Chapter 2

The legal aspects of Child labour
many are in hidden work situations such as domestic work (Yaremko-Jarvis 1999: 12).

The political will and commitment of individual governments to address child labour, in cooperation with employers’ and workers’ organisations, other non-governmental organisations and relevant parties in society, is the starting point for IPEC action. IPEC support is given to partner organisations to develop and implement measures which aim at preventing child labour, withdrawing children from hazardous work and providing alternatives, creating credible alternatives for working children and their families and improving working conditions as a traditional measure towards the elimination of child labour. The IPEC’s partners include also other international and government agencies, companies, NGOs, media, and parliamentarians (ILO-IPEC, Child labour, http://www.ilo.org/ipec/lang_en/index.htm).

The IPEC programmes involve a careful consideration of the well-being of the children and ensure that those children’s lives are improved (Yaremko-Jarvis 1999: 12). IPEC’s approach to the elimination of child labour has evolved over the past ten years as a result of the experience it has gained and the changing needs of its partners for assistance. The programme now incorporates the different categories of ILO work against child labour, including research and statistics, technical cooperation, advisory services and advocacy, as well as its own unit for monitoring and evaluation, therefore providing member states with comprehensive support to combat child labour (Bhargava 2000: 221).

Recently, the ILO-IPEC programme has had operations in 88 countries and has provided services to directly assist almost 430,000 children who are either involved in or at risk of child labour (ILO-IPEC, Child labour, http://www.ilo.org/ipec/lang_en/index.htm).

**Other Inter-Agency Cooperations:**

Cooperation between the various international organisations concerned with children, poverty and development has intensified in recent years. The structural
causes of child labour, such as poverty, inequality and deficient education, health and child protection systems, fall within the mandates of different agencies. Thus, the core mandate of the ILO in the field is complemented by those of UNICEF, the World Bank, WHO, UNDP, UNESCO and others, each of which has expertise and programme experience to bring to bear on solving problem.

The ILO and UNICEF drew up an agreement in 1996 to strengthen existing cooperation, confirming the complementary and mutually supportive roles of the two agencies in the progressive elimination of child labour and protection of working children. Launched in December 2000, this joint initiative of the ILO, UNICEF and the World Bank aims to improve child labour research, data collection and analysis, to enhance local and national capacity for research and to improve the evaluation of interventions. It is assessing existing information so as to identify major gaps and ways of filling them. Indicators are being developed to chart the dimensions of child labour and to relate them to income, gender, health condition and education.

Another example is the cooperation between the ILO, UNICEF, UNESCO and Education international in a project to mobilize teachers, educators and their organizations to combat child labour. This collaboration produced two outputs: an information kit for teachers; and report, which assembled country systems responding to the challenge of child labour, the obstacles faced and successful strategies to overcome them (Bhargava 2000: 227-28).
Chapter 2

The Legal Aspects of Child Labour

International Conventions

For the most of this century, the international community has sought to solve the problem of child labour. In 1919, the International Labour Organization (ILO) adopted the Minimum Age Convention, which prohibited the employment of children less than 14 years of age from working in industrial enterprises. The minimum age convention of 1973 extended the prohibition to all child labour, whether or not the children are employed for wages (Gomango 2001: 5). It set 15 as the minimum age for admission to employment, subject to a number of exceptions, including the following:

- 13 for light work (not defined).
- 18 for hazardous work (defined as work likely to jeopardize the health, safety or morals of young person) unless adequate training and protection is afforded to protect the children.
- The 15 and 13 year minimums can be lowered to 14 and 12 respectively in countries with insufficiently developed economies and educational facilities (Yaremko-Jarvis 1999: 3-4).

Furthermore, the Convention on the Rights of the Child (CRC) was first mooted and adopted by the General Assembly of the United Nations on November 20, 1989 (CRC 1989: 3-4).

Most importantly, Article 32 of CRC prohibits the practice of child labour. It declares that the rights of the child 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 be harmful to the child’s health or physical, mental, spiritual, moral or social development. It mandates every state party to:
i. Provide for a minimum age or minimum ages for admission to employment.

ii. Provide for appropriate regulation of hours and conditions of employment.

iii. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of present article (Pandiaraj 2006: 85).

The international community continues to work on the adoption of international standards on child labour. However, the focus has changed with a shift from attempts to abolish all child labour to recognition that it may be more beneficial to the children of the world to initially devote resources to the immediate abolition of the worst forms of child labour. This approach is clearly more realistic in the light of economic, social and cultural conditions existing in various countries and also acknowledges that some forms of work are acceptable and indeed beneficial to children and need not be abolished. As a result of this change in focus, the ILO convened a conference in Geneva in June 1998 to work on the drafting of a new convention to be known as the Immediate Abolition of the Worst Forms of Child Labour Convention, 1999. The challenge which faced the 1999 conference was to arrive at satisfactory definitions of the operative provisions of the convention, many of which were the subject of heated debates in 1998. The current draft of the convention defines the expression “worst forms of child labour” as:

a) All forms of slavery or practices similar to slavery, such as the sale or trafficking of children, forced or compulsory labour, debt bondage and serfdom.

b) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.
c) Work which, by nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children (Yaremko-Jarvis 1999: 5-6).

