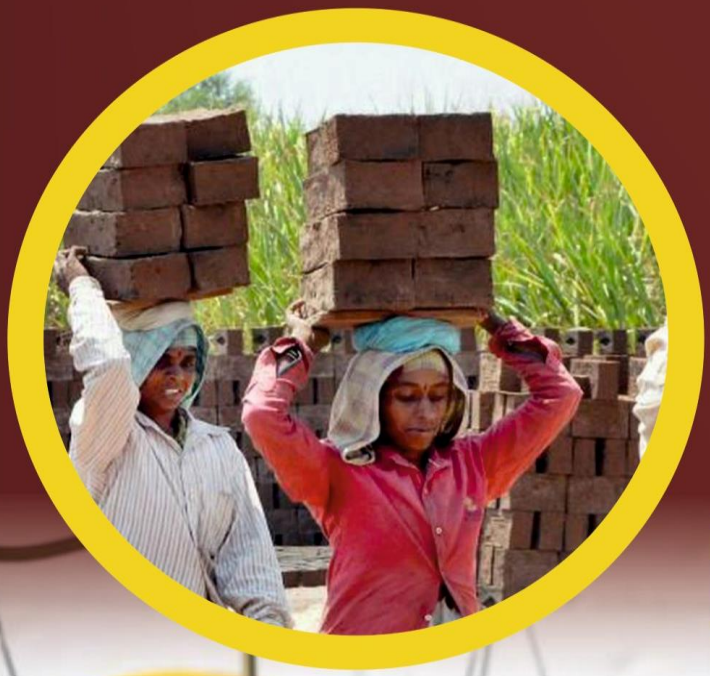
Rights at Work: Women and Children in

Indian Labour Jurisprudence



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RIGHTS AT WORK: WOMEN AND CHILDREN IN

INDIAN LABOUR JURISPRUDENCE

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PREFACE

The book Rights at Work: Women and Children in Indian Labour Jurisprudence is a humble effort to explore the legal framework, constitutional safeguards, and judicial interpretations that shape the rights of women and children in the sphere of labour law. Labour jurisprudence in India is deeply rooted in the ideals of justice, equality, and dignity enshrined in the Constitution. Yet, despite progressive legislation and international commitments, women and children remain among the most vulnerable groups in the workplace.

This work seeks to examine how far Indian labour legislations have succeeded in securing social justice for these groups, and to what extent international conventions have influenced national policies. It also attempts to analyze judicial responses and contemporary challenges arising in the context of globalization, industrialization, and liberalization. By providing both theoretical insights and practical perspectives, the book aims to serve as a resource for students, academicians, researchers, and practitioners of law.

In presenting this study, it is my hope that it not only adds to the academic discourse but also inspires constructive reforms and deeper commitment to protecting the dignity and welfare of women and children in the labour sector.

— Mrs. R. Vimala Rajagopal

Acknowledgment

First and foremost, praises to God, the Almighty, for His immense shower of blessings and kindness throughout this work, which has enabled us to complete it successfully.

We are sincerely grateful to our institution. VELS INSTITUTE OF SCIENCE TECHNOLOGY AND ADVANCED STUDIES, Special thanks to our Dean, Madam DR S. AMBIKA KUMARI LLM, PHD, and to all our family members for providing continuous support and motivation during this work. I would also like to thank my constant pillars of support and strength my father, V. RAJAGOPAL, and my mother, R. JAYA RAJAGOPAL. All that I am and all that I hope to become, I owe to them.

We would also like to take this opportunity to express our heartfelt gratitude to the publisher for providing a golden opportunity by giving us the most awaited platform to showcase our novel work.

List of Abbreviations

BPO	BUSINESS PROCESS OUTSOURCING
CEDAW	CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
CLA	CHILD LABOUR ACT
ESI	EMPLOYEES' STATE INSURANCE
ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
ILO	INTERNATIONAL LABOUR ORGANISATION
IDA	INDUSTRIAL DISPUTES ACT
ITUC	INTERNATIONAL TRADE UNION CONFEDERATION
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
MNC	MULTI NATIONAL CORPORATIONS
UDHR	UNIVERSAL DECLARATION OF HUMAN RIGHTS
UNCEDAW	THE UNITED NATIONS CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
UNICEF	UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND
WTO	WORLD TRADE ORGANIZATION

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Chapter 1

Introduction

1.1 Historical Background:

The framers of the Indian Constitution were very keen in enshrining the principles of equality, liberty and social justice. They were aware of the sociology of the problem of emancipation of the female sex. They realized that equality was important for the development of the nation. It was evident that in order to eliminate inequality and to provide opportunities for the exercise of human rights it was necessary to promote education and economic interests of women. It became to them the objective of the state to protect women from exploitation and provide social justice. Social justice means the attainment of socio-economic objectives laid down by the planners. The jurisprudence of industrialization has demonstrated the vital role of labour laws as an instrument of social justice. Amongst laws which are vital to a nation‟s life, which manifest a nation‟s spirit, which bestow revolutionary and progressive values to jurisprudence and lift it from conservative to progressive strata, industrial law has acquired a place of pride. It can be asserted that it embraces not only labour and industrial matters but also social matters affecting children, women and other oppressed sections of society.

In this contextual pretext one may quote Dr.Abdul Kalam:[1]

“Children are our national wealth. Cruelty to children is against the fabric of the society, which cannot be tolerated at any cost.”

Under the Industrial Laws women have been bestowed the special position in view of their unique characteristics, physically, mentally and also biologically. Moreover, the women are treated as a second-class citizenry. Though the half of world‟s population is women, still they suffer even today the course of discrimination therefore the problem spells for establishment of a just and equitable social order, where nobody can be treated or exploited by another as unequal.

[1] Dr.A.P.J.Abdul Kalam Quotations, Address to the nation by the president of India dr. a.p.j. abdul kalam on the eve of the 58th republic day - 2007

Similarly the children who are considered to be the national asset are treated with cruelty and rejected rather abandoned child by the parents takes a job in a factory, hotel, small scale industry and other road side commercial business only for his own maintenance in many compelling circumstances and having no shelter for his protection a child gets associated with crimes and criminals. The child exploitation in India is a result of the macabre family circumstances, social environment, poverty, ignorance of family planning and unchecked population control, lack of proper care and affection, and lack of love and affection from parents.

In earlier times children were used to work within the family and it was the learning of adulthood. But that was not the barrier for their growth, as family was the single unit of production and universal elementary education, where exploitation or ill-treatment was not there. From mythology it is learnt that children were to work while learning at Gurukulashrams. But that was again, not exploitation because they were not performing any hard task and compulsion was not there. With the change of time and particularly, due to industrialization of society, different jobs were imposed on children. If we see in to the fractional units of society we could see the role of children, as one of the significant contributors to family income in many cases. It was seen that jobs were imposed on children who were offering their labour due to poverty, illiteracy and many other reasons. Thus, it became a problem of serious concern, as exploitation was observed in child employment.

1.2 Women and the Quest for Social Justice:

In the industrial sector, women were provided special protection under labour laws, recognizing their unique biological and social roles. However, this protective approach also highlighted the contradiction of women being simultaneously shielded yet treated as secondary citizens[2]. Despite constitutional guarantees under Articles 14, 15, and 21, women continue to face wage disparities, unsafe working conditions, sexual harassment, and unequal opportunities.The Constitution and subsequent legislations sought to uplift women by promoting education, securing equal pay, maternity benefits, and prohibiting discrimination in employment. Yet, the social reality of exploitation persists, showing a gap between law in books and law in action[3].

[2] Desai, M. (2012). Women in modern India. Zubaan
[3] Rao, M. (2012). Law relating to women and children. Eastern Book Company

1.3 Child Labour and Exploitation

Children, often called the national wealth of India, remain victims of harsh socio-economic conditions. Poverty, illiteracy, absence of family planning, and lack of parental care push many children into exploitative forms of work[4] . They are seen working in factories, hotels, roadside stalls, and small-scale industries under conditions harmful to their physical and mental growth.

Historically, child labour within family units was seen as part of learning. In ancient Gurukulas, children combined education with simple forms of work, which did not amount to exploitation. However, with industrialization and commercialization, children were drawn into hazardous occupations, stripping away their childhood and education.

The Constitution provides strong protections under Articles 21 and 24, prohibiting employment of children in hazardous industries and affirming their right to life and education. Various statutes such as the Child Labour (Prohibition and Regulation) Act, 1986, and policies like the National Child Labour Policy aim to safeguard children. Nevertheless, child labour persists, showing the limitations of enforcement and the impact of socio-economic pressures[5]

1.4 Labour Laws as an Instrument of Social Justice

Labour laws in India evolved as an answer to the jurisprudence of industrialization. They were designed not only to regulate employer-employee relationships but also to serve as vehicles of social transformation. Unlike purely penal statutes, labour laws carry a welfare orientation, ensuring fair wages, safe working conditions, reasonable working hours, maternity relief, prohibition of child labour, and the right to organize[6]

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[4] Weiner, M. (1991). The child and the state in India: Child labour and education policy in comparative perspective. Princeton University Press.
[5] Burra, N. (2005). Crusading for children in India's informal economy. Oxford University Press.
[6] Mishra, S. N. (2016). Labour and industrial laws. Central Law Publications

These legislations are a reflection of the spirit of the Constitution, particularly the Preamble, Fundamental Rights, and Directive Principles of State Policy. Industrial law, therefore, occupies a place of pride in Indian jurisprudence as it manifests a nation's progressive character and commitment to human dignity[7]

1.5 International Dimensions

India's engagement with international labour standards has further shaped its domestic framework. As a founding member of the International Labour Organization (ILO), India has ratified several conventions, including those on Equal Remuneration and Discrimination in Employment (ILO, 2023). However, significant gaps remain—India has not ratified conventions on the Worst Forms of Child Labour and Minimum Age of Employment.

This partial compliance underscores the challenges India faces in balancing international obligations with domestic socio-economic realities. Nevertheless, the guidance of the ILO and international human rights instruments like the Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (1989), and the Convention on the Elimination of Discrimination against Women (1967) continue to inform Indian policy and jurisprudence (ILO, 2023).

[7] Baxi, U. (1985). Law and poverty: Critical essays. Tripathi

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Chapter 2

An Overview of Indian Constitution, Labour Welfare Legislations and International Convention Relating to Women and Children

2.1 Constitution of India – Position of Women and Children:

The Indian polity more or less has always tried to cope with the contemporary need-based development of laws for the specified purposes. It may be in the field of Human Rights, Political, Civil Rights, Constitutional Rights, Labour welfare or Social Justice. Still the judiciary always inspires directly or indirectly to meet the challenges as per need, either by precedents, directions, or suggestions etc. The only ray of hope has been the interest shown by the judiciary in upholding the equality of women and their right to equal opportunities through various landmark judgments. The Hon‟ble Supreme Court in a case[8] observed that

"It is well accepted by thinkers, philosophers and academicians that if JUSTICE, LIBERTY, EQUALITY and FRATERNITY, including social, economic and political justice, the golden goals set out by the Preamble of the Constitution, are to be achieved; the Indian polity has to be educated with excellence.

This is because the Constitution is not to be construed as a mere law, but as the machinery by which laws are made. The Constitution is a living and organic thing which, of all instruments has the greatest claim to be construed broadly and liberally.

Articles 14 and 16 of the Constitution intend to remove social and economic inequality to make equal opportunities available to every citizen irrespective of the sex. In reality the right to social and economic justice as envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of State Policy under Part-III and Part-IV of the Constitution respectively, in particular Articles 14, 15 (3), 16(1), 39(a), 39(d), 39(e), 39(f) and 46 provides to make the quality of the poor, disadvantaged and weaker sections of the society meaningful. Similarly, to

[8] P.A.Inamdar *v.* State of Maharastra, (2005) 6 SCC 537.

safeguard the interest of the children the Constitutional mandate has been enumerated under Articles 15(3), 39(e), 39(f)[9], 41. Moreover a specific provision under Article 42 enables the State to make provision for securing just and human conditions and for maternity relief.

Article 39(a) *inter alia* provides that the State shall in particular direct its policy towards securing all citizens; men and women equally have the right to adequate means of livelihood. This Article has been described as having the object of securing a welfare state may be utilized for construing provisions so as to fundamental rights.[10]

The provisions and objectives of various labour welfare legislations enacted for the betterment of women should be construed harmoniously with the constitutional goals of removing gender-based discrimination effectuating socio-economic justice and empowerment of women and children employed in industries.

The Constitution also prohibits employment of children below 14 years of age in factories and hazardous employment. Article 24 is certainly in the interest of public health and safety of children. Children are assets of the nation. That is why Article 39 of the Constitution imposes upon the State an obligation to ensure that the health and strength of workers, men and women, and the tender age of the children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. It further stipulates that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and that the childhood and youth are protected against exploitation and against moral and material abandonment.

2.2 Labour Welfare Legislations and Indian Constitution:

The idea behind the enactment of labour welfare legislations, in particular the laws relating to women and children are conceived by the modern jurists and legislators is dynamic and includes within its import social justice. It is gratifying to note that apart from the Fundamental Rights our Constitution embodies within itself, in Part-IV under the Directive Principles of State Policy. It is the function and duty of the State *inter alia* to secure social order for the promotion of the welfare of the people

[9] (42nd Amendment) Act,1976, The Indian Constitution.
[10] Srinivas v. State of Karnataka, AIR 1987 SC 1518.

to direct its policy that the citizens have the right to an adequate means of livelihood, that the health and strength of workers and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength and that the childhood and youth are protected against exploitation, to endeavor by suitable legislation or economic organization to all workers, a living wage, condition worth ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. These functions and duties of the State have given rise to the concept of social justice. The main objective of passing various labour laws safeguarding the women and children is to achieve the preambular message of social justice and attain the welfare State. In this context it is apt to quote Fritz Gygi:

"*By social legislation in favour of workers, tenants and lodgers, as also of agriculture, the legislator is doing a work of equalization, which is to improve the lot and prospects of the less fortunate classes. But that is exactly what constitutes the essence of the so-called social freedom. Constitutional rights can no longer remain mere landmarks between the State and the individual."*[11]

The labour welfare legislations enacted in favour of women and children not only aims at providing welfare measures to these weaker sections of the society, but also attempts to establish a secured protective shield in the name of social security. Social security laws envisage that the members of community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose private resources can seldom be adequate to which a person is exposed. These risks are such that an individual of small men cannot effectively provide for them by his own ability or foresight alone even in private combination with his colleagues. The concept of social security is based on ideals of the human dignity and social justice.

The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law, meaning and significance to the ideal of welfare state.

Justice P. B. Gajendragadkar in *Workers of Gold Mines* case[12] observed that

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[11] Fritz Gygi, "The Rule of Law in the Contemporary Welfare State", Journal of the International Commission of Jurists, 1962, Vol.VI, pp.7-9.
[12] State of Mysore *v.* Workers of Gold Mines, AIR 1958 SC 923

"*In the economic sphere, social justice means opportunities in greater measure to the poor and the needy for the betterment of their economic and social conditions. It does not mean making rich man poor in order to make poor men rich. It does not mean that all wealth should be shared equally."*

The scope of social justice is comprehensive and is founded to the basic ideals of social economic equality and it aims at assisting the removal of socio-economic disparities and inequalities of birth and the competing claims especially between employers and workers by finding a just, fair and equitable solution to their human relation problem, so that peace, harmony and collection of the highest order prevails amongst them which may further foster the growth and progress of nations.

Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as Constitutional or Fundamental Rights in India. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time immemorial and therefore included general as well as specific provisions for the upliftment of the status of women. Article 15(1) prohibits gender discrimination and Article 15(3) lifts that rigor and permits the State to positively discriminate in favour of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. The State in the field of Criminal Law, Service Law, Labour Law, Social Laws etc. has resorted to Article 15(3) and the Courts, too, have upheld the validity of these protective discriminatory provisions on basis of constitutional mandate. Article 16 of the Constitution provides equality of opportunities for all and prohibits discrimination against women. The Constitution, thus, provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. The Delhi High Court in *Dimple Singla v. Union of India*[13] expressed its apprehension that unless attitudes change, elimination of discrimination against women cannot be achieved. There is still a considerable gap between constitutional rights and their application in the day-to- day lives of most women. At the same time, it is true that women are working in jobs which were hitherto exclusively masculine domains. There remains a long and lingering suspicion regarding their capacities to meet the challenges of the job assigned. Such doubts affect the dignity of working women. The term „social laws" and „social legislation" used in this context denotes not only industrial and labour matters but also other social matters like subjects affecting children, women and

[13] (2002) 2 AISLJ 161.

other weaker classes. A major portion of industrial and labour law would thus be part of social legislation.

2.3 Social Justice and Industrial Law:

The origin of the concept of social justice is traced by modern democratic jurists from the time of formation of International Labour Organization after the close of World War I. This great labour organization "was born at a time when a great stirring of hope quivered in the heart of those who cherished a desire of social justice. After the first Great War private enterprise has been slowly yielding place throughout the world to planning of economic life and this process had been accelerated by the great depression. Social progress was considered as necessary as economic progress", wrote Mr. Albert Thomas, the first Director of International Labour Organisation.[14] A little introspection would, however, reveal that the fundamentals of social justice had their roots in the great revolutionary movement of „liberty, equality and fraternity" of France and the Communist thoughts of philosophical thinkers like Karl Marx and Engels and their immediate application in the revolution of the proletariat in Russia during and after the World War I.

Although there was no dearth of humanitarian thinkers in democratic countries, the application of the principles of socialism was halting and long delayed. The economic theories propounded by Adam Smith and Robert Malthus had their hold in the industrial field. It can be said without any fear of contradiction that all forms of Government including judiciary tried to curb for long the labour upsurge towards collectivism. The doctrine of *laissez faire* was considered to be the best policy in matters relating to labour. The realization of injustice towards labour did give rise to some legislation.

It has been said that law approximates to justice. In a democratic state of society, the conception of administration of justice is based on the Rule of Law, which is conceived by modern jurists, is dynamic and includes within its import social justice. The functions and duties of the State have given rise to the concept of social justice. The old idea of *laissez faire* State has given place to a new idea of welfare State. The modern State acts as a dispenser of social services and as an economic controller. This has given rise to a fundamental difference that arises out of the

[14] K. D. Srivastava, Commentaries on Contract Labour (Regulation and Abolition) Act,1970 (3rd Edn 1982, Eastern Book Company, Lucknow) p.5

demands in a welfare State, to be met by social control through law. The concept of social justice is dynamic. In dispensing social justice, apart from the interest of contesting parties, the general and over-all interests of society as a whole have to be taken in to consideration so as to prevent tampering of one group in society at the cost of the rest.

