The Children (Pledging of Labour) Act, 1933

It stressed a penalty for parents and guardians who favoured the labour of the child. This Act was aimed at the most direct and blatant exploitation of children by adults.49 This Act prohibits the making of agreements by a parent or guardian to pledge the labour of children, below the age of fifteen years for employment and any agreement made has been declared void being opposed to policy. The Act has also made both the consenting parties liable to file. British Government enacted this Act for child welfare. This Act was passed to eradicate the evils arising from labour of young children by their parents or guardian to employers for raising loans or advances.

3.3.1.5 The Employment of Children Act, 1938

This Act was passed to check the abuses of the employment of children in workshops, which are outside the scope of Factory Act. This Act also prohibits the employment of children below 15 years. No child between the ages of 15-17 can be employed or permitted to work unless he is allowed a rest interval of at least 12 consecutive hours a day. This Act also requires maintenance of registers by the employers showing the names and dates of birth of children below 17 years. In certain occupations employment during night shifts is totally prohibited.50

48 Id, p. 17.
49 Id, p. 149.
3.3.2 Legislative Framework after Independence

Keeping in view the constitutional philosophy of child labour much legislation have been enacted by the government, both at the center and state level laying special emphasis on the responsibility of nation for physical, mental, moral and special development of children. There are above 300 central and state statutes concerning children. These have been enacted with an intention to protect and help children and achieve the goal of child labour welfare enshrined in our national character. These legislations have been greatly influenced and are the result of various conventions and recommendations adopted by ILO from time to time.\(^\text{51}\) Considering poverty and Illiteracy are the root cause for child labour Government is following educational rehabilitation of the children has to be supplemented with economic rehabilitation of their families so that they are not compelled by the economic circumstances to send their children to work.\(^\text{52}\) Child labour is a matter on which both the Union Government and State Government can legislate. The major national legislation regarding child labour includes the following:-

3.3.2.1 Minimum Age

The Factory Act, 1948 was passed with the aim of protecting workers employed in factories against industries and occupational hazardous. It imposes certain rules on the employer for their protection and safety. According to this Act ‘child’ means a person who has not completed his fifteen years of age.\(^\text{53}\) It prohibits employment of children below the age of 14 years.\(^\text{54}\) Besides, a child between 14th and 13\(^{th}\) year of age or an adolescent (below 18years) is not to be employed unless he is certified to be fit to work in a factory by a certifying surgeon.\(^\text{55}\) The Merchant Shipping Act, 1951\(^\text{56}\) also explain minimum age fourteen years for entering in the employment related to work at sea. The

\(^{51}\) Id, p. 72.
\(^{53}\) Section 2(c) of the Act.
\(^{54}\) Section 67 of the Factories Act, 1948: “prohibition of employment of young children- No child who has not completed his fourteen year shall be required or allowed to work in any factory”.
\(^{55}\) Id, p. 166.
\(^{56}\) Section 109 of the Act explains – No person under fourteen years of age shall be engaged or carried to sea to work in any capacity in any ship.
Mines Act, 1952\(^\text{57}\) also prescribes the minimum age for employment in mines. The provisions in the mines act are stricter than factories act. It prohibits employment of persons below 18 years to work in any mine.\(^\text{58}\) The Merchant shipping Act, 1958 prohibits employment in any capacity of a person less than 15 years in a ship except school ship or training ship in accordance with the prescribed conditions.\(^\text{59}\)

The Motor Transport Workers Act, 1961 also contains a provision according to which employment of a child in motor transport undertaking in any capability is absolutely prohibited\(^\text{60}\) and adolescent can only be employed if a certificate of fitness is granted to him to work as a worker in motor transport undertaking.\(^\text{61}\) The Beedi and Cigar workers Act, 1966 prohibits the employment of children below 14 years of age in all industrial premises where in any manufacturing process connected with making of beedi and cigarette.\(^\text{62}\) Apprenticeship Act, 1961 also prescribe the age limit for apprenticeship training is above 14 years.\(^\text{63}\)

Sec. 24 of the Act provides: “No child below the age of fourteen years shall be employed in any industrial premises”. According to State Shops and Commercial Establishments Act, 1969-Different states have enacted their own laws regulating employment of children in shops and commercial establishments, restaurants and hotels and places of amusements and notified urban areas etc. to which the Factories Act, 1948 does not apply. The minimum age for employment in shops and commercial establishments is 12 years in Bihar, Gujrat, J&K, Madhya Pradesh, Karnataka, Orissa, Rajasthan Tripura, Uttar Pradesh, West Bengal, Goa, Daman and Diu and Manipur, and 14 years in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Kerala, Tamil Nadu, Punjab,

\(^{57}\) Section 45 of the Mines Act, 1952- “prohibition of the presence of persons below eighteen years of age in mine-Subject to the provisions of sub section 2 of Section 40, after such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no person below eighteen years of age shall be allowed to present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on”.

\(^{58}\) Id, p. 167.

\(^{59}\) Section 109 of The Merchant Shipping Act, 1958.

\(^{60}\) Section 21 of The Motor Transport Workers Act, 1961.


\(^{62}\) Id, P.169.

\(^{63}\) Section 3 of the Act explains-Qualifications for being an apprentice-A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-

(a) is not less than fourteen years of age, and

(b) satisfies such standards of education and physical fitness as may be prescribed.
Delhi, Chandigarh, Pondicherry and Meghalaya. The minimum age of employment is 15 years in Maharashtra. There is no separate Shops and Commercial Establishments Act in Andaman and Nikobhar, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshadweep, Nagaland and Sikkim. In Punjab, there is an Act relating to shops and commercial establishments namely the Punjab Shops and Commercial Establishment Act, 1958.

According to Child Labour and Prohibition Act, 1986, “No child below the age of 14 years shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop where in any of the processes set forth in part B of the schedule”.

The main feature of the Child Labour and Prohibition Act, 1986 is that it brings uniformity in the definition of ‘Child’ provided under the Minimum Wages Act, 1948, The Plantations Labour Act, 1951, The Merchant Shipping Act, 1958 and The Motor Transport Workers Act 1961 by amending their sections dealing with the definition of ‘child’. The age of ‘Fourteen Year’ was fixed under these Acts for employment of children under these occupations.

Regarding minimum age Article 24 of the Constitution prohibits the employment of children below the age of 14 years in any factory, mine or in any other hazardous employment. But various legislations are operating ‘proprio vigore’ by fixing the different minimum age for employment. The Factory Act, 1948 prohibits employment of children below the age of 14 years.

The Merchant Shipping Act, 1951 also explain minimum age fourteen years for entering in the employment. The Mines Act, 1952 also prescribes the minimum age for employment in mines. The Mines Act prohibits even the presence of a child in any part of the mine below the prescribed age. The provisions in the mines act are stricter than factories act. The Motor Transport Workers Act, 1966 prohibits the employment of children in the Motor Transport undertakings. Beedi and Cigar Workers (Conditions of Employment) Act, 1966 prohibits employment of children below 14 years of age in industries. Different States have enacted their own laws regulating employment of children in shops and commercial establishments, restaurants and hotels and places of amusements and notified urban areas etc. The minimum age varies from enactment to

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64 Section 3, the Child Labour (Prohibition & Regulation) Act, 1986.
enactment. In some Acts, the minimum age is 12 years and in some 14 years, thus failed to provide protection to children.

3.3.2.2 Working Hours

The main object of Factories Act, 1948 is to ensure adequate safety measures and to promote the health and safety and welfare of the workers employed in factories. The act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc. According to The Factory Act, 1948, the hours of work of children should be limited to 4 and half hours per day and must be spread over on shift only of not more than 5 hours duration.\(^{66}\) The employer has to maintain a register of child workers and the periods of work have to be notified. According to Plantation Labour Act, 1952- No child workers shall be employed except between the hours 6a.m. and 7p.m. with due permission of the State Government. The Beedi and Cigar workers Act, 1966 prohibits to work during 7 p.m. to 6 a.m. According to Child Labour and Prohibition Act, 1986, the period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour. Further the Act explains no child shall be permitted or required to work between 7p.m. and 8p.m.\(^{67}\)

That Act lay down that no period of work as such shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest or at least one hour. The child has been permitted to enjoy a holiday of one whole day in each week. The Act also includes the penalty of the Act has been made punishable with

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66 Section 71-Working Hours for children-
1. No child shall be employed or permitted to work in any factory (a) for more than four and a half hours in any day; (b) 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 P.M. and 6 P.M
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 in any factory except between 8 A.M. and 7 P.M.

67 Section 6, the Child Labour (Prohibition & Regulation) Act, 1986.
imprisonment which shall not been less than ten thousand rupees but which may extend to twenty thousand rupees or with both. The Act also authorizes the appropriate government to make rule for the health and safety of the children employed or permitted to work in any establishment by notification in the official gazette.\textsuperscript{68} The various Acts have been passed regarding the fixing of minimum and maximum working hours but the hard reality is different. Because children start working from before sun rises to after sun set in hotels, factories and other employment places. The fixing of working hours is useless for them. From all the welfare provisions making for children, this provision has the least influence and implementation. Children are still exploited in the hands of their employer.

