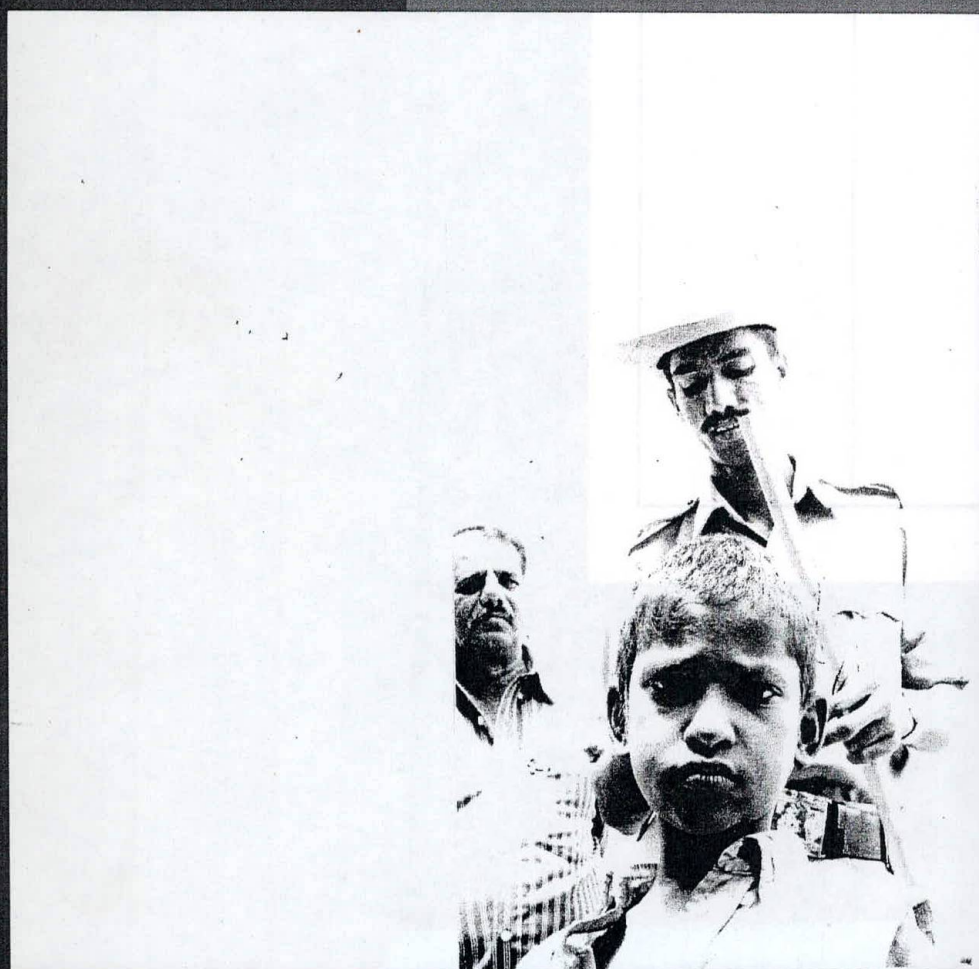


Hand Book for the orientation of the Enforcement Officers, Prosecutors and Legal Practitioners on the Elimination of Child Labour

Edited by: **H. Kamalakar Halembi**
Sanjiv Kumar



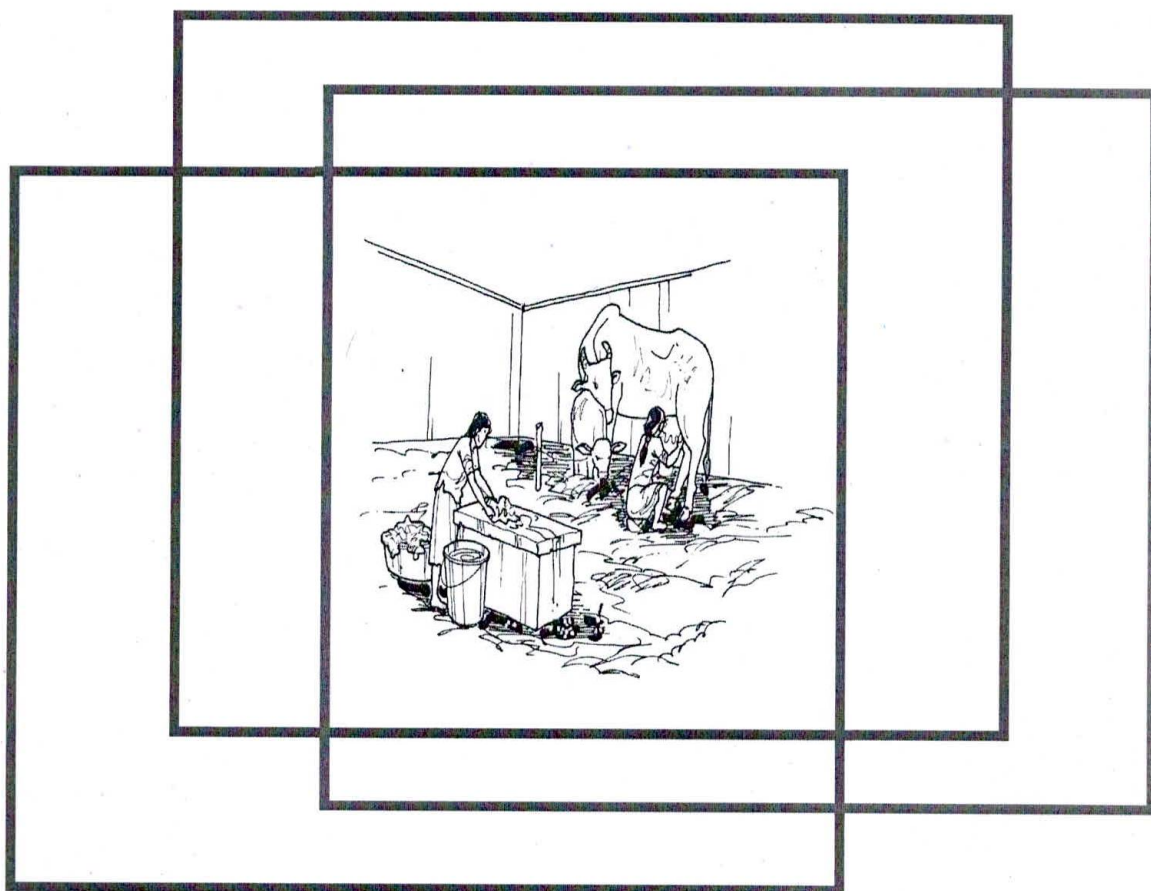
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International Labour Organization
ILO-IPEC - Karnataka Child Labour Project
(Funded by the Government of Italy)

Hand Book for the Orientation of the Enforcement Officers, Prosecutors and Legal Practitioners on the Elimination of Child Labour



International
Labour
Organisation



INTERNATIONAL LABOUR ORGANIZATION

International Programme on the Elimination of Child Labour (IPEC)

Karnataka Child Labour Project

(Funded by the Government of Italy)

Foreword

Large numbers of stakeholders are involved at various levels for the successful implementation of the programmes for the elimination of child labour. Unless these stakeholders are sensitized on issues relevant to child labour and trained about their roles and responsibilities and what to expect from other stakeholders and institutions; a concerted, coherent, cooperative and sustained effort towards the common goal of child labour elimination is not possible. Appropriate training of a stakeholder builds his capacities to discharge his responsibilities as expected, and respond in time to any emergent situation, need and expectation. A trained stakeholder follows a particular process and is in a position to contact other actors and institutions and get their cooperation and response as and when needed.

The capacity building should be such that the stakeholders understand the complex socio-economic, cultural, attitudinal, political and administrative circumstances of the issue so that they are motivated, sensitized and equipped mentally and physically to deliver the objectives successfully. The training should provide conceptual clarity on child labour issues and instill in all the stakeholders a sense of urgency to fulfill the mission of eliminating child labour. Training programmes would need to focus on prompting attitudinal change, converging inter-departmental efforts and setting specific cross-sectoral goals. Training needs of the functionaries at various levels and various stakeholders are quite different and distinct and a common training manual for every one may not serve the purpose.


Generally the implementing stakeholders are trained, because when they are not adequately trained, the quality of implementation suffers. But some stakeholders who may not be implementing stakeholders but yet have a wide influence on the outcome (both potentially positive as well as negative), like members of the media, political and religious leaders etc. are also trained to capitalize on their influence for the cause.


It is heartening to note that the ILO-IPEC – Karnataka Child Labour Project has developed trainers' handbooks for training various stakeholders like:

1. Parents (particularly mothers)/Guardians of Child Workers.
2. Government functionaries of Grass roots level organizations, Teachers, Anganwadi Workers.
3. Gram Panchayath members, SDMC members, Local Leaders of the Community etc.
4. Employers, Employer Organization office bearers.
5. Workers, Trade Union office bearers.
6. Enforcement officers.
7. Judicial officers.

8. NGOs and Government officers of other departments in the development sector.

The manual containing modules prepared and jointly edited and field tested by Mr. Kamalakar Halambi and Mr. Sanjiv Kumar, in Kannada and English is an important tool for training stakeholders and preparing them to effectively combat child labour. We trust that it shall be used widely.


Ms Leyla Tegmo-Reddy,
Director, ILO, South Asia.


Mr. BL Sridhar, IAS,
Principal Secretary Labour,
Government of Karnataka

Acknowledgement

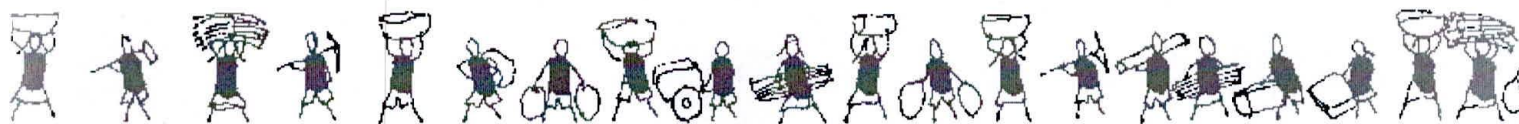
Being a complex socio-economic problem the elimination of child labour requires a concerted effort and active involvement of all the Stakeholders including the community. A large number of Stakeholders are involved at various levels for the successful implementation of the protocols and processes involved in the elimination of child labour. Unless these stakeholders are sensitized to the issues relevant to child labour and trained about their roles and responsibilities and what to expect from other stakeholders and institutions, a concerted, coherent, cooperative and sustained effort towards the common goal is not possible. An appropriate training of a stakeholder builds his capacities to discharge his responsibilities as expected, and respond timely and adequately to any emergent situation, need and expectation. A trained stakeholder acts on a predictable line and is in a position to contact other actors and institutions and get their wholehearted cooperation and timely response.

For child labour elimination, training should be such that the stakeholders understand the complex socio-economic, cultural, attitudinal, political and administrative circumstances of the issue so that they are motivated and sensitized and equipped mentally and physically to deliver the objectives successfully. The training should provide conceptual clarity on child labour issues and instill a sense of urgency to fulfill the mission of elimination of child labour in all the stakeholders. Training programmes would need to focus on promoting attitudinal change, convergence of inter-departmental efforts and setting specific goals cross-sectorally. Training needs of the functionaries at various levels and various stakeholders are quite different and distinct and a common training manual for every one would be ineffectual.

In this background ILO-IPEC – Karnataka Child Labour Project has taken up this task to develop a set of seven Self Help Training Manuals for the trainers in English and Kannada for the different Stakeholders. We have tried to make this training manual as simple as possible. We are thankful to Ms. Leyla Tegmo-Reddy, Director ILO, SRO, New Delhi for entrusting this work to us and encouraging us from time to time to deliver our best. We are thankful to the Principal Secretary Labour, Government of Karnataka Mr. BL Sridhar, IAS, Deputy Commissioners of the Project Districts and other important stakeholders who gave their valuable suggestions for improving these manuals. We are thankful to Mr. Mohan Chandra U., Development Consultant, for his valuable contributions and involvement at every stage of the development of these manuals. We remember the support given by Ms. Merlin Martis, Director-Deeds for extending the much needed institutional support for the preparation of these manuals. We thank Mr. Thirtharama Valalambe for his excellent illustrations. We further thank Mr. Prasad and Mr. Vinaya T.S. for providing us necessary help required for the preparation of these Manuals. Further we thank all those who have helped directly and indirectly in the development of these modules. We have borrowed freely from various sources and earlier efforts in developing such material. But if any limitations remain we are solely responsible for the same and are happy to invite comments and suggestions to be incorporated in the next version of the manual.

Kamalakar Halambi

Sanjiv Kumar



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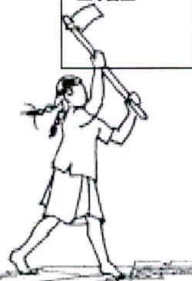
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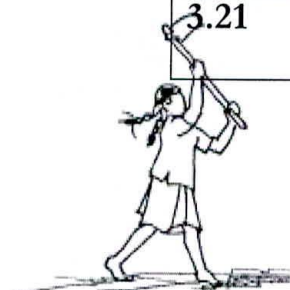
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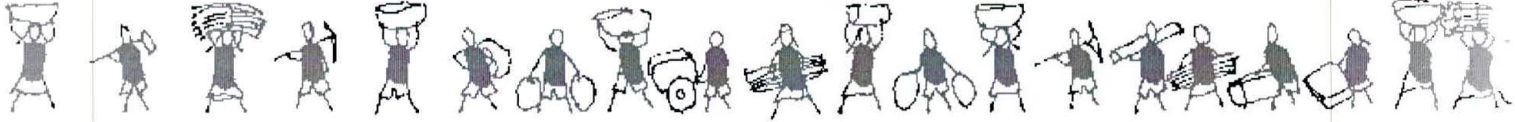




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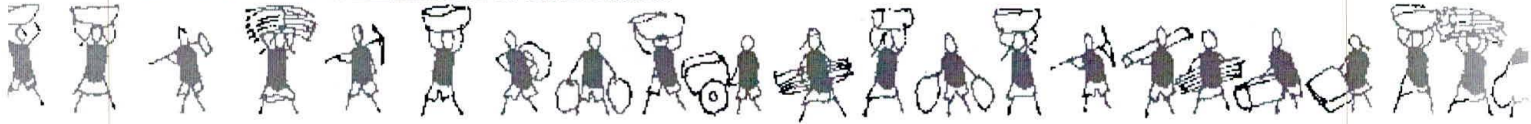
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SECTION - I





1.1 Introduction

International Labour Organization (ILO) has initiated the 'Karnataka Child Labour Project (KCLP)' to combat child labour and economic exploitation among adolescents in Chamarajnagar and Bidar Districts of Karnataka State. The mandate of this three-year project is to try out workable models and to identify best practices with downstream service oriented activities at the community level, which will be implemented through eight components. Capacity building of all the stakeholders including the enforcement officers, prosecutors and legal practitioners is integral to any strategy to combating child labour.

With reference to child labour, enforcement has two aspects. Firstly, ensuring that laws on free and compulsory education are implemented and all out of school children are put in school; secondly, enforcing labour laws on employment of children and ensuring that all of them are released and rehabilitated. This manual primarily deals with the second type of enforcement. Enforcement leading to conviction is a more real and effective deterrent with a wide demonstration effect. But, for enforcement to be a deterrent, its frequency has to be such that at least one in ten defaulters is caught and convicted. Throughout India, very few cases are registered under Child Labour laws and also conviction is insignificant as there are no interest groups to support the enforcement of the legislation banning child labour. Booking a criminal case is a very difficult task as it involves resistance at all levels. No one, neither the public nor even the NGOs comes to witness the inspection note drawn on the spot; doctors may not cooperate to give the age certificate; the employer and the general public are hostile. Even the child worker and his/her guardians are non-cooperative. Cooperation from police and other concerned departments is not forthcoming. Elected representatives at all levels interfere with the case. Public prosecutors may demand a more elaborate panchanama. In the courts, a number of dates are given and the personal appearance of the inspectors is insisted upon. Often, false allegations are hurled at the inspecting officers. Appropriate secretarial assistance and stationery may not be made available to them. Mobility (vehicle) of the inspecting officer is also a constraint. Insufficient training of the enforcement officer, insufficient monitoring and lack of incentives (both negative and positive) do not allow good quality cases to fructify into conviction. It is said that legislation is likely to be effective only where there is a capable administration determined to implement the laws, where the working child is visible, and where there is relatively no advantage from child work.

The enforcement of child labour laws is much more complex than any simple enforcement. In the case of child labour, on the one hand, the enforcement authority has to collect evidence, draw a panchanama on the spot for prosecution and also simultaneously release the child worker, get his/her age ascertained and arrange for his/her rehabilitation. Many NGOs argue that unless the Government lays down clear guidelines for rehabilitating the child's family, enforcement will not be effective. Due to these complexities, very few cases have been booked throughout India. In Karnataka, after a new inspection protocol was evolved wherein a multi-departmental team consisting of a labour officer, an education officer, a revenue officer, an NGO and a doctor go together for enforcement the number and quality of cases and the conviction rates have improved considerably.





Enforcement is both preventive as well as curative; its impact goes beyond the case by demonstration and deterrence. Criminal conviction resulting in jail term has an electrifying effect where not only the convicted person but the employers are also careful in not employing children. Compared to any other intervention enforcement is more cost effective. Many still argue that enforcement impacts the child worker's family as their source of income is affected. It may appear to be logically true that at the micro level that enforcement cannot compensate a child worker's family its loss of income, but at the macro-level, the 'Child Worker' does not technically add anything additionally to the GDP, as only adult labour is replaced. Adult labour becomes under-employed or unemployed and this has far more complex ramifications as the number of unemployed and under-employed is much larger than the number of child workers in our economy. Complete abolition of child labour should not make much difference to the average income of the child worker's family as the loss of income of the child worker will be offset by the increase in the wages of the adult in the same family. This proposition needs validation by appropriate studies. Also, the existence of child labour increases the supply of the work force in a market, reducing their bargaining power and decreasing the prevailing wage rate, and the reverse should happen with the elimination of child labour. Enforcement as a strategy has not been used effectively. Some of the funds allocated for NCLP projects should be allocated for augmenting man-power, vehicle and other contingent resources required for stricter enforcement.

Minimum needs for successful enforcement:

For any enforcement to be meaningful and effective, the requirements are standard laws, standard institutions to legislate, execute, adjudicate and communicate (media), standard monitoring and enforcement, standard communication and community participation (including civil society organizations, Panchayat Raj Institutions, self-help groups, trade unions, parents and children themselves, etc.). As discussed earlier, the laws on child labour are sectorally focused; leaving enough loopholes for the defaulters to re-engineer the business process and wriggle out of the net - burden of proof of the child's age quantum of punishment and non-provisioning of special courts for this purpose have all contributed to the non-effectiveness of the legislation. Complete prohibition of child labour; simplifying presumptions regarding age, strengthening the penal provisions and making executive magistrates hear the 'child labour' cases are certain measures that will improve the situation. In developing countries, standard institutions are a distant dream but appropriate communication campaigns and capacity building exercises empower them sufficiently to come up to expectations. Existing manpower and resources devoted to child labour eradication are insufficient to provide standard monitoring and enforcement. The present labour inspectorate is geared only to meet the needs of the formal sector and formal work place monitoring. The challenge of informal workplace monitoring will not be possible without large-scale community participation.

This two days capacity building module is designed to train and orient the enforcement officers, prosecutors and legal practitioners towards understanding child labour issues and laws and to facilitate them in drawing up an action plan so that they can initiate a proactive enforcement and prosecution process to eliminate child labour.





1.2 About the Training Manual

(A note on the Manual for Training of Enforcement Officers, Prosecutors and Legal Officers)

There are four sections in this manual.

The first section contains information which will help the trainers understand this training manual and guide them in organizing the training successfully.

The second section contains the training activities, which can be part of a two days training program for the enforcement officials. As child labour is a very vast subject, all the important issues cannot be included in the two days' program due to constraints of time. Based on local needs the trainer is at liberty to include other relevant issues by making suitable changes in the schedule. In case of time constraint the sessions may be reduced carefully without affecting the overall impact of the training.

The third section contains reference articles related to training activities, which will help in preparing power point presentations or flipcharts.

The fourth section contains a model power point presentation which may be used as a flip chart with suitable modifications. This section gives a prototype of a friendship band and masks to be used for sensitizing participants.

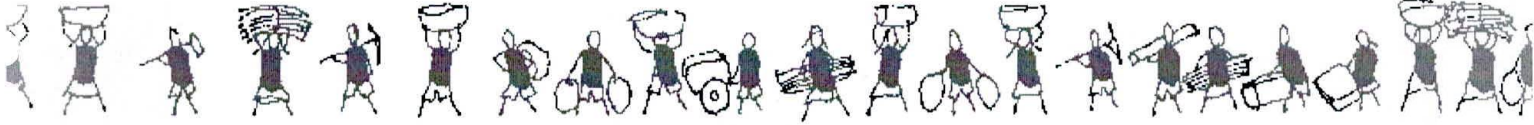
All the training activities demand total participation. Trainers are requested to internalize the whole manual before organizing the training.

Certain methods and approaches have been suggested. Based on local need if the trainer feels that he should use some other method which will be more effective, he can do so after discussing the same with the Project Director of the NCLP and the District Lead Agency. But it should be ensured that the issues taken up in the identified modules reach the participants.

Each training activity is divided into several sub activities, and contains the following:

- Title
- Duration
- Objectives
- Text
- Materials
- Methods / Approaches
 - Process / Activities
 - Expected Out come
 - Key Question
 - Indicators of success
 - Instruction



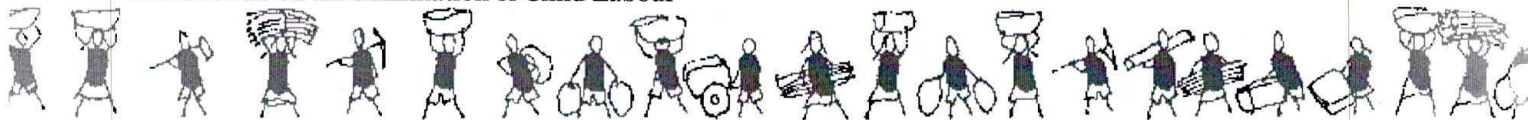


1.3 Preparations for the Workshop

Conducting a workshop for the enforcement officers and prosecutors is easier said than done. This calls for meticulous preparation and planning. The following points will be helpful in organizing the workshop:

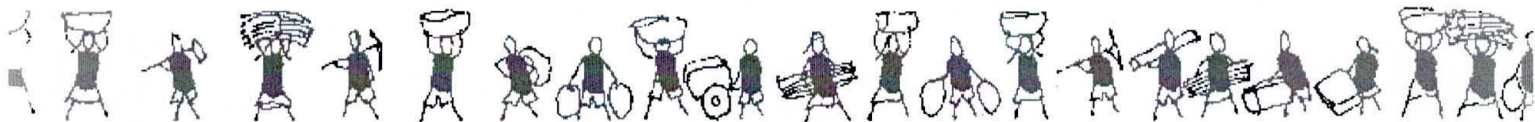
- Collect information on various enforcement officers and prosecutors functioning in your area
- Consolidate the data thus gathered and focus on the following information:
 - The name of the official/the area of work
 - The approximate number of years of their work in the area
 - What are their main achievements or lack of it till now?
 - What is the child labour situation in their area?
 - What is their understanding of the issue of child labour?
 - What are the bottlenecks in child labour law enforcement in the area?
- You will obtain the necessary background material and the delegates to be invited for the workshop based on the above information
- Based on this arrange a suitable venue for the workshop
 - The venue should be located away from the noise of the town but must be well connected by public transport to enable the participants to reach it
 - It must accommodate a minimum of 30-50 persons
 - Prepare a small stage
 - Toilets, parking facilities and generator will be an added advantage
 - It is desirable to have a separate room for food and refreshments
- After the venue is decided, fix a suitable date after consulting with the trainee's representatives
- Invite the suitable resource persons and furnish all the details of the workshop to them. Collect required information from the resource persons regarding the materials required to be kept ready and other arrangements to be made during their sessions. Confirm the availability of the equipments well in advance (for e.g. OHP projector, LCD projector, Slide projector, etc.). If possible provide the copies of the speech / lecture material to the delegates before or during the workshop
- Dispatch invitation letters to all the delegates; it would be better if you personally invite them to the workshop
 - During the workshop make suitable arrangements for light breakfast, serving tea twice a day, water to drink, and lunch
 - Arrange for a banner to be displayed as a backdrop to the stage or a board containing the information on the workshop





- If available make use of loud speakers/microphones
- As far as possible the reading material should be in the local language and use examples from local experiences
- Keep sufficient stationeries and other materials required for the workshop ready
- Form a task force of volunteers to assist you in the workshop, and brief them thoroughly about the organizational details of the workshop
- Display banners/posters in the training hall depicting child labor and the remedies to address the issue of child labour
- Prepare a tentative budget of the workshop
- Please bear in mind the following aspects with regard to meeting the workshop expenses:
 - Although this workshop may be sponsored either by the Child Labour Project or Sarva Shiksha Abhiyan, various organizations/associations such as the NGOs and Employers Associations are likely to sponsor programmes like this. The efforts to mobilize local resources for the workshop will set an example for others to follow which will also represent the collective voice of the society against the evil of child labour.
 - The resources need not be in the form of cash. The contributions in the form of concessional printing of the workshop materials by a printing press; sponsoring food and refreshment by the Hotel Owners Association or training hall for the workshop being provided by NGOs either at lower rent or free of any charges, are also to be considered as valuable resources. Money is required to meet sundry expenses and to pay honorarium to the resource persons.



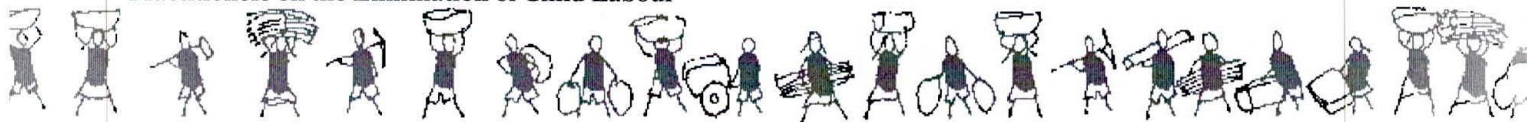


1.4 Objectives of the Training Manual

Following are the objectives of the training manual:

- To provide functional awareness about child labour and relevant laws to the enforcement officers and prosecutors.
- To sensitize them on the issues of child labour.
- To make them proactive in combating child labour and enforcing laws against child labour.
- To enable them to identify the child workers in their area and rehabilitate them.
- To make them take steps to avoid occurrence of child labour in their area through effective enforcement.
- To help participants understand the consequences of child labour.
- To help them understand that child labour is a blot on our society and it neither helps the family, nor the child worker or the society.
- To enable them to understand that the elimination of child labour is their social and legal obligation.
- To facilitate them to make an implementable plan of action for themselves to eliminate child labour through enforcement.

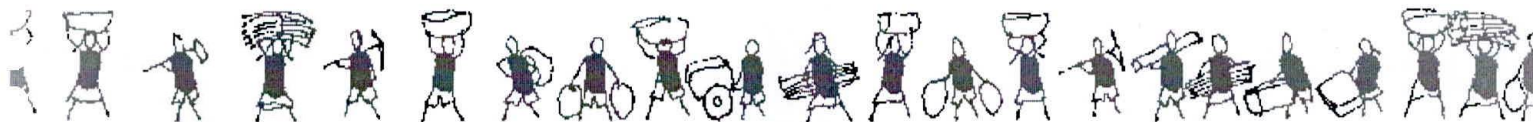




1.5 Training Techniques / Approaches

- **Lecture**
This is to be employed for introducing the subject / topic at the beginning of the session.
- **Asking Questions**
Questions can be asked to keep the participants attentive and also to stimulate discussions; they should never be asked in an irritating or threatening way.
- **Sub-Groups discussions**
It is an active method of participatory learning; helps participants become involved in the discussions and provides opportunities to all the participants.
- **Case Studies**
Case studies given in the activity provide real life situations whereby the participants understand the subject. After presenting case studies, the salient features of the same should be discussed and recorded.
- **Action Plan**
Action plan can be developed individually or as a group activity. Action plan is required to make participants think about the issues and develop a strategy for taking positive steps at their individual and collective levels to prevent child labour.
- **Guided dialogue**
This will help the participants generate new ideas regarding the content of the training by gleaning points from the experiences of the individual participants.
- **Brain Storming**
It is a technique used to encourage the participants to generate a wide variety of ideas. Participants must be encouraged to offer any idea however divergent which comes to their mind regarding the topic.

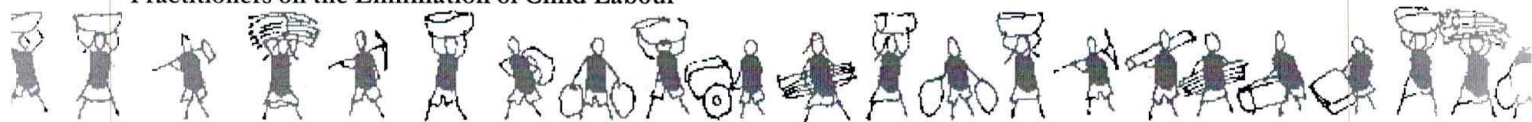




1.6 Role of the Resource Persons

- ❖ Should be aware of the group dynamics and provide and promote equal opportunities to all
- ❖ Should ensure that different ideas / opinions are respected
- ❖ Should facilitate discussions
- ❖ Should lead discussions and at the end summarize the key points
- ❖ Arrange for field visits / guest speakers
- ❖ Should be very punctual and become a role model
- ❖ Should respect the knowledge and background of the participants
- ❖ Should make suitable preparations before the commencement of the training
- ❖ Should encourage group discussions, dialogues, questions etc.
- ❖ Should try to procure handouts, basic information, publications, video films, audio cassettes, charts, banners, posters, photographs etc.
- ❖ Should help the participants understand the orientation schedule
- ❖ Should avoid unnecessary discussions, arguments, etc.
- ❖ Encourage the use of songs and other activities etc.
- ❖ Help participants to learn from one another
- ❖ Try to ensure that no one dominates the session
- ❖ Encourage the silent participant to speak up and participate in the session
- ❖ Be democratic, allow participants to lead
- ❖ Recognize the contributions of the participants
- ❖ Prevent the withdrawal of participants from participation or discussion
- ❖ Document the training experience and report the same to appropriate authorities
- ❖ Obtain feed back and record suggestions for further improvement of the sessions in future.

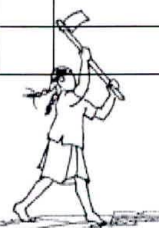




1.7 Indicative Time Table

Day ~ 1

Sl No	Topic	Time	Activities	Materials
1.	Registration	09.30 AM to 10.00 AM	Material distribution and Information gathering	Registration Register, Registration Form, File, Pen, Resource Materials etc.
2.	Inauguration	10.00 AM to 10.30 AM	Meeting	Inauguration function Materials
3.	Introduction, Ice Breaking	10-30 AM to 11-30 AM	Games, Discussion, Lecture	Drawing Sheets, Scissors, Black Board, Brown Sheets, Markers.
	Tea Break	11.30 AM to 11.45 AM	-	-
4.	Magnitude of child labour, Causes and consequences of child labour, Hazardous child labour and worst forms of child labour, myths about child labour.	11.45 AM to 12.45 PM	Presentation, Open discussion	LCD Projector, OHP/ Transparency, Power point presentation, Black Board, white Board, Markers, Sketch Pens, Flip Chart etc.
5.	Provisions of some of the Enactments with Child Labour Prohibition	12.45 PM to 1.45 PM	Presentation, Lecture, Group discussions, Brainstorming, report reading	Blackboard, Chalk
	Lunch	1.45 PM to 2.15 PM	-	-
6.	The Child Labour (P&R) Act, 1986	2.15 PM to 4.15 PM	Lecture, Guided Group discussions and report reading	Blackboard, Chalk.
7.	Determination of Age of the Child	4.15 PM to 5.45 PM	Group discussion, Brief lecture, Experience sharing	Blackboard, Chalk
	Tea	5.45 PM		

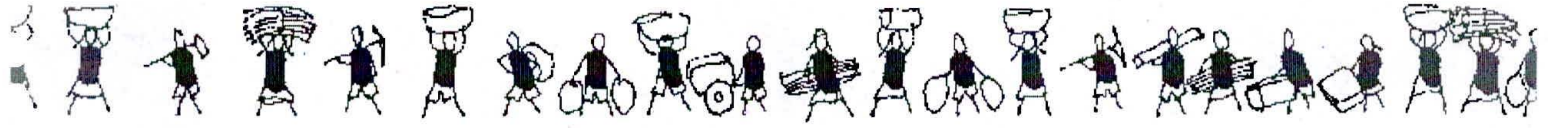




Day ~ 2

Sl No	Topic	Time	Activities	Materials
8.	Effective enforcement of Child Labour Laws	09.30 AM to 11.30 AM	Presentation, Lecture, Group discussion. Role Play, Experience sharing	Blackboard, Chalk, Pen, Paper, LCD Project etc.
	Tea Break	11.30 AM to 11.45 AM		
9.	Some Case Studies	11.45 AM to 13.45 PM	Group discussion, presentation, debate, Experience sharing, Role play	Chart paper, sketch pen etc.
	Lunch	13.45 PM to 14.15 PM	-	-
10.	The Child Labour (P&R) Act 1986 and some case studies repeated.	14.15 PM to 16.15 PM	Presentation, lecture, group discussions, role play, Experience sharing	Blackboard, chalk, pen, paper, LCD Project etc.
11.	Action Plan for effective enforcement.	16.15 PM to 17.15 PM	Group discussion	Blackboard, Chalk
12.	Evaluation and summing up, signing of social contract	17.15 PM to 17.45 PM	Function	Social contract forms, feedback forms.
	Tea	17.45 PM		

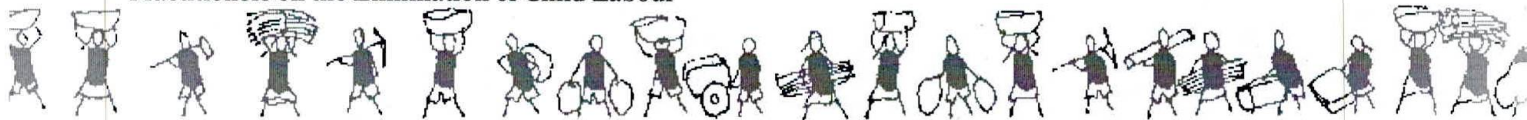




SECTION - II

Training Activities





2.1 Registration

Duration – 30 minutes

2.1.1 Objectives

- To obtain the name, address and contact details of the participants.
- To distribute required materials to the participants.
- To introduce the participants to a ‘child labour’ face and a small exhibition on child labour.

2.1.2 Materials

- Registration book
- Registration forms
- Pen
- Materials required to be given to participants (Agenda of Programme with Time Schedule, Training Material, Registration Form, Pen, Action Plan and Commitment Cards, List of important contact persons details, ‘Knowing Self’ questionnaire etc).

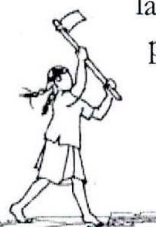
2.1.3 Process

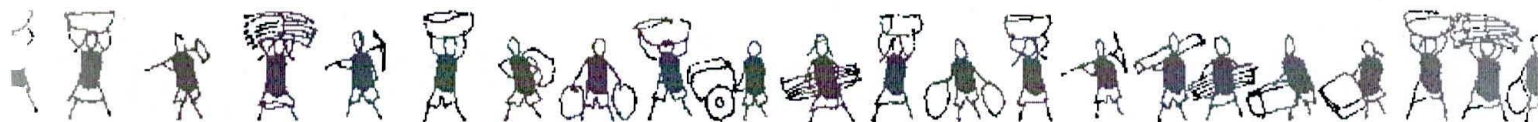
[A] As and when the participants come to the venue their name and other required details should be entered in the register.

Participants should be made to feel at ease.

[B] Participants would be greeted by two masked individuals at the door of the training hall. On one side will be a volunteer greeting the participants wearing the mask (sample mask is given as Annexure – II) of a smiling face and saying, “Good Morning.... Good Afternoon! Would you like to be my friend?” He will offer his hand for a handshake.

On the other side the second volunteer wearing a mask of a child labour on his face (sample mask in the Annexure – I) will greet the participants individually by saying ‘..... Good morning/ Namaskara.....! I am a child labourer; would you like to be my friend? Would you help me...?’ He will offer his hand for a





handshake. After the handshake with each participant he will tie a heart shaped sensitivity badge (friendship band) on the wrist of each participant. (The badge is heart shaped and has a ribbon attached for tying – sample is given in Annexure – I). The objective of tying the band is to remind and sensitize the participants about child labour.

- [C] The participants are guided near the training venue to see a small exhibition on child labour. The exhibition may have various posters, pictures, banners, paper cuttings, photographs, articles, and slogans mounted on board. There can be exhibits related to scope, magnitude, forms and consequences of child labour.

2.1.4 Expected Outcome

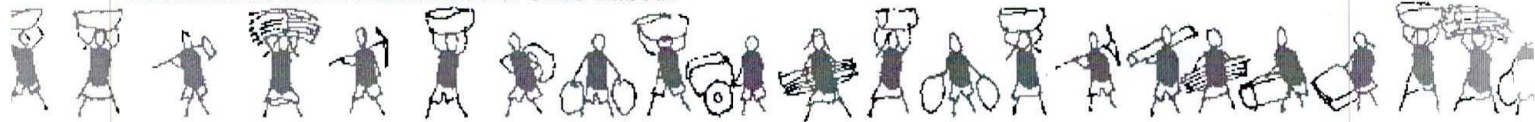
- ★ The essential details about the participants are collected.
 - ★ Participants get the essential materials required for the training and know the time table and other details of the training.
 - ★ Participants are
- 2.1.5 Note** The volunteers at the registration counter should be warm, courteous and helpful. Registration is the first point of contact and bonding starts here. All participants should be made to feel special and exclusive. From the administrative point of view, the data collected during registration is vital for later contact and reference, so it should be done carefully.
- ★ With a friendship band from the child labourer the participant will start thinking about Child Labour at a personal level.

2.1.5 Note

The volunteers at the registration counter should be warm, courteous and helpful. Registration is the first point of contact and bonding starts here. All participants should be made to feel special and exclusive. From the administrative point of view, the data collected during registration is vital for later contact and reference, so it should be done carefully.

Participants may be encouraged to see the exhibition whenever they get time later during the day later, e.g., tea break, lunch time etc. They should be encouraged to discuss amongst themselves and with the resource persons any issue which comes to their mind related to the topic.





2.2 Inauguration

Duration – 30 minutes

2.2.1 Objectives

- To provide a good beginning to the training.
- To introduce the purpose, structure, design and benefits of the training programme.
- To motivate the participants.
- To sensitize the participants about the issues covered in the programme so that they feel involved and committed before the end of the session.

2.2.2 Process

- Inviting the guests to the stage
- Welcome – song (Song related to elimination of child labour)
- Welcome speech
- Briefing about the training programme by resource persons
- Inauguration
- Speech / key note address
- Vote of thanks

2.2.3 Instructions

- Arrangements must be well planned and properly made.
- Participants should come on time.
- Participants should not be kept waiting for the chief guest.
- If the chief guest does not turn up within a reasonable time, resource persons should start the orientation / training
- The chief guest should be able to talk on child labour issues





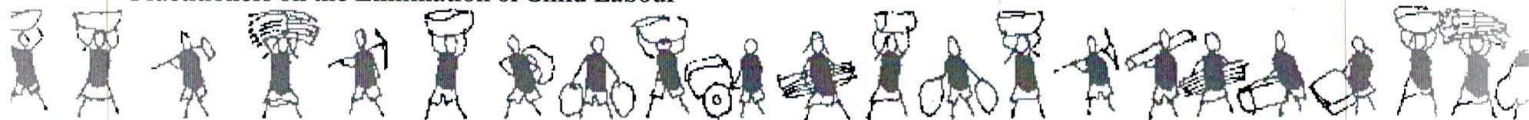
- Those who are conversant with child labour issues may be invited to be the chief guest / speaker.
- Song must be related to child labour issues. There should not be any scope for mistakes or lapses.
- Inauguration should be brief and memorable.

2.2.4 Precaution

Ensure that this programme ends on time so that the training starts as per schedule.

Audio cassettes about child rights and child labour rehabilitation may be played during registration and before starting the inaugural session.





2.3 Introduction : Breaking the Ice

Duration – 60 minutes

2.3.1 Objectives

- To enable the participants to know others.
- To condition and prepare them to participate wholeheartedly in the training without any reservations.

2.3.2 Process

Almost all the participants may be from the same locality, but they may not know each other well. Hence the icebreaking session should be essential but must be as brief as possible. Each of the participants may be requested to introduce themselves briefly.

2.3.3 Expected out come

- The persons will come to the training mode and become more participative and receptive.

2.3.4 Sub-Activity

1. I need this.
2. Stepping into the shoes of the child workers.



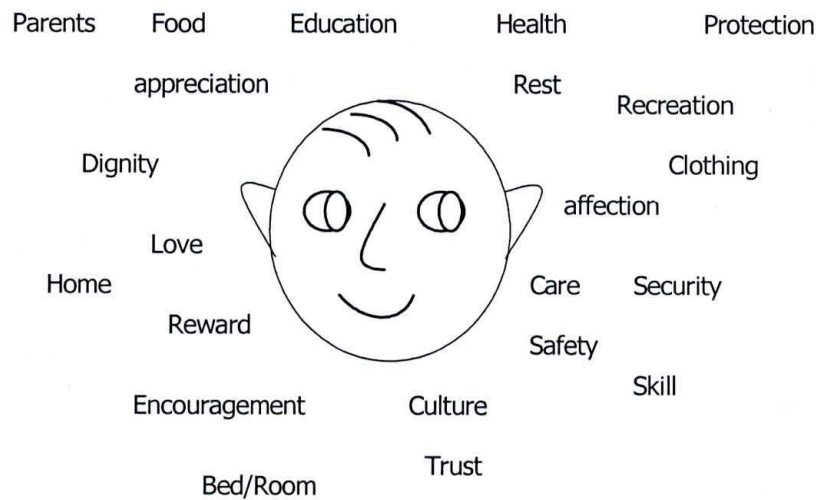
2.3.4.1 I Need This

Objective : To focus on various emotions that surface from the word 'Child'; to raise sensitivity towards child labour.

Materials : Blackboard, chalk or chart paper and sketch pen, cello tape, etc.

Process : The trainer writes the word 'CHILD' in block letters and draws the picture of a child. The trainer asks the participants to look at the picture and to visualize all that is relevant or associated with the word 'Child'. The trainer may ask, 'What are the things essential for the development and well being of a CHILD?' The trainer encourages participants to come forward with as many relevant words as possible and writes the words on the board as shown below :

I need this



- The trainer writes the ideas expressed by the participants.
- The Trainer may ask participants, "From the above listed words what does a child labourer receive and what is it that s/he is deprived of?" Those things that a child labourer does not get are marked with a different colour.

At last there are only one or two things left unmarked. The trainer initiates the discussion by asking 'what does this imply? What will be the future of such children who do not get the things essential for their development? And what will be the future of the country in which 33% of the children are deprived of developmental opportunities? We have to work for the elimination of child labour on a war footing! There is no other alternative!

Outcome : The participants start feeling and thinking about child labour.





2.3.4.2 Stepping into the shoes of the child worker

Objectives : To sensitize trainees about the life of a child worker.

Process :

- The trainer divides the class into two groups. One group will be designated to act as ‘Normal Child’ and another group will be designated to act as ‘Child Labour’.
- The trainer will call out different timings and the participants in both groups will visualize the action they are doing at the time and act accordingly. For example: when the trainer shouts, “6:00 am” the reaction expected from the group acting as child labour is to actually imitate children who are labourers and who will be getting ready to go to work in hotels or cleaning cars on the street. The same instruction received by a normal child, will probably find the child making a fuss to wake up so early or may be the parents may be lovingly waking up the child to get ready to go to school.
- The trainer calls out different timings like morning 7, morning 10, afternoon 12, 3, evening 6, night 9, midnight 12 etc. and both the groups are expected to act as per their role (i.e. what would they be doing at the respective timing if they were a child worker or a normal child).
- The trainer initiates the discussion with the help of following questions:
 - What were the differences in the situations of these two types of children?
 - What are the effects of these differences?
 - Is the Child Labour deprived of any rights?
 - What have we understood?

Outcomes :

- The participants would have experienced the situations/circumstances which child labour faces every day, and the way they live their lives. While a normal child is playing at 4 in the evening at school – the child labourer is actually busy working in a factory, hotel or household as a domestic help.
- Some of the participants may find it difficult to act as child labour. Why? Because they really don’t know the routine of the child workers. Let us speak with few child workers and try to understand their life.



2.4 Magnitude of child labour/ Causes and Consequences / Hazardous child labour / Worst Forms of child labour

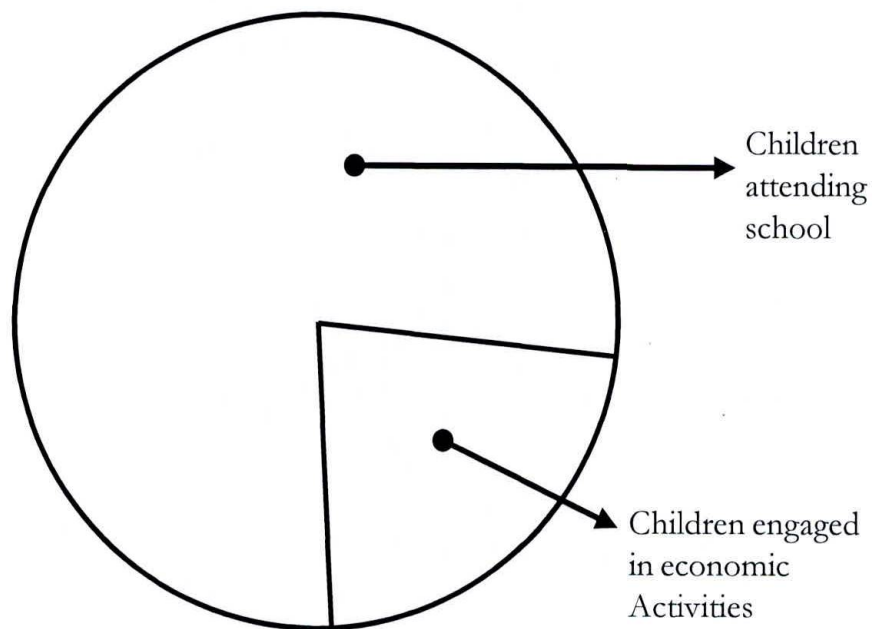
Duration 60 minutes

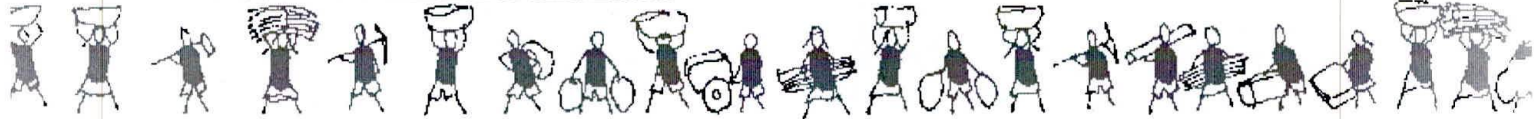
2.4.1 Objectives

To enable the participants to understand the magnitude of child labour at all the levels including their locality.