This process naturally brings in to play not only the appreciation of various social forces that are at work at particular time in society, but also the concept of social philosophy of the judge, who shouldered the responsibility to do justice. With the concept of welfare state, the State is no longer content to play the part of a passive onlooker. The old principles of freedom of contract and the doctrine of *laissez faire* have yielded place to new principles of social welfare and common good. In the context of modern Industrial Law, the judges while interpreting the welfare legislations do interpret legitimately and liberally so as to achieve the socio-economic ethos and aspirations suiting to the needs of the times in which the legislation is passed. Further they strike a balance between the legislative intent and the social welfare objectives enshrined in the Constitution to ensure real social justice. The concept of social justice serves as the bed rock behind the enactment of various labour welfare legislation protecting the interest of weaker sections more particularly women and children in order to still empower them.

2.4 International Convention on Labour Welfare:

The ill-consequences of the industrial revolution in the western world compelled the Governments of those countries to introduce a spate of welfare measures and social assistance schemes since the 19th century. The role of the International Labour Organization since its inception in 1919 gave an added dimension to the effectuation of social security and labour welfare measures not only in the advanced countries but in the developing world as well. Through many conventions and recommendations, the International Labour Organisation (I.L.O) exerted its influence to extend the range of security and the classes of protected thereunder including women and children.

Convention on Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)

Article 1 states that "for the purpose of present Convention, the term „discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of imparting or nullifying the

recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civic or any other field."

Whereas Article 2 of this Convention directly defines the violence against women.

The Article states that "violence against women" shall be understood to encompass:

a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children with household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence related to exploitation.
b) physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
c) physical, sexual and psychological violence perpetuated or condoned by the State, wherever it occurs.

The General Conference of the International Labour Organisation held in 1944 in Philadelphia clarified its objectives through a declaration. According to Article 3 of the Declaration following are its main objectives:

Full employment and rise in living standards; Minimum living wage;
Recognition to the rights of collective bargaining; Social security;
Proper security of the health of the workers; Child welfare;
Proper arrangements of housing, entertainment etc;
Assurance of equal opportunity in education and employment.

The countries who are members of the International Labour Organisation, have drawn not only inspiration but a considerable degree of guidance from the Conventions and Recommendations of I.L.O.[15] in evolving a progressive labour code in accordance with the principles of social justice which I.L.O. has been propounding from the beginning.

[15] The Indian Labour Year Book, 1960, pp.331-332.

2.5 National Commission on Labour And Its Report:

A high-power commission on labour affairs known as the "*National Commission on Labour"* was appointed by the Government of India on 24th December 1966 under the Chairmanship of the former Chief Justice of the Supreme Court of India, Dr. P. B. Gajendragadkar, having on its membership employers‟ representatives, trade union representatives and independent persons.

The terms of reference of the Commission included a very wide range of matters regarding the existing conditions of labour in the country, review of the existing legislative and other provisions intended to protect the interests of labour, and to advise how far they serve in implementing the Directive Principles of State Policy in the Constitution and the national objectives of establishing a socialist society and achieving planned economic development.

Appointment of such a commission was a momentous occasion in the history of labour as 36 years had passed since the appointment of the Royal Commission on Labour in 1929 which went in to the labour affairs and conditions of labour in the country. After a thorough and comprehensive study of the matters the Commission signed its report on 28th August 1969 and suggested some of the very far-reaching and important recommendations.

The Royal Commission found that it was impracticable to formulate a Common Labour Code for the whole country, the reason being that labour continuing in the concurrent list under Constitution, adjustment to suit local conditions in different States would have to be allowed and these adjustments may not necessarily conform to the letter of a common code.

The commission has suggested measures to straighten the existing legal provisions rather than overhauling the same. On the whole the approach of the Commission seems to have been to maintain the existing labour structure in the country with suggestion for modifications and recommendations for improvements.

The last part of the decade has witnessed a growing and searching reappraisal of the entire gamut of labour situation in various countries of the world. Of considerable interest to readers in our country is the Report of the "Royal Commission on Trade Unions and Employers‟ Associations, 1965-1968" of U.K. under the Chairmanship of the Rt. Hon'ble Lord Donovan the eminent Jurist and Lord of Appeal in U.K.

2.6 Legislative Regulation of Employment Terms:

The government regulation, in our country, of late, has been mainly on the following lines in respect of employment conditions:

Enactment of minimum standards and regulation of employment terms and conditions for specific industries viz.-

Factories and Workshops[16]
Mines and Minerals[17]
Plantations[18]
Transport[19]
Working Journalists[20]
Shops and Commercial establishments[21]
Regulation and prescription of minimum norms in respect of specific industrial matters e.g.
Wages[22]
Indebtedness[23]
Social security[24]
Welfare and Safety[25]
Housing[26]
Forced Labour[27]
Prescription of employment conditions for sub-standard or weaker groups of society e.g.

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[16] Industries (Development and Regulations) Act,1951; Factories Act,1948; Cotton Ginning and Pressing Factories Act,1949.
[17] Mines Act,1952; Mica Mines Labour Welfare Fund Act,1946; Coal Mines (Conservation and Safety) Act,1952.
[18] Plantations Labour Act,1951; Tea Districts Emigrant Labour Act,1952.
[19] Indian Dock Labourers Act,1934; The Motor Transport Workers Act.
[20] The Working Journalists (Conditions of Service) and Misc. Provisions Act,1955
[21] The Weekly Holidays Act,1942; The Shops and Establishments Act; Tamil Nadu Shops and Establishments Act,1947
[22] Minimum Wages Act,1948; Payment of Wages Act,1936
[23] Madras Workmen"s Protection Act,1941
[24] Employees Provident Fund Act,1952; Employees State Insurance Act,1948; Indian Fatal Accidents Act,1855; Workmen"s Compensation Act,1923.
[25] Factories Act,1948
[26] Housing Boards Acts in different States.
[27] Art.23 of Constitution of India

Children[28]
Women under certain conditions[29]
Apprentices[30]

These legislative regulations made by the State in respect of labour and employment conditions in generic sense also have a legal binding which provides for the welfare of women and children who are employed in the industries in particular. The appropriate labour welfare legislations provide for the protective mechanism of these weaker sections against undue exploitation.

Taking steps towards protecting employment is an immediate obligation. Deliberate, concrete and targeted steps as expeditiously and effectively as possible, in similar ways as are being taken to support the economy and industry. Such steps might include adopting legislation or the administrative machinery, or establishing action programs and appropriate oversight bodies to step retrenchment and layoffs. An understanding of progressive uplift of the economy does not justify the government's inaction on the immediate and massive sufferings of labour. The right to work and the rights at work are perhaps the least prioritized in our country today. The concern for workers" rights includes worries in the international community over processes of globalization and the social consequences of trade liberalization. Nowhere more than in the workplace do we see, in practice, an absolute indivisibility of rights. Instances of labour violations throughout the country prove how abuses of civil and political rights compound an already grave situation, where breaches of economic, social and cultural rights have already existed.

2.7 Industrial Relation and Labour Welfare in The Era Of liberalization:

With the declaration of national emergency with effect from 26th June 1975 and announcement of 20-point economic program, the socio-economic policies including industrial relations, have taken a positive and a meaningful turn. Like in political and constitutional history of the country, this marks the beginning of a positive and constructive era in industrial relations also. While on the one hand renewed and vigorous battle against poverty has been launched for mitigating the sufferings of the deprived, vulnerable and weaker sections of society, the attitudes,

[28] Children (Pledging of Labour) Act,1933; Employment of Children Act,1938
[29] Maternity Benefit Act,1961
[30] Apprentices Act,1961

trends and activities of working classes leading to indiscipline, economic chaos and collapse of industrial production by interruptions, agitations etc., have also been controlled. The industrial man-power has been channelized for raising productivity. This era, therefore, witnesses not only laws for pruning the existing industrial and labour laws structure but also carving out a positive role for it. Thus anti-inflationary laws like Payment of Bonus (Amendment) Act,1975, Additional Emoluments (Compulsory Deposit) Amendment Act,1976 and the 42nd Amendment of the Constitution Act, the Bonded Labour System (Abolition) Act,1976, the Equal Remuneration Ordinance and consequential Act viz. Equal Remuneration Act,1976 and introduction and revision of agricultural minimum wages, schemes for providing assistance to women workers during the period of pregnancy by way of maternity benefit and more schemes of social security characterize the new labour law approach. Undoubtedly this is the first ever pragmatic and firm approach to put the labour jurisprudence on a socially just base. This marks the end of the era of governmental hesitation and opportunism-plagued approach in favor of a determined and positive effort for the formulation of a rational industrial order based on socio-economic justice. A new leaf has turned in the rural management of social engineering.

The year 1991 witnessed a radical switch over from protected, controlled and closed economy to competitive, decontrolled and open economy in the name of liberalization, privatization and globalization. This made all avenues thrown open to women in par with men in terms of employment. With the opening of Multi-National Corporations (MNCs), Marxist Law of labour was replaced by marketism. Consumerism overshadowed austerity and divinity was agressioned by Darwinism. Humanistic value attached to labour force has been evaluated on its cost effectivity bearing a lot of pressure on Industrial Relations. The principle of *„demand and supply"* and *„hire and fire"* got its head up. Labour cost is now related to productivity and not on security. There are no country today where industrial relations or labour management relations can be entirely a matter of tradition or custom; nor is there any country where the industrial employer or management, the workers or their organizations and Government do not interact to build up the country's industrial relations system. Industrial Welfare means looking after the employees by the employer by providing them with facilities ordinarily required to make a worker contended and happy in body and spirit. The facilities extended should not only cover his period of work at the establishment but also his life outside. To keep in pace with the modern developments the industrial establishments have now started to provide the benefits available to women workers and very keen

in ensuring the safety of female employees at workplace by evolving Code of Conduct and formulating Grievance Settlement Procedure through setting up of Complaints Committee to deal with the complaints leveled against the employer for violation of the legal procedures and non-compliance of the statutory requirements in terms of employment, conditions of service, wages and other monetary benefits, maternity benefits etc.

Fundamental rights at work viz: elimination of forced and compulsory labour in all its forms, equal pay for women and men for work of equal value, freedom of association, and a ban on child labour are missing and these are considered to be the effects of global financial crisis. The right to work and rights at work have been heavily curtailed in India in the recent past. The right of access to employment without discrimination, free choice of employment, and a supportive structure that aids access to employment, which includes appropriate vocational education, right to fair wages, safe and healthy working conditions, reasonable limitations on or employment, are less valued. We seriously lack a basic framework for protection of labour rights and an enabling rights-based environment for equity and development.

In an atmosphere where basic principles of freedom of association, the right to organize and the importance of collective bargaining have been comprehensively cornered by employers and sectors in the past decades, the strength among workers and their organizations to stop downsizing or protest against anti-union discrimination has diminished considerably although there have been some calls for all India protest actions. No doubt, the primary accountability rests with the governments in whose jurisdiction the violations are occurring. At the same time, the companies must be answerable for labour rights abuses on their premises.[31]

Today, the reality of liberalization and corporate globalization is more exposed and the alternatives are clearer. The immediate challenge is labour redundancy. However, the danger in the present trend is determined not only by their immediate direct significance but also by the fact that like before, they will create the conditions for a further onslaught on people's democratic rights and for an anti-people restructuring of the economic sphere.

[31] An article titled „Right to work and rights at work" by Mukul Sharma published in THE HINDU, Chennai Edn

Bad Law and Good Judge Policy:

Sometimes in the history of judiciary in India and elsewhere the judge interprets the law on many grounds viz., social customs, relationship of parties, legislative intend etc. for such act of judiciary the law is corrected beforehand of new amendment or new legislation. The good judge who interpret a particular fact and issue with the sorrowing factors. Every legislative drafting is not correct in full extent. Some drafting leaves the people to raise an eyebrow for comments. Especially the legislation on women and children on labour issues require many aspects of judicial interpretations. The judiciary has to evolve a multi-dimensional approach while interpreting the law relating to the welfare of women and children.

On the whole among the three great organs of our socialistic country viz., Legislature, Executive and Judiciary, the supreme authority is vested in the Judiciary, rightly termed as the brain of India and Article 141 of our Constitution which reads as the law declared by the Supreme Court to be binding upon all courts, is the best instrument for correction of law and proper use of it. This Article also provides that this final authority vests in it.

Justice Binann of Supreme Court of America in case of *Roth v. United Stat*[326] observed that the law is not an end itself nor does it provide ends. It is prominently a means to serve what we think is right. The law is to serve. To serve what? To serve in so far as law can properly do so, within limits of the realizations of man's ends, ultimate and mediate.

In this context one may remember the wordings of Earl Warren, the then Chief Justice of US Supreme Court who once had said "our judges are not monks or scientists, but participants in the living stream of our national life, steering the law between the dangers of rigidity on the one hand and formlessness on the other."

Lord Denning once observed[33]:

"There is a clear and absolute line between law and morals. Law is simply a series of commands issued by a sovereign telling the people what to do or what not to do. Judges and advocates are not concerned with the morality of the law, but only with

[32] 354 US 476.
[33] The Family Story: Law and Morals, p.181

the interpretation of it and with its enforcement. This supposed division between law on the one hand and morals on the other has been a great mistake."

Benjamin N.Cardozo, the then Associate Justice of the United States Supreme Court observed:[34]

"A definition of law which in effect denies the possibility of rules of general operation must contain within itself the seeds of fallacy and error."

The equality, justice and conscience is the purposive approach in the basic frame work of the constitutionalism. This is the source of great and good judges, for dealing with cases in respect of rights.

In respect of judges and use of law aftermath of enactment, Lord Denning once wrote and he reluctantly holds that we trust the judges and corrective criticism made in good faith is the answer.

He also pronounced:[35]

"It is the right of every man, in Parliament or out of it, in the press or over the broadest, to make fair comment even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we should ask is that those who criticise will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be iIts own vindication."

Constitutional recognition of women's rights and the degree to which the Constitution had been used to grant or deny equal legal status became the most controversial issue undertaken by the United States President's Commission Report on American Women, was based in great part, on the in-depth analysis and recommendations of seven committees on Civil and Political Rights, Education,

[34] Benjamin N.Cardozo, "The Nature of the Judicial Process", (8th Indian Reprint,2010, Universal Law Publishing Co. New Delhi) p.126
[35] Quentin Hogg case

Federal Employment, Private employment, Home and Community, Social Security and Taxes and Protective Labour Legislation.

During the late nineteenth century and early twentieth century, many states passed laws restricting the employment of women to certain occupations, establishing maximum hours, minimum wages, maximum weight to be lifted, etc. These laws were designed to protect women from exploitation and the hazards of industrial life. Reflecting on the judicial decisions, by focusing on the gender differences rather than on gender disadvantages, the courts often misperceived the problem and misconstrued the solution.[36] Resistance to female participation in public pursuits, particularly paid labour, reflected a broad array of ideological and economic concerns. In 1963, the President of United States of America, John F. Kennedy signed the Equal Pay Act, the first piece of federal legislation prohibiting discrimination on the basis of sex.

The US Supreme Court in *Bradwell v. State of Illinois*[37], Justice Bradley revived the cult of domesticity and infused it with constitutional as well as spiritual significance.

He observed,

"The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of thing is repugnant to the idea of a woman adopting a distinct and independent career from her husband."

Despite the erosion of formal legal restrictions, discrimination by employers persisted. At the lower reaches of occupational hierarchy women's maternal mission continued to be a major obstacle to equal opportunity. During the latter part of the eighteenth and early nineteenth century the State Legislature passed protective labour statutes enacted to protect workers regardless of sex. In *Lochner v. New York*[38] the court held that these kinds of labour restrictions could not be imposed on

[36] Mamta Rao, Law Relating to Women and Children (1st Edn. 2005, Eastern Book Company, Lucknow) p.16
[37] 83 US 130 (872)
[38] 198 US 45

men's constitutional rights of personal liberty and the liberty of contract; this was not held to be true for women however.

In a celebrated decision, the Supreme Court of United States in *Muller v. Oregon*[39] upheld an Oregon State Law restricting women's working hours while adhering to a precedent that disallowed comparable restrictions for men. The re-emergence of a feminist movement drew in to a question certain central tenet of legal ideology. The proliferation of statutory mandates and state constitutional provisions against sex discrimination were both a catalyst and consequence of changing attitudes towards the status of women.

Though the necessity of reviewing Indian women‟s status across the historical phases is non-controversial, the task is fraught with innumerable difficulties. As historian Romilla Thapar remarks:

"Within the Indian subcontinent there have been infinite variations on the status of women diverging according to cultural milieu, family structure, class, caste, property rights and morals."[40]

[39] 208 US 412: 52 L Ed 551 (1908)

[40] Romilla Thapar, Looking Back in History, Devika Jain, "Indian Women", Publication Division, Ministry of Information and Broadcasting, Government of India, New Delhi, 1975, p.6.

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Chapter 3

International Conventions on Labour Law Relating to Women and Children

3.1 Universal Declaration of Human Rights, 1948:

The Preamble of the United Nation Charter 1945 begins by referring a faith in fundamental human rights in the dignity and worth of the human persons, in the equal rights of men and women.

Human rights may be defined as the rights and freedoms that every person on the earth are entitled to enjoy certain rights viz: right to social security, right to equality, right to life, liberty and security of persons etc., without distinction of any kind such as race, color, sex, language, religion, political or the opinion, national or social origin, property, birth or status.

Article 2 of UDHR states that everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind such as race, color, sex, language, religion, political or other opinion, nation or social origin, property or other status.

As per the Universal Declaration of Human Rights, women along with men are entitled for the following civil and political rights as the terms "no one" and "everyone" consists both men and women. All human beings are born free and equal in dignity and rights.

Article 23 of UDHR ensures the right to work and equal pay for equal work to everyone without any discrimination.

3.2 The United Nations Declaration on The Elimination of Discrimination Against Women, 1967:

The General Assembly of the United Nations adopted the Declaration on the 7th November, 1967. The Preamble to the Declaration states that despite various instruments extensive discrimination against women continues exist. This Declaration was a precursor to the Convention on the Elimination of All Forms of

Discrimination against Women, 1979. Some of the important Articles related to equal remuneration, equal rights in the fields of economic and social life.

Article 10 of this Declaration directs that all appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

1. The right without discrimination on grounds of material status or any other grounds to receive vocational training to work, to free choice of professional and employment advancement.
2. The right to equal remuneration with men and to equality of treatment in respect of work of equal value.
3. The right to leave with pay retirement, privileges and provision for security in respect of unemployment due to sickness, old age or other incapacity to work.
4. The right to receive family allowance on equal terms with men.

3.3 The United Nations Convention on Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW):

Article 11 of this Convention provides that the state parties are required to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the following rights on the basis of equality of men and women:

1. The rights to work as an inalienable right of all the human beings.
2. The right to same employment opportunities, including the application of the same criteria for selection in matter of employment.
3. The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training including apprenticeship advanced vocational training.
4. The right to equal remuneration, including benefit of equal treatment in respect of work of equal values, as well as the equality of treatment in the evaluation of equality of work.
5. The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other capacity to work, as well as the right to paid leave.
6. The right to protection of health to safety in working conditions including the safeguarding of the function of reproduction.