3.3.2.3 Medical Examination of Children

The Factory Act, 1948, Mines Act, 1952, Merchant shipping act, 1958, Motor Transport Workers Act, 1961 and Plantation Labour Act, 1951 prescribed that a child or an adolescent between 15-18 years cannot be employed for work unless he is certified fit for work by a surgeon.\textsuperscript{69} The Acts thus emphasize on the production of a medical certificate of fitness by child workers but there are other industrial and non-industrial employments where even the minimum certificate of fitness is not required. An adolescent\textsuperscript{70} aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. Moreover, the Indian laws by 18 years as the maximum age up to which the certificate of fitness would be required, whereas, ILO Conventions clearly recommend that no person up to the age of 21 should be employed in health risk establishments without a certificate of fitness. Besides, our legislations do not include any x-ray examination and other investigations whereas; the ILO includes the x-ray of the lungs as a part of the requirement of medical examination of the case.\textsuperscript{71} It is obvious that legislations regarding medical examination do not cover all occupations in which children are employed and all children up to the age of 21. In other words, those employed after the age of 15 (the legal minimum age for employing children) and those

\begin{itemize}
  \item \textsuperscript{68} \textit{Ibid}, Sections 7,8,13 &14.
  \item \textsuperscript{69} \textit{Ibid}, Section 26.
  \item \textsuperscript{70} Section 2(b) of \textit{The Factories Act, 1948} “adolescent” means a person who has completed his fifteen years of age but has not completed his eighteen years of age.
\end{itemize}
below the age of 21 (the minimum age for adult employment) need to be covered by the Acts relating to the health status of potential young workers. But there is no uniformity in issuing a medical certificate under these enactments. Lack of uniformity is the reason for exploitation of children in the hands of employer.

3.3.2.4 Working at Night

All the Acts prohibit children from working at night. The Factories Act, 1948 also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours. The Factories Act also mentions that children between 14 and 18 years cannot be asked to work at night i.e. between 10p.m. to 6 a.m. the legislation does not confirm to ILO standards which prohibit working at night during a period of at least 14 consecutive hours.

3.3.2.5 Hazardous Jobs

Different sections of the Acts prohibit children from working in hazardous occupations, such as working in mines, in ships (with certain exception), in motor transport undertakings, in plantations, on dangerous machines unless the children have been made aware of the dangers involved, and precautions are observed, the child has received sufficient training to work at the machine and is under adequate supervision. As per The Factories Act, 1948 children below the age of 14 were prohibited to work in hazardous conditions or environment. Beedi and Cigar Workers Act (1966) prohibit employment of children in industrial premises. The Employment of children Act, 1938, prohibits employment of children in any workshop where the process of beedi making, carpet weaving, cement manufacturing, cloth printing, manufacture of matches, explosive and fire-works, mica- cutting and splitting.

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72 Ibid.
73 Section 71 (2) of the Act.
74 Section 71 (I) (b) of the Act.
75 Id. p.38.
76 ‘Hazardous Process’ means any process of activity in relation to an industry specified in the first schedule where, unless special care is taken, raw material used therein in or the intermediate or finished products, bye products, water or effluents thereof would:-
(i) Cause material impairment to the health of the persons engaged in or connected therein, or
(ii) Result in the pollution of the general environment, soap manufacture, canning is carried out.
77 Ibid.
The bonded Labour Act came into force on 9 February, 1976. According to this Act the bonded labour system would stand abolish and every bonded labour shall on such commencement, stand freed and discharged from any obligation to render, any bonded labor. All the bonded labour agreements would become void, which would mean that the bonded labour is freed from repaying any amount towards his bonded labour agreement. Apart from the bonded labour contract even the property of the bonded labour would be freed from mortgage etc. Moreover, no person who has been freed and discharge under this act from any obligation to render any bonded labour shall be discharged from any homestead or other residential premises which he was occupying immediately before the commencement of this act as part of the consideration for the bonded labour. Any person who enforces bonded labour, peruses bonded debt or extracting the bonded labour contract is punishable under this Act for imprisonment for a term which may extend up to 3 years and also a fine of Rs. 20,000/-. The meaning of the “hazardous” is not clear even in the Child Labour (Prohibition and Regulation) Act, 1986. It varies from enactment to enactment. Again no uniformity regarding the meaning of hazardous, and employers are getting the benefit of this provision. It is very necessary to give precise meaning of the word hazardous to protect children from the clutches of employers. The main aim of these legislations is to eradicate child labour from the society, and to stress upon the overall development of children so that they may grow into good citizens.

3.3.2.6 Analysis of Child Labour (Prohibition and Regulation) Act, 1986

After a plethora of laws containing provisions to prevent child labour, it was soon realized that child labour is still a problem. Taking that into consideration efforts were made to regulate the conditions of child labour in order to avoid exploitation in areas where child labour could not be avoided. The Child Labour (Prohibition and Regulation) Act, 1986 repealed the Employment of Children Act, 1938. The main aim under this Act was to identification of more hazardous processes and industries with a view to banning child labour in these industries and regulating conditions for children in non-hazardous occupations.
Objectives of the Act

1. To bring uniformity in the definition of ‘child’ in the related laws.
2. To ban the employment of children in specific occupations and processes.
3. To modify the scope of banned industries and processes by laying down a procedure.
4. To regulate the conditions of work of children when they are not prohibited from working.
5. To lay deterrent punishments for violators.\(^7\)\(^8\)

Main Features of the Act

Section 2(ii) of the Act defines, ‘child’ to mean a person who has not completed his fourteen year of age. At the same time Sections 23, 24, 25 and 26 of the Act amended the Minimum wages Act, 1948, the plantation Act Labour Act, 1951, The Merchant Shipping Act, 1958 and the Motor Transport Workers Act, 1961 by substituting the word fourteen in place of the word fifteen in the case of age of the child. The Act is divided into four parts. Part I deals with the definitions, part II and III deal with Prohibition of Employment and Regulation of conditions of work respectively. According to Section 3, no child shall be employed or permitted to work in any of the occupations set forth in part A of the Schedule or in any workshop wherein any of the processes set forth in part B of the Schedule.

Part A-Occupations

1. Transport of passengers, goods; or mails by railway;
2. Cinder picking, clearing of an ash pit or building operation in the railway premise;
3. Work in a catering establishment at a railway station, involving the movement of vendor or any other employee of the establishment from one platform to another or into or out of a moving train;

4. Work relating to the construction of railway station or with any other work where such work is done in close proximity to or between the railway lines;

5. The port authority within the limits of any port;

6. Work relating to selling of crackers and fireworks in shops with temporary licenses;

7. Abattoirs/slaughter Houses;

8. Automobile workshops and garages;

9. Founderies;

10. Handling of taxies or inflammable substance or explosives;

11. Handloom and powerloom industry;

12. Mines (Under ground and under water) and collieries;

13. Plastic units and Fiber glass workshop;

14. Domestic workers or servants;

15. Dhabas (roadside eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centers; and;

16. Diving;

17. Caring of elephant;

18. Working in the circus;

Part B-Processes

1. Beedi making.

2. Carpet Weaving.

3. Cement manufacture including bagging of cement.

4. Cloth printing, dyeing and weaving.

5. Manufacture of matches, explosive and fire works.

7. Shellac manufacture
8. Soap manufacture
9. Tanning
10. Wool cleaning
11. Building and construction industry
12. Manufacture of slate pencils (including packing)
13. Manufacture of products of agate
14. Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos (Section-3).
15. All Hazardous processes as defined in section 2(cb) and dangerous operations as notified in rules made under section 87 of the factories Act 1948
16. Printing (as defined in section 2(k) of the factories Act 1948
17. Cashew and cashew nut descaling and processing
18. Soldering process in electronic industries
19. Agarbathi manufacturing
20. Automobile repairs and maintenance (namely welding lather work, dent beating and printing)
21. Brick kilns and Roof files units
22. Cotton ginning and processing and production of hosiery goods
23. Detergent manufacturing
24. Fabrication workshop (ferrous and non-ferrous)
25. Gem cutting and polishing
26. Handling of chromites and manganies ores
27. Jute textile manufacture and of coir making
28. Lime kilns and manufacture of lime
29. Lock making
30. Manufacturing process having exposure to lead such as primary and secondary smelting, welding etc. (See item 30 of part B process)
31. Manufacture of glass, glass ware including bangles fluorescent tubes bulbs and other similar glass products
32. Manufacturing of cement pipes, cement products, and other related work.
33. Manufacture of dyes and dye stuff
34. Manufacturing or handling of pesticides and insecticides
35. Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo enlarging and soldering processes in electronic industry
36. Manufacturing of burning coal and coal briquette.
37. Manufacturing of sports goods involving to synthetic materials, chemicals and leather.
38. Moulding and processing of fiberglass and plastics
39. Oil expelling and refinery
40. Paper making
41. Potteries and ceramic industry
42. Polishing, moulding, cutting welding and manufacture of brass goods in all forms.
43. Process in agriculture where tractors, threshing and harvesting machines are used and chabt cutting
44. Saw mill all process
45. Sericulture processing
46. Skinning dyeing and process for manufacturing of leather and leather products
47. Stone breaking and stone crushing
48. Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form
49. Tyre making repairing, re-trading and graphite beneficiation
50. Utensils making polishing and metal buffing
51. Zari Making (all process)
52. Electroplating;
53. Graphite powdering and incidental processing;
54. Grinding or glazing of metals;
55. Diamond cutting and polishing;
56. Extraction of slate from mines;
57. Rag picking and scavenging;
58. Processes involving exposure to excessive heat (e.g. working near furnace ) and cold;
59. Mechanised fishing;
60. Food Processing
61. Beverage Industry;
62. Timber handling and loading;
63. Mechanical Lumbering;
64. Warehousing;
65. Processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries, and agate industry.