On the global scene there has been much propaganda against child labour, but participation of the state is the essential part for making machinery of it. Both India and Pakistan not only recognized child rights and state responsibility toward these in their constitutions but have also passed many legislative acts.

**Child Labour Related Legislations in India**

The constitution of the India which set the goal for democracy found its magnification in its broad perspective much earlier than its enactment. The first law on child labour enacted was Children (Pledging of Labour) Act, 1933. This law prohibits parents and guardians from pledging the services of a child, and treats any agreement as void which is entered into between parents/guardians and recruiting agents. This law which is still on the statute book continues to be honoured, but breached also as many children are sent to work with the tacit consent of their parents and guardians which is prohibited under law.

The 1933 Act was followed by Employment of Children Act, 1938 (Mishra 2001: 289, 293). The ILO in 1937 adopted a convention fixing a minimum age at which children were to be employed in certain occupation. The Employment of Children Act, 1938 was passed to implement this convention; so it prohibited the employment of children below 15 years in certain industrial employment and restricted children below 14 years in the transport of goods in docks and wharves. Though the 1938 Act banned child labour in hazardous industries, it made an exception in favour of family labour (Saksena 2001: 103). It is clear that the Employment of Children Act, 1938, hardly had any impact in bringing down the incidence of child labour, as penalty was not stringent and the maximum fine was only Rs. 500 or a month’s imprisonment or both. The Employment of Children Act, 1938, had consequently become unrealistic and ineffective in combating child labour (Sekar 1997: 82-83).
After Independence, the Factories Act 1948 was passed, raising the minimum age for employment in factories to 14 years. The Act required workers between the age of 14 and 18 years to obtain a certificate of fitness from a certifying surgeon and periodic examination. Such certificates are valid only for a period of one year. Restrictions are also placed on their employment in certain dangerous occupations; the hours of work of children are limited to $4\frac{1}{2}$ hours on any day; period of work is to two shifts and spread over to 5 hours a day. They cannot be employed at night between 10:00 p.m. and 6:00 a.m. They were not allowed to work on machines that are considered dangerous. However, this Act didn’t apply to such factories where there are less than 10 workers with power and less than 20 workers without the aid of power (Kanna 2002:101).

The Minimum Wages Act, passed in 1948, specified that the expression "adult", "adolescent" and "child" will have meaning assigned to them. It defined "child" as a person who has not completed his 15th year. It provides that in fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for adults, adolescents, children and apprentices (Saksena 2001: 103-04).

The Constitution of India, the Supreme law of the land, contains a fundamental right against exploitation in Article 24 according to which no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous occupations. This provision that prohibits the employment of children in all hazardous employment argues that all employment of children per se is hazardous, because to put a child to work is to confiscate childhood. Article 39(e) and (f) obligate the state to ensure that:

1. The health and strength of workers, men and women and the tender age of children are not abused.

2. They are not forced by economic necessity to enter vocations unsuited to their age and strength.

3. Children shall be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.
4. Childhood and youth shall be protected against moral and material abandonment.

Article 45 mandates the state to provide within a period of 10 years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of 14 years (Government of India 2006: 1-2).

Legislations on Child Labour in India have sought to address two broad concerns:

1. Prescribing minimum age limit for employment of children and regulation of working hours for children.

2. Ensuring the health and safety of child labours by prohibiting the employment of children in hazardous work.

In 1951, the Plantations Labour Act was passed to prevent the employment of children under 12 years in plantations. In 1952, the Mine Act prohibited the employment of children less than 15 years in mines. The act also stipulated conditions for underground work to include having completed 16 years of age and a certificate and physical fitness from a surgeon.

In 1954, The Factories Act was amended. This amendment included a prohibition of employment of persons less than 17 years at night between 10 p.m. and 7 a.m. In 1958, the Merchant Shipping Act prohibited the employment of children under 15, in any capacity in any ship, except in certain specified cases (Sekar 1997: 41-42).

In 1961, the Motor Transport Workers Act was passed to prohibit the employment of children under 15 in motor transport undertakings. In the same year, the Apprentices Act was passed and prohibited the apprenticeship of a person less than 14 years. In 1966, the Bidi and Cigar Workers (Conditions of Employment) Act was passed. It prohibited the employment of children under 14 in industrial premises manufacturing bidis or cigars and the employment of
young persons who have completed their 14 but not 18 years to work at night between 7 p.m. and 6 a.m. (VVGNLI 2001: 48). In 1978, the Employment of Children Act, 1938 was further amended so as to extend the prohibition of employment of a child below 15 years in railway premises, such as cinder-picking or clearing of ash pit or building operation, in catering establishment and in any other work which is carried on in close proximity to or between the railway lines.