Article 11 of this Convention, the state parties shall take the following measures to prevent the discrimination against women on the ground of marriage or maternity and to ensure their effective right to work.

1. To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy, maternity leave and discrimination in dismissals on the basis of marital status.
2. To introduce maternity leave with pay or work comparable social benefits without loss of formal employment, seniority or social allowances.
3. To encourage the provision of necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life in particular through promoting the establishment and development of network of child care facilities.
4. To provide special provision to women during pregnancy in types of work proved to be harmful to them.

India is a signatory to CEDAW, 1979 having accepted and ratified it in June 1993. The domestic courts are under an obligation to give due regard to the International Conventions, treaty provisions and norms for construing domestic laws when there is no inconsistency between them. It is pertinent to note here that the United Nations recently on 8th March 2010 celebrated the centenary year celebrations of International Women's day with its focus on gender equality and upliftment of women with a theme, "Equal rights, equal opportunities: Progress for all".

3.4 Rights of The Children:

The beginning of the movement for the rights of the child can be traced back with the first impression of international concern over the situation of children came in 1923 when the Council of the newly-established non-governmental organization "Save the Children International Union" adopted a five-point declaration on the rights of child. This Geneva Declaration was endorsed in the following year, 1924, by the fifth Assembly of the League of Nations. In 1948, the General Assembly of the United Nations approved an expanded version of that text and, in 1959, went on to adopt a new declaration for child welfare and protection. The Convention on the Rights of the Child, 1989 marked the culmination of the efforts to bring the international community to recognize the needs of children.

Article 25(2) of the Universal Declaration of Human Rights states that:

"Motherhood and childhood are entitled to special care and assistance. All children whether born in, or out of, wedlock shall enjoy the same social protection."

Article 10(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that:

"Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage and other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals, or health, or dangerous to life or likely to hamper their moral development, should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law."

The International Covenant on Civil and Political Rights (ICCPR) provides:[41]

1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status of a minor on the part of his family, society and the State;
2. Every child shall be registered immediately after birth and shall have a name;
3. Every child has the right to acquire nationality.

The United Nations General Assembly adopted another Declaration on Social progress and Development in 1969.

Part I of this declaration, while discussing the concept of family as a basic unit of society, observed that the growth and well-being of its members, particularly children and youth, should be assisted and protected.[42]

Part II provides for the protection of the rights of the child.[43]

The I.L.O. Report on the Protection of Children and Young workers submitted in the Regional Conference for the Protection of Young Workers in Asian Countries held in 1953 at Tokyo has rightly emphasized the problem of prohibition of child

[41] Article 24
[42] Article 4
[43] Article 11(b)

labour is inextricably mixed up with the problem of the maintenance of the child and the provision of a living wage for all employed persons adequate to maintain the family at an adequate standard.[44]

3.5 Declaration of The Rights of The Child, 1959:

The Preamble of the Declaration adopted by the General Assembly of the United Nations on the 20th November, 1959 states:

Whereas the people of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom;

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth;

Whereas the need for such special safeguards has been stated in the General Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of the children.

The General Assembly proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national governments to recognize these rights and strive for their observance, through legislative and other measures progressively taken in accordance with ten principles stated as follows:

1. The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitle to these rights, without distinction or discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

[44] I.L.O Regional Conference Report Measures for the Protection of Young Workers in Asian Countries, Tokyo, 1953, p.13

whether of himself or of his family.[45]

2. The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a locality and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.[46]
3. The child shall be entitled from his birth to a name and a nationality.[47]
4. The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to his end, special care and protection shall be provided both to him and to his mother including adequate prenatal care, the child shall have the right to adequate nutrition, housing, recreation and medical services.[48]
5. A child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.[49]
6. The child, for full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up, in the care, in an atmosphere of affection and of moral and material security.[50]
7. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stage. He shall be given an education which will promote general culture and enable him, on a basis of equal opportunity, to develop his abilities.[51]
8. The child shall in all circumstances be among the first to receive protection and relief.[52]
9. The child shall be protected against all forms of neglect, cruelty and exploitation. The child shall not be the subject of traffic in any form. The child shall not be admitted to employment before an appropriate age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.[53]

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[45] Principle 1,
[46] Principle 2
[47] Principle 3
[48] Principle 4
[49] Principle 5
[50] Principle 6
[51] Principle 7
[52] Principle 8
[53] Principle 9

10. The child shall be protected from practices which may foster racial, religious and any other forms of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellowmen.[54]

3.6 Convention On the Rights of the Child, 1989:

The Convention on the Rights of the Child, drafted by the U. N. Commission on Human Rights, was adopted by the General Assembly of the United Nations on 20th November, 1989. The Convention is a set of international standards and measures intended to protect and promote the well-being of children in society.

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

The Right to Survival:

This right includes the right to life, the highest attainable standards of health, nutrition and adequate standards of living.[55]

The Right to Protection:

This includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment and neglect, including the right to special protection in situations of emergency and armed conflicts.[56]

The Right to Development:

It contains the right to education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.[57]

[54] Principle 10
[55] Article 27
[56] Article 34
[57] Article 29

The Right to Participation:

It includes respect for the views of the child, freedom of expression, access to appropriate information,[58] and freedom of thought, conscience and religion.[59]

The Convention expressly contained a provision that:[60]

1. State parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

The Convention further provides that:[61]

1. State parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual or moral or social development.
2. State parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, State parties shall in particular:
   a. Provide for a minimum age for admission to employment;
   b. Provide for appropriate regulation of the hours and conditions of employment;
   c. Provide for appropriate penalties or other sanctions to ensure the enforcement of the present Article.

India has also ratified on December 2, 1992 the Convention on the Rights of the Child which came in to force in 1990.

[58] Article 13
[59] Article 14
[60] Article 26
[61] Article 32

3.7 International Labour Organization:

The International Labour Organization (ILO) has been instrumental in protecting the rights of children and laying down conditions and standards regarding wages and welfare of working children. Some of the points of focus of the ILO are:

1. Prescribing and pressing uniform minimum age for employment of children under all the Acts;
2. Identifying hazardous occupations and banning the employment of children in such occupations;
3. Recommending laws, rules, regulations, Acts and legislations for protecting children in employment and for progressive elimination of child labour; and
4. Suggesting labour welfare and social welfare measures to protect working children from exploitation and suitable machinery for enforcement and implementation of provisions adopted for welfare of working children.

3.8 World Conference On Human Rights,1993:

In the World conference on Human Rights considerable urgency was expressed for the protection and implementation of the rights of the child. The World Conference reiterated the principle of *"first call for children"*. In this respect it underlined the importance of the role of the UNICEF for the promotion of rights of the child. An opinion was also expressed that measures should be taken to achieve the universal ratification of the Convention as well as its effective implementation.

3.9 Other International Instruments:

1. The United Nations Commission on Human Rights,1994 considered the rights of children under a separate agenda.
2. The United Nations Commission on Crime Prevention and Criminal Justice in 994 adopted resolutions on violence against women and children in international traffic in minors.
3. The Fourth World Conference on Women in Beijing paid special attention to ensuring rights of girl children and protecting them against violence and other forms of crime.
4. Conventions Regarding minimum age Minimum Age (Industry) Convention,1919 Minimum Age (Agriculture) Conventiion,1921
   Minimum Age (Non-Industrial Employment) Convention,1932 Minimum Age (Revised) Convention,1937

Minimum Age (Underground Work) Convention,1965 Minimum Age Convention,1973

Minimum Age (Trimmers and Strokers) Convention,1921 Minimum Age (Sea revised) Convention,1936

5. Conventions Regarding Work at Night

   Night Work of Young Persons (Industry) Convention,1919

   Night Work of Young Persons (Non-Industrial Occupation) Convention,1946

   Night Work of Young Persons (Industry) (Revised) Convention,1948

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Chapter 4

Labour Welfare Legislations Relating to Women

Under the Industrial Laws the women have been bestowed the special position in the view of their unique characteristics physically, mentally and also biologically. As the Constitution of India, 1950 is the basic law of land which enshrines number of provisions to prohibit gender discrimination and protect the interest of women, whether it is political field or industrial field. The State under its constitutional power had formulated number of legislations pertaining to women engaged in industrial activities. Various studies have shown that economic dependence of women is a predominant cause of their subordination. Thus a change in the structure of the economy whereby women are assigned a major productive role would be a way to improve their status. Economic independence is the foundation on which any structure of equality for women can be built.

The Constitution of India adopted by the Constituent Assembly on 26th November 1949 is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity. These objectives specified in the Preamble and elsewhere form part of basic structure of the Indian Constitution. The fundamental law of the land assures the dignity of the individuals irrespective of their sex, community or place of birth.

A. The Preamble:

The Preamble to the Indian Constitution contains various goals including ***"the equality of status and opportunity"*** to all the citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status and opportunity.

It has been the basis for much legislation which aims at achieving equality and social justice. Social justice means the attainment of socio-economic objectives laid down by the planners as envisaged in the Preamble of the Indian Constitution. The jurisprudence of industrialization has demonstrated the vital role of labour laws as an instrument of social justice. Amongst laws which are vital to a nation's life,

which manifest a nation's spirit, which bestow revolutionary and progressive values to jurisprudence and lift it from conservative to progressive strata, industrial law has acquired a place of pride. It can be asserted that it embraces not only labour and industrial matters but also social matters affecting children, women and other oppressed sections of the society.

It was held by the Honorable Supreme Court of India in *L. Pochanna v. State of Maharashtra*[62] as follows:

"Law should be used as an instrument of distributive justice to achieve fair division of wealth among the members of society based upon the principle: from each according to his capacity, to each according to his needs."

According to the Human Development Report,1995, women's participation in the labour force had risen only by four percent points in twenty years, from thirty-six percent in 1970 to forty percent in 1990; women normally receive a much lower average wage than men; all religions record a higher rate of unemployment among women than men; women work longer hours than men in nearly every country; the deeply sharing of the burden of adversities between women and men are still persisting.[63]

In a democratic system the law through legislative and administrative responses to new social conditions and ideas as well as through judicial interpretation, increasingly not only articulates but also sets the course for major social changes.[64] The same role of law has played in our country also. It has been an important instrument in bringing about social change and equality. Under the Constitution of our country both the legislature as well as the machinery for settlement of industrial disputes have invariably to keep in mind the considerations of social justice which is the ultimate goal of all State policy.

The peculiar problem faced by women in the sphere of employment is inequality of wages and discrimination resulting from their biological role of childbearing. This problem was demarcated by the legislature and led to the enactment of legislations

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[62] (1985) 1 SCC 479: AIR 1985 SC 389

[63] Mamta Rao: Law Relating to Women and Children (1st Edn. 2005, Eastern Book Company, Lucknow) p.363

[64] W. Friedmann: Law in a Changing Society, (2nd Edn, 1972 Penguin Books, London) p.513.

like the Equal Remuneration Act,1976 and the Maternity Benefit Act,1961. The mandate in the Preamble of the Constitution also directed the State to incorporate protective, beneficial and health provisions relating to welfare of women in various enactments.

The specific legislations passed by the State in this regard has to be interpreted liberally since these laws are termed as the beneficial legislations and hence the real benefits extended under these enactments has to reach the concerned section of the society to the fullest extent.

B. Fundamental Rights:

Even though all the fundamental rights contained in Part III under Articles 12 to 35 are applicable to all the citizens irrespective of sex, certain fundamental rights contain specific provisions to protect the rights of women and children.

Article 15(3) of the Constitution specifically provides that the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth as contained in Art.15, shall not prevent the State from making any special provisions for women and children. In other words, the State is empowered to make any such provisions and it shall not be violating the Art.15.

Article 15(1) prohibits gender discrimination Art.15(3) lifts that rigor and permits the State to positively discriminate in favor of women to make special provision to ameliorate their social, economic and political justice and accords to them parity.

Article 15(3) which permits special provisions for women and children has been widely resorted to by the State and the Courts have always upheld the validity of the special measures in legislation or executive order favoring women. These provisions could be seen in the sphere of Labour and Industrial Laws, Service Laws and Criminal Laws. To understand these provisions clearly some of the important Labour and Industrial laws have to be discussed.

4.1 Social Justice and Women Welfare:

Social justice is an inseparable component of human rights of women in India. It is also an essential concomitant of sustainable development of a nation. As human rights envelope social justice, they are not only incomplete, but also empty and meaningless without it. To a great extent, the goal and fruits of human rights are

social justice and the resultant development of women. Conflict of interest and pressing claims and justifying them by rules are also the result of social justice. John Rawls has argued that we are traditionally committed to acting justly by our very position as persons engaged with other in joint practices designed to promote common or complementary interests. Social welfare is a broad term used to cover many allied concepts.

The duty to act justly by providing social justice and protecting human rights stems from the duty to keep a promise by respecting human dignity. Human rights and social justice are necessary to society and our ideas on them arise from needs common to all human beings.

These are binding by custom and convention but are justified by their inseparable quality to human dignity. Understanding the humanness of a woman is imperative in helping her to attain development besides helping her to protect and promote her human rights. Biologically the ground plan of a human body is female, which becomes male only when some conditions prevail.

Human rights to a woman mean her liberation from the traditional bonds and discrimination, improvement in her concept of self and her relation to the environment and the people around her. It means a matter of provision of social justice in relation to resources, organizations and structural opportunity of women. So, human rights expect a change in the perception and the value characteristics of Indian culture.

Therefore, social justice to women in terms of provision of basic needs has to be the essential pre-requisite for the protection and promotion of human rights in our country. The development of women needs the articulation of social justice and implementation of human rights.

The only ray of hope has been the interest shown by the judiciary in upholding the equality of women and their right to equal opportunities through various landmark judgments. Women's development is an inseparable part of social justice and can be considered as increase in women's choices, opportunities, freedoms and participation in decision making. Therefore, considering the social justice view of human rights on women's development number of welfare measures including the passing of various labour welfare legislations to safeguard the interest of women workers is being carried out from time to time so as to ensure them with social justice.

4.2 Equal Remuneration Act,1976:

The Directive Principle of State Policy of the Constitution of India, namely Article 39 specifically directs the states to secure equal work for both men and women. To realize this Constitutional mandate, the Parliament enacted the **Equal Remuneration Act, 1976.** The Act was passed to provide for the payment of equal remuneration to men and women workers and for prevention of discrimination, on the grounds of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

According to the Apex Court ruling in *Dharwad District PWD Employees Association V. State of Karnataka*[65], this Act provides for equal remuneration to men and women workers for the same work or a work of a similar nature and for prevention of discrimination on basis of sex.

4.2.1 History and Evolution of the Principle:

The Supreme Court in *Associate Bank Officers Association V. State Bank of India*[66] has explained the history and evolution of the principle *"equal pay for equal work".* Historically, equal pay for equal work has been a slogan of the women's sex based discrimination in the pay scales of men and women doing the same or equal work in the same organization. It is meant to prevent discrimination on the ground of sex, against women in the matter of employment. The Equal Remuneration Act 1976 contains 18 sections and its provisions are mainly based on Article 39 (d) of the Constitution.

4.2.2 Statement of Objects and Reasons:

The Statement of Objects and Reasons for passing the Equal Remuneration Act,1976 is as follows:

1. Article 39 of the Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the President promulgated on 26th September, 1975 the Equal Remuneration Ordinance, 1975 so that the provision of Article 39 of the Constitution may be

[65] (1990) 2 SCC 396
[66] (1998) 1 SCC 429

implemented in the year which is being celebrated as the International Women's Year. The Ordinance provides for payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on the grounds of sex.

2. The Ordinance also ensures that there will be no discrimination against recruitment of women and provides for the setting up of Advisory Committees to Promote employment opportunities for women.

Parity in wages is one of the major components of service law jurisprudence which has evolved over the years. It was rightly pointed out that "while one may appreciate the fact that a country which has just attained freedom and which has been so long under foreign rule may not be able to implement the provision of adequate means of livelihood for all citizens or that ownership and control of national resources of the community are so distributed so as best to sub serve the common good."[67] But if two workers are doing the same work, why should they be paid different wages. Surely this does not in any way depend on the resources available or on the sex of the worker.

The complacency of the government towards this issue vital to women is further reflected in the fact that though India had ratified the Equal Remuneration Convention of International Labour Organization in 1958, it honored the promise of equal pay only in 1975 when the Equal Remuneration Ordinance was promulgated to commemorate the International Women's Year.

4.2.3 Scope and Applicability:

The Act covers workers in any establishment or employment and extends to the whole of India. The Act does not apply in certain special cases, for example in so far as the terms and conditions of women's employment are affected by any compliance with any other law regulating employment of women or wherein any special treatment is accorded to women in connection with the birth or expected birth of a child, then to the extent of which such special treatment is given. Similarly, where the terms and conditions relating to retirement or death or any provision regarding marriage or death are given special treatment the Act will not apply. Subject to these, the provisions of this act have an overriding effect on the terms of

[67] Mamta Rao: Law Relating to Women and Children (1st Edn. 2005, Eastern Book Company, Lucknow) pp.364-365

any award or agreement or contract of service made before or after the commencement of the Act. The peculiar problem faced by women in the sphere of employment is inequality in wages. This problem is demarcated by the legislature and led to the enactment of the Equal Remuneration Act, 1976.

It was held in *J. P. Singh v. TELCO*[68] that principles of equality are virtually in the nature of natural law and denial of equality would be against the objective enshrined in article of equality, i.e. Article 14 of the Constitution.

4.2.4 Remuneration:

Section 2(g) of the Act defines remuneration as the basic wage or salary and any additional emoluments, either in cash or kind, payable to a person in respect of employment or work done in such employment.

4.2.5 5 Equal Work:

Section 2(h) of the Act defines such work as "work in respect of which skill, effort and of responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment."

The Apex Court in *Mackinnon Mackenzie and co. v. Audrey D. Costa*[69] has observed that the question of equal work can be decided on the basis of various factors like responsibility, skill, effort and condition of work. Whether work is of a similar nature a broad approach should be taken by the authority. This is because the very concept of similar work implies *"differences in detail"*. These differences should not defeat the claims of equality on trivial grounds. The Court further observed that in doing so the fact that duties actually and generally performed by men and women not theoretically possible, should be considered. In the instant case the Supreme Court has held that the confidential stenographers and general male stenographers perform the same or similar nature of work. The Court further gave its verdict that, "there should be proper job evaluations whenever sex discrimination is alleged." If lady stenographers were doing work of the same kind as male stenographers, irrespective of the place where they were working, the employer was obliged to pay equal remuneration. Applying the above criterion, the court held that unless women

[68] (1999) 2 LLJ 43 (Pat).
[69] AIR 1987 SC 1281

were shown as not fit to do the work of male stenographers the employer could not create such conditions of work so as to keep away women from a particular work which they could otherwise perform in order to pay them less wages. Hence, lower remuneration to confidential lady stenographers is discriminatory and violates Section 4(1) of the Equal Remuneration Act,1976 and also Articles 14 and 39 (d) of the Constitution of India,1950.