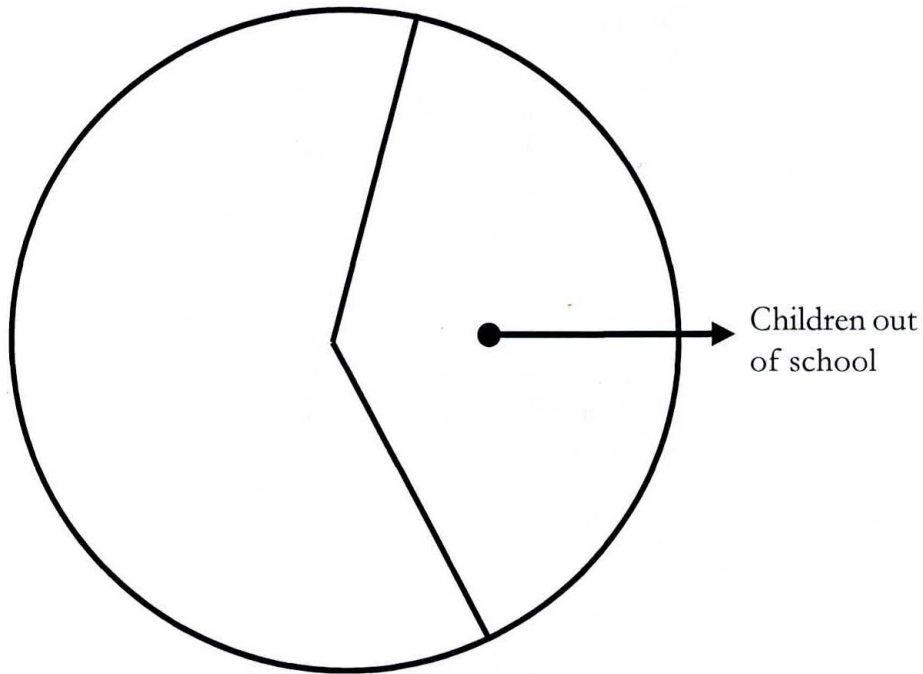
2.4.2 Text

- a) It is estimated around 211 million children of 5-14 year of age are engaged in economic activities in the world. This constitutes a little less than 1/5 of the total child population in that age group.

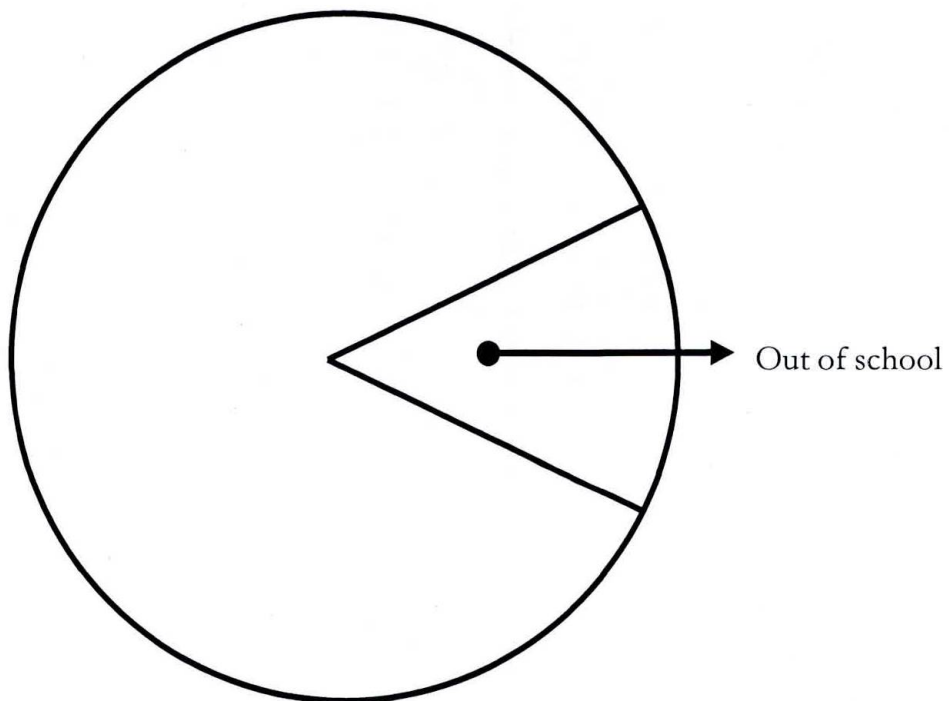




- b) In India, out of 203 million children in the age group of 5-14 years, 116 million are in the school, 12.6 million are out of school and the status of 74 million is not known.



- c) In Karnataka out of 10 million children in the age group of 5-14 years, 0.85 million children are out of school





Child labour can be found even in educationally developed districts like Dakshina Kannada and Udupi. Their numbers are more in northern Karnataka districts.

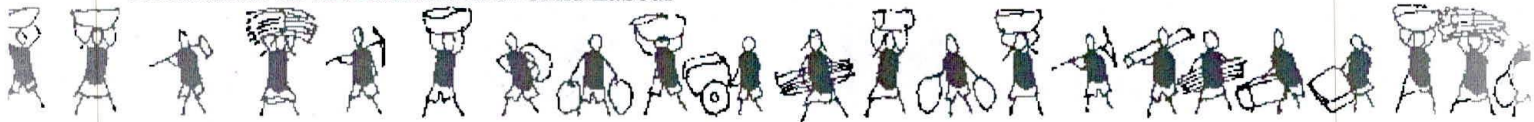
The following are some of the causes of child labour as enumerated by various stakeholders. If we critically examine these causes, we may come to the conclusion that many of them are not the real causes but only pseudo causes.

- Illiteracy of parents
- Poverty and perceived poverty
- Lack of educational facilities
- Unemployment
- Exploitation
- Indebtedness and delinquency of parents
- Superstition and general apathy
- Ill health, lack of social security
- Low-wages
- Bonded labour
- Lack of political will
- Lack of enforcement for child labour law, minimum wages law and other labour laws
- Special requirement of certain industry, nimble fingers, un-unionized workforce, disciplined and less demanding work force

As already stated, many of these are superficial causes. There are many examples where parents, though poorer have sent their children to school.

There are many Government Programmes which focus on livelihood through which parents can improve their earnings, etc. If the parents have a strong will, they can definitely find ways and means to provide childhood opportunities to their children. In many cases, parental apathy is the root cause for child labour. They think that education is a luxury meant only for the rich and this attitude in no way helps the individual to improve his livelihood opportunities. As the causes of child labour is often too complex and hidden deep in the minds of the child's parents it would be better instead if we focus on the consequences of child labour and motivate all the stakeholders to act together to eliminate child labour.





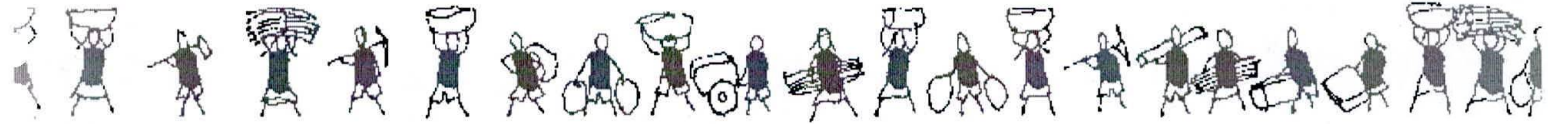
2.4.2.1 Consequences of child labour

Consequences of child labour are very grave and disastrous. If the parents understand the consequences of child labour properly they will themselves find ways and means to withdraw their children from child labour and send them to school.

The following are the consequences of child labour

- a. Illiteracy: Child will become an illiterate adult and has to depend on others even for small things.

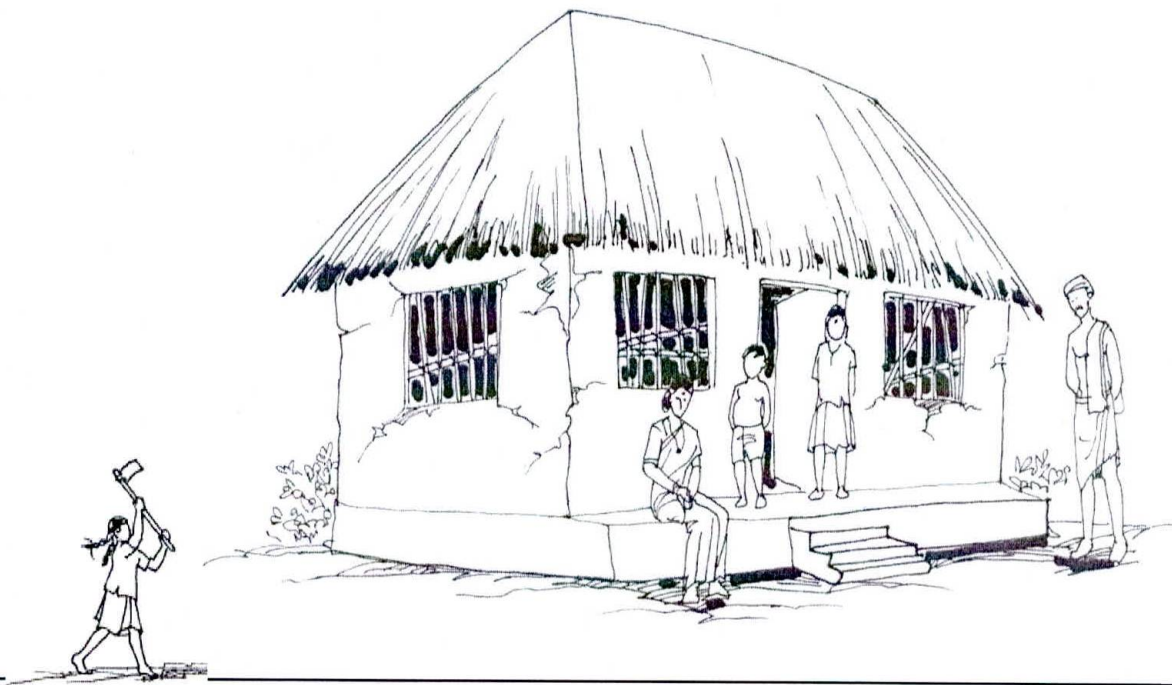




- b. Low wages and consequent poverty: Child labour as an adult will be forced to do unskilled jobs, which fetches him low wages, whereas the educated will do skilled jobs and earn more. The child labour results in poverty and thus a vicious circle of child labour, illiteracy and poverty is formed.



- c. Life will be very difficult.



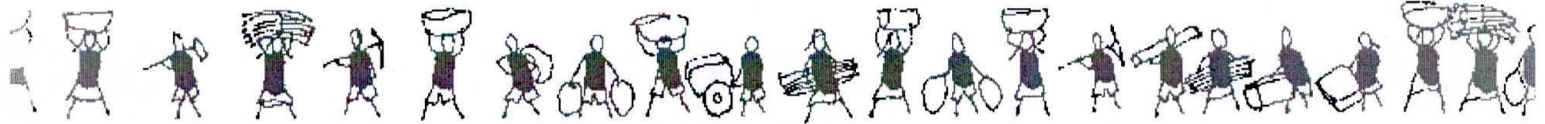


- d. Stunted growth: By child labour mental and physical growth of the working child will be affected adversely.

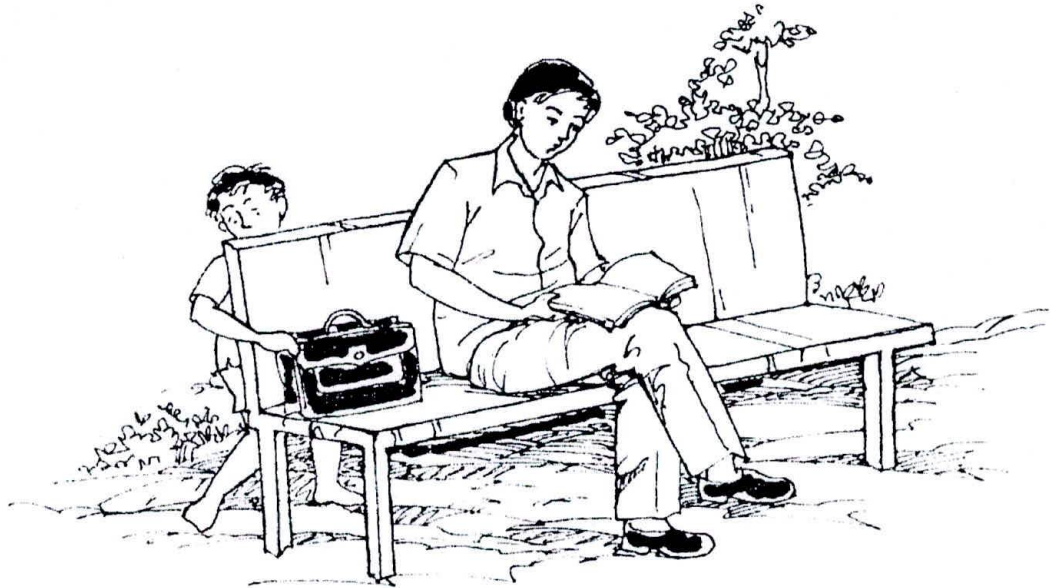


- e. Child labour may lead to bad habits such as drinking and smoking, etc.





- f. Child labour can be exploited by anti-social elements which may lead the children to illegal activities such as theft, drug trafficking, robbery, dacoity, etc.



- g. Child labour may lead to the molestation of girls and force them into prostitution.

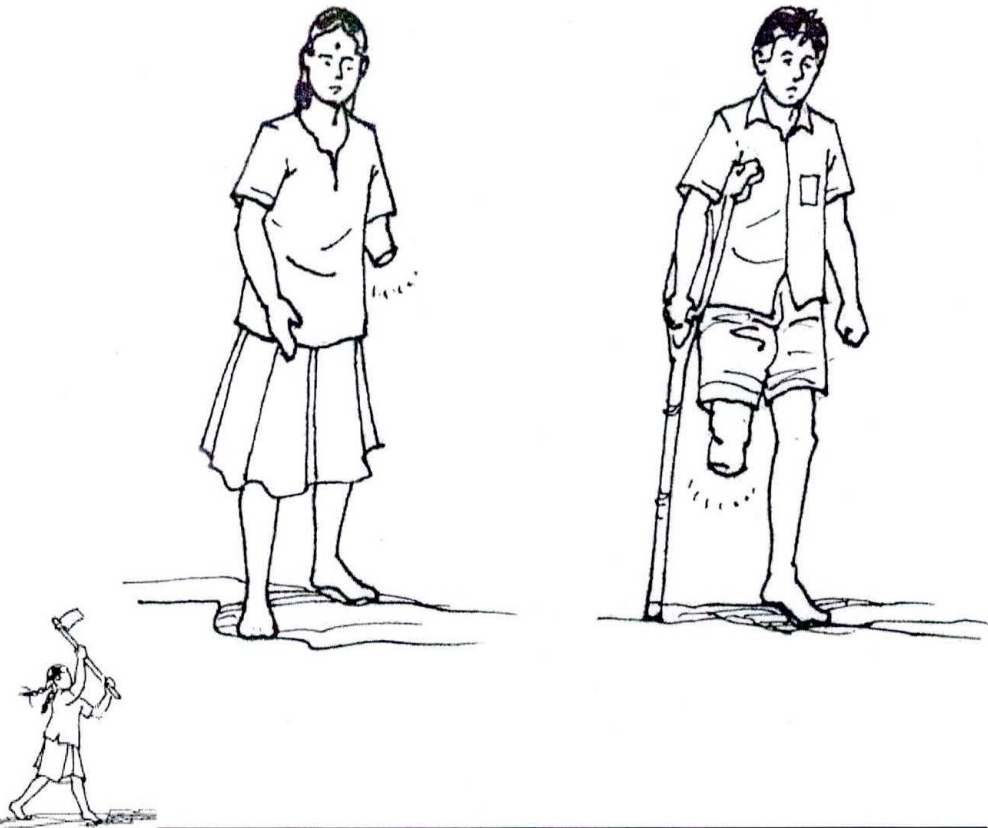


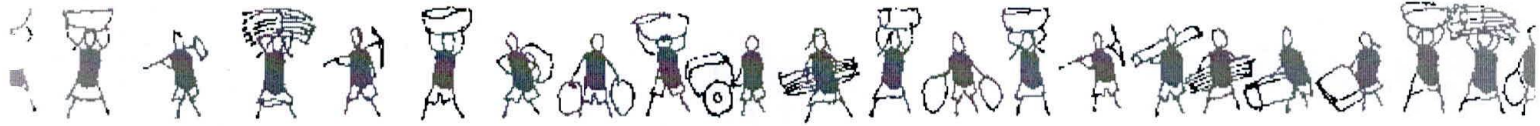


h. They may be attacked by fatal diseases

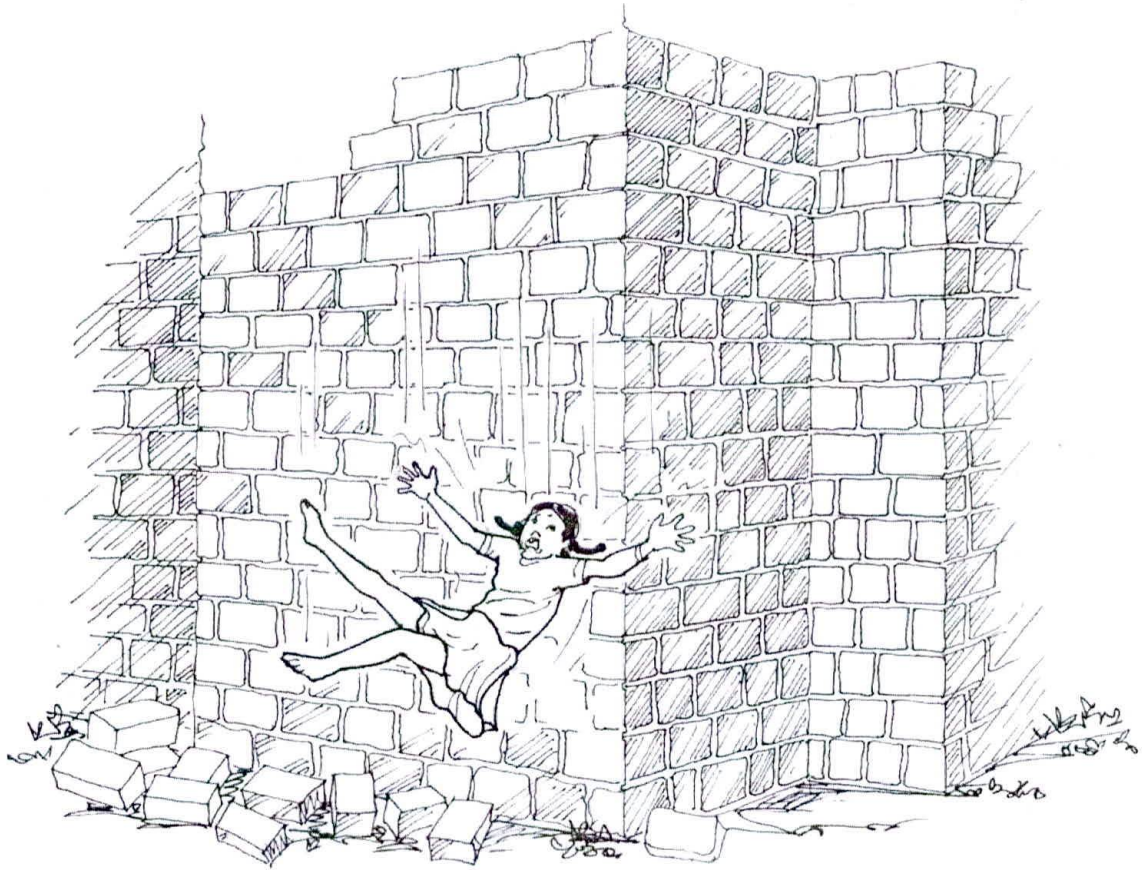


i. They may lose parts of their body and become physically handicapped





- j. They may lose their lives



- k. They will be exploited and harassed by their own family members and others due to their illiteracy, low skills, lack of knowledge, wisdom, stunted growth and lack of exposure to the world. (All these may result in social conflict and criminal activity and affect the peace of the whole village. So every citizen particularly those with responsibilities such as GP members, SDMC members and local leaders should participate actively in the elimination of child labour.)
- l. Child labour replaces adult labour and depresses wages. Employing child labour in an area or an industry leads to more incidences of child labour in the said area or an industry as competitors employ more and more child labour to compete in the market. With more and more child labour, the capacity of adult labour to negotiate better wages and working conditions, reduces, thus affecting the earning capacity of the adult workers including parents. (In this way child labour affects every wage earner and so everyone should act to eliminate child labour.)



- m. The other consequences are:
- Aches and pains
 - Stress symptoms
 - Reproductive problems

2.4.3 Methods

Demonstration
Lecture
Discussion
Group discussion

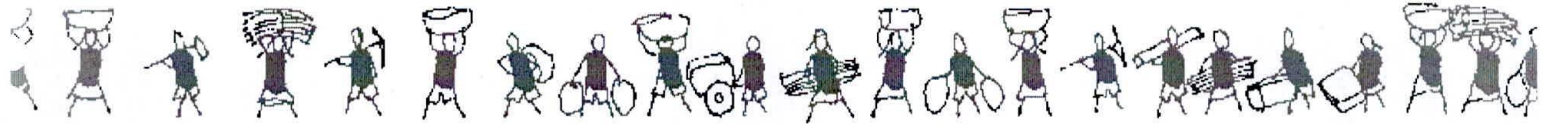
2.4.4 Materials

Pictures / Posters
Black Board
Brown sheets
Markers

2.4.5 Process

- The resource person introduces the topic with a brief lecture.
- He will show the graphics to make them understand the magnitude of child labour in the world, India and Karnataka. If possible the resource person should collect district-wise statistics: put them in a circular graph and show them to the participants.
- The sub groups may be allowed to estimate child labour in their locality and put it in a circular graph.
- The resource person should draw a line with a chalk piece on the black board and on one side write "Our dream school" and then ask the participants to explain how their school should be. They may suggest lots of logistic and scholastic requirements which should be written below the "Dream School". Continue the discussion till they say that all the children should attend our dream school. The resource person may prompt them to come to this conclusion.
- The resource person should with the help of the participants list out the present condition of the village school which should be written on the other side of the board.

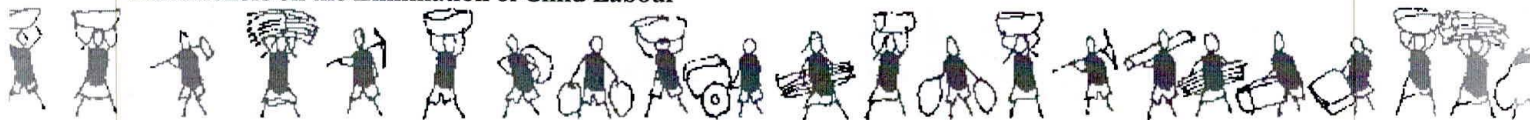




Our Dream School	Present Village School
- Good Building	-
- Good Toilets	-
-	-
-	-
-	-
-	-
-	-
-	-

- There may be a lot of different view points. The resource person may discuss these differences with the participants.
- The resource person must take up the issue for discussion that “all the children are not attending the school in our village”.
- The participants must be allowed to discuss “Why all the children in their locality are not attending school; what are they doing if they are not attending school; where are they?”. (Sub group activity)
- Sub groups must present their findings in the larger group
- The resource person should present pictures or drawings of consequences of child labour one by one and request for the participant’s reactions.
- The resource person should explain that whatever may be the causes, the consequences are the same. And all the consequences are extremely serious and disastrous, spoiling the life and future of the children. It should be emphasized that every participant can contribute to combating child labour in his/her own way.
- The resource person may clarify the following: Who is a child; what is child labour; what is hazardous child labour? etc. while showing the pictures and drawings.





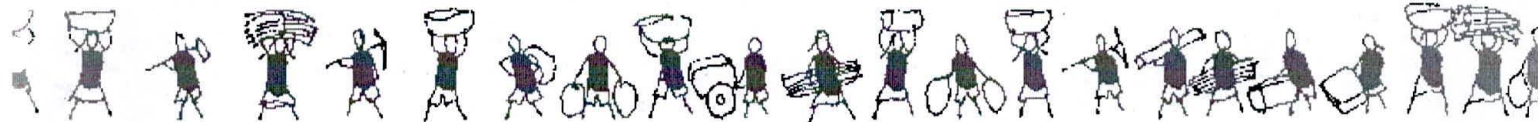
2.4.6 Expected Outcome

- Participants understand the magnitude of child labour at all the levels.
- Participants understand the causes and the consequences of child labour.

2.4.7 Instruction

- The resource person should prepare the circular graphs of the magnitude of child labour or the NCLP may prepare and supply them to the resource persons.
- NCLP may print the pictures of the causes and the consequences as posters and give the same to the resource persons.





2.5 Provisions of some of the Enactments with Child Labour Prohibition

Duration 60 minutes

2.5.1 Objectives

- To give the participants an overview of various laws wherein child labour is defined and prohibited.
- To enable them to know and understand the penal provisions, procedures and notified officers who can inspect and build up cases.

2.5.2 Text

See chapter 15 in Section-III.

2.5.3 Methods

Lecture

Question-Answer

Discussion.

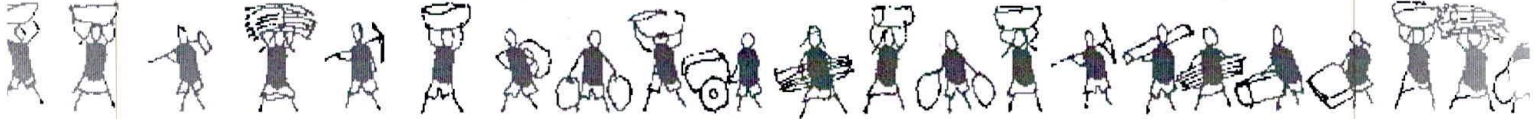
2.5.4 Materials

Blackboard

Chalk

Law Books.





2.5.5 Process

- ★ The resource person may introduce the topic with a brief lecture.
- ★ He may tabulate salient features of different enactments like difference in defining the age of the child, penal provision, inspecting authority, responsibilities cast on the doctors to give age certificate etc.
- ★ Resource person may ask a few questions about each of the enactments at the end of his lecture. He should ensure that every participant gets a chance to speak and discuss.
- ★ If participants have more information about various enactments prohibiting child labour they should be encouraged to tell about the same. These points may be listed on the blackboard.
- ★ At the end the resource person may recapitulate and sum up the gist of the salient points.

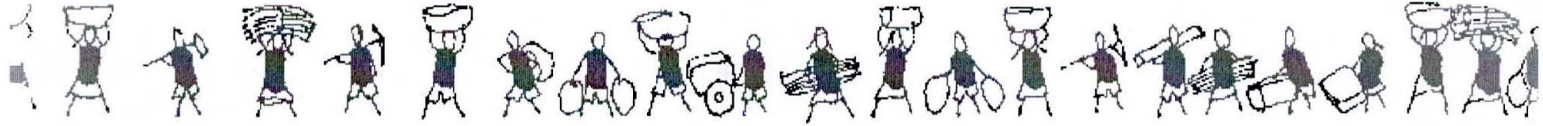
2.5.6 Expected Outcome

- ★ Participants are acquainted with the various child labour laws and their important features.
- ★ Participants understand their own role as an inspector, prosecutor or legal practitioner in child labour elimination specifically child labour laws enforcement.

2.5.7 Instructions

The participants may be encouraged to see and read the original enactment and relevant rules. They should also be told where the laws and its up-to-date amendments can be found. They should be encouraged to ask as many questions as possible. If the resource person is not in a position to answer some of their questions, he should try to find the answer by interacting with the DC or trainers' trainer.





2.6 The Child Labour (P&R) Act, 1986

Duration 120 minutes

2.6.1 Objectives

- ★ To enable the inspectors, prosecutors and other legal practitioners to know the provisions of The Child Labour (P&R) Act, 1986.
- ★ To make them understand their own role in the enforcement of the provisions of The Child Labour (P&R) Act, 1986.

2.6.2 Text

See Chapter 20 in Section-III for the Act and Chapter 21 in Section-III for the Karnataka Rules.

2.6.3 Methods

Lecture
 Question-Answer
 Discussion
 Role play

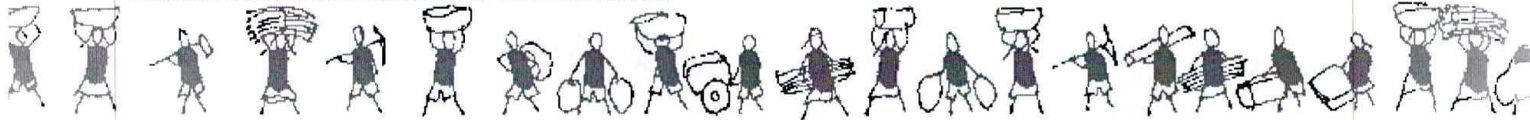
2.6.4 Materials

Blackboard
 Chalk
 Act copy

2.6.5 Process

- ★ The resource person may introduce the topic with a brief lecture.
- ★ He may tabulate salient features of the Child Labour (P&R) Act 1986 like definition of child labour, prohibited work and processes, penal provisions, powers and responsibilities of the inspectors, role of doctors in giving the age certificate, regulatory provisions, time limitations, registers and forms, differences between the Central and Karnataka State Rules etc.





2.6.6 Expected Outcomes

- ★ Participants have understood most of the relevant provisions related to child labour enforcement and prosecution in the Child Labour (P&R) Act, 1986 and Karnataka Rules.
- ★ Participants understand their own role as an inspector, prosecutor or legal practitioner in Child Labour Elimination, particularly through the effective enforcement of the provisions of The Child Labour (P&R) Act, 1986,

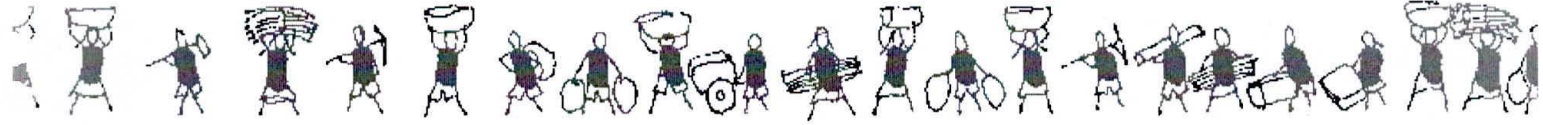
2.6.7 Instructions

The participants may be encouraged to see and read the original enactment and relevant rules. They should be told where (on the website of the Ministry of Labour, Government of India) the laws and its updated amendments can be found. They should be encouraged to ask as many questions as possible.

The resource person may also ask the participants to enact a role play of an inspecting team identifying and rescuing child labour and drawing up a mahazar (Inspection note).

Some blank copies of mahazar (establishment inspection report) may be circulated amongst the participants and they should be asked to draw up a mahazar in a group in an imaginary case where prosecution is possible.





2.7 Determination of Age of the Child

Duration 90 minutes

2.7.1 Objectives

- ★ To enable the participants understand the criticality of the conclusive proof of age in child labour related cases.
- ★ To enable the participants understand how they can obtain proper age certificate and ascertain the age of the child unambiguously for successful prosecution.

2.7.2 Text

See chapter 18 in Section-III.

2.7.3 Methods

Lecture
 Question - Answer
 Discussion
 Role Play

2.7.4 Materials

Blackboard
 Chalk
 Law Books

2.7.5 Process

- ★ The resource person may introduce the topics with a brief lecture.
- ★ He may tabulate salient features of different enactments related to child labour and their age determination, burden of proving age, authorities giving age certificate, maintenance of register regarding age etc.
- ★ The Resource person may ask a few questions from the participants and ensure that every participant gets a chance to speak and discuss.
- ★ He should encourage participants to ask questions.
- ★ Role play may also be enacted regarding age determination of child.





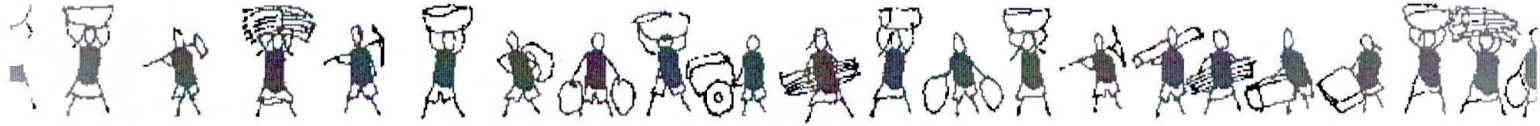
2.7.6 Expected outcome

- ★ Participants become conversant with all the age related aspects of the child labour laws and their enforcement.
- ★ Participants become confident to effectively enforce child labour laws by obtaining such certificates of age of the child worker which cannot be controverted or contradicted.

2.7.7 Instructions

Some of the cases which have failed due to improper age certification of the child should be discussed and it may be pointed out why such cases failed in the court and how such cases can be improved and made effective.





2.8 Effective Enforcement of Child Labour Laws

Duration 60 minutes

2.8.1 Objectives

- ★ To enable the participants know their roles and responsibilities in effective enforcement of child labour laws.
- ★ To enable the participants effectively enforce child labour laws.

2.8.2 Text

See Chapter 16 in Section-III. Also see Chapter 1 of Part-I.

2.8.3 Methods

Question-Answer
 Discussion
 Role play
 Video show
 Experience sharing.

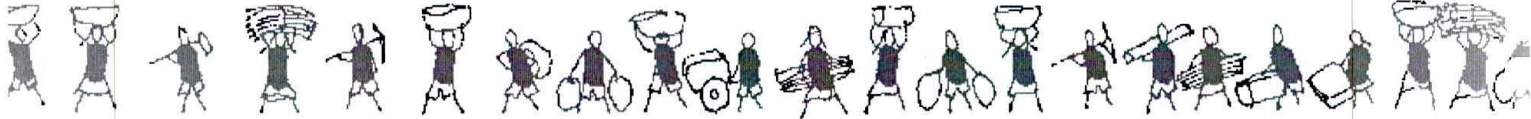
2.8.4 Materials

Blackboard
 Chalk
 Law Books
 Video (Iga-Ivaga).

2.8.5 Process

- ★ The resource person may introduce the topic with a brief lecture tabulating salient aspects given in chapter 16 in Section-III. He may point out the problems encountered in the inspections and in pursuing the cases in the court of law.
- ★ Through the video film (Iga-Ivaga) the resource person may induce the participants to discuss their own experiences in child labour enforcement.





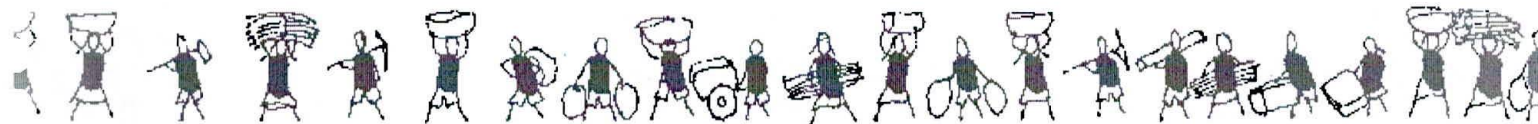
2.8.6 Expected Outcome

- ★ The participants become confident about their role in child labour enforcement.
- ★ The participants will be confident in planning and executing enforcement impeccably without giving opportunity for law and order problems or failure.

2.8.7 Instructions

Experience sharing and discussion may be encouraged so that all the participants benefit from each other's first hand experiences. The problems encountered by all of them may be tabulated and they can be encouraged to find a solution to the same, facilitated by the contents of Chapter 16 in Section-III.





2.9 Some Case Studies

Duration 60 minutes

2.9.1 Objectives

- ★ To learn from actual case studies and court orders why child labour cases fail or succeed.
- ★ To take precautions in building water tight cases where there is no scope for acquittal.

2.9.2 Text

See Chapter 17 in Section-III.

2.9.3 Methods

Case Studies
 Group Discussion
 Group Report Presentation
 Plenary discussion

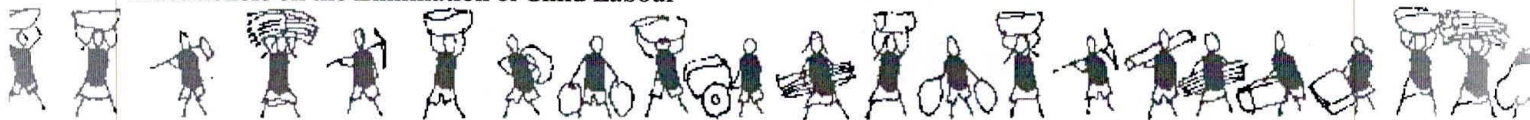
2.9.4 Materials

Case Study copies
 Chart papers
 Sketch pen
 Blackboard
 Chalk.

2.9.5 Process

- ★ The resource person may introduce each case and its salient features and tell the participants why they failed or succeeded.
- ★ He can form as many groups of participants as there are case studies and ask them to discuss the cases and make a list of their important features. They should list out why the case failed or succeeded and then discuss the report in the plenary.





2.9.6 Expected Outcome

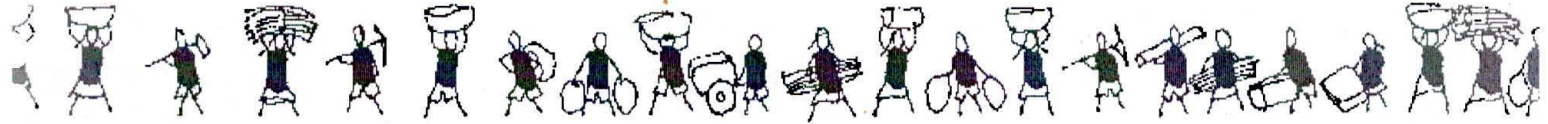
- ★ Participants know intricacies of legal aspects, evidence and procedures which make a case a success or a failure.
- ★ Participants become confident about the legal points and do effective enforcement.

2.9.7 Instructions

The participants should be encouraged before coming to the training, to collect successful or failed cases of their own and bring them to the training session to share with others.

Some of the cases may be referred to the editors of this manual for incorporating them in the training manual.





2.10 Repeat the session by changing Case Studies

2.10.1 Objectives

2.10.2 Text

2.10.3 Methods

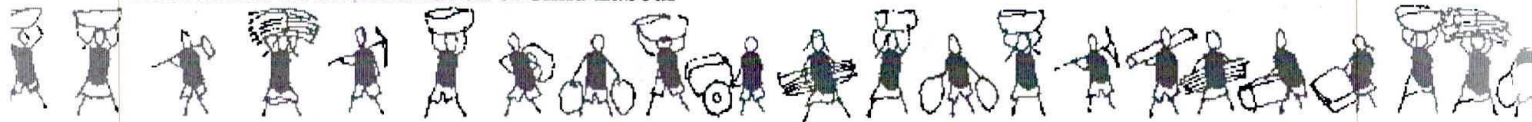
2.10.4 Materials

2.10.5 Process

2.10.6 Expected Outcome

2.10.7 Instructions





2.11 Action Plan for the Enforcement Officers, Prosecutors and Legal Practitioners

Duration 60 minutes

2.11.1 Objectives

- ★ To draw up an implementable action plan for the Enforcement Officers, Prosecutors and Legal Practitioners for the elimination of child labour.
- ★ To draw up an action plan for individual participants for the elimination of child labour.

2.11.2 Text

In the earlier sessions the participants would understand the concept of child labour, its causes and consequences, and how child labour laws can be effectively enforced to combat child labour. With that background members may introspect, brainstorm, discuss and chalk out individual and their organizational action plans for child labour elimination through enforcement.

2.11.3 Methods

Lecture

Small Group discussion

Action Plan preparation

2.11.4 Materials

Chart paper

Pen

Blackboard

Chalk.



2.11.5 Process

The trainer should recapitulate briefly the gist of the earlier sessions. A few questions may be asked on the subject and concepts. The participants may be divided into small groups to discuss and note down what they can individually and collectively do to eliminate child labour in their area through effective enforcement. Each group may present their plan in the plenary and discuss them and draw up a common collective work plan and individual plan. Work plan should be very specific, indicating time, resources, responsibility, objective, methodology etc. The work plan should be implementable. General statements like 'we will work for the elimination of child labour, we will lobby for the change in the law' should be avoided. The plan should be specific, like:

1. In 4 units of my area in Karnataka we will eliminate child labour and rehabilitate the families in six months time.
2. 20 parents in the 'Y' slum will be counseled and convinced to send their children to school after withdrawing them from work in three months time etc.

2.11.6 Expected Outcome

A definite implementable action plan will be drawn up for the group and for the individuals. A definite monitoring mechanism should be devised to follow up on the progress and periodically information may be tabulated in a formatted table for review and monitoring.





2.12 Evaluation and summing up

Duration 30 minutes

2.12.1 Evaluation

The resource person must distribute the printed evaluation forms to the participants. A draft format is annexed here but the organizer should prepare separately for each training appropriate forms based on the number and type of sessions.

He should give them 5-10 mts time to evaluate.

In addition a few participants may be asked to speak on the effectiveness and relevance of the training programme and how it can be improved in future.

2.12.2 Summing up

Summing up should be organized with a motivational talk, after which the participants may be required to sign a social contract for the eradication of child labour. Format of the same is given on the next page. At the end all the participants may read out the contract together as an oath taking ceremony.

2.12.2.1 Evaluation Form

Participant's Name	:
Designation & Address	:

Course Evaluation—Please Note: 4 = Excellent, 3 = Very Good, 2 = Good, 1 = Fair





I COURSE ADMINISTRATION AND CONDUCT:

No.	Details	4	3	2	1
1.	Does the course meet the objectives?				
2.	Role of the Course Director				
3.	How useful will this training be to you immediately in your job?				
4.	How useful is this training for the future jobs you may handle?				
5.	Was the course methodology appropriate?				
6.	Have you benefited from interaction with fellow participants?				
7.	Was the course material relevant and related to the course?				
8.	Was the coverage of Subjects appropriate to the objectives?				

II PLEASE GIVE YOUR DETAILED COMMENTS AND SUGGESTIONS ON THE FOLLOWING POINTS:

Areas of Concern & Comments	Suggestions and Critical Remarks
Academy, Campus Facilities, Hostel Mess and Infrastructure	
Course Facilities, Library, Computer Centre, Classroom, Audio-Visual Equipment & Course Material	
Course Faculty, Director, Group Sessions, Workshops, Participant Seminar etc	
Interaction with other participants, faculty, resource persons, library staff and Administration	





IV Which three sessions did you find MOST useful in the course?

SNo.	Course Session Title	Remarks
1		
2		
3		

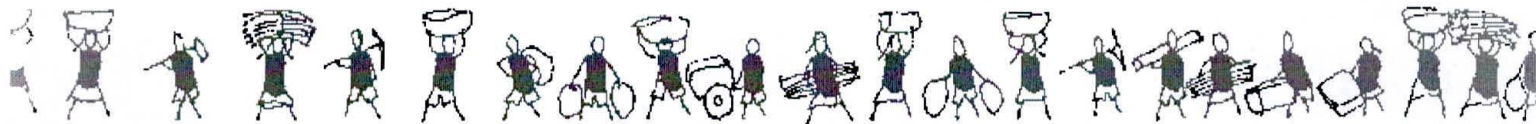
IV Which three sessions did you find LEAST useful in the course?

SNo.	Course Session Title	Remarks
1		
2		
3		

V Improvements in working situation after the course

SNo.	Details of Question
A	Did you get any specific idea about improvements in your working situation? YES / NO
B	If Yes, Can you spell them out briefly?
	Knowledge
	Skills
	Attitude
C	Any other comments/observations you will like to make about the course?





**VI FACILITIES : To what extent are you satisfied with the following?
(Whichever applicable)**

No.	Details	4	3	2	1
1.	Hostel Reception and Room Service				
2.	Residential Accommodation including Housekeeping				
3.	Food Quality and Service				
4.	Classroom facilities, cleanliness, messages etc.				
5.	Library Facilities				
6.	Recreation Facilities				
7.	Computer Facilities				
8.	Administrative Help (Telephones, tickets, medical etc.)				
9.	Audio-Visual Equipment				





2.12.2.2 Social Contract

I the under signed participant of the child labour training held at _____ on _____ enter into this social contract with our society and the Nation on the following terms and conditions.

1. I will continue to strive hard for the eradication of child labour till child labour is completely eradicated from my surroundings.
2. I will ensure that child labour shall not reappear in any form by enrolling all the children of our area in the school and enforcing child labour laws effectively.
3. I will discourage child labour in any form anywhere.
4. I shall continue to support the actions initiated by the local bodies, Government and the NGOs.

This social contract is signed on _____ in the presence of Stri. _____

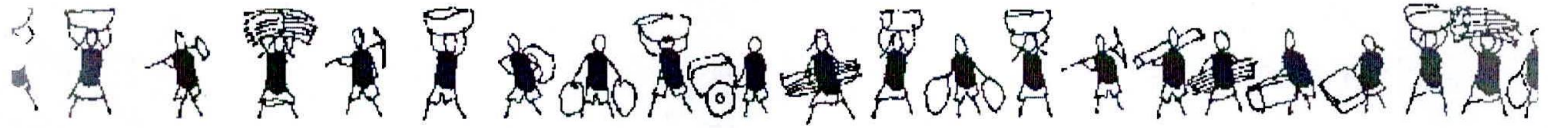
Signature of the Trainer
(On behalf of the
Society and the Nation)

Signature of the Participant (Date)

Name : _____

Address (contact details) : _____

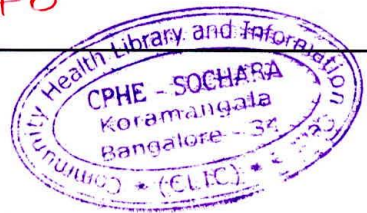




SECTION III



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3.1 Causes for Child Labour

3.1.1 Demand Side Causes: Demand side causes are those which are specific to the employers of child labour, the causes why an employer employs a child and not an adult worker.

3.1.1.1 Greed on the part of the employer to exploit un-unionized, disciplined child workers who work for long hours in sweat shops and do works which are repetitive and full of drudgery. Child workers do not take time off for tea or beedis.

3.1.1.2 Children work for lower wages. Whenever work has lower productivity, children are preferred as adults do not work.

3.1.1.3 In a few industry, myths of felt need have been floated which include, 'nimble finger' needed for carpet industry and sericulture industry; 'Girl children of before puberty age group', preferred for pollinating cotton by propagating the idea that after puberty they lose divine ability for successful pollination.

3.1.1.4 Certain low cost, low productivity technology like the use of hand charaka in sericulture reeling enhances the employment of children.

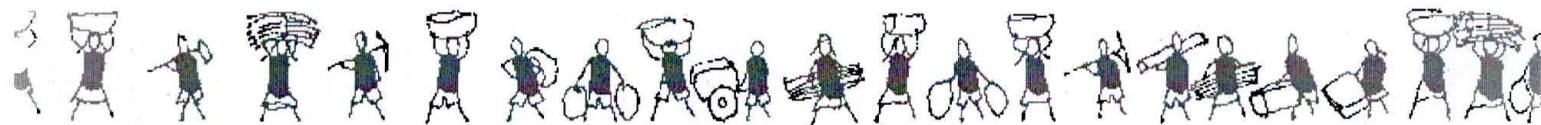
3.1.1.5 Enforcement of child labour laws and labour laws have direct bearing on the demand of child labour. A single case of lack of enforcement encourages the competitors to indulge in more and more child labour.

3.1.2 Supply Side Causes: Those causes which afflicts the families and forces them to send their children for work are referred to as supply side causes.

3.1.2.1 Poverty: Poverty is a reason for child labour, but often 'felt poverty' and not absolute poverty is the cause of child labour. If poverty was the only and most important cause of child labour, all children from poor families would have been working as child labour. Incidence of child labour is rarer than the incidence of poverty. In any village many poorer parents manage to send their children to school.



As the child labour disables the child from attending regular school and vocational training, it cripples the future earning capacity of the individual; thereby perpetuating poverty.



3.1.2.2 Parental Delinquency: Often child labour is found in such families where parents do not take the responsibility of raising children and sending them to school. The parents may be extravagant in spending on rituals, festivals, recreation or sometimes on addictions like drinking, betting etc.

3.1.2.3 School related Reasons: Often distance, direct or indirect costs, lack of infrastructure like toilets for girls, certain procedures, unsympathetic and ineffective teachers, uninspiring curriculum and pedagogy are some of the major causes why poor children and their families do not see any value in education. And when children are not in school the best alternative they find is the work place.

3.1.2.4 Attitudinal Reasons: A plethora of attitudinal reasons including illiteracy and lack of information of the parents, ignorance on the part of parents and the society about the ill effects and long term consequences of child labour, social apathy, lack of political will, and acceptance of child labour as a usual way of life, and thoughts that child labour is beneficial to learn family or traditional skills are all causes of child labour.