The Child Labour (Prohibition and Regulation) Act was passed in December 1986. This Act repealed the Employment of Children Act, 1938, but repealed its schedules A and B. All rules made in this Act were in addition to the Factories Act, 1948, the Plantation Labour Act, 1951 and the Mines Act, 1951 (Saksena 2001: 109). The Child Labour (Prohibition and Regulation) Act, 1986 was the culmination of efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour. Most significant among them are National Commission on Labour (1979). Gurupadaswamy Committee on Child Labour, which was appointed to enquire into the causes leading to and the problems arising out of employment of children, made a recommendation that a distinction be made between child labour and exploitation of child labour. It further logically expanded this argument by recommending the banning of child labour only in hazardous work and to regulate and ameliorate the conditions of work in other areas of employment (Pandiaraj 2006: 91).

The Child Labour (Prohibition and Regulation) Act, which was enacted in 1986, largely tolerates employment of child labour in India. It prohibits the employment of children below the age of 14 years in 13 occupations and 57 processes that are hazardous to the children's lives and health. These occupations and processes are listed in the schedule to Act (Government of India 2006: 2). Among the most important occupations in which child labour is prohibited are ports, handloom and power loom industry, mines, selling crackers or fire workers, plastic units and fibre glass workshops, beedi-making, carpet weaving,
manufacturing of matches explosives and fireworks, construction industry, tobacco processing, etc. (Government of India 1986).

The 1986 Act also limits child work for 6 hours between 8 a.m. to 7 p.m. with one day rest per week, and provides penalties of imprisonment and fine up to 10,000-20,000 rupees for violations. For repeated offences, imprisonment can be up to three years. It also provides that any person, besides a police officer or an inspector, can file a complaint regarding commission of offences. These complaints have to be filed with Court not inferior to that of metropolitan magistrate or a magistrate of the first class.

The Act provides for the setting up of “Child Labour Technical Advisory Committee” for the purpose of addition of occupations and processes to the schedule. A notice of at least three months should be given by the central government before adding any occupation or process to the schedule. The Act clearly states that the government can make rules for the health and safety of children who are permitted to work in any establishment. These rules can provide for matters such as cleanliness, ventilation, dust and sanitary facilities, etc. But there is no mention of nutrition or medical facilities (Joshi 1999: 276).

According to this Act, child labour is prohibited only in specified occupations and processes which clearly militate against the constitutional dictum contained Article 24. According to Article 24, child labour stands outlawed in all hazardous occupations. Part III of the 1986 Act regulates child labour in those establishments where none of these occupations and processes listed in the schedule are carried on. In other words, children who are prohibited from being employed in certain processes and occupations are at liberty to join other employments, which are only regulated. This is nothing but ‘Legalization of Child Labour’. In all these regulated areas, it has not provided any minimum age for the employment of children (Pandiaraj 2006: 92). The 1986 Act makes certain exceptions to the above said rules. The Act does not apply to:
i. Any workshop wherein any process which is carried on by the occupier with the aid of the family or to

ii. Any school established by or receiving assistance or recognition from the government (Government of India 1986: Section 3).

The rationale behind this exception is to protect and encourage innumerable cottage, family or home-based enterprises in the country. What this exception means is that work and conditions ordinarily deemed harmful to children are considered non-harmful so long as they take place as home-based enterprises or under the auspices of an official government programme. This exception defies logic and has resulted in large scale violation of the Act.

The 1986 Act does not include several misuse processes which are hazardous for children. The Act does not include industries like lock industry, balloon industry, pottery industry and several others in its list of prohibited occupations and processes even though children are forced to work in these industries with dangerous chemicals and machines. The agricultural sector, which constitutes 80 per cent of child labour, also appears to be outside the regulatory reach of the Act. This Act also doesn't specify the minimum age of employment of children in occupations and processes other than prohibited ones. It is important to note that the 1986 Act omits section 3(B) of the Employment of Children Act, 1938, requiring that a notice be sent to the inspector before any of the prohibited processes are started in any workshop, regarding the name and situation of the workshop, the name of person in actual management, the address for communication, and the nature of processes to be carried on in the workshop. As a result of this omission, the burden of tracking down such process is now shifted to an understaffed and ill-equipped labour inspectorate or private individuals. The provision of a mandatory notice would have acted as a deterrent to some extent against employing children (Singh 2001: 297-98).

Over the years there has been a shift in the employment of children from the organized sector into the unorganized sector. Owners of small scale
establishments keep the number of workers employed by them below 70, so that their establishments does not fall within the purview of the Factories Act, 1940 or let out or subcontract several processes to family based units since 1986 Act exempts such units. The government proposes to amend the Child Labour (Prohibition and Regulation) Act, 1986, in order to strengthen and streamline the prohibitory and regulatory provisions of the Act to ensure effective implementation. The following amendments are on the anvil:

- Section 16 is to be amended for more implementation of Act. The Act is proposed to be amended to provide for summary trial by Executive Magistrates in case of violation of the prohibitory provisions, which are proposed to be made as cognizable offence.

- Section 17 is to be amended to shift the burden of proof of the age of the children employed from the prosecution to the employer in line with similar provisions existing in the Factories Act and the Beedi and Cigar Workers Act (Saksena 2001: 113).