4.2.6 Employer's Duty:

Section 4 of the Equal Remuneration Act,1976 provides that every employer is under a statutory obligation to pay remuneration at equal rates to men and women employees if they perform the same work or work of a similar nature. The deciding factor in cases of equal wages is the *"same or similar work"* principle. However, this principle leads to adoption of indirect means for fixing lower wages for women like dividing the jobs into Grade I and Grade II and then employing women in the lesser grade, thus overriding the equal remuneration provision. The benefit conferred by the Equal Remuneration Act,1976 is not absolute, but subject to fulfillment of certain conditions. The main objective behind this provision is to enable the employer to make an intelligible classification so as to determine the factor of same or similar work among the men and women workers for providing them with equal wages thereby achieving social justice and equality.

In *Air India v. Nargesh Meerza*[70] the air hostesses of Air India brought a case against their employers, contending that they were being discriminated against assistant flight pursers who did more or less the same kind of work on flights but had better service conditions, later date of retirement and other facilities. In order to set at rest all doubts with regard to violation of the provisions of the Equal Remuneration Act, the government issued a notification which unequivocally stated that the "differences in regard to pay, etc. of these categories of employees are based on different conditions of service and not on the difference of sex." This notification was issued in pursuance of Section 16 of the Equal Remuneration Act, 1976 which empowers the appropriate government to make a declaration subsequent to a close consideration of circumstances that discrimination in remuneration is based on a factor other than sex. The differential thus arising is not punishable.

[70] (1981) 4 SCC 335.

The Supreme Court accepted this declaration and held that:

"If at the threshold the basic requirements of two classes are absolutely different and poles apart even though both the classes may during the flight work as cabin crew, they would not become one class of service."

The Supreme Court granted some infinitesimal concession to the petitioners like rising of retirement age and declaring the provision requiring termination of services of air hostesses on pregnancy as unconstitutional. At the same time the court conceded that functions of the two though obviously different overlap on some points but the difference if any is one of degree rather than of kind. Thus although the air hostesses and assistant flight pursers do almost the same work, the conditions of service of the two cadres are different because of which sex discrimination could not be established. This highlighted the weaknesses of the test of *"equal pay for same or similar work"* in the Equal Remuneration Act,1976.

4.2.7 Prohibition of Discrimination:

According to Section 5 of the Equal Remuneration Act, 1976 no employer shall, while making recruitment for the same work or work of a similar nature, make any discrimination against women unless employment of women is prohibited or restricted by any law. Thus in matter of recruitment or any condition of service subsequent to recruitment such as promotions, training or transfer the employer is prohibited from making a discrimination against women only on grounds of sex. This prohibition is similar to the one contained in Article 16(1) of the Constitution.

The recent judgment of the Delhi High Court which strikes down gender discrimination ruled that not granting permanent commission to Short Service Commissioned women officers in the Air Force and the Army amounts to gender discrimination and directed the two defense services to give permanent commission to all such women officers. The judgment dated 12.03.2010 by a Division Bench of the Court Comprising Justice Sanjay Kishan Kaul and Justice M. C. Garg came on a bunch of petitions by some Short Service Commissioned women officers.

Their contention was that the Air Force had promised in its advertisement for recruitment that the Short Service Commissioned officers would be offered permanent commission after completion of five years in service and subject to availability of vacancy and suitability of the candidates. However, the Air Force changed the recruitment policy in May 2006 saying that no Short Service

Commissioned officers, whether male or female, would be given permanent commission. The women officers submitted before the Court that they were not given permanent commission, which was discriminatory. The women Short Service Commissioned officers of the Army had sought their absorption in the permanent commission to achieve parity with the Air Force women officers. They further argued that they were discriminated against *vis-à-vis* male officers as the latter were granted permanent commission while they were denied this despite working in the same department and having equal merit and experience.

Allowing the petitions, the Bench said: "The Short Service Commissioned women officers of the Air Force who had opted for permanent commission and were not granted extension of Short Service Commission, and of the Army are entitled to permanent commission on a par with male Short Service Commissioned officers with all consequential benefits. The permanent commission shall be offered to them after completion of five years. They would also be entitled to all consequential benefits such as promotion and other financial benefits. However, the aforesaid benefits are to be made available only to women officers in service or those who have approached this Court filing these petitions and have retired during the course of pendency of the petitions."[71]

This judgment is one which attempts to establish equality and prohibit the gender based discrimination against women in recruitment. This decision reflects the real spirit and true intention of the Constitution in ensuring social justice and the activist role of the judiciary in upholding the same in its letter and spirit to the fullest possible extent whenever required. This judgment acts as an instrumentality in achieving social justice in the field of labour welfare for women.

The provisions contained in the Equal Remuneration Act and Rules are mandatory in nature and the employers specified under Section 1 of the Act are under statutory obligation to maintain prescribed registers and other documents as laid down under the Act. Any violation of the provisions would invite penal action against the delinquent employer.

Section 10 of the Act deals with the penalties. If any employer makes any recruitment in contravention of the provisions of this Act, or makes any payment of

[71] Unreported judgment of Delhi High Court reported in THE HINDU, 13.03.2010 Chennai Edn. p.14

remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, or makes any discrimination between men and women workers in contravention of the provisions of this Act shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall not be less than three months but which may extend to two years for the second and subsequent offences.

4.2.8 Cognizance of Offences:

Under Section 12 of the Act, no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act. The Court is competent to take cognizance of an offence either upon its own motion or on its own knowledge, or on a complaint by the appropriate Government or by the person aggrieved by the offence or by any recognized welfare institution or organization. Therefore, it appears from the above provision that even public interest litigation is maintainable under the Act in the case of failure to pay equal remuneration to men and women by an employer.

4.2.9 Implementation and Remedies:

For the purpose of implementation of the provisions of the Act and providing increased employment opportunities to women, the appropriate Government shall constitute one or more Advisory Committees and appoint Inspectors. All cases of contraventions of the provisions of the Act or claims or complaints for discriminatory payment are to be heard by the appropriate Government or by such other officer as it may appoint in this behalf.

After analyzing the entire provisions of the Act, it is very clearly understood that Equal Remuneration Act, 1976 provides for equal pay for men and women doing the same or similar work. It also forbids discrimination on the basis of sex at the time of recruitment the Act however, does not apply to the unorganized sector where most women work. The unorganized sector is that where there is no formal or informal structure which gives laborers an identity for the purposes of bargaining or decision-making against the employer or construction workers, domestic workers, etc. The equality can be achieved only if the provisions are extended even to the unorganized sectors where the discrimination in wages still persists. But with the active intervention of the judiciary at the time needed by formulating new judicial trends to establish social equity and strive to uphold the constitutional values of

social justice and equality the objectives of the Equal Remuneration Act,1976 are achieved to the maximum extent.

4.3 Maternity Benefit Act, 1961:

International attention on maternity protection, of the world community was attracted when the first Maternity Protection Conference was convened in 1919 by the International Labour Organization. In this matters relating to maternity leave, economic benefits during absence from work, leave for bringing up children and non-termination of service during pregnancy and immediately after delivery were deliberated upon and a resolution passed. The resolution of this convention was amended in 1952 which increased maternity leave, economic benefits and added some more benefits to the mothers of new-born children. The fact that motherhood requires special care and attention is reflected in Article 25(2) of the UDHR which says:

"Motherhood and childhood are entitled to special care and assistance. All children whether born in, or out of, wedlock, shall enjoy same social protection."

In the sixtieth session of the International Labour Organization held in 1975, emphasis was laid on the need to make maternity protections more adequate in the following spheres:

a. extension of maternity protection to new categories of women workers
b. extension of the period of statutory or prescribed maternity leave
c. more liberal provision for extended or extra leave during the child's infancy
d. higher rates of maternity benefits
e. more effective protection against dismissal during pregnancy and after confinement
f. greater encouragement of breast feeding and wider provision of nursing breaks for mothers
g. more adequate attention to the safety and health of women during pregnancy and lactation establishment by social security schemes or public bodies of day nurseries to care for infants and children of working parents.

Keeping in view of the convention of the International Labour Organization and the fact that there was a need for providing maternity benefits, Article 42 of the Constitution directs the State to make provision for securing just and human conditions of work and for maternity relief. In pre-Independent India, in 1941 the

Mines Maternity Benefit Act was passed. This Act was applicable to only those women who were working in mines. In 1948 the provision for maternity benefit was made under the Employees State Insurance Act and in 1951 under the Plantations Labour Act. Some State legislations also provided for maternity benefit. The scope of qualifying conditions for payment, the rate and period of benefit was not uniform under these Acts, therefore in 1961 the Maternity Benefit Act was enacted to remove these disparities and to have uniform rules.

It was rightly pointed out by the Supreme Court in *B. Shah v. P.O. Labour Court*[72] that: "Performance of the biological role of child bearing necessarily involves withdrawal of a woman from the workforce for some period. During this period, she not only cannot work for her living but needs extra income for her medical expenses. In order to enable a woman worker to subsist during this period and to preserve her health, the law makes a provision for maternity benefit so that the woman can play both her productive and reproductive roles efficiently."

4.3.1 Object and Scope:

In order to reduce the disparities relating to maternity provisions under the various State and Central Acts referred to above, the Central Government enacted a new Act, called the Maternity Benefit Act in 1961. By the end of the year 1972, the Act was extended to the whole of the Indian Union. It applies to every establishment belonging to the Government except those factories or establishments to which provisions of the Employees State Insurance Act,1948 are applicable. It applies to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances.

The Maternity Benefit Act,1961 has been passed to regulate the employment of a pregnant women in certain periods before and after childbirth and to provide for maternity benefit and certain other benefits. This is a very significant piece of labour legislation which is exclusively devoted to working women in factories, mines, plantations and establishments wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. The law of maternity benefit was enacted to ensure the health and wellbeing of the working mother and her child. It was meant to provide support to a woman worker to enable her to play her productive and reproductive roles and to remove any discrimination faced by her

[72] (1977) 4 SCC 384.

because of the biological role she is required to play. The good intentions of the legislators seem to have backfired since employers refuse to employ married women in order to avoid paying maternity benefit. In some cases, "marriage" itself is a disqualification while in others „pregnancy" acts as a bar to employment. Not only private employers but sometimes even government departments are perpetrators of such derogatory practices.

4.3.2 Restriction On Employment by Women:

Section 4 of the Act prohibits employment or work by women in any establishment during the six weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. Under the provisions of this section a pregnant woman has been given protection in order to protect her health as well as to avoid any interference which may be detrimental to the sound development of the unborn child. It may be noted that even on a request from a pregnant woman, she shall not be given any work which is likely to cause interference with her pregnancy, normal development of fetus or likely to cause her miscarriage or otherwise adversely affect her health.

4.3.3 Right to Payment of Maternity Benefit:

According to Section 5 of the Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at rate of the average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following the day. The maximum period for which any women shall be entitled to maternity benefit shall be 12 weeks, that is to say six weeks up to and including the day of her delivery and six weeks immediately following the day. The maternity benefit is a payment to a woman worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day.

According to Section 5 (o) of the Act, a woman means a woman employed, whether directly or through any agency, for wages in any establishment. No woman shall be entitled to maternity benefit unless she has actually worked in the establishment of the employer from whom she claims maternity benefit for a period of not less than eighty days in twelve months preceding the date of her expected delivery. The qualifying period of eighty days aforesaid shall not apply to a woman who has migrated in to the State of Assam and was pregnant at the time of migration. The

minimum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery. Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

4.3.4 Notice of Claim for Maternity Benefit:

Under Section 6 of the Act, a woman entitled to maternity benefit may give notice to her employer claiming the amount and giving date of availing the leave. The employer shall permit her absence till the expiry of the six weeks after delivery. The employer is bound to pay maternity benefit amount in advance for the period before the delivery on proof of pregnancy. The amount towards the subsequent six weeks must be paid within 48 hours of production of proof that she delivered a child. The failure to give notice will not deprive the woman of her right or maternity benefit or any other amount under the Act. PAYMENT OF MEDICAL BONUS

Under Section 8 of the Act, every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of two hundred and fifty rupees, if no prenatal confinement and postnatal care is provided by the employer free of charge.

4.3.5 Leave for Miscarriage:

As per Section 9 of this Act, in case of miscarriage or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of two weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy. Section 9A provides that in case of tubectomy operation, a woman shall be entitled to leave with wages for a period of two weeks immediately following the day of her tubectomy operation.

It was held in *Manangement of Kallayar Estate Jayshree Tea and Industries Ltd.*

v. Chief Inspector of Plantations[73] that leave for miscarriage can be claimed even if the woman worker had not worked for 160 days in the period of 12 months preceding the date of miscarriage.

4.3.6 Nursing Breaks:

Under Section 11 of this Act, every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed, in the course of her daily work, two breaks of the prescribed duration for nursing the child attains the age of fifteen months.

4.3.7 Prohibition Against Dismissal, Discharge, Wage Deduction:

Section 12 prohibits the employer from discharging or dismissing a woman worker due to her absence permitted by this Act. Such dismissal or discharge will not deprive the woman of her right to maternity benefit and medical bonus. However, if the dismissal is due to the proved misconduct of the woman, she will not be entitled to the above right. The woman can prefer an appeal against such dismissal or termination of employment order to such authority as may be prescribed, within sixty days from the date of communication of such order to her, and the decision of the authority on such appeal whether the woman should or should not be deprived of maternity benefit or medical bonus or both shall be final.

Section 13 makes it clear that the usual daily wages of a woman entitled to maternity benefit should not be reduced due to assignment to her of less arduous work under Section 4(3) or due to giving of two nursing breaks under Section 11.

As is evident, mere legislative process on issues such as maternity benefit does not produce the desired results because new ways are involved to circumvent these provisions. These provisions have also resulted in employers either refusing to employ married women or dismissing them on pregnancy. Continuous monitoring of implementation of these laws will provide a protective umbrella to women right help in lot of cases. But the Maternity Benefit Act, 1961 is a unique piece of beneficial legislation passed with the intention to accord social justice to the women workers in an industry thereby aim to attain substantial degree of socio- economic equality which is the legitimate expectation and constitutional goal. Social justice is

[73] 1998 Lab IC 3394 (Mad)

an essential part of complex social change to relieve the poor and weaker from handicaps, penury, to ward off distress and to make their life livable, for greater good of the society at large.

4.4 The Employees' State Insurance Act, 1948:

The Employees‟ State Insurance Act,1948 is one of the most important social legislation in India, has been enacted to provide for various benefits in different contingencies.

As per this Act, insured women workers get sickness benefit, disablement benefit, dependents benefit, medical benefit and funeral expenses along with insured men workers. In addition to the above benefits insured women workers also get maternity benefit.

4.4.1 Object and Scope:

The object of the Employees‟ State Insurance Act, 1948 is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters. The main object of the Act is to evolve a scheme of socio- economic welfare, making elaborate provisions in respect of it. This Act extends to whole of India.

The provisions of this Act apply, in the first instance, to all factories including the factories belonging to the Government other than seasonal factories. The Central Government in consultation with the Employees‟ State Insurance Corporation or the State Government with the approval of the Central Government, may extend different provisions of the Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

4.4.2 Benefits Given Under the Act:

Section 46 (b) of the Employees‟ State Insurance Act,1948 states:

“Periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such women being certified to be eligible for such payments by an authority specified in this behalf by the regulations, is hereinafter referred to as Maternity Benefits.”

4.4.3 Maternity Benefits:

The maternity benefit is payable for:

1. confinement
2. miscarriage
3. sickness arising out of pregnancy, confinement, premature birth of child, or miscarriage, and
4. death

Under Section 50 of the ESI Act,1948 the qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be or such may be prescribed by the Central Government. The Central Government made the Employees‟ State Insurance (General) Regulations,1950 in exercise of powers conferred by Section 97 of the ESI Act,1948. Some important regulations are related to the maternity benefit to the insured working woman are discussed as follows.

4.4.4 Regulation 87 – Notice of Pregnancy:

Under this regulation, an insured woman, who decides to give notice of pregnancy before confinement, shall give such notice in Form 19 to the appropriate Local Office by post or otherwise and shall submit, together with such notice, a certificate of pregnancy in Form 20 given in accordance with these regulations on a date not earlier than seven days before the date on which such notice is given.

4.4.5 Regulation 92 – Date of Payment of Maternity Benefit:

Regulation 92 states that maternity benefit shall be payable from the date it is claimed, provided that such date does not precede the expected date of confinement by more than forty-two days and that no work is undertaken by an insured woman for remuneration during her leave period.

4.4.6 Regulation 93 – Disqualification for Maternity Benefit:

According to this Regulation, an insured woman might be disqualified for receiving maternity benefit if she fails, without good cause, to attend, or to submit herself to, medical examination when so required; and such disqualification shall be for such numbers of days as may be decided by the Authority authorized by the ESI

Corporation in this behalf. However, a woman may refuse to be examined by a person other than a female doctor or midwife.

Thus it is understood from various provisions of the Employees‟ State Insurance Act, that the Act primarily focused to introduce certain welfare measures and benefits for the betterment of the women. Undoubtedly the ESI Act has achieved the socio-economic objective by providing for the welfare of women workers. Once again the ESI Act being socio-welfare legislation proved to have a great concern for women by ensuring the special benefits to the female employees taking in to account of the needs during their sickness, pregnancy, miscarriage etc. has achieved its objectives to the fullest extent.

4.5 Factories Act, 1948:

In India the first Factories Act,1881 was passed to protect children and to provide for a few measures for the health and safety of workers. The subsequent Act and finally the Act of 1948 aim to consolidate and amend the law and regulate labour in factories. This Act is complete from all points of view and implements several provisions of international conventions like the ILO‟s Code of Industrial Hygiene and periodical examination of young persons.

The Act makes detailed provisions regarding health, safety and welfare of workers. Separate provisions are made for employment of young persons. Exclusive provisions have been made for employment of women in factories. Factories Act,1948 is a welfare legislation which throws prime focus upon the socio-welfare aspects of workers employed in factories.

4.5.1 Provisions for Welfare of Women:

The Factories Act,1948 contains some provisions especially for the welfare of women such as providing separate latrines and urinals for women, crèches, prohibition of woman’s employment near machinery etc. They are discussed in detail as follows.

4.5.2 Prohibition of Woman’s Employment Near Machinery:

According to Section 22 (2) of the Factories Act,1948 no woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machine is in

motion or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any machine or of any adjacent machinery.