3.1.2.5 Lack of social securities, enforcement of labour standards like minimum wages and lack of unionization and promotion and protection of workers' rights – all contribute to child labour.



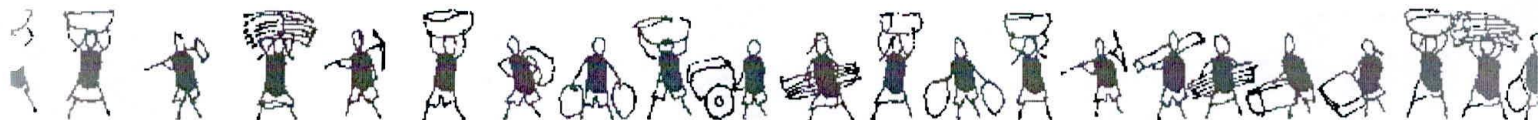


3.2 Consequences of Child Labour

Consequences of child labour are very grave on the child, society and the nation.

- 3.2.1 Child labour is violation of Human Rights and Child's Rights.
- 3.2.2 It is violation of International Labour Standards. It may attract possible trade and social sanctions.
- 3.2.3 Child labour replaces adult labour and causes unemployment.
- 3.2.4 It deprives child of education and so increases illiteracy.
- 3.2.5 It causes child to be unskilled worker thus reduces his/her future earning capacities and thus causes him to remain poor.
- 3.2.6 Child labour along with illiteracy and poverty forms a vicious cycle, and it is difficult to get out of such cycle.
- 3.2.7 Early work affects the normal physical, mental, psychological and moral development of children.
- 3.2.8 The child worker has reduced physical and mental vigour. They get many work related injuries, illnesses and sometimes meet untimely death or permanent disability.
- 3.2.9 Child labour may often lead to bad habits such as drinking, smoking or drug addiction.
- 3.2.10 Child labour may lead them to illegal and anti-social activities such as theft, drug trafficking, and other crimes etc.
- 3.2.11 Illiteracy, low skills, low earning capacity, lack of knowledge and wisdom forces child worker to successively more and more exploitative situations.
- 3.2.12 Child labour replaces adult labour and depresses wage rates and hence it affects both wage and labour markets adversely.
- 3.2.13 Child labour has demonstration effect and one case un-enforced emboldens the competitors to indulge in more and more child labour. Mass scale child labour affects the bargaining capacity of Trade Unions.
- 3.2.14 Child labour and poverty may damage social peace and degrade environment.
- 3.2.15 Distortion in labour and wage market due to child labour affects the cost of product and services thus affecting international competitiveness and so attracting international interest and criticism.





3.3 Magnitude of child labour

3.3.1 Children engaged in economic activity

3.3.1.1 WORLD SCENARIO

It is estimated that there are about 211 million children in the age group of 5 to 14 years engaged in economic activities in the world. This accounts for a little less than one fifth of all the children in this age group. About 73 million working children are less than 10 years old. The total economically active child population in the age group of 5-17 is around 352 million. There are no significant gender differences in the age group of 5-14. But in the older age group, we can observe a widening gap, with more boys working.

3.3.1.2 INDIAN SCENARIO

Total Population: 998,056,000

Child Population: 398,306,000

Interpretation of 2001 census figures by the National Labour Institute indicates that out of 203 million children between the ages of 5 and 14, 116 million are in school, 12.6 million are in full-time employment, and the status of 74 million is unknown. Most, if not all, of the 87 million, not in school, do housework, work on family farms, work alongside their parents as paid agricultural labourers, work as domestic servants, or are otherwise employed.

3.3.2 Child Labour in India / Karnataka State

	1971	1981	1991	2001
India	10753985	13640870	11285349	12666377
Karnataka (7 th largest among 35 State/UT)	808719	11311530	976247	822615
Karnataka as a % of India	7.5%	8.29%	8.65%	6.49%





3.3.3 State-wise Distribution of child labour (5-14 years) in millions (some bigger states)

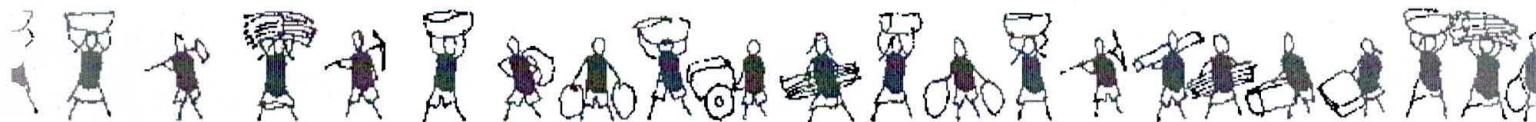
<i>States</i>	<i>1981</i>	<i>1991</i>	<i>2001</i>
Andhra Pradesh	1.95	1.66	1.36
Bihar	1.10	0.94	1.12
Gujrat	0.62	0.52	0.49
Haryana	0.19	0.11	0.25
Karnataka	1.13	0.98	0.82
Kerala	0.09	0.03	0.03
Madhya Pradesh	1.70	1.35	1.07
Maharashtra	1.56	1.07	0.76
Orissa	0.70	0.45	0.38
Punjab	0.22	0.14	0.18
Rajasthan	0.82	0.77	1.26
Tamil Nadu	0.98	0.58	0.42
Uttar Pradesh	1.43	1.41	1.93
West Bengal	0.61	0.71	0.86
India	13.64	11.29	12.59

3.3.4 Child labour in Karnataka

Girl child suffers more “Between the work and the daily chores, the girl child works around the clock”

The type of work that Indian children perform is diverse. For instance, there is a strong gender stereotype with regard to the work that male and female children do in agriculture, in the household, and in the unorganized industry. Studies indicate that the burden of household duties fall largely upon the female child. In rural areas girls are responsible for looking after younger siblings, cooking, cleaning, fetching, and carrying, which releases adults for more profitable and productive work. Evidence suggests that girls in the unorganized sector are engaged in low-paid, or unpaid, unskilled occupations, which do not necessarily lead to skill formation. The jobs that boys do, on the other hand, are closely related to apprenticeship training and skill formation. In general, the following types of child labour are found in Karnataka:





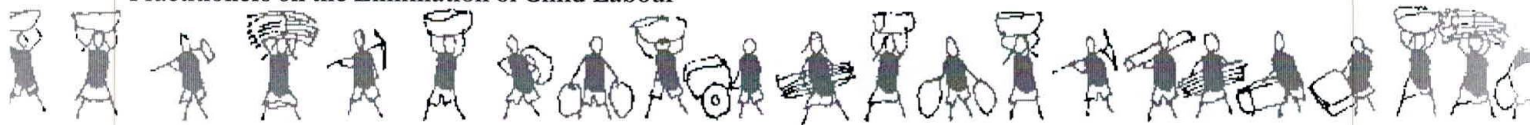
- Agricultural, cattle rearing, horticulture and fisheries
- Bonded Labour
- Beedi making
- Children working in manufacturing of Agarbatti
- Rag pickers in cities
- Children working in mines
- Children working in Hotels, shops & roadside restaurants/dhaba, eatery
- Children on streets selling balloons, balls, Gajare (Flower garlands), begging and acrobatics
- Children in Slaughterhouse
- Girl child as domestic workers
- Children in Prostitution/pornography
- Children in Garages and automobile repair
- Commercial agriculture and plantations and food processing
- Migrant workers and construction workers
- Brick kiln
- Sericulture and small unorganized manufacturing

3.3.5 Trends at Regional Level

Ranking of Major States by percentage of Children working

<i>States</i>	<i>1983</i>	<i>1993/94</i>	<i>1999/00</i>
Andhra Pradesh	01	01	01
Bihar	12	11	12
Gujrat	10	10	04
Haryana	11	12	13
Karnataka	03	03	03
Kerala	14	14	14
Madhya Pradesh	07	06	05
Maharashtra	08	07	09
Orissa	05	05	07
Punjab	04	13	11
Rajasthan	02	02	02
Tamil Nadu	06	04	08
Uttar Pradesh	09	09	10
West Bengal	13	08	06





Have we, as consumers, ever stopped to wonder where the trinkets, ornaments, and decorative pieces that we buy, the very clothes that we wear and the cup of tea that starts our day, come from?

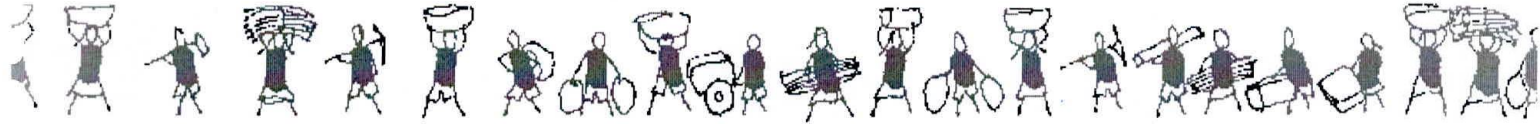
These are examples of consumer goods that are often the products of child labour. Many children as young as 5 years old work tirelessly for hours, under harsh, hazardous, exploitative, and often life threatening conditions, for extremely low wages. A large fraction of these child labourers are working as slaves, bonded to their 'jobs', with no means of escape or freedom, till they can repay their parents' loans. This often means years of bondage or even a trickle down effect of bondage, where younger siblings pick up from where the older ones left off because they were too old, too diseased, too handicapped or dead to be useful.

3.3.6 Major types of child labour

Child Labour

Within Legal Framework 6 – 8% of child labour is covered. The following Acts are relevant:	Outside Legal Framework	
	Rural areas of Agriculture / allied activities (70% of child labour)	Urban areas unorganized sector
<ul style="list-style-type: none"> • The Child Labour (Prohibition and Regulation) Act (1986) • The Factories Act (1948) • The Plantation Labour Act (1951) • The Mines Act (1952) • The Beedi and Cigar Workers (Conditions of Employment) Act (1966) • The Karnataka Shops and Commercial Establishments Act (1961) • The Juvenile Justice (Care and Protection of Children) Act (2000) 	<p>Girls</p> <ul style="list-style-type: none"> • Collecting fuel/fodder • Fetching drinking water • Weeding • Food processing • Poultry keeping • Caring for younger siblings etc. <p>Boys</p> <ul style="list-style-type: none"> • Ploughing/digging • Grazing cattle • Carrying goods • Threshing/harvesting • Purchase/sale in markets • Tool related activities etc. 	<ul style="list-style-type: none"> • Construction Labour • Couriers • Domestic workers • Tanneries • Vendors • Helpers in restaurants, shops, canteens and garages. • Porters and rag pickers • Shoe-shiners • Sweepers and waste • Recyclers • Sex workers • Factories/Workshops (e.g.) hosiery units <p>Example of Home Based Industries</p> <ul style="list-style-type: none"> ? Beedi rolling ? Papad making ? Incense making ? Embroidery, etc.





3.4 United Nations Convention on the Rights of the Child (CRC): 1989 (India is signatory to this convention):

The Convention recognized the exceptional vulnerability of children and proclaims that childhood is entitled to special care and assistance. It is a means of empowering children and creating an environment in which all children are able to live securely and realize their full potential in life. The Convention draws attention to four sets of civil, political, social, economic and cultural rights of every child. It prescribes the following:

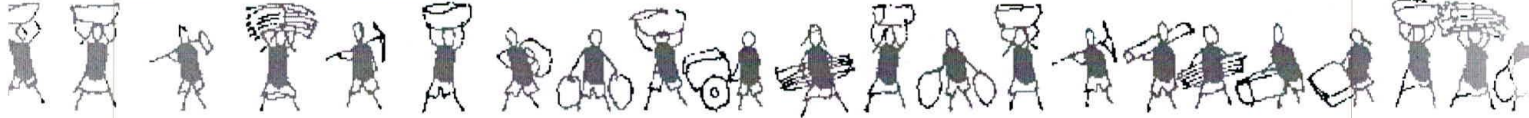
The Right of Survival, which includes the right to life, the highest attainable standard of health, nutrition, and adequate standards of living. It also includes the right from birth to a name, the right to acquire a Nationality, and as far as possible the right to know and be cared for by his or her parents.

The Right to protection, which 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.

The Right to Development, which includes the right to education, support for early childhood development and care, social security, and right to leisure, recreation and cultural activities.

The Right to Participation, which includes respect for the view of the child, freedom of expression, access to appropriate information and freedom of thought, conscience and religion.





3.5 ILO and Child labour

The International Labour Organization is committed to the abolition of the worst forms of child labour, and gradually other forms also, since its foundation in 1919. The very first child labour convention in 1919, prohibited children under the age of 14 from working in industrial establishments.

3.5.1 Minimum Age Convention 1973:-

This was the most comprehensive ILO convention on the child labour issue and called for fixing minimum ages for admission to work or employment. This convention demanded a National Policy designed to ensure effective and gradual abolition and elimination of child labour. The convention laid down the basic principle, that the minimum age for admission to employment or work should not be less than the upper age limit of compulsory education and in any case it should not be less than 15 years. It also provided flexibility in the minimum age for employment for countries which are less developed in educational facilities and such countries can fix minimum age as 14 instead of 15 in the initial stage and gradually increase the same. The Convention also suggested that the minimum age for hazardous work should be 18 and that the minimum age should not be static; it should be progressively raised to a higher level corresponding with the full physical, mental and spiritual development of young persons.

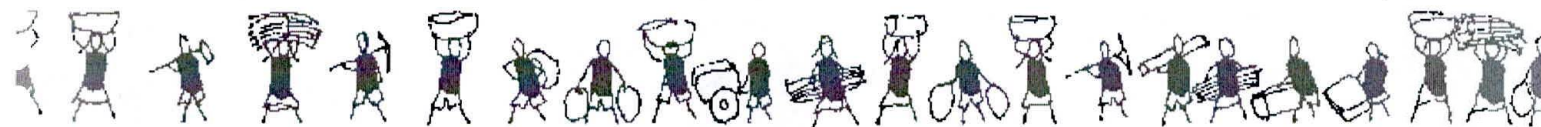
3.5.2 The Worst Forms of Child Labour Convention 1999:-

This convention called for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour and as a matter of urgency applied this to all persons under the age of 18.

The Convention defined the “worst form of child labour” as all forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage, serfdom and forced or compulsory labour, forced or compulsory recruitment of children for use in armed conflict, use of child for prostitution, production of pornography, use in illicit activities, etc.

This Convention also defined “hazardous work” as work which exposes the children to physical, psychological or sexual abuse, work underground, under water, at dangerous heights, closed places, with dangerous machines/tools, work in unhealthy atmosphere, long hours, during nights etc.





3.5.3 International Programme on the Elimination of Child Labour (IPEC)

This is the technical co-operation programme on child labour in the world. In more than 70 countries ILO/IPEC inspires, guides and supports national initiatives to eliminate child labour.

The aim of IPEC is to work towards progressive elimination of child labour by strengthening national capacities and policies to address the child labour problems and creating a world wide movement to combat it.

Priority target groups for IPEC are:-

1. Bonded child labourers.
2. Children in hazardous working conditions and occupations.
3. Children who are particularly vulnerable.

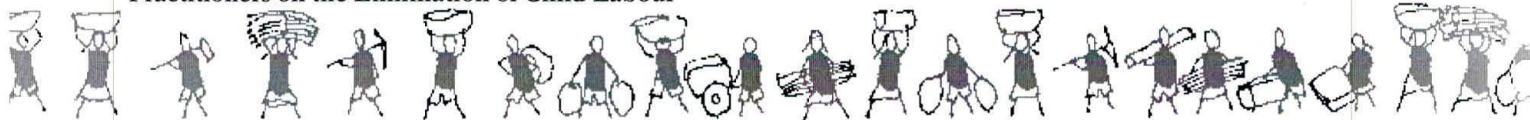
Support under this programme is given to organizations to develop and implement measures which aim at preventing child labour, withdrawing children from hazardous work; providing them with alternatives; improving their working conditions and livelihoods.

The important activities of IPEC are:

- Motivating a broad spectrum of partners to acknowledge and act against child labour.
- Carrying out the situation analysis to find out quantitative and qualitative attributes of child labour to create awareness on the problem.
- Promoting development; application of protective legislation, preventive and rehabilitative policies and programmes etc.

IPEC is moving forward with several projects in the country; one of the flagship projects is the Karnataka Child Labour Project.





3.6 Karnataka Child Labour Project

As part of the IPEC, The Karnataka Child Labour Project is the result of a multi-bilateral Programme of Technical Cooperation between the International Labour Organization and the Government of Italy. Started in August 2005, this three year project works towards the elimination and rehabilitation of child labour in Chamarajnagar and Bidar districts of Karnataka.

The Project uses a holistic approach, and works at four levels (Community, Block, District and the State), to create a multilayered impact on child labour.

Strategy under the Project:

The strategy at the Community, Block and District level focuses on service oriented community activities and experiences for adapting, innovating and trying out best practices; while identifying replicable models for up scaling and mainstreaming through community action and empowerment.

At the state level the project makes use of the experiences emerging from the project interventions into enriching Government policies, programmes and its other efforts, through a combination of intensive policy research, documentation, mobilization and organization of influential stakeholders, disseminating key information, and in developing and advocating a revised Karnataka State Child Labour Elimination Action Plan.

At the field level the project looks at both the demand as well as the supply side of the Child labour issue. On the demand side it tries to investigate and research the causes and works closely with the employers and workers organizations to experimentally introduce child labour free technology and improve working conditions.

On the supply side, preventive and self sustaining efforts are being tried to address the issues of livelihood (both parents and the older child worker), education, mindset (of all the stakeholders), social protection and social exclusion.





Components under the Project:

- Component 1: Prevention and withdrawal of child labour through awareness raising and education.
- Component 2: Income generation through skills training and self employment promotion.
- Component 3: Self help group approach for participatory development and self sustaining social changes. Formation of federations to self access benefits and empowerment through collective bargaining.
- Component 4: Modular based vocational training for adolescents at risk.
- Component 5: Upgrading local industries for better working conditions and child labour free production.
- Component 6: Strengthening grass root level institutions, block level institutions, National Child labour Project Society, and state level institutions.
- Component 7: Community monitoring and strengthening grass root institutional capacities for sustainable change, (Self Help Groups, Mahila Mandals, (forum for women) Youth Groups, School Development Management Committee, Anganavadi Committee, Drinking water and Sanitation Committee, Forest Committee, Milk Society, Coop Society, Irrigation Committee, Gram Panchayath, etc.)
- Component 8 : Policy research, innovation and advisory services which focus on:
 - Bridge School curriculum remedial teaching & learning material
 - Technology related issues
 - Vocational education policy
 - Informal sector child labour issues
 - Child track systems.

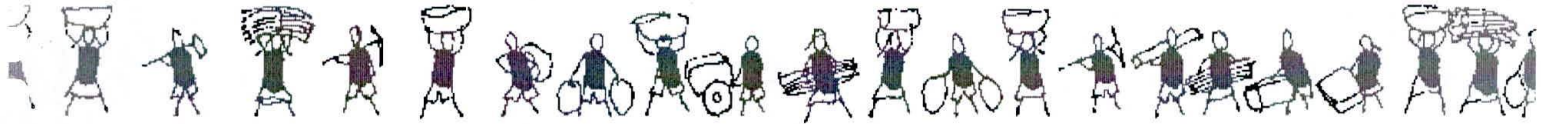




3.6.1 Outputs under the Project

- Awareness and appropriate capacity building at the community level will contribute to the sustainability of the interventions. To create awareness against the scourge of child labour innovative methods are being used. Eye catching colorful posters with anti child labour slogans, wall paintings with similar messages, and documentary films, have been developed. The use of puppets and street plays in schools will be used to effectively spread awareness against children working, and promote the fact that their being in school is essential for their holistic growth. A compendium of street plays on the issue of child labour is being developed so that different stakeholders can use this as an innovative communication tool, where actions can speak louder than words.
- A community monitoring structure is being set up. Grassroots institution members such as the School Development Management Committees, Anganwadi Mothers' Committees, Gram Panchayat members, and Self Help Group members will be actively involved in community monitoring of the progress and rehabilitation of the rescued child worker.
- This project lays stress on the 'family approach' which enables other members of the working child's family to avail of support if the working child is targeted for withdrawal and social protection.
- Support, most importantly livelihood related ones, and supplementary income generation opportunities (training of parents and at-risk adolescents on income generation skills and assistance for self employment).
- The project will try out employments and employability in all the three sectors of the economy - Primary (agriculture and allied activities), Secondary (manufacturing and processing), Tertiary (services etc.). The project intends to conduct intensive research on this issue to evolve an adaptable, implementable and coherent vocational training and education policy.
- Policy research is an innovative dimension under the project. There is still lack of clarity on the inter-linkages of the various causes and effects of child labour. The labour policy envisages that after 14 years of age children can join the labour force; whereas the vocational





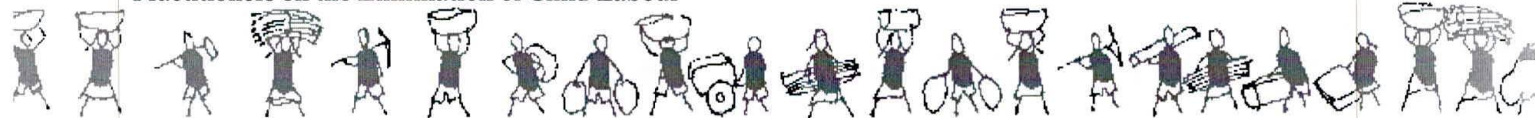
education policy mostly concentrates at the 10 + 2 level (18+ age group). Between 14 + to 18 years a large number of children the join labour force without the benefit of any formal vocational skill upgradation, which makes them extremely vulnerable to economic exploitation and lack of decent earning, consequently causing these children to slide into poverty. To address the issue of child labour on a sustainable basis there is a need to have a vocational education policy suitable to the needs of children in the age group of 14 + to 18 years.

- Developing appropriate remedial teaching learning material that can be used as bridge school curriculum.
- Developing and deploying child track system, to ensure that children do not drop out of school, once they are rehabilitated.
- Social security and child labour policy research.
- Child labour eradication in informal sector through technology up gradation and employer sensitization.

In carrying out its mandate the project will work with workers unions, employers associations, reputed NGOs and other institutions, and government functionaries at all levels. It is expected that:

- 5000 children (9 to 14 yrs) will join Bridge schools (day and residential) which will be set up for the purpose of providing rescued children minimum level of competency to join mainstream schooling.
- 4000 Adolescents (14 to 18 yrs) will be provided Vocational training so as to enhance opportunity of decent employment.
- 1000 Adult family members will be provided skill and assistance for self employment.
- 180 SHGs (around 3600 Women) will be federated so as to collectively work towards economic, social and political empowerment.
- 100 employers will be provided support services to upgrade business.





3.7 Special provisions related to child labour and child rights in the Constitution of India

The framers of the Indian Constitution consciously incorporated relevant provisions in the constitution to secure compulsory universal primary education as well as protection for children. The following provisions of the constitution have a direct bearing on child labour:

- 3.7.1 Article 23:** Prohibition of traffic in human beings and forced labour. Traffic in human beings, beggary and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- 3.7.2 Article 24:** Prohibition of employment of children in mines, factories; etc. 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.
- 3.7.3 Article 39 (e) and (f) :** Certain principles of policy to be followed by the state: "The state shall, in particular, direct its policy towards securing (e) that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- 3.7.4 Article 21A:** The state shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the state may by law determine.



3.8 Protective Legal provisions for the employment of children and definition of 'Child' under various Acts

3.8.1 The Factories Act, 1948: No child who has not completed his fourteenth year shall be required or allowed to work in any factory (under Section 67). Further provides for regulation of working condition of young persons (15 to 18 years). (Penalties and cognizance Chapter-X Section 98, 99 and Chapter-XI).

3.8.2 The Children (Pledging of Labour) Act 1933: This Act prohibits making of agreements to pledge the children and the employment of children (under the age of 15 years, Section-2) whose labour has been pledged under such an agreement. It lays down penal provisions for the employers as well as the parents or guardian.

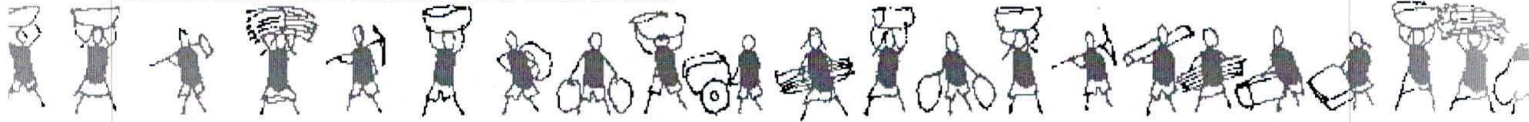
3.8.3 The Plantation Labour Act, 1951: 'Child means a person who has not completed his fourteenth year'. As provided under Section 26 of the Act, any child shall be employed in any plantation work without possessing the fitness certificate issued by the Medical Officer. Penalties and cognizance: Chapter VII Section 35 & 39.

3.8.4 The Mines (Amendment) Act, 1983: No person who has not completed 18 years of age shall be allowed to work in any mine or part there of " and stipulate regulatory provisions for employing apprentices and trainees who have completed 16 years of age (under Section 40 of the Act). Penalties and cognizance: Chapter IX Section 68, 76, 79, 80, 81.

3.8.5 The Merchant Shipping Act, 1958: This Act prohibits children under 15, to be engaged to work in any capacity in any ship, except in certain specified cases. Penalties & Cognizance: Section 436.

3.8.6 The Motor Transport Workers Act 1961: No child shall be required or allowed to work in any capacity in any motor transport undertakings (Section 21). "Child" means a person who has not completed 14 years of age. Certificate of fitness issued by the Medical Surgeon is a must, if employer wants to employ children above 14 years and below 18 years (Section 22, 23 & 24). Penalties & Cognizance: Chapter VIII Section 30, 31, 34, 35.





3.8.7 The Beedi and Cigar workers (condition of employment) Act, 1966:

This Act prohibits the employment of children who have not completed 14 years of age in any industrial premises (Section 24) and regulates the working condition of the adolescents (above 14 and below 18 years of age). Penalties and Cognizance: Section 33, 34, 36.

3.8.8 The Karnataka Shops and Commercial Establishment Act, 1961:

The Act prohibits employment of children who have not completed 14 years of age under section 24. Penalty provision: Section 30(3).

3.8.9 Dangerous Machines (Regulation) Act, 1983: This Act prohibits employment of children who have not completed 14 years of age by the user of dangerous machines (Section 20).

3.8.10 The Bonded Labour System (Abolition) Act; 1976: Under this Act, the bonded labour system stands abolished and sets free the bonded labour, including child bonded labour. The released bonded labour is entitled for relief and rehabilitation from the State Government (Section-4 of the Act).

3.8.11 The Apprentice Act, 1961: A person shall not be qualified to be engaged as an apprentice..... unless he completes 14 years of age. The Act prohibits a person below 14 years of age to be engaged as an apprentice to undergo apprenticeship training in a designated trade (Section-3). Penalties & Cognizance: Section 30, 31, 32 & 33.

3.8.12 The Minimum Wages Act, 1948: In Karnataka, under the rules, the employment of children below 14 years is prohibited in the domestic works.

3.8.13 The Child labour (Prohibition and Regulation) Act 1986: “Child means a person who has not completed 14 years of age”, under Section 3 of this Act, no child shall be employed or permitted to work in any of the occupation set forth in Part-A and or in any of the workshop where in of any of the processes set forth in Part-B; except in the process of family based work or recognized school-based activities are there.





3.9 The Juvenile Justice (Care and Protection of Children) Act, 2000

'Juvenile' is a person who has not attained the age of eighteen years.

3.9.1 The Juvenile Justice (Care and Protection of Children) Act 2000:

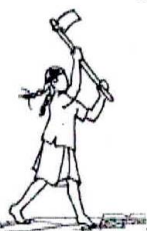
An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions was established under this enactment.

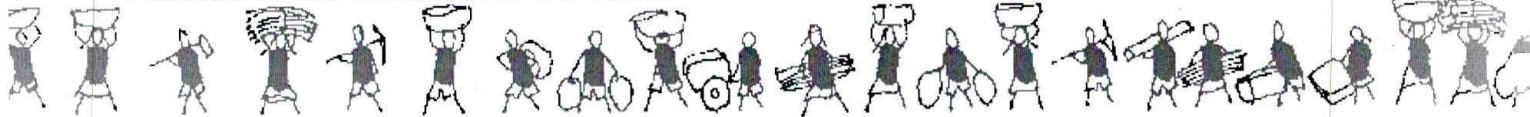
The legislation aims at making the justice system for the juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults, and spells out the role of the State as facilitator rather than doer by involving voluntary organizations and local authorities in the implementation of the Act. The emphasis is a shift from institutional care to bringing in the family and the community to the task of care, protection, treatment, development, rehabilitation and aftercare of juveniles in conflict with law and children in need of care and protection.

Above all, it is an attempt to bring this legislation in conformity with the United Nations Convention on the Rights of the Child and is expected to be implemented largely by the States and the Union Territories by utilizing the existing infrastructure available under the Juvenile Justice Act, 1986.

Though the Act was passed in late 2000, many states and union territories are yet to implement the same. At the operational level, the juvenile justice system needs to become more accessible to a juvenile or the child or anyone acting on their behalf, including the police, voluntary organizations, social workers or parents and guardians, throughout the country. The urgent need for creating adequate infrastructure of informal system specially linked to the family, voluntary organizations and the community cannot be overlooked.

Most of the definitions of the expressions used in the Act are based on the definitions in the Juvenile Justice Act 1986. The scope of some of the definitions have been broadened





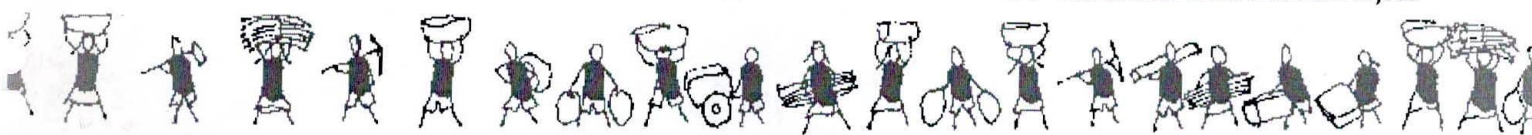
and some new definitions have been added taking into consideration the United Nations Conventions on the Rights of the Child (CRC) which has been ratified by the Government of India. Sub-clause (e) defines “child in need of care and protection” who was earlier defined as “neglected juvenile” in the Juvenile Justice Act, 1986. The scope of a child in need of care and protection has been broadened taking into consideration various areas emerging from neglect of children. Sub-clause (1) has now prescribed uniform age for juvenile or child as a person who has not completed his eighteen years of age keeping in conformity with article 1 of the Convention on the Rights of the child. Sub-clause (m) defines the expression “juvenile in conflict with law” who was earlier defined as “delinquent juvenile” in the Juvenile Justice Act, 1986. The expression “Juvenile in conflict with law” has been used for removing the stigma attached with the word, “delinquent” and make the law more child-friendly. Sub-clause (n) defines “local authority” to bring in involvement of authorities, such as, Panchayats at the village and Zilla Parishad at the District level and other authorities as stated in that sub-clause for proper implementation of the proposed legislation. Sub-clause (x) defines State Government to include Union Territories also.

3.9.2 Exploitation of juvenile or child employee (26):- Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment; keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

3.9.3 Child Welfare Committee (29):-

- (1) The State Government may, by notification in the Official Gazette, constitute for every district or group of districts, specified in the notification, one or more Child Welfare Committees for exercising the powers and discharging the duties conferred on such Committees in relation to a child in need of care and protection under this Act.
- (2) The Committee shall consist of a Chairperson; and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.
- (3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.



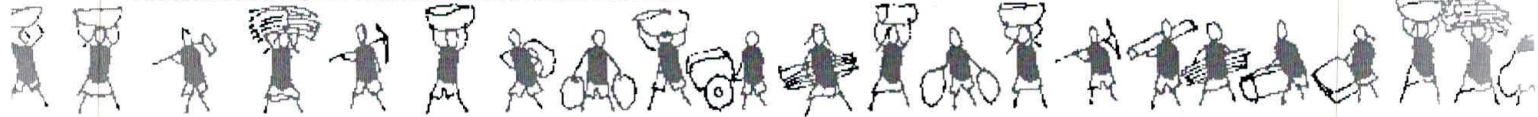
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- (4) The appointment of any member of the Committee may be terminated after holding inquiry, by the State Government, if -
- (i) S/he has been found guilty of misuse of power vested under this Act;
 - (ii) S/he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or s/he has not been granted full pardon in respect of such offence;
 - (iii) S/he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or s/he fails to attend less than three-fourth of the sittings in a year.
- (5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the **Code of Criminal Procedure, 1973 (2 of 1974)** on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

3.9.4 Comments : State governments have been empowered to constitute for every district or group of districts one or more Child Welfare Committees for exercising the powers and discharge the duties in relation to children in need of care and protection under the Act. The Committee shall consist of a Chairperson and four other members, of whom at least one shall be a woman and another, a child expert.

3.9.5 Powers of the Committee (31):-

- (1) The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.
- (2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.





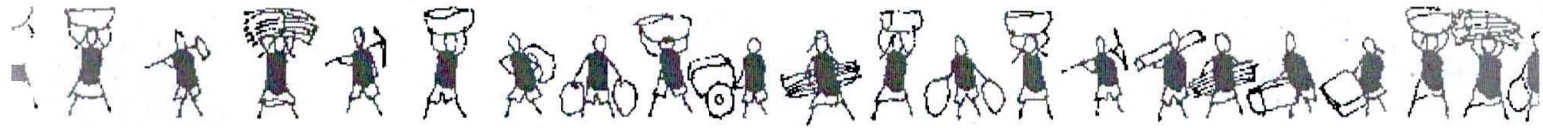
3.10 Supreme Court directions on child labour

The Supreme Court of India, in its judgment dated 10th December, 1996 in Writ Petition (Civil) Number 465/1986, has given certain directions regarding the manner in which children working in the hazardous occupations are to be withdrawn from work and rehabilitated, and the manner in which the working conditions of children working in non-hazardous occupations are to be regulated and improved. The judgment of the Supreme Court envisages:

- (a) Simultaneous action in all the districts of the country;
- (b) Survey for identification of working children (to be completed by June 10, 1997);
- (c) Withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions;
- (d) Contribution of Rs.20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose;
- (e) Employment to one adult member of the family of the child so withdrawn from work, and if that is not possible a contribution of Rs.5,000 to the welfare fund to be made by the State Government;
- (f) Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs. 20,000/25,000.00 deposited in the welfare fund as long as the child is actually sent to the schools;
- (g) Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer;
- (h) Planning and preparedness on the part of Central and State Government in terms of strengthening of the existing administrative/regulatory/enforcement frame-work (covering cost of additional manpower, training, mobility, computerization etc.) implying additional requirement of funds.

In a related judgment on 7th May, 1999, the Supreme Court of India in a writ petition (Civil No. 12125/84 and 11643/85) - Bandhwa Mukthi Morcha, etc., V/s. Union of India and others, has also given a number of directions on the identification, release and rehabilitation of child labour. The court, inter-alia directed the GOI to convene a meeting with the State



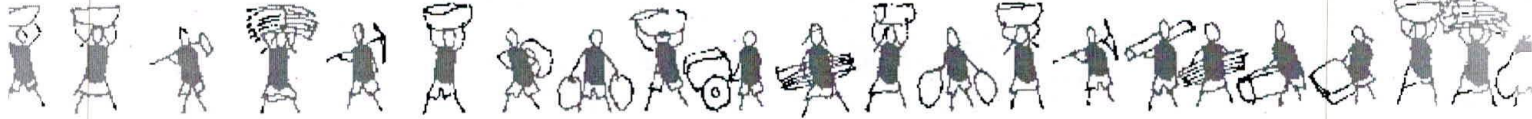


Government to evolve principles/policies for progressive elimination of employment of children below 14 years in all employment consistent with the scheme laid down in civil writ petition No. 465/86. This direction was given by the court in the context of employment of children in the carpet industries in the State of Uttar Pradesh. In this case, the court issued the following directions to the Government of Uttar Pradesh:

- i) Investigate the conditions of the employment of children.
- ii) Issue such welfare directions as are appropriate for the total prohibition of employment of children below 14 years of age.
- iii) Provide facility for education, health, sanitation, nutritious food, etc.

The implementation of the directions of the Supreme Court is being monitored by the Ministry of Labour and compliance of directions reported to the Court on the basis of information received from the States/UT Governments. The Ministry of Labour issued guidelines to state governments. Receipt of materials from the state governments is monitored and affidavits filed before the court from time to time.





3.11 Hazardous child labour

An estimated 171 million children, aged between 5-17, work in dangerous, hazardous conditions that could result in their being killed or injured (often permanently) and/or made ill (often permanently). Work which results in children being killed, injured or made ill as a consequence of poor safety and health standards and working conditions/arrangements is called hazardous child labour.

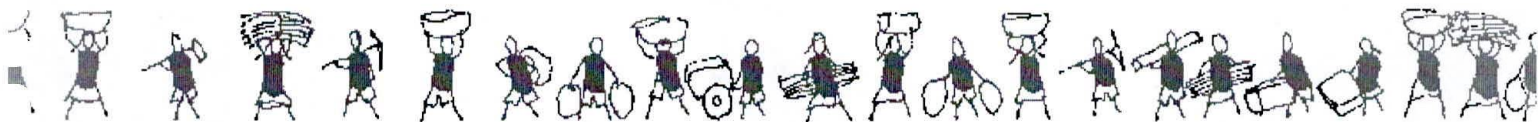
Hazardous child labour is by far the largest category of worst forms of child labour. The aim is elimination of hazardous child labour with no child (defined as under 18 for this purpose) undertaking hazardous work (with very limited exemptions for young workers, aged 16-17).

An estimated 22,000 children are killed every year at work. No figures for child accidents or ill health due to work are currently available. But every year there are 270 million work accidents and 160 million cases of ill health due to work. The risks arising from hazards in the workplace are much greater for children.

3.11.1 Hazards and risks

When discussing hazards it is important to understand the distinction between hazard and risk. A “hazard” is anything with the potential to do harm. A “risk” is the likelihood of potential harm from that hazard being realized. For example, the hazard associated with machinery might be getting trapped or entangled by moving parts. The risk may be high if guards are not fitted and workers are in close proximity to the machine. If the machine is properly guarded, regularly maintained and repaired by competent staff, then the risk will be lower.





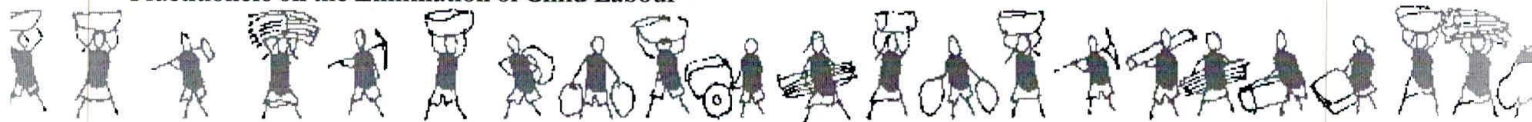
3.12 Children in the worst forms of child labour

The following working situations are considered as worst forms of working situations:

1. Trafficked children
2. Forced and bonded labour
3. Children involved in armed conflict
4. Children in prostitution and pornography
5. Children in illicit activities (drug trafficking etc)
6. Work that disables children from attending a regular school and work, which causes psychological, moral or physical (contact with toxic chemicals, fire, explosives, sharp or moving objects etc.) hazard.

[But in effect there is no work which does not obstruct a child's education and his normal psychological, moral and physical well being. Hence all or any work is hazardous for children.]





3.13 Selected Myths and Realities about child labour

The following are certain selected myths and realities about child labour

3.13.1 Poverty is the single major cause of child labour

Poverty has many dimensions to it. Low earnings and low level of skill, lack of assets and access to training or education are accompanied by poor health, malnutrition, absence of shelter and food insecurity. Poverty is a cause, but often 'perceived' poverty is a cause for child labour. In any village not the poorest but often some others also send their children to work to satisfy their greed, extravagance, and sometimes bad habits. There are enough conscientious parents, who, even though poor send their children to school. If poverty alone caused child labour every child from the poor households would have been child labour. Poverty is more widespread than the prevalence of child labour as many poor parents take on all hardships on themselves and send their children to school. One grave aspect is that child labour causes low skill, low income and consequent poverty.

3.13.2 If children do not work, they and their families will starve

Starvation persists even when all the members of the family, including children, are working. Starvation is the result of a combination of factors, including price policy, low income, low purchasing power, income distribution, poor availability of food, lack of economic and physical access to food and unequal land and asset ownership pattern. At the macro economic level enough research findings are there to indicate that when all the children are removed from work, both the wage and the labour market situations improve and the poor parents get better work with more remuneration. Consequently, removal of children from work does not affect their families adversely.

3.13.3 Child labour is the result of the poor having more children

The wealth of a nation is its people. The tendency, however, is to view them not in terms of their potential, but their sheer numbers. But family planning is essential to have enough resources for children's well being, education and health.





3.13.4 Parents would rather send their children to work than to school

“The withdrawal of children from the labor market through mass enrolment by NGOs effectively disproves the “Poverty argument” very often used to justify continuance of child labour”. Proper counseling will dissuade even the most recalcitrant parents from sending their children to work.

3.13.5 Children themselves want to work

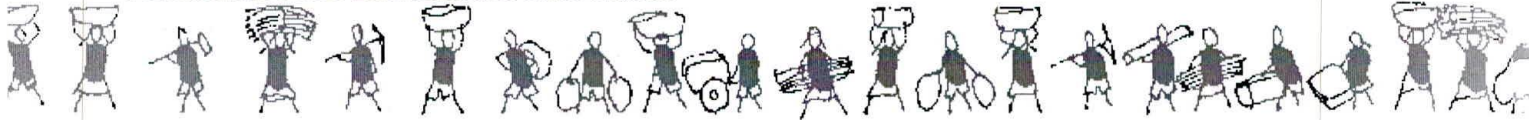
When children express their preference to work, it is because of their inability to conceive of an alternative. Children are compelled to work by the non – availability or lack of access to schools, an irrelevant school curriculum and physical abuse from teachers. The expression of the desire to work by children reflects their lack of trust in adults to change their situation. Child labour is ultimately an indictment of societal apathy, effete education system and indifference to their plight.

Many a times adults invent reasons why children should go to work and repeated reiteration of same is internal

3.13.6 There is nothing wrong in allowing children to work in non-hazardous occupations

The word “hazardous” is a debatable point. The reference is to what is hazardous to the child. In this respect even jobs which are not inherently hazardous become hazardous for children, if they are made to do the job for a long period and if they are being denied their rights to development, education, medical care, recreation, leisure and play.





3.13.7 Work equips the children with skills for the future

The tasks allotted to child labour are simple and repetitive such as labelling, filling, rolling, fetching and carrying. “Skill” is a misnomer when applied to the backbreaking toil and drudgery children engage in. The hard, physical labour, exposure to the elements like dust, toxic fumes and chemical solutions damage children’s health irrevocably, shortening their life span and impairing their development. Research shows that 95% of the children do not continue in the same jobs as adolescents or adults. Worse, many of the sectors employing child labour forcibly eject such individuals who have crossed their age of childhood.

3.13.8 Child labour is necessary to preserve traditional arts and crafts

Children bonded to families or who are hired labour are never taught the actual craft. Learning of a particular art or craft by children within their families, as part of their socialization, should be integrated with their education. Children should not be sacrificed at the altar of preserving traditional art.

3.13.9 Children work faster and have nimble fingers needed in certain types of work especially for making knots in carpets

It is a myth that child labour is essential and the children are capable of weaving better carpets than adults. “There was no truth in the ‘nimble fingers’ argument, as proven by the research”. Adults can do the job better and faster in a more productive way.

3.13.10 Industry will collapse if child labour is not available

The industries examined included carpet, brassware, gem polishing, and match industries. The increase in cost, being only marginal, can be largely absorbed by the industry or if passed on to the customer, the increase in the sale price of the final product would also be marginal.



3.13.11A Global ban on child labour products will stop the practice of employing child labour and protect children's rights

Child labour is essentially a domestic problem as only approximately 8 percent of India's child labour force is engaged in the export sector. Linking the concerns of human rights to trade can only serve the protectionist interest of the developed countries. These social clauses and blanket boycotts make no commitment to the rehabilitation of child labour.

3.13.12 Legislation prohibiting child labour is sufficient to resolve the problem

Legislation prohibiting child labour may end up compounding the problem by legitimizing child labour.

"Having enacted so many Acts, little attention has been given towards enforcement, there is failure in the area of compulsory education of children up to the age of 14 (Article 45). Several states have made commendable effort in the direction of providing education facilities, but none has been able to do anything to check the phenomenon of high drop – outs"

3.13.13 Child labour cannot be abolished

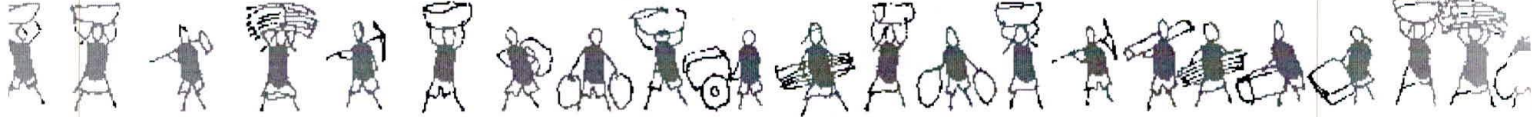
The task is big, but not as to prove either unwieldy or burdensome. This shows that what has caused the problem of child labour to persist here is really not dearth of resources, but lack of real zeal.

"We must see the child as a human person in a holistic perspective... The time has come to recognize the primacy of the Rights of the Child and to take effective steps on the basis of that primacy to promote the cause of child Development."

3.13.14 Girl children in the post – puberty stage should not enter the cottonseed fields, as it will pollute the crop and cause failure of crop

Employers are concerned about profit. They have spread this myth among the community so that they get young children to work with no wages or low wages. In this process they can extract more work from these young children because of their pliability.





3.14 List of Occupations and Processes in which Child Labour is prohibited under the Child Labour Prohibition and Regulation Act, 1986

3.14.1 Any occupation connected with:

1. Transport of passengers, goods or mails by railway.
2. Cinder-picking, clearing of an ash pit or building operation in the railway premises.
3. Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train.
4. Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines.
5. A port authority within the limits of any port.
6. Work relating to selling of crackers and fireworks in shops with temporary licenses.
7. Abattoirs/slaughter house.
8. Automobile workshops and garages.
9. Foundries.
10. Handling of toxic or inflammable substances or explosives.
11. Handloom and power loom industry.
12. Mines (underground and under water) and collieries.
13. Plastic units and fiberglass workshops.
14. Employment of children as domestic workers or servants.
15. Employment of children in dhabas (road side eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centers.

