

## CHAPTER - 3

# Fundamental Rights and Directive Principles of State Policy: Prevention of Child Labour

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### 3.0 Introduction

This chapter presents an assessment of the effectiveness of the existing strategies on child labour and suggested and recommended measures to the situation of child labour in India. After its independence from colonial rule, India has passed a number of constitutional protections and laws on child labour.

The Constitution of India in the Fundamental Rights and the Directive Principles of State Policy prohibits child labour below the age of 14 years in any factory or mine or engaged in any other hazardous employment (Article 24). The constitution also envisioned that India shall, by 1960, provide infrastructure and resources for free and compulsory education to all children of the age six to 14 years. (Article 21-A and Article 45).

### **3.1 Constitutional Provisions**

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

Constitution of India contains provisions for survival, development and protection of children; these are mainly included in Part III and Part IV of the Constitution, i.e., fundamental rights and directive principles of state policy. India follows pro-active policy towards tackling child labour problem. The concern for children in general and child labour in particular is reflected through the Articles of the Constitution of India. In Article 23, it prohibits traffic in human being and begar and other similar forms of forced labour. Under Article 24 it has laid down that "no child under the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment". Article 39(e) and (f) requires the State and secure that the tender age of children are not abused and to ensure that they are not forced by economic necessity to enter avocations unsuited in their age or strength. Those children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 provides, for free and compulsory

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

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

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

fact, the evil of child labour has not only survived but has become deep rooted and multi-dimensional.

### **3.2 Indian statutory provisions**

In order to implement the constitutional and international obligation towards eradication of child labour in different occupations, the following legislative enactments have been in force, and continue after the Child Labour (Prohibition and Regulation) Act, 1986. It would be better to appraise various statutes and statutory provisions enacted in the existing labour laws to tackle the problem of child labour.

### **3.3 Historical Background Of Child Labour**

#### **3.3.1 The Children (Pledging Of Labour) Act, 1933**

The Royal Commission on Labour was established in 1929 to inquire into various matters relating to labour in this country. The Report of the Commission was finalized in 1931. The Commission had examined the conditions of the child labour in different industries and had found that children had been obliged to work for any number of hours per day as required by their masters. Further it found that, children were subjected to corporal punishment. The Commission had felt great concern at the pledging of children by parents to employers and return for small sums of money; and this system was found to be worst and exploitative of children. So the Commission recommended that any bond pledging a child should be regarded as void. The recommendations of the Commission was discussed in the Legislative Assembly and the Children (Pledging of Labour) Act,

1933 came to be passed, which may be said to be the first statutory enactment dealing with child labour. The main object of this Act was to eradicate the evils arising from the pledging of labour of young children by their parents to employers in lieu of loans for advances. The statement of objects and reasons provides<sup>4</sup> : “The Royal Commission of Labour found evidence in such widely separated areas as Amritsar, Ahmedabad and Madras of the practice of pledging child labour, that is, the taking of advances by parents or guardians on agreements, written or oral, pledging the labour of their children. In some cases, the children so pledged were subjected to particularly unsatisfactory working conditions. The Commission considering that the state would be justified in adopting strong measures to eradicate the evil, and the Bill seeks to do so by imposing penalties on parents by agreements pledging the labour of children and on person knowingly employing children whose labour has been pledged. Previously, the Act extended to whole of India except Jammu and Kashmir but after 1st September 1971, it has also been extended to Jammu and Kashmir.<sup>5</sup> The Act declares that an agreement, oral or written, express or implied to pledge the labour of child below 15 years of age by the child’s parents, guardians as void and makes the contracting parties, liable for penalties.<sup>6</sup> Under this Act, ‘Child’ means a person who has not completed the age of 15 years.<sup>7</sup> This Act was passed with an intention to protect child from exploitation in various hazardous occupations but it remained a dead letter. No judicial efforts were made to protect the child from exploitation.