The employer has been put under statutory obligation to the effect that he cannot permit to child to work in his establishment in excess of such numbers of hours as may be prescribes by law for such establishment from time to time. There is also a provision for constitution of Child Labour Technical Advisory Committee by the Central Government under section 5 of the Act. The Committee’s function is to advise the Central Government for the purposes of addition of occupations and processes to the Schedule added in the Act. The Committee shall consist of a Chairman and members, not
exceeding ten, to be appointed by the central government. The committee has the power to regulate its own procedure and meet as and when it considers necessary. It may also constitute one or more sub-committees, if it feels necessary, on some particular matter or generally. Effectiveness of any law depends on its enforcement. The enforcement of the Child Labour (Prohibition and Regulation) Act, 1986 is vested in a machinery controlled by both the central and state governments.

3.3.2.6.1 Amendment under the Child Labour (Prohibition and Regulation) Act, 1986

The Government of India has recently amended the Child Labour (Prohibition and Regulation) Act, 1986. It now includes child ‘domestic work’ as a form of hazardous labour and states that action can be taken against those who employ children up to the age of fourteen years in domestic work, including homes, hotels, motels, teashops, resorts or any other recreational center. The decisions to ban employment of children as domestic help or servants in even non-hazardous jobs was taken on the recommendation of Technical Advisory Committee on Child Labour, headed by the Director-General of the Indian Council of Medical Research. The committee said that children in domestic labour were often subjected to physical violence, psychological traumas and at times even sexual abused. It added that such incidents go unnoticed as they took place in close confines.

The Labour Ministry had already prohibited government employees from engaging children as domestic help, issuing a notification warning that anyone employing children would be liable to prosecution and other penal action, including fine and one year jail term. It is also planning to strengthen and expand its labour endemic districts. The notification was issued on October 10, 2006 by the Ministry of Labour and Employment that bans the child labour under age of 14 working as domestic help and from waiting tables in eating. It is pertinent to note that this act is equally applicable to the State of J &K, which has been, given special status under Article, 370 of the Indian Constitution.

Prime Minister, Dr. Manmohan Singh issued a strong statement declaring zero tolerance towards perpetrators of child labour and firm action against those who violate the new

provision of the Child Labour Act. He appealed to people to “abolish this practice”. He also appealed to citizens, forums, representing voices of all section of the society, employees of the government and other public institutions to join the government’s endeavour in ensuring that the law is implemented. The nation has solemnly pledged that children will not be engaged in any form of work at the cost of their right to education. I call upon each one of you to stop employing children as workers and actively encourage children to join schools, he asserted. It is crystal clear that after independence a new brand of jurisprudence that is the child welfare jurisprudence has developed in our country. The intention behind all labour legislation is to safeguard their interest and promote the welfare in every walk of their life. All legislations dealing with child welfare are obligatory and binding on the employer even if they are not acceptable to him. The birth of child welfare legislations in our country may be ascribed to the Constitution of India, which has made more articulate and clear philosophy of child welfare. Accordingly, Parliament and State Legislature have helped the lot in shaping the entire child welfare jurisprudence through legislations.

Numerous generations of poor persons have come and gone by in India, not knowing what real childhood is. At an age when they should have been in school, these children of lesser god were toiling on menial chores in dhabas or houses. Leave alone the luxury of schooling; they did not even have the privilege of a carefree environment so necessary for proper development. Untold misery and abused would be their constant companion. With pre-teens being made to work like galley slaves, adult responsible for their upkeep would take it easy. The pernicious practice had become so widespread that it was inevitable that it should be banned, as the government has finally done. The ones of ensuring that no children below fourteen are employed on his premises would be on the employer. But much will depend on the implementation of the child labour ban provisions. Only strict enforcement will make it meaningful. As far as having a rule on the statute book is concerned, there is already provision from ensuring that children are not employed in hazardous activities like construction and running. Yet, the practice goes on putting the children to grave risk. Detecting the employment of children in households

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80 The Tribune, 10th October, 2006, p. 1.
and eateries will be more difficult. Corrupt enforces will have to be ruthlessly weeded out. At the same time there is need for proper rehabilitation package. Many children are make to work because there are no adult earning members in their household or the income is so meager that even food cannot he arranged. Such children will have to be monitored closely. There is possibility that deprived of an honest living, they may fall prey to beggary and other such vices. The crime world is always on the lookout for drifters. In the absence of a safety net, these children might be by these demons.\(^8^2\)

**Critical Analysis of Child Labour (Prohibition and Regulation) Act, 1986**

There is no uniformity in the definitions given regarding child by various legislative enactments. The Child Labour (Prohibition and Regulation) Act, 1986 has made efforts to bring uniformity, regarding the definition of a child but in spite of that, large portion of children are still victim of exploitation. Due to lack of uniformity in different legislations prohibit the implementation of these legislations in their full spirit. Child Labour prohibition and Regulation Act, 1986 made provisions for regulating working hours, restricted the employment of children during night and prohibited the employment in certain occupations and also punishments for violation of the provisions of the Act. No doubt, employment of children in organized sectors has been regulated by different legislations, but employment of children in unorganized sector has not been regulated at all. There is no legislation covering employment of children in agriculture and domestic services. The Government of India and various state governments should also pass suitable legislation to protect the interest of child workers, in unorganized sector.

**3.3.2.7 The Child & Adolescent (Labour and Prohibition) Bill, 2012**

The Child Labour (Prohibition & Regulation) Bill was introduced in Rajya Sabha on December 4, 2012 by the Minister of Labour and Employment Mallikarjun Kharge. The Bill seeks to amend the Child Labour (Prohibition & Regulation) Act, 1986 which prohibits the employment of children in certain occupations and regulate the working conditions in other. The Bill seeks to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours in the light of Right to Free and Compulsory Education Act, 2009. In addition to it Bill adds a new

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\(^{82}\) Retrieved from [http://www.tribuneindia.com](http://www.tribuneindia.com) last visited on 12-3-2013.
category of persons called “adolescents” means person between 14 and 18 years of age. The Bill prohibits employment of adolescents in hazardous occupations. The Bill is enhancing the punishment for employing any child in the employment. The Penalty for employing child and adolescent in hazardous occupations is increased to imprisonment between 6 months to 2 years or a fine of Rs. 20, 000 to 50, 000 and both.  

The Child Labour (Prohibition & Regulation) Amendment Bill, 2012 has been placed in the Parliament and is presently under examination with Parliamentary Standing Committee. The Amendment Bill inter-alia covers-

(i) Complete prohibition on employment of children below 14 years and linking the age of the prohibition with the age under Right to Free and Compulsory Education Act,
(ii) Prohibition of working of Adolescents (14 to 18 years) in Mines, Explosives and hazardous occupations set forth in the Factories Act, 1948,
(iii) More strict punishment to the offenders and making the offences under the Act cognizable.

3.3.2.8 Right to Free and Compulsory Education Act, 2009

*Without education, we cannot see beyond ourselves and our narrow surroundings to the reality of global interdependence without education, we cannot realize how people of other races and religions, share the same dreams, the same hopes, without education we cannot recognize the universality of human aims and aspirations*  

-Mr. Kofi Annan

The child labour and education is strongly interlinked. According to National Human Rights Commission of India, child labour can never be eradicated unless compulsory

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primary education up to the age of 14 years is implemented. The concept and definitions of child labour are varied and sometimes vague. Child labour is regarded as a social construct which differs by actors, history context and purpose. Basically the child labourers are the child workers involved in the odd jobs that are harmful to their overall development. These children are economically active and play a role in contributing to the family income. Child labour is closely associated with poverty. Many poor families are unable to afford fees or other school costs. The family may depend on the contribution that a working child makes to the household’s income, and place more importance on that than on education and when a family has to make a choice between sending either a boy or a girl to school; it is often the girl who loses out. Most child labour is rooted in the poverty. The way to tackle the problem is clear. The Indian Constitution has made elementary education a fundamental right for every child falling between the ages of 6-14 years.

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) is an Indian Legislation enacted by the parliament of India on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. The main object of RTE Act is that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education.

In consideration to the objectives of the 86th constitutional amendment, judgment of the hon’ble Supreme Court of India, commitment of the Government of India to various international declarations, it is of the opinion that the Right of Children to Free and Compulsory Education Act, 2009 is not an ideal legislation to realize the object statement of the 86th Constitutional Amendment Act, 2002 i.e. Early childhood care and education to all children below the age of six years, and free and compulsory education to all 6-14

86 Section 3, Right to Free and Compulsory Education Act, 2009.
Prior to this provision, education was a part of Directive Principle of State policy under Article 45 of Chapter IV of the Constitution and with the 86th amendment, education has been brought under Chapter III Article 21 A of the Constitution which deals with Fundamental Rights of Citizens.

3.3.2.8.1 Main Features of the Act

The important features of the Act are as follows:

1. Provision of free and compulsory education to all the children from six to fourteen years of age.

2. Action on the part of the government and local authority to establish a school in each prescribed neighborhood within a period of three years from commencement of this Act.

3. Central and state governments should share the expenditure on education as agreed upon;

4. No segregation of children of downtrodden communities admitted into schools from other children in the classroom nor should the classes be held at places and timings different from the classes held for other children.