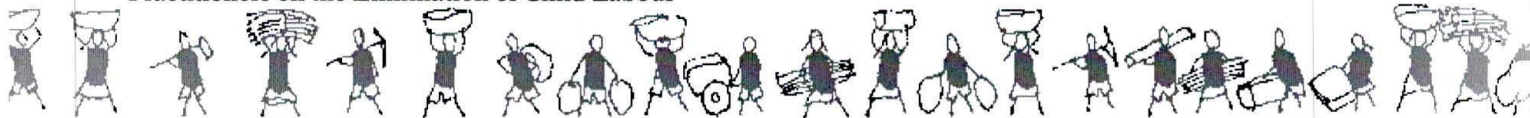




3.14.2 Prohibited Process

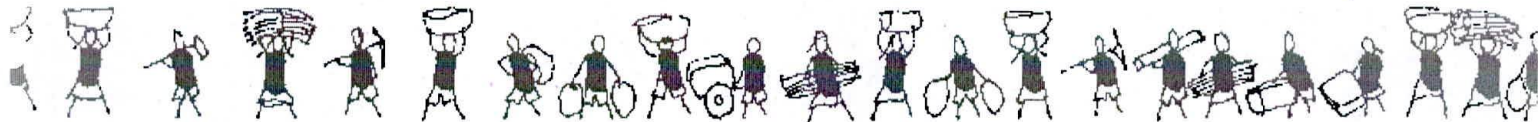
1. Beedi-making.
2. Carpet weaving, including preparatory and incidental process thereof.
3. Cement manufacture, including bagging of cement.
4. Cloth printing, dyeing and weaving, including process preparatory and incidental thereto.
5. Manufacture of matches, explosives and fireworks.
6. Mica-cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture.
9. Tanning.
10. Wool-cleaning.
11. Building and construction industry.
12. Manufacture of slate pencils (including packing).
13. Manufacture of products from agate.
14. Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.
15. 'Hazardous processes' as defined in Section 2 (cb) and 'dangerous operations' as notified in rules made under Section 87 of the Factories Act, 1948.
16. Printing as defined in Section 2 (k) (iv) of Factories Act, 1948.
17. Cashew and cashew nut de-scaling and processing.
18. Soldering processes in electronic industries.
19. Agarbatti manufacture.
20. Automobile repair and maintenance, including processes incidental thereto namely welding, lathe work, dent beating and painting.
21. Brick kilns and roof tiles units.
22. Cotton ginning and processing and production of hosiery goods.
23. Detergent manufacturing.
24. Fabrication workshops (ferrous and non-ferrous).
25. Gem-cutting and polishing.
26. Handling of chromites and manganese ores.
27. Jute textile manufacture and coir-making.
28. Lime kilns and manufacture of lime.
29. Lock-making.
30. Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal, constructions, welding of galvanized or zinc





- silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding of lead mining, plumbing, cable making, wire patenting, lead casting, type founding in printing shops. Store typesetting, assembling of cars, shot-making and lead glass blowing.
31. Manufacture of cement pipes, cement products and other related work.
 32. Manufacturing of glass, glassware including bangles, florescent tubes, bulbs and other similar glass products.
 33. Manufacture of dyes and dyestuff.
 34. Manufacturing or handling of pesticides and insecticides.
 35. Manufacturing or processing and handling corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry.
 36. Manufacturing or burning coal and coal briquettes.
 37. Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather.
 38. Molding and processing of fiberglass & plastic.
 39. Oil expelling and refinery.
 40. Paper-making.
 41. Potteries and ceramic industry.
 42. Polishing, molding, cutting, welding and manufacture of brass goods in all forms.
 43. Processes in agriculture where tractors, threshing and harvesting machines are used and chaff-cutting.
 44. Saw mill (all processes).
 45. Sericulture processing.
 46. Skinning, dyeing and processes for manufacturing of leather and leather products.
 47. Stone-breaking and stone-crushing.
 48. Tobacco-processing, including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.
 49. Tyre-making, repairing, re-treading and graphite beneficiation.
 50. Utensil-making, polishing and metal buffing.
 51. Zari making (all processes).
 52. Electroplating.
 53. Graphite powdering and incidental processing.
 54. Grinding or glazing of metals.
 55. Diamond cutting and polishing.
 56. Extraction of slate from mines.
 57. Rag-picking and scavenging.





3.15 Provisions of some of the Important Enactments with Child Labour Prohibition

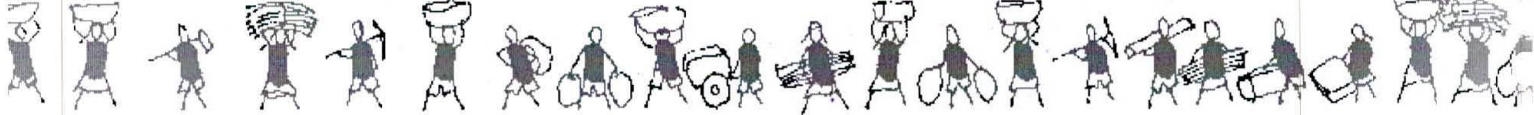
THE FACTORIES ACT, 1948

[Act LXIII of 1948]

[23rd September, 1948]

2. **Interpretations** – In this Act, unless there is anything repugnant in the subject or context,
- (b) **“Adolescent”** means a person who has completed his fifteenth year of age but has not completed his eighteenth year
 - (c) **“Child”** means a person who has not completed his fifteenth year of age
 - (d) **“Young person”** means a person who is either a child or an adolescent
23. **Employment of young persons on dangerous machines** –
- (1) No young person [shall be required or allowed to work] at any machine to which this section applies, unless he has been fully instructed as to the danger arising in connection with the machine and the precautions to be observed and –
 - (a) Has received sufficient training in work at the machine, or
 - (b) Is under adequate supervision by a person who has a thorough knowledge and experience of the machine.
 - (2) Sub-section (1) shall apply to such machines as may be prescribed by the [State] Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.
67. **Prohibition of employment of young children** – No child who has not completed his fourteenth year shall be required or allowed to work in any factory.
71. **Working hours for children** –
- (1) No child shall be employed or permitted to work, in any factory
 - (a) For more than four and a half hours in any day;
 - (b) During the night
- Explanation** – For the purpose of this sub-section “night” shall mean of period of at least twelve consecutive hours which shall include the interval between 10 p.m. and 6 a.m.





- (2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.
- (3) The provisions of Section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.
- (4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.
- (5) No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

73. Register of child workers –

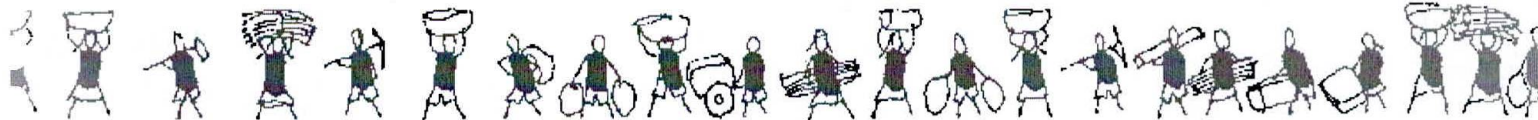
- (1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing—
 - (a) The name of each child worker in the factory,
 - (b) The nature of his work,
 - (c) The group, if any, in which he is included,
 - (d) Where his group works on shifts, the relay to which he is allotted, and
 - (e) The number of his certificate of fitness granted under Section 69.

[(1-A) 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]

- (2) The [State] Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

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





extend to [one thousand rupees] for each day on which the contravention is so continued:

[Provided that where contravention of any of the provisions of Chapter-IV or any rule made there under or under Section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than [twenty-five thousand rupees] in the case of an accident causing death, and [five thousand rupees] in the case of an accident causing serious bodily injury.

103. Presumption as to employment – If a person is found in a factory at any time, except during intervals for meals, or rest, when work is going on or the machinery is in motion, he shall, until the contrary is proved, be deemed for the purposes of this Act and the rules made there under to have been at that time employed in the factory.

104. Onus as to age –

- (1) When any act or omission would, if a person were under a certain age, be an offence punishable under this Act, and such person in the opinion of the Court *prima facie* under such age, the burden shall be on the accused to prove that such person is not under such age.
- (2) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made there under, be admissible as evidence of the age of that worker.

105. Cognizance of offences –

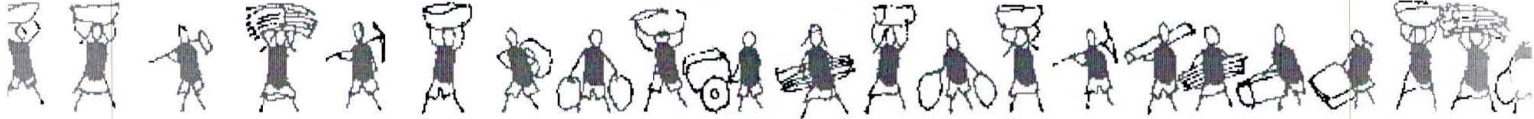
- (1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector.
- (2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

106. Limitation of prosecutions – No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

106-A. Jurisdiction of a court for entertaining proceedings, etc., for offence – For the purposes of conferring jurisdiction on any court in relation to an offence under this Act or the rules made there under in connection with the operation of any plant, the place where the plant is for the time being situated shall be deemed to be the place where such offence has been committed.

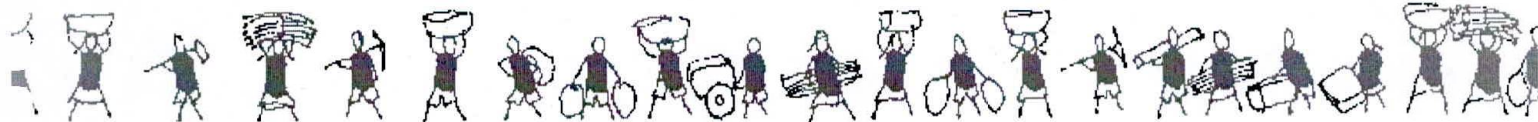




THE KARNATAKA SHOPS AND COMMERCIAL ESTABLISHMENTS ACT, 1961

2. **Definitions** – In this Act, unless the context otherwise requires:
- (c) **“Child”** means a person who has not completed his [fourteenth year].
 - (g) **“Employee”** means a person wholly or principally employed in or in connection with, any establishment whether working on permanent, periodical, contract or piece-rate wages, or on commission basis, even though he receives no reward for his labour and includes an apprentice, any clerical or other member of the staff of a factory or industrial establishment who falls outside the scope of the Factories Act, 1948, but does not include a member of the employer’s family; and “employed”, shall be construed accordingly.
 - (i) **“Establishment”** means a shop or a commercial establishment.
 - (k) **“Inspector”** means an Inspector appointed under Section 26 and includes the Chief Inspector and an Assistant Inspector.
 - (u) **“Shop”** means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948.
 - (z) **“Young person”** means a person who is not a child and who has not completed his eighteenth year.
24. **Prohibition of employment of children** – No child shall be required or allowed to work in any establishment.
26. **Inspectors:**
- 1) The State Government may by notification appoint such persons or such class of persons as it thinks fit, to be Inspectors and Assistant Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.
 - 2) The State Government may, by Notification, appoint such public officers as it thinks fit to be Additional Inspectors, for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.
 - 3) In any area where there are more Inspectors than one, the State Government may, by Notification, declare the powers which such Inspectors shall respectively exercise.
 - 4) The Commissioner of the Labour in Karnataka shall be the Chief Inspector for the purposes of this Act, for the whole of the State of Karnataka.





30. Penalties:

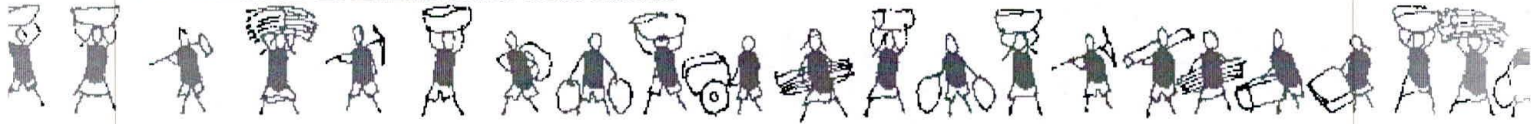
- 1) Whoever contravenes any of the provisions of Sections 4, 5, 6, [6-A], 7, 9, 10, 11, 12, 13, 15, 16, ²[x x], 25 and 39, shall, on conviction, be punished with fine, which, for a first offence, may extend to [one thousand rupees] and for a second or any subsequent offence, may extend to [two thousand rupees].
- 2) Whoever contravenes any of the provisions of Section 8, 17, 29 and 34 shall, on conviction, be punished with a fine which may extend to [two hundred and fifty rupees].
- 3) Whoever contravenes the provisions of Section 24, shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to six months or with fine which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both, for the first offence and for the second and subsequent offences, he shall be punishable with imprisonment of a term which shall not be less than six months but which may extend to one year.

31. Procedure:

- 1) No prosecution under this Act or the rules or orders made there under shall be instituted save on a complaint in writing by an Inspector.
- 2) No court inferior to that of a Magistrate of the Second Class shall try any offence punishable under this Act or any rules or orders made there under.

32. Limitation of prosecutions: No court shall take cognizance of any offence under this Act or any rule or order made there under, unless complaint thereof is made within six months from the day on which the offence is alleged to have been committed.

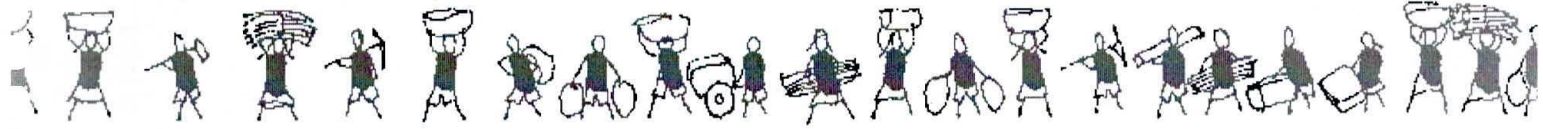




THE PLANTATIONS LABOUR ACT, 1951 [Central Act 59 of 1951]

2. **Definitions** – In this Act, unless the context otherwise requires –
- (a) **“Adolescent”** means a person who has completed his [fourteenth] year but has not completed his eighteenth year
 - (c) **“Child”** means a person who has not completed his [fourteenth] year
25. **Night work for women and children** – Except with the permission of the State Government, no woman and child worker shall be employed in any plantation otherwise than between the hours of 6 a.m. and 7 p.m.
Provided that nothing in this Section shall be deemed to apply to midwives and nurses employed as such in any plantation.
26. **Non-adult workers to carry tokens** – No child [x x x x] and no adolescent shall be required or allowed to work in any plantation unless –
- a) A certificate of fitness granted with the reference to him under Section 27 is in the custody of the employer; and
 - b) Such child or adolescent carries with him while he is at work a token giving a reference to such certificate.
35. **Contravention of provisions regarding employment of labour** – Whoever, except as otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made there under, prohibiting, restricting or regulating the employment of persons in a plantation, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.





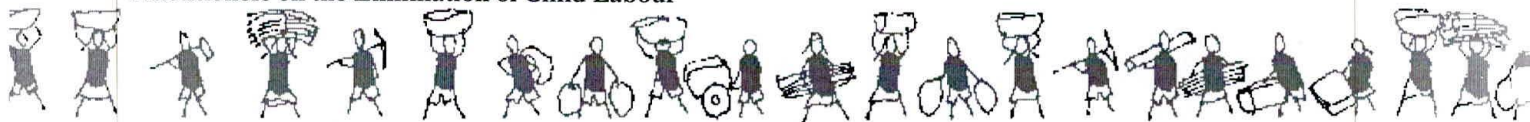
THE MINES ACT, 1952
[Act No.35 of 1952]

- 40. Employment of persons below eighteen years of age –**
- 1) After the commencement of the Mines (Amendment) Act, 1983, no person below eighteen years of age shall be allowed to work in any mine or part thereof.
 - 2) Notwithstanding anything contained in sub-section (1), apprentices and other trainees not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof by the manager:
Provided that in the case of trainees, other than apprentices, prior approval of the Chief Inspector or an Inspector shall be obtained before they are allowed to work.

Explanation – In this section and in Section 43, “apprentice” means an apprentice as defined in clause (a) of Section 2 of the Apprentices Act, 1961 (52 of 1961).

- 45. Prohibition of the presence of persons below eighteen years of age in a mine –** Subject to the provisions of sub-section (2) of Section 40, after such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no person below eighteen years of age shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on.
- 68. Penalty for employment of persons below eighteen years of age –** If a person below eighteen years of age is employed in a mine in contravention of Section 40, the owner, agent or manager of such mine shall be punishable with fine which may extend to five hundred rupees.





The Motor Transport Workers Act, 1961 [Central Act 27 of 1961]

2. **Definitions** – In this Act, unless the context otherwise requires –
- (a) **“Adolescent”** means a person who has completed his [fourteenth] year but has not completed his eighteenth year
 - (c) **“Child”** means a person who has not completed his [fourteenth] year
14. **Hours of work for adolescents employed as motor transport workers** – No adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking –
- (a) For more than six hours a day including rest interval of half-an-hour
 - (b) Between the hours of 10 p.m. and 6 a.m.
21. **Prohibition of employment of children** – No child shall be required or allowed to work in any capacity in any Motor Transport Undertaking.
22. **Adolescents employed as motor transport workers to carry tokens** – No adolescent shall be required or allowed to work as a motor transport worker in any motor transport undertaking unless –
- (a) A certificate of fitness granted with reference to him under Section 23 is in the custody of the employer; and
 - (b) Such adolescent carries with him while he is at work a token giving a reference to such certificate.
31. **Contravention of provisions regarding employment of motor transport workers** – Whoever, except as otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made there under, prohibiting, restricting or regulating the employment of persons in a motor transport undertaking, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to seventy-five rupees for every day during which such contravention continues after conviction for the first such contravention.

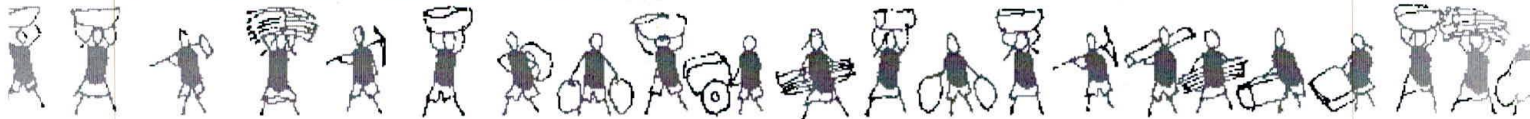




**THE BEEDI AND CIGAR WORKERS (CONDITIONS OF
EMPLOYMENT) ACT, 1966**
[Central Act No.32 of 1966]

2. **Definitions** – In this Act, unless the context otherwise requires -
- (b) “Child” means a person who has not completed fourteen years of age
24. **Prohibition of employment of children** – No child shall be required or allowed to work in any industrial premises.
25. **Prohibition of employment of women or young persons during certain hours** – No woman or young person shall be required or allowed to work in any industrial premises except between 6 a.m. and 7 p.m.
30. **Onus as to age** –
- (1) When any act or omission would, if a person were under a certain age, be an offence punishable under this Act and such person is, in the opinion of the court, prima facie under such age, the burden shall be on the accused to prove that such person is not under such age.
- (2) A declaration in writing by a medical officer not below the rank of a Civil Assistant Surgeon relating to an employee that he has personally examined him and believes him to be under the age stated in such declaration, shall, for the purposes of this Act and the rules made there under, be admissible as evidence of the age of that employee.
33. **General penalty for offence** –
- (1) Save as otherwise expressly provided in this Act, any person who contravenes any of the provisions of this Act or of any rule made there under, or fails to pay wages or compensation in accordance with any order of the appellate authority passed under clause (b) of sub-section (2) of Section 31, shall be punishable for the first offence, with fine which may extend to two hundred and fifty rupees and for a second or any subsequent offence with imprisonment for a term which shall not be less than one month or more than six months or with fine which shall not be less than one hundred rupees or more than five hundred rupees or with both.





3.16 Effective Enforcement of Child Labour Laws

Lack of effective enforcement of the Child Labour and related laws is one of the important reasons for the continuation of child labour in prohibited occupations and processes. All India figures indicate that quantitatively very large number of inspections are done every year to detect child labour cases but number of detected cases are much lesser and substantive convictions still rarer. Qualitatively most of the convictions are technical in nature, where non-maintenance of registers etc. are reasons for conviction. In such cases penalties are minimal and the employers become bolder thinking that no one will ever be able to prove a child labour case against him.

Child labour cases fail mostly because of the indifferent attitude of the enforcement authorities vis-à-vis the prevailing laws and the plight of the children. Often the indifference is attributable to the misplaced sympathy for the family poverty, and incomplete understanding of the true causes and consequences of child labour. Sometimes such specious reasons like lack of sufficient staff, conveyance facilities, resources and training are assigned as alibis. Partly such poor enforcement is also due to lack of proper monitoring and encouragement from the top.

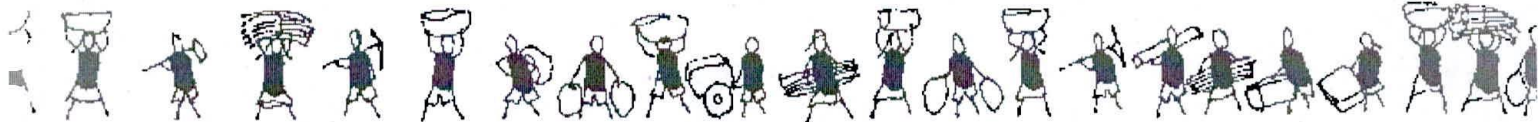
False notions of the 'poverty' argument is a very critical reason de-motivating many inspectors, who feel that the issue does not really require a serious enforcement and thus they limit their activities to mere building statistics. Enforcement failures are broadly due to three categories of reasons and bottlenecks:

(i) **Bottlenecks associated with the social environment:**

If the important stakeholders and society at large are not convinced about the bane of child labour and its debilitating consequences on the child, his family, and society at large; there is hardly any moral and physical support of the society for the enforcement. Any serious enforcement under such circumstances meets with hostility from the employer, parents, and the immediate society at large. In such circumstances neither the employers nor the parents see child labour as an undesirable practice. Many employers do not see themselves as law breakers when they engage child labour. Contrarily, they often believe that their act of employing a child helps to alleviate the poverty of the child's family and teaches him marketable skills that will stand him in good stead in later life. They strongly believe that the work for which they employ children, cannot be done by adults ('.....nimble finger theory....').

Attitude of parents, particularly those facing poverty or having extravagant habits, also poses certain problems. Such parents fail to understand, for whose benefit the enforcement is undertaken? How can elimination of child labour benefit the child and his family?





Community leaders, elected representatives, Government functionaries, media representatives, and opinion makers are all very important and their understanding of child labour issues either supports or mars enforcement. Hence it is essential that in the area where enforcement has to be undertaken, community mobilization and awareness raising campaigns should be initiated. When the community is receptive and understands the purpose of enforcement, it is the right time to proceed and any enforcement measure is supported by one and all. Employers should be sufficiently enlightened and warned of the ills of child labour. Parents and children should be counseled about it.

(ii) Bottlenecks associated with physical support system (logistics):

The problem of child labour is very widespread, and more numerous in the informal sector in the tiny, home based units where compliance to labour laws is minimal. Often, the employers, workers and the surrounding community join together to prevent the inspection and sometimes even attack the inspecting team.

Hence any inspection or enforcement activities should be done after adequate preparations.

(iii) Legal bottlenecks:

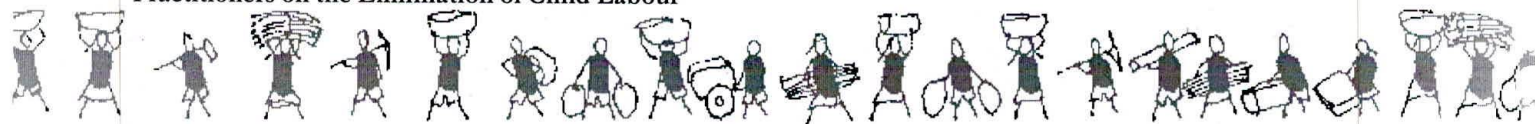
Generally, the children and their parents work together at a work site and in case of enforcement, the employers may plead that the child came to bring the lunch to the work site etc. To disprove this, the inspector has to collect relevant evidence. There may not be any record to prove that child was working, in such cases eye witnesses' evidence will have to be taken. Even non-maintenance of prescribed register should be made as a charge against the employer.

Age of the child is very critical to prove child labour. A certificate of age is very pivotal to successful prosecution. The employer must keep an age certificate but in the absence of the same the inspector should try to obtain the age certificate of the child from his village school or revenue office. In the absence of such direct evidence of an age certificate, the inspector should obtain an age certificate from an Authorized Government Doctor.

Often prosecution's cases fail due to various reasons including:

- (i) The case not being built properly. The mahazar was incomplete and not drawn properly. The evidences are not sufficient to prove
- That the child was working in a prohibited process or occupation.
 - That the child was below the age of 14 years.
 - That the accused was the employer of the child.





- (ii) Not maintaining the case file properly with the copies of relevant documents from the beginning.
- (iii) Not attending court regularly, not briefing the APP/PP properly,
- (iv) Not filing written statements/affidavits in time.
- (v) Not securing the presence of proper witnesses in time.
- (vi) Not preferring appeal in time, if aggrieved by the order of the lower court etc.

Effective Enforcement: Legal Provisions:

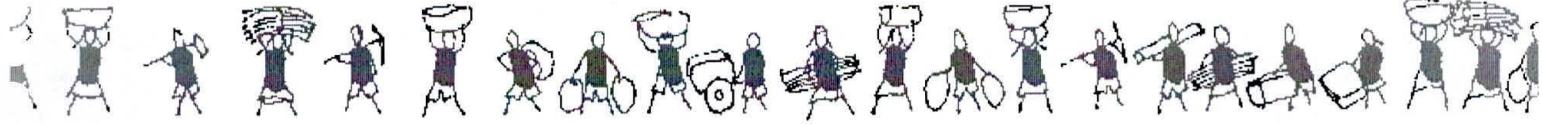
There are several enactments (as in the annexure) wherein child labour has been prohibited in some form or the other. But the following three Acts are the major enactments covering large number of children:

1. The Child Labour (Prohibition & Regulation) Act, 1986,
2. The Karnataka Shops & Commercial Establishments Act, 1961; and
3. The Factories Act, 1948.

Pre-planning: Any inspection of a workplace taken up for enforcing Child Labour Laws requires meticulous planning on following counts:

1. Pre-survey and collection of information on existence of child labour.
2. Mobilizing community and awareness rising.
3. Formation of an inspecting team with at least four members, out of which one can be a Doctor who can certify age of the child; another are an NGO (or NCLP staff), who can take charge of the child to counsel him and her parents and to take measures to rehabilitate him through various interventions; third one a trained section 17 inspector as defined in the Child Labour (P&R) Act 1986, who can draw up a proper mahazar and inspection note which will stand the scrutiny of the court and the fourth one either another Sec.17 inspector or a police or revenue official to give strength and assistance to the group in smooth discharge of their functions.
4. Adequate pre-thought and planning about how the rescued child will be rehabilitated, counselled and comforted.
5. A contingent plan to deal with a situation where the 'inspection' develops into a law and order problem. For this adequate mobility of the group and their familiarity with local area and people is very essential. The inspecting group should have a vehicle and preferably one of them should have a mobile phone to contact and call others for help.
6. It is better to take a camera/video camera so that appropriate photo/video of the work place, owner, work activity, child's work activities and the process of inspection, statement of witnesses etc can be recorded for later use.
7. The group should be equipped with paper, pen, proforma of drawing up the mazajar and taking statements of the accused and





witnesses. (Use of proforma should be only to standardize the format. The actual mahazar or the statement of the witness should be recorded on white paper, as courts often take objection to pre-formatted mahazar and statements.)

Inspecting Officers:

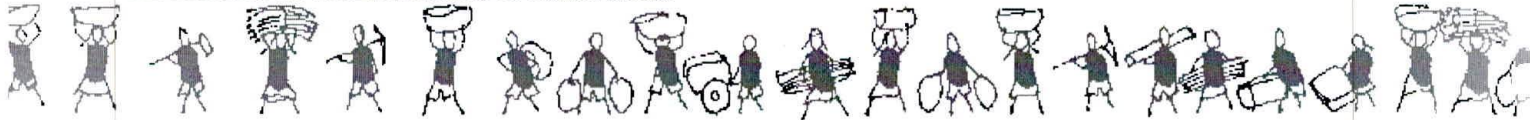
Under the CL(P&R) Act, 1986... any person or police officer or an Inspector appointed under Section.17 of the CL(P&R) Act, 1986, can inspect, draw up mazajar, collect evidence and file a complaint against any employer who employs child labour in the appropriate court. In the case of the Karnataka Shops & CE Act, 1961, the inspectors of the Labour Department and in the case of the Factories Act, 1948, the inspectors of the factories department can enforce and file a complaint before the appropriate court. In most of the other enactments the labour inspector is the appropriate authority.

Role of the Enforcement Officer:

(i) All the authorized inspectors should go through the provisions of law including the important court rulings like the judgment of the Honourable Supreme Court in MC Mehta-Vs-State of Tamil Nadu and others in WP(C) No.465/1986 etc. They should be clear about their roles and responsibilities. They should plan out who among the team member will do what. They should be clear in their mind that the Government policy on child labour is in favour of enforcement hence it is their bounden duty to enforce the laws as per the spirit of the statute. His own lack of will and lack of conviction in the 'Child Labour' laws should not affect the quality of enforcement. Regular, periodical visits by the Inspector; to all the establishments within his jurisdiction for detecting employment of any child below the age of 14 years is very essential. In every detected case of employment of children, a detailed inspection note (Mahazar, panchanama) should be drawn up where it should be very clear:

- 1) Under which law (Act and specific Sections) the violation is identified. (quote the Act and sections)
- 2) That he is notified under the provision as inspector. (quote the notification number & date)
- 3) Who is the working child? In what activities was s/he was employed and in which establishment? What was the age of the child? How was age ascertained and proven?
- 4) Who was the employer in the establishment?
- 5) What documents or witnesses prove the
 - Age of the child,
 - The fact that the child was working,
 - The fact that the child was employed on the 'X' employers' premises.





- The fact that the child was working in a prohibited employment or processes.
- Hence what offence (provision of law) is committed by the employer? And under what provision the employer is liable for punishment?

Police protection may be taken, wherever necessary. The officers of the Police Department are already instructed by the DGP vide his circular to extend police protection to the inspecting staff whenever needed by them.

Departmental vehicle may be provided by the Deputy Commissioner to the teams for carrying on inspections. Fuel for such vehicle may be arranged by the NCLP. The accompanying doctor with the inspecting team may examine the child and ascertain his age. There are circulars from the Health Commissioner and ESI Director that their departmental doctors should fully cooperate in this endeavour. Examine whether the employer can provide employment to the released child's family. Obtain an undertaking from the employer that he will never employ any child in future.

Prosecution should be launched against the erring employer and taken to its logical conclusion as a successful conviction to create demonstration effect. Discuss with the public prosecutor and with his help launch prosecution. Attend the court regularly and inform and seek help from the Deputy Commissioner of the District whenever you encounter any bottleneck in the process of enforcement or prosecution.

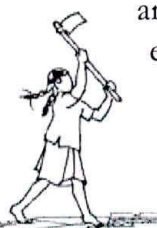
How to conduct an effective inspection:

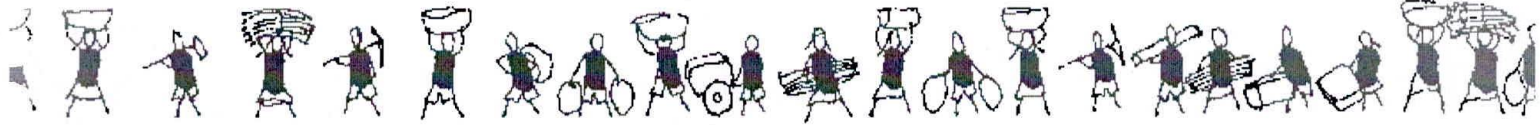
It is necessary for an Inspector to be objective, reasonable and follow the principles of natural justice while conducting inspections. He should come to a conclusion and give his findings based on sound legal evidence, instead of mere presumptions. He should be tactful, cool and firm at the inspection place as he can hardly consult anyone else for advice at that time. His language and demeanor should be courteous, controlled and unprovocative. But, he should be firm without appearing to be aggressive. He should not show any signs of weakness, fear or ask for favours, or show favouritism.

He should keep in mind the fact that the employer would do everything possible to frustrate the inspection. Rubbing people on the wrongside and abusive behaviour will not give any salutary results.

Often the employers may use the practice of driving out the children from the work spot on getting wind of the inspection. Care should be taken to prevent and avoid such happenings. The Inspector should not be misled by the employer, while ascertaining the age of the child.

The Inspector should collect the legal evidence like the school certificate and the medical certificate to strengthen the case. The Doctor with the inspecting team may ascertain the age and give a certificate of age on





the spot or after further examination in the hospital. But the Doctor's certificate as age proof should be used for the case as a last resort if the certificate of age from the school or revenue office is not available. The Inspector should try to visit the village of the child and obtain his birth certificate from the school or the Revenue office (or Municipal office) as the case be. If it is confirmed that the child's birth is neither registered with the Registrar of Birth & Deaths nor has the child ever gone to school (so the date of birth is not available in the school) then only the Doctor's certificate of age should be relied on.

The NGO representative accompanying the inspecting team should start a dialogue and interaction with the child employed in the establishment through counseling and child friendly communication techniques. He may be courteous, respectful, and affectionate to the child.

While booking cases it should also be looked into if minimum wages was being paid and if there were any other working condition or labour laws or technical violations.

Preparing an Inspection Report:

The Inspector should carry with him the template (See Annexure-IX in Section IV) of the inspection report so that he does not forget recording any vital information essential for prosecution. But he should avoid using the template as a form to fill in the blanks to prepare an inspection report as such practices are often held as non application of mind. Hence he should preferably use a white paper to draw up an inspection report as per the template.

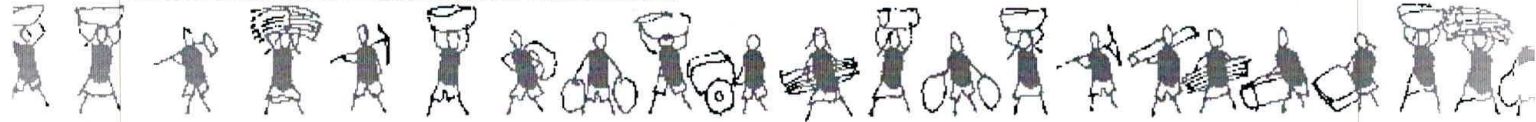
Mention the date and time of inspection; name and addresses of the establishment; and names of some of the neighbours and neighbouring establishments. Record the name and address (both workplace and residential) of the Employer/Agent/ Occupier. Specify the nature of the establishment and under what provision of law the child labour is prohibited in such establishments.

The inspection report should contain the complete details of name, age, sex, identification marks, educational qualification, caste, names of mother and father, full residential address; advances/loans taken from the employer, if any; physical or mental torture if any by the employers, types of hazards faced and evident on the body and mind of the child, and all other details relevant to the case.

The report must contain the mention of the breach of specific legal provisions and specific failures on the part of the employers. Evidence should be collected in support of each finding. The Inspector should be unbiased and desist from implicating anyone falsely. The report should not be prepared mechanically, but only after serious application of mind.

The Inspector should take down statements, admissions or confessions exhaustively from all concerned (like the accused employer, the parents, neighbours, independent witnesses, child etc.) and obtain their signature with date and time on the spot.





The Inspector must give the inspection report and showcause notice to the offending employers (or his agent) on the spot and obtain their signature on the original copy of the notice and inspection as a token of acknowledgement for having received the notice. This will be direct evidence in the court of law.

In addition issue a show cause notice (**See Annexure-VII in Section IV**) to the occupier of the hazardous occupations/processes for the payments of compensation amount of Rs.20,000/- (This amount can be recovered by the revenue department as an arrear of Land Revenue after due notice is given to the employers, and if inspite of such notice he has failed to show cause and give an acceptable reason or failed to deposit the said amount in the name of the designated fund. For this a case may have to be filed before the Deputy Commissioner Revenue with all evidences. The DC may authorize a Tahsildar to proceed after a demand notice is issued and a show cause demand notice is not satisfactorily replied. After the due process the Tahsildar may proceed further to recover the due amount as an arrear of land revenue) as directed by the Supreme Court, to the corpus Fund for employing the child below the age of 14 years. This is a civil liability for the violation of the fundamental rights and the offending employers are bound to compensate the child in addition to facing criminal charges. If the case is under the Karnataka Shops and Commercial Establishments Act, 1961, a show cause notice may be given in the format as shown in the **Annexure-VIII in Section IV**.

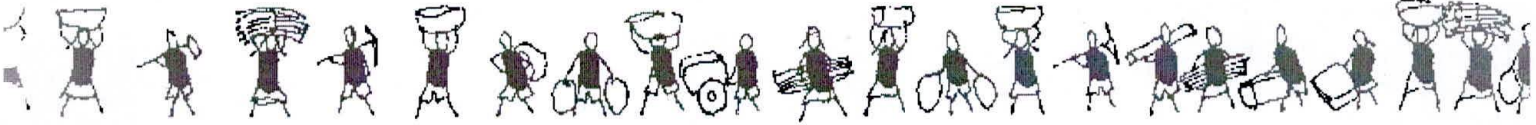
Procedure for the Prosecution:

Under section.16 of the Child Labour (P&R) Act, 1986, any person or police officer or Inspector can file a complaint in a jurisdictional criminal court against the employers engaging child labour. However, the Inspectors appointed under the Section.17 of the CLPR Act, 1986 are the main persons who carry out these inspections. They should follow the procedures carefully to obtain as many convictions as possible. In all the cases of violations detected, whether substantive or technical in nature, a prosecution should be launched in time without fail, not later than six months from the commission of an offence. A complaint filed after six months of commission of an offence should be accompanied by a supporting strong reason and evidence to satisfy the court why the complaint could not be filed within the prescribed period.

The inspecting officer should thoroughly brief the APP/PP about the case. The complaint should be supported by the necessary documentary evidences that are collected at the time of inspection and later and are in possession of the inspecting officer. If the complaint is filed by an Inspector in his representative capacity, the same has to be stated in the complaint.

The complaint (**See the format in Annexure-VI in Section-IV**) must recite the facts of the case in the order in which they have occurred till the commission of an offence and then after. The complaint must be signed by the Inspector and he must enclose the list of witnesses whom he intends



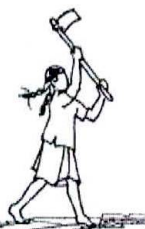


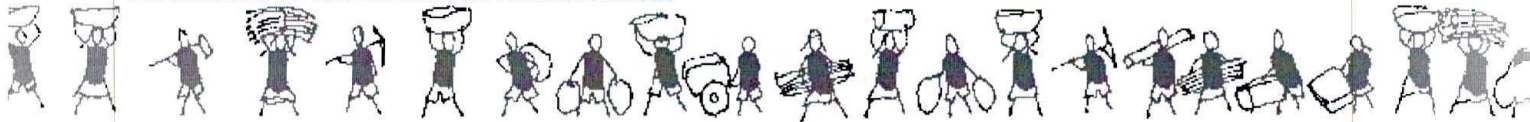
to call for tendering evidence before the court, and the list of documents which he intends to rely on to substantiate the case. At the time of the trial the Inspector should be present and as far as possible bring the witnesses and furnish the original records/documents in support of his case.

Action to be taken after the final verdict is delivered:

In cases of successful conviction, wide publicity should be given to create awareness about the case and to ensure a demonstration effect on the other offending employers.

Review the cases thoroughly where the case has failed and ascertain reasons for such failure so that it does not happen again, and also learn how cases can be presented better. In cases where there has been miscarriage of justice and there is sufficient evidence and reasons to appeal against such an order, the Inspector must discuss the same with the PP and prepare to appeal against the same in the appropriate court of law.





3.17 Some Case Studies

**3.17.1 IN THE COURT OF THE CIVIL JUDGE JR.DN &
ADDL.JMFC
AT RAMANAGARAM**

DATED THIS THE 24TH DAY OF MAY 2003

**PRESENT: SMT. RAJESHWARI N. HEGDE, B.COM, L.L.B.(SPL)
C.J.JR.DN. & ADDL.JMFC, RAMANAGARAM.
C.C.147/98**

Complainant : State of Karnataka at the instance of Sr. R.N. Rathod, Inspector of Factories, Bangalore Division 6, Bangalore (An Inspector appointed Under section 8(1) of the Factories Act 1948) (Reptd. By the A.P.P)

Accused : Sri. Javeed, Occupier, Silk Filature, House No.3715, K.E.B. Mtr.No.AEH 954, Mehaboob Nagar Main Road, Ramanagaram. (Reptd. By Sri. M.K. Adv)

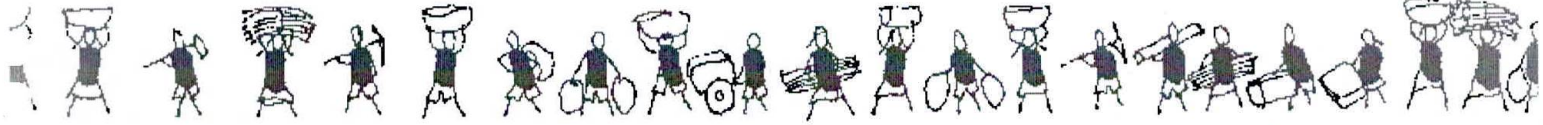
JUDGEMENT

This is a complaint filed by the Inspector of Factories under the Factories Act against the accused.

2. Brief facts of the complainant's case is that:

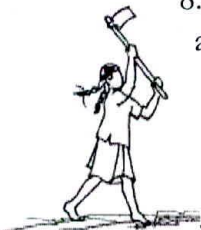
The accused who was the occupier of the Silk Filature running the factory situated at House No.3715 at Mehaboob Nagar Main Road, Ramanagaram which is filed U/s.2m(l) of the Factories Act. The complainant Sri. R.N. Rathod, Inspector of Factories, Sri. Thyagarajan, Deputy Chief Inspector of Factories II and Dr. Surendra V.H.H. Medical Inspector of Factories visited the factory on 28.11.1997 and during the course of inspection they found that the factory was working, manufacturing process of Silk Yarn from Cocoons and reeling of the same was found being carried on with the aid of electrical power of 2.5 hp. Further it was noticed that 15 workers were found engaged to carryout the said manufacturing activity. As the manufacturing of silk yarn with the aid of electrical power and by employing more than 10 workers, the premises constitutes a factory as defined U/s.2m(l) of the Factories Act. During the course of inspection, the complainant noticed that the accused person being the occupier of



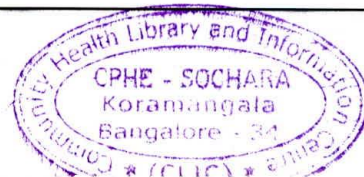


the factory has committed following offences contravening the provisions of the factories Act and rules made there under.

- a) There were 15 workers found working to carryout the manufacturing activity with the aid of electrical power. Though the said premises constitutes a factory, the occupier was found not registered under factories act and obtained licence in respect of the above said premises, thus by using the said premises as a factory unless a licence has been obtained in respect of said premises and thereby contravened the provision of Rule 4(2) of the Karnataka Factories Rules r/w.sec.6 of the Factories Act.
 - b) Further though the premises constitutes a factory an application for obtaining the previous permission for the site on which the factory is to be situated and for layout of machinery or of process is not submitted to the Chief machinery or of process is not submitted to the Chief Inspector of Factories and thereby contravened the provisions of Rule 3(1) of the Karnataka Factories Rules r/w.sec.6 of the Factories Act.
 - c) Further during the inspection it is noticed that four children by name (1)Shivaraju (2)Azoo (3)Asha (4)Mashsagir who are below the age of 14 years were working and by allowing or employing the said workers under the age of 14 years to work in the factory, the accused has contravened the provisions of Sec.67 of the Factories Act.
3. As the accused has contravened the provisions of the Factories Act as aforesaid, the accused is punishable U/s.92 of the Factories Act and hence the complaint is filed.
 4. After filing of the complaint, cognizance of the offence taken by this court and summons issued to the accused. The accused appeared before the court and copies of the complaint along with documents furnished to him. He is represented by the counsel of his choice.
 5. Plea of the accused is recorded and read over to the accused. The accused pleaded not guilty and claimed to be tried.
 6. At the time of recording of the plea of the accused, this court by oversight has not included the contravention of provisions of Sec.67 of the Factories Act. However in the evidence the said aspect was elicited from the witnesses and the defence counsel has also cross examined to that effect. Therefore, the provision of Sec.67 is now inserted and as the evidence has already come, in my opinion it is not necessary to give any further opportunity to the prosecution of the accused.
 7. The prosecution in order to bring home the guilt of the accused in all examined 2 witnesses as PW.1 and PW.2 and got marked the documents Ex.P1 to P4.
 8. After completion of the prosecution evidence the statement of the accused as contemplated U/s.313 Cr.P.C. is recorded and the accused called upon to lead defence evidence. The accused did not choose to lead defence evidence.
 9. Heard the arguments.
 10. The following points do arise for my consideration:



CH-150
15848





Point No.1 : Whether the complainant proves that the accused not obtaining the licence has contravened the provisions of 4(2) of the Karnataka Factories Rules r/w.sec.6 of the Factories Act not obtaining previous permission for the site on which the factory is to be situated and for layout of machinery has contravened the provisions of Rules3(1) of Karnataka Factories Rules r/w.sec.6 of the Factories Act and thereby committed the above offence which is punishable U/s.92 of the Factories Act?

2 : Whether the complainant whether proves that the accused engaged child workers who were not completed 14th year of age and hence contravened the provisions of Sec.67 of the Factories Act?

3 : What order?

11. My answer to the above said points are as under:

Point No.1 & 2 : Affirmative

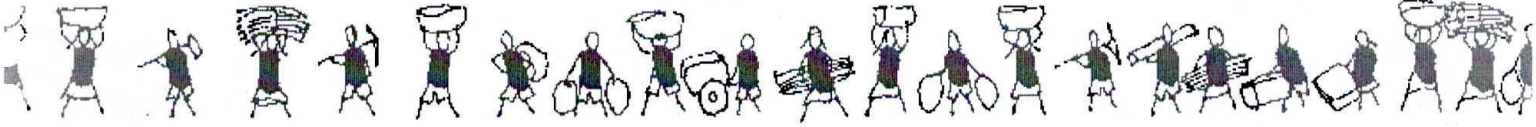
3 : As per the order for the following:

REASONS

12. **Point No. 1:** It is the case of the complainant that on 28.11.97 the complainant herein who is examined as PW.1 and Sri. Thyagarajan who is Deputy Chief Inspector of factories and Dr. Surendra visited the premises bearing No.3715 situated at Mehaboobnagar main road, Ramanagaram in which the accused is the occupier. It is the further case of the complainant that during the course of inspection, they noticed that the factory was found working manufacturing process of silk yarn from cocoons and same was found with the aid of electrical power of 2.5 H.P. It was also noticed that 15 workers were found engaged to carry out the manufacturing activity and as per and as there were 10 workers, which constitute a factory as defined U/s.2M(1) of the Factories Act, and as the factory was working with the electric power, the complainant asked the occupier of the building who is the accused herein whether he got registered the factory and obtained licence from the concerned department. It was found that the factory was not registered and no licence obtained. Therefore, the complainant contended that the occupier of the building has contravened the provisions of Rules 4(2) of the Karnataka Factories Act r/w.sec.6 of the Factories Act and Rule 3(1) of the Factories Act.

13. The prosecution in order to bring home the guilt of the accused has examined the complainant as PW.1. In his evidence he has reiterated the complaint averments. He was cross examined by the defence counsel. During the course of cross examination the learned counsel appearing for the accused tried to elicit from PW.1 that the accused is not at all running silk filature in the separate accommodation but the silk filature factory is located in his house only. The said suggestion is denied by the PW.1. The learned counsel appearing for the accused has further put number of questions to the PW.1 stating that in order to run filature factory, one has to obtain KEB connection, permission from

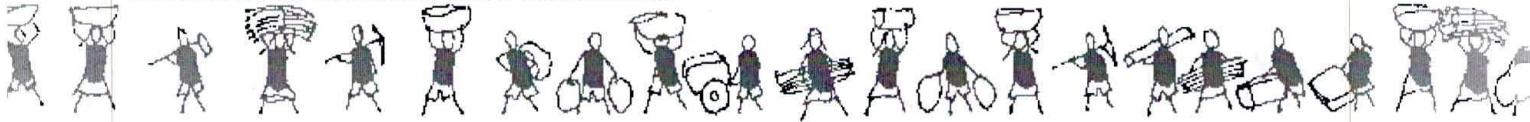




purchasing center of cocoons, permission from silk exchange in order to sell the goods, licence from Sericulture Department, permission from Municipal Corporation etc. The PW.1 has answered that he does not know whether the person who is running the factory has to obtain the above said permission in order to run the filature factory. Though the PW.1 has answered that he does not know that the person has to obtain the above said licence to run the factory. As per the cross examination done by the learned counsel or the accused, it shows that the accused is running silk filature factory whether it is in his house or separate accommodation. The PW.1 in his evidence has stated that he has issued show cause notice to the accused asking for explanation but the accused has not given any reply for the said show cause notice. Said show cause notice is produced by the prosecution, which is marked as Ex.P2 in this case. In the Ex.P2 there is one LTM. According to the complainant the said LTM is of the accused. During the course of cross examination it is suggested to PW.1 that the LTM of the accused is not identified by anybody. It is further suggested to the PW.1 that at the time of inspection the occupier of the building who is the accused herein was not at all present. The said suggestion is denied by PW.1. Though the L.T.M. of the accused is not identified by any person, it cannot be said that the accused was not at all present during the inspection. If this witness do not go for inspection to the factory, what is the enmity by this witness against the accused so as to file false case against the accused. The learned counsel appearing for the accused himself put suggestion to PW.1 stating that in the year 1998 there were about 5000 filature factory running in Ramanagaram. If that is so, why the complainant has chosen to file the case against this accused only. The accused except the denial that he is not running the filature as contended by the complainant, has not tried to convince the court that he has not contravened the provisions of Factories Act and he has taken permission and licence from the concerned department. Therefore, I am of the opinion that the accused has contravened the Provisions of Rule 4(2) and Rule 3(1) of the Karnataka Factories Act. Accordingly, I answer Point No.1 in the affirmative.