### **3.3.2 The Employment of Children Act, 1938**

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

The Statement of objects and reasons of the repealed Act stated;<sup>8</sup> “The twenty-third session of the International Labour Conference adopted a Convention in which a special Article for India was inserted fixing the minimum age at which children may be employed or may work in the transport of passengers, goods or mails by rail, or in the handling of goods at docks wharves or quays at 13 years. This Bill provides for prohibiting the employment of children under 15 in occupations connected with the transport of goods passengers or mails on railways and for raising the minimum age fixed by section 6 (1A) of the Indian Ports Act, 1908, to 14 the age recommended by the Royal Commission of Labour. A simple

procedure enabling employers to safeguard themselves against transgression of the Act by furnishing themselves with or requiring candidates for employment to possess, certificate of age is provided in the Bill.” The keys points of this Act are;

(a) Prohibited the employment of children under 15 years in occupations connected with transport of goods, passengers, mail or railways;

(b) Raised the minimum age for handling goods on docks from 12 to 14 years

(c) Provided for the requirement of a certification of age ;

(d) In pursuance of the International Labour Conference at its 31st session held in 1948 adopted a Convention (No.90) concerning night work of young persons employed in industry. Accordingly in 1951, a provision was added for prohibition of the employment of the children between 15 and 17 years at night in railways and ports and also provided for requirement of maintaining register for children under 17 years; and (e) In 1978, a provision was added for prohibition of employment of a child below 15 years in occupations in railway premises such as under picking or cleaning of ash pit or building operations, in catering establishment and in any other work, which is carried on in close proximity to or between the railway lines. The penalty for the breach of the Act, punishable with simple imprisonment extending to one month or fine up to Rs. 500/- or both 10 One of the drawbacks of the Act is that it has not provided any provision in regard to the health, safety, medical examination and welfare of children. This Act was

amended as many as 5 times during the year 1939, 1948, 1949, 1951 and 1978 only to ameliorate better working conditions to children.

### **3.3.3 Factories Act, 1948**

The Factories Act, 1948 prohibits employment of a child below 14 years in any factory. This Act, extends to the whole of India except the state of Jammu and Kashmir. Section 67 of the Act, enacts an absolute prohibition of employment of a child in any factory. It means no child below the age of 14 years can be asked to work or if he himself wants to work can be permitted to work in any factory. The provision is intended to safeguard the needy children who may like to work at the cost of their health and life. The Act distinguishes between 'child', 'adolescent' and 'adult.'<sup>12</sup> 'Child' is a person who has not completed the age of 15 years<sup>13</sup> ; an 'adolescent' is a person who has completed age of 18 years<sup>14</sup> and an 'adult' is a person who has completed the age of 18 years.<sup>15</sup> The Act defines a 'young person' as one who is either a child or a adolescent'<sup>16</sup> A child below the age of fourteen is not allowed to work in a factory<sup>17</sup> A child above the age of fifteen and below the age of eighteen cannot be employed to work for more than four and half hours and cannot be employed during the night.

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



processing it for the purpose of packing. In *Walker T. .Ltd. v. Martindale*,<sup>20</sup> the court held that, prohibition is absolute and not restricted to employment in one of the manufacturing process. Thus a child employed as a sweeper to clean up the floor of a factory is also in contravention of provisions of Factory Act, even though he is not employed in any of the manufacturing process. Section 68, provides that non-adult workers have to carry tokens. The children who are of 14 years but those are below 18 years can be allowed to work in any factory if the child concerned has been given certificate of fitness by a certifying surgeon and the said certificate is in the custody of the manager of the factory and the child so employed carries a token with him while he is at work in which a reference of such certificate has been made. Section 69 deals with the manner in which the fitness certificate is issued and the procedure to be followed by a certifying surgeon in case the certificate is to be issued, renewed or revoked. Under this Act, there is a provision for a weekly day of rest, every child worker who has worked for a period of 240 days or more in a factory during a calendar year is entitled during the subsequent year for leave with wages at the rate of one day for every 15 days of work as against every 20 days in the case of a child worker.