Section 27 of the Factories Act,1948 says that no woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.

However, if the feed end of a cotton opener is in room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed end is situated.

The requirement if not met if there is a door made in a partition between the portions of the room and that the door is shown to be open at a particular time or even though it is shut yet it is not locked or other effective means taken to prevent it from being opened by a woman or child wishing to go into the press room.

4.5.3 Conservancy Arrangements:

It has been provided under Section 19(1) of the Factories Act that:

(a) sufficient latrine and urinal accommodation of prescribed types shall be provided, conveniently situated and accessible to workers at all times when they are at factory.

(b) separate enclosed accommodation shall be provided for male and female workers which shall be adequately lighted and ventilated and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage. These accommodations shall be in a clean and sanitary condition at all times. Sweepers shall be employed whose primary duty would be to keep the latrines, urinals and washing places clean.

4.5.4 Creches:

Creches means public nursery where babies are looked after while their mothers are at work. Section 48 of the Factories Act specifically provides that in every factory

where more than 30 women workers are ordinarily employed they should be provided with suitable rooms for the use of their children below six years of age.

Such rooms should provide adequate accommodation along with adequate light and ventilation. The employer has been made responsible to maintain such rooms in a clean and sanitary condition. He should appoint a well-trained woman to take care of the children and infants.

It may also require additional facilities to be given for the care of children belonging to women workers including suitable provisions for washing and changing their clothing, free milk or refreshment and the facility for the mothers for feeding their children.

4.5.5 Other Restrictions:

According to Section 66 (1)(*b*) the provisions of this Act shall be supplemented by further restrictions that no woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m.

The State Government in this regard has been given powers to vary the limits but even such variation shall not authorize the employment of any woman between the hours of 10 p.m. and 5 a.m.

4.5.6 Rights of Workers:

The rights of the workers have been elaborated in Section 111-A of the Factories Act,1948 According to Section 111-A of the Act, every work either male or female shall have the right to:

1. obtain from the occupier information relating to workers‟ health and safety at work
2. get trained within the factory whenever possible, or, to get himself or herself sponsored by the occupier for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers‟ health and safety at work.
3. represent to the Inspector directly or through his or her representative in the matter of inadequate provision for protection of his/her health safety in the factory.

The safety of a woman worker not only means providing safety measures from preventing her against any industrial accidents, but also equally protecting women from sexual harassment in workplaces. One of the evils of the modern society is sexual harassment caused to the women particularly the working women by their male counterpart and other members of the industry. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace.

Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute health and safety problem. It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment including recruiting or promotion, or when it created a hostile working environment.

The Supreme Court considered it is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

In a landmark judgment delivered in *Vishaka v. State of Rajasthan*[74], by the Chief Justice of India J. S. Verma, Justice Sujata Manohar and Justice B. N. Kirpal laid down number of guidelines to remedy the legislative vacuum.

Thus the guidelines and norms given by the Supreme Court to govern, in the absence of legislation till now, in the field of sexual harassment of women at workplaces. Indeed, a historic judgment, responding to the needs of present-day society which have become law filling the legislative lacuna.

a. It shall be the duty of the employer or other responsible persons in workplaces and other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.
b. Express prohibition of sexual harassment ass defined above at the workplace should be notified, published and circulated in appropriate ways.

[74] (1997) 6 SCC 241.

c. The rules/regulations of Government and public sectors bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
d. As regards private employer's steps should be taken to include the aforesaid prohibition in the Standing Orders under the Industrial Employment (Standing Orders) Act,1946.
e. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

It was directed by the Supreme Court in its landmark judgment dated 13.08.1997 that the guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working woman.

These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

It is a sorry state of affairs and very pathetic to note that neither any legislation is passed in India till date to prevent sexual harassment at workplace nor the Governments have adopted suitable measures to ensure that the guidelines laid down by this order are also observed by employers in the private sector.

There is no gainsaying that each of the incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty, the two most precious Fundamental Rights guaranteed by the Constitution of India.

Therefore, it may be concluded that the objective of Factories Act,1948 is not only to protect the position of workmen of various ages employed in factories by laying down rules relating to their health and safety.

But it also aimed at making certain restrictions in the case of child employment and restrictions placed in the working hours of women and young persons.

The Factories Act ultimately proved to be a beneficial and welfare legislation that safeguards the interest of women and young persons employed in factories which

certainly attempts to bring about a social welfare measure which is an integral facet of social justice.

4.6 Mines Act, 1952:

As the mines are not included within the purview of the Factories Act a separate legislation was enacted for the operation of Mines, i.e. the Mines Act, 1952. Under this Act, a separate provision deals with the matters relating to employment of women in mines.

According to Section 46 of the Mines Act,1952:

1. No woman shall notwithstanding anything in any other law, be employed
   a. in any part of a mine which is below ground,
   b. in any mine above ground, except between the hours of 6 a.m. and 7 p.m.
2. Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment or anyone day and the commencement of the next period of employment.
3. Notwithstanding anything contained in sub-section (1), the Central Government may by notification in the Official Gazette vary the hours of employment above ground of women in respect of any mine or class or description of mine, so, however, that no employment of any woman between the hours of 10 p.m. and 5 a.m. is permitted thereby.

The prohibition of employment in a mine which is below ground is made in the interest of women as the process or activity in mines is hazardous and causes material impairment to the health of women.

4.7 The Beedi and Cigar Workers (Conditions of Employment) Act, 1966:

Beedi and cigar making is an area where a large number of women and children are employed. They are then subjected to exploitation in terms of wages and working hours. Long hours of work and less wages compelled the Government to enact the Beedi and Cigar Workers (Conditions of Employment) Act,1966 which provided benefits to women workers.

Under Section 25 of the Act it has been laid down that no woman or young person shall be required to work in any industrial premises except between 6 a.m. and 7 p.m. This has been provided to ensure the welfare and safety of women workers.

Hence all these labour welfare legislations enacted for the protection of women employees are passed with a prime objective to ensure social justice in a welfare state like India. The preambular message of social justice can be achieved if only the interest of all sections of the society irrespective sex is safeguarded. The Constitution of India provides for gender equality which includes the fundamental right to carry on any occupation, trade or profession depends on the availability of a safe working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation and the creation of a mechanism for its enforcement is of the legislature and the executive. To achieve the objectives and attain the purpose of all these welfare legislations it is the bounden duty of the executives to have a check on the effective implementation of the law and ensure that the social welfare objectives are fully achieved. The laws enacted in consonance with the aim to attain social equity and to establish a new social welfare state has achieved the primary intention of the legislation by providing social security and social assistance to the weaker section of the workers and by safeguarding the interest of the women workers in particular.

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Chapter 5

Labour Welfare Legislations Relating to Children

5.1 An Overview of Labour Welfare Legislations Relating to Children:

In a civilized society, the importance of child welfare cannot be underestimated because the welfare of the entire community, its growth and development, depends on the health and well-being of its children. Children are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop. However, these wishful and optimistic sayings look shallow and no more than a rigmarole when one encounters the reality of child labour and exploitation in the unorganised and organised sectors of the economy. In several cases the sectors of work, in which street children are engaged, do not ensure any protection at work with regard to the physical capacity of the child, regularity of income, or any long-term benefits. No wonder India has earned the dubious reputation of being the spring board of a largest concentration of child labour in the world.

In this context it is apt to quote Justice V.R.Krishna Iyer[75]

"The hallmark of culture and advance of civilisation consists in the fulfilment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole."

5.1.1 Constitutional Provisions:

Our Constitution makers, wise and sagacious as they were, had known that the India of their vision would not be a reality if the children of the country are not nurtured and educated. For this, their exploitation by different profit makers for their personal gain had to be first made punishable. The rights against exploitation were mentioned in the drafts proposed by Dr.Ambedkar, K.M.Munshi and K.T.Shah. While

[75] Jurisprudence of Juvenile Justice:A Preambular Perspective, Justice V.R.Krishna Iyer

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.[76]

Children are the most vulnerable section of the society. They become the victims of exploitation and ill-treatment easily and can be directed into undesirable channels by anti-social elements. The Constitution makers reflected their anxiety to protect and safeguard the interest and welfare of the children incorporated Article 15(4) which provides that the State shall not be prevented from making any special provision for women and children. This in reference to provisions which are to their advantage and which give them extra protection they need.

A. Fundamental Rights:

Article 24 of the Constitution of India accepting the fact of prevalent of child labour in India provides that 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. Considering the fact that India is a welfare state, the founding fathers of the Constitution recognised the importance of the rights of the child in a nation‟s development.

B. Directive Principles of State Policy:

Dr. Ambedkar was far ahead of his time and in his wisdom projected these rights in the Directive Principles including children as beneficiaries. Their deprivation has deleterious effect on the efficacy of democracy and the rule of law.

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 that children of tender age will not be abused; that the citizens should not be forced by economic necessity to enter in to avocations unsuited to their age or strength.

Article 39(*f*) enjoins that the State shall direct its policy towards securing that children are given opportunity and facilities to develop in a healthy manner and in

[76] Mamta Rao: Law Relating to Women and Children, 1st Edn 2005, p.410

conditions of freedom and dignity and that children and youth are protected against exploitation and moral and material abandonment.

Article 42 and 43 provide for securing just and human conditions of work and hold out a promise that the State shall endeavour to secure, by suitable legislation, or economic organization or in any other way, for all workers, a living wage with specified conditions of work ensuring a decent standard of life and full employment.

Article 45 mandates that the State shall endeavour to provide free and compulsory education for all children until they complete the age of 14 years.

Thus the Constitution mandates that every child shall have the right to health, well-being, education and social protection without any discrimination on the grounds of caste, birth, colour, sex, language, religion, social origin, property or birth alone.

5.1.2 National Policies on Child Welfare:

The national policies influence law making, clarify laws and ultimately have the effect of supporting rights. The following national policies concern themselves with the children.

1. National Children Policy
2. National Child Labour Policy
3. National Education Policy
4. National Policy of Handicapped Persons

The Government of India in pursuance of the Constitutional provisions constituted committees and commissions to enquire in to the causes and consequences of child labour and suggest measures to reduce the incidence of and ameliorate the conditions of child labour.

The Report of the National Commission on Labour,1969 and the Report of the Committee on Child Labour,1979 are two very important reports made in this direction. In 1975, following the National Policy Resolution for Children 1974, a National Children‟s Board was constituted with the Prime Minister of India as its President. The main objective of creating this Board was to bring about greater awareness and promote the welfare of children and to plan, review and co-ordinate programmes and services directed at children including working children.

Some of the measures to be adopted towards the attainment of full and complete development of the child are:

1. The State shall take steps to provide free and compulsory education for all children up to the age of 14 years.
2. Children who are not able to take full advantage of formal education should be provided other forms of education suited to their requirement.
3. Children shall be protected against neglect, cruelty and exploitation.
4. No child under 14 years shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work.
5. Existing laws should be amended so that in all legal disputes, whether between parents or institutions,the interests of children are given paramount consideration.
6. In organizing services for children efforts would be directed to strengthen family ties so that full potentialities of growth of children are realized within the normal family, neighbourhood and community environment.

The National Policy sets out the measures which the Government of India proposes to adopt towards attainment of the objects set out in the Preamble. They include measures designed to protect children against neglect, cruelty and exploitation and strengthen family ties so that full potentialities of growth of children are realized within the normal family, neighbourhood and community environment.

The issues relating to child labour, however, have to be looked at from the point of view of the legislature as well as the judiciary. In order to fulfil the Constitutional obligation various legislative measures have been adopted to protect the rights of the child. Before analyzing in detail about the various labour legislations relating to children, it is very essential to study the causative factors, magnitude of the problem and socio-economic dimensions of child labour so as to arrive at a conclusion of effective implementation of the law and to suggest for solutions to this Socio-Legal cum socio-economic issue.

5.1.3 Determining Factors of Child Labour:

The prevalence of child labour phenomenon is common in India. In fact, the crux of the emergence, growth and nature of dynamics of child labor intrinsically lies with the changing trends of production and reproduction of a given matrix and to its relation on the existing socio- economic structure of the society.

The value of labour was taken thus as part of child‟s socialisation for reproduction of labour power. Advent of capitalism rapidly transformed the scenario. The capitalist relations of production made redundant the traditional practice of family members working as a team.

The child workers were thus forced out from the familial environment relationships, turned very formal in course of time and the child was gradually exposed towards hazardous environment. It is a double alienation separation from the system of production and an expulsion from the family. As such, now child labour is viewed as a social problem. In the last decade numerous explanations were put forth for the cause of acceleration of child labour force.

The socio-economic backwardness followed by poverty, illiteracy, unemployment, demographic expansion and above all the government apathy are commonly considered as the most prominent causative factors for large scale employment of children. These reasons are inbuilt in India‟s socio-economic formation.

5.1.4 Backwardness:

Backwardness is historically specific phenomenon associated with the development of capitalism in the West and its relations of expropriations of the Third World like India. Such ostencious situation is largely the product of colonial and imperial domination of over centuries which have endangered the survival of the large masses of the people. Now there is extraction of transformation of surplus through a series of metropolis satellite links on diverse sectors.

This situation along with various ineffective Five Year Plans is adding to the continuation of backwardness in India. Even after four decades of independence, India has remained one of the poorest countries of the world both in terms Gross National Product and per capita income.

5.1.5 Poverty:

The issue of poverty is very relative and subjective concept. An estimated 37.6 percent of population lives below poverty line. There has been increasing concentration of wealth on one hand and corresponding pauperization, semi-proletarianization and unemployment on the other. As such, child labour is the product of such continual situation.

Though poverty is not sufficient condition for the phenomenon of child in India yet, quite essential in its essence on analyzing the issue. The association between child labour and the poverty in any given space and time is highly significant.

5.1.6 Bondage:

Bondage is another dimension which is a product of such abject poverty. Pertinent to mention that almost 70 percent of the total child labour force in rural areas an urban unorganized sectors are put under diverse form of bondage by their own parents and guardians. The principal feature is the pledging of child against loan or agreement between the employer and parents of child that child will work all the time in exchange of money or food.

The nature and character of bondage however vary depending upon the existing nature of agrarian structure. This reflects not only the nature of informal sector but also the specific character of Indian capitalism which survives with the cheapest available labour.

5.1.7 Culture and Tradition:

The peculiar restrictive tradition particularly on learning is another dimension for the growth of child labour. Historically learning outside home has remained more or less confined to the privileged members of upper castes whereas children of the producing classes have learned the necessary skills from their parents for their respective hereditary occupations. Education had little relevance for their survival and development.

Needless to say despite constitutional commitments and piecemeal efforts at the level of universalization of education, of nearly two thirds of people remain illiterate indicates continuity of the tradition. The children of the overwhelming majority of the country‟s population are committed to the culture of work from the beginning.

For instance studies in the metropolitan city of Mumbai found that 41 percent of children were working in the manner as what was their family tradition.[77]

[77] National Institute of Public Cooperation and Child Development (NIPCCD) Report 1978. Ministry of Social Justice and Empowerment, India 2009 pp.992-993, Publications Division, Ministry of Information and Broadcasting, Government of India.

5.1.8 Education:

Child labour in another dimension it is observed that limited number of schools, their absence in several interior villages, the clash of school timings and agricultural operations, and the cost of schooling as well as its restricted nature of providing job opportunities facilitates the path of underprivileged classes to enter in to labour market. An estimated 90 percent of children belong to the three lowest classes, namely agricultural labourers, poor and middle peasants.[78]

5.1.9 Magnitude of The Problem:

It is reported that 42 percent of our total population are children. It is shocking that about 5 percent of this child population is child labour, which is about 6 percent of the total workforce of the country. Work participation rate among different states reveals that Andhra Pradesh occupies the highest position followed by Karnataka. It is observed that more than 85 percent of these children are working in primary and allied sectors which is the unorganized sector.[79] As high as 90 percent of them belong to rural areas.

In organized sector, these children are employed in shops and commercial establishments like hotels, garages, as well as in factories where their skill is successfully utilized like beedi rolling, match and fireworks, carpet industries, glass industries, etc. in all cases; the employment obstructs the healthy growth and development of the children. As per the survey carried out by the National Sample Survey Organisation the total employment, in both organised and unorganised sectors in the country was of the order of 45.9 crore.[80]

This is a problem which has three important perspectives. The economic perspective of the problem is that, child labour affects the human capital formation. The evils of child labour does not allow a child to become a complete and normal adult who can be a potent factor of economic development of the country. It never allows the child to be developed education wise, and health wise, which affects the development to

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[78] Child Labour Dimensions in India: An Appraisal, Umesh Chandra Sahoo, Research Unit, CYSD, Bhubaneshwar

[79] Dr.S.K.Tripathy: Child Labour: An Introspection, (1996, Discovery Publishing House, New Delhi) p.20

[80] India published by the Publications Division, Ministry of Information and Broadcasting, Government of India.

the adulthood. Also the use of child labour involves lowest productivity and inefficient utilization of labour force.

As far as the social perspective is concerned children are the most vulnerable group in the society who need greatest social care. If their vulnerability and dependence is exploited, ill- treated and desired in to undesirable channels by the unscrupulous elements of the society, the future will be in danger. To save these future assets the State has to protect them and care for their healthy development.

The legal perspective of the problem is continuance of the child labour system is violation of provisions of the Constitution of India and other legislations which prohibit employment of children. Therefore the problem is of serious concern whatever the magnitude or form may be.

Child labour is the work by children which interferes with their full physical development and their opportunities for a desirable minimum of education and restriction. It is an unhealthy economic practice and social evil. In economic sense employment of children in gainful occupation add to the income of the family and in the social aspect it takes in to account the damages to which children are exposed which means the denial of opportunities for development.[81] Child labour has social aspects and economic implications. Child labour exerts a negative effect on child health. It is the economic backwardness which pushes the child or infants to toil for their bread. The problem of child labour is extended to child beggary and bonded labour.[82] It disturbs the emotional ties between the children and their parents which is turned in to a commercial interaction.

5.1.10 Child Labour – A Socio-Economic Analysis:

The socio-economic structure of the working class promotes increasing involvement of the child labour force. Different modes of exploitation and unhealthy working conditions has resulted in their plight. They are ill-fed, ill-clad and ill-housed. Illiteracy, unemployment, poverty, population pressure, family disorganization due to divorce, loss of parents are the important causes of emergence of child labour. Child labour cannot be eliminated in the presence of poverty and starvation. Child

[81] V.V.Giri, Labour Problems in Indian Industry, Asia Publishing House, Bombay,1972

[82] S.N.Tripathy. "Child Labour in India Issues and Policy options" Article written by Dr.Surendranath Behera titled „Socio-Economic Dimensions of Child Labour-Issues and Policy Options" (1996, Discovery Publishing House, New Delhi) p.119

labour is due to the pressure of economic necessity and hence there is economic use of children to supplement the parents income in poor families. For poor parents an uneducated child is an asset and desire to be educated becomes a double liability, because of loss of earnings if the child did not work and expenditure on education however small.[83]

In the words of Lenin, *"a man sends his child to work as child labour out of impatience when he goes beyond his means."*[84] It is unwillingly done because of the compulsion of economic distress and it remains a universal truth in all cases of the society. There is poverty within poverty. The economically backward people have gained a little within backward regions. Both economically and socially they were kept outside the circumference of the development schemes.