5. Making parents/guardian responsible for admitting their child; reserve 25 per cent of seats to the weaker sections and to abolish capitation fee at the entry level.

6. Not to conduct any entrance tests and, public examinations up to VII standard;

7. Maintenance of teacher-student ratio as per prescribed norms, provision of necessary facilities in the School, student-friendly education, etc.

As per the provisions of the Act, schools which have not received any benefit by way of a grant of land at a concessional rate or building grants of any kind, will receive a subsidy from the government towards the fees of these children “to the extent of per child expenditure incurred by the state, or the actual amount charged from the child, whichever

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88 Section 6, Right to Free and Compulsory Education Act, 2009.
is less.” The question arises as to what parameters will be adopted to calculate the per child expenditure incurred by the state. There is bitter irony in the provision in the Act which says, “The central government and the state governments shall have concurrent responsibility for providing funds for carrying out the provision of the Act.” There are states where the government has no resources to pay the salaries of teachers for months on end, where government schools are under-staffed because the state government does not have the resources to pay the salaries for a full component of teachers. Against this background, it appears unrealistic to expect from state governments that they will provide more resources for this additional financial burden.

Modern states regard education as a legal duty, not merely a right. Parents are required to send their children to school, children are required to attend school, and the state is obliged to enforce compulsory education. Compulsory primary education is the policy instrument by which the effectively removes children from the labour force. The state thus stands as the ultimate guardian of children, protecting them against both parents and employers. Everyone has the right to education because it opens doors for the growth of employment opportunities. The Right to Free and Compulsory Education Act is enacted by Indian Legislature to fulfill this objective. Education has the power to eradicate child labour from the society.

Family position is the result of children’s entry in the labour force, sometimes in the form of clashes in their parents, and sometimes due to divorce and single parent. Parents didn’t care even the illness of their children and ready to send them to their employers in that condition without thinking that what will be the impact of that on the health of children. If parents are ignoring them how can blame only be given to the employers, because in these circumstances they get an opportunity to exploit children by not giving holidays and long hours of work. Government’s Right to Free and Compulsory Education Act is meaningless in such circumstances.

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91 Ibid.
Education is the best method by which child labour can be eradicated from the society. It is that weapon by which poverty can be beaten. Government has enacted The Right to Free and Compulsory Education Act, 2009 and there is a reduction in the drop-out rate of children from schools after passing of the Act but situation is not under fully control. Child labour still exists in spite of various efforts done by government. The most important need is to create awareness among parents regarding education so that they may understand the importance of education and value of sending the children to schools. Because the parents of these children are mainly responsible for making them child labourers. The attitude of the parents show that they want their children must work, and for this purpose they are not ready to listen the importance and benefits of education. Actually poor parents want money. This is the reason that still in spite of this Right to Free and Compulsory Education Act, child labour is going on and children instead of coming to school are going to join their workplaces. The need is to create effective awareness in each person of the society so that they can understand their responsibility towards children.

The basic aim of all these enactments is to prohibit the engagement of children in certain employment and regulate the conduct of the employers of child workers in such a way that these poor creatures are not exploited any more. These legislations strictly define the minimum age for the employment, number of working hours of child workers, food facilities, rest hours, medical facilities, entertainment hours, schedule of weekly, monthly and yearly holidays of the child workers, minimum wage and mode of payment etc. The employers of child workers have been directed to carry out these rules in strict sense. Penalty can even be imposed on these employers in case of violation of the provisions of this legislation.\textsuperscript{94}

3.4 GOVERNMENT’S INITIATIVES

The Government of India has appointed, from time to time the commissions and committees to study the problem in all its aspects and recommend suitable measures to control and eliminate the malaise of child labour. The Government of India has

\textsuperscript{94} Id, p. 73.
introduced various national policies, plans and programmes relating to children. Some major policies and plans are as discussed as follows:

3.4.1 Commissions and Committees

3.4.1.1 Report of the National Commission on Labour, 1969

The first National Commission on Labour was established on 24 December, 1966 under the chairmanship of Dr. Gajendragadkar, The Commission was appointed by Government of India to enquire into the conditions of labour in general. Although terms of reference of this commission did not specifically refer to the child labour, the commission did study the problem of child labour and found that the “employment of children persists in varying degrees in the unorganized sector and that it is more an economic problem than anything else”. Further in April 1974, the Department of Social Welfare, Government of India set up a “Working Group” to consider various problems that arises out of employment of children. The working group emphasized on the possibility of evolving a National Children’s Code and laying down minimum standards regulations and to allow the administrative machinery to make suitable modifications to suit local conditions.

3.4.1.2 The Commissions for the Protection of Child Rights Act, 2005

It provides for the constitution of a National and State Commissions for protection of child rights and child’s courts for providing speedy trial of offences against or of violation of child rights or for matters connected therewith or incidental thereto in every State and Union Territory. The functions and powers of the National and State Commissions will be to:

(i) Examine and review the legal safeguards provided by or under any law for the protection of child rights and recommend measures for their effective implementation.

(ii) Inquire into violations of child rights and recommend initiation of proceedings where necessary.

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95 See, The National Commission on Labour, 1969 (Chapter xxvii on Employment of women and Children)
96 Id., p. 160.
(iii) Spread awareness about child rights among various sections of society.
(iv) Help in establishment of children’s courts for speedy trial of offences against children or of violation of child rights.


It is the first policy document concerning the needs and rights of children. It recognized children to be a supremely important asset to the country. The goal of the policy is to take the next step in ensuring the constitutional provisions for children and the UN Declaration of Rights are implemented. It outlines services the state should provide for the complete development of a child, before and after birth and throughout a child’s period of growth for their full physical, mental and social development. The committee was appointed in 1979 by the Ministry of Labour under the chairmanship of M.S. Gurupadswami to look into the details of the causes leading to and the problems arising out of the employment of children in India. The Gurupadswamy Committee has observed that labour becomes an absolute evil in the case of a child when he is required to work beyond his physical capacity, when hours of employment interfere with his education, recreation and rest when his wages do not commensurate with the quantum of work done and when the occupation in which he is engaged endangers his health and society. Gurupadswamy Committee in its report submitted in 1979 recommended:

- Setting up of Child Labour Advisory Boards;
- Fixation of minimum age of entry to any establishment;
- Strengthening of enforcement machinery; and
- Formulation of effective educational policy with emphasis on integration of educational requirements with local crafts.

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3.4.2 National Policies

3.4.2.1 National Policy on Children, 1974

As a follow-up of the commitment to combat child labour, and being a party to the UN Declaration on the Rights of the Child 1959, India adopted the National Policy on Children in 1974. The policy reaffirmed the constitutional provisions and stated that it shall be the policy of the state to provide adequate services to children, both before and after birth through the period of growth to ensure their full physical, mental and social development. The state shall progressively increase the scope of such services so that within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth.99

3.4.2.2 National Policy on Education, 1986

The Prime Minister Indira Gandhi announced the First National Policy on Education in 1968 and after 1968 National Policy was adopted in 1986. The National Policy on Education, 1968 (NPE) marked a significant step in the history of education in post independence India. It aimed to promote national progress a sense of common citizenship and culture and to strengthen national integration. It laid stress on the need for a radical reconstruction of the education system to improve its quality at all stages and gave much greater attention to science and technology, the cultivation of moral values and a closer relation between education and the life of people.100 After 1968 the national policy on Education was adopted by parliament in 1986. The policy has laid the “special emphasis on the removal of disparities and to equalize educational opportunity”, especially for Indian women, Schedule Tribe and Schedule Caste communities. To achieve these, the policy called for expending scholarships, adult education, recruiting more teachers from the Schedule Castes, incentives for poor families to send their children to school regularly, development of new institutions and providing housing and services. The NPE called for a "Child Centered Approach" in primary education and launched "operation blackboard" to improve primary schools nationwide.101

101 Ibid.
3.4.2.3 National Policy on Child Labour, 1987

It contains the action plan for eradicating the problem of child labour. It envisaged a legislative action plan focusing and convergence of general development programmer for benefiting children wherever possible and project based plan of action for launching of projects for the welfare of working children in areas of high concentration of child labour. Though the Government of India launched certain policies that could potentially reduce the incidence of child labour, enforcement however is really the most difficult problem. Policies can and will be developed concerning child labour, but without enforcement they are all useless.\textsuperscript{102} The Ministry of Labour and Employment has been implementing the national policy through the establishment of National Child Labour Projects (NCLPs) for the rehabilitation of child workers.\textsuperscript{103}

3.5 NATIONAL CHILD LABOUR PROJECT (NCLP)

National Child Labour Project was established in 1988 with the aim to rehabilitate child labourers in 12 child labour endemic districts of the country. By providing them with non formal education and bridge course to facilitate their transition to formal schooling system. After 19 years, the government has been able to only reach less than half districts in the country. The largest and most structured intervention in the area of child labour in India is the National Child Labour Projects (NCLP). The NCLP Scheme targets children below 14 years of age working in specific areas of hazardous work, listed as 18 occupations and 65 processes in the schedule to the Child Labour (Prohibition & Regulation) Act, 1986 under the scheme, a survey of child labour engaged in hazardous occupations/ processes is conducted, following which the children are withdrawn from work and admitted to special schools in order to enable them to be mainstreamed into the formal schooling system. These schools are often referred as “bridge centers”, underlying their inherent temporary function and the importance of mainstreaming children into school as their ultimate objective.\textsuperscript{104}

\textsuperscript{102} See National Child Labour Policy, 1987.
\textsuperscript{104} Ibid.
3.5.1 **Objectives of the Scheme**

1. This is the major central Sector Scheme for the rehabilitation of child labour.

2. The Scheme seeks to adopt a sequential approach with focus on rehabilitation of children working in hazardous occupations and processes in the first instance.