#### **3.3.4 The Minimum Wages Act, 1948**

The Act extends to the whole of India except the State of Jammu and Kashmir.<sup>22</sup> The Minimum Wages Act was enacted for the improvement of the economic conditions of the working people in industries in our country. It provides for fixing minimum rates of wages in certain employment to

which provisions of this Act applies. It intended to prevent exploitation of labour and for the purpose it authorizes the appropriate government to take steps to prescribe minimum rates of wages in the scheduled industries. The Act was enacted with the objectives of fixing, reviewing, revising and enforcing the minimum rates of wages relating to scheduled employments to the notified under the law by the appropriate government, i.e. Central/state. The intention of the Act is to fix minimum rates of wages in which the labour force is vulnerable to exploitation i.e. is not well organized and has no effective bargaining power. It provides for an institutional mechanism and procedure for fixation, review, revision and enforcement of minimum rates of wages. 'Minimum Wage' has not been defined in the Act. In essence, the minimum wage represents the basic subsistence wage below which no employer can go, although nothing prevents him from paying above this statutorily notified wage. According to the Judgment of the Supreme Court, an industry or industrial establishment does not have the right to exist if it cannot guarantee payment of the minimum wage. However, the following five norms recommended by the Indian Labour Conference in its 15th session held at Nainital in 1957 are kept in view by the appropriate government for fixation and revision of minimum wages: (1) Three consumption units for one earner; (2) Minimum food requirement of 2700 calories per average Indian adult; (3) Clothing requirements of 72 yards per annum per family; (4) Rent corresponding to the minimum area provided for under the governments Industrial Housing scheme; and (5)

Fuel, lighting and other miscellaneous items of expenditure to constitute 20 per cent of the total minimum wage.

The Supreme Court of India in its Judgment in the case of Reftakes Brett and Co. v. others,( Civil Appeal No. 4336 of 1991). held that the children's education; medical requirement; minimum recreation; provision for old age; and marriage, should be added to the norms and criteria already recommended by Indian Labour Conference.

The Act defines a child as a person below 15 years. It provides for minimum wages for children and apprentices. It also has provision regarding hours of work and physical fitness. Under this Act, adult means a person who has completed the age of 18 years<sup>24</sup> and adolescent means a person who has completed the age of 14 years but less than 18 years.

There are however two provisions in the law that have a direct relevance to child labour, which appears that the Act did not have any objective of elimination of child labour. Sub-section 3 of section 3(A) read as follows.

In fixing or revising minimum rates of wages under this section:

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

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

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

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

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

### **3.3.5 The Plantation of Labour Act, 1951**

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

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

### **3.3.6 The Mines Act, 1952**

This Act extends to the whole of India.<sup>30</sup> This Act defines child as a person who has not completed his 15 years.<sup>31</sup> The Act not only prohibits the employment of children in mines, but also prohibits the presence of children in any part of a mine which is below ground or in any open cast working in which any mining operation is being carried on.<sup>32</sup> Even an adolescent is not allowed to work in any part of a mine which is below ground, unless he has completed his 16th year and has a medical certificate of fitness for work.<sup>33</sup> A certificate is valid only for twelve months.<sup>34</sup> Under the Act, adolescent is allowed to be employed in any mine except between 6 am and 6 pm. The provision with respect to employment of children under Mines Act, 1952 are more stringent than those under the Factories Act, 1948. It prohibits the employment of person below 18 years to work in any mine. The Act, stipulated two conditions for underground work in a mine, (i) requirement to have completed 16 years of age and (ii) requirement to obtain a certificate of physical fitness from a surgeon. Apprentices and other trainees, not below 16 years of age, may be allowed to work, under proper supervision, in a mine by the manager, provided that in case of trainees other than apprentices, prior approval of the Chief Inspector or an Inspector is required to be obtained before they are allowed to work.

The Central Government is the administrative authority under the Mines Act and it administers the Act and through inspectors having usual powers. Under section 48 of the Act, provisions of maintaining register of all those person employed in the mine, has been made showing – (a) The age and sex

of the employee; (b) The nature of the employment (whether above ground or below ground, and if above ground whether is open cast working or otherwise) and the date of commencement thereof; (c) In the case of an adolescent, reference to certificate of fitness granted under section 40.

The Act also contains the provisions related to the powers of inspectors and maintenance of records. Section 87 of this Act, further lays down “No suit, prosecution or other legal proceeding whatever shall lie, against any person for anything which is in good faith done or intended to be done under this Act.”