Economic poverty, social segregation and oppression continues. The poorest become the first casualty in the event of natural and human made events. The residential distribution of child workers shows that about 4/5th of them are rural origin. Labourers migrate from rural areas to urban centres because migrant labourers are economically better off in urban area than their counterparts in the villages.

In this context it is apt to quote a real incident reported in the newspaper about the causes for child labour and migrant labourers in a particular region in Maharashtra. In Mardi village of Amravati District, most of the Adivasi and nomadic tribes are finding it very difficult to send their children to school. Most of the children works for daily wages and many of the family migrate to other cities for work. It is not only the abusive parents but teachers also cause children to drop out. There is a large Pardhi community here which is nomadic. Its members travel around for six – eight months a year, taking their children with them.

The entire district is plagued by child labour and migration for employment. The National Rural Employment Guarantee Scheme is non-existent here and the frequent excuse the administration gives is that people do not want to work.

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[83] Government of India, Report of the National Commission on Labour, 1969, p.386.

[84] Socio-Economic Dimensions of Child Labour-Issues and Policy Options, Dr.Surendranath Behera (1996 Discovery Publishing House, New Delhi) p.117

For the impoverished people, it makes little difference that the President of the country hails from Amravati.[8579]

5.1.11 Child Labour – Policy Imperatives:

The problem and evil practice of child labour should be doubly attacked. On the one hand, the income of the poorer section of the people should be increased and on the other prohibition of child labour should be strictly followed. Hence, policy options are opened in both preventive and curative aspect. Eradication of the problem of child labour calls for a long term Perspective Action Plan.

Since in India widespread, prevalence of child labour can be attributed to poverty, child labour cannot be eliminated in the presence of poverty and starvation. When child labour emerges due to economic necessity protection of children can be made by providing sufficient income to the parents of child labour. India has all along followed a proactive policy in the matter of tackling the problem of child labour.

India has always stood for constitutional, statutory and development measures required eliminating child labour in all forms. The Indian Constitution has consciously incorporated the provisions to secure compulsory universal elementary education as well as protection against exploitation of children.

5.1.12 Legislative Measures:

In view of various conventions and recommendations of the United Nations and International Labour Organisation adopted by India, it tries to follow the standards set by such conventions. These conventions act as a guideline in enacting suitable legislations to safeguard the rights of children and maintain the standards set forth by various international instruments.

In order to understand clearly about these legislations, their objectives and level of implementation certainly each of the Acts and the specific provisions listed there under are to be studied in detail.

[85] THE HINDU, Chennai Edn

5.2 Factories ACT,1948:

The Factories Act of 1881 was the first law to define child and to prescribe prohibitory regulations for employment of children below 7 years of age. The Factories Act,1911 prohibited employment of children in dangerous occupations and working during night hours. The present Factories Act,1948 prescribes prohibitory regulations for employment of children below 14 years of age in any factory. The Factories Act,1948 is an important Act which provides for prohibition of employment of young children and prescribes working hours for minors.

Section 67 of Factories Act,1948 provides that:

"No child who has not completed his fourteenth year shall be required or allowed to work in any factory."

In a landmark judgment in *M.C.Mehta v. State of Tamil Nadu*[86] popularly known as *Child Labour Abolition Case*, a three Judges Bench of the Supreme Court comprising of Justice Kuldeep Singh, Justice B.L.Hansaria and Justice S.B.Mazumdar has held that children below the age of 14 years cannot be employed in any hazardous industry, or mines or other work.

The matter was brought to the notice of the Court by public spirited lawyer Sri M.C.Mehta through a public interest litigation under Article 32 of the Constitution. He told the Court about the plight of children engaged in Sivakasi Cracker Factories and how the constitutional right of these children guaranteed by Article 24 was being grossly violated and requested the Court to issue appropriate directions to the Government to take steps to abolish child labour.

The Court issued the following directions:

1. The Court directed for setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employers to pay for each child a compensation of Rs.20,000 to be deposited in the fund and suggested a number of measures to rehabilitate them in a phased manner.

[86] AIR 1997 SC 699.

2. The liability of the employer would not cease even if the child is discharged from work, asked the Government to ensure that an adult member of the child‟s family gets a job in a factory or anywhere in lieu of the child.
3. In those cases where it would not be possible to provide jobs the appropriate Government would, as its compensation, deposit, Rs.5000 in the fund for each child employed in a factory or mine or in any other hazardous employment.
4. In case of getting employment for an adult the parent or guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parents shall have to see that his child is spared from the requirement of the job as an alternative source of income interest.
5. As per Child Labour Policy of the Union Government the Court identified some industries for priority action and the industries so identified are namely: The Match industry in Sivakasi, Tamil Nadu; Diamond Polishing industry in Surat, Gujarat; the Precious Stone Polishing industry in Jaipur, Rajasthan; the Glass industry in Firozabad; the Brass-ware industry Moradabad; the Handmade carpet industry in Mirzapur, Bhadohi and the Lock making industry in Aligarh in Uttar Pradesh; the Slate industry in Manakpur, Andhra Pradesh and the Slate industry in Mandsaur, Madhya Pradesh for priority action by the authorities concerned.
6. The employment so given could be in the industry where the child is employed is a public sector undertaking, and would be manual is nature inasmuch as the child in question must be engaged in doing manual work the undertaking chosen for employment shall be one which is nearest to the place of residence of the family.
7. For the purpose of collection of funds, a district could be the unit of collection so that the executive head of the district keeps watchful eye on the work of the inspectors. In view of the magnitude of the task, a separate cell in the Labour Department of the appropriate Government would be created. Overall monitoring by the Ministry of Labour of the Union Government would be beneficial and worthwhile.
8. Penal provisions contained in the 1986 Act will be used where employment of a child labour prohibited by the Act is found.

The Court observed that the task is big, but not as to prove either unwieldy or burdensome. The financial implication would be such as to prove damper because the money for all would be used to build up a better India. The verdict gives a new hope to the children of the country that a beginning is being made to honour the mandate in Articles 24, 39 (e), 39 (f), 41, 45 and 47 of the Constitution.

5.2.1 Scope and Object:

The provisions under Chapter XII of the Factories Act,1948 deals with the regulatory provisions in the employment of children and young persons. The provisions of this chapter are intended to discourage the exploitation of children by employing them in factories. These provisions are intended to give more effect to the Employment of Children Act,1938 and thereby put an effective check on the employment of children in the factories with a view to protect their health. With this objective the Act requires the manager of every factory in which children are employed to maintain a register of child workers giving full details of the age group, work etc. Factory Inspectors are given powers to verify and check the employment of children and conditions of their work in the factory.

According to Section 67 of Factories Act,1948 the employer has to ensure that no children below 14 years of age is not employed in his factory. The Madras High Court has held in the case of *N.Bhageerathan v. State*[87] that if an accused employer is unable to prove that children employed were not below 14 years, he can be convicted for the offence of employing child labour.

5.2.2 Certificate of Fitness:

Section 68 of the Factories Act,1948 provides that a child who has completed has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless a certificate of fitness is granted with reference to him by a certifying surgeon under Section 69 of the Act.

5.2.3 Certifying Surgeon:

Section 69 is important as it deals with the certificate of fitness to be provided by a surgeon. The certifying surgeons are empowered to certify the age and physical fitness of young persons on the application of young person or his guardian, parent or manager of the factory.

[87] 1999 Cri LJ 632 (Mad)

The application must be accompanied by a document signed by the manger of the factory conveying that such young person will be employed in the factory if he is certified to be fit for the work in the factory.

The certifying surgeon after examination may grant the certificate of fitness or renew the same if he is satisfied that the young person has completed 14 years age, that he has attained the prescribed physical standard and that he is fit for such work in the factory.

The certifying surgeon may deny the grant or renewal of such certificate unless he has the personal knowledge or has examined the place where the young person has proposed to work and of the manufacturing process in which he will be employed.

The certificate granted will be valid for 12 months only from the date of issue. The fees payable for the grants of certificate are to be paid by the occupier and such fees cannot be recovered from the child or adolescent or his parents or guardian.[88]

Section 70 provides that no female or male adolescent who has not attained the age of 17 years but who has been granted a certificate of fitness to work in a factory as an adult shall be required or allowed to work in a factory except between 6.00 a.m. and 7.00 p.m.

5.2.4 Working Hours for Children:

Section 71 of Factories Act,1948 deals with the working hours of children. No child shall be employed or permitted to work in any factory for more than four and a half hours in any day. Further such a child shall not be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

The period of work of all children in the factory shall be limited to two shifts, the shift shall not overlap or spread over more than five hours each. Each child can be employed only in one relay which shall not be changed more frequently than once in 30 days, except with the previous permission in writing to the Chief Inspector of Factories.

[88] K.M.Pillai: Labour and Industrial Law,(9th Edn 2003, Allahabad Law Agency, Faridabad) p.522

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. This provision also contains a restriction and preventive measure on female child. No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m. Section 74 dealing with the hours of work says, no child shall be employed in any factory except in accordance with the notice of periods of work for children displayed in the factory and the entries should be made beforehand against his name in the register of child workers of the factory.

A cursory reading of these provisions would reveal the true intent of the legislation and the real objective envisaged in Chapter XII of the Factories Act,1948 which are intended to discourage the exploitation of children by employing them in factories.

These provisions are intended to give more effect to restriction and prohibition of employment of children with a view to protect their health, which is a constitutional mandate i.e. protect and preserve the tender age of children and also to the right against exploitation which includes in itself the prohibition of employment of children in factories etc.

5.2.5 Duty of The Employer:

Sections 72 and 73 of the Factories Act,1948 make it the duty of the employer to display a notice of periods of work for children and to maintain a register of child workers.

Section 72 makes it obligatory on the factory owners and managers to display notices relating to the periods of work of children.

The notice shall give details clearly regarding the every day the duration and hours of work of children employed in the factory. Periods of work should be fixed beforehand by the employer.

5.2.6 Register of Child Workers:

Section 73 mandates the employer to maintain a register of child workers. The manager of every factory where children are employed shall maintain a register of child workers.

The register shall give details of the name of each child worker, nature of the work, group in which he is included, the shift, the relay, etc. allotted to him, the number of his certificate of fitness, etc. the register shall be made available to the Inspector of Factories during working hours or when any work is being carried on in a factory.

According to sub section (1 A) of Section 73 of the Act, no child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.

Section 77 of the Factories Act,1948 states that the provisions of Chapter XII of the Act shall be in addition to and not in derogation of the provisions of the Employment of Children Act,1938.

5.2.7 Penalty for Permitting Double Employment:

Section 99 of the Factories Act,1948 states that, if a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit his wages shall be punishable with fine which may be extended to one thousand rupees unless it appears to the court that the child so worked without the consent or connivance of such parent, guardian or person.

5.2.8 Prohibition of Employment of Children:

Section 27 of the Factories Act,1948 contain the provisions for certain safeguards to the child by prohibiting employment in certain operations and on dangerous machines unless he has been fully instructed as to dangers thereof, precautions to be observed and has received sufficient training in work at the said machine under adequate supervision. It is further provided that no young person shall be employed to carry out any mounting or stripping of belts and lubrication of machines in motion.

From analyzing the provisions of Factories Act,1948 in an elaborate manner, it is understood that the basic concern of the legislation is to provide safeguards to children working in factories and for prohibition of employment of young children and prescribes minimum age for employment of children and working hours for minors.

Despite these legal provisions there is an apparent inefficiency and lacuna on the part of administrative authorities to strictly implement these provisions.

The vacuum in the implementation of the law has been filled by the appropriate intervention of the judiciary at the right time by means of judicial activism. In most of the cases the judiciary applies a liberal interpretation of the provisions so as to uphold the social justice.

5.3 Mines ACT,1952:

The Mines Act,1952 also regulates the employment of children in mines. It prohibits the employment of persons below 18 years of age to work in any mine and also prohibits the presence of any child in any part of mine which is below ground or in any open excavation in which any mining operation is being carried on.

The provisions regarding working hours and rest have also been taken care of. There are penal provisions also to ensure the observance of the Act. The relevant sections are Section 40 which prohibits employment of persons below 18 years in a mine.

Section 43 provides the power of medical examination. Where an Inspector is of opinion that any person employed in a mine or otherwise than as an apprentice or other trainee is not an adult or that any person employed in a mine as an apprentice or other trainee is either below sixteen years of age or is no longer fit to work, the Inspector may serve on the manager of the mine a notice requiring that such person shall be examined by a certifying surgeon and such person shall not, if the Inspector so directs,, be employed or permitted to work in any mine until he has been so examined and has been certified that he is an adult or, if such person is an apprentice or trainee that he is not below sixteen years of age and is fit to work.

Every certificate granted by a certifying surgeon shall be conclusive evidence of the matters referred in this Section.

The penal provisions lay down that if a person is employed in a mine in contravention of Section 40 the owner, agent or manager of such mines shall be liable to be punished with fine. Despite the Mines Act containing a very little provision regarding the employment of children in mines, they are really vital in concerning with the welfare and safety of the children thereby attempts to ensure social justice which is the prime concern of all labour welfare laws.

5.4 Apprentice ACT,1961:

Section 3 of the Apprentice Act,1961 provides protection against engagement of children as apprentices. This section provides the qualification for being engaged as as apprentice in any place of work. A person shall not be a qualified as an apprentice to undergo apprenticeship training in any designated trade unless:

a. he is not less than fourteen years of age and
b. has satisfied such standards of education and physical fitness as may be prescribed.

This provision again is ensuring about the age criteria for children to be employed as apprentice. This once again concerns with the health and well being of a child and prohibits a child being unnecessarily exploited.

5.5 The Beedi And Cigar Workers (Conditions of Employment) ACT, 1966:

The Beedi and Cigar Workers (Conditions of Employment) Act,1966 is a special enactment to regulate the conditions of work of beedi and cigar workers. This is an area where a large number of children work and are being exploited.

The Factories Act,1948 will no doubt, certainly applicable but because of the special nature of the work the provisions of Factories Act were violated easily by splitting a single unit in to many small units. However this special legislation evasion is not possible.

According to the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, no child below the age of 14 years shall be employed in any industrial premises. Subject to the provisions of this Act children who have completed the age of 14 years but not 18 years may be allowed to work.

Under Section 25 of the Beedi and Cigar Workers (Conditions of Employment) Act,1966 it is provided that no young person shall be required to work in any industrial premises except between 6 a.m. and 7 p.m. Thus the Act prohibits employment during the night.

A survey by the UNICEF in villages around Vellore in Tamil Nadu reveals that children in the age group of 6-14 years are employed in Beedi making industry and

are exposed to the danger of tuberculosis because they breath an obnoxious smell of nicotine for several years.[89]

5.6 The Merchant Shipping ACT,1958:

This is also a specified piece of legislation relating to the shipping industry. It contains provisions prohibiting and regulating child employment. The Merchant Shipping Act bars employment of children below 14 years of age in capacity in the shipping industry.

Sections 110 – 113 lay down certain conditions for the employment of young persons who are above 14 years but who have not completed 18 years of age. Penalty has also been provided for violating the provisions of the Act.

5.7 The Plantation Labour ACT,1951:

This Act is more comprehensive in the sense that this Act alone makes the provisions for education as a responsibility of the employer under sections 5, 6 and 7 and so also housing, medical and recreational facilities. Perhaps the legislators were moved to make all these provisions in this Act because of the complaint that plantation labour is commonly known as "family labour" as against "individual" child labour.[90]

As per Section 4(a) of the Act it covers in the first instance all tea, coffee, rubber, cinchona, cardamom plantations and areas 10.117 hectares or more in which 30 or more persons are employed or were employed on day of the preceding 12 months. Section 24 prohibits the employment of children under 12 years.

5.8 The Children (Pledging of Labour) ACT,1933:

The Children (Pledging of Labour) Act,1933 was enacted with the main object of eradicating the evils arising from the pledging of labour of young children by their parents to employers in lieu of loans and advances.

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[89] Article titled "Problem of Child Labour in India", Radhakrishna Rao, published in S.N.Tripathy,Child Labour in India-Issues and Policy options (1996 ,Discovery Publishing House, New Delhi) p.61

[90] P.L.Mehta and S.S.Jaiswal; Child Labour and the Law-Myth and Reality of Child Labour Welfare, Deep and Deep, New Delhi, 1996

According to Section 3, an agreement, oral or written, to pledge the labour of children whereby parents or the guardian of a child in return of any payment or benefit to be received, undertakes to cause or allow the services of a child to be utilised in any employment, is declared to be void. According to Section 4, a person who knowingly enters in to an agreement with a parent or guardian of a child whereby such parent or guardian pledges the labour of child, or an employer who knowingly employs such a child is liable to a fine up to Rs.200.

5.9 The Employment of Children ACT,1938:

The main object of this Act is to prevent employment of children in hazardous employment and certain categories of unhealthy occupations. The Act prohibits the employment of children below 15 years of age in any occupation connected with the transport of passengers, goods or mail by railway or a port authority within the limits of a port.

According to Section 3(3), the Act also prohibits the employment of children below the age of 14 years in workshops connected with beedi making, carpet weaving, cement manufacture including bagging of cement, cloth printing, dyeing and weaving, manufacture of matches, explosives and fireworks, mica cutting and splitting, shellac manufacture, soap manufacture, training and wool cleaning.

Section 4 of the Act provides for penalty for breach of the Act is imprisonment up to one month or fine up to Rs.500 or both. It is however, imperative to mention that this Act has been repealed to the extent it is consistent with Child Labour (Prohibition and Regulation) Act,1986.

5.10 The 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 of serious concern. Taking this in to 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 most important point was that this Act aimed at identifying more hazardous processes and industries with a view to banning child labour in these industries and regulating conditions for children in non-hazardous occupations.

5.10.1 Historical Background:

Child labour is the outcome of our social and economic system the solution of which requires a coordinated effort. The Child Labour (Prohibition and Regulation) Act, 1986 is the culmination of efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour.

Significant among them are the National Commission on Labour (1966-69), Gurupada Swamy Committee on Child Labour (1979), Sanat Mehta Committee (1980).

5.10.2 Objectives of the ACT:

The main objectives of the Act are:

a. To bring uniformity in the definition of child in the related laws.
b. To ban employment of children in specific occupations and processes.
c. To modify the scope of banned industries and processes by laying down a procedure.
d. To regulate the conditions of work of children when they are not prohibited from working and to lay deterrent punishment for violators.