3. Under the Scheme, survey of child labour engaged in hazardous occupations & processes has been conducted.

4. The identified children are to be withdrawn from these occupations and processes and then put into special schools in order to enable them to be mainstreamed into formal schooling system.

5. Project Societies at the District level are fully funded for opening of special schools/Rehabilitation Centers for the rehabilitation of child labour.

6. The special schools/Rehabilitation Centers provide:
   
   (i) Non formal/bridge education.
   
   (ii) Skilled / Vocational training
   
   (iii) Mid Day Meal
   
   (iv) Stipend @ Rs.150/-per child per month

   (v) Health care facilities through a doctor appointed for a group of 20 schools.¹⁰⁵

Provision of School Uniform and School Bag for Children in NCLPs Schools is essential for inculcating discipline as well as raising self esteem amongst these children, who hail from the economically deprived sections of the society. Such a provision would also help them to overcome the sense of discrimination that such children suffer from while comparing themselves with those children studying in regular schools. It is proposed that at least two sets of uniform with a pair of shoes and a school bag every year for each child covered under the scheme.¹⁰⁶

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¹⁰⁵ Retrieved from labour.nic.in, last visited on 28-9-2013.
### Table 3.1

**Children Mainstreamed during Last Three Years State-Wise**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>State</th>
<th>2009-2010</th>
<th>2010-2011</th>
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3.5.2 Indus Child Labour Project

The INDUS Project is based upon the NCLP Scheme with some additional interventions, such as vocational training for adolescents, income generation alternatives to child labour families, training & capacity building programmes for Government agencies and civil society organization strengthening public education, greater convergence with mainstream education system through lead schools & comprehensive child labour monitoring and tracking with the objective of replicating the successful interventions in the NCLP Scheme. The US Department of Labour is providing 20 million dollars being matched with equal amount from Indian Government. The government of India, Ministry of Labour and US Department of Labour signed a joint statement on “Enhancement Indo-US cooperation on Elimination of Child Labour” in August 2000. As a follow up to Joint statement, INDUS Project was launched in Feb, 2004. The objective of the project is to provide a comprehensive child labour elimination model worthy of replication of elsewhere in the country. It is a time bond project of 3 years duration and is being implemented in 21 districts of 5 states of UP, MP, Tamil Nadu, Maharashtra and Delhi. The budget of the project is 40 million US$ with equal contribution from Government of India & US Department of Labour.

3.6 OTHER INITIATIVES

3.6.1 Mid Day Meal Scheme

Mid day meal program is an initiative to provide free midday meal to children in government schools, Government aided, Local Body Schools till primary and upper primary level education. This is a state level program which got popularized at the Central level. It was originally conceptualized by K.Kamraj ex-Chief Minister of Tamil Nadu in 1982. The rationale was to take care of nutritional need of young budding children at primary level. According to the research many young children were facing mal-nutritional problems which were affecting their performance in their school and play. The aim of midday meal scheme is to provide hot cooked meals to children with the objective of providing nutritious food whilst encouraging children from poor id, p. 245.

108 Retrieved from news.oneindia.in, last visited on 11-9-2013.

disadvantaged to attend school regularly rather than working on farms or in factories, so that they participate actively in school activities. The Mid-day Meal scheme is the popular name for school meal programmer in India which started in the 1960s. It involves provision of lunch free of cost to school children on all working days. The key objective of the programmer are: protecting children from classroom hunger, increasing school enrolment and attendance, improved socialization among children belonging to all castes addressing malnutrition and social empowerment through provision of employment to women. The scheme has a long history especially in the state of Tamil Nadu introduced state wise by then Chief Minister K. Kamraj in 1960s and later expanded by M.G. Ramachananrran government in 1982 has been adopted by most of the states in India after a landmark direction by the Supreme Court of India on Nov. 28, 2001.110

The need of such programs was identify by several other states such as Gujarat, Kerala, Madhya Pradesh, and Orissa. Finally on 28 November 2001 the Supreme Court made it obligatory for the government to provide cooked meals to all children in all government and government assisted primary school. Initially, most of the state government resisted vigorously but the program became almost universal by 2005. In the present day scenario even the central government under the leadership of esteemed Prime Minister Manmohan Singh has invested in this cause. Moreover, they have increased its scope as ‘National Program for nutrition support to primary education. This is a good step taken by our governments but in this scheme one thing is to be considered, seriously i.e. checking the quality of food at short intervals to check the quality of food. It will lead to serious effect on the health of children.

3.6.2 Sarva Shiksha Abhiyan

Sarva Shikha Abhiyan was an initiative taken up by the NDA government in the year 2002. It was mandated by the 86th amendment to the Constitution of India making free and compulsory education to the children of ages 6-14. Program aims to achieve the goal of Universalisation of Elementary Education of satisfactory quality by 2010. The program seeks to open new school in that habilitation which does not have schooling

facilities and strengthen existing school infrastructure through provision of additional class room, toilets, drinking water and other schooling equipments.

The Sarva Siksha Abhiyan also would strengthen teacher-student ratios which are dismal in several backward and under developed areas. It would also provide the teaching-learning materials and support the academic infrastructure at district level. It would give special focus on girl’s education and will take care of children with special needs. In the coming years it would also provide computer education to all its children. The estimated budget is 10.004 crore for the coming years more over it is planned to construct 5 lakh additional class room and to appoint more than 1, 50,000 teachers by 2012. Both at the national level and the International level great interest is being shown in the matter of welfare of children. Children need special protection because of their tender age, physique and mental facilities. They are important national assets and the future well being of the Nation depends as to how children grow and develop. They need special law to protect them from exploitation and fraud to save them from certain liabilities and to develop their personality in view of their weak position.\textsuperscript{111}

3.7 \textbf{RECOMMENDATIONS OF THE 12\textsuperscript{th} FIVE YEAR PLAN (2012-2017)}\textsuperscript{112}

(1) It emphasized, on “Child Rights Paradigm” and focused upon “\textit{More inclusive growth begins with children}”. The current 12\textsuperscript{th} plan is committed to implement the mandates of United Nations Convention on the Rights of the Child, 1989 in real spirit, (a) Rights of Survival; (b) Holistic Development of children i.e. physical, Physo-social, Cognitive and emotional; (c) Protection (d) Participation.

(2) Strengthening policies and legislations

(3) Developing comprehensive children’s code harmonizing and updating legal provisions and uniformity in the definition of children i.e. enhancing the age from 14 to 18 years.

\textsuperscript{111} Id, p. 2.

(4) Child Labour (Prohibition and Regulation) Act, 1986 to be amended with the Right to Education Act as it makes a distinction between hazardous and non-hazardous categories of work for children under 14 years.

(5) It should be amended to abolish all forms of child labour for children under 18 years of age, as children cannot be both working and in school at the same time.


3.8 JUDICIAL RESPONSE TO CHILD LABOUR

The response of the judiciary with regard to Child Labour in India is highly commendable. It has in real sense brought a revolution in the field of child labour in India. It has always endeavoured to expand and develop the scope of law so as to respond to the hope and aspirations of the framers of the Constitution as well as the people of India. Time and again, it has pronounced glorious judgments for eliminating the problem of child labour and improving the working conditions of child labour in India. With regard to child labour in India, the justice Subba Rao, the former Chief Justice of India rightly remarked, “Social Justice must begin with the child. Unless a tender plant is properly nourished, it has little chance of growing into strong and useful tree. So, first priority in the scale of justice should be given to the welfare of children”.  

The written constitution of the country guarantees social justice, liberty and equality to all its citizens. For achieving these objectives, there are three organs of government, the legislature, the executive and the judiciary. Each of these is supreme within the sphere allotted to it. To interpret the spheres and enforce the rule of law, an independent authority is absolutely essential and this is furnished by the courts of justice. The Supreme Court of India, as the apex court has been assigned a very important role, and constituted as a guardian of the Constitution which is the yardstick of ground norms for other legislation.  

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113 Ibid.
The Constitution of India accords a dignified and crucial position to the judiciary. It is the greatest unifying and integrating force of the country. The Supreme Court is at the apex of the well ordered and well-regulated judicial structure of the country. It expounds and defines the true meaning of law. It is the ultimate interpreter of the Constitution and this puts a second brake on the legislature and the executive the first being the political check of the people themselves. The Constitution puts an obligation on every organ of the State, including the judiciary; to usher in a new social order in which justice—social, economic and political and equality of status and opportunity, prevail. The final burden of interpreting these elastic provisions is upon the courts. Courts are to contribute to law’s growth without overstepping the boundaries of the system; in other words, how to reconcile tradition and convenience or the claims of stability and those of change.¹¹⁶

Reacting liberally to the problem of child labour in People’s Union for Democratic Rights v. Union of India¹¹⁷ a liberal interpretation was given to the term ‘hazardous employment’. The Supreme Court held: “Construction work is clearly hazardous occupation and it is essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. Referring to Article 24, Justice, P. N. Bhagavathi and Justice Bahrul have held that apart from the requirement of International Labour Organization Convention No. 59, there is Article 24 of the Constitution which even if not followed up by the appropriate legislation, must operate “proprio vigore” and construction work plainly and indubitably a hazardous employment, it is clear that by a reason of constitutional prohibition, no child below 14 years can be allowed to be engaged in construction work. And specifically in Employment of Children Act, 1938, no child below 14 years can be employed in construction work.