14. **Point No. 2:** It is the further case of the complainant that during the course of inspection of the factory, they found that there were four workers under the age of 14 years to work in the factory. The prosecution in order to prove the same has examined PW.1 and PW.2. PW.1 being the complainant in his evidence has stated that when they have inspected the factory, there were four child labours by name Shivaraju aged about 12 years, Azoo aged about 13 years, Asha aged about 12 years, Mashsagir aged about 13 years. He further stated that the said child labours were examined by the Doctor and on clinical examination the Doctor has opined that they are under the age of 14 years. PW.1 was cross examined by the defence counsel. During the course of cross examination the question put to him that whether he has taken the statement from the parents of the child labours and whether any of the parents of the child labours had come and stated



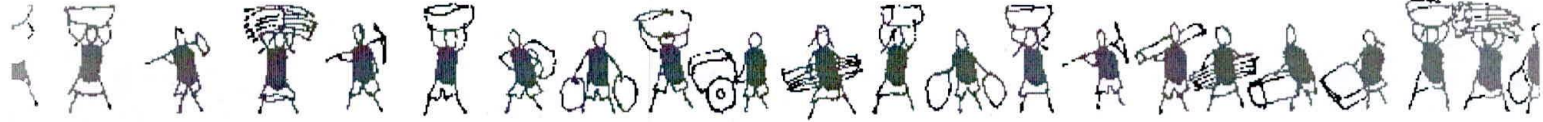


about the children. The PW.1 has stated that they have not taken any statement by the parents of the child labours. It is very pertinent to note that normally the parents of the child labours will not give any statements about their children as they are not having so much courage to say about their employer. Most of the parents would be poor and they will send their children for work so as to eke out their livelihood. Under such circumstances, it is very difficult for the complainant to take up any statement from the parents of the child labours and one cannot expected to do like so.

15. The prosecution further examined PW.2 Doctor. In his evidence he has stated that on 28.11.97 he has accompanied with Rathod the PW.1 herein for inspection of the factory belongs to the accused and during the inspection they found that four workers who were less than 14 years of age are working. He further stated that on his examination the said four workers were looking very young and did not require any assistance to assess the age. He further deposed that according to their own statement of the child labours and on his clinical assessment he has come to the conclusion that there were four child labours. He issued certificate in form No.4 and the said certificates are marked as Ex.P3 and P4. I have gone through Ex.P3 and P4 the names of the child labours are mentioned. The learned counsel appearing for the defence has put suggestion to the PW.2 stating that the Ex.P3 and P4 are concocted document because there are number of correction made in Ex.P3 and P4 with regard to the address of the accused and age of the child labours. It is true that there is correction in the Ex.P3. Because there is correction in the name of the accused, it cannot be said that Ex.P3 and P4 are concocted document. The complainant has also written the names of the said four child labours. If they were not found working in the factory, it is very difficult to mention their names and father's name also in the complaint and in Ex.P3 and P4. More over, it is not the case of the accused that these PW.1 and PW.2 are having enmity against him and hence they filed the false complaint against the accused. When there is no enmity shown by the accused. I can't understand what made the complainant to file the false complaint against this accused. The learned counsel for the accused further put suggestion to the PW.1 and PW.2 stating that for the purpose of statistics they filed the false case against the accused. If that is so, the complainant can file any number of complaints against all the owners or occupier of the factory. Why this complainant chose to file the complaint against this accused only. From the evidence of PW.1 and PW.2 and the documents i.e. Ex.P2, P3 and P4, I am of the opinion that the prosecution was able to prove that the accused has contravened the provisions of Sec.68 of the Factories Act. Accordingly, I answer point No.2 in the affirmative.



16. **Point No. 3:** In view of my above said discussions, I proceed to pass the following:



ORDER

The accused is convicted for the offence punishable U/s.92 of the Factories Act for having contravened the provisions of Rule 4(2) of the Karnataka Factories Rules r/w.sec.6 of the Factories Act and provisions of Rule 3(1) of the Karnataka Factories Rules r/w.sec.6 of the Factories Act and also the accused has contravened the provisions of Sec.67 of the Factories Act.

And the accused is sentenced to pay fine of Rs.2,500/- for the contravention of the Provisions of Rule 4(2) of the Karnataka Factories Rules r/w.sec.6 of the Factories Act. Failing which he shall undergo simple imprisonment for a period of One month and further the accused shall pay fine of Rs.2,500/- for the contravention of the provisions of Rule 3(1) of the Karnataka Factories Rule r/w.sec.6 of the Factories Act. In default he shall undergo simple imprisonment for a period of One month.

Further the accused shall undergo simple imprisonment of a period of 1 year and also shall pay fine of Rs.3,000/- for contravention of provisions of 67 of Factories Act. In default of payment of fine amount the accused shall further undergo simple imprisonment for a period of 6 months.

In all the accused shall pay fine of Rs.8,000/- and shall undergo simple imprisonment for a period of One year.

Sentence in default of payment of fine shall run consecutive.

ANNEXURE

1. Witnesses examined for the prosecution:

PW.1 Ravindranath N. Rathod

PW.2 Dr. Surendra

2. Documents marked for the prosecution:

Ex.P1 Complaint

P1(a) Signature of CW.1

P2 Inspection Report

P2(a) Signature of CW.1

P3 & 4 Fitness Certificates

P3(a) & (b) Signature of CW.3

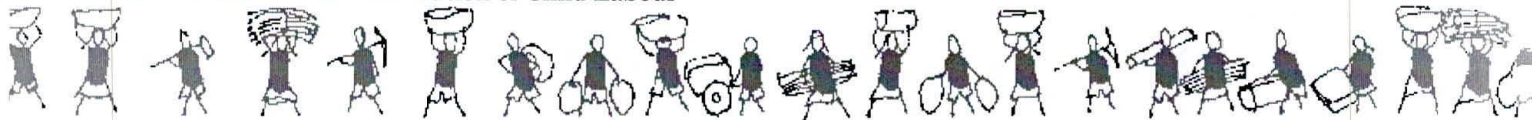
P4(a) & (b) Signature of CW.3

P4(c) Signature of Shivaraju

Sd/- 24/05/2003

C.J.JR.DN.&ADDL.JMFC.RAMANAGARAM





3.17.2 IN THE COURT OF THE CHIEF METROPOLITAN MAGISTRATE BANGALORE CITY

Present : Sri M.S. Hegde Nagre, M.A., LL.B (Spl.)
Chief Metropolitan Magistrate,
Bangalore City.

Sl. No. of the case : CC.516/2001
Date of commission of offence : Prior to 02.10.01
Name of the complainant : State By : JC Nagar P.S.
Represented by : State By : Sr. APP
Name of the accused : 1) Iladevi, W/o
Venkatesh, Aged 40
years.
2) Venkagesh, S/o.
Thippanna, Aged 42 years.
Both are residing at:
No.39, 5th Cross,
Nandidurga Layout,
J.C Nagar, Bangalore.

A.1&2 are represented by : R.M.D.R, Advocate
The offence complained : 341, 342, 323, 324 R/W.
Sec.34 IPC and u/s.6 of
The Children (pledging of
Labour) Act 1933.

Date of order : 03.01.2003

JUDGEMENT UNDER SEC. 355 OF CR.P.C

This chargesheet came to be filed by the Police Inspector, SHO of J.C. Nagar P.S, Bangalore, against the accused persons, for the offences punishable under Secs.341, 342, 323, 324 R/W. Sec.34 IPC and Sec.6 of The Children (Pledging of Labour) Act 1933.

2. The main allegations leveled against the accused, in the chargesheet, are:
That, prior to 2/10/01, the accused nos.1&2 both, with common intention, have wrongfully restrained CW.2 Shashikala, aged about 12 years, as child labour at their house situated at No.39, 5th Main, Nandidurga Layout, within the limits of J.C.Nagar P.S., Bangalore, and that, they have wrongfully confined her, in the said house knowing fully well that she was minor in age and that, they have voluntarily caused hurt to CW.2 by assaulting her with hands and biting her and that, they have caused bleeding injuries and that, the both A.1&2 having reason to believe, with common intention, have made to pledge the labour of CW.2 and obtained domestic work from her, as

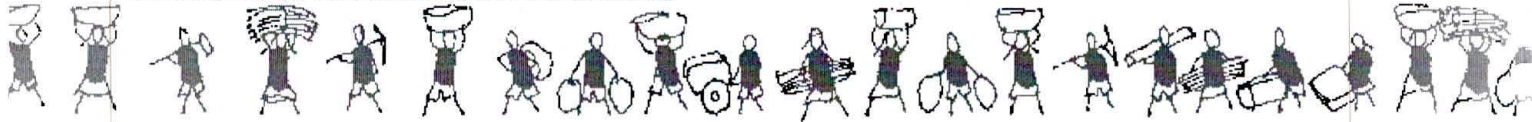




child labour, and that thereby the accused were chargesheeted for the aforesaid offences.

3. The both accused, on appearance, have engaged their advocate and were released on bail, and after filing the chargesheet, copies were furnished and after hearing the accused, charges under Secs.341, 342, 323, 324, R/w Sec.34 IPC and under Sec.6 of The Children (Pledging of Labour) Act 1933, were framed, read over and explained to the accused, and the accused both, pleaded not guilty and claimed to be tried. Hence, the case was posted for trial.
4. During trial, the prosecution has examined in all 10 witnesses and got marked 4 documents and the presence of the remaining witnesses could not be secured even though coercive steps were taken and hence, the side of the prosecution was ordered to be closed, by rejecting the request of learned St.APP. The incriminating circumstances arising in the evidence of prosecution witnesses were read over and explained to the accused and their statements, as required U/s.313 of Cr.P.C, were recorded. The defence was total denial. But the accused have chosen to lead defence evidence in support of their stand. Accordingly, one Hema W/o Ramu, Maid Servant, has been examined as DW.1 and the accused no.2 has been examined as DW.2 and in all 12 documents, at Exs.D1 to D12 were exhibited and closed the side.
5. Heard the arguments on both the sides and posted the case for Judgment.
6. On the basis of the above materials, the following points arise for determination.
 - I. Whether the prosecution proves beyond all reasonable doubt, that, prior to 2/10/01, the accused nos.1&2 both, with common intention, have wrongfully restrained the CW.2 Shashikala, aged about 12 years, as a child labour, at their house situated at No.39, 5th Mian, Nandidurga Layout, within the limits of J.C.Nagar P.S, and thereby, they both have committed an offence punishable under Sec.341 R/w.S.34 IPC?
 - II. Whether the prosecution further proves that, on the above said date, time and place, the A.1&2, with common intention, have wrongfully confined the CW.2, in the said house, as a child labour, knowing in fully well that she was minor in age and thereby, the accused have committed an offence punishable under Sec.342 R/w. Sec.34 IPC?
 - III. Whether the prosecution further proves that, on the above said date, time and place, the A.1&2, with common intention, have voluntarily caused hurt to CW.2 by assaulting her with hands and thereby, they have committed an offence punishable under Sec.323 R/w.S.34 IPC?
 - IV. Whether the prosecution further proves that, on the above said date, time and place, the A.1&2, with common intention, have caused bleeding





injuries to CW.2 by biting her and thereby, the both accused have committed an offence punishable under Sec.324 R/w Sec.34 IPC?

- V Whether the prosecution further proves that, on the above said date, time and place, the A.1&2, having reason to believe, with common intention, have made to pledge the labour of CW.2 and obtained domestic work from her, as child labour, and thereby, the accused have committed an offence punishable under Sec.6 of The Children (Pledging of Labour) Act 1933?
- VI Whether the petitioner Lalitha proves that, she is entitled to the custody of the child, as prayed in her Applications filed under Sec.97 Cr. P.C?
- VII What Order?

7. For the reasons to be recorded herebelow, I answer the above points, as under:

Point No.I	:	NEGATIVE
Point No.II	:	NEGATIVE
Point No.III	:	NEGATIVE
Point No.IV	:	NEGATIVE
Point No.V	:	NEGATIVE
Point No.VI	:	AFFIRMATIVE
Point No.VII	:	As per final Order below.

REASONS

Point Nos.I to V:

8. In order to avoid repetition and for better appreciation of evidence, I club the above points, for common discussion.
9. The witnesses examined for the prosecution, in this case, are:
CW.1 Anncela, the complainant, as PW.1;
CW.3 Yeshoda, WPC 8251, as PW.2;
CW.4 Umesh, the driver of the vehicle, as PW.3;
CW.8 Dr. Chandra R. Nayak, who examined the child CW.2 Shashikala, as PW.4;
CW.2 Shashikala, the victim child, as PW.5;
CW.5 Lalitha, the mother of the said child PW.5, as PW.6;
Additional witness Meena Kumari, WPC, as PW.7;
CW.7 r. Prakash Rao, panch to the spot mahazar Ex.P2, as PW.8;
CW.9 Byranna .G, HC.639, who brought the accused and produced before the IO, as PW.9; and
CW.11 M. Nagaraj, Police Inspector, the IO.



Out of them, the PWs.1&2 on the one hand and PWs.1, 3, 5 & 7 on the other, are material witnesses, besides the evidence of PW.5, according to the stand taken by the prosecution.

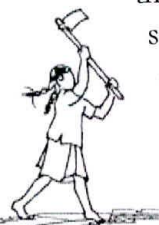
10. According to PW.1, she is a Social Worker in Makkala Sahaya Vani situated in the office of the Police Commissioner, Bangalore, and her duties are to attend to the children in crisis. Further, she has stated that on 2/10/01, when she was in the office of Makkala Sahaya Vani, at about 9.30 AM, she received an anonymous phone call through toll free line and came to know that, a child was put to labour, in the house of the accused, as per the details furnished in the said phone message. So, she waited for half an hour and had discussed with her coordinators in the mean time. But subsequently, since she did not receive any phone call from the same informant, through toll free line, she went to the house of the accused, along with WPC Meena Kumari (PW.7) by a vehicle driven by Umesh (PW.3), as the said vehicle was donated to Makkala Sahaya Vani and maintained by the Bangalore Police and further, she was stated that she found A.1, she stated that, it is the correct address and then, the PW.1 introduced herself with A.1 and also, about the purpose of their visit, based on the information received, for having employed the minor child for domestic work and being ill-treated, but the A.1 has stated that, no such child was employed there. But by that time, that Shashikala (PW.5) was just inside the house and was sweeping the front floor. So, the PW.1 and Meena Kumari (PW.7) went inside the house. Then, the A.1 just went inside the house and talked to the said girl child. But they could not hear the same clearly. Then, A.1 brought the said girl child from the room. Then, the PW.1 has enquired with the girl child (PW.7) and on observing the said girl, her hands were shivering and there was tears in her eyes and she was wearing a short frock and there were some other injury marks on her stomach and thighs and burnt marks on her fore arms. Then, the PW.1 has explained the motto of the Makkala Sahaya Vani to protect the children, for the welfare of such children and to take care of them, in case, she accompanies with them, and when the A.1 was asked about he said injuries found on the person of the said girl child (PW.5) the A.1 has stated that she suffered such injuries due to allergy and when the same was enquired with the girl child, the A.1 interfered and stated that it was due to allergy. Then, they requested the A.1 to be just away from the girl child, as they intended to talk to the child. When the A.1 was just away from the said girl child, they talked to the said girl child, which was audible to A.1, and after taking the said girl child to their confidence, PW.1 could gather some information, as the girl child stated that the said injuries on the shoulders, were due to the bite and on account of pushing down her to the ground, her face was swollen, and then, they explained the girl child that, if she comes with them, they would call her mother and also, they are ready to give necessary scope for her studying, for which the girl child has agreed and then, they furnished the address of Makkala Sahaya Vani to A.1, along with contracting phone number and stated that, they would take the

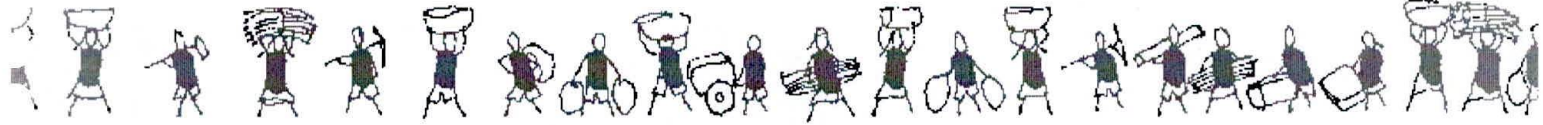




said girl child to Makkala Sahaya Vani, as the said girl child was so willing. But, the A.1 though refused to accompany them, she stated that, she would come to the said office, and permitted them to take the child with them. Therefore, they took the girl child to Makkala Sahaya Vani, in the same vehicle, and reached the office around 12.20 PM on the same day, and after serving the food to the said girl child, at about 3 or 3.30 PM, herself and WPC Yeshoda (PW.2) have taken the girl child to J.C.Nagar P.S, by the same vehicle, driven by Umesh (PW.3) and then, she filed the complaint before the police and then, the said girl child was taken to Bowring Hospital for treatment, with the assistance of police. Further, she has stated that she filed the complaint as per Ex.P1, at about 5.30 PM, after returning to the Police Station from the hospital and the police have then visited the spot and prepared spot mahazar, as per Ex.P2. Of course, the PW.7 has stated that, she accompanied with PW.1 to the house of the accused, and also, for having brought the girl child (PW.5) to Makkala Sahaya Vani, from the house of the accused. But we find material discrepancies in the evidence of PWs.1&7, as PW.7 has stated that, on introduction by PW.1 with A.1, she has requested them to come inside the house. But according to PW.1, they themselves, went inside the house, on seeing that the said girl child (PW.5) was sweeping the floor, and this PW.7 has not stated about the burn injuries found on the both hands of the girl child, when they saw her for the first time, in the house of the accused and according to PW.7, the left side eye of the child PW.5 was swollen and further, on furnishing the address to A.1, while bringing the PW.5 to the Makkala Sahaya Vani, they asked the A.1 to visit Makkala Sahaya Vani, as they were taking the PW.5 to the office, based on the complaint, and further, she has stated that the statement of PW.5 was recorded in the office. But this initial statement of PW.5, said to have been recorded in Makkala Sahaya Vani, is not forthcoming in the case. But the statement only made available, was recorded by the IO, on 2/10/01. On perusal of the evidence of PW.3, we find so many other discrepancies in his evidence, as he has not stated about the injuries found on the person of PW.5 and his evidence is only to be restricted for having taken the PWs.1&7 to the house of the accused, in the vehicle, and for having brought PWs.1&7, along with PW.5, to Makkala Sahaya Vani and thereafter, for having taken the PWs.1, 2&5 to J.C. Nagar P.S or hospital, and for having brought back them, to Makkala Sahaya Vani, as he was serving as driver of the said vehicle. But the discrepancies in the evidence of PWs.1&2 are also material, for having taken the child to the Police Station and to the hospital and again taking her to the Police Station and brought back her to Makkala Sahaya Vani. The PWs.1, 2&7 have been thoroughly cross-examined by the defence side and it is elicited that the said phone call was entered in the register concerned, maintained in Makkala

Sahaya Vani, but the same was not furnished to the police, and the reason given by these witnesses, for the same, that the IO has not enquired with them, about the said register, during the course of investigation. As can be seen from the evidence of PWs.1, 2&7, certain injuries on the person of PW.5 was afresh. But this aspect is totally silent in the evidence of PW.4, as she has stated that on 2/10/01, at about 4.30 PM, she examined one Shashikala (PW.5) aged





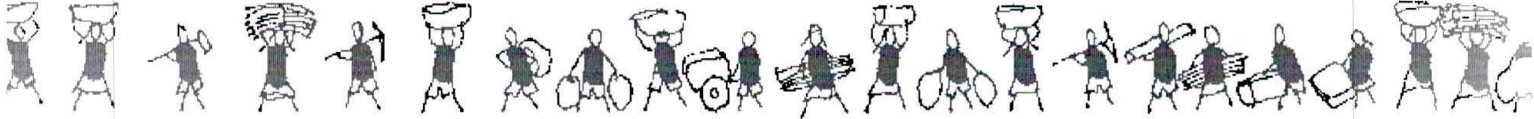
about 12 years, who was brought by Makkala Sahaya Vani Police, with the history of injuries suffered due to the assault by the employer, and on examining her, she found in all 15 injury marks and issued Wound Certificate as per Ex.P3. But surprisingly, on showing the CW.2 (PW.5) to him, during the course of her evidence, she was not in a position to identify her, as the same child who was examined on that day, as her evidence reads as under:

“..... Now I see the CW.2 present before the court. But I cannot identify her without referring the hospital records, since I have not brought the same today.....”

During the course of cross-examination, this PW.4 has admitted that, she cannot say the exact age of the injuries mentioned in Ex.P3 and also, the injury nos.4, 5 & 10 could have been caused, if the portion of the finger of the injured, fixed, while closing the door by injured herself, and certain injuries also could have been caused to such children, while playing, and injury nos.13 & 14 could have been caused by viral infection. Further, she has admitted that she has not taken any family history from the said child, about her past illness or accident, etc., if any caused to her. So, the evidence of PW.4 coupled with her certificate Ex.P3, will not help the case, as expected for the prosecution, from PW.4.

11. The remaining material evidence would be of the victim girl PW.5 and she has stated that the caste of herself and that of accused are one and same. However, according to her, her mother (PW.6) was working on daily wages, under one Engineer by name Romeo and that Romeo came to their house, on one day, and asked her mother to send her, to him, to look after a child at Nandidurga, and also, that Romeo asked this child about her willingness, for which she agreed. Then, he has taken her to the Kanakapura Bus Stand, where he introduced her to the A.2 and asked her to accompany with A.2. Since then, she was staying in the house of the accused, and according to PW.5, she was ill-treated by accused no.1 and she was made to wash the clothes and to do household work and wash the cooking vessels and to clean up the house and also, to cook the food and her mother was visiting the house of the accused, oftenly, to see her. She has also stated about the arrival of the persons from Makkala Sahaya Vani to the house of the accused, on the date of Gandhi Jayanthi and also, the conversation held between them and the A.1 and also, the enquiry held with her, by the said persons from Makkala Sahaya Vani, and also, she has disclosed about the ill-treatment given by the A.1 to her, and at that time, according to this PW.5, the A.2 was reading a paper and the mother of A.2, who was there did not agree to send her to Makkala Sahaya Vani persons, by saying that, she was not able to cope up with the work. But the presence of the mother of A.2, in the house of the accused, at the relevant time, was not stated by PWs.1, 3 & 7. This witness has also stated that, after taking her to Makkala Sahaya Vani, she was served with food and some photos were





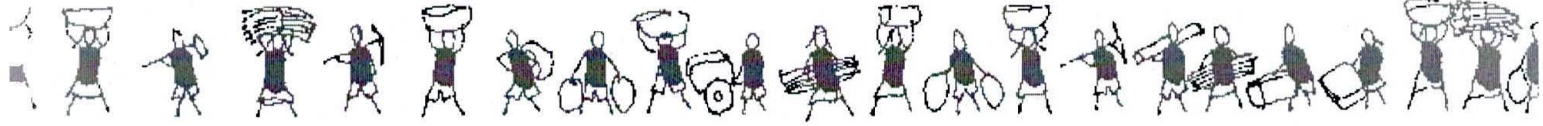
taken and her statement was recorded. But that photos taken and statement said to have been recorded by Makkala Sahaya Vani persons are not furnished in this case. But on the other, the defence side, during the course of the evidence of DW.2, has produced the records relating to the enquiry held by the Enquiry Officer in the Department Enquiry initiated against the accused, wherein the Ex.D7 is the record of conversation had with Kum. Shashikala (i.e. PW.5) by Enquiry Officer and it discloses as under:

“..... No marks of injury were visible on the exposed part of the said girls hands/arms. However, faint remnants of scars could be made out. It was noticed that mehendi was applied on the finger nails of the said girl and she informed that the same had been applied by mistress Ila Devi

Moreover, to rely on the sole testimony of the child witness, is stated to be notoriously dangerous, unless immediately available and unless received, before any possibility of coaching is eliminated, as referred in the book by Sarkar on Evidence, 12th Edition at page 1144, under Sec.118 of the Indian Evidence Act. On this line, if the evidence of PW.5 is viewed, at the time of giving her statement before the IO, she was totally under the control of Makkala Sahaya Vani and thereafter, with APSA, till her evidence before this court, was recorded as PW.5. So, in view of the material contradictions, in the evidence of material witnesses, would play material role in disbelieving the entire case.

12. The another material witness PW.6, who was mother of PW.5, has turned hostile on material aspects and according to her, about 3 years ago, she sustained fracture on her right fore arm. So, she left PW.5 at the residence of the accused and she used to visit the house of the accused, at least twice in a month, and further, she has stated that the PW.5 was looked after by the accused, with love and affection, during her stay in the house. Then, when she went to the house of PW.5, on 30th date, about one year ago, from the date of her evidence dated 18/10/02, PW.5 was fine. Then on 4th day of the subsequent month, she came to know that PW.5 was taken from the house of the accused by Makkala Sahaya Vani. So, she rushed to Makkala Sahaya Vani Centre, but authorities concerned, have not shown the PW.5 and did not allow her to see her. Then, after the lapse of 2-3 months, in pursuance of the order of the court, the said authorities have allowed her to see PW.5. On seeing the PW.5, she found 2-3 injury marks on her hands, and on enquiry with her, about the said marks, she expressed her ignorance and this PW.6 stick up to her such version, even during the course of her cross-examination by the learned Sr. APP, after treating her as hostile and she has denied her statement said to have been recorded by the IO, as per Ex.p4. During the course of chief-examination itself, the PW.6 has admitted that the accused are distant relatives and during the cross-examination, it was elicited that the accused were looking after the PW.5 with love and affection,



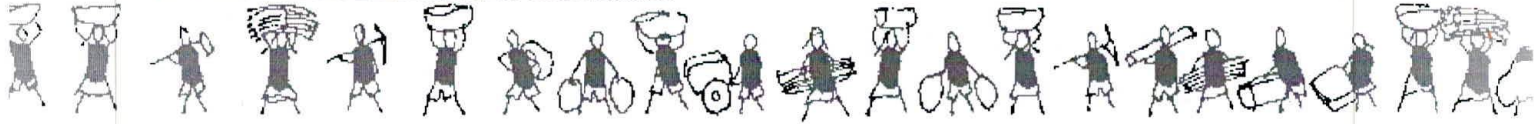


as their own child and one Hema was the maid servant working in the said house of the accused and she was doing all the household work in the house of the accused. But PW.5, during the period of her stay in the house of the accused used to play with the children of the accused as well as the children of the neighborers and in the nearby park and she used to play in the slide situated in the park, which was damaged and she suffered injuries while playing in the said garden, as well as, on the terrace of the house of the accused. It is the firm stand taken by the defence that PW.5 had suffered with chicken pox and due to which, certain old scars remained on her body. So, basing on the evidence of PW.6 also, the evidence of PW.5 loses its weight, which results in disbelieving the case of the prosecution.

13. The PW.8 is only the panch to the spot mahazar Ex.p2, but he does not speak anything about the incident or the identity of the PW.5 or injuries found on her person. Therefore, in the case on hand, the evidence of PW.8 is not so material.
14. The PW.9 has only apprehended the accused on 4/10/01, at the instruction issued by the IO and he produced them before the IO and as such, his evidence is not worth for scrutiny.
15. The PW.10, being the IO in part, has stated that he has taken the records from CW.10 H. Gangaiah ASI, for further investigation and then, he arrested the both accused on one Romeo and released them on bail and then, he recorded the statement of PW.6 and PW.7 and after obtaining the Wound Certificate Ex.p3 from PW.4, he filed the chargesheet against the accused. But this PW.10 has not assigned any reason for leaving that Romeo in the chargesheet, as one of the accused, and also, in the entire investigation and no reason is assigned for non including the PW.6 as accused & in the case.
16. Now, coming to the technical defects in the case, of course, the minor technicality will not take away the case of the prosecution, under any circumstance. As I have gone through the entire oral and documentary evidence placed before me, by the prosecution, as well as the defence side, I find material defects in the case, which also contribute to create serious doubt in the story of the prosecution. Out of them the notable are as under:
 - a) The PW.1 though claimed to be Social Worker, she has stated that she was getting remuneration from Makkala Sahaya Vani, during the relevant time. So, in such event, she cannot be considered as Social Worker, but she becomes the employee of Makkala Sahaya Vani;
 - b) The PW.1 claims to be representing Makkala Sahaya Vani for filing the complaint as per Ex.p1. But Makkala Sahaya Vani was not a registered Body as on the date of the incident, as PW.1 herself admits, which reads as under:

“..... Makkala Sahaya Vani is not government organization. But the Bangalore City Police will work for Makkala Sahaya Vani..... At the



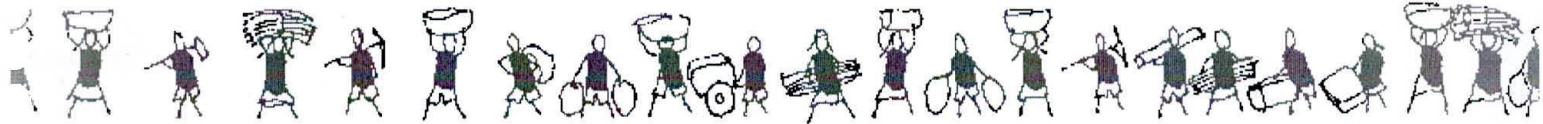


time of registering this case, it was not a registered Body, but now it is registered Body.....”

So, the PW.1 could not explain the authority under which she proceeded to the house of the accused and got the custody of the child PW.5 in her favour;

- c) There is no allegation in the entire case, that the PW.6, the mother of the girl child PW.5, was giving step motherly treatment to PW.5, as she was not a step mother, but natural mother of PW.5. Under such circumstances, the PW.1 or other persons accompanied with her, to the house of the accused, who taken the custody of PW.5 it would be proper on their part to take the PW.5 to her natural mother PW.6 and in case, the PW.6 refused to look after the PW.5 or to receive her or to take care of the PW.5, then only they could take further steps, as provided under law. But since the PW.1 or any other authorities of Makkala Sahaya Vani did not take any suitable steps in this regard, but the PW.1 straight away taken the PW.1 to Makkala Sahaya Vani, even without giving any acknowledgement in writing, to the then custodian of the PW.5, or obtaining their consent in writing, it amounts to a glaring error on the part of PW.1;
- d) It is peculiar to note that, PW.1 with PW.7 & PW.3, went to the house of accused, as it has come in the evidence, without informing the local police having jurisdiction over the area, or not even seeking assistance of the said police and even while taking the PW.5 from the house of the accused, to Makkala Sahaya Vani, it would be proper on the part of PW.1 to take the PW.5 to the local police and only after intimation, she could proceed ahead. But failing to do so, is also another error committed by PW.1, on behalf of Makkala Sahaya Vani, when it was admittedly, not a registered Body then;
- e) Even after intimation to the then IO, by way of complaint Ex.p1, by PW.1, and also, producing the PW.5 before the police, it would be proper on the part of the then IO CW.10 H. Gangaiah, ASI, to make an arrangement to produce the PW.5 before the competent jurisdictional Magistrate, for further needful orders. But unfortunately, as is born out from the records, the PW.6, being the petitioner, appears to have moved Application u/s.97 Cr.P.C, on 13/2/02, as per Ex.D3, and another Application dtd 30/3/02, marked at Ex.D1, coupled with Affidavits Ex.D2 and Ex.D4, claiming the custody of the child, i.e., restoring the custody of the child, and only at the enquiry stage, on the said petition, it is brought to the notice of the court concerned, that the said child was in APSA “ $\text{L}^{\text{A}}^{\text{A}}^{\text{A}}^{\text{A}}^{\text{A}}^{\text{L}}^{\text{E}}$ ”, as she was handed over to APSA by Makkala Sahaya Vani. Therefore, in this connection also, even a semblance of procedure laid down under Juvenile Justice Act 1986 or the new Act, Juvenile Justice (Care & Protection of Children) Act 2000, was followed, in this regard. Therefore, the entire process followed by Makkala Sahaya Vani, as well as the subsequent process followed by APSA both, are on wrong footing;



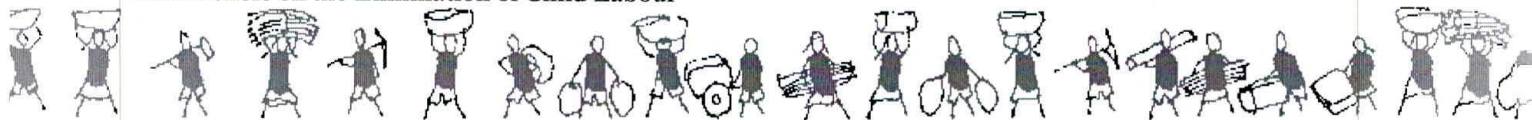


- f) It was the case built up that, Romeo was the mediator in bringing the PW.5 from the custody of PW.6 and to hand her over to A.2. If that was the case, certainly the IO would challan the chargesheet against that Romeo, as well as against the PW.6. When it was not so done, a strong presumption arises that Romeo and PW.6 have not done anything, contravening under law, which leads to de-link the entire case of the prosecution;
So, all these technical defects, clearly show that the prosecution has failed to set up the case against the accused, in an appropriate manner and that, thereby, it could not prove it, against the accused, as expected of the same.
17. Now coming to the defence side evidence, the DW.1 Smt. Hema was the maid servant working in the house of the accused and DW.2 is the accused no.2 and DW.1, has categorically stated throughout, that, she was working as maid servant in the house of the accused, since the last 8 years and she used to visit the house of the accused, daily at about 8 AM and do all household works till 5.30 PM and she has given the details of household work also, and the prosecution, though suggested to DW.1 that she was not working as maid servant, the same was denied by her, on the one hand, and supported by PW.6, on the other, during the course of her evidence. In such event, the evidence of DW.1 is proved by the defence side. Over and above, the accused no.2 on oath, has also stated that DW.1 was the maid servant in his house and she does all household works and assists the A.1 in cooking the food, etc., and as such, there was no chance or necessity for the accused, to engage PW.5 to do the household works, during the relevant period. Apart from that, the defence has also produced the Enquiry Report Ex.D11, which shows that there was Department Enquiry, initiated against the present accused, wherein other materials such as, the Case Presentation Ex.D9, by one Vimala, dtd 1/10/01, and Notice as per Ex.D10 and the statement of the witness Mr. Mathew Philip, marked at Ex.D6, and the Record of Conversation with Kum. Shashikala (PW.5) at Ex.D7, and Note at Ex.D8 and the denial portion marked in the statement of PW.6 marked at Ex.p4, and the denial portion in the statement of PW.7 marked at Ex.D5, also play material role in discarding the evidence placed by the prosecution, and the result in the Department Enquiry was only in favour of the accused, who are delinquents in the said Enquiry proceedings, wherein the Enquiry Authority was pleased to mention as under:

“..... The said NGOs seem to function on the assumption that they are a law unto themselves, the Executive and Judiciary of the land be damned.....”

The firm stand taken by the defence that the case has been registered only because the accused have declined to fulfil the unlawful demand on the part of Makkala Sahaya Vani or other NGOs who made protest in front of the house of the accused, as well as in front of their office. The said demand of lakhs of rupees was also, though suggested to other witnesses, which are





not admitted, the PW.7 has admitted to certain extent, as her evidence reads as under:

“..... There is no rule to register the case in the concerned Police Station regarding the message received by Makkala Sahaya Vani, but usually one or two cases will be booked against the concerned, in the jurisdictional Police Station. The remaining cases will be amicably settled in Makkala Sahaya Vani itself. The Makkala Sahaya Vani will insist the concerned, to deposit the amount for the welfare of the child, during the course of amicable settlement and also, to bear the education cost of the child and if the concerned agrees for the same, then the matter will be settled amicably.....”

It is also brought on record, during the course of Department Enquiry, as can be seen from the Report Ex.D12, as it reads as under:

“..... The said report makes it clear that while threats of all kind were made by Makkala Sahaya Vani and assorted organizations, no charges were brought against the alleged offender. Apparently, the gangster style extortion ploy of demanding payment of monies within 3 days seems to have worked. And that seems to have been the end of the matter, apart from Makkala Sahaya Vani taking it upon itself to advise the husband of the alleged offender therein to take her for extensive counseling. And yet another NGO is reportedly nourished by the interest earned on the compensation amount. Whither justice? Justice, underworld style.....”

But in this connection also, that APSA, though continued to be the interim custodian of the said girl child PW.5, it has not produced any iota of evidence or scrap of paper in these proceedings to show that the PW.5 is prosecuting her studies, except her own bald version, which is also considerable lapse on the part of the prosecution. Of course, it was much argued by Sri. R.M.D.R, learned advocate for the accused, that one Vimala, on behalf of the KSFC, has prepared the Case Presentation in the matter, dtd 1/10/01 itself, as per Ex.D9, alleging the same offence. But according to the case, it was 2/10/01, and as such, according to him, the entire case is a concocted one. But in this connection, I could not agree with the arguments submitted by the learned advocate for the accused, because, though it was mentioned at the face page of Ex.D9, as Case Presentation was dtd as 1/10/01, registered by Makkala Sahaya Vani in respect of



Shashikala aged 10 years, against the accused persons, while signing by Vimala, it was mentioned atop of Ex.D9, may be only typographical error. However, in pursuance of the other material grounds, stated above, which were urged by both sides, in support of their respective stand and also the doubtful circumstances, as pointed out supra, under the foregoing paras, I have no hesitation to hold that the prosecution has failed to prove the offences under charges, against the accused, beyond all reasonable doubt, and hence I answer the Point Nos.I to V in the NEGATIVE.

Point No.VI :

18. As seen from the cause sheet, and the evidence on record the girl child PW.5 is in the custody of APSA, who stated to be educating the PW.5, but there is no material placed before the court, in this case, to substantiate that PW.5 is actually attending the school, for prosecuting her studies. It is a well versed principle that welfare of the child is paramount consideration in all cases, relating to minors, irrespective of sex. Under such circumstances, when the natural mother PW.6 has claimed the custody of the child, the same cannot be denied at this stage, since the trial in the case, is also at the verge of conclusion. Therefore, I am of the considered view that the PW.6, being natural mother of PW.5 Shashikala, she alone, is entitled to be the custodian of the said child PW.5, but not others. Hence, I conclude this point, by answering in AFFIRMATIVE.

Point No.VII:

19. In pursuance of the findings in the following paras, I proceed to pass the following:

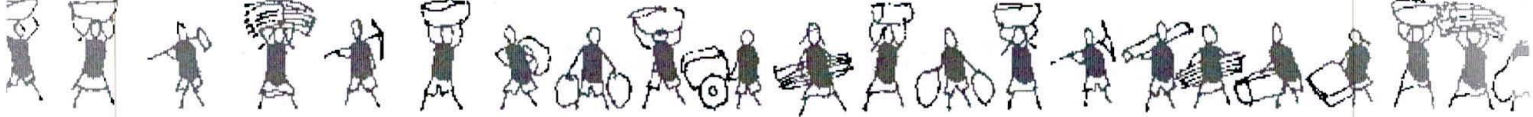
ORDER

The accused nos.1&2 are hereby ACQUITTED under Sec.248(1) Cr.P.C, of the offences charged under Secs.341, 342, 323, 324 R/w. Sec. 34 IPC and Sec.6 of The Children (Pledging of Labour) Act 1933. The bail bonds executed by these accused nos.1&2 stand cancelled.

The PW.1/Makkala Sahaya Vani/APSA, whoever be the custodian of the said girl child PW.5, shall handover the said child to the custody of her natural mother PW.6. Lalitha, under proper acknowledgment, forthwith, and the PW.6 is directed to take all best possible care as a prudent natural mother, to educate her child PW.5, and accordingly, the petitions filed by the petitioner PW.6 u/s.97 Cr. P.C. (Ex. D1&3) are disposed off. (Typed to my dictation by the stenographer, corrected by me and then pronounced by me in the open court on 03.02.03.



(M.S. HEGDE NAGRE)
CHIEF METROPOLITAN MAGISTRATE,
BANGALORE CITY



ANNEXURE

Witnesses examined on behalf of the prosecution:-

PW.1	Ancilla	21/08/02
PW.2	M.C. Yeshoda	21/08/02
PW.3	Umesh	21/08/02
PW.4	Dr. Chandra R. Nayak	23/09/02
PW.5	Shashikala	23/09/02
PW.6	Lalitha	18/10/02
PW.7	Meena Kumari	04/11/02
PW.8	Prakash Rao	04/11/02

Documents marked on behalf of the prosecution:-

Ex.p1	Complaint
Ex.p1(a)	Signature of PW.1
Ex.p2	Spot Mahazar
Ex.p2(a)	Signature of PW.8
Ex.p3	Wound Certificate
Ex.p3(a)	Signature of PW.4
Ex.p4	Statement of PW.6

Witnesses examined on the defence side:

DW.1	Hema
DW.2	Venkatesh

Documents marked on the defence side:

Ex.D1&3	Applications of PW.6
Ex.D2&4	Affidavits
Ex.D5	Denial portion in statement of PW.7
Ex.D6	Statement of witness in D.E
Ex.D7	Denial portion in statement of PW.5
Ex.D8	Note
Ex.D9	Case Presentation
Ex.D10	Notice
Ex.D11	Acknowledgement
Ex.D12	Department Enquiry

Material objects produced : NIL



(M.S. HEGDE NAGRE)
CHIEF METROPOLITAN MAGISTRATE,
BANGALORE CITY.

3.17.3 IN THE COURT OF THE M.M. TRAFFIC COURT – III, BANGALORE

DATED THIS THE 29th NOVEMBER 2001

PRESENT : SRI. MARUTHI BAGADE, B.COM, LL.B. (SPL) M.M.
TR.C-III; BANGALORE

CC No. : 1975/2001.

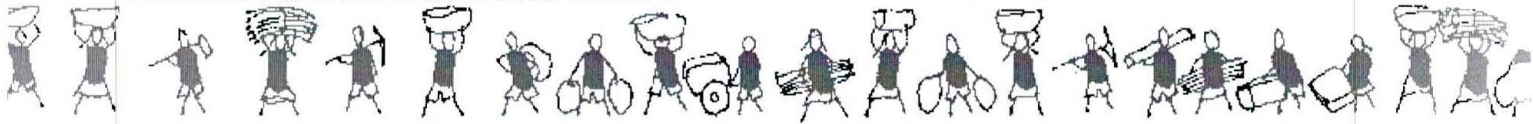
COMPLAINANT : STATE BY SR. LABOUR INSPECTOR
24th Circle, J.C. Road,
Bangalore.

ACCUSED : C. Chandran, S/o. Kunniraman,
Prop: Minerva Bakery, R/at.No.475,
New BEL Road, Devasandra,
R/at.No.92, Nanjappa Layout, Vidhyaranyapur,
Bangalore.

JUDGMENT

1. The Sr. Labour Inspector of 24th Circle, has filed a private complaint against the accused for the offences under Sec.24 of the Karnataka State Shops and Commercial Establishment Act 1961 and punishable U/s.30 of the said Act.
2. **The Brief facts** : The prosecution case is that on 24.11.2000, at about 12.45 PM the Sr. Labour Inspector of 24th Circle, has visited the shop of accused at Minerva bakery, No.475, New BEL Road, Devasandra, Bangalore and found the accused has appointed a child labour named Sri. T. Velan aged 13 years in his shop as Helper and there by violated the provisions of the section.24 of the Karnataka State Shops and Commercial Establishment Act 1961 and punishable U/s.30 of the said Act.
3. After the appearance of the accused, the copies of the prosecution papers have been supplied to him. Plea has been recorded. Accused pleaded not guilty and claimed to be tried.
4. In order to prove the guilt of the accused, the prosecution is examined only 2 witnesses and got marked the documents at Ex.P-1 to P-6(a) and closed the side. Thereafter the statement of the accused under Sec.313B of Cr.P.C. stand recorded. Accused denied the allegations in to and entered no defence.





5. Heard the arguments.
6. Points for consideration:
 1. Whether the prosecution proves that the accused in question has engaged a child labour aged 13 years by name T. Velan in his bakery and there by violated the provisions of Sec.24 of the Karnataka State Shops and Commercial Establishment Act, 1961?
 2. Whether the prosecution further proves that the said child labour is of 13 years old or below the age of 14 years?
 3. What order?
7. My findings for the above points are as follows:

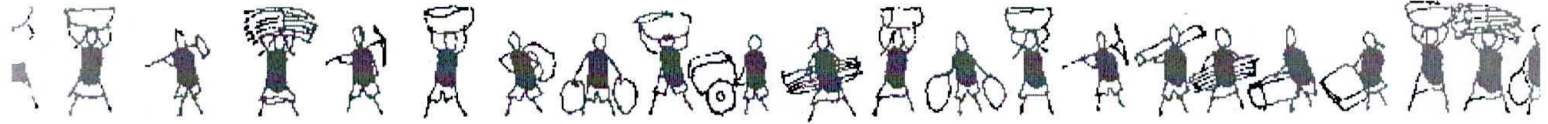
Point No.1	:	In Affirmative
Point No.2	:	In Affirmative
Point No.3	:	As per final orders for the following

REASONS

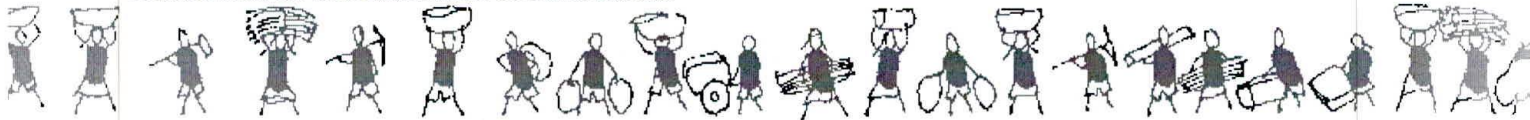
POINT NO.1: The Complainant PW.1 has lodged this complaint before the court stating that he is the Senior Labour Inspector and on 24.11.2000, at 2.45PM he had inspected the Minerva Beckery situated at New BEL Road and found there were 4 adult persons and one minor boy was working in the bakery. The age of the minor boy was of 13 years and his name is Master. Velan. At the time of Inspection Abilash the elder son of accused and some other person by name Sri. Sinod, who appears to be the second S/o accused were present at the premises. During enquiry they revealed that the owner of the beckery is their Father and his name is C. Chandran. Thereafter PW.1 has recorded the statement of the child labour and drawn inspection report. Accused having failed to submit any age proof of the child labour within the given period, he sought the approval from the Asst. Labour Commissioner for the prosecution and thereafter filed a complaint before the court.