5.10.3 Scheme of the ACT

The Act is divided in to four parts. Parts I and IV deal with the definition and miscellaneous aspects respectively. Parts II and III, being the most important deal with Prohibition of Employment and Regulation of Conditions of Work respectively.

5.10.4 Prohibition of Employment of Children in Certain Occupations:

Under Section 3 of the Act, 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 are carried on. Part A of the Schedule contains 13 occupations while Part B contains a list of 51 processes.

Among the major occupations set forth in Part A are those connected with:

1. Transport of passengers, goods or mail by the railway

2. Cinder picking, clearing of an ash pit or building operation on the railway premises
3. Work in a catering establishment at a railway station, involving movement from one platform to another or in to or out of a moving train
4. Work relating to construction of a railway station in close proximity to railway lines
5. A port authority within the limits of any port.

Some of the processes mentioned in Part B are

1. Bidi making
2. Carpet weaving
3. Cement manufacture
4. Cloth printing, dyeing and weaving
5. Manufacture of matches, explosives and fireworks
6. Mica-cutting and splitting
7. Shellac manufacture
8. Soap manufacture
9. Tanning

5.10.5 Punishment:

Section 14 provides punishment up to one year (minimum being 3 months) or with fine up to Rs.20,000 (minimum being ten thousand) or with both, to one who employs or permits any child to work in contravention of the provisions of Section 3 of the Act.

5.10.6 Child Labour Technical Advisory Committee:

Section 5 of the Act envisages the constitution of an Advisory Committee to be called the Child Labour Technical Advisory Committee to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.

5.10.7 Constitution of The Committee:

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.

The Central Government framed the Child Labour (Prohibition and Regulation) Rules,1988 which are related to the Child Labour Technical Advisory Committee.[91]

5.10.8 Maintenance of Registers:

Section 11 of the Child Labour (Prohibition and Regulation) Act,1986 mandates the occupier of an establishment where children are employed to maintain a register showing the details of name and date of birth of every child employed, hours and periods of work, intervals of rest for a child, nature of work of any such child etc.

To have an effective check on the functioning of this Act and for securing compliance with the provisions of the Act, Inspectors are appointed by the Appropriate Government under Section 17 of the Act. The register maintained under Section 11 is to be made available for inspection to an Inspector at all times.

5.10.9 Procedure Relating to Offences:

Section 16 of the Act provides the following procedure relating to offences.

Any person, Police Officer or Inspector may file a complaint about the commission of an offence under this Act in any court of competent jurisdiction.

No court inferior to that of a Metropolitan Magistrate or Magistrate of the first class shall try any offence under this Act.

The exhaustive study on child labour as a socio-legal and socio-economic issue would give a vivid picture of the major reasons and causative factor behind this pathetic social evil. The affirmed reasons are mainly poverty, lack of education and backwardness among the rural sector of the population. Despite the compulsory schooling for children forms a part of assimilative measure is however found deceptive.

This is an economic problem and it cannot be solved merely by legislation so long as there is poverty and destitution in the country. As such, the phenomenon of child labour is the product of such indifference to education.

[91] In exercise of Rule-making power conferred by Section 18(1) of the Act.

Besides these economic factors there are several other cultural and traditional factors such as bonded labour system in the form of bondage is another dimension which is a pertinent factor leading to child labour.

Having understood the contributing factors and various legislative and constitutional safeguards available as a panacea for this problem, yet taking in to consideration the reality that the malaise cannot be eradicated to the fullest possible extent the Courts have given ways for its regulation through its constructive interpretations. Therefore it is necessary to have a glimpse discussion of the role of judiciary and the judicial protection extended to overcome and find a solution in this regard.

5.10.10 Protection to The Child by Judiciary:

The judiciary with its innovative and inspiring judgments has been the bedrock of social justice. This concept of social justice would remain a myth if protection could not be provided to children – the future of any nation. With a collage of constitutional and legislative provisions the judiciary took up cudgels against the exploitation of children and whenever called upon gave full protection to the rights of children in consonance with the international commitments which India has made. However, the biggest challenge of child labour and its exploitation remains.

In order to tackle the problem of child labour the catena of decisions by the Supreme Court has been supplementing its view and further the task which is to be carried out by the Legislature and the Executive is now been shouldered upon by the sole protector and true guarantor of fundamental rights of the citizens in the name of judicial activism. There is an obvious contrast between the activist role of the judiciary and the passive role of the judiciary. According to Justice Bhagwati, the former is necessary for the Indian society, which is pulsating with urges of gender justice, worker justice, minorities justice and equal justice between chronic unequals.[92]

The judiciary through various decisions revolves as a ray hope of faith upon the welfare of children, in particular to safeguard the rights of child workers has acted for realization of true social justice which is the signature tune of our Constitution so as to enforce the basic human rights of the poor and vulnerable sections of the community and actively helped in the realization of the constitutional goals. In a

[92] Dr.P.Nagabooshanam: Social Justice and Weaker Sections Role of the Judiciary (1st Edn,2000 C.Sitaraman Publishers, Chennai) p.37

developing country like India, where there is vast gap of inequality in status and opportunity, law is a catalyst, rubicon to reach the ladder of social justice.

Throwing light on the problem of child labour and reacting liberally in a very popular *People"s Union for Democratic Rights v. Union of India*[93] also known as *Asiad Worker"s case*, a liberal interpretation was given by the Supreme Court to the term „hazardous employment" and held that the term was wide enough to include employment in construction work and directed that the schedule to the Employment of Children Act,1938 should be suitably amended to include the construction industry in it. It was held by the Court 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 conditional prohibition which even if not followed up by appropriate legislation must operate *proprio vigore.*"

A public spirited organization called Peoples Union for Democratic Rights (PUDR) brought a writ petition by way of public interest litigation in order to ensure observance of labour laws in relation to workmen employed in the construction work of various projects connected with the Asian games. Every possible objection was taken including the maintainability of the writ petition, the argument being that no violation of fundamental rights was involved to approach the Supreme Court under Article 32 directly.

The Supreme Court, in a spirited defence of the rights of the working people held that the labour laws were in nature of fundamental rights. They said it involved the violation of fundamental right to life and exploitation of human beings as enshrined in the Constitution is being violated. Justice P.N.Bhagwati refers to reality of the Indian situation. Large number of men, women and children who constitute a bulk of our population are today living a sub-human existence. Abject poverty has broken their back and sapped their moral life. They have no faith in the existing social and economic system.

According to Justice Bhagwati the only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to

[93] AIR 1982 SC 1473.

realize the economic, social and cultural rights. He further says that this is to be carried by the Legislature and the Executive. But the judiciary can play a role when it has to decide cases coming in public interest litigation. Then Justice Bhagwati said: "the time has once come when the Courts must become courts for the poor and struggling masses of this country. They must shed their characters as upholders of the established order and *status quo*. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations.

The realization must come to them that social justice is the signature tune of our Constitution, and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goals."

The aforesaid pronouncement of the Supreme Court in the *Asiad Worker''s Case* clearly convey an idea that social justice enshrined in the Constitution urges unmistakably remaking of material conditions and restructuring of social and economic order in order to enable the vast masses of the Indian society. The social justice envisages a socio-economic revolution by restructuring socio-economic order, and remaking material conditions to bring in to existence a new social order of lasting value to all. Following the decisions in *Maneka Gandhi v. UOI*[94] and *Francis Carolie v. Union Territory of Delhi*[95] cases the Supreme Court in the above case held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to life with basic human dignity.

Following the constitutional dictates, the Supreme Court once again in *Labourers Working on Salal Hydro Project v. State of J&K*[96] , has reiterated the principle that the construction work is a hazardous employment and children below 14 years cannot be employed in this work.

The Supreme Court rejected the contention in *Asiad Project Case* and held that the construction work is hazardous employment and therefore under Article 24 no child below the age of 14 years can be employed in the construction work even if construction industry is not specified in the schedule to the Employment of Children

[94] AIR 1978 SC 597.
[95] AIR 1981 SC 746.
[96] AIR 1984 SC 177.

Act,1938. Expressing concern about the,, sad and deplorable omission", Justice Bhagwati advised the State Government to take immediate steps for inclusion of construction work in the schedule to the Act, and to ensure that the constitutional mandate of Article 24 is not violated in any part of the country.[97]

The Court further held in the above case that:

"We are 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 in order to be able to make two ends meet. 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 dropouts from schools. This is an economic problem and it cannot be solved merely by legislation so long as there is poverty and destitution in the country. It will be difficult to eradicate child labour. But even so an attempt has been made to reduce, if not eliminate, the incidence of child labour because it is absolutely essential that a child should be society and to play a constructive role in the socio-economic development of the country. We must concede that having regarded to the prevailing socio-economic condition it is not possible to prohibit child labour altogether and, in fact, any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 limits the prohibition against the employment of child labour only to factories, mines or other hazardous employments."

In a landmark judgment in *M.C.Mehta v. State of Tamil Nadu*[98], the petitioner by way of PIL before the Supreme Court highlighted the problems of employment of children in match factories in Sivakasi, Virudhunagar District of Tamil Nadu. Judicial notice of frequent accidents occurring in match factories was taken. Considering the health and hazards involved in the employment of children in match factories, directions were given against employment of children in that area. In this case Chief Justice of India Ranganath Mishra and Justice M.H.Kania observed:

"The spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period."

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[97] J.N.Pandey: Constitutional Law of India, 41st Ed, 2004, p.287
[98] (1992) 1 SCC 283.

As regards the welfare of child labour the Supreme Court opined that a compulsory insurance scheme should be provided for both adult and child employees taking in to consideration the hazardous nature of employment. The State of Tamil Nadu was directed to ensure that every employee working in a match factory is insured for a sum of Rs.50,000 and the Insurance Corporation, if contacted, should come forward with a viable group of insurance schemes to cover these employees in the match factories of Sivakasi area. But it is a doubted question that how far the verdict of the Apex Court of the country concerning the welfare of children is given effect, adhered to and implemented in its true letter and spirit by the State.

The Supreme Court once again in *M.C.Mehta v. State of Tamil Nadu*[99] observed that Sivakasi was once taken as the worst offender in the matter of violating the prohibition of employing child labour. But child labour is by now an all-India evil though its acuteness differs from area to area. Therefore, the problem is national and one has to travel beyond Sivakasi to visualize the issue in a wider perspective. Analyzing the actual problem the court said:

"We are however of the view that till an alternative income is assured to the family, the question of child labour would remain a will-o"-the wisp. Now if employment of child labour below the age of 14 years is a constitutional indication insofar as work in any factory or mine or engagement in hazardous work and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39 (c) that the tender age of the children is not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age, and if the children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as envisaged by Article 39 (c), it seems to us that the least we ought to do is to see fulfillment of legislative intendment behind the enactment of the Child Labour (Prohibition and Regulation) Act,1986."

In *Bandhua Mukti Morcha v. Union of India*[100] a Public Interest Litigation was filed alleging employment of children aged below 14 years in the carpet industry in the State of Uttar Pradesh. Reports of the Commissioner by appointed by the Supreme Court confirmed forced employment of a large number of children, mostly belonging to SCs and STs and brought from in Bihar, in carpet weaving centres in

[99] AIR 1997 SC 699.
[100] (1997) 10 SCC 549.

the State. It need held by the Court that State is obliged to render socio-economic justice to the child and provide facilities and opportunities for proper development of his personality.

The Court opined that various welfare enactments made by Parliament and the appropriate State Legislatures are only on paper and illusory unless they are effectively implemented and the right to life of the child driven to labour is made a reality. Pragmatic, realistic and constructive steps and actions are required to be taken to enable children belonging to weaker sections of society to enjoy their childhood and develop their personality. Child labour, therefore, must be eradicated through well planned and focused poverty alleviation programmes and through imposition of trade sanctions in employment of children, etc. Total banishment of employment may drive children in to destitution and other mischievous environments, making them vagrants, hardened criminals and prone to social risks, etc. therefore, while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutritious food, shelter and other means of livelihood with self-respect and dignity of person. Immediate ban of child labour would be both unrealistic and counterproductive.

Taking in to account of the real ground situation of this problem the Government has started taking appropriate measures by way of effectively implementing various child welfare schemes. Interesting to note that a recent legislation is passed making free and compulsory education to children from 6 to 14 years, Right of Children to Free and Compulsory Education Act,2009. This can be a solution to abolish child labour and children can be provided with an opportunity to equip themselves in a progressive manner. This of course termed as a positive step of approach initiated by the policy makers keeping in pace with the changing needs of the society and a gradual change in the existing laws will not only eradicate child labour, but also serve as a platform to establish the dynamic idea of social welfare measure which is the other side of the coin called as social justice.

Therefore, it can be concluded that, having analyzed almost all the labour welfare legislations enacted in considering the betterment of the child more particularly the Child Labour (Prohibition and Regulation) Act,1986 which was passed with a prime objective to ban employment of children and to lay deterrent punishments for violators has achieved its purpose to the fullest extent rather it has find suitable means to solve this social issue. Taking in to consideration that children are supremely important national asset and the future well-being of the nation depends

on how its children grow and develop the legislations protecting the welfare of children are passed. A balanced view of life with full appreciation and realization of the role which the children have to play in the nation-building process without which the nation cannot develop and attain real prosperity. In India, this consciousness is reflected in the provisions enacted in the Constitution. The founding fathers of the Constitution, therefore, have emphasized the importance of the role of the child and the needs for its best development and projected the rights under social justice including the children as beneficiaries.

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Chapter 6

Indian Labour Legislations and International Labour Standards

"Universal and lasting peace can be established only if it is based on social justice." ILO,1919.

International Labour Organization (ILO) is the most important organization in the world level and it has been working for the benefit of the workers throughout the world. It was established in the year 1919. It is a tripartite body consisting of representatives of the Government, Employer, workers. It functions in a democratic way by taking interest for the protection of working class throughout the world. Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues.

It is also working at the international level as a "savior of workers" protector of poor" and it is a beacon light for the change of social justice and social security. The I.L.O examines each and every problem of the workers pertaining to each member country and discusses thoroughly in the tripartite body of all the countries.

The I.L.O passes many Conventions and Recommendations on different subjects like Social Security, Basic Human Rights, Welfare Measures and Collective Bargaining. On the basis of Conventions and Recommendations of I.L.O. every country incorporates its recommendations and suggestions in its respective laws. The ILO is the global body responsible for drawing up and overseeing international labour standards. Working with its 181 member States, the ILO seeks to ensure that labour standards are respected in practice as well as principle.

The idea of protecting the interest of the labour against the exploitation of capitalists owes its origin to the philanthropic ideology of early thinkers and philosophers, and famous among them is "Robert Owen" who being himself an employer took interest in regulating hazardous working conditions of the workers and also in human conditions under which the workers were being crushed underneath the giant wheels of production.

The I.L.O Conventions and Recommendations have been greatly honored by the working class all over the world for their beneficering humanitarian and missionary zeal. These I.L.O standards are considered the embodiment of social justice by the underprivileged, a magna carta of their liberty and proclamation of their freedom and dignity against tyranny, whether social or economic or political.

It can be mentioned here that the I.L.O standards have been ratified by all the countries irrespective of their political complexions or economic development and also varying forms and number depending upon many factors. India is also greatly benefited by the I.L.O standards for the welfare of the workers.

There is a detailed procedure for ratification of the Conventions and Recommendations and the Conventions analogues to International Treaties with required ratification by competent authority within a period of 18 months at the latest from the closing session of the conference. The time limit is intended to induce quicker action by the members‟ state. In India the treaty making power is regarded as „Executive Act‟ with in the competency of the Government of India.

Article 253 of the Indian Constitution expressly provides that “notwithstanding anything in the foregoing provisions of this chapter. Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other decisions made at any international conference association or other body”.

According the scope of implementing legislation in India not limited to subjects with in the legislative jurisdiction of the union parliament.

Therefore, the making of the treaty in India is unlimited. As regards the subject matter perhaps the only limitation is that legislation to give effect to treaties and agreements or decision cannot be violating the fundamental rights mentioned in part III of the Constitution of India. Under Article 13 of the Constitution, any law which violates rights guaranteed under part-III of the Constitution of India is void to the extent of repugnancy.

In other words, there are no constitutional limitations upon the powers of the Union Government to enter into treaties with other States or international organizations except those provided in part III of the constitution.

The treaty enables the parliament to override the federal distribution of the powers under the Constitution of India. This concept has been borrowed from the American constitution. The scope of the treaty power was considered by the Supreme Court of the United States.

The United States and the United Kingdom entered into a treaty in 1916 for the protection of migratory bird, which in their annual migrations traversed certain parts of the United States and Canada. Pursuant to this treaty to give effect to its provisions the Migratory Birds Treaty Act of 1918 was passed in the United States. It prohibited the killing, capturing or selling of any migratory birds including in the terms of the treaty. Therefore, such procedure will have to be followed in the case of International Labour Standards for incorporation in the respective legislations.

The Director General of International Labour Office is obliged by Article 19 (4) of the I.L.O constitution to send certified copy of the Convention or Recommendation to each of the members.

After the receipt of the certified copy the Central Government circulate the same to all the State Governments, Concerned Ministries of the Government of India and also to the employers‟ organizations and worker's organizations inviting their observations, and suggestions with regard to the desirability or other wise of giving effect to those Conventions or Recommendations. After taking into consideration the views expressed, the central government prepares a statement on action proposal which is placed before the parliament where the statement will be discussed and considered.

The copies of the statements are thereafter forwarded to the I.L.O and to the state governments, and employers and workers organizations. It is there mentioned that in the process of any ratification or recommendation the tripartite consultation is very essential.

India is the member of the International Labour Organization since its inception in the year 1919 and so far it has ratified 47 conventions and 1 Protocol, out of which 5 conventions have been denounced and 4 instruments abrogated. The rest of the 37 conventions ratified by India pertaining to variety of subjects which are enumerated below according to subject-wise categorization. Fundamental Conventions: 6 of 8; Governance Conventions (Priority): 3 of 4;

Technical Conventions: 38 of 178

List of ratifications by India:

India has ratified six of the eight core ILO labour Conventions. In view of restrictions on trade union rights, the prevalence of child labour and forced labour as well as discrimination, determined measures are needed to comply and in the ILO Declaration on Fundamental Principles and Rights at Work.

India has not ratified the core ILO Convention on freedom of association or the core Convention on collective bargaining. There are several restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. Public sector workers are even further restricted in their rights.[101]

India has ratified the core ILO Convention on Equal Remuneration as well as the Convention on Discrimination. However, there are legal shortcomings and in practice there is discrimination in employment and wages. In particular castes are subject to serious discrimination and are employed in the most exploitative jobs.