- Section 20 is to be amended so that the more stringent penalty as per the Child Labour (Prohibition and Regulation) Act will be made applicable in case of violations of four Central Acts, namely, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Bonded Labour System (Abolition) Act, 1976, Plantations Labour Act, 1951 and Contract Labour (Regulation and Abolition) Act, 1970.

- Section 2(iv) defining establishments is proposed to be amended to extend the scope of the protective provisions to progressively cover more activities in which child labour is likely to be engaged. This is an enabling provision to add additional types of workplaces, if necessary. This enabling provision is currently absent in the definition.

- Section 2 (vi) casts a responsibility on the “occupier” of the establishments to comply with its provisions in employments such as carpet, beedi, matches, etc. while children are employed in large numbers,
they may not be directly under the main principal employer. Section 2 (vi) is sought to be amended, casting responsibility on the principal employers clearly by amplifying the present definition of the term “occupier”.

- In order to discourage employers from engaging children, amendment to the Minimum Wages Act is also proposed by a reference doing away with the present provisions under the Act which permitted different rates of minimum wages to be fixed for child workers.

Government has opted for a go-slow and conservative approach in its proposed amendments by not prohibiting child labour in hazardous industries in family-based, government-aided and recognized schools. It is not surprising that the cabinet approval of these amendments in 1994 failed to evoke any great elation among the crusaders for abolition of child labour. Moreover, legislation by itself can’t bring about a radical transformation in the prevalence of child labour (Singh 2001: 300-01).

In 1989, 1993 and 1994, significant additions to the list of hazardous industries and processes were made by notifications issued by the Ministry of Labour. Some debated hazardous processes like glass manufacture were not scheduled. By a notification no. S.O. 404 (E) dated 5 June 1989, published in the Gazette of India extraordinary, the manufacture of slate pencils including packing processes, along with manufacture of products from agate and processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos were inserted in the list of hazardous processes. Work relating to the selling of crackers and fireworks in shops with temporary licences was added to the list of occupations (Government of India 2001-02: 104). In 1993, Government of India through a notification, dated 26.05.1993, regulated the working conditions of children in all employment, which were not prohibited 1986 Act.

By a notification of March 29, 1994 Government also prohibited employment of children in some of the occupations and processes adding to the
already scheduled six occupations and fourteen processes. The Government of India has further added some more processes and occupations to the act through a notification dated 23rd July 1998 and in 2001 again six more processes were added in the schedule (Government of India 2001-02: 104).

The standards set by different Labour Acts can be examined under the following headings: (a) prohibition of children working in hazardous employment, (b) minimum age employment, (c) hours of work, (d) medical fitness, (e) night work, and (f) penalties.

(a) Children working in Hazardous Employment:

Different sections of Acts prohibit children from working in hazardous occupations. Under section 23 of Factories Act (1948) no young person can be employed on dangerous machines unless he/she is fully instructed, and is under adequate supervision. The Employment of Children Act (1938) prohibits employment of children in any workshop, where the process of beedi making, carpet weaving, cement manufacturing, cloth printing, manufacturing of matches, explosive and fire works, mica cutting and splitting, soap manufacturing, canning is carried out. Under Beedi and Cigar Workers Act (1966) “no person below 14 years can be employed in industrial premises”. According to the Mines Act (1952) “no person below 18 years shall work in anytime. Apprentices and other trainees, with the permission of the children inspector, may work, provided they are above 16 years”. The Child Labour (Prohibition and Regulation) Act, 1986 intends to ban the working children in hazardous occupations and processes (Rao 2000: 337).

(b) Minimum Age:

The minimum ages for the employment in any occupation or process are defined between the ages of 12 to 18 years by the different acts. If we look at table 2.1, it can be pointed out that over the years the minimum age has decreased, though
there is some deviation because of the higher degree of probable hazards associated with the nature of work.

Table 2.1

Minimum Age in Various Legislations Related to Child Labour in India

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Act</th>
<th>Minimum Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Children Pledging of Labour Act, 1983</td>
<td>15 years</td>
</tr>
<tr>
<td>2.</td>
<td>The Employment of Children Act, 1938</td>
<td>15 years</td>
</tr>
<tr>
<td>3.</td>
<td>The Factory Act, 1948</td>
<td>14 years</td>
</tr>
<tr>
<td>4.</td>
<td>The Plantation Labour Act, 1951</td>
<td>12 years</td>
</tr>
<tr>
<td>5.</td>
<td>The Merchant Shipping Act, 1958</td>
<td>18 years</td>
</tr>
<tr>
<td>6.</td>
<td>The Motor Transport Workers Act, 1961</td>
<td>18 years</td>
</tr>
<tr>
<td>7.</td>
<td>The Beedi Cigar Workers (Conditions of Employment) Act, 1966</td>
<td>14 years</td>
</tr>
<tr>
<td>8.</td>
<td>The Employment of Children Act, 1978</td>
<td>15 years</td>
</tr>
<tr>
<td>9.</td>
<td>The Child Labour (Prohibition &amp; Regulation) Act, 1986</td>
<td>14 years</td>
</tr>
</tbody>
</table>

Source: Deshpande 1996.