8. In order to prove the guilt of the accused, the complainant himself has examined as PW-1 and got examined the elder son of accused Master Abilash as PW.2 and got the documents marked at Ex.P.1 to P.6.a. and closed the side. During the course of arguments the learned prosecutor has submitted that after enquiry the accused has been asked to PW.2 to submit the age proof certificate within a period of 3 days. But he has failed to comply with the request. Thereafter on 12.12.2000 a show cause notice was also issued to the accused to produce the age proof certificate as per Ex.P.4. But he failed to produce any age proof certificate. As per rule.22 of the Karnataka State Shop and Commercial Establishment Rules 1961 hereinafter shortly called as rules, it is mandatory on the part of the accused to produce the age proof certificate showing that the age of child labour is above 14 years. As such failing in this behalf there is much material for the court to draw an inference that the child labour was aged below 14 years.



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9. During the cross-examination of PW.1 the defence has clearly admitted that the child labour is their relative. Thus they are well within the knowledge about the age of the child labour. As such they ought to have produced any document. PW.2 son of the accused has clearly admitted the inspection and engagement of the boy. But they only denied about age. They have also admitted that the Velan is their relative. In such circumstances the prosecution has clearly proved this case beyond all reasonable doubt. Hence the prosecution prayed for the conviction of the accused.
10. On the other hand, the defence counsel has submitted his strong objection to the written arguments submitted by PW.1. It is the duty of the PW.1 to bring prima-facie case to the court and show the court that the child labour was aged about 13 years and they have not produced any documents to show his age. In the absence of the documents the court cannot form an opinion to accept as PW.1 is not an expert. Rule.22 does not bind the accused to produce any age proof certificate. There are no any independent eye witnesses to the case. The case is the out come of some ulterior motive. As such the prosecution failed to prove its case beyond all reasonable doubt. There by prayed for the acquittal of the accused.
11. I see that there is no worth in the arguments narrated by the defence counsel rather there is much force in the arguments of prosecution. PW.1 the Labour Inspector has clearly deposed as from 18.10.2000, he is working as Sr. Labour Inspector in 24th Circle and on 24.11.2000 at about 2.45 PM he has inspected the Establishment and at that time PW-2 and his younger brother Sri. Sinod were present. During enquiry he learnt that the accused is the owner of the establishment. Amongst 5 labourers he found one child labour aged 13 years by name Velan. There by he has recorded the statement of Master Velan in Ex.P-2 i.e., Annexure-I and obtained the signature of child labour and delivered the copy of Ex.P-1 to PW-2 and obtained his signature. Thereafter he has also deposed that he has drawn the Inspection report as per Ex.P-3 and issued the copy to PW-2 and asked him to produce the age proof certificate. But he failed to comply with the requirements. Ultimately the PW.1 had issued a showcause notice on 12.12.2000 to the accused through post to produce any documents to prove the age of child labour. But he has failed to do so. Thereafter he sought permission from the higher authority and filed the complaint. This is the sum and substance of the deposition of PW-1. During his cross-examination the defence counsel admitted that Mr. Velan is the relative of the accused. PW-2 the son of the accused has clearly admitted the inspection made by PW-1 and also admitted that the child labour is son of his sister. If this aspect is taken into consideration it is crystal clear that there was an inspection by PW-1 and he found a boy by name Velan is working as labour and helper in the beckerly. So there is no any dispute regarding the engagement or working of the Mr. Velan in the premises. As such in view of the admission by defence counsel in cross-examination of PW-1 and admission by PW-2 regarding the engagement of Velan in their



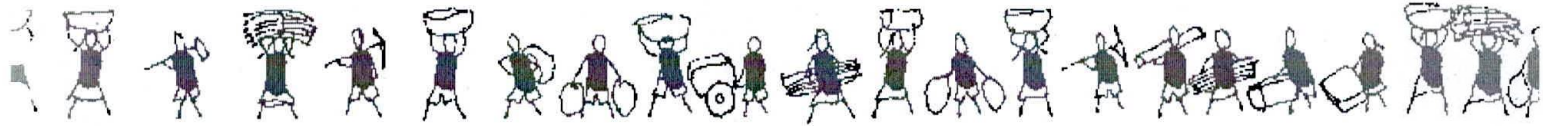


beckery as helper, I am of the opinion that there is no hesitation for me to say that the complainant successfully proved the engagement of Mr. Velan in the bekery. As such the point No.1 is answered accordingly.

POINT NO.2 : In view of the findings given by me to point No.1 in affirmative, now the only question remains for the consideration of court regarding the age of child labour. The question can be styled in the following form whether the complaint successfully proved the age of the child labour as 13 years old. PW-1 in his evidence has deposed that when he has Inspected the establishment in question he found one Master Velan is working as helper and during enquiry he learnt that his age is 13 years. After enquiry PW.1 through Ex.P-3 i.e. Inspection Notes asked PW-2 the S/o accused who was present in the premises to produce the age proof certificate stating that the age of Velan was more than 14 years and he will not fall within the preview of Sec.24 of the Karnataka State shops and commercial Establishment Act 1961 shortly called as Act. But neither the accused nor PW-2 has produced any kind of certificate showing the age of child labour as he is above the age of 14 years. Failing in this behalf the complainant has issued a showcause notice to the accused under the certificate of posting as per Ex.P-4. Wherein it has been clearly required to showcause why the necessary action shall not be taken against the accused for the violation of provision of Sec.24 of the Act, within a period of 3 days. But the accused failed to produce the age proof certificate within a period of 3 days. Even the defence counsel did not contend that he had produced any kind of documentary evidence to prove the age of Velan. The copy of the postal receipts is marked as Ex.P-5, which clearly shows that a letter has been issued to the accused, which has not been strongly disputed by defence counsel. In such circumstances, it is crystal clear that PW-1 the complainant has clearly discharged its initial burden as contemplated under Rule.22 of the Act.

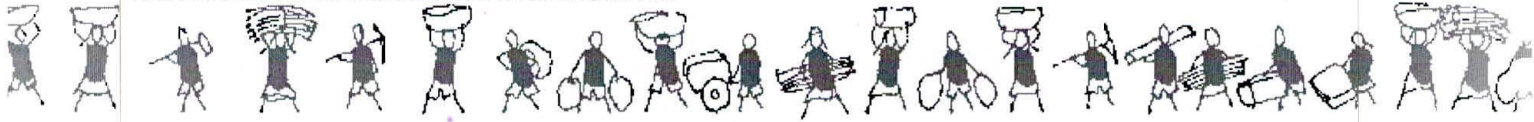
12. Rule.22 of the Act is clearly laid down that the Inspector may require the employer to produce a certificate in respect of age from a Registered medical practioner in respect of any employee such certificate shall be under form No.J. If this proviso is taken into considerate on, it is crystal clear that the burden of disproof lies on the shoulder of the accused. In this case PW-2 has clearly deposed that/the Velan child labour is the S/o the sister of accused. Hence it is well within the knowledge of the accused that the child labour is of a particular age. Apart from this Ex.P-2, column No.9 has clearly discloses that the child labour is studied up to 6th standard in a Tamilnadu School. In such circumstances, I am of the opinion that the particular age of the child labour was known to the accused. Then the question arises what prevented him to produce any kind of certificate i.e., Medical certificate either in form J or School certificate from the school where in the child labour had studied. For a moment I do not dispute the submission of the defence counsel that it is the duty of the prosecution to establish the case while discharging its initial burden. The present case is the outcome of a Socio-legislature, as such Rule.22 is enacted to prevent the harassment by the Inspector or authority. There





could be no case if any age proof is produced. Non-production of age proof itself creates doubt against the accused. If the child labour studied in Karnataka then it could be said that the prosecution is failed to discharge its initial burden in obtaining the same from School records. But the School in which the child labour studied is in Tamilnadu State. As such the Labour Inspector is unable to approach the School authority. In such circumstances, it is the bounded duty of the accused to produce the School certificates or age proof certificates in Form No.J and get absolved from prosecution and Criminal liability. But inspite of issuance of showcause notice, though under certificate of posting and also inspite of service of Notice through Ex.P-3 Inspection Notes, to PW-2 the son of accused, the accused failed to produce any kind of certificate. The preposition of standard of evidence and presumption of law can be different in case there was a complete denial of engagement of child labour and its relation with the accused. But in this case accused has clearly admitted the relationship of the child labour and engagement of him in bakery for the helping work thus it is mandatory on his part to discharge the burden cast under rule.22. Issuance of show cause notice is complete compliance of provision of Rule.22 by the Inspector PW.1. As such I am of the opinion that there are no reason to discard the evidence of PW-1. Of course the statement obtained during the investigation by the I.O. is not admissible under the evidence act. But this preposition of law is applicable only to the police. The Labour Inspector is not a police. As such the particulars recorded in Ex.P-2 & 3 are clearly admissible in the eyes of law. Even the format of Ex.P-2 & 3 are prescribed by law or Act. As such it cannot be said that these documents are inadmissible in the eye of law. In such circumstances, I am of the opinion that prosecution had discharged its initial burden and shifted the burden to disproof upon the shoulders of accused. But the accused failed to discharge its burden. Thus he invites the risk of penal liability. What prevented the accused to enter into witness box and produce any kind of Medical report or School certificate or Birth certificate to show that the child labour was above the age of 14 years. But he did not do so, rather PW-2 has clearly deposed that they have engaged Velan and he is their relative. Looking into the over all facts and circumstances of the case and evidence of PW-1 and admission by PW-2 and non-discharging of burden by accused casted under rule.22, I am of the opinion that the prosecution case can be accepted. Nothing has been brought on record by the defence that the complainant had some ill will against the accused. The principle that can made applicable to the police witness while appreciating their evidence cannot be made applicable while appreciating the evidence of Labour Inspectors, PW-2 has clearly admitted the Inspection by PW-1. Hence therein left no room for doubt regarding the Inspection. As regards the submission of defence counsel that no independent neighbouring witnesses have been examined is concerned, I am of the opinion that there is no any worth in this submission. Because no neighbouring person having good relation likes to strain their relation with the accused by entering into witness box and deposing against accused, after all they are commercial minded people. As such no independent eye





witnesses can be expected in such cases. Sec.27 of the act does not insist any independent eye witnesses. Sec.27(a) empowers the Inspector to enter into the witness box at all reasonable times with assistance if any being persons in the service of State Government as he deems fit in place which he has reason to believe is an establishment. If this proviso is taken into consideration it is crystal clear that no independent eye witness is necessary. However if the Inspector wants he can take the Assistance of State Government. But in this case the complainant alone is inspecting the premises, when PW-2 admitted the Inspection by PW-1 the complainant there needs no corroboration or any official witness as a witness to the Inspection. It is not mandatory on the part of the complainant Inspector to take assistance of any other Government servant at all times. But it is only an obligatory upon his part to taken the assistance of any other Government servant if he feels necessary. As such in this case the evidence of PW-1 is sufficient to believe inview of the support by PW-2, who is son of accused. Thus I am of the opinion that there are hardly any reasons to discard the evidence of PW-1 regarding age of child labour as he is below 14 years of age. This aspect also strengthen as accused failed to discharge his burden cast by Rule.22 of the Act. As such there is no hesitation for me to say that the complainant successfully establishes the age of child labour as he was 13 years old on the date of Inspection. Hence the point is answered in affirmative. Thus by answering the Points No.1 & 2, I am of the opinion that accused has committed the offences punishable U/s.24 of the Act R/w.sec.30 of the Karnataka State Shops and Commercial Establishment Act 1961. Thus the accused found guilty.

(Dictated to the stenographer, transcribed and typed by her, corrected and then pronounced by me in open court on this the 29th day of Nov.2001)

(MARUTHI BAGADE)

M.N.Tr. c-III : Bangalore



ORDERS REGARDING SENTENCE :

Sec. 30(3) of the Karnataka State Shops and Commercial Establishment Act 1961, prescribes the minimum imprisonment of 3 months or minimum fine of Rs.10,000/-. In my opinion the imposing of fine will mete out the very purpose of the Act. In view of the Bar laid down U/s.29(2) of the Criminal Procedure Code 1963, this court cannot impose the fine more than 5,000/- rupees. Sec.29(2) prescribes the maximum fine amount of Rs.5,000/- that can be imposed by this court. But Sec.30 of the Act prescribed Rs.10,000/- fine amount the supreme court of India in a number of cases laid down that no JMFC or Metropolitan Magistrate courts can impose fine exceeding rupees 5,000/-. In the absence of over riding effect of sec.29(2) of Cr.P.C. in particular Act. The act in question contains no provision of over riding section 29(2) of the Cr.P.C. Hence, I am of the opinion that this court cannot impose a fine more than Rs.5,000/- at the same time it cannot impose a fine below Rs.10,000/- as sec.30 of the Act prescribed a minimum fine of Rs.5,000/-. In such circumstances, the remedy left open for the court is to adopt the provision laid down under Sec.325(1) of Cr.P.C. Sec.325(1) of clearly laid down that whenever a Magistrate is of opinion after hearing the evidence for prosecution and accused, that the accused is guilty and that ought to receive punishment of any different kind or more severe than that it when such Magistrate is empowered to inflict. He may record the opinion and submit his proceedings and forward the accused to the Chief Judicial Magistrate to whom he is subordinate. Thus it is crystal clear that this court shall have to submit the proceedings to the Chief Metropolitan Magistrate for the inflicting of fine amount laid down U/s.30 of the Act. In Bangalore City the functions of Chief Judicial Magistrates are to be exercised by the Chief Metropolitan Magistrates. Hence the Proceedings is to be submitted to the Chief Metropolitan Magistrate. As such I pass the following:

ORDER

Submit the entire proceedings before the Hon'ble Chief Metropolitan Magistrate, Bangalore City for necessary further actions in this behalf with a brief note.

Accused shall appear before the C.M.M. Bangalore City at 11 AM on 1.12.2001.

(MARUTHI BAGADE)

M.N.Tr.C-III, B'lore





ANNEXURE

List of witnesses examined & Documents marked for Prosecution:

PW-1	N. Chandrashekar.
PW-2	Abhilash.
Ex.P-1	Complaint
Ex.P-1.a.	Sign
Ex.P-2	Annexure-I
Ex.P-2.a.	Sign of child labour
Ex.P-2.b.	Sign of PW-2
Ex.P-2.c.	Sign of PW-1
Ex.P-2.d.	Sign of Raju
Ex.P-3	Inspection report
Ex.P-3.a.	Sign of PW-1
Ex.P-3.b.	Sign of PW-2
Ex.P-4	Showcause Notice
Ex.P-4.a.	Sign of PW-1
Ex.P-5	Postal Receipt
Ex.P-6	Permission of Asst. Labour Commissioner
Ex.P-6.a.	Sign of Asst. L. Com.

No witnesses examined & No documents marked for Accused.

M.N.Tr.C-III : B'lore



3.17.4 IN THE COURT OF ADDL. CIVIL JUDGE (JR.DN) & JMFC, TIPTUR

Present : Sri. Chandrashekhar .U., B.Sc., LL.B.,
Addl. Civil Judge (Jr. Dn) & JMFC.

Date : This the 5th Day of March 2001.

C.C. No.411/2000

Complainant : State represented by Labour Inspector,
Tiptur Circle,
Tiptur.
(By A.P.P.)

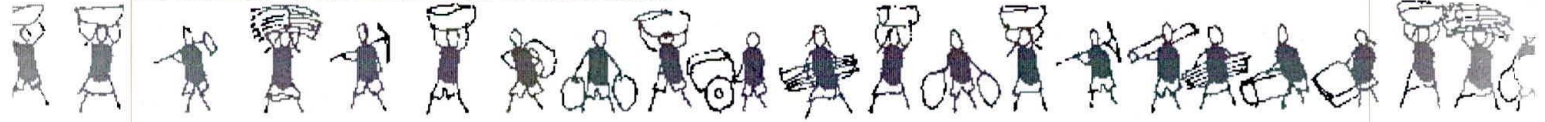
Accused : Dhamodhara, Major,
Proprietor, Mahalingeshwara
Auto Works, B.H. Road,
Tiptur.
(By Sri. G. Nandakumar, Advocate)

JUDGMENT

The complainant being the Labour Inspector of Tiptur Circle, has filed this complaint against the accused under section.16 of the Child Labour (Prohibition & Regulation) Act, 1986 r/w Section.200 of Cr.P.C., for the contravention of section.3 and 12 of the Act and punishable under section.14 of the said Act.

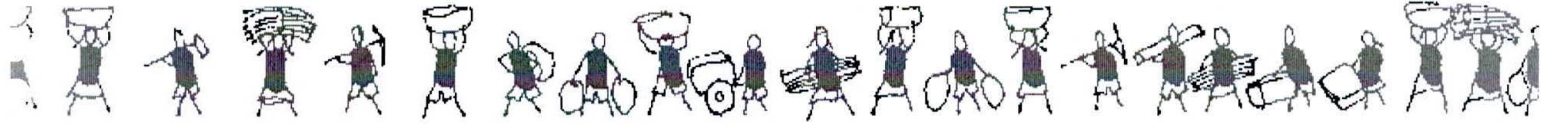
2. The complainant has stated that he is the Labour Inspector of Tiptur Circle, Tiptur, with effect from 10.06.1991 and appointed as 'Inspector' under Section.17 of the Child Labour (Prohibition and Regulation) Act, 1986 r/w Notification No.SWL 28 LPW 91, dated 03.08.91, for enforcement of the said Act and Karnataka Rules there under. The complainant has further stated that the accused is the 'Occupier' within the meaning of definition of Section.2(vi) of the said Act, having repair of automobiles i.e., automobile engineering. The complainant has further stated that he along with the Labour Officer, Tumkur and the Labour Inspector, Kungial, visited and inspected the establishment of the accused on 03.03.2000 at 12.35 p.m., and found that two child workers were working in the establishment and their particulars are recorded in the Notes of Inspection-cum-show cause Notice dated 03.03.2000. He has further stated that during inspection, the accused found to have violated the Section.3 of the Act by employing two child workers and Section.12 by not displaying notice containing the extract of the said Act. Accordingly, the complainant has prayed for the taking action against the accused in accordance with Law.





3. Since it was a complaint by the Public Servant, this court took cognizance of the offence and issued process to the accused. In response to the summons the accused appeared before the court and he was enlarged on bail. There afterwards, the accusation was read over to him by explaining the contravention of provision of Section.3 and 12 of the Child Labour (Prohibition & Regulation) Act, 1986, and that it is punishable under Section.14 of the said Act, for which he pleaded not guilty and claimed to be tried. Accordingly, the prosecution proceeded to lead evidence and after closure of the prosecution evidence, a statement as required under Section.313 of Cr.P.C. was read over to the accused by explaining the incriminating evidence found against him, for which he denied it as false and submitted no defence evidence.
4. In this case, after the inspection by the complainant, he prepared an Inspection Report-cum-Show cause notice in the spot itself, and obtained the signature of the child labours and also other labours. A copy of the said notice was served on the owner of the Establishment. The owner of the Establishment has not submitted any explanation to the show cause notice. Accordingly, he filed this complaint before the court.
5. Inorder to bring home the guilt of the accused, the prosecution in all examined two witnesses and got marked Ex.P.1 and 2. The accused has not chosen to adduce evidence on his behalf. Accordingly, arguments were heard. The points that arise for my consideration are:
 1. Whether the prosecution proves that the complainant visited the establishment of the accused on 03.03.2000, at 12.35 p.m., along with the witness No.2 and 3?
 2. Whether the prosecution proves that during the inspection, the accused found to have violated the section.3 of the Act of employing two child labours and also section.12 by not displaying the notice containing the extract of section.3 and 14 of the Act?
 3. Whether the prosecution proves beyond reasonable doubts that the employment of the child labours by the accused and contravention of the Section.3 and 12 of the Act is an offence punishable under Section.14 of the Child Labour (Prohibition & Regulation) Act, 1986?
 4. What Order?
6. My answer to the above points are in
 1. In the Affirmative.
 2. In the Affirmative.
 3. In the Affirmative.
 4. As per final order for the following:





Reasons

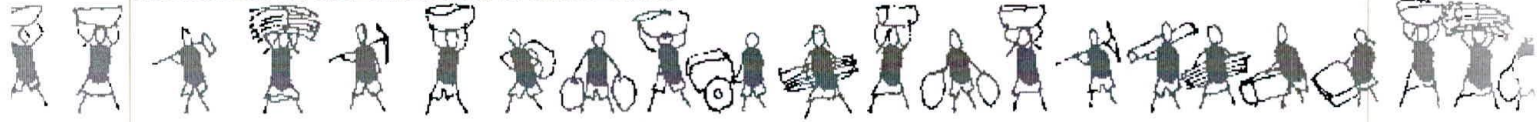
7. **Point No.1 to 3:**

For the Sake of convenience, I would like to deal them together. In order to prove this point, the prosecution mainly relies on the evidence of PWs.1 and 2. Both of them are official witnesses and performed their inspection, while discharging of the official duty. It is the case of the prosecution that the accused being the Owner and Occupier of the Mahalingeshwara Auto Works, B.H. Road, Tiptur, employed two child labours in his establishment. The complainant has stated that on 03.03.2000, at about 12.35 p.m., he along with witnesses No.2 and 3, inspected the establishment of the accused and found that the accused has employed two child labours in contravention of Section.3 and 12 of the Act. There afterwards, the complainant prepared an Inspection Report as required under relevant provision of the Act and Karnataka Rules thereunder. The complainant has been examined as PW.1 and the Labour Inspector, Tumkur District, has been examined as PW.2 before the Court. The PW.1 has categorically stated that on 03.03.2000, at 12.35 p.m., he along with PW.2 visited the establishment of the accused and found the violation of Section.3 and 12 of the Act. Immediately, he prepared an Inspection Report and obtained the signature of the child labours on it. According to the prosecution, at the time of visit, one Rasool S/o Babu and one Rafee S/o Ameer were present. Both are aged about 12 years and working as Helpers in the said establishment. Both the child labours have disclosed that they are working in the said establishment since sometime as helpers. Accordingly, after the completion of the Inspection Report as required under the relevant provision of Karnataka Rules, he served the copy of the same on the person, who was present at the time of inspection. One Amzad S/o Khasim Sab was present and he has signed to said Inspection Report. The Inspection report has been marked as Ex.P.1 and the complaint lodged before the Court has been marked as Ex.P.2. At this juncture, the learned counsel for the accused argued that in the case, there is no corroboration by the evidence of independent mahazar witnesses or eye witnesses. Infact, the complainant ought to have taken some of the independent eye witnesses to the establishment of the accused and in their presence, conducted the inspection. On the other hand, though there were persons present at the time of inspection, he has not obtained their signatures to the Ex.P.1. Inspection Report and cite them are witnesses. The arguments canvassed by the learned counsel for the accused may not hold good for the reasons that the PW.1 and 2 are the Public servants and they have discharged their duty as the Public Servants. As per Section.114 of the Indian Evidence Act, Court may presume that all the judicial and official acts are regularly performed. The learned counsel for the accused cited a decision reported in KCCR 19999(1) 448(D.B), wherein their Lordships have held in para No.7 that

“Section.4 of the Code of Criminal Procedure provides Trial of offences under the Indian Penal Code and other laws:

- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated inquired into, tried, and otherwise dealt with according to the provisions here in afterward contained.





- (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any other laws for the time being in force regulating section of place of investigating & regulating into trying or otherwise dealing with such offences.

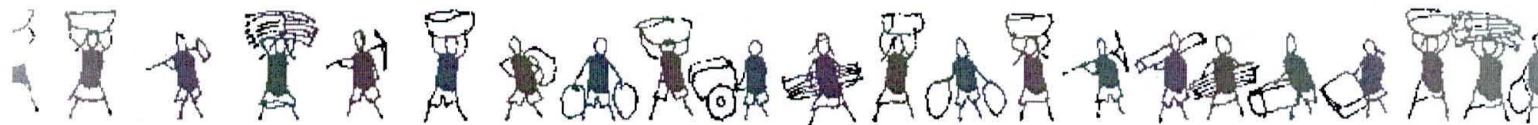
All offences under any special statute otherwise expressly provided are required to be investigated inquired into, tried and otherwise dealt with according to the procedure prescribed under the Code of Criminal Procedure. The provisions of the Section are plenary, which provide that if any person accused of an offence created under a special statute is decided to be prosecuted, the recourse, to the Criminal Procedure Code and the procedure prescribed there in shall be applicable unless specifically excluded or otherwise provided. Section.27 of the Act has not in any way taken away or barred the jurisdiction of the ordinary Criminal Courts”

8. When we closely peruse the dictum of the above decision, it is very clear that though the authorities are empowered to take action against the accused, they have to follow the procedure contemplated under Section.4 of the Cr.P.C., I do concede the gist of the case. I do not know how the dictum of the above case is applicable to the present case in hand. In this case, the complainant is empowered to inspect any establishment and prepare the Inspection Report and if he finds that the owner of the such establishment has violated or contravened any of the provisions, he has to issue show cause notice calling upon his explanation. After doing so, if the owner or occupier of the establishment fails to give any explanation, then, the complainant is empowered to initiated a proceeding before the court of law under Section.16 of the Act. The Section.16 of the Act reads as

“Procedure relating to offences:-

1. Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction.





2. Every certificate as to the age of child which has been granted by a prescribed medical authority shall for the purposes of the Act, be conclusive evidence as to the age of the child to whom it relates.
3. No court inferior to that of a Metropolitan Magistrate of a Magistrate of the first class shall try any offence under this Act.”

In this case, when the complainant found the accused contravened the section.3 and 12 of the Act, he filed a complaint before the court as per Section.16 and 200 of Cr.P.C.

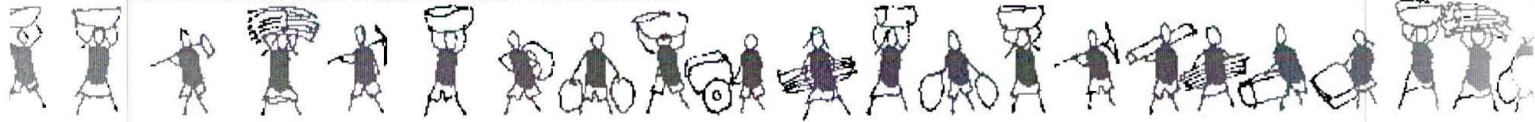
The complainant has not taken a direct action against the accused for the violation of the Section.3 and 12 of the Act, on the other hand, he has filed a complaint before the Court and got issued the process to the accused and adduced evidence on their behalf and shown to the court that the accused has violated the Section.3 and 12 of the Act. Therefore, the dictum of the above case is not applicable to the present case as the complainant has followed the due procedure of law as contemplated under Cr.P.C.

9. The another grievance of the accused is that at the time of inspection and preparing inspection report, he should have taken some independent witnesses. Without taking the signature of independent witnesses and citing them as witnesses in this case, the evidence of PWs.1 and 2 cannot be relied on at all. At this juncture the learned A.P.P. argued that PWs.1 and 2 are official witnesses and the presumption is there that all official acts are regularly performed. In support of her contention, she cited a decision reported in FIR 1973, Supreme Court, page No.2723, wherein his lordship has held in para No.2 that

“Concurrent findings of fact conclude the case against the petitioner so far as his possession of unlicensed cartridges on the date and the time and place given in the charge are concerned. The fact that the two witnesses called from amongst the members of the public, namely, Raghunathasingh (PW.1) and gambhirsingh Tomer (PW.2) has turned hostile was considered by the High Court and the Courts below. They had held that the two prosecution witnesses who had turned hostile could not be relied upon. Their evidence could not destroy the prosecution case or make it doubtful. The prosecution case is fully supported by Mahadevsingh (PW5) and Umashankar (PW6) who are police officers. The mere fact that they are police officers was not enough to discard their evidence; no reason was shown for their hostility to the appellatant”.



So, it is very clear from the above decision that though the witnesses are the official witnesses, their evidence cannot be disbelieved just because, there is



no corroboration by the independent mahazar witnesses. Under Section.27 and 161 of Cr.P.C., it is not necessary to take the signatures of the independent witnesses on any report prepared by the officer under the Act. The corroboration is only the Rules of Prudence and not the Rule of Law. At this juncture. I would recollect the decision reported in 2000(1) Crimes 176, wherein their Lordships have held in para No.17 that

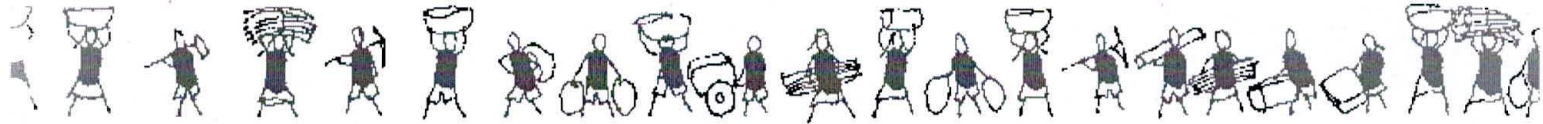
“Recovery of the nicker is evidence by the seizure memo Ext.PW-10/G. It was signed by PW.10 – Sharda besides its author PW.17 Investigating Officer. The Division Bench of the High Court declined to place any weight on the said circumstance purely on the ground that no other independent witness has signed the memo but, it was signed only by “highly interested persons”. The observation of the Division Bench in that regard is extracted below:

It need hardly be said that in order to lend assurance that the investigation has been proceedings in fair and honest manner, it would be necessary for the Investigating Officer to take independent witnesses to the discovery under Section of the Indian Evidence Act; and without taking independent witnesses and taking highly interested persons and the police officers as the witnesses to the discovery would render the discovery at least not free from doubt”.

Para No.18:

“In this context we may point out that there is no requirement either under Section.27 of the Evidence Act or under Section.161 of the Code of Criminal procedure to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by police is cast on the police officer when searches are made under Chapter-VII of the Code. Section.100(s) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively, found, shall be prepared by such officer or other person” and signed by such witnesses”. It must be remembered that search is made to find out a thing or document which the searching officer has no prior idea where the thing or documents is kept. He prowls either on reasonable suspicion or on some guess work that it would possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-sketer. The legislative idea of insisting that no such searches to be made in the absence of two independent inhabitants of the locality is to ensure the safety of





all such articles meddled with and to protect the rights of the persons entitled there to, but recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter-VII of the Code. This Court has indicated the difference between the two processes in the Transport Commissioner, Andhra Pradesh, Hyderabad & Anr. V.S. Sardar Ali & Ors. Following observations of Chinappa Reddy J, can be used to support the said legsl proposition.

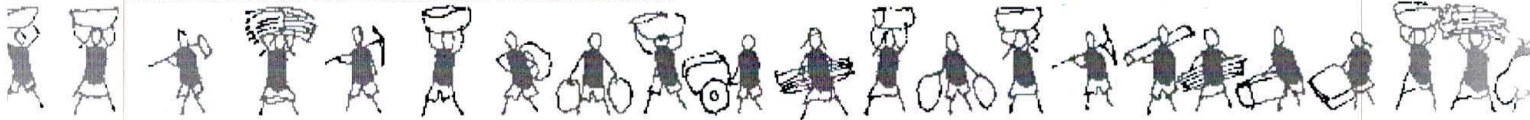
“Section.100 of the Criminal Procedure Code to which reference was made by the Counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during search, it is not to comply with the provisions of Sub-section (4) and (5) of Section.100 of the Criminal Procedure Code. In the case of a seizure (under the Motor Vehicles act), there is no provisions for preparing a list of the things seized in the course of the seizure for the obvious reasons that all those things are seized not separately but as part of the vehicle itself”.

Para No.19:

Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course if any such statement leads to recovery of any article is open to the Investigating Officer to take the signature of any person present at that time on the documents prepared in such recovery. But if no witnesses were present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the documents prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The Court has to consider the evidence of the Investigating Officer who deposed to the statement based on the fact of recollected rom the accused on its own worth”.

So, it is very clear from the above decision that at the time of inspection of spot mahazar, the presence of two respectable persons of the locality is not necessary. Likewise, in this case, also there is no necessity of presence of any respectable persons of the locality just to corroborate the inspection and report of the complainant. This is an inspection as contemplated under Rule.9 of Child Labour (Prohibition and Regulation) (Karnataka) Rules 1998. The presence of two respectable habitant of the locality is necessary only in case of search conducted by the police official under Section.100 of Cr.P.C. Their Lordships have categorically held under Section.100 (4) of Cr.P.C., that the police officer has to conduct a search in the presence of two respectable habitants of the locality. The purpose behind the said provisions of the Act is very clearly been stated by their Lordships in the above decision. Therefore, the arguments of the accused that the





complainant has not cited any independent witnesses etc., holds no water at all. In this case, the accused has not suggested to PWs.1 and 2 regarding the motive behind the filing of the complaint against him. There is no denial on the part of the accused that the complainant has no authority to inspect his establishment and that he is not the owner of the said establishment. Of course, the accused has put a definite suggestion that he has not employed any child labours in his establishment as stated by the complainant. But, the said suggestion itself is not sufficient to disbelieve the evidence of the PWs.1 and 2, they have categorically stated regarding their inspection and also regarding the employment of the child labour by the accused and contravention of the relevant provision. When we peruse the cross examination part of PWs.1 and 2, the accused has not suggested that he is not the owner of the establishment and that the persons, who were present at the time of inspection were not at all labourers. A duty cast on the owner or occupier of the establishment that he has to display the age certificate of his labours as required under Rule.4 of the Child Labour (Prohibition & Regulation) (Karnataka) Rules 1998. The Rules.4 reads as

“Certificate of Age:”

1. Every adolescent in employment in any of the occupations specified in part “A” of the schedule or in any workshop, wherein any of the processes specified in part “B” of the schedule is carried on, shall produce a certificate of age from the “Medical Authority” whenever required to do so by an Inspector.
2. Every employer shall also maintain similar certificate of age in respect of all young persons in employment in any other occupation or work shop or establishment where a child is allowed to work and where his or her conditions of work is regulated as per Part-III of the Act and shall be produced whenever required by the Inspector.
3. _____
4. _____
5. _____

Explanation : _____”.

So, it is duty of the employer to display the medical certificate as to the age of the every young person employed in the establishment. The processes stated in Part-B of the schedule disclose that automobile repairs and maintenance including processes incidental there to namely, welding, lathe work, dent bending, and painting comes within the pervue of establishment stated under the part-B of the schedule. In this case also, the establishment owned by the accused carrying on the business of automobile requires etc., and maintenance.



10. So, the arguments canvassed by the learned counsel for the accused that the evidence of PWs.1 and 2 cannot be believed is the strange one for the reason stated in the above said paras. The accused has not suggested any ill will or motive in filing the complaint against him. Since the complaint has been filed by the public servant, we have to presume that the every act performed by them were regularly performed. The another argument of the learned counsel for the accused is that the child labours have not been cited as witnesses and examined before the court. I am of the view that the evidence of child labours is not necessary, as, even if they are examined before the court, nothing affects the credibility of the evidence of PWs1 and 2. So, in this case, the prosecution has established that the PW1 and 2 inspected the establishment of the accused on 3.3.2000, at 12.35 p.m., and found that the accused has violated the Section.3 and 12 of the Act and that they prepared inspection report at Ex.P.1. When the prosecution establishes that the accused has violated the provision of Section.3 and 12 of the Act, certainly, I have to hold that the accused has committed an offence punishable under Section.14 of the Act and the prosecution has proved the guilt of the accused beyond reasonable doubts. However, this is the Social Welfare Legislation, has been brought, keeping in mind, about the welfare of the child, who are made to suffer in a process or establishment without proper education, health, care and caution. Under the circumstances, I answer point No.1 to 3 in the Affirmative.

11. **Point No.4:**

For the reasons stated in the aforesaid paras, and discussion made by me, I proceed to pass the following

Order

By acting under Section.255 (2) of Cr.P.C., the accused is convicted and sentenced to undergo simple imprisonment for six months for the offence punishable under Section .14 (1) of the Child Labour (Prohibition and Regulation) Act 1986 and one month for the offence punishable under Section.14 (3)(c) of the above said Act. Both the sentences shall run concurrently.

The Bail bond executed by the accused and surety bond executed by his surety stand cancelled.

(Judgment dictated by me to the stenographer transcribed and typed by her, corrected, signed and then pronounced by me in the open court on 5.3.2001)

Sd/-

(Chandrashekar U.)

Addl. Civil Judge (Jr. Dn.) & JMFC.,
Tiptur.





Appendix

1. LIST OF WITNESSES EXAMINED ON BEHALF OF PROSECUTION:

PW.1 - Rajagopal.
PW.2 - Mohammed YasooF.

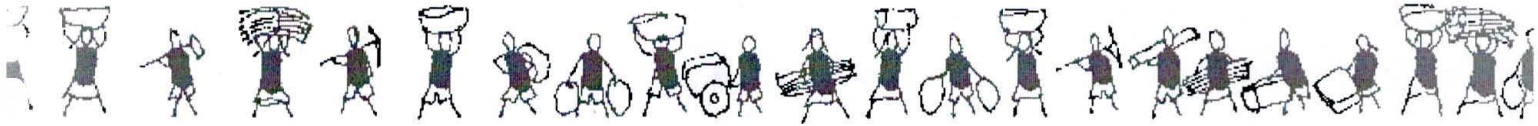
2. LIST OF EXHIBITS MARKED ON BEHALF OF PROSECUTION:

Ex.P.1 - Inspection Report.
Ex.P.2 - Complaint dtd:31.3.2000

3. LIST OF WITNESSES EXAMINED AND EXHIBITS MARKED ON BEHALF OF DEFENCE - NIL

Sd/-
(Chandrashekar U.)
Addl. Civil Judge (Jr. Dn.) & JMFC.,
Tiptur.

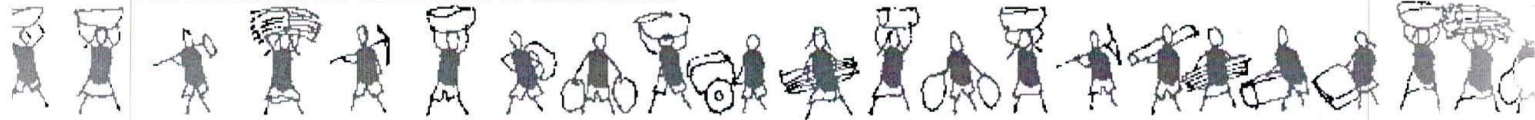




Brief history of Child Labour cases acquitted and the grounds thereof in the jurisdiction of Senior Labour Inspector, IVth Circle, Bangalore.

Sl. No.	Name and address of the accused person	Under Sec. before MMTC - I Mayohall, Bangalore	C.C.No.	Grounds on which acquitted
1.	Sri. Ravichandra Reddy, M/s. Amruth Sagar Veg. Hotel, No.20, Thippa Mudaliar Road, Shivajinagar, Bangalore - 560 051.	Sec.24 of K.S. & C.E. Act. (Inspection dt.12-5-2000 by team filed on 17-06-1000. Master Manje Gowda) 13 years	C.C.No.18242/2000 (No. of hearings 18)	Line of argument was that the accused person was not the employer of the establishment and the person who was present at the time of inspection Sri. Sadashiva gave wrong information that the accused was the employer. Acquitted under 255 (1) of Cr.P.C. on 13-12-2000.
2.	Sri. Mohiuddin Kutty, Employer, Arifa Hotel No.3(68 & 69) New Market Road, Shivajinagar, Bangalore.	Before MMTC - I, Mayo Hall, Bangalore-1. Sec.24 of K.S.&C.E. Act inspection 26-5-2000 by team filed on 27-6-2000 (Child Manikantan - 13 years)	C.C.No.18243/2000 No. hearings : 15	Acquitted on 26-11-2001 under Sec.255(1) of Cr.P.C. Grounds : 1) Want of Medical Certificate. 2) Want of Independent Witnesses.
3.	Sri. Nayeem, Employer, M/s. New Taj Auto Centre, No.149, H.K.P. Road, Shivajinagar, Bangalore.	MMTC - I Inspection date : 29-1-2000 by team. (Master Arif - 11 years)	C.C.No.21597/2000 No. of hearings : 27	Acquitted on same grounds.





3.18 Determination of Age of the Child

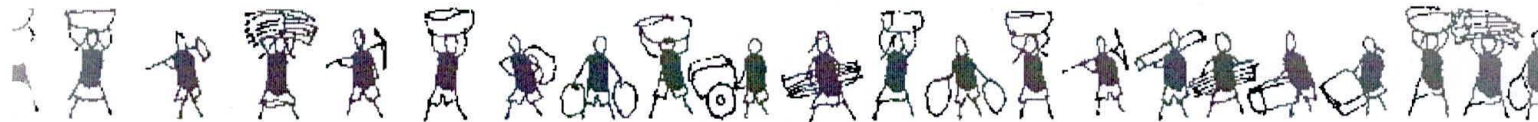
In any child labour related enforcement and cases the age of the child is very critical to substantiate the fact that it (offence) constitutes child labour. In India for most of the laws the prescribed age for work is only after 14 years of birth. Children below the age of 14 years have been prohibited to do any hazardous work in occupations and processes listed in the schedule of the Child Labour (Prohibition and Regulation) Act 1986. In the Karnataka Shop and Commercial Establishment Act also children below 14 years of age are prohibited from working in the shops and commercial establishments in the notified areas. Please see the relevant chapter, where various statutes define child labour.

In all cases of enforcement the team should pay special attention to ascertain the age of the child workers. The NGO representative in the team must befriend the child and build a rapport with him. The representative must explain to the child about his rescue and rehabilitation and should put in extra efforts to ascertain from the child his actual age. In the course of discussion with the child he should try to ascertain if the child had earlier studied in any school and find out the exact address of the school if possible. He should also try to find out if the child was issued an age certificate from the revenue office in the village (or a Municipal Office in the Urban Area). If the child had an age certificate or if he had gone earlier to any school and the said school and the village of the child is nearby, one of the team members should be sent there to obtain the birth certificate of the child either from the school or the revenue office (Municipal Office). The birth certificate is the most reliable document to establish the age of the child. In case the school or the child's village is far away or in some other state, appropriate correspondence may be made through the Deputy Commissioner (or Labour Officer) with the School Teacher, Village Accountant, Municipal Officer, or the Collector of that District to obtain such a certificate.

When the birth certificate is not available from any source, then as per the Child Labour (P&R) Act 1986 assistance of an authorized doctor may be obtained to ascertain the child's age. The authorized government doctors of Health Department or ESI have been instructed by their respective department heads to grant such certificates expeditiously on priority basis. In the cases when proper cooperation of the doctor is not forthcoming, each case should be brought to the notice of the Deputy Commissioner, who in turn may direct such a doctor to give the necessary certificate or refer the case to the Government to take appropriate action against the doctor.

The doctor ascertains the age based on examining the various growth parameters of the child based on a physical examination. Sometimes he may have to do an X-ray or other clinical tests to ascertain these. In all such cases if some expenditure has to be borne initially, the same can be provided by the NCLP or the Hospital Development Fund or any other fund at the disposal of the DC or CEO, ZP. But the same can be recovered later





from the employer as per the law. The doctor's certificate sometimes gives only a certain level of probable age. In such cases if there is a doubt as to whether the child is below 14 years or not, the said certificate should not be relied as a proof of age. In such cases actual age certificate is essential from the school record or the records of the village Registrar of Births and Deaths (or a Municipal authority as the case may be).

In the Child Labour (Prohibition and Regulation) Act, 1986 Section 10 states, 'Dispute as to age – If any question arises between an inspector and the occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

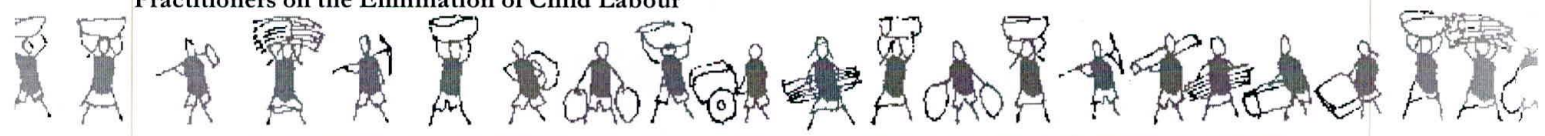
The employer under section 11 is bound to maintain a register of working children wherein he should clearly indicate the age of the child. Failure to do so also attracts nominal penalty.

The Child Labour (P&R) Karnataka Rules, 1997 Section 4 gives in detail the procedure regarding the 'Certificate of Age'.

1. Every adolescent in employment in any of the occupations specified in part "A" of the Schedule or in any workshop, wherein any of the processes specified in part "B" of the Schedule is carried on, shall produce a certificate of age from the "Medical Authority" whenever required to do so by an Inspector.
2. Every employer shall also maintain similar certificate of age in respect of all young persons in employment in any other occupation or workshop or establishment where a child is allowed to work and where his or her conditions of work is regulated as per Part-III of the Act and shall be produced whenever required by the Inspector.
3. The certificate of age referred to in sub-rule (1) shall be, in Form-B.
4. The charges payable to the Medical Authority for the issue of certificate of age under sub-rule (1) shall be the same as specified by the State Government for the Medical Boards, in this behalf.
5. The charges payable to a Medical Authority shall be borne by the employer of the young persons whose age is under question.



Explanation: For the purpose of this rule, "Medical Authority" means a Government Medical Officer not below the rank of an Assistant Surgeon of a District Hospital or a Medical Officer of equivalent rank employed in any other Government Hospital or Employees' State Insurance Hospitals or Dispensaries.



Form B
(Certificate of Age)
[See Rule 17(2)]

Certificate No.

I hereby certify that I have personally examined (name)
Son/Daughter of residing at
..... and that he/she has completed his/her fourteenth year
and his/her age, as nearly as can be ascertained from any examination, is
..... years (completed).

His/her descriptive marks are

Thumb impression/signature of child

Place Medical Authority
Date Designation

Hence it is clear that ultimately for obtaining a Child's Age from a medical practitioner, the cost can be recovered from the employer. But to expedite the case it is essential that initially the cost may be paid from the NCLP.

In case of Karnataka Shops & Commercial Establishment Rules, 1963, Section 22 prescribe: Ascertainment of age by the Inspector: An Inspector may require an employer to produce a certificate of age from a registered medical practitioner in respect of any employee such certificate shall be in form 'J'.

Form J
[See Rule 22]
Form of Certificate

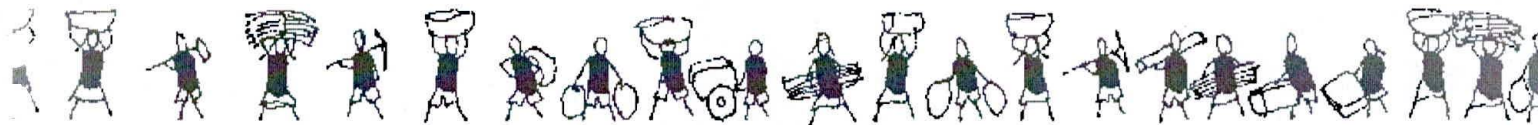
I hereby certify that I have personally examined (name)
..... son/daughter of Residing at
..... and that he/she has completed his/her
twelfth/seventeenth year.

Description marks are

Thumb impression or signature Medical
Practitioner

But in all such cases for the purpose of effective and reliable prosecution the Inspector must first try to collect and use age certificate from the school or the registrar of births and deaths (in urban area Municipal Authorities and Rural areas the Village Accountant). As a last resort in cases where these are not available Doctor's Certificate may be used.





3.19 Understanding and Communicating with the Vulnerable Child

Communication is a two way process, it includes:

- An effort to understand the thoughts and feelings of others.
- Reciprocating/responding in a way that is helpful to the recipient.

The above process indicates that to communicate well, one needs to have:

- Listening and observation skills.
- Skills to express your own idea and feeling in a way that it is clearly understood by the target audience.

When face someone who is under stress, who is upset, and is looking for support to overcome the hard situation, especially children in difficult circumstances, we have to carefully plan as to how we can communicate and respond in the best possible way.

This chapter deals briefly as to how an adult, teacher or social worker should communicate with children in need and how to encourage such children to communicate and express their own feelings and predicament.

3.19.1 Communication and Children

At the Residential Bridge Centre, the age group of children varies from 8yrs plus to 14 yrs, coming from various socio-cultural and economic backgrounds. The RBC will have children of both the genders and also from various religious and caste groups.