There are penal provisions to ensure observance of the provisions of the Act. If a person below 18 years of age is employed in a mine in contravention of section 40, the owner, agent or manager of such mine shall be punishable with fine upto Rs. 500/- However, it is obvious that, the relevant penal provisions are not adequate.

### **3.3.7 The Merchant Shipping Act, 1958**

The Act, prohibits the employment of children in any capacity, who are below 14 years of age.<sup>35</sup> on sea-going ships, except (a) in a scholarship or training ship; or (b) In a ship in which all persons employed are members of one family; (c) In a home-made ship of less than two hundred ton gross; or (d) Where such person is to be employed on nominal wages and will be in the charge of his father or other adult or a male relative. Similarly, employment of young persons under 18 years of age as trimmers and strikers is also made conditional in any ship to the extent of production of medical fitness certificate from a competent authority. Further the Act empowers the

government to make necessary rules regarding employment of young person as and when the occasion demand. The Act also makes provision for modest penalty of a fine of Rs. 50/- for violating these provisions.

### **3.3.8 The Motor Transport Workers Act, 1961**

This Act applies to whole of India.<sup>36</sup> Minimum age required for employment in every transport undertaking employing five or more workers<sup>37</sup> is 15 years.<sup>38</sup> The 35 Merchant Shipping Act, 1958, Sec 109. The age of the child which was earlier 15 in Sec. 109 is now amended and brought down to 14 by sec.25 of the Child Labour Act, 1986.

State Governments are authorized to apply all or any of the provisions of the Act to any motor transport undertakings employing less than 5 workers.<sup>39</sup> Now as amended by section 26 of the Child Labour (Prohibition and Regulation) Act, 1986, by which word 'fifteenth' in clauses (a) and (c) of section 2 has been substituted by word 'Fourteenth'. Thus the Act prohibits employment of children below 14 years. The adolescents are prohibited to work unless a certificate of fitness is granted<sup>40</sup> which is valid only for one year.<sup>41</sup> An adolescent can work only for 6 hours including a rest interval of half an hour and between 10 am and 6 pm only.

### **3.3.9 The Apprentices Act, 1961**

There is no comprehensive law dealing with matters relating to training of apprentices and their service conditions before this Act was passed. The only statutory provisions regarding apprentices were found in the model standing orders framed under the Industrial Employment (Standing Orders)



Act, 1946. The Government of India appointed an expert committee to examine this matter and to recommend for under-taking a separate legislation regulating the training of apprentices in the industries. Consequently, the parliament enacted Apprentices Act, 1961.

This Act extends to the whole of India.<sup>42</sup> Under this Act, no person shall be eligible for being engaged as an apprentice, or to undergo apprenticeship training unless he is at least 14 years of age.<sup>43</sup> The main objective of the Act is to regulate and control the training of apprentices and supplement the availability of trained technical personnel for the industrial concerns. It provides for practical training to the graduate and diploma engineers. Any person who is not less than 14 years of age and satisfies the prescribed standards of education and physical fitness can undergo apprenticeship training in the designated trade under an employer. The Act applies to only designated trade notified by the Central Government after consultation with the Central Apprenticeship Council.

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

The Act enjoins upon the employer to pay compensation to apprentices in accordance with the provisions of Workmen's Compensation Act, 1923, if

personal injury is caused to them by accident arising out of and in the course of their training between 10 p.m. and 6 a.m. except with the approval of the Apprenticeship Advisor. Thus, the Act, adopts a flexible approach and leaves most of the matters to be decided by the executive and other authorities. Violation of the provisions of this Act on the part of the employer is punishable for a term which may extend to six months or with fine or with both.

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

### **3.3.10 Beedi and Cigar Workers (Conditions of Employment) Act, 1966**

This Act extends to the whole of India.<sup>44</sup> This is a special legislation for regulating conditions of work of Beedi and cigar workers. Although the Factories Act, applies to such workers but the employers intentionally split the concerns into small units to escape the provisions of the Factories Act. Further, a special feature of this industry is that the manufacturers of Beedis

get the work done through contract labour and also in private dwelling houses which again leads to avoidance the provisions of the Factories Act. This Act tries to meet such difficulties.