(c) Medical Fitness:

The requirement of the certificate of physical fitness is also one of the ways to regulate child labour practice. Thus, employment of children in certain occupations requires producing certificate of medical fitness. If we see table 2.2, we can find that such requirements are for ensuring that children below 14 years should not join the labour market and adolescents who are working should be physically fit.
Table 2.2

Medical Examination in Legislations Related to Child Labour in India

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Act</th>
<th>Requirement of Certificate of fitness</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Employment of Children Act</td>
<td>A child who has completed 15 years</td>
</tr>
<tr>
<td>2.</td>
<td>The Factory Act, 1948</td>
<td>i. A child who has completed 14 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ii. Adolescent being a person who has not completed 18 years</td>
</tr>
<tr>
<td>3.</td>
<td>The Plantation Labour Act, 1951</td>
<td>i. A child who has completed 12 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ii. Adolescent being a person who has not completed 18 years</td>
</tr>
<tr>
<td>4.</td>
<td>The Merchant Shipping Act, 1958</td>
<td>A child who has completed 18 years</td>
</tr>
<tr>
<td>5.</td>
<td>The Motor Transport Workers Act, 1961</td>
<td>A child who has completed 15 years</td>
</tr>
</tbody>
</table>

Source: Deshpande 1996.

(d) Hours of work:

Every Act prohibits excessive hours of work and had made some provisions to regulate these practices for children and the adolescents. Almost all Acts prohibit work more than four and half hour a day, but child labourers in plantation work are allowed to work for five hours a day. However, the Child Labour (Prohibition and Regulation) Act, 1986 do not allow children to work more than three hours consecutively (table 2.3).
Table 2.3

Hours of Work in Legislations Related to Child Labour in India

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Act</th>
<th>Hours of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Factory Act, 1948</td>
<td>4 hours per day at stretch</td>
</tr>
<tr>
<td>2.</td>
<td>The Minimum Wages (Central Rules under the Act)</td>
<td>4½ hours per day at a stretch</td>
</tr>
<tr>
<td>3.</td>
<td>The Plantation Labour Act, 1951</td>
<td>Not more than 4 hours per week</td>
</tr>
<tr>
<td>4.</td>
<td>The Motor Transport Workers Act, 1961</td>
<td>4½ hours per day at a stretch</td>
</tr>
<tr>
<td>5.</td>
<td>The Mines Act, 1982</td>
<td>4½ hours per day at a stretch</td>
</tr>
<tr>
<td>6.</td>
<td>The Child Labour (Prohibition &amp; Regulation) Act, 1986</td>
<td>Total 6 hours per day with one hour break</td>
</tr>
</tbody>
</table>

*Source: Deshpande 1996.*

(e) Night Work:

Almost all the Acts ban night work for children. Overtime is not permitted. According to Factories Act, children between 14 and 17 years cannot be asked to work at night between 10 p.m. to 6 a.m. The Child Labour (Prohibition and Regulation) Act has not allowed children for work between 7 p.m. to 8 a.m., and overtime is not allowed too.

Table 2.4

Night Work in Legislations Related to Child Labour in India

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Act</th>
<th>Prohibition of Night Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Employment of Children Act, 1938</td>
<td>10:00 p.m. to 07:00 a.m.</td>
</tr>
<tr>
<td>2.</td>
<td>The Motor Transport Workers Act, 1961</td>
<td>10:00 p.m. to 06:00 a.m.</td>
</tr>
<tr>
<td>3.</td>
<td>The Beedi and Cigar Workers Conditions</td>
<td>7:00 p.m. to 06:00 a.m.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Description</th>
<th>Section</th>
<th>Imprisonment</th>
<th>Penalty Imposed (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>The Mines Act, 1982</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>The Child Labour (Prohibition &amp; Regulation) Act, 1986</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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</tbody>
</table>

Source: Deshpande 1996.

(f) Penalties:

Earlier, it was Factories Act and Mines Act, which had provided the maximum amount of penalties, i.e., Rs. 2000 and Rs. 1000 respectively. Fines in other Acts range between Rs. 200 and Rs. 500. These fines are associated with imprisonment, and range from one month to three months.

The Child Labour (Prohibition & Regulation) Act (CLPRA) of 1986 fines Rs.10,000 to 20,000 to the offenders. The imprisonment under the CLPRA ranges from 3 months to 1 year (table 2.5)

Table 2.5

Penalties in Legislations Related to Child Labour in India

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Description</th>
<th>Section</th>
<th>Imprisonment</th>
<th>Penalty Imposed (in Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The children (pledging of labour) Act, 1933</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Penalty on parents or guardian making an agreement to pledge the labour of the child.</td>
<td>4</td>
<td>1 month</td>
<td>500/-</td>
</tr>
<tr>
<td>b)</td>
<td>Penalty for</td>
<td>5</td>
<td></td>
<td>200/-</td>
</tr>
</tbody>
</table>
making with parents or guardian arrangement to pledge the labour of child.