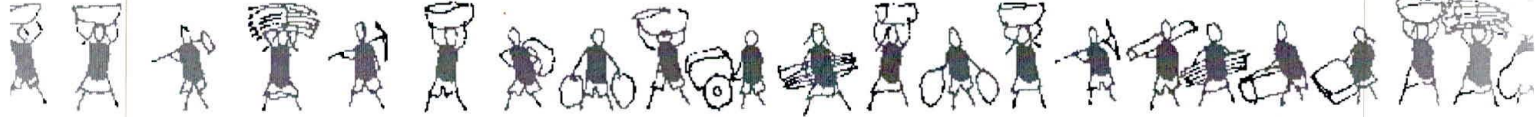
The life of the child is mostly centered around the family and the community. The physical, emotional and mental development of a child depends upon the attention and care s/he receives from the immediate family and the community. The development of language, ability to express his/her thoughts, views, and feelings depend largely upon the support and interaction with their parents, siblings, neighbours and community members.

In majority of the communities, the children soon build a network of relationships with individuals of both the genders of varied ages. Apart from interacting and talking with the immediate family, they also communicate with the varied members of the society.

3.19.2 The Value of Communication

Communicating with others forms the basis for relationships. Communication can be through verbal, written or nonverbal expressions. Sharing enables to overcome many difficulties. Some of the important aspects of communication are:





Moral support and someone to confide in

There are thousands of children who are in difficult circumstances who need moral and physical support. Children who are on the streets, who are working, children from broken families etc., need the support and advice of an adult to overcome the situation. An adult who is interacting with such children needs to build the confidence level of the child who is in distress. Many children are subjected to sexual, mental and physical abuse; torture and exploitation. These children need someone in whom they can confide so that their pain and anguish can be reduced to a certain extent.

The social worker/adult can enable the child to share his/her feelings through drawings, story telling, games, performing arts, group interaction, or one to one discussion. The social worker/adult can share their own experiences to enable children to speak without any fear and inhibition.

Positive appreciation

Coming to terms with trauma and trying to overcome those traumatic experiences, is most important for the child. The persons working with such children need to keep in mind the following points to enable the children to overcome the traumatic experiences.

- Distance or separate them from the painful feelings;
- Give a different viewpoint on what has happened to them, and show numerous case studies showing that others have also faced similar problems;
- Along with the child and with a group of children try to resolve the child's current problems;
- Promote positive thinking and positive appreciation;
- Many of the traumatic experiences of children can be resolved through group work and with the support of children who had similar experiences. Moreover, many a time the interaction within their own group helps children to overcome the negative experiences very quickly and this process also helps in building a positive bond of friendship within the group.

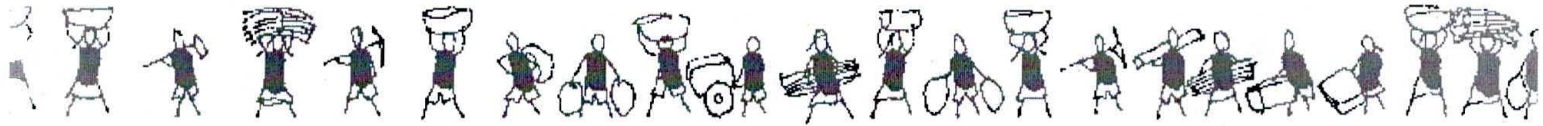
3.19.3 The importance of different kinds of Communication

Children express themselves through play, drawings, modeling, music, singing, talking, crying, being in solitude, dancing and writing. Talking helps them to regain confidence, and also helps them in dealing with difficulties. Children in difficult circumstances need opportunities to live a normal life.

It is very important for the persons working with children to be aware of the following guidelines, in order to help children to communicate effectively and enable them to overcome their difficulties:

- It is essential to have eye contact and observe the facial expressions of the child
- Should pay attention to what the other person is trying to express
- Be a good listener
- Be aware of non-verbal communication





- Try to communicate in the language the other person is speaking and use local colloquial language if possible
- Always ensure that dialogue with the children will enable the child to ask questions. Never have close ended questions as they will not serve any purpose
- Ensure that the young person with whom you are speaking has understood you

Getting to know each other

Every child that comes to an Education Bridge Center or any institutional set-up comes with experiences that are unpleasant. Employed and exploited, from broken families with painful existence, mired in destitution and delinquency, the child who enters an institutional set-up, for a short or long term, does not like the system and most of the time there is anger and loneliness. Hence, it is important to know the children and their needs well. For this there is a need to have some guidelines, which will help the teachers or social workers. They are:

- There should be no hurry to collect details about the child
- Relationship should be built slowly with trust and understanding the child should have confidence in the functionaries. It would be possible only by showing warmth and interest in the child
- Focus should be to respond to the feelings, rather than only facts
- Be creative and use imagination to understand what the child has been through and what his/her feelings are
- While communicating with the child ask direct questions rather than distorted questions. Ease the environment by sharing stories, jokes, and ensure the dialogue is lively and participative

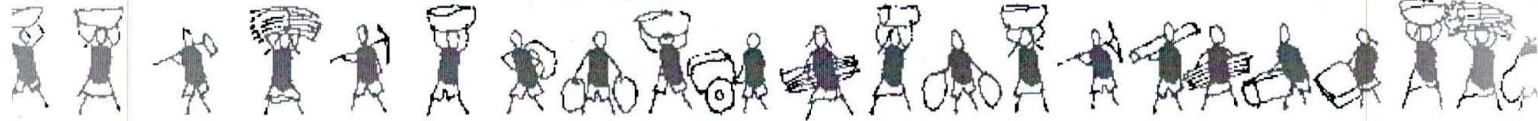
It is also important to know the feelings of the children and their states of mind. Most of them have undergone harsh or stressful experiences. When they communicate their experiences they usually use a different medium to do so, such as talking, showing good or bad behaviour, attitude towards self and others. The teachers, social workers or others need to be very observant to notice their actions, expressions, and use of key words that help to reveal the child's inner feelings that s/he wants to share.

3.19.4 Hindrance in Communication

A child having a happy childhood is able to express his/her feelings uninhibitedly and through various means. It is important to consider the following points that hinder the process of sharing thoughts among children who have had painful experiences:

- Lack of trust by the child and lack of encouragement and negative attitude of the adult who is handling the child.





- It can be impaired by other feelings, such as distrust, sadness, guilt or anger.
- During the first or second meeting the child may not tell the truth. Try to understand, why this might be and accept it as a way of expressing certain feelings. Give space for the child to build trust and confidence in the teacher or social worker.

One of the best ways to improve the skills of communication with the children is to seek the support of your colleagues and request them to observe you while you are with the children and ask them to suggest ways to improve your interaction and communication with the children.

3.19.5 Specific and Realistic Advice

Providing support and advice includes physical comfort and acceptance of feelings. The teacher or social worker needs to accept that feelings of revenge and anger are common, which arises from suffering, humiliation and guilt. Encourage constructive expression of these feelings.

At the same time, assurance should be helpful and realistic, because the assurance and advice interferes with the child's attempts to cope. Hence, when giving advice, keep in mind the following:

- Take sufficient time to understand the problem of the disturbed child
- Possible solutions should be worked together or in a group, which reinforces the child to have trust on more number of persons and the advice should be specific, practical and realistic
- The social worker or teacher should be positive and build confidence in the child and explain the steps to be taken in the future

3.19.6 Talking with the physically challenged children

The physically challenged children have the same needs as other children including the feelings of inferiority and pain. The need of the physically challenged children are love and an opportunity to express themselves; they too seek education and would like take responsibility for self.

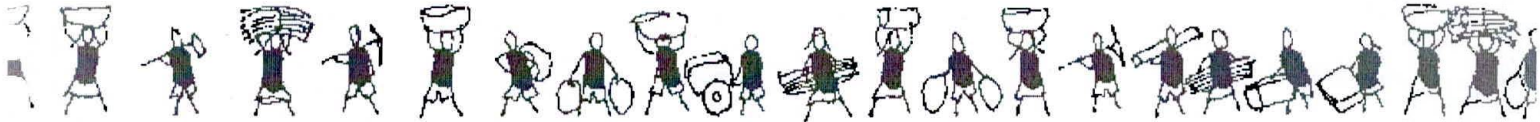
It is necessary to integrate them with the mainstream, for which certain hurdles have to be overcome and many traits encouraged:

- Discrimination and isolation;
- Building their self-esteem, valuing their various abilities;
- Creating opportunities for expression and access to available resources equally.



3.19.7 Working with Groups

In counselling, different methods are adopted to enable the child to overcome trauma, group work is one of them. Most of the time the



child is in the company of friends, where the feelings are shared and they are able to find solutions to their problems on their own.

Group work should enable the child to:

- Share his or her feelings and ideas;
- Develop mutual bonding to provide moral support to each other;
- Accept differences in people;
- Taking responsibility for each other and for the behaviour of the group.

Group work increases trust in others and confidence in self. The adults have an important facilitating role to play in ensuring that the group members do not slide back into a negative loop.

3.19.8 Talking with Family

Family is an important primary unit of society; which nurtures and cares for the child's overall development. The child's well-being is largely dependent on the family. There can be no alternative to a family. All other arrangements are only temporary.

It becomes difficult for parents to care for children when normal life has been disrupted by man-made conflicts or natural disasters; social vices, political conflict or adverse economic situations. Tension makes adults irritable, impatient, angry and guilty, due to which they are unable to hold the family together and its consequences for the child is disastrous.

Communicating with parents or other family members is equally challenging and requires similar skills as those for talking with children. Maturity is essential to understand the situation of the family and relationships within the family.

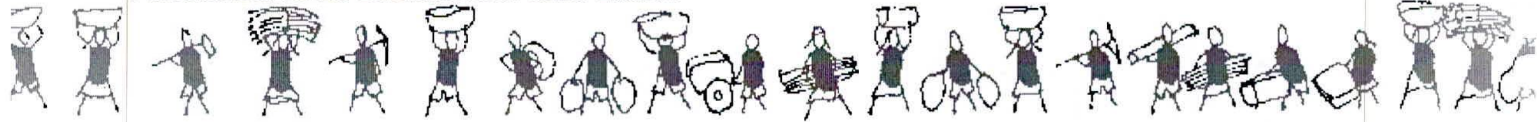
Some of the points to understand the family of the children are:

- Families have varying beliefs, priorities and ways of doing things. To share any facts or feelings will take a longer period if the worker is not warm and courteous.
- Often families prefer to talk with someone from the same community whom they can trust; alternatively, they prefer an outsider (who can be trusted) as this seems more private and criticism about not conforming to the community norms can also be avoided. This outsider can be a teacher or a social worker.

The dialogue with the family can vary depending upon the situation, it is vital for the social worker or a teacher to be aware of various pressures that the family may be undergoing. In our context socio-economic situations forces many parents to send the children to work and conduct their early marriage.

Interaction and dialogue needs to be centered on the family, its health, work,





relationship, conflict with the neighbours, education of the children, and other socio-economic aspects.

For interacting with the family and to gain the confidence of the family, the social worker or teachers need to have good communication skills, be well behaved; acquire good counseling skills and should be a role model. The person should also be firm while dealing with the problems of the family and children in distress.

3.19.9 Organizing support for yourself and your staff

While working with children or in the field, the motivation level does not remain constant due to factors such as emotional status, physical well being, family situations, work environment and the situation of the people with whom you work. Most often, being engrossed in our work, we are unable to think about self and neither are we aware as to what kind of support we need to handle our work environment.

Most often we become physically and emotionally burnt out or lose interest in our work and become less effective. As we are emotionally burnt out, a series of physical complaints and illness become common and we keep off from work.

In order to overcome stress and emotional burn out, one needs to learn to relax and enjoy the work. The work should not be carried out due to compulsion, which will only create unnecessary problems for the children with whom we are working.

What can be done to be more effective in our work with children?

Our state of mind

Each one of us should know that an individual cannot do everything or resolve all problems. We should find other people with whom we can share some of the responsibility. Though it is essential that there is continuity in the care of the children, we should create avenues for the children to approach other colleagues also.

Skill development and Relaxation

Even though we know the work is incomplete, our own need is very important for being effective. Monotonous work will only harm our quality of output. Hence, there is a need for a person to relax or take a short break to do personal work, and go on exposure visits to some other work areas with family. This will renew commitment and energy levels to overcome lethargy and monotonous work routine.

The situation of children and the problems faced by them are unique and peculiar and to handle them one needs to upgrade knowledge and skills regularly.

Attending training is also a form of relaxation and along with that it enhances the person's resolve to be more effective. Hence, inputs should be continuous.





Monitoring and feed back: Regular Staff Meeting

Monitoring meetings help in avoiding tension in the workplace and in the team. Stress and tension at workplace is another reason for burn out. Staff meetings give persons the space to address problems with self and within the team. More importantly, everybody is aware of the work progress and there is continuity even if any staff leaves the team. It provides emotional support.

Feedback from the team members, from children and from the community has to be a regular process. The feed back becomes vital for continuation or change in course if necessary with the various stakeholders. Feedback acts as a check and balance to make us effective in our work with the children and their families.

3.19.10 Spokesperson - Conclusion

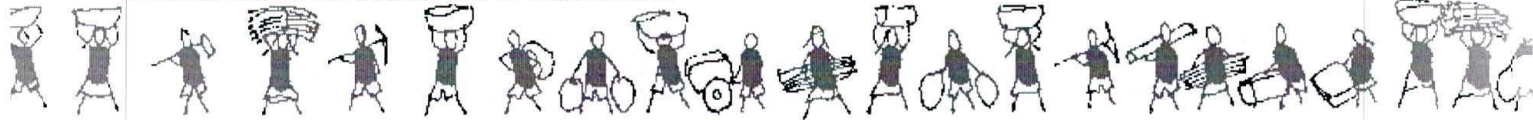
The importance of caring and showing interest in children's wellbeing cannot be emphasized enough. Children need a sympathetic adult to listen to them. If we remember our childhood, we will feel thankful that there were many adults (parents, elder brother or sister, uncle and aunts, neighbours), who helped us by listening and by giving helpful advice. However, there are large numbers of children who are in difficult circumstances, on the streets, in the institutions, and need a person who could be their advocate, friend, philosopher and guide, a "spokesperson" for moral support and to protect their interests, who can counsel them to deal with memories of any traumatic experiences, and who can guide them to regain their self confidence and childhood joyousness.

It is very important to remember that:

- Continuous updating of skills and knowledge will increase the effectiveness of work with children and their families.
- Remember that the children do have positive strengths and good qualities.
- Be positive in your attitude and reinforce their positive aspects.
- Value their viewpoints and suggestions; do not assume you know everything about the children.
- Show warmth, interest and create trust in the child.

For a child in difficult circumstances, the presence of a good and caring adult can build confidence, self-esteem and a sense of worth, to face the world with hope for a dignified life.





3.20 *The Child Labour (Prohibition and Regulation) Act, 1986 and Rules*

THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 AND RULES (Act No. 61 of 1986)

[23rd December, 1986]

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:

Comments

Social and beneficial legislation – Social legislation is designed to protect the interest of a class of society who, because of their economic conditions, deserves such protection. With a view to pass the test of reasonable classification there must exist intelligible differentia between persons or thing grouped together from those who have been left out and there must be a reasonable nexus with the object to be achieved by the legislation.

The Court must strive to so interpret the statute as to protect and advance the object and purpose of enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

PART I

Preliminary

1. **Short title, extent and commencement** – (1) This Act may be called the Child Labour (Prohibition and Regulation) Act, 1986.
 - (2) It extends to the whole of India.
 - (3) The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.

Comment

May and shall – Where the Legislature uses two words “may” and “shall” in two different parts of the same provision, prima facie it would appear that the Legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive. The power of the Court still to ascertain the real intention of the Legislature by carefully examining the scope of statute to find out whether the provision is directory or mandatory remains unimpaired even where both the words are used in the same provision.



In interpreting the provisions the exercise undertaken by the Court is to make explicit the intention of the Legislature which enacted the legislation.

It is not for the Court to reframe the legislation for the very good reason that the powers to “legislate” have not been conferred on the Court.

In order to sustain the presumption of constitutionality of a legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of facts which can be conceived existing at the time of the legislation.

2. Definitions – In this Act, unless the context otherwise requires,

- (i) “Appropriate Government” means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;
- (ii) “Child” means a person who has not completed his fourteenth year of age;
- (iii) “Day” means a period of twenty-four hours beginning at midnight;
- (iv) “Establishment” includes a shop, commercial establishment, work-shop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment;
- (v) “Family” in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;
- (vi) “Occupier”, in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;
- (vii) “Port authority” means any authority administering a port;
- (viii) “Prescribed” means prescribed by rules made under Sec.18;
- (ix) “Week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;
- (x) “Workshop” means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

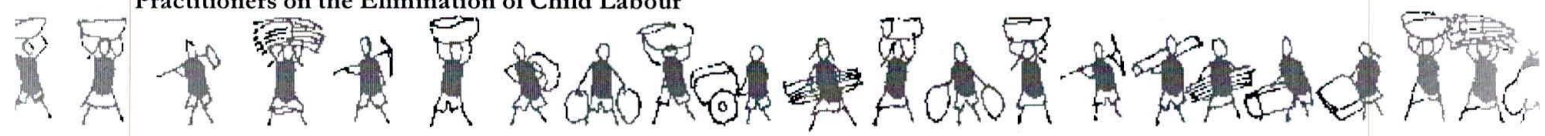
Comments

This section defines the various words and expressions occurring in the Act.

Interpretation of section – The Court can merely interpret the section; it cannot re-write, re-cast or re-design the section.

Ambiguous expression – Courts must find out the literal meaning of the expression in the task of construction. In doing so if the expressions are ambiguous, then the construction that fulfils the objects of the legislation must provide the key to the meaning. Courts must not make mockery of





legislation and should take a constructive approach to fulfill the purpose and for that purpose, if necessary, iron out the creases.

PART II

Prohibition of Employment of Children in certain Occupations and Processes

3. **Prohibition of employment of children in certain occupations and processes** – No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on :

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from, Government.

Comment

This section imposes prohibition on employment of children in the occupation and processes specified in the Schedule.

Proviso – A proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

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

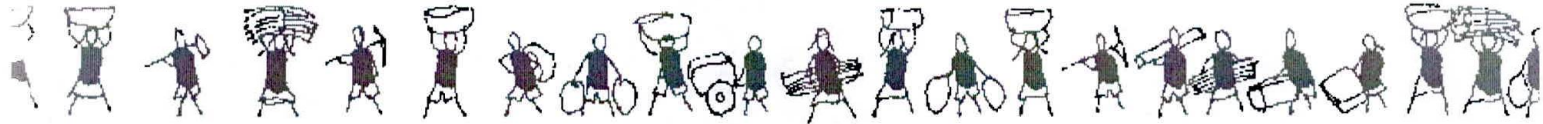
Comment

This section empowers the Central Government to amend the Schedule so as to include therein any occupation or process considered necessary.

Construction of a section – it is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different part of the same section.



5. **Child Labour Technical Advisory Committee** – (1) The Central Government may, by notification in official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereinafter in this section referred to as the Committee) to advise the



Central Government for the purpose of addition of occupations and processes to the Schedule.

- (2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.
- (3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.
- (4) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.
- (5) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed.

Comment

This section empowers the Central Government to constitute the Child Labour Technical Advisory Committee for giving advice in the matter of inclusion of any occupation and process in the Schedule.

PART III

Regulation of Conditions of Work of Children

6. **Application of Part** – The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in Sec. 3 is carried on.

Comment

This section lays down that provisions of this Part shall apply to an establishment in which none of the prohibited occupations or processes is carried on.

7. **Hours and period of work** – (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

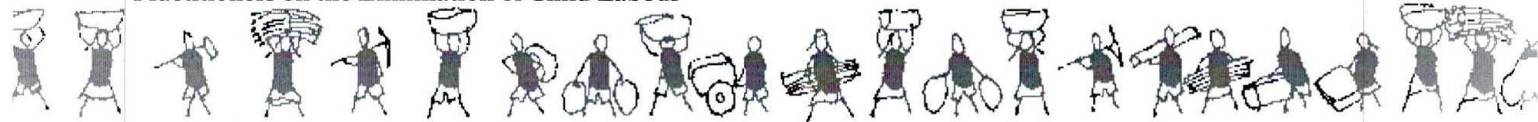
- (2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

- (3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section(2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.



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- (3) No child shall be permitted or required to work between 7 p.m. and 8 a.m.
- (4) No child shall be permitted or required to work overtime.
- (5) No child shall be permitted or required to work in any establishment on any day on which he has already been working in another establishment.

Comment

This section prescribes working hours for a child labour.

Provision if mandatory or directory – The surest test for determination as to whether the provisions is mandatory or directory is to see as to whether the sanction is provided therein.

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

Comment

This section lays down that a weekly holiday should be allowed to every child labour.

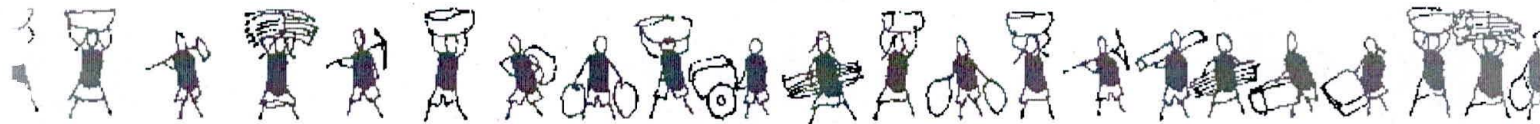
9. **Notice to Inspector** – (1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector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

- (a) The name and situation of the establishment;
- (b) The name of the person in actual management of the establishment;
- (c) The address to which communications relating to the establishment should be sent; and,
- (d) The nature of the occupation or process carried on in the establishment.

- (2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars as are mentioned in sub-section (1).

Explanation – For the purposes of sub-sections (1) and (2), “date of commencement of this Act, in relation to an establishment” means the date of bringing into force of this Act in relation to such establishment.





- (3) Nothing in Secs. 7, 8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any schools established by, or receiving assistance or recognition from, Government.

Comment

This section makes provision for furnishing of information regarding employment of a child labour to Inspector.

Explanation – It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

10. **Disputes as to age** – If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed authority be referred by the Inspector for decision to the prescribed medical authority.

Comment

This section makes provision for settlement of disputes as to age of any child labour.

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

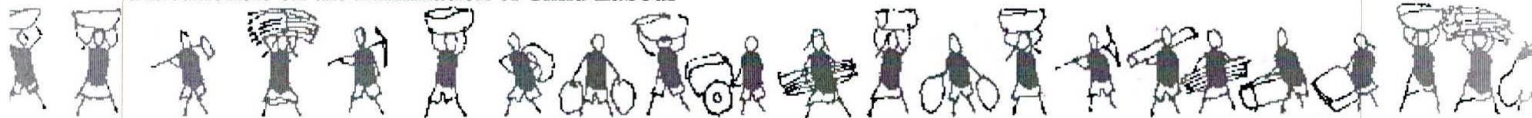
- (a) The name and date of birth of every child so employed or permitted to work;
- (b) Hours and periods of work of any such child and the intervals of rest to which he is entitled;
- (c) The nature of work of any such child; and
- (d) Such other particulars as may be prescribed

Comment

This section makes provision for maintenance of register in respect of child labour.

12. **Display of notice containing abstract of Secs. 3 and 14** – Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Secs. 3 and 14.





Comment

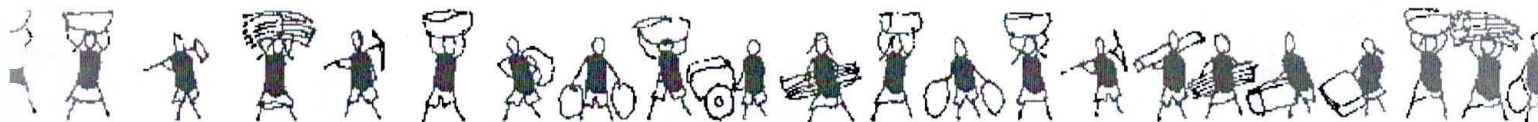
This section makes provision for display of notice in a conspicuous place at every railway station or port or place of work regarding prohibition of employment of child labour, penalties, etc., in the local languages and in the English language.

13. **Health and safety** – (1) The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.
- (2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:
- (a) Cleanliness in the place of work and its freedom for nuisance;
 - (b) Disposal of wastes and effluents;
 - (c) Ventilation and temperature;
 - (d) Dust and fume;
 - (e) Artificial humidification;
 - (f) Lighting;
 - (g) Drinking water;
 - (h) Latrine and urinals;
 - (i) Spittoons;
 - (j) Fencing of machinery;
 - (k) Work at or near machinery in motion;
 - (l) Employment of children on dangerous machines;
 - (m) Instructions, training and supervision in relation to employment of children on dangerous machines;
 - (n) Device for cutting off power;
 - (o) Self-acting machinery;
 - (p) Easing of new machinery;
 - (q) Floor, stairs and means of access;
 - (r) Pits, sumps, openings in floors, etc.;
 - (s) Excessive weight;
 - (t) Protection of eyes;
 - (u) Explosive or inflammable dust, gas, etc.;
 - (v) Precautions in case of fire;
 - (w) Maintenance of buildings; and
 - (x) Safety of buildings and machinery.

Comments

This section lays down that the Government is required to make rules for the health and safety of the child labour.





PART IV Miscellaneous

14. **Penalties** – (1) Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.
- (2) Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.
- (3) Whoever –
- (a) Fails to give notice as required by Sec. 9, or
 - (b) Fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or
 - (c) Fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or
 - (d) Fails to comply with or contravenes any other provisions of this Act or the rules made thereunder;
- shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both

Comments

This section makes provision for penalty for contravention of the provisions of the Act.

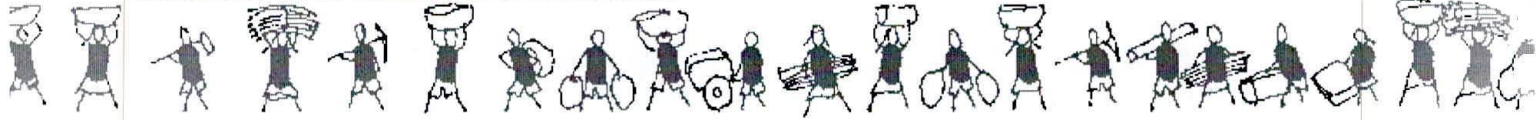
Penalty – Mens rea – Essential – Penalty proceedings are quasi criminal proceedings. Before penalty can be imposed it has to be ensured that mens rea has been established.

Penal provision – Object of – The law in its wisdom seeks to punish the guilty who commits the sin, and not his son, who is innocent.

15. **Modified application of certain laws in relation to penalties** – (1) Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub-section(2), he shall be liable to penalties as provided in sub-sections (1) and (2) of Sec. 14 of this Act and not under the Acts in which those provisions are contained.



- (2) The provisions referred to in sub-section (1) are the provisions mentioned below:



- (a) Section 67 of the Factories Act, 1948 (63 of 1948);
- (b) Section 40 of the Mines Act, 1952 (35 of 1952);
- (c) Section 109 of the Merchant Shipping Act, 1958 (44 of 1958); and
- (d) Section 21 of the Motor Transport Workers Act, 1961 (27 of 1961).

Comment

This section makes provision of penalties under the Act even when any person is found guilty and convicted of contravention of any of the provisions of Sec. 67 of the Factories Act, 1948, Sec. 40 of the Mines Act, 1952, Section 109 of the Merchant Shipping Act, 1958 and Sec. 21 of the Motor Transport Workers Act, 1961.

16. Procedure relating to offences – (1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction.

- (2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.
- (3) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

Comment

This section lays down that any person, police officer or Inspector can make a complaint regarding commission of offences. It also lays down the procedure for disposal of such a complaint.

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

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





Comment

This section empowers the appropriate Government to appoint inspectors for securing compliance of the provisions of the Act. Such Inspector is deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Public servant – Every public officer is a trustee and in respect of the office he holds and the salary and other benefits which he draws, he is obliged to render appropriate service to the State. If an officer does not behave as required of him under the law he is certainly liable to be punished in accordance with law.

18. Power to make rules – (1) The appropriate Government may, by notification in the official Gazette and subject to the condition of previous publication, make rules for carrying into effect the provisions of this Act.

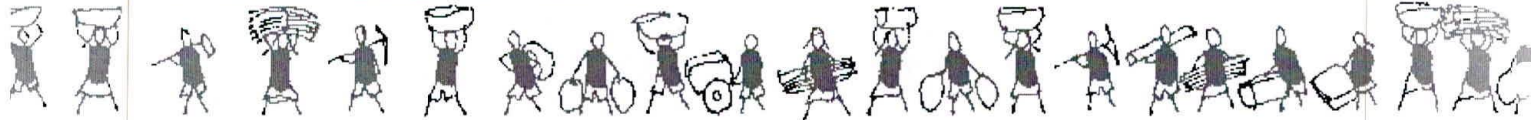
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - (a) The term of the office of, the manner of filling casual vacancies of, and the allowances payable to, the Chairman and members of the Child Labour Technical Advisory Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of Sec.5;
 - (b) Number of hours for which a child may be required or permitted to work under sub-section (1) of Sec. 7;
 - (c) Grant to certificates of age in respect of young persons in employment or seeking employment, the medical authorities which may issue such certificate, the form of such certificate, the charges which may be made there under and the manner in which such certificate may be issued;
Provided that no charge shall be made for the issue of any such certificate of the application is accompanied by evidence of age deemed satisfactory by the authority concerned;
 - (d) The other particulars which a register maintained under Sec. 11 should contain.

Comment

This section empowers the appropriate Government to make rule for carrying out the provisions of the Act.

Rules for effectuating the purpose of the Act – The general power of framing rules for effectuating the purposes of the Act, would plainly authorize and sanctify the framing of such a rule.





19. Rules and notifications to be laid before Parliament or State legislature –

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

Comment

Under this section the rules and notifications are to be laid before Parliament of State Legislature for approval.

- 20. Certain other provisions of law not barred –** Subject to the provisions contained in Sec. 15, the provisions of this Act and the rules made there under shall be in addition to, and not in derogation of, the provisions of the Factories Act, 1948 (63 of 1948), the Plantations Labour Act, 1951 (69 of 1951) and the Mines Act, 1952 (35 of 1952).

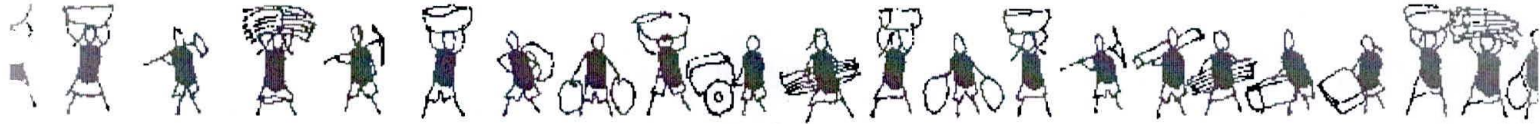
Comment

This section lays down that the provision of this Act shall be in addition to and not in derogation of, the provisions of the Factories Act, 1948, the Plantations Labour Act, 1951 and the Mines Act, 1952.

- 21. Power to remove difficulties –** (1) If any difficulty arises in giving effect of the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:
- Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.



- (2) Every order made under this section shall, as soon as may be after it is made, before the Houses of Parliament.



Comment

Under the provisions of this section the Central Government is empowered to remove difficulties which arise in giving effect to the provisions of this Act.

22. Repeal and savings – (1) The Employment of Children Act, 1938 (26 of 1938) is hereby repealed.

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

Comment

The Employment of Children Act, 1938 (26 of 1938) has been repealed by this section.

Implied repeal – It is well settled that when a competent authority makes a new law which is totally inconsistent with the earlier law and that the two cannot stand together any longer it must be construed that the earlier law had been repealed by necessary implication by the latter law.

23. Amendment of Act 11 of 1948 – In Sec. 2 of the Minimum Wages Act, 1948 –

- (i) for Cl. (a), the following clauses shall be substituted, namely:
 “(a) ‘Adolescent’ means a persons who has completed his fourteenth year of age but has not completed his eighteenth year;
 (aa) ‘Adult’ means a person who has completed his eighteenth year of age;”:
- (ii) after Cl.(b), the following clause shall be inserted, namely :
 “(bb) ‘Child’ means a person who had not completed his fourteenth year of age;”.

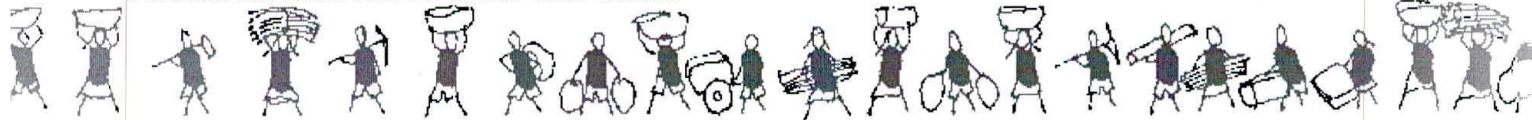
Comment

Under this section Sec. 2 of the Minimum Wages Act, 1948 has been amended so as to define the terms “adolescent”, “adult” and “child”.

24. Amendment of Act 69 of 1951 – In the Plantations Labour Act, 1951

- (a) in Sec.2 in Cls.(a) and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted;
- (b) Sec. 24 shall be omitted;
- (c) in Sec. 26, in the opening portion, the words “who has completed his twelfth year” shall be omitted.





Comment

Under this section, sec. 2 of the Plantations Labour Act, 1951, has been amended so far as it relates to the employment of child labour

25. **Amendment of Act 44 of 1958** – In the Merchant Shipping Act, 1958, in Sec. 109, for the word “fifteen”, the word “fourteen” shall be substituted.

Comment

Under this section Sec. 109 of the Merchant Shipping Act, 1958, has been amended so far as it relates to the employment of child labour.

26. **Amendment of Act 27 of 1961** – In the Motor Transport Workers Act, 1961 in Sec.2, in Cls.(a), and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted.

Comment

Under this section, Sec.2 of the Motor Transport Workers Act, 1961, has been amended so far as it relates to the employment of child labour.

THE CHILD LABOUR (PROHIBITION AND REGULATION) RULES, 1988

G.S.R. 847(E), dated 10th August, 1988 – In exercise of the powers conferred by subsection (1) of Sec. 18 of the said Act, the Central Government, hereby makes the following rules, namely:

Comment

Rule-making power – The general power of framing rules for effectuating the purposes of the Act, would plainly authorize and sanctify the framing of such a rule.

1. **Short title and commencement** – (1) These rules may be called the Child Labour (Prohibition and Regulation) Rules, 1988.

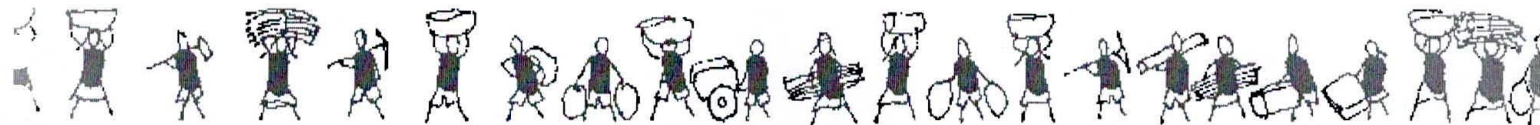
(2) They shall come into force on the date of their publication in the official Gazette.

Comment

These rules have been framed by the Central Government in the exercise of the powers conferred by Sec. 18 (1) of the Child Labour (Prohibition and Regulation) Rules, 1986.



Rules – Whether validly framed – The question whether rules are validly framed to carry out the purposes of the Act can be determined on the analysis of the provisions of the Act.



2. **Definitions** – In these rules, unless the context otherwise requires –

- (a) “Act” means the Child Labour (Prohibition and Regulation) Rules, 1986 (61 Of 1986);
- (b) “Committee” means the Child Labour Technical Advisory Committee constituted under sub-section (1) of Sec. 5 of the Act;
- (c) “Chairman” means the Chairman of the Committee appointed under sub-section (2) of Sec. 5 of the Act;
- (d) “Form” means a Form appended to these rules;
- (e) “Register” means the register required to be maintained under Sec. 11 of the Act;
- (f) “Schedule” means the schedule appended to the Act;
- (g) “Section” means a section of the Act.

Comments

This rule defines the various expressions occurring in the Rules.

Interpretation by a court – The Court can merely interpret the section; it cannot re-write, re-cast or re-design the section.

Otherwise – What amounts to – The words “otherwise” is not to be construed *ejusdem generic* with the word “circulars, advertisement”.

3. **Term of office of the members of the Committee** – (1) The term of office of the members of the Committee shall be one year from the date on which their appointment is notified in the official Gazette;

Provided that the Central Government may extend the term of office of the member of the Committee for a maximum period of two years;

Provided further that the member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

- (2) The members appointed under sub-rule (1) shall be eligible for re-appointment.

Comment

“Shall” cannot be interpreted as “May”



Proviso – In *Abdul Jabbar Butt v. State of Jammu and Kashmir*, it was held that a proviso must be considered with relation to the principal matter to which it stands as a proviso.



4. **Secretary to the Committee** – The Central Government may appoint an officer not below the rank of an Under-Secretary to the Government of India as Secretary of the Committee.

Comment

This rule empowers the Central Government to appoint an officer not below the rank of an Under-Secretary to the Government of India as the Secretary to the Child Labour Technical Advisory Committee.

5. **Allowances to non-official members** – The non-official members and Chairman of the Committee shall be paid such fees and allowances as may be admissible to the officers of the Central Government drawing a pay of rupees four thousand and five hundred or above.
6. **Resignation** – (1) A member may resign his office by writing under his hand addressed to the Chairman.
(2) The Chairman may resign his office by writing under his hand addressed to the Central Government.
(3) The resignation referred to in sub-rule (1) and sub-rule (2) shall take effect from the date of its acceptance or on the expiry of thirty days from the date of receipt of such resignation, whichever is earlier, by the Chairman or the Central Government, as the case may be.
7. **Removal of Chairman or member of the Committee** – The Central Government may remove the Chairman or any member of the Committee at any time before the expiry of the term of office after giving him a reasonable opportunity of showing cause against the proposed removal.

Comment

This rule lays down procedure for removal of Chairman or member of the Committee by the Central Government.

8. **Cessation of membership** – if a member –
- (a) Is absent without leave of the Chairman for three or more consecutive meetings of the Committee; or
(b) Is declared to be of unsound mind by a competent court; or
(c) Is or has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or





- (d) Is, or at any time, has been adjudicated insolvent or has suspended his debts or has compounded with his creditors, shall cease to be a member of the Committee.

Comment

This rule deals with the matter relating to cessation of membership.

9. **Filling up of casual vacancies** – in case a member resigns his office under rule 6 or ceases to be a member under rule 8, the casual vacancy thus caused shall be filled up by the Central Government and the member so appointed shall hold office for the unexpired portion of the term of his predecessor.

Comment

This rule empower the Central Government to fill up casual vacancies and it lays down that the member so appointed shall hold office for the unexpired portion of the term of his predecessor.

10. **Time and place of meetings** – The Committee shall meet at such times and places as the Chairman may fix in this behalf.
11. **Notice of meetings** – The Secretary to the Committee shall give at least seven days notice to every member of the Committee of the time and place fixed for each meeting along with the list of business to be transacted at the said meeting.
12. **Presiding at meetings** – The Chairman shall preside at every meeting of the Committee at which he is present; if, however, the Chairman is unable to attend a meeting, any member elected by the members present among themselves shall preside at the meeting.

Comment

“Shall” – It is well-known principle that in the interpretation of statutes that where the situation and the context warrants it, the word “shall” used in a section or rule of a statute has to be construed as “may”.

13. **Quorum** – No business shall be transacted at a meeting of the Committee unless atleast three members of the Committee other than the Chairman and the Secretary are present:

Provided that at any meeting in which less than three of the total members are present, the Chairman may adjourn the meeting to a date as he deems fit and inform the members present and notify other members that the business of the scheduled meeting shall be disposed of at the adjourned meeting irrespective of the quorum and it shall be lawful to dispose of the business





at such adjourned meeting irrespective of the member of members attending the meeting.

Comment

Scope of proviso – The scope of a proviso is well settled. In *Ram Narain Sons Ltd. V. Asstt. Commissioner of Sales Tax*, it was held :

“It is a cardinal rule of interpretation that a proviso to a particular provision of statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.”

14. **Decision by majority** – All questions considered at a meeting of the Committee shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairman, or in the absence of Chairman, the member presiding at the meeting, as the case may be, shall have a second or casting vote.

Comment

This rule lays down that the matters considered by the Committee in its meeting should be decided by a majority vote of the members present. The rule further lays down that the Chairman or in his absence the member presiding at the meeting shall have a casting vote.

15. **Sub-Committees** – The Committee may constitute one or more Sub-Committees, whether consisting only of members of the Committee or partly of members of the Committee and partly of other persons as it thinks fit, for such purposes, as it may decide and any Sub-Committee so constituted shall discharge such functions as may be delegated to it by the Committee.

16. **Register to be maintained under Sec. 11 of the Act.** – (1) Every occupier of an establishment shall maintain a register in respect of children employed or permitted to work, in Form A.

- (2) The register shall be maintained on a yearly basis but shall be retained by the employer for a period of three years after the date of the last entry made therein.

Comment

Under this rule every occupier of an establishment is required to maintain an yearly register showing the children employed or permitted to work and to retain such registers for a period of three years.



17. **Certificate of age.** - (1) All young persons in employment in any of the occupations set-forth in Part A of the Schedule or in any workshop



wherein any of the processes set forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector.

- (2) The certificate of age referred to in sub-rule (1) shall be issued in Form 'B'.
- (3) The charges payable to the medical authority for the issue of such certificate shall be the same as prescribed by the State Government or the Central Government, as the case may be for their respective Medical Boards.
- (4) The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question.

Explanation - For the purposes of sub-rule (1), the appropriate "Medical authority" shall be Government medical doctor not below the rank of an Assistant Surgeon of a District or a regular doctor or equivalent rank employed in Employees' State Insurance dispensaries of hospitals.

Comment

Explanation - It is not well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain and clarify certain ambiguities which may have crept in the statutory provision.





FORM A
[See Rule 16(1)]

Year.....

Name and Address of employer.....

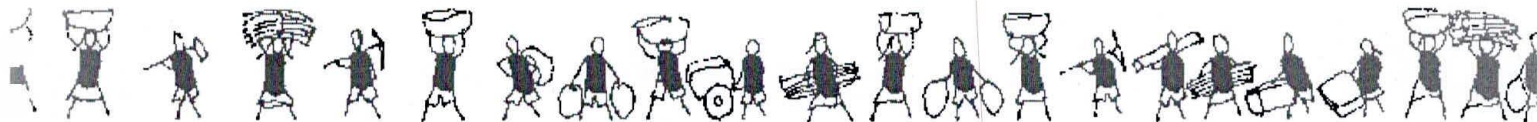
Place of work.....

Nature of work being done by the establishment

Sl. No.	Name of Child	Father's Name	Date of Birth	Permanent Address	Date of joining the establishment
1	2	3	4	5	6

Nature of Work on which employed	Daily hours of work	Intervals of rest	Wage paid	Remarks
7	8	9	10	11





FORM B

(Certificate of Age)

[See Rule 17 (2)]

Certificate No.....

I hereby certify that I have personally examined
 (name.....) Son/daughter of
 residing
 at..... and that he/she has completed his/her
 fourteenth year and his/her age, as nearly as can be ascertained from my examination
 is.....years (Completed).

His/Her	descriptive	marks
Are.....
.....
.....

Thumb-impression/signature of child.....

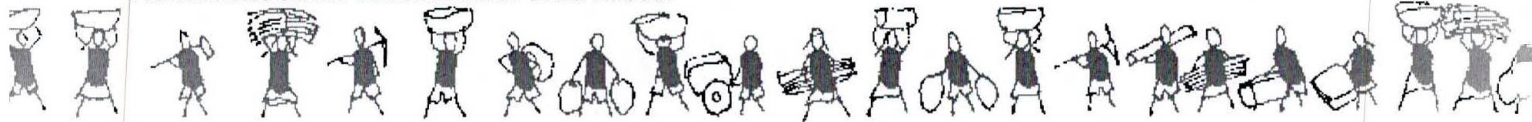
Place
 Date.....

Medical Authority
 Designation

Supplement
The Child Labour (Prohibition and Regulation) Act, 1986

S.O. 333(E), dated 26th may, 1993 – in exercise of the powers conferred by sub-section(3) of Sec.1 of the Child Labour (Prohibition and Regulation) Act, 1986 (61 of 1986), the Central Government hereby appoints the 26th day of May, 1993 as the date of which the provisions of Part III of the said Act shall come into force in respect of all classes of establishments, throughout the territory of India, in which none of the occupations and processes referred to in Sec. 3 of the said Act is carried on.





THE SCHEDULE

(See Sec. 3)

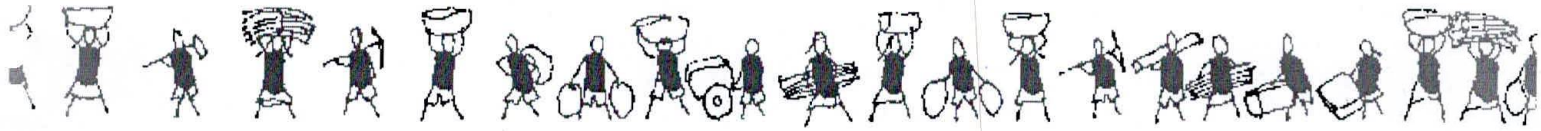
PART A

Occupations

Any occupation concerned with: -

- (1) Transport of passengers, goods or mails by railways;
- (2) Cinder picking, clearing of an ash pit or building operation in the railway premises;
- (3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train;
- (4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
- (5) A port authority within the limits of any port;
- * (6) Work relating to selling of crackers and fireworks in shops with temporary licenses;
- # (7) Abattoirs/Slaughter House;
- \$ (8) Automobile workshops and garages;
- (9) Foundries;
- (10) Handling of toxic or inflammable substances or explosives;
- (11) Handloom and power loom industry;
- (12) Mines (underground and under water) and collieries;
- (13) Plastic units and fiberglass workshops;



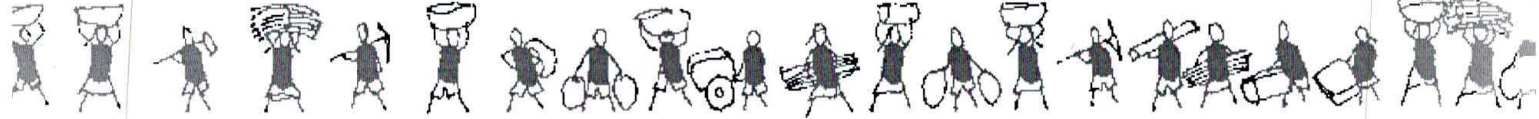


PART B

Processes

- (1) Beedi-making.
- (2) Carpet-weaving.
- (3) Cement manufacture, including bagging of cement.
- (4) Cloth printing, dyeing and weaving.
- (5) Manufacture of matches, explosives and fire-works.
- (6) Mica-cutting and splitting.
- (7) Shellac manufacture.
- (8) Soap manufacture.
- (9) Tanning.
- (10) Wool-cleaning.
- (11) Building and construction industry.
- * (12) Manufacture of slate pencils (including packing).
- * (13) Manufacture of products from agate.
- * (14) Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.
- # (15) "Hazardous processes" as defined in Sec. 2 (cb) and 'dangerous operation' as notice in rules made under section 87 of the Factories Act, 1948 (63 of 1948)
- # (16) Printing as defined in Section 2(k) (iv) of the Factories Act, 1948 (63 of 1948)
- # (17) Cashew and cashewnut descaling and processing.
- # (18) Soldering processes in electronic industries.
- \$ (19) 'Aggarbatti' manufacturing.
- (20) Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting.
- (21) Brick kilns and Roof tiles units.
- (22) Cotton ginning and processing and production of hosiery goods.
- (23) Detergent manufacturing.
- (24) Fabrication workshops (ferrous and non ferrous)
- (25) Gem cutting and polishing.
- (26) Handling of chromite and manganese ores.
- (27) Jute textile manufacture and coir making.
- (28) Lime Kilns and Manufacture of Lime.
- (29) Lock Making.
- (30) Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of lead

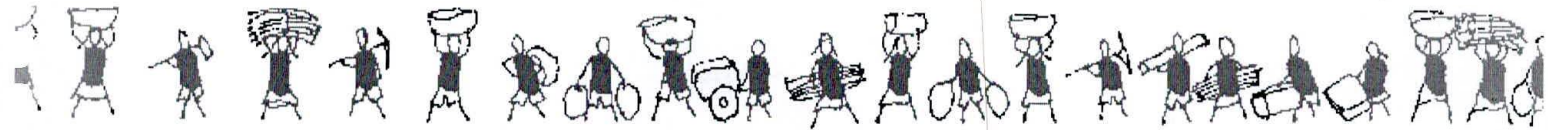




paint, burning of lead in enameling workshops, lead mining, plumbing, cable making, wiring patenting, lead casting, type founding in printing shops. Store type setting, assembling of cars, shot making and lead glass blowing.