In this case inter alia, the question before the Supreme Court was that whether the employment of children in the construction work amounts to employments in hazardous concerns and whether it violated the Employment of Children Act, 1938. The Union of India, the Delhi Administration and the Delhi Development Authority contended that this

¹¹⁷ AIR 1982 SCC 1481.
Legislative Measures and Judicial Response to Child Labour

act is not applicable in case of employment in the construction work since construction industry is not a process specified in the Schedule and is, therefore, not within the provision of sub-section (3) of section 3 of the Act, which prohibits the employments of children under the age of 14 years in hazardous concerns.

The Supreme Court pointed out that this was a sad and deplorable omission which must be immediately set right by every State Government by amending the Schedule so as to include construction industry. This could be done in exercise of the powers conferred under Section 3A of the Employment of Children Act, 1938. The Supreme Court held that Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. This is a constitutional prohibition which, even not followed up by appropriate legislation, must operate proprio vigore. Further the Apex Court observed that there can be, no doubt that notwithstanding the absence of specification of construction industry in the Schedule to the employment of Children Act, 1938, no child below the age of 14 years can be employed in construction and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country.

Through this judgment, the Apex Court explored the doctrine of Locus Standi by saying that not only aggrieved persons have a right to approach the court for redressing their problems but also public spirited institution or any person affected by the interest of the some persons can approach the court on behalf of the aggrieved persons who are not in a position to come for relief. In this case, the Apex Court took notice on this point that no doubt construction industry did not come into the Category of Schedule of Section 3 of the Employment of Children Act, 1938 but it violates the Fundamental Rights of the children by engaging them in a construction site which is considered to be hazardous one and Article 24 of the Constitution also prohibits the employment of children below the age of 14 years in factory or mine or any other hazardous employment. It is very irony that instead of giving them education, they engage children in construction sites. This operates proprio vigore of Article 24 of the Constitution. The Supreme Court further gave directions to the State Governments to protect the interest of the children and they should take stand in the absence of Child labour legislation for the welfare of the children.
With a view to protect the interest of bonded child labourers Supreme Court delivered a judgment in *Bandhua Mukti Morcha v. Union of India and Others*.\(^{118}\) On behalf of the Court, Justice Bhagwati remarked that “it is a problem which needs urgent attention of the Government of India and the State Governments and when the Directive Principles of State Policy have obligated the Central and State Government to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and handicapped. It is not right on the part of concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected…” It is therefore essential that which ever be the State Government it should, where there is bonded labour; make all possible efforts to eradicate it. By doing so, it will not only be performing a humanitarian function, but also discharging a constitutional obligation and strengthening the foundations of participatory democracy in the country.\(^{119}\)

*Bandhua Mukti Morcha v. Union of India*\(^{120}\) is another public interest litigation filed by the petitioner organization seeking issue of a writ of mandamus directing the government to take steps to stop employment of children in carpet industry in the State of Uttar Pradesh; to appoint a committee to investigate into their conditions of employment; and to issue such welfare directives as are for total prohibition on employment of children below 14 years in carpet industry and to accord to them facilities like education, health, sanitation, nutritious food, etc.\(^{121}\)

It was contended by the petitioner that employment of children in carpet industry being a hazardous employment is violative of article 24 of the Constitution and derogatory to the mandates contained in articles 39 (e) and (f) and 45 of the Constitution read with preamble. Pursuant to the filing of the petition the court appointed a commissioner to find out how many children below 14 years are working in the carpet industry. Subsequently, it appointed another committee to go around Mirzapur and other places where carpets are being weaved to find out whether children are being exploited and to submit a

\(^{118}\) AIR 1984 SC 802.

\(^{119}\) Ibid.

\(^{120}\) (1997) 10 SCC 549.

comprehensive report. The report of the committee disclosed the enormity of the problem of exploitation to which children were subjected. It was disclosed that children between the ages of 5 to 12 years were being kidnapped from villages and taken to Mirzapur for being engaged in carpet weaving centers. They were forced to work all day and were being treated as slaves and were subjected to physical torture. Most of them belonged to schedule caste and schedule tribes. Explaining the importance of child and childhood the court observed that the child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Every nation links its future with the status of the child. Neglecting children means loss to the society as a whole. If children are deprived of their childhood- socially, economically, physically and mentally- the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry.

Article 21 mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law which means due process of law. According to the court, the bane of poverty is the root cause of child labour and the children are being subjected to deprivation of their meaningful right to life, leisure, food shelter, medical aid and education. Article 51 A enjoins that it shall be the duty of every citizen to develop scientific temper, humanism and the spirit of inquiry and to strive towards excellence in all spheres of individual and collective activities so that the nation is constantly rises to higher levels of endeavor and achievement. Unless facilities and opportunities are provided to children, in particular those handicapped by social, economic, physical or mental disabilities, the nation stands to lose the human resources and good citizens. Education eradicates illiteracy and provides a means to economic empowerment and opportunity to life of culture. Education enables development of human personality and strengthens the understanding, tolerance and friendship among people. It is therefore the duty of the state to provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens.

122 Ibid.
123 Ibid, at p. 553.
124 Ibid at 554.
The Convention on the Rights of the Child which was ratified by the Government of India recognizes the rights of the child for full and harmonious development of his personality. Article 24 of the Constitution prohibits employment of the child below the age of 14 years in any factory or mine or in any other hazardous employment, but it is a hard reality that due to poverty the child is driven to be employed in a factory, mine or hazardous employment. Pragmatic, realistic and constructive steps and actions are required to be taken to enable the child belonging to poor, weaker sections, dalits and tribes and minorities, enjoy their childhood and develop their full blossomed personality- educationally, intellectually and culturally. Child labour, therefore, must be eradicated through well-planned, poverty-focused alleviation, development and imposition of trade actions in employment of children.\(^\text{125}\)

In the *Neerja Chaudhary v. State of Madhya Pradesh*\(^\text{126}\) case the apex court has taken a serious note of the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating the bonded labourers in the country. The present case is based on a letter of September 20, 1982 addressed to one of the judges of the apex court by a petitioner who is a civil rights correspondent of Statesman in an article written by her and published in the issue of Statesman dated September 14, 1982 in which she set out how these bonded labourers were without land and work, facing immense hardship and near starvation in the absence of any rehabilitation assistance by the State Government. It seems that once these freed bonded labourers were brought back to their villages, the administration of the State Government thought they had discharged their duty and then they conveniently forgot about the existence of this unfortunate specimen of humanity. That is why when the petitioner interviewed some of these bonded labourers they said that they would rather go back to the stone quarries for work than starve and added that they might have been killed there, but they are also dying here. The petitioner pointed out this statement in the leading newspaper in the country. The petitioner stated that 135 bonded labourers who were working in the stone quarries in Faridabad had been released from bondage by an order made by this court in the first week of March, 1982 since they were found to be bonded labourers within the meaning of the Bonded Labour

\(^{125}\) *Ibid.*  
\(^{126}\) AIR 1984 SC 1099.
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System (Abolition) Act, 1976 and on release, they had been brought back to their respective village in Bilaspur District of the State of Madhya Pradesh with a promise of rehabilitation by the Chief Minister of that State. But when she visited three villages namely, Kunda, Pandhari and Bhairavapura in Mungeli Taluka of Bilaspur District in September 1982, with a view to ascertain whether or not the process of rehabilitation as promised by the Chief Minister had commenced, she found that most of the released bonded labourers belonging to these three villages have not yet been rehabilitated though six months have passed since their release and they are living almost on the verge of starvation. It may be pointed out that out of 135 released bonded labourers, about 75 belonged to these three villages and 45 out of them were from village Kunda. The petitioner also pointed out that some of the released bonded labourers owned land at one time but they had lost it to the money lender and some of them had pledged their jewellery and other small belonging to raise money for their subsistence. Therefore, the petitioner argued that it was statutory obligation of the State Government to ensure rehabilitation of the free bonded labourers and failure to do the same amounted to violation of the fundamental right of the freed bonded labourers under Article 21 of the Constitution. The petitioner prayed for a direction to the State Government to take steps for the economic and social rehabilitation of the freed bonded labourers released in March, 1982. When the writ petition came up for preliminary hearing, the court asked the State Government for providing information regarding the framing of scheme for rehabilitation including constitution of vigilance committee as well as the steps taken for rehabilitating 135 released labourers living in the village in Mungeli Taluka of District Bilaspur. An affidavit was filed by the Assistant Labour Commissioner informing the court of the various steps taken by the State Government for identification, release and rehabilitation of bonded labourers.

The court expressed its disapproval of the information supplied by the State Government. It found that the attitude of the State government was indifferent and the State was not willing to admit the existence of bonded labour as according to it unless a workman was able to show that he is forced to provide labour to the employer in lieu of an advance received by him, he cannot be regarded as a bonded labourer within the meaning of the
definition of that term as laid down in the Act of 1976. But having regard to the decision of the Bandhua Mukti Morcha case.