c) Penalty for employing a child whose labour has been pledge. 6 - - 200/-

2. The Employment of Children Act, 1938

a) Penalty against the employment of children to work or failing to give notice to inspector before carrying on work or failure to maintain register. 4 - 1 - 500/-

3. The Factory Act, 1948

a) General penalty for offences. 62 - 3 months - 500/-

b) Penalty for using certificate of fitness 98 - 1 - 50/-

c) Penalty for permitting double employment of a child. 99 - - - 50/-

4. The Plantation Act, 1951

a) Use of false certificate of fitness 34 - 1 months - 50/-
<p>| | | | | |</p>
<table>
<thead>
<tr>
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<td>b) Contravention of provisions regarding employment of labour</td>
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<td>5.</td>
<td>The Motor Transport Workers Act, 1961</td>
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<td>a) Use of false certificate of fitness</td>
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<td>b) Contravention of provisions regarding employment of Motor Transport workers</td>
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<td>6.</td>
<td>The Mines Act, 1982</td>
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<td>a) Falsification of records</td>
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<td>b) Use of false certificate of fitness</td>
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<td>c) Penalty on employment of persons below 18</td>
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<td>7.</td>
<td>The Child Labour (Prohibition and Regulation) Act, 1986</td>
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Source: Deshpande 1996.
Child Labour Conventions Ratified by Pakistan

Pakistan is signatory to the Declaration of the Rights of the Child adopted by the U.N. General Assembly in 1959. This Declaration aims at protecting the child against all forms of neglect, cruelty and exploitation. It also calls for no employment before an appropriate minimum age and especially in occupations which would jeopardize his or her health or education or interfere with his or her physical, mental or moral development. However, as is quite well known, the declarations are no more than goodwill gestures because they are legally not binding on the signatories. Pakistan has ratified the minimum age convention, 1973 (No. 138). The convention requires member states to ensure effective abolition of child labour, and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The minimum age cannot be less than the age of completion of compulsory school and, in no case less than 15 years; in case of a member state whose economy and educational facilities are insufficiently developed, the minimum age initially can be lowered to 14 years. This convention fixes the minimum age for admission of children to industrial employment at 14 years (Kemal 1993: 32, 34).

In 1990 Pakistan has ratified the UN Convention on the Rights of the Child (CRC), 1989 which is the most important international covenant on the rights of children. Some significant provisions of CRC are:

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, spiritual, 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 or minimum age for admission to employment.

(b) Provide for appropriate regulation of the laws and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article (Government of Pakistan 2004: 8).

Pakistan also ratified ILO Convention 182 in 2001. Countries are bound, following ratification, to take action for the elimination of the worst forms of child labour. The convention applies to all persons under the age of 18 years.

In order to identify the worst forms of child labour, the Government of Pakistan organized consultations that resulted in a compilation of a list of 29 occupations and processes in 2002, which are regarded as hazardous occupations for children (SPARC 2006: 89).

**Child Labour Legislations in Pakistan**

There are several laws regarding child labour in Pakistan, and constitution has specific provisions. In Pakistan’s constitution, employment of children below 14 years is prohibited in some works.

Article 11 (1) of Pakistan’s constitution forbids Slavery and states that no law shall permit or facilitate its introduction into Pakistan in any form. Article 11 (2) also prohibits all forms of forced labour and traffic in human beings (Government of Pakistan 2006a: 1).

Article 11 (3) of Pakistan’s constitution prohibits employment of children below the age of 14 years in any factory or mine or any other hazardous employment; incidentally this article is a copy of Article 24 of the Indian constitution (Jillani 2002: 1).
In addition, the constitution makes it a principle of policy of the state of Pakistan to protect the child, to remove illiteracy and provide free and compulsory education within the minimum possible period and to make provision for securing just human conditions of work, ensuring that children are not employed in vocations unsuited to their age and sex. The factories Act, 1934 allows for the employment of children between the ages of 14 and 18 years provided that each adolescent obtains a certificate of fitness from a certifying surgeon. A certifying surgeon, per section 52 of the Act, shall on the application of any child or adolescent who wishes to work in a factory, or on the application of the parent or guardian of such person, or the factory in which such person wishes to work, examine such person and ascertain his or her fitness for such work.

The Act further restricts the employment of a child in a factory to five hours in a day. The hours of work of a child should thus be arranged in such a way that they are not spread over more than seven and a half hours in any day. In addition, no child or adolescent is allowed to work in a factory between 7 p.m. and 6 a.m. The provincial Government may, by notification in the official Gazette in respect of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 a.m. and 7.30 p.m. Moreover, no child is permitted to work in any factory on any day in which he or she has already been working in another factory.

Factories are further required to display and correctly maintain a notice of periods for work for children, indicating clearly the periods within which children may be required to work. The manager of every factory in which children are employed is compelled to maintain a register of child workers identifying the name and age of each child worker in the factory, the nature of his or her work the group, if any, in which he or she is included, where his or her group works on shifts, the relay to which he or she is allotted, the number of his or her certificate of fitness granted under section 52, and any such other particulars as may be prescribed (Wexels 2004: 5-6).
A factory means any premises, including the precincts thereof, whereon ten or more workers are working, and in any part of which a manufacturing process is being carried on, or is ordinarily carried on with or without the aid of power,¹ but does not include a mine. Thus if an establishment employs less than 10 workers then it would not be considered as a ‘factory’ (Jillani 2002: 2).