Section 24 of the Act enacted for the welfare of labour and for regulating and enforcing better conditions of labour, amongst those who are engaged in the manufacture of Beedis and cigars, prohibits employment of children in industrial premises, where any process connected with the manufacture of Beedis and cigars takes place. “Child” for the purpose of this Act, means a person who has not completed fourteen years of age.<sup>45</sup> The employment of young persons between 14 and 18 years is prohibited between 7 pm and 6 am.<sup>46</sup> Provisions for canteen<sup>47</sup>, first aid,<sup>48</sup> ventilation<sup>49</sup>, and cleanliness<sup>50</sup> are made under the Act. The administration of the Act rests with the State who appoint. Chief Inspector or Inspector for the purpose. The Act provides for penalties for breach, which may be imprisonment up to three months or a fine up to Rs. 500/- or both.<sup>51</sup>

### **3.3.11 Contract Labour (Regulations and Abolition) Act, 1970**

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

### **3.3.12 Shops and Commercial Establishment Act, 1969**

Different states have enacted their own laws regulating employment of children in shops and establishments, restaurants and hotels and places of

amusements and notified urban areas etc., to which the Factories Act, 1948 does not apply. Time to time these Acts had been amended to meet the need of situation. These provisions regulate the daily and weekly hours of work, rest intervals, payment of wages, overtime pay, holidays with pay, annual leave, employment of children and young persons, etc.

These Acts prohibits the employment of child in shops and establishments and he cannot be employed even as the family member of the employer. Generally speaking, a child is a person who has not completed the age of 12 years. However, the age requirement varies from 12 to 15 years in states. The minimum age for employment in shops and commercial establishments is 12 years in Bihar, Gujarat, Jammu and Kashmir, Madhya Pradesh, Karnataka, Orissa, Rajasthan, Tripura, U.P. West Bengal, Goa, Daman and Diu and Manipur, and 14 years in Andhra Pradesh, Assam, Harayana, Himachal Pradesh, Kerala Tamil Nadu, Punjab, Delhi, Chandigarh, Pondichery and Meghalaya. The minimum age of employment is 15 years in Maharashtra. Now after the insertion of Act .21A no child under the age of 14 years can be employed in an work, in this light, an Act which permits employment of children under the age of 14 years becomes unconstitutional. There is no separate shops and commercial establishments Act in Andaman and Nicobar, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshdweep, Nagaland and Sikkim.<sup>56</sup> The working hours for children are generally from 6 am to 7 pm. The maximum hours of work for children are usually 5 per day for young person or 30 per week for adolescents (Young Persons) they may be higher i.e. 7 per day and 42 per week in Andhra

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Pradesh, Bihar, Tamil Nadu, Tripura, West Bengal, Pondichery; 6 hours per day in Jammu and Kashmir, Maharashtra, Uttar Pradesh, Karnataka, Madhya Pradesh Orissa, Punjab, and three hours per day in Rajasthan. All the states prohibit the employment of children and young person in shops and commercial establishments during night.

### **3.3.13 Radiation Protection Rules, 1971**

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

### **3.3.14 The Child Labour (Prohibition and Regulation) Act, 1986**

Plethoras of legislations were enacted since 1881 for progressively extending legal protection to the working children. Provisions relating to child labour under various legislations have concentrated mainly on aspects such as minimizing working hours, increasing minimum age and prohibition of employment of children in occupation and processes detrimental to the health and welfare of children of tender age.<sup>57</sup> The Children (Pledging of Labour) Act, 1933 followed by the Employment of Children Act, 1938 was the first statutory enactment dealing with child labour, was repealed by the Child Labour Act, 1986. The Child Labour (Prohibition and Regulation) Act is an outcome of various recommendations made by a series of Commissions.<sup>58</sup> This legislation was enacted to reform the legal measure, as the policy of both Prohibition and Regulation.

All the recommendations made by various Committees created a National consensus in favour of bringing a uniform comprehensive legislation to

prohibit employment of children in certain other employments. To achieve this goal, the Child Labour (Prohibition and Regulation) Bill was introduced and passed in both houses of parliament in August 1986 with a view to prohibiting employment of children in certain types of jobs and regulating the conditions of employment of children in certain others.