The court reasserted its stand in the following word: It would be cruel to insist that a bonded labourer in order to derive the benefits of this social welfare legislation should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up turgidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well as obliterate this Act from the statute book. Justice Bhagwati observed that whenever it is shown that a labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is, therefore, a bonded labourer. Unless the employer or the government rebuts this presumption, the court shall presume that the labourer is a bonded labourer entitled to the benefit of a provision of the Act.

In the facts of the case it came to conclude that the Court has, issued direction to the State Government to include in the vigilance committee representatives of Social Action for identification, release and rehabilitation of bonded labourer. It also made a number of suggestions and recommendations for improving the existing state of affairs. One such suggestion related to their re-organization and activation of vigilance committees. It is submitted that the observations of the Apex Court in Neerja Chaudhary made in the context of rehabilitation of free bonded labourers provide a new impetus to the observance of provisions of labour welfare legislations as nay failure on the part of the State to implement the same would contravene the provisions of the Article 21 of the Constitution. It was a unique case where the court compelled the state to implement with the directions issued in favour of the bonded labourers.

Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir127 was a public interest litigation based on a report published in the Indian Express dated 26.8.1982 to the effect that a large number of migrant workmen from different states including the State of Orissa were working on the Salal Hydroelectric Project in difficult conditions

and they were denied the benefits of various labour laws and were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the central government. The court directed the Labour Commissioner, Jammu to visit the site of the Salal Hydroelectric Project and ascertain (i) whether there are any bonded labourers employed on this project and if so, to furnish their names; (ii) whether there are any migrant workers who have come from other states; (iii) what are the conditions in which the workers are living; and (iv) whether the labour laws enacted for their benefit are being observed and implemented. Pursuant to this order made by the court, the Labour Commissioner, Jammu visited the site and submitted an interim report and a final report.

It was pointed out in the final report that some minors were found to have been employed on the project site but the explanation given was that these minors accompany male members of their families on their own and insist on getting employed. The court recalling its earlier judgment in the Asiad Workers’ case wherein it had observed that construction work is a hazardous employment and therefore under article 24 of the Constitution no child below the age of 14 years can be employed, observed that it was aware that the problem of child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed. The possibility of augmenting their meagre earnings through employment of children is very often the reason why parents do not send their children to schools and there are large scale drop outs from schools. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country, it would be difficult to eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate the incidence of child labour, because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country.

With regard to child labour in Beedi Industry, in Rajangam, Secretary, Dist. Beedi Workers Union v. State of Tamil Nadu and others, \(^\text{128}\) with K.C. Chandra Segaram v.

\(^{128}\) AIR 1993 SC 404; 1993 Lab IC 4.
State of Tamil Nadu and others, complaint was made regarding failure to implement the provisions of the labour laws, manipulation of records regarding employees, non-payment of appropriate dues for work taken etc. including the child labour and specifically the non-implementation of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. To protect child labour, the Apex Court recommended that tobacco manufacturing has indeed health hazards. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Governments but with in a period not exceeding three years from now. The provisions of the Child Labour Act, 1986 should be strictly implemented. The Court further admitted that the exploitation of labour is rampant in the beedi trade and directed that in view of the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs. 50,000 and the premium should be paid by the employer.

In M.C. Mehta v. State of Tamil Nadu, The petition under Article 32 of the Constitution has been brought before this court by way of a Public Interest Litigation and is connected with the problem of employment of children in Match Factories of Sivakasi in Kamaraj District of Tamil Nadu State.

The Court was of the view that employment of children within the match factories directly connected with the manufacturing process up to final production of match sticks or fireworks should not at all be permitted. Article 39(f) of the Constitution provides that 'the State Should direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.' The spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Article

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129 Ibid.
130 Ibid, at 405.
131 Ibid.
132 AIR 1991(1) SCC 283.
133 Ibid, para, 1.
134 Ibid, para, 5.
45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years. The provision of Article 45 in the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in school, economic necessity forces grown-up children to seek employment.\textsuperscript{135}

Children can, therefore, be employed in the process of packing but packing should be done in an area away from the place of manufacture to avoid exposure to accident. We are also of the view and learned Counsel on both sides have agreed that minimum wage for child labour should be fixed. We take note of the fact that the tender hands of the young workers are more suited to sorting out the manufactured product and process it for the purposes of packing. We are, therefore, of the opinion that in consideration of their special adaptability at least 60\% of the prescribed minimum wage for an adult employee in the factories doing the same job should be given to them. Our indicating the minimum wage does not stand in the way of prescription of a higher rate if the State is satisfied that a higher rate is viable.\textsuperscript{136} In this judgement Supreme Court has not imposed total ban on child labour but gave certain guidelines for the regulation of child labour.

The Supreme Court ordered the employment of children within the match factories directly connected with the manufacturing process tip to the final production of matchsticks or fireworks should not at all be permitted. Supreme Court allowed children to work in a prohibited occupation like fireworks. Ranganath Mishra and M. H. Kania JJ. opined that “the provisions of Article 45 of the Constitution in the Directive Principles of State Policy still remained a far cry and through according to this provision,” all children up to the age of fourteen years are supposed to be in the school, but economic necessity forces grown-up children to seek employment. Children can, therefore, be employed in the process of packing of fireworks but packing should be done in an area away from the place of manufacture to avoid exposure to accident.

In order to tackle the problem of child labour, the Supreme Court in \textit{M.C. Mehta v. State of Tamil Nadu},\textsuperscript{137} popularly known as Child Labour Abolition Case issued directions to

\textsuperscript{135} \textit{Ibid}, para, 6.
\textsuperscript{136} \textit{Ibid}, para, 7.
\textsuperscript{137} \textit{AIR}, 1996 (6) SCC 756.
the State Governments to fulfill the legislative intendment behind the enactment. The offending employers were directed to pay compensation of Rs 20,000 for every child employed. A three judge Bench of the Supreme Court comprising Justice Kuldeep Singh, Justice B.L. Hansaria and Justice S.B. Majumdar delivered a landmark judgment on 10 December 1996 in writ petition (Civil) No.465/1986. This Judgment is of considerable importance and is a progressive advancement in public interest litigation and child jurisprudence. This judgment is an attempt to tackle the problem of child labour. Subsequently, suo moto cognizance was taken in the present case itself when news about an “unfortunate accident”, in one of the Sivakasi cracker factories was published. At the direction of the Court, Tamil Nadu Government filed a detailed counter stating, inter alia, that number of persons to die was 39. The Court gave certain directions regarding the payment of compensation and thought that an advocates committee should visit the area and makes a comprehensive report relating to the various aspects of the matter, as mentioned in the order of August 14, 1991. The committee was to consist of (1) Shri R.K. Jain, a senior advocate; (2) Ms. Indira Jai Singh, another senior advocate; and (3) Shri KC Dua, Advocate.\textsuperscript{138} To give shape to the report of the committee Supreme Court has given the following directions:

**Directions given by the Supreme Court**

- Every State Government must conduct a survey to be completed within six months, on the types of child labour carried out in the State.

- The survey could begin with the modes of employment mentioned under Article 24 of the Constitution of India. The most hazardous employment would rank first in priority, to be followed by a comparatively less hazardous employment, and so on.

- To ensure compliance with Child Labour (Prohibition and Regulation) Act, 1986, an employer must be asked to pay a sum of Rs 20,000 as compensation for every child employed in contravention of the provisions of the Act.

\textsuperscript{138} Ibid, para 4.
The employer would be liable to pay this amount even if he were to disengage the child presently employed.

The inspectors, appointed under Section 17 of the Act, would bear the responsibility of ensuring this.

The sum paid as compensation should be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund.

Such a fund should be established district-wise or area-wise.

The fund so generated should be used only for the concerned child. The income earned through the fund would also be a part of the fund. To generate greater income, the fund could be deposited in a high-yielding scheme of any nationalised bank or other public body.

The State should ensure that an adult member of the family (whose name would be suggested by the parent/guardian of the concerned child) whose child is in employment in a factory or a mine or in other hazardous work gets a job anywhere, in lieu of the child.

The employment could be combined with other assured employment as this would not require generation of much additional employment.

The employment so given could be in the same industry where the child was employed or a public undertaking, and could be manual in nature. The undertaking chosen for employment shall be one that is nearest to the place of residence of the family.

In those cases where it would not be possible to provide employment to the adult member, the appropriate government would deposit a sum of Rs 25,000 every
month for each child employed in a factory, a mine, or any other hazardous employment, in the Child Labour Rehabilitation-cum-Welfare Fund.

- In case of obtaining employment for an adult, the parent/guardian shall have to withdraw their child from work. Even if no employment was provided, the parent/guardian shall have to see that the child is spared from the requirement to work, as an alternative source of income would have become available to him.

- The employment given or payment made would cease to be operative if the child is not sent by the parent/guardian for education.

- On discontinuation of the employment of the child, his education would be assured in a suitable institution. It would be the duty of the inspector to see to it that free and compulsory education up until the age of 14 is provided to the child.

- Penal provision contained in the Child Labour (Prohibition and Regulation) Act, 1986, would be used where employment of a child labour prohibited by the Act is found.