The Mines Act, 1923 has a section dealing with employment of children in Mines. A young person below the age of 17 years is not permitted to work in a mine unless a certificate of fitness is granted to him by a qualified medical practitioner (The Mines Act 1923, Section 26A).

The Children (Pledging of Labour) Act, 1933, prohibits the pledging of labour of children less than 15 years of age. The Act allows employment of children in certain industrial employments and prohibits it in certain others. The Act prohibits the employment of children below the age of 15 years in occupations connected with the transport of goods, passengers or mails by railway or involving the handling of goods within the limits of any port (Employment of Children Act 1938: Articles 3-6). A child of 15, but below 17 years of age, is permitted to work in the above-mentioned occupations if his working hours are fixed in such a way as to allow an interim or rest for at 12 consecutive hours.

Children below 14 years of age are not permitted to work in any workshop wherein any of the following processes are carried on:

1. Bidi making
2. Carpet weaving
3. Cement manufacture, including bagging of cement

¹ The words “with the aid of power, or is ordinarily carried on” are substituted by the words “or is ordinarily carried on whether with or without the aid of power” by the Factories (Amendment) Act, 1973 (Act No. XVI), sec. 2 (a).
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
10. Wood cleaning

If a dispute arises as to the age of the child, and the child doesn't have a certificate giving proof of his age, the dispute according to this Act will be settled by a prescribed medical authority. It is compulsory for every employer to maintain a register giving details of children employed, their dates of birth, the nature of job and whether it employs a child in any of the occupations mentioned before; if fails to maintain a register, it will be imposed with a fine which may extend to 500 rupees.

The punitive sum does not appear to have suffered the indignity of inflation indexation. The Employment of Children Act (Government of Pakistan) doesn't have any provisions for the safety of the children employed. Their education and health have also been neglected by the Act (Government of Pakistan, 1938). General Yahya Khan's martial law regime was active in enacting labour laws. One law that it passed in June 1999 and which is still in force is the Shops and Establishments Ordinance. This prohibited employment of children below the age of 12 years in any establishment. The term establishment is defined under this law to mean a shop, commercial or industrial establishment, private dispensary, hotel, restaurant café, cinema and such other places as are notified by the concerned provincial government (Jillani 2002: 2).

The primary education ordinance was passed in 1962. The purpose of this law is to make education compulsory up to the primary level. According to this ordinance, the 'primary education' means education pertaining to all or any of the
classes I to VIII, in any school other than high school. The “primary school” means a school, other than high school, in which primary education is imparted. This primary education should be enacted in the recognized school that means a school or department of a school recognized by Government as suitable for primary education. The government is expected to select either the whole district or any specific area, for introducing compulsory primary education.

The parents can be compelled by law, to send their children for attending a recognized school by the school attendance authority. According to this ordinance they should not go to work as child labourers. According to this ordinance, any parent who fails to comply with the order shall be punishable with fine which may extend to fifty rupees and with further fine which may extend to five rupees for every day after the conviction for which the failure continues (Primary Education Ordinance, 1962: 8). According to this ordinance, the children below 12 years are prohibited to work and should be attending primary education that continues up to grade 8th.

In April 1991 in Pakistan, the ECA (Employment of Children Act) was passed not at behest of Government but on the initiative of a senator. This law brought about some good changes but it proved to be detrimental in one area in that the minimum age for admission to employment instead of being raised through this law, unprecedented in the world, was lowered from 15 to 14 year in the case of several sectors like mines, factories, and establishments (Jillani 2002: 3). The Act ensures protection of children from economic exploitation and particularly from the work which is hazardous and harmful for their health. This Act, further, regulates the minimum standard, requisite for health and safety of the children employed. Contravention of its provision is subject to penalties provided in the enactment (Mokal 1992: 12). This Act debars children from being employed, or from being permitted to work, in all such occupations as are connected with:
(i) Transport of passengers, goods or mails by railway.

(2) Cinder picking, cleaning of ash pit or building operation in railway premises.

(3) Work in a catering establishment at railway station which involves the movement from one platform to another or into or out of a moving train.

(4) Work relating to the construction of a railway station or any of their work in close proximity to or between the railway lines.

(5) Work relating to setting up of crackers and fireworks in shops with temporary licenses.

Children have also been prohibited from working in any workshop where any such industrial process is carried on, such as bidi making, carpet-weaving, dyeing and weaving, manufacture of matches, explosives and fire-works, mica-cutting, shellac manufacture, soap-manufacture, tanning, wool-cleaning, building and construction, manufacture and packing of state pencils, manufacture of products from agate and manufacturing processes using toxic metals and substances such as Lead, Mercury, Manganese, Chromium, Cadmium, Benzene, Pesticides, and Asbestos. An exception has, however, been made for children to work, or be employed in any establishment where such process is carried on by the occupier with the help of his family. There is also another exception that children can be employed in schools established, assisted, or recognized by Government.