**3.3.15 the statement of objects and reason in the bill reads**

There are a number of Acts which prohibit employment of children below 14 years and 15 years in certain specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions.

The Bill seeks to achieve the following objects;

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

(5) Establish uniformity in the definition of child in laws concerning them.

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

The provisions in clause 3, part 2 of the Bill which says, “provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from Government”.

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

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

**3.3.16 The main features of the present Act**

- (i) It prohibits employment of children in most employments as detailed in the Schedule as Processes and Occupations. Most of them are hazardous in nature but the term hazardous has not been defined;
- (ii) It intends to regulate employment of children in all establishments except those prohibited ones;
- (iii) It provides for a Child Labour Technical Advisory Committee to advise the Central Government in matters of further prohibition, regulation etc ;
- (iv) Regulatory provisions made fixing the number of hours, period of work, prohibition of overtime, double employment, provision of weekly holidays etc; (v) Requirement of the employer to give notice to Inspectors, maintenance of register, display of notice ; provision for health and safety are also in Part III ; (vi) It provides for minimum penalty of imprisonment for 3 months and maximum one year and minimum fine of Rs. 10,000 and maximum fine of Rs. 20,000. Almost all the violations of the regulatory and mandatory provisions are declared as offence under the Act; (vii) Any person can file a complaint but only a Metropolitan Magistrate can take cognizance of any offence; and finally; and (viii) The provisions made under the present Act is declared to be in addition to the provisions and protections of children already existing in other enactments.



### **3.3.17 Significant provisions of the Child Labour (Prohibition and Regulation) Act, 1986**

The Act is divided into IV parts and contains 26 sections with one Schedule consisting of Part-A for Occupations and Part-B for Processes. The preamble to the Act, states that it is “An Act to prohibit the employment of children in certain employments and to regulate the conditions of work of the children in certain other employment. The Act prohibits the employment of any person who has not completed his fourteenth year of age 61 in occupations and process set forth in Part-A62 and Part-B63 of the schedule of the Act. The prohibition under Part II, section 3 is 61 Child Labour Act, 1986; Sec. 3, “ No child shall be employed or permitted to work in any of the occupations set forth in part A of the Schedule or in any workshop wherein, any of the processes set forth in part B of the schedule is carried on”. 62 There are 15 occupation setforth in part-A of the schedule under section 3. Further employment of child as servants or workers and employment of children in Dhabas, ( roadside Eateries), restaurants, not absolute as it does not apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government. Section 5 of the Child Labour (Prohibition and Regulation) Act provides for the constitution of a Child Labour Technical Advisory Committee to advise the Central Government for the purpose of addition to the schedule of the Act. The Act thus classifies all establishments in two categories.

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

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

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

According to the Act child means a person who has not completed his fourteenth year of age<sup>64</sup> and the establishment for the purpose of this Act includes a shop, commercial establishment, workshop, farm, residential hotel, restaturant, eating house, theatre or other place of public amusement or entertainment. The expression hotels, Motels, Tea-Shops, Resorts, Spas or other recreational centers are notified on 10th July, 2006 and added by SO, 1942 ( E ) dated : 10.10.2006.

Thus Child Labour (Prohibition and Regulation) Act corresponds the Employment of Children Act, 1938 and lacunae in the present enactment continued so. Part-III of the Act runs from section 6 to 13 deal with regulation of conditions of work of children. This part prescribes the norms for working hours and period of work, weekly holidays, guidelines to deal the disputes as to age, imposed legal responsibility to maintain the register on the occupation and health and safety of the working children. The policy of regulation of child labour in circumstances other than those where it is prohibited is a major component of the Act. However, regulatory provisions

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granting permission for child labour involves compromise with the interest of children and has far reaching effect on their career.

The Act, in its Part III regulates the conditions of work of children in establishments in which none of the occupations or processes referred to in section 3 is carried on.<sup>68</sup> It provides that no child shall be required or permitted to work between 7 pm and 8 am and to work overtime. The period of work shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. The total working hours including interval for rest and the time spent in waiting for work shall not be spread over more than 6 hours per day. It is also provided that no child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

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

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

inspector at all times during working hours or when work is being carried on in any such establishment showing:

- (a) The name and date of birth of every child so employed or permitted to work;
- (b) hours and periods of work of any such child and the intervals of rest to which he is entitled;
- (c) the nature of work of any such child; and
- (d) such other particulars as may be prescribed.