- Also, wherever child labour is employed in non-hazardous jobs (which is permissible under the Child Labour (Prohibition and Regulation) Act, 1986), the working hours of the child must not be more than four to six hours a day. Every child so employed must receive education for at least two hours each day. The entire cost of education must be borne by the employer. It would be the responsibility of the inspector to ensure this.

The Supreme Court in landmark decision in *Mohini Jain v State of Karnataka* has illuminated the constitutional mandate of child education on integral part of the very right to life enshrined in the Article 21 of the Constitution. The Court held that the Right to Education was part of the Fundamental Right to life and Personal liberty guaranteed by Article 21. The sudden elevation of the Right to Education to the high constitutional pedestal created a controversy. Aggrieved by this judgment, some private educational institutions, which run medical and engineering colleges, challenged the correctness of

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139 AIR1992SC 1858.
that proposition and the matter came before a larger Bench consisting of Justice Jeevan Reddy, Justice Pandian, Justice Mohan Sharma and Justice Barucha.

In *Unni Krishnan v State of Andhra Pradesh* \(^{140}\) the Supreme Court has recognized primary education as an aspect of personal liberty and thus elevated it to the level of each child’s constitutional right to education. Supreme Court while dealing with education as a Fundamental Right has emphasized the importance of education by stating that; the fundamental purpose of the education as same at all times and in all places; it is to transfigure the human personality into a pattern of perfection through a synthetic process. Education develops human personality and the sense of its dignity and strength the respect for human rights and fundamental freedoms. Education enables all persons to participate effectively in free society, promotes understanding, tolerance and friendship among all persons –therefore education is a tool to maintain peace, unity and integrity of the nation. Prime Minister Shri Manmohan Singh has emphasized that it is important for the country that if we nurture our children and young people with the right to education, India’s future as a strong and prosperous country is secure. \(^{141}\) Judiciary has played a very important role for making education a fundamental right but Judiciary will not be able to make this right meaningful.

In *Rosy Jacob v. Jacob A Chakramkkal* \(^{142}\) the Supreme Court observed – “The Children are not mere chattels; nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society.” So every child in the country has legitimate claim. In *N. Bhageerthan v. State* \(^{143}\), it was held that if an accused or employer is unable to prove that children employed were not below fourteen years, he can be convicted for the offence of employing child labour. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood, socially, economically, physically and mentally the nation gets deprived of the

\(^{140}\) AIR1993SC 2178


\(^{142}\) 1993 (1) SCC 645.

\(^{143}\) 1999 Cr.LJ 632(Madras)
potential human resources for social progress, economic empowerment, peace and order and the social stability and good citizenry.\textsuperscript{144}

In \textit{Sathyavan Kottarakkara v. State of Kerala},\textsuperscript{145} the High Court of Kerala held: “Exploitation of children in any form which has the tenancy to exploit them either physically, mentally or otherwise is Objective able.” The Supreme Court has rightly held in \textit{Vikram Deo Singh Tomar v. State of Bihar},\textsuperscript{146} that it is constitutional duty of the Government to abide by the constitutional standards and provide at least the minimum conditions ensuring child’s dignity. In \textit{Rajangam v. State of Tamil Nadu},\textsuperscript{147} The Supreme Court has widely given the directions by saying that Tobacco manufacturing had indeed health hazards. Child labour in this trade should therefore be prohibited. The Supreme Court in \textit{S.C. Legal Aid Committee v. Union of India},\textsuperscript{148} showed judicial activism and stress on juvenile justice, because delinquent children were not capable of initiating their claims. In \textit{Vishaljeet v. Union of India},\textsuperscript{149} the Supreme Court issued directions to the State Governments and Union Territories to prevent sexual exploitation of children.

In \textit{Sheela Barse v. Union of India}\textsuperscript{150} the Supreme Court observed that children should not be confined in jails because incarceration in jail has a dehumanizing effect and it is harmful to the growth and development of children. It was held that child is a national asset, and it is the duty of the State to look after the child with a view to assuring full development of its personality. It is submitted that the Judicial Institutions have played a significant role not only for resolving disputes but also has always endeavoured to expand and develop the law so as to respond to the hopes and aspirations of the people who are looking to the judiciary to give life and content to law.

In \textit{Gaurav Jain v. Union of India}\textsuperscript{151} the Supreme Court showed its concern for the children born to prostitutes and to rehabilitate the victims. Thanks to the judicial craftsmanship and legal engineering done by the judges of the Supreme Court, many of

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\item \textsuperscript{144} Nuzhat Parveen Khan, “Constitutional and Legal Rights of the Child”, \textit{Nyaya Deep}, Vol. X, Issue 1, Jan, 2009.
\item \textsuperscript{145} AIR 1997 Ker.133
\item \textsuperscript{146} AIR1988SC1782, Asia Law Quarterly, Vol. 1 No.1, pp. 63-86.
\item \textsuperscript{147} AIR1983SC404
\item \textsuperscript{148} AIR1989SC1278
\item \textsuperscript{149} AIR1990SC 1412
\item \textsuperscript{150} AIR1986SC 1773
\item \textsuperscript{151} AIR1990SC 292
\end{itemize}

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the articles which remained as governing policy have now become enforceable through legal actions brought before these courts.

The Supreme Court in the Asiad’s case has held that those rights whichever provided in Part IV of the Constitution can be read into the fundamental rights provided under Part III of the constitution and in that way they can be enforceable in the court. For example Article 45 provides for free and compulsory education for children until they complete the age of 14 years. However, the Supreme Court in its liberal interpretation of life and liberty guaranteed under Article 21 held that the term liberty not only include livelihood but also the right of human being to live with dignity, and such dignity is not possible without literacy, and therefore, the Right to Education is a fundamental right coming within the meaning of Article 21 of the Constitution.\(^{152}\)

Children are the very foundation of society. Country’s progress depends upon its children that how they grow up. The problem of child labour is not of recent origin. It is existing in the world since long time. After independence of India there are many laws and policies enacted for the welfare and protection of children. The Constitution makers understood their responsibility towards children and consequently they made number of provisions under the directive principle of state policy as enshrined in the Constitution of India. The Constitution puts the state under duty to ensure that the tender age of the children is not to be abused and they are not to be exposed to economic necessity to enter avocations unsuited to their age and strength. Analyzing the relevant satisfactory provisions of the Indian laws relative to child labour, it has become clear that the statutes vary as to the age limit of child or permitted to work in various occupation. No doubt, the Child Prohibition and Regulation Act tried to fix the age limit up to 14 years but still there are deficiencies in the Act. New law Child & Adolescents (Labour & Prohibition) Bill is on card. Indian laws regarding child labour are deficient but they can be considered satisfactory in view of the prevalent economic conditions of the country.

The complete abolition of child labour is the main object and to get this, government should take all appropriate, legislative, administrative, social and educational measures and to ensure sincere implementation of constitutional and satisfactory enactments.

\(^{152}\) *Id*, p. 62.
Surprisingly, in spite of so many laws child labour is continuing in India at a fast speed. A single factor is not responsible for the problem of child labour. There are many factors out of them some are visible and some are hidden. Visible factors can be cured and the legislations are providing the remedies by making policies on visible factors. But the main problem is related with hidden factors. They are very dangerous and it is very difficult to cure them. The family system of the country is of such type that even middle class family employs workers to work in their houses. Mostly a child labourer is preferred to look after for kids and other related activities. Children are obedient and it is very easy to give them directions instead of giving to an adult person. Every year a number of children enter into labour force because of their economic compulsions. Despite plethora of laws made one after the other the problem of child labour has not stopped. There is a relation between child labour and poverty and both together are hindrance in the achievement and education of a child. In spite number of constitutional provisions and policies on Education and eradication of child labour, this gap cannot be covered. Child labour means working long hours for low wages. Government has passed Right to Compulsory Education Act, in 2009 and under this Act provides education is free and compulsory between the ages 6-14 but what will happen with the child after 14 if he/she want to get higher education. Lack of education is the main reason behind child labour.

In *M. C. Mehta v. Union of India*, keeping in view the provisions contained in Article 39 (f) and 45 of the Constitution, court gave directions as to how the quality of life of the children employed in the factories could be improved. In this case, Court observed that Child labour is a big problem and has remained intractable even after 50 years of the country having become independent, despite various legislative enactments for the prohibition of child labour. It was observed that every employer should be asked to pay a compensation for every child in contravention of the provisions of the Act a sum of Rs. 20,000; while the state shall pay Rs. 5,000/- if it failed to provide alternative employment to the adult member of child’s family. Both the amounts shall go to the corpus welfare fund, the income from which would be used for the education of laid off children and their welfare.
No doubt, work is worship and it is essential for peaceful survival of a person on this earth. But if this work is done by a person in his tender age then after grown up, he/she will not be healthy or cannot work effectively. That is why the Constitution makers enacted number of provisions to protect children from exploitation. But, in spite of constitutional provisions and plethora of laws on the subject this problem still exists in the society. Judiciary has done commendable job to protect children from the menace of child labour. The aforesaid judgments are very valuable to prevent child labour in the light of Constitution Provisions and legislative legislations. The aforesaid judgments are testimony of the fact that Judiciary is playing very sincere role for the eradication of child labour and very much concern about the agony of child labourer. To some extent the problem of child labour in India has been checked through the enactment of Child Labour (Prohibition & Regulation) Act, 1986, which specifically prohibit child Labour in hazardous occupations and regulate the working conditions in others but inspite of that child labour is prevailing in the country.

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