India has not ratified the core ILO Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Despite efforts, child labour remains a serious problem in India and includes hazardous child labour and bonded child labour. India has ratified both Conventions on Forced Labour. There are reports of trafficking for forced labour and forced prostitution. There is also a widespread problem of bonded labour in India.

6.1 Internationally Recognised Core Labour Standards in India:

The report of International Trade Union Confederation (ITUC) on the respect of internationally recognised core labour standards in India is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organization in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards."

[101] Report for the WTO general council review of the trade policies of India by international trade union confederation (ITUC)

6.1.1 Freedom of Association and the Right to Collective Bargaining:

Freedom of Association and the Right to Collective Bargaining India has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize or Convention No. 98 on the Right to Organize and Collective Bargaining.

Workers have the right to establish and join trade unions without prior authorization. However, there is no legal obligation on employers to recognised trade unions or to engage in collective bargaining. Moreover, a change in legislation in 2001, which amended the Trade Union Act of 1926, states that a trade union has to represent at least 100 workers or 10 percent of the workforce, whichever is less, compared to a minimum of seven workers previously. Such a minimum requirement of 100 workers is very high by international standards.

Public sector workers have only limited rights to organize and collective bargaining.

The Trade Unions Act prohibits discrimination against union members and organizers but is not sufficiently observed or enforced. The Trade Unions Act does not apply in Sikkim, a state annexed to India in 1975, and although some workers‟ organizations exist, no one sector as such is organized.

In practice, only a small group of workers, employed in the organized industrial sector, enjoys protection of its rights. Over 90% of workers are employed in informal employment relationships or in agriculture, which are characterized by almost no union representation due in large part to the non-enforcement of the law.

The State of Tamil Nadu has proposed a Bill to extend the right to form trade unions to workers in informal employment relationships. The Bill on the informal economy, which includes domestic workers, has been presented but has not been passed yet. There is a growing use of contract labour, which makes organizing difficult and has led to a weakening of trade unions. In general, employers are often hostile towards trade unions and use intimidation, threats, beatings and demotion. Legal procedures are long and costly and labour inspection and enforcement of labour legislation are often lacking, rendering the exercise of legal rights to freedom of association extremely difficult.

There is no statutory obligation to undertake collective bargaining and consequently many employers are reluctant to negotiate with unions. Workers have the right to strike but this right is restricted under the 1947 Industrial Disputes Act. Industry

workers in public utilities have to announce a strike at least 14 days in advance. Some states also require private sector unions to submit a formal notification. Since the banking industry has been declared a public utility, banking workers have to give 6 months‟ notice before going on strike. The Industrial Disputes Act does prohibit retribution by employers against employees involved in legal strike action.

In practice the legal procedures for a strike are complicated so that in most cases these are not fulfilled completely. Despite this there have been few prosecutions of workers engaged in a strike.

In the public sector strikes are not allowed but do take place. In some situations, particularly where trade unions are weak, this can lead to reprisals.

The Second National Labour Commission has been preparing proposals for amendments to the Labour Law with an aim of making labour markets more flexible. Among the proposals were amendments to section 10 of the Contract Labour Act of 1970, which would permit contract labour arrangements in a number of processes such as:

a. sweeping, cleaning, dusting and gardening;
b. collection and disposal of garbage and waste;
c. security, watch and ward;
d. maintenance and repair of plant, machinery and equipment's;
e. house-keeping, laundry, canteen and courier;
f. loading and unloading;
g. information technology;
h. support services in respect of an establishment relating to hospital, educational and training institution, guest house, club and transport;
i. export oriented units established in Special Economic Zones and units exporting more than seventy-five per cent or more of their production; and
j. construction and maintenance of buildings, roads and bridges.

It is also proposed that the appropriate government may, in the case of an emergency, direct, by a simple notification that any of the provisions of this Act shall not apply to any establishments or any class of contractors for any period. In addition, the government proposes to acquire an enabling power to grant exemption to any undertaking from all or any of the provisions of the Industrial Disputes Act, 1947.

The amendments were discussed in the 41st Session of the Indian Labour Conference, held in New Delhi on 27 and 28 April, 2007 but there was no unanimity. Workers have the right to organize and collective bargaining in Export Processing Zones, called Special Economic Zones (SEZs). In practice, entry into the zones is restricted which makes organizing and trade union activities difficult in SEZs. Moreover, since the Zones were declared public utilities in 2001, a 45-day strike notice period is required.

The majority of SEZ workers are women, employed in garments, electronics and software. Workers who protest are often dismissed immediately, and many are employed on a temporary contract basis by fictitious contractors.

New employment sectors, such as call centers, the BPO industry, the visual media and telecommunications are not covered by any explicit employment regulations, and employers obstruct the formation of unions. Workers in the construction and shipbuilding industries are increasingly hired through contractors and subcontractors, which try to prevent workers from organizing by threatening them with dismissal. Most of the work is project-based, which also limits the possibilities for collective bargaining.

Workers have the right to organize and collective bargaining, but employers are not obliged to recognised a union or to enter into collective bargaining, and high representation levels are required to form a union. Public sector workers are restricted in their rights to organize and to collective bargaining. The right to strike is restricted through prior notice and the Essential Services Maintenance Act. Current proposals for amendments to the labour legislation would further restrict trade union rights. There has been an increase in contract labour, and there is a general repression of freedom of association, varying from state to state, which has included police violence.

6.1.2 Child Labour:

India has not ratified ILO Convention No. 138, the Minimum Age Convention or Convention No. 182, the Worst Forms of Child Labour Convention.

The Constitution of India states that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Article 24). In addition, Article 45 states that the State shall endeavor to provide, within a period of 10 years from the commencement of the Constitution,

free and compulsory education for all children until they complete the age of 14 years. However, this Constitutional provision has never been implemented, and school enrolment rates remain low.

Child labour is a matter on which both the central government and state governments can legislate. A number of legislative initiatives have been undertaken at both levels. One of them is the Child Labour (Prohibition and Regulation) Act, 1986. This Act prohibits the employment of children below the age of 14 years in occupations and processes that are hazardous to the children's lives and health.

Another is the Factories Act, 1948, which prohibits the employment of children below the age of 14 years in factories. An adolescent 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. The Act also prescribes a maximum of four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

An important judicial intervention in the action against child labour in India was a 1996 Supreme Court judgment which directed the government to identify all children working in hazardous processes and occupations, to withdraw them from work, and to provide them with quality education. The Court directed that a Child Labour Rehabilitation-cum-Welfare Fund be set up using contributions from employers who contravene the Child Labour Act.

A new law was enacted in 2006 which bans domestic work and restaurant and hotel work by children under the age of 14. Children in these occupations have to be removed and rehabilitated. However, enforcement of the law is weak and illegal employers rarely face sanctions, according to Human Rights Watch studies. Domestic child workers are also difficult to identify, as they work in individual households, controlled by their employers. They work long hours for low pay and are often subject to abuse.

Poor data availability and data collection is a serious problem, resulting in a probable underestimation of the number of child workers and estimates of the number of working children in India vary widely.

The hazardous occupations children are engaged in, which include hybrid cotton seed production; agricultural allied processes such as beedi making, and thread making from silk cocoon; mining mica and slate; manufacturing processes such as

carpet weaving, silk and cotton weaving, leather, electric bulb making, glass and bangle making, ball stitching, gem and diamond cutting and polishing, and lock making; construction and manual labour such as brick- making and chipping and stone breaking; and services industries such as domestic services, transport and garages, hotels and restaurants, sexual abuse and exploitation.

On child labour in hybrid cotton seed production describes the production process as one in which girls are engaged in most of the operations. They are employed on long term contracts against loans and advances extended to their parents by seed companies that often have contracts with multinational seed companies. The children make long hours are paid less than the market wages and are exposed to pesticides. Bonded child labour is a serious problem in India. Although prevalent in different sectors and industries, the silk industry provides an important example.

The UN Committee on the Rights of the Child concluded that it was "extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded laborers, especially in the informal economy, in household enterprises, as domestic servants and in agriculture. The Committee was further concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law".

India has not ratified the ILO Conventions on Child Labour. Child labour is a serious problem in India. Estimates on children working in India vary between 10 million and 115 million. Children are engaged in different activities, including hazardous labour. Many children are in bonded labour. Although efforts have been made to improve the situation, and some actual improvements have been made, the enforcement of legislation remains poor and sanctions are insufficient.

6.1.3 Forced Labour:

India ratified ILO Convention No. 29, the Forced Labour Convention in 1954, and Convention No. 105, the Abolition of Forced Labour Convention, in 2000. Article 23 of the Constitution prohibits trafficking in human beings and forced labour. There are also various provisions in the criminal law, both in the Indian Penal Code and in the Immoral Traffic (Prevention) Act. The Bonded Labour System (Abolition) Act was adopted in 1976. Bonded labour is a serious problem in India, and although programmes of action have been implemented, much more remains to be done.

There continues to be a lack of reliable statistics, which is particularly problematic in identifying the vastness of the problem and in measuring progress made in elimination.

Bonded labour is prevalent mainly in agriculture, but also in industries such as mining, brick kilns, silk and cotton production, and beedi production. Trafficking of people is prevalent in India. Research by the Institute of Social Sciences in India showed that "girls and women are being trafficked into Delhi from other states, some are re-trafficked from Delhi. The conditions of work of these trafficked persons are extremely exploitative and involve slavery-like practices. Working hours are long, wages low and often withheld, and health risks and costs are severe".

Forced labour is prohibited by law but does occur in the form of trafficking of persons for the purpose of labour or forced prostitution. There is a widespread problem with bonded labour. Enforcement and sufficient penalties are often lacking.

6.2 Way Forward:

In order to strengthen the framework of labour welfare and to ensure genuine protection of workers, the government must take concrete steps to ratify and effectively implement the Freedom of Association and Protection of the Right to Organize Convention (No. 87), 1948, thereby upholding the collective rights of labourers. The right to strike should be extended to employees in the public sector, subject to reasonable restrictions, while ensuring that existing labour legislations are fully enforced in both letter and spirit. Equal pay for work of equal value, without gender discrimination, must be guaranteed in accordance with the Conventions on Discrimination in Employment, the Equal Remuneration Convention (No. 100), 1951, and the Equal Remuneration Act, 1976. Urgent action is also required to eliminate all forms of workplace discrimination and to promote equality of opportunity in employment.

With respect to child labour, constitutional provisions must be rigorously implemented to provide free and compulsory education, while imposing stringent penalties on violators. Despite some progress, the persistence of child labour calls for stronger interventions, including the establishment of a separate police wing and special courts dedicated to child labour violations. In line with the ILO's Minimum Age Convention (No. 138), 1973, and to harmonize with international standards, it is recommended that Article 24 of the Indian Constitution be amended to raise the minimum age of employment from 14 to 18 years.

Further, comprehensive measures are needed to eliminate bonded labour and human trafficking, including stricter enforcement and rehabilitation schemes.

Effective poverty eradication programs, along with alternate employment schemes and vocational training initiatives, must be implemented to address the root socio-economic causes of child labour. Only through such coordinated legal, social, and economic interventions can India move closer to realizing the constitutional mandate of social justice and equality for women and children in the world of work.

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Chapter 7

Towards Social Justice

Women's development is considered as an inseparable part of social justice. The jurisprudence of industrialization has demonstrated the vital role of labour laws as an instrument of social justice. The study of labour welfare laws relating to women and children is considered to be a very significant part of the study of modern jurisprudence. Sociological jurisprudence of law has become a veritable ground for legal research and studies in management by objectives which attempts to establish the inter-relation between law and the society. This leads to the incorporating of Constitutional provisions of equality and special protection for women welfare that in turn provides the base for enactment of various labour welfare legislations safeguarding the women. The Industrial and Labour laws has acquired a place of pride in lifting the jurisprudential values of social matters concerning women and children to some progressive strata over a period of time.

In a democratic system the law, through legislative or administrative responses to a new social conditions and ideas as well as through judicial interpretation, increasingly not only articulates but also sets the course for major social changes. The same role law has played in our country acts as an important instrument in bringing about social change and equality thus paved a way for enacting several welfare legislations to protect the interest of women and children. There are voluminous legislations dealing with the welfare of women, more particularly the laws governing labour and industrial jurisprudence are implemented and enforced in its true spirit with an intention to achieve the Constitutional ethos of social justice and equality.

The Constitution of India gives security to its citizens as a condition of human existence. Security to human beings against ravages of social conflicts and inadequacies is an important aspect of social justice. Social justice leads to social security. In a way both are the two sides of the same coin, because where there is social justice there is social security. As it is perceived from various social security legislations that labour welfare is of more recent origin in India. Social security measures are significant because they enable workers to become more efficient and thus reduce wastage from industrial disputes. Lack of social security impedes production and formation of a stable and efficient labour force.

Therefore, labour welfare legislations are considered to be a wise investment which yields good dividends in the name of social justice.

With reference to the labour welfare legislations passed in India for the wellbeing of women, the basic ideas behind the enactment of these laws is to ensure equality to the female sex so as to achieve emancipation of women which is sine qua non for the development of the nation. It was evident from all these labour welfare laws that in order to eliminate inequality and to provide opportunities for the exercise of human rights it was necessary to promote economic interests of women. It became the objective of the State to protect women from exploitation and provide social justice.

It is interesting to note that, most of the labour welfare measures relating to women and children provided in the Constitution of India find place in the Directive Principles of State Policy which could not be easily enforceable. But with the recent development in name of judicial activism has paved way for categorical implementation of the Constitutional imperatives. The process adopted by the judiciary in many cases at present would reflect the Constitutional goal of securing social justice to women thereby establishing a welfare state.

The other major concern with reference to children is that among several legal provisions under different labour welfare legislations relating to the welfare of children, while some of the laws prohibiting the exploitation of children in the name of employment in certain occupation and processes, few law legalized employment of children in other cases. Indirect support was extended for such evil practice which should be totally prohibited irrespective of employment. This ultimately defeats the Constitutional goals which are concerned with the welfare and development of the children who are considered to be the pillars of the future India. Therefore, it is high time that there must be uniformity in all the legislations brought out by the policy makers which is the need of the hour.

Despite the existence of numerous legislations, it is matter which relates more towards the real implementation which will reflect the true purpose of the laws. Moreover, law is not the only and total solution to these kinds of socio-economic problems. There should be a many-fold approach which is essential for such purpose. The first approach is definitely implementation of the provisions of different legislations. The law implementing authorities with intensive power of executing the provisions must be aware of the seriousness of the problem.

The second approach relates to socio-economic factors, which are proved to be the basic reasons of the problems. It would be mainly preventive of the problem and primitive of growth opportunities for children.

These can be taken care of by effective implementation of various employment guarantee schemes which may help poor families to rehabilitate economically, attractive and free primary school education system and ensuring better employment opportunities in future. Since the issue relates more towards the socio-economic factors, law alone cannot be considered as a sole panacea for this problem. However public awareness against this social evil, coordinated efforts of Governments and other organizations can be helpful for gradual elimination of the problem from our country. Voluntary efforts need to be strengthened. There should be a radical change in the manner in which the bureaucracy deals with voluntary organizations. An extension oriented primitive style of functioning is very important to accomplish the objectives.

In India general improvement of economic and social conditions of people will result in eliminating gradually these social problems which exists commonly in the industrial sector. Hence, total abolition of problems like child labour through legislation may not be feasible or desirable in the future. Hence, the appropriate alternative policy is to improve the employment and working conditions and living standards of the children employed in the industries to save them from ruthless and inhuman exploitation by employers.

Therefore, it can be concluded that, after the adoption of our Constitution, large scale social and economic changes have taken place. Law is essentially marginal to the process by which society changes; law is an effect rather than a cause. It is only within the limits given there that change can be accomplished. Law and legal system have an impact on the changes either originating from within or outside. It is interesting to note that at the time of drafting of the Constitution, some of the Directive Principles were part of the Declaration of Fundamental Rights, such as the rights of workers and social rights, which included provisions protecting women and children and guaranteeing right to work, a decent wage and a decent standard of living. Legislative and executive actions must be conformable to and for effectuation of the fundamental rights and Directive Principles enshrined in the Constitution legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order. To make the law much more powerful the judiciary is playing an active role in upholding the rights of these weaker sections.

The Supreme Court has adopted substantive equality and result oriented approach. This approach tends to encourage the downtrodden and underprivileged classes such as the labour class more particularly the weaker sections like women and children to redeem themselves of previous inequalities, and has resulted in greater judicial activism, and has opened new vistas for judicial innovation and creativity in order to fulfill the mandate of achieving social equality. The labour welfare legislations enacted for the interest of women and children are effectively implemented in its letter and spirit with an active role played by the judiciary at the most of the times to the rescue of safeguarding the rights of the women and children. The majority of labour laws are enacted with a real concern for the weaker sections and with an intention to achieve social justice and often these welfare legislations acts as an instrumentality in attaining the Constitutional mandate of social justice. To make India stronger we need to emancipate the poor and weaker sections of the society by ensuring them their rights. The labour welfare legislations passed in relation to women and children must keep in pace of this development and move ahead steadfastly to attain social justice.

It can be seen from the multiple special provisions made for the welfare of women that both at the national and international levels, there has been a movement towards the empowerment of women in labour law. There has been a clear move towards making equal pay, equal access to opportunity, prevention and redressed of sexual harassment and provision of maternity benefits a reality in India. In fact, a majority of laws in relation to the special provisions for women have been modelled after the ILO conventions.

India being a founding member of the ILO has tried very hard to stick to the standards provided by the ILO in theory at least. The special rights provided to women in various labour laws (i.e. The Factories Act, 1948, The Mines Act, 1952, The Plantation Labour Act 1996, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Contract Labour (Regulation and Abolition) Act, 1970, , The Maternity Benefit Act, 1961, The Employees "State Insurance Act, 1948, The Employees" Provident Funds and Miscellaneous Provisions Act, 1952, The Payment of Gratuity Act, 1972, and The Workmen's Compensation Act, 1923, Minimum Wages Act, 1948, Payment of Wages Act, 1936 and Equal Remuneration Act, 1976) are proof of this.

However, it is important to note that some of these protective legislations have backfired and proved to be counterproductive in nature.

For instance, the prohibition of night work by many legislations has deprived women laborers of the agency of deciding for themselves whether or not they would like to work at a certain time or not. In many instances women workers who are willing to and want to work overtime or night shifts are unable to do so because of these regulations leading to a gross denial of the right equal opportunity of employment to women. The only way to solve such issues in socially rather than legally, i.e. by making the work environment safer through social intervention, legal rules that are paternalistic in nature can be relaxed.

The next level of effort that Indian needs to make is to develop effective implementation and redressed mechanisms. The best way to ensure effective implementation of these provisions and redressed of any complaints is to begin implementation at a grassroots level, i.e. at the level of individual enterprises, and employers. This will ensure that the actions are more specific in nature and will bring about more concrete outcomes.

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