The Act further prescribes that every railway administration, every port authority and every occupier shall display a notice containing abstracts of section 3 and 14 in the local language and in the English language in a conspicuous place. The Act also empowers the appropriate Government to make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments. Part-IV of Child Labour (Prohibition and Regulation) Act deals with procedure for prosecution of offences and penalties under the Act.

It provides a procedure relating to the offences. A positive feature of the Act under sec. 16 is that : (a) Any person, police officer or inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction ; (b) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act be conclusive evidence as to the age of the child to whom it relates ; and (c) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try any offence under this Act.

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### **3.3.18 Penalties under the Child Labour Act**

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

The penalties<sup>73</sup> under this Act are as follows:

(i) Whoever employs any child or permits any child to work in an hazardous employment shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both;

(ii) For a repeated offence, the punishment is imprisonment for a term which shall not be less than six months but which may extend to two years; and

(iii) For failing to give notice to the inspector as required by section 9, or failing to maintain a register as required by section 11, or making any false entry in the register, or failing to display an abstract of section 3, or of failing to comply with any other provisions of this Act or rules, the punishment is imprisonment which may extend to one month, or with fine which may extend to ten thousand rupees or with both.

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

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

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

The definition of children given under Child Labour (Prohibition and Regulation) Act, 1986 is in contradiction with United Nations Convention on the Rights of the Child, 1989 and Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Article 24 of the Constitution indirectly permits the child labour because Article 24 reads; provided that nothing in the section shall apply to any work -shop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from Government.

“No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”. By reading above Article 24 it is observed that Constitution of India does not create an absolute bar to the employment of children below the age of 14 years. Their employment is prohibited only in factory or mine or in any other hazardous employment. Child below the age of fourteen years shall be employed to work in all establishments other than factory or mine or hazardous employment. Various laws and policies relating to child labour and child rights appear to work in isolation. There is no nexus between each other. The right to education did not have direct bearing upon the child labour law. Policy perspectives relating to children and childhood are confused. The Right of Children to Free and Compulsory Education Act, 2009<sup>79</sup> intended to provide free and compulsory education all the children of the age 6-14 years. But under Child Labour (Prohibition and Regulation) Act, 1986 laying down that children below fourteen years can work in non-hazardous occupations and processes is a mockery in providing justice to the children. The Chairperson of National Commission for Protection of Child Rights said “The child labour policy itself is flawed and existing child labour law was violating the fundamental right to education. Thus there is a need to amend the Act to make it in consonance with the Right to Education.<sup>80</sup> The definition of child labour needs to include children working in the farm-lands. The National Policy on Children 1974 is now outdated. It should be more children oriented and Rights based in order to

be effective. The laws and policies now have to confirm to the international standards laid down in the U.N. Convention on the Rights of the Child.

### **3.3.20 An Analysis of the Amendment to the Child Labour (Prohibition and Regulation) Act 2006**

The Child Labour (Prohibition and Regulation) Act, 1986 does not ban child labour per se, and leaves the millions of child labourers in the domestic and unorganized sectors, outside its purview. According to extremely conservative Governmental estimates, about 1,85,595 children are estimated to be engaged in domestic work and roadside eateries,<sup>81</sup> which have been refuted by the statistics compiled by NGOs, which estimate the number at around 20 million. On August 01, 2006, the Government imposed a ban on employment of children as domestic servants or servants in dhabas (road side eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centres. The ban has been imposed under the Child Labour (Prohibition and Regulation) Act, 1986 on the recommendation of the Technical Advisory Committee on Child Labour headed by the Director General, ICMR, and has become effective from 10th October, 2006. The Ministry of Labour has recently issued a notification to this effect giving three-month mandatory notice. Employing children in these categories would make the offender liable to prosecution, Committee has been laid down in and may result in imprisonment up to two years and/or fine shall not be less than Rs. 10,000 but may extend to Rs.20,000.