In fact, the ECA does not prohibit work in establishments or enterprises that are not related to the occupations and processes specified in the Act. It also doesn’t prohibit children’s work in the agriculture sector (except where hazardous chemical sprays are used), or work in the family business, form or enterprises (National Commissioner for Child Welfare and Development 1992: 131). According to the Act, period of work for each day should be fixed so that no child should work for more than 3 hours without a break. And total period of
for waiting. The Act also do no permit or recognize children to work between 7 P.M. and 8 A.M. (Fiashin 2007). Under-14 working child is also required to be given a whole day of holiday, even if this requirement is not in any establishment. A similar holiday to children above the age of 14 may be refused if such a weekly day of rest is not there in an establishment, as this ECA provision only covers children below the age of 14 years.

Every employer of an under-14 working child, within a period of 30 days of employing the child, is to furnish to the Child Labour Inspector appointed under ECA, the establishment's name and address, person's name in-charge of the establishment, and nature of process carried on at the establishment. Every establishment is ordered to maintain a register in respect of the working children (AGHS Legal Aid Cell on Child Rights 2008). The health and safety of the children, employed or permitted to work in any establishment, are also taken care of by a provision, in the Act, whereby rules are to be made for providing for such matters as cleanliness of the place of work, its freedom from nuisance, proper disposal of wastes, etc., proper ventilation and temperature, ensuring the place of work to be free from dust, providing artificial humidification, proper lighting, suitable arrangements for drinking water, latrines, urinals, spittoons, etc.

In addition, safety-measures are to be taken in accordance with the rules framed under the Act. These measures include fencing of machinery, protection of eyes, exclusion of inflammable gas, etc. and numerous other measures for the safety of the child at work (Mokal 1992: 33-34). The Employment of Children Act, 1991 has also provided necessary penalties for contravention of the various provisions of enactment. If anyone employs child in contravention of ECA, then he or she is punishable with imprisonment for term which many extend to one year or with fine which may extend to twenty thousand rupees, or with both. A repeated offence is punishable with imprisonment of term which shall not be less than six months but which may extend to 2 years. Penalties under the ECA also apply to the Factories Act, the Mines Act and the Shops & Establishments
Ordinance. Any person may file complaint for contravention of ECA to a court of first class magistrate.

However, ineffectiveness of this law can be assessed from the fact that few, if any, have been convicted under it (Jillani 2002: 5). The Employment of Children Rules was passed in 1995. This extends to the whole Pakistan with the exception of the state of Azad Jammu and Kashmir and delimits finite labour conditions afforded for the protection of minors. Rules insist on cleanliness in the place of work. No rubbish, filth or debris shall be allowed to accumulate or to remain in any part of the establishment and proper arrangements shall be made for maintaining in reasonable clean and drained condition the place for the workers of the establishment. Rule I further calls for proper ventilation, and removal of gases or other impurities from any process carried on, in such establishment. As long as workers are present in an establishment the latrines, passages, stairs, ground and all other parts of the establishment in so far as the entrance of the said places is not closed, must be lighted in such manner that safety is fully secured. In addition, in every establishment an arrangement of drinking water for child workers is to be provided free of charge. All shafts, couplings, collars, clutches, tooth end wheels, pulleys, driving straps, chains projecting set screens, keys nuts, and belts on revolving parts, employed in the establishment shall be security-fenced if in motion and with reach of a child worker, and further these shall not be operated by a child worker.

Under the employment of child rules, anyone who employs child or permits a child to work in contravention of the constitution is punishable by imprisonment for a term extending up to one year or may be fined up to Rs. 20,000 or subject to both. Repletion of the offence is punishable by imprisonment for a term extending up to two years and shall not be less than six months (National Labour law profile, Islamic Republic of Pakistan: 6). Government of Pakistan, with the Bonded Labour System (Abolition) Act, 1992, terminated all obligation of a bonded labourer to repay any pounded debt. The Act declares an agreement to pledge the labour of a child void. It defines an agreement to pledge
the labour of a child to mean an agreement, written or oral, express or implied whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilized in any employment provided that an agreement made without consent of child, and made in consideration of any benefit farther than reasonable wages to be paid for the child services, and terminable at not more than a week's notice, is not an agreement within the meaning of this definition.

‘Child’ is defined to mean a person who is under the age of 15 year; while ‘guardian’ includes any person having legal custody of or control over the child (Jillani 2002: 7-8).

Conclusion

By analyzing these legislative attempts in both countries it is found that these Acts do not cover all kinds of child labour. Moreover, their implementation process is very weak and slow. Both countries prohibited the employment of child labour under 14 years of age in any factory or mine or any other hazardous employment. But most important loophole is that they do not ban child labour in the family. They only deal with the child labour and employer in the context of hazardous occupations and are silent to employer’s agent or middleman or the contractor who plays a crucial role in employing children. Moreover, all these Acts are for urban areas whereas most of the child labourers are in the agricultural sector. Mere legislation is not enough to solve this problem.