- (31) Manufacture of cement pipes, cement products and other related work.
- (32) Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products.
- (33) Manufacture of dyes and dye stuff.
- (34) Manufacturing or handling of pesticides and insecticides.
- (35) Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry.
- (36) Manufacturing of burning coal and coal briquettes.
- (37) Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather.
- (38) Moulding and processing of fiberglass and plastic.
- (39) Oil expelling and refinery.
- (40) Paper making.
- (41) Potteries and ceramic industry.
- (42) Polishing, moulding, cutting, welding and manufacturing of brass goods in all forms.
- (43) Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting.
- (44) Saw mill – all processes.
- (45) Sericulture processing.
- (46) Skinning, dyeing and processes for manufacturing of leather and leather products.
- (47) Stone breaking and stone crushing.
- (48) Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.
- (49) Tyre making, repairing, re-treading and graphite beneficiation.
- (50) Utensils making, polishing and metal buffing.
- (51) 'Zari' making (all processes)'.
@ (52) Electroplating;
(53) Graphite powdering and incidental processing;
(54) Grinding or glazing of metals;
(55) Diamond cutting and polishing;
(56) Extraction of slate from mines;
(57) Rag picking and scavenging.

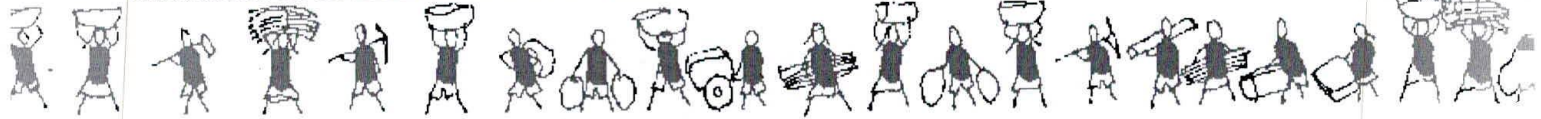




- a. For item (2), the following item shall be substituted, namely:- “(2) Carpet weaving including preparatory and incidental process thereof”;
 - b. For item(4), the following item shall be substituted, namely:- “(4) Cloth printing, dyeing and weaving including processes preparatory and incidental thereto”;
 - c. For item (11) the following shall be substituted, namely:- “(11) Building and Construction Industry including processing and polishing of granite stones”.
- * Ins. by Notification No. S. O. 404(E) dated the 5th June 1989 published in the Gazette of India, Extraordinary.
- # Ins. by Notification No. S. O. 263 (E) dated 29th March, 1994 published in the Gazette of India, Extraordinary.
- \$ Ins. Sr. No. 8-13 in Part A and Sr. No. 19-51 in Part B by Notification No. S. O. 36 (E) dated 27th January 1999 published in the Gazette of India, Extraordinary.

@ Ins.Sr. No. 52 – 57 part B by Notification No. S.O. 397 (E) dated the 10th May 2001 published in the Gazette of India, Extraordinary.





3.21 *The Child Labour (Prohibition and Regulation) (Karnataka) Rules, 1997*

Notification

Whereas, the draft of the Child Labour (Prohibition and Regulation) (Karnataka) Rules, 1997, was published as required by sub-section (1) of Section 18 of the Child Labour (Regulation and Prohibition) Act, 1986 (Central Act 61 of 1986) in Notification No.LD 30 LBW 96, dated 14th October, 1997, in Part IV, Section 2C(1) of the Karnataka Gazette (Extraordinary) dated 5th May, 1998 inviting objections and suggestions from all persons likely to be affected thereby within thirty days from the date of its publication in the Official Gazette.

Whereas, the said Gazette was made available to the public on 5th May, 1998:

And whereas, no objections and suggestions have been received by the State Government in respect of the said draft rules;

Now, therefore in exercise of the powers conferred by Section 13 and Section 18 of the Child Labour (Prohibition and Regulation) Act, 1986 (Central Act 61 of 1986) the Government of Karnataka hereby makes the following rules, namely:-

1. **Title and commencement:**

- (1) These rules may be called the **Child Labour (Prohibition and Regulation) (Karnataka) Rules, 1998**.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions:** In these rules, unless the context otherwise requires –

- (a) **“Act”** means the Child Labour (Prohibition and Regulation) Act, 1986 (Central Act 61 of 1986);
- (b) **“Form”** means a form appended to these rules;
- (c) **“Register”** means a register required to be maintained under Section 11.
- (d) **“Schedule”** means the Schedule under Section 3 of the Act;
- (e) **“Section”** means a Section of the Act.


3. **Register to be maintained under Section 11 of the Act –**

- (1) Every occupier of an establishment shall maintain a register in Form-A in respect of children employed or permitted to work.
- (2) The register shall be maintained on a yearly basis, but shall be retained by the employer for a period of ten years after the date of the last entry made therein.

4. **Certificate of Age –**

- (1) Every adolescent in employment in any of the occupations specified in part “A” of the Schedule or in any workshop, wherein any of the processes specified in part “B” of the Schedule is carried on, shall produce a certificate of age from the “Medical Authority” whenever required to do so by an Inspector.



- 
- (2) Every employer shall also maintain similar certificate of age in respect of all young persons in employment in any other occupation or workshop or establishment where a child is allowed to work and where his or her conditions of work is regulated as per Part-III of the Act and shall be produced whenever required by the Inspector.
 - (3) The certificate of age referred to in sub-rule (1) shall be in Form-B.
 - (4) The charges payable to the Medical Authority for the issue of certificate of age under sub-rule (1) shall be the same as specified by the State Government for the Medical Boards, in this behalf.
 - (5) The charges payable to a Medical Authority shall be borne by the employer of the young persons whose age is under question.

Explanation – For the purpose of this rule, “Medical Authority” means a Government Medical Officer not below the rank of an Assistant Surgeon of a District Hospital or a Medical Officer of equivalent rank employed in any other Government Hospital or Employees’ State Insurance Hospitals or Dispensaries.

5. **Hours and work of a child** – No child shall be required or allowed to work in an establishment for more than twenty hours in any week and for more than five hours in a day.
6. **Health and Safety of the children in the establishment** –
 - (a) No child shall be required or permitted to work in any of the vicinity of toxic or hazardous substance or in premises where the occupations and processes listed in Part A or B of the Schedule is carried out.
 - (b) No child shall be required or permitted to work in conditions which expose him or her to intense heat.
 - (c) Every child employed in an establishment shall be provided with adequate protective clothing, headgear, mask, gloves and spectacles as the nature of work may require.
 - (d) Every establishment which requires or permits children to remain in the premises during non-working hours shall be provided with adequate rest room facilities to such children.
 - (e) Every room, building or place where as a child is required to work shall be provided with proper ventilation and lighting.
 - (f) Every establishment employing children shall have properly equipped first aid box.
 - (g) Every establishment employing children shall provide latrine and urinal accommodation;
 - (i) Which shall be accessible to the children at all times while they are in the premises;
 - (ii) Which shall be adequately lighted and ventilated;
 - (iii) Which shall not be a place communicating with any work room except through an intervening open space or ventilated open passage;





- (iv) Which shall be maintained in a clean and sanitary condition at all times;
- (h) The employer in any establishment employing children shall ensure that every child employed is;
 - (i) Properly immunized and vaccinated;
 - (ii) Subject to medical checkup periodically atleast once in a year and a medical fitness certificate in Form-C obtained.
- (i) In every establishment, all the inside walls of the rooms and all the ceilings or tops of such rooms whether such walls ceiling or tops be plastered or not and all the passage and staircases shall be lime washed atleast once in a each year dating from the period when last lime washed. All beams, roatters, doors, window frames and other wood work, with the exception on floors shall be either lime washed or colour washed atleast once a year dating from the period when last lime washed; or colour washed or shall be painted or varnished once in seven years dating from the period when last painted or varnished and shall be kept in a clean state.
- (j) No rubbish, filth or debris shall be allowed to accumulate or to remain on any premises in an establishment for more than twelve hours and shall be disposed of in such manner as approved by the Inspector.
- (k) The compound surrounding of every establishment shall be maintained in a clean and sanitary condition.
- (l) The latrines, passages, stairs, hoists, establishment grounds, in so far as the entrance of the said places is not closed, shall, during working hours, be provided with such lighting as well ensure safety of movement of passage through them.
- (m) Every building of an establishment containing more than one storey, shall be provided with at least two sets of star stairs or steps permanently fixed either inside or outside the building, so as to afford direct and unimpeded access from every part of the building to the ground level. Such stairs shall be provided with a suitable and sufficient handrail or other convenient support. In an establishment employing less than forty persons, the Inspector may accept in lieu of a second set of stairs or steps such other means of escapes in case of fire as can reasonably be required in the circumstances of each case.
- (n) Every window or door giving access to an external stair case shall be so arranged as to open immediately from inside.
- (o) No persons shall smoke or use a naked light or cause or permit any such lights to be used, in the immediate vicinity of any inflammable material in any establishment.
- (p) In every establishment effective arrangement shall be made to provide drinking water at suitable points conveniently situated so as to give access for all children employed therein.



7. **Work on or near machinery in motion –**

- (1) No child shall be allowed in any establishment to clean, lubricate or adjust any part of the machinery while that part is in motion or to work between moving parts or between fixed and moving parts of any machinery which is in motion.
- (2) No child shall work on any machine declared to be dangerous unless he has been fully instructed as to the dangerous arising in connection with the machine and the precautions to be observed and has received sufficient training in work at the machine or is under adequate supervision under a person who was through knowledge and experience of the machine.

8. **Prohibition of employment of child near cotton openers –** No child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.

9. **Duties of Inspectors –** The Inspector shall make such enquiry as appear to him to be necessary for the purpose of satisfying himself that the provisions of the Act and rule and any order passed by the Government under the Act, are complied with.

In particular he shall satisfy himself;

- (i) That the registers, records and notice required to be maintained or displayed under the Act or rules are properly maintained or displayed by the concerned;
- (ii) That the intervals of rest and holidays required to be granted or observed under the Act are granted and observed and the limits of hours of work and spread over laid down under the Act are not exceeded;
- (iii) That the provisions or these rules relating to cleanliness, sanitation, lighting and precaution against fire are properly observed;

10. **Repeal and savings –** The Child Welfare (Prohibition and Regulation) (Karnataka) Rules, 1995 are hereby repealed;

Provided that such repeal shall not be affect –

- (a) The previous operations of the said rules or anything duly done or suffered thereunder; or
- (b) Any right, privilege, liability or obligation acquired occurred or incurred under the said rules; or
- (c) Any penalty forfeiture or punishment incurred in respect of any offence committed against the said rules; or
- (d) Any investigation legal proceedings or remedy in respect of such right, privilege, obligation, liability, forfeiture or punishment as aforesaid, and such investigation legal proceedings or remedy may instituted, continued or enforced an any such penalty, forfeiture or punishment may be imposed as if the said rule has not been repealed.





FORMS

FORM "A"
(See Rule 3(1))

Year

Name & Address of Employer

Place of work

Nature of work being done by the Establishment

Sl. No.	Name of Child	Father's Name	Date of Birth	Permanent Address	Date of joining the establishment
1	2	3	4	5	6

Nature of Work on which employed	Daily hours of work	Intervals of rest	Wage paid	Remarks
7	8	9	10	11





FORM "B"
CERTIFICATE OF AGE
(See Rule 4(3))

Certificate No.

I hereby certify that I have personally (name) Son/Daughter of
..... Residing at and that he/she has
completed his/her fourteenth year and his/her age, as nearly as can be ascertained from
my examination, is years (completed).

His/her descriptive marks are
.....

Thus – impression/signature of child

Place:

Date:

Medical Authority
Designation





FORM "C"
MEDICAL FITNESS CERTIFICATE

(See Rule 6(h)(ii))

Proforma

Bio – Data

Name :
Age :
Sex :
Address :
Home :
Place of work :

Present illness
(Chronological order with Duration)

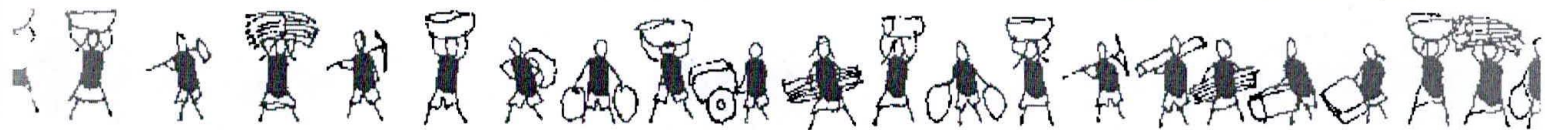
- 1.
- 2.
- 3.

History of present illness
(Origin, Duration and Progress)

Past History :
Similar illness :
Childhood illness :
Infectious diseases :
Past Injuries, accidents :
Operation & Hospital Stay :

Personal History :
Appt. :
Diet :
Bowel :
Micturition :
Sleep :
Substance Abuse :





Family History
Menstrual History

Menarche :
Date of last Menses :
Amount of flow :

Central Physical Examination

1. Built :
- Height :
- Weight :
- Body proportion :
2. Nutrition :
- (specify deficiencies) :
3. Cynmosis :
4. Icterus :
5. Pallor :
6. Lymphadenopathy :
7. Oedema :
8. Skin, Hair and Nails :
9. Vertebral column :
10. Joints :
11. Temperature :
12. Pulse :
13. Blood Pressure :

Systems Examinations

Respiratory System :
Cardio Vascular System :
Abdomen :
Central Nervous System :
Probable Diagnosis
Investigations
Diagnosis
Treatment & Advice
Date of Next Visit







SECTION IV





4.1 Annexure – I

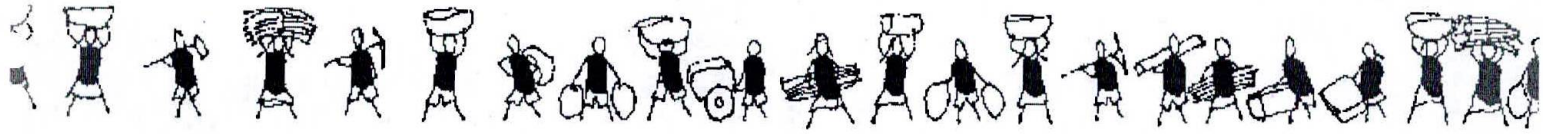
Friendship Band



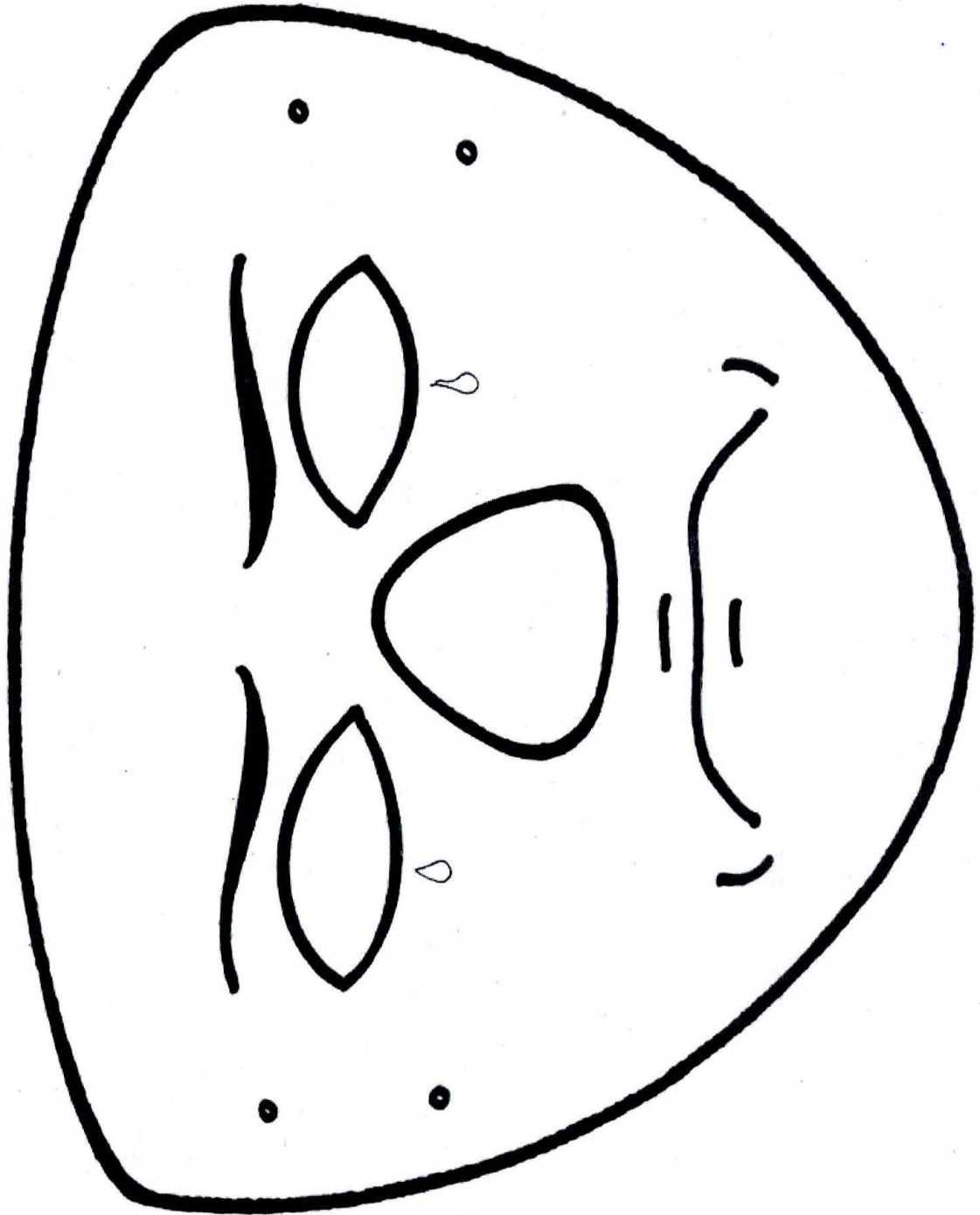
Instruction to use masks

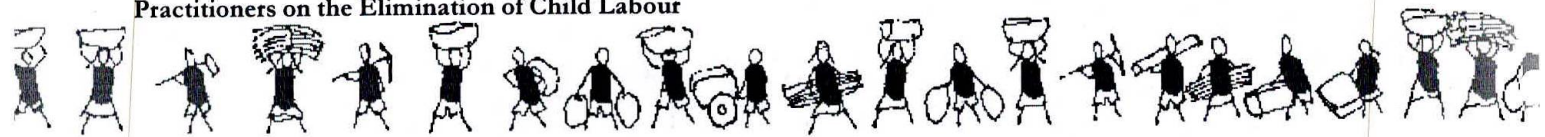
- The masks are life size masks
- Before using the mask, cut out the portion of nose and eyes
- Thread holes are given in the masks
- The masks fit in on any bodies face





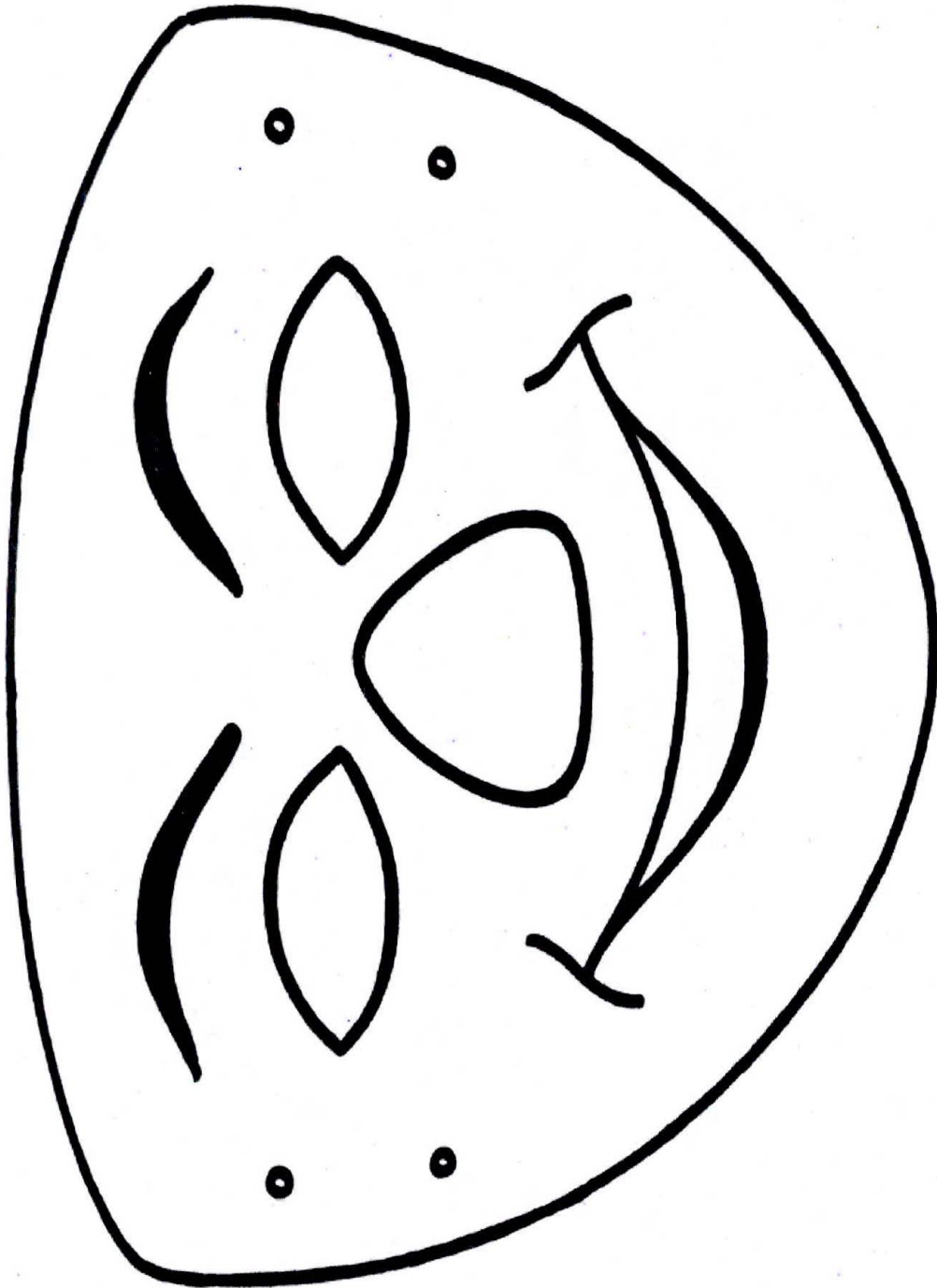
The Mask of Child Labour

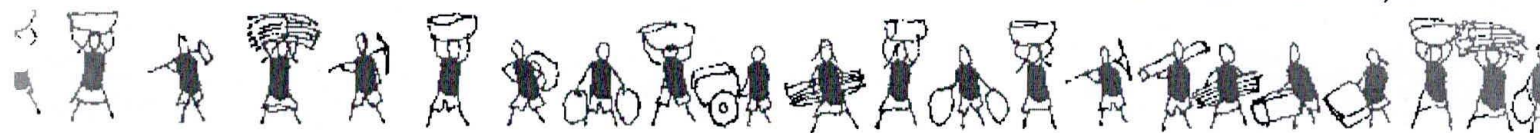




4.2 Annexure – II

The Mask of the Happy Child



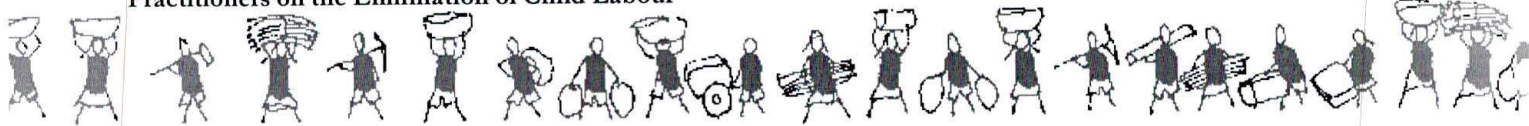


4.3 Annexure - III

Acronyms

SDMC	School Development Management Committee
CBO	Community Based Organizations
ILO	International Labour Organization
IPEC	International Programme for the Elimination of Child Labour
KCLP	Karnataka Child Labour Project
CRC	Convention on the Rights of the Child
PRI	Panchayat Raj Institutions
GP	Gram Panchayath
ZP	Zilla Panchayath
TP	Taluka Panchayath
OHP	Over Head Projector
UT	Union Territory





4.4 Annexure - IV

*A Model Power Point Presentation
(This can be converted into a flip chart in rural areas on full size chart paper)*

CHILD LABOUR

- ★ WHO ARE WE?
- ★ WHY ARE WE WORKING?
- ★ WHAT IS OUR FUTURE?

1

WHO ARE WE?

ILO Says :

- ★ Persons below the age of 18 years, who constantly shoulder responsibility of adults by working under exploitative conditions for low wages and unable to realize its normal physical and mental development.
- ★ Children who are deprived of bright future for want of education and training.
- ★ Children who are kept away from the family physically and emotionally.

2

WHO ARE WE

- ★ Government of Karnataka, Action Plan for the elimination of Child Labour 2007 : Any child out of school is a potential child labour.
- ★ The Child Labour (Prohibition and Regulation) Act 1986, India : A person who has not completed 14 years of age and is working in hazardous occupation and processes specified in the Act

3

Children are Prohibited to work in

★ 57 Processes and

★ 15 Occupations

But they still work in

Primary Sector : Agriculture, livestock, sericulture etc.

Secondary Sector : Manufacturing Brick, Bidi, Agarbathi, Handicrafts, Handloom, Small Factory, Household manufacturing.

Tertiary Sector : Domestic, Vending, Waste Recycling, Prostitution, Construction.

4

Some People classify the work as Hazardous and non hazardous. Is it appropriate?

According to children and their friends :

Every work is hazardous to a child, as it interferes with its education and normal development.

5

Rights and Realities

- ★ Under Child Rights Conventions of UN Children have rights.
- ★ But Child Labourer in reality is unable to enjoy any of his/her rights.

6





Rights and Realities

<i>Rights</i>	<i>Realities</i>
★ All children have a right to education	★ Neither the employer nor the parents see the need to educate the child labour.
★ All children have a right to life.	★ Child Labour always gets the employer's harsh words.

7

Rights and Realities

<i>Rights</i>	<i>Realities</i>
★ All children have a right to express themselves	★ If the child labour complains about hard work his master scolds him for being cheeky.
★ All children have a right to leisure and play	★ Child labour has all work and no play. He cannot even rest when he works in the garages and establishments.

8

Rights and Realities

<i>Rights</i>	<i>Realities</i>
★ All children have a right to live with their parents.	★ The child labourer longs to enjoy his parents' warmth & love.
★ All children have a right to be protected from abuse & neglect.	★ Sometimes the child labourer is beaten up black and blue by the master for the smallest of mistakes.

9

Rights and Realities

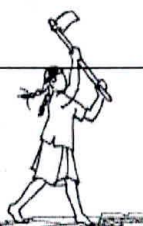
<i>Rights</i>	<i>Realities</i>
★ All children have a right to be protected from work that threatens his/her health, education and development.	★ The child labourer is injured, maimed, killed and stunted for life.
★ All children have a right to be protected from abuse & neglect.	★ The child labourer has to work inspite of being unwell and suffer physical, mental and sexual abuse by the employer.

10

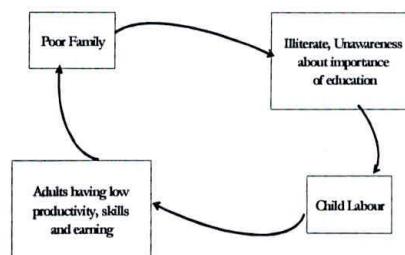
Child Labourer is not the only sufferer

- ★ His family suffers as child labour begets uneducated, unskilled poor individuals.
- ★ The Society and the Nation suffers as the child labour perpetuates illiteracy, poverty and exploitation. Poverty affects social harmony, rule of law and environment.
- ★ It affects wage rate, employment market.

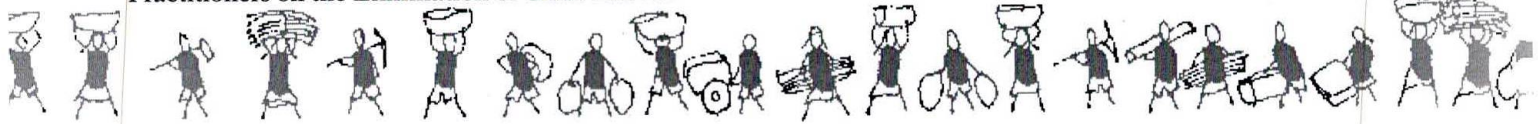
11



Trapped in the Vicious Cycle



12



Investing in the Child

<i>Cost</i>	<i>Benefits</i>
- Improving quality of Education and Health.	- Better educated, healthy skilled and positive minded, peace loving and constructive citizens.
- Elimination of child labour programmes	
- Opportunity cost	

700% return on Investment

13

But Why They Work

<i>Demand Side</i>	<i>Supply Side</i>
- Poor implementation of law.	- Poverty
- Cheap source of disciplined labour	- Indebtedness - Lack of proper education - Migration, calamity - Lack of Decent employment, social security. - Social apathy and mindset

14

But Child Labour can be Eliminated

If

You and I come together

And

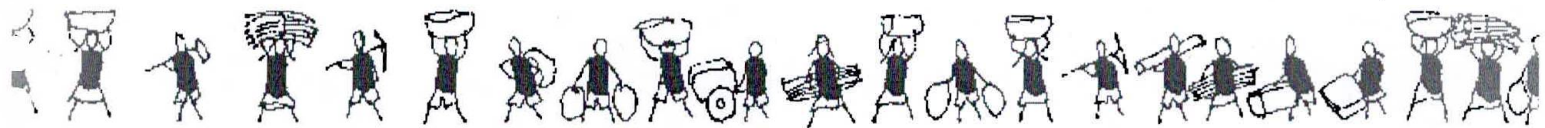
Put up a determined concerted Effort.

15

Thank You

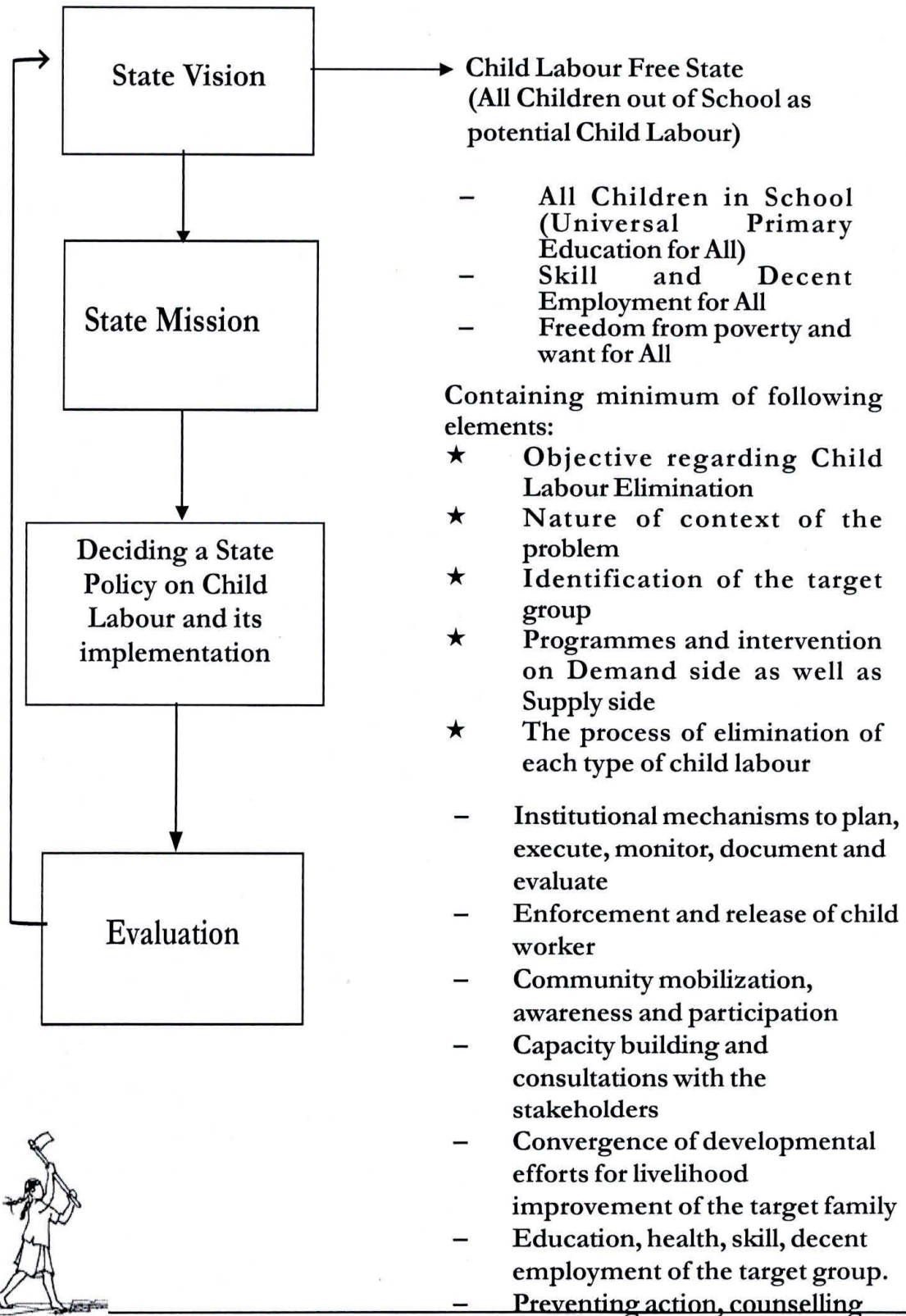
16





4.5 Annexure – V

‘Child Labour’ Free Karnataka: A Vision





4.6 Annexure – VI

General Format of a Complaint

In the Court of the

Complaint Case No.

Police Station limits:

Offence under Section

Date of offence

COMPLAINANT :

State of Karnataka

.....

Represented by the

Senior Labour Inspector / Labour Inspector / Inspector notified under Section 17 of the Child Labour (Prohibition & Regulation) Act, 1986 / Karnataka S&CE Act.

ACCUSED:

ShriDesignation

COMPLAINT

Under the Child Labour (Prohibition & Regulation) Act, 1986 and Karnataka Rules, 1998./Karnataka shops and commercial establishments act 1961

{Contravention of Section of the Act punishable under Section of the said Act}.

1. The Complainant is the Senior Labour Inspector / Labour Inspector / Inspector notified under, section 17 of the Child Labour(Prohibition & Regulation) Act, 1986, vide Notification No. dated / KS&CE Act, 1961;
2. The Accused person(s), namely, (designation) is/are 'Occupier' within the meaning of the word as defined in Section of the Act, having an establishment at
3. The Complainant inspected the above said establishment of the said Accused on At am/pm and found that he/they has/have employed child labour, numbering, and contravened Section.....





Name of child labour	Age	Age proof
(i)		
(ii)		
(iii)		
(iv)		
4.	The Accused is/are, therefore, punishable under Section of the Act.	
5.	Wherefore, the Complainant prays that the matter may be enquired into and dealt with according to law.	
6.	Following are the witnesses who would be relied on:	
	(i)	_____
	(ii)	_____
	(iii)	_____
7.	Following are the documents which are relied on :	
	(i)	Age proof document (a)..... (b)..... (c).....
	(ii)	Spot inspection mahazar
	(iii)	Show cause notice
	(iv)	Replies of the accused to the show cause notice
	(v)	Statement of witnesses or child, parents etc. if any.
	(vi)	Any other relevant document

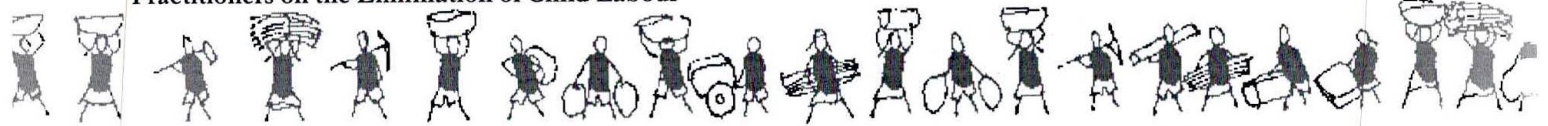
Senior Labour Inspector / Labour Inspector

Place :

Dated :

Note: Strike out whichever is not applicable. This form may be suitably modified as required while filing the complaint by the Inspector. Feed the form to the office computer and filling the necessary details printout may be made. Blank printed forms should never be used, as the other side may take it as non-application of mind etc. as defense.





4.7 Annexure – VII

FORMAT OF A SHOW CAUSE NOTICE:
Under the Child Labour (Prohibition & Regulation) Act, 1986

Whereas your establishment, viz., M/s..... dealing in Occupation/processes, which is included in Part-A/B of Schedule to the above said Act, has been inspected by the undersigned on at a.m./p.m.

And whereas during the course of inspection, it is noticed that you have employed the children aged below 14 years for the works carried out in your establishment and the following children were found working in processes / occupation at the time of inspection:

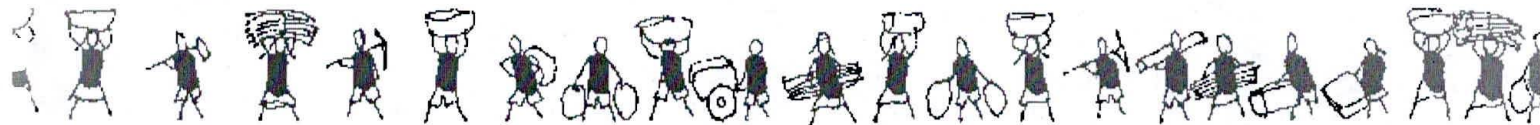
Sl. No.	Name of the child	Age	Age proof
1.			
2.			
3.			
4.			

And thus, you have contravened Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986, punishable under Section 14 of the said Act;

You are aware that as per the provisions of the Child Labour (P&R) Act, 1986, employment of children below the age of 14 years have been prohibited in hazardous occupations/processes and employment of child labour in contravention of the provision of the said Act is an offence punishable under Section 14 of the above said Act.

Following the directives of this Hon'ble Supreme Court in W.P. No.465/1986 dt.10.12.96 between M.C. Mehta & others Vs State of Tamil Nadu others, you are hereby directed to disengage the said child labour immediately and deposit a sum of Rs.20,000/-, per child, totaling Rs..... in the District Child Labour Rehabilitation-cum-Welfare Fund with the DC of District. Failing which it shall be recovered as per law and procedure by the revenue authorities.





Wherefore, you are hereby lawfully directed to show cause as to why you should not be prosecuted before the competent Court of Law for the said contraventions and appropriate amounts recovered from you for the violation of directives of the Hon'ble Supreme Court of India, within **THREE** days from today.

Documents Enclosed

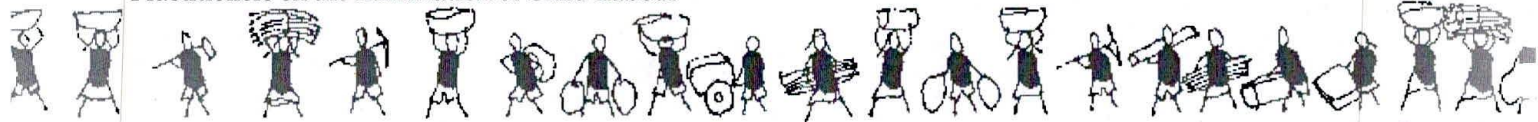
1. _____
2. _____
3. _____
4. _____
5. _____

SENIOR LABOUR INSPECTOR/LABOUR INSPECTOR

To,
M/s _____

* Note: Enclose with this notice copies of the spot inspection mahazar, age proof evidence, statements etc. recorded at the time of the inspection.





4.8 Annexure – VIII

FORMAT OF A SHOW CAUSE NOTICE

Under Section 24 of the Karnataka Shops & Commercial Establishments Act, 1961

Whereas your establishment, viz., M/s dealing in occupation/processes, was inspected by the undersigned on at a.m./p.m.

And whereas during the course of inspection, it is noticed that you have employed children aged below 14 years for the works carried out in your establishment and the following children were found working at the time of inspection:

Sl. No.	Name of the child	Age	Nature of work	Age proof
1.				
2.				
3.				
4.				

As per Section 24 of the provisions of the above said Act, employment of children below the age of 14 years, have been prohibited and employment of child labour in contravention of the provision of the said Act is an offence punishable under Section 30(3) of the said Act. I am satisfied that you have employed the above said child labour in contravention of Section 24 of the said Act.

Wherefore, you are hereby lawfully directed to show cause as to why you should not be prosecuted before the competent Court of Law for the said contraventions within THREE days from today.

Documents Enclosed

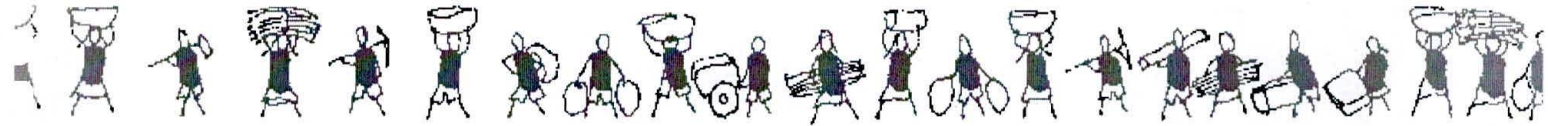
1. _____
2. _____
3. _____
4. _____
5. _____

SENIOR LABOUR INSPECTOR/LABOUR INSPECTOR

To,
M/s _____



Note: Enclosed with this notice, copies of the spot inspection mahazar, age proof evidence, statements etc. recorded at the time of the inspection.



4.9 Annexure – IX

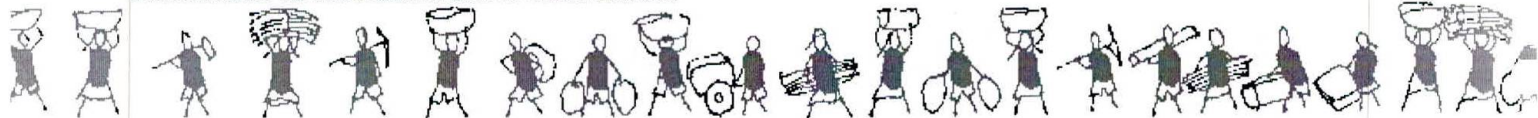
*For training purposes: A Model Format for Spot Inspection Report
(Spot Mahazar)*

Spot Mahazar

Proceeding of the Labour, notified as Inspector under Section-17 of the Child Labour (Prohibition and Regulation) Act 1986 vide notification dated

Name and Designation of the Inspector : _____	
Contact details : _____	
Date and Time of Inspection : _____	
Members of the Inspecting Team	Independent Witness
1. Name, designation, contact details _____ _____ _____	1 Name, contact details etc. _____ _____ _____
2. _____ _____	2 _____ _____
3. _____ _____	
Name and Address of the premises where child was working:	
Name _____	What Sector/Process/Industry _____ _____
Address _____ _____ _____	Hazardous notified under the Child Labour (Prohibition and Regulation) Act 1986 Yes/No (or prohibited under any other law?)
Contact details, Phone etc. (Both Work Place and Residential : _____ _____	
Registration details under Municipal or Labour or any other Enactment _____	





Details of some of the neighbours	
1. Name, Address, Contact details _____	3. Name, Address, Contact details _____
2. Name, Address, Contact details _____	4. Name, Address, Contact details _____

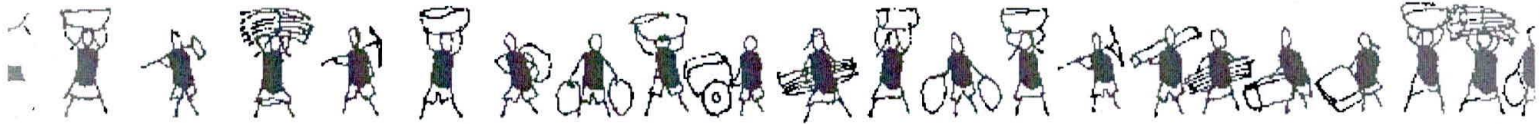
Name of the Child	Work details	Age _____
1. Child-1 Contact details of Parents / Guardian _____	Wage (per day/month)	Age Proof – School Certificate Medical Examination / _____
	Advance taken	_____
2. Child-2 Contact details of Parents / Guardian _____	_____	Age _____
	_____	Age Proof _____
3. Child-3 Contact details of Parents / Guardian _____	_____	Age _____
	_____	Age Proof _____

In the proceeding describe the date and time of the inspection, description of premises, type of business and nature of work of the child, and contact details of the employer. Describe some of the nearby premises, if possible take the statements of some of the adjacent owners, workers etc (each statement may be recorded separately on a sheet of paper and signature of the deponent may be obtained; each of them can be marked as an annexure separately and included as part of the mahazar).

Describe the persons who went as members of the inspection team and who did what.

Describe the name (each of them separately), address, age of children found working in the premises. Describe which hazardous and prohibited sector they were working in and under which enactment. If they had any injury, occupational health or safety problems record the details. If they have any





other problem or abuse from the employer record the same. If there are violations of any other labour rights like working condition, hour of work, wage payment, payment of social securities etc. the facts may be recorded.

What was the age of the children found (each separately) in the premises and how will the age be ascertained and proved. Mention what evidence exists about the age or if any further investigation is needed for the same. If for a child or adolescent the age certificate as required by law is not being maintained by the employer the same fact may be mentioned. If any other technical violations like maintenance of any certificate, register or declaration has to be there and is not maintained as per law, it should be mentioned clearly in the mahazar.

If there are independent witnesses, or if employer/owner gives a statement, or child/or other workers give a statement each person's statement may be recorded on a separate sheet of paper. Take their signature, attest all such documents, other members of the team can also do so and they should be marked as Annexure (giving separate numbers to each) and these Annexure details should be mentioned in the proceeding.

Make out clearly what offences are committed by the employer employing children; whether or not maintaining registers etc. Mention under which section of which Act the violation takes place. Describe substance of evidence whether oral or documentary, which confirms the commission of offence.

Mention details of other document or materials collected on the spot which may be material to substantiate the case. (If products are there, samples may be collected, photo may be taken of the process, a video can be taken and the same may be described and marked in the proceeding).

Mention any other relevant material which can be critical to substantiate the case.

End the mahazar giving opening and closing time of inspection and date etc. Give details of number of pages and annexures (all annexures must be mentioned separately with description and number of pages.....)

Signature of (if possible)
Other members of the team

Signature
Labour (Designation/Address and other
contact details

Child workers/witnesses

Employer/Neighbour

Other workers may put their
signature with date, time and
place details on the mahazar



[Give a copy of this mahazar with a show cause notice to the employer on the spot and obtain his Signature. If show cause notice can not be given as evidence on child's age proof has to be collected from other sources then also a copy of the spot mahazar should be given to the employer and his acknowledgement taken].



When will this vicious
circle of child labour
which is passing from
generation to
generation end?



ILO-IPEC
Karnataka Child Labour Project



Stop child labour



Education is their way to progress

International Labour Organisation Karnataka Child Labour Project

No 5A, Block 5, MCHS, HSR Layout,
Sector VI, Bangalore - 560 102.

Website : www.ilo.org/india

Email : sanjiv@ilodel.org.in

Ph : 080 - 25727418, Telefax : 080 - 25729106