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

### **3.3.21 Abolition of Child Labour Bill, 2006**

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

Hence, the Abolition of Child Labour Bill, 2006 has been placed before the Parliament which envisages a stricter regime, and includes sectors such as

domestic work, agricultural operations, construction activities, transport industry etc.<sup>86</sup> The greatest merit of the new Bill is that, apart from putting prohibitions on child labour, it also seeks to provide for their rehabilitation. Section 6 of the Bill has mandated that even if an employer employs a child, he should send him to school, failing which he will be punished with imprisonment for a term which may extend to three months and a fine of Rupees Ten Thousand. This provision while discouraging child labour, indirectly points at a policy of rehabilitation of child labour, the proposed Act, lays down a separate penalty for companies employing child labour. In case a company employs a child for remuneration without sending him to school, the person in charge of the company at that point of time, shall be held liable to be punished with imprisonment which may extend to six months, or with fine which may vary between Rs.1 lakh and Rs.5 lakhs. Moreover, the licence of the company shall be liable to be cancelled, and the company shall also be required to meet the educational and such other requirements of the child as may be necessary for his development and education upto graduation level. Section 7 says that if any child is found to be self-employed and he has no parents or guardians to support him, he shall be immediately sent to a hostel for students by the Central Government and all expenditure on this account shall be met by the Central Government. Thus, the Bill of 2006 has a definite policy towards rehabilitation of child labour, and is hence a welcome piece of legislation. From the above discussion, it is clear that the Government has taken cognizance of child labour as a major social problem in India, and is taking

a number of steps to eradicate it. Although nothing can be predicted about the potential success of this legislative intent, it must be admitted that the efforts are steps in the right direction. Unfortunately this bill is not yet passed.

### **3.3.22 CHILD LABOUR : A CRIME**

Under section 374 of the Indian Penal Code, whoever unlawfully compels a person to labour against his or her will, shall be punished with imprisonment of one year or a fine, or both. Under the Child Labour (Prohibition and Regulation) Act, 1986, it is a crime to employ any child, below the age of 14, in any hazardous occupation. This includes work in factories, workshops, domestic households, tea stalls, dhabas and restaurants, among others.

### **3.5 Juvenile Justice (Care and Protection) Act, 2000**

Under the Juvenile Justice (Care and Protection) Act, 2000, any person who makes a child do dangerous or hazardous work, employs bonded child labourers and uses a child to get his own work done, shall be punished with three years rigorous imprisonment and a fine. Under the Bonded Labour System (Abolition) Act, 1976, employing a child as a bonded labourer is a punishable offence.

### **3.3.24 SUPREME COURT DIRECTIVES ON CHILD LABOUR**

In 1996, the Supreme Court issued directives on children employed in hazardous occupation, and their rehabilitation. They were:

Children should not be employed in hazardous occupation. If they are, then they should be freed, and arrangements should be made for them to go to school

A penalty of Rs.20,000 for every child that a person employs, be imposed  
In place of a rescued child labourer, an unemployed member of his family should be provided with employment. If this is not possible, then the state government should help the child with a rehabilitation package of Rs.5,000  
In this manner, a helping amount of Rs.25,000 is provided for the rehabilitation of a rescued child labourer. In addition to this, the child should be enrolled in school

In brief, if any person is found to be employing children, below the age of 14, in any work in domestic household, tea stall, dhaba (kiosks) or hotel, then criminal proceedings can be initiated against him. It is also imperative for the government to ensure that along with rescuing a child, he or she is also rehabilitated, so that they don't fall prey to the same trap again.

### **3.3.25 CONCLUSION**

"The parents of child labourers are often unemployed or underemployed, desperate for secure employment and income. Yet it is their children - more powerless and paid less-who are offered the jobs. In other words, says UNICEF, children are employed because they are easier to exploit," according to the "Roots of Child Labour" in Unicef's 1997 State of the World's Children Report. Children have the right to practice their

constitutional rights, to obtain education and live at par with others in the society, without facing any discrimination. The Right to Education Act is a tool for a child to obtain his right to elementary education and is an important medium to bring all children, who are still out on the roads, to school by the year 2013. The Act pays equal emphasis on good quality education.

