

**A STUDY OF CHILD LABOUR IN INDIA: MAGNITUDE AND
CHALLENGES**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF
DEGREE OF MASTER OF LAWS**

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I wish him success in life.

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LIST OF ABBREVIATIONS

| | |
|----------|---|
| AEP : | Appropriate Education Pedagogy |
| AIR : | All India Reporter |
| Art : | Article |
| B.B.A | Bachapan Bachoo Andolan |
| BMM | Bandhu Mukti Morcha |
| BOSCO : | Bangalore Oniyavara Seva Coota |
| CACL : | Campaign Against Child Labour |
| CLPRA : | Child Labour Prohibition & Regulation Act |
| CRC : | Convention on the Rights of the Child |
| CRPC : | Child Rights Protection Committee |
| Cr P C : | Code of Procedure Criminal |
| CRT : | Child Right Trust |
| CRY : | Child Relief and You |
| CWC : | Child Welfare Committee |
| CWC : | Concerned for Working Children |
| EFA : | Education for all |
| FTCI : | Free The Children – India |
| GSP : | Generalized System of Preferences |
| HC : | High Court |
| Id : | Ibid |
| ILO : | International Labour Organization |

| | |
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| IPEC : | International Programme on the Elimination of Child Labour |
| WPR : | Work Participation Rate |
| MDG's : | Millennium Development Goals |
| NCPCR : | National Commission for the Protection Child Rights |
| NFHS : | National Family Health Survey |
| NGO's : | Non-Governmental Organizations |
| NHRC : | National Human Right Commission |
| NCLP : | National Child Labour Project |
| NREGA : | National Rural Employment Guarantee Act |
| NSS : | National Sample Survey |
| OBC : | Other Backward Classes |

LIST OF CASES

- Ashok Kumar Thakur v. Union of India
- Bandhu Mukti Morcha v. Union of India
- People's Union for Democratic Rights v. Union of India
- Labourers of Salal Hydro Project v. State of Jammu & Kashmir'
- Unni Krishnan v. State of Andhra Pradesh
- Democratic Rights v. Union of India
- Union for Democratic Rights v. Union of India
- Vishal Jeet v. Union of India
- M. C. Mehta v. State of Uttar Pradesh
- Bandhua Mukti Morcha v. Union of India
- Neerja Chaudhary v. State of Madhya Pradesh'
- Labourers Working on Salal Hydro project v. State of Jammu & Kashmir & other'
- Mohini Jain v. State of Uttar Pradesh'
- P. Cherriyakaya v. Union of India

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CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

It is well known and universally accepted fact that children are a nation's asset. If the said fact is to be put to reality, the nation has to protect children from all harms and enable them to grow up into healthy and valuable citizens.

In fact, they form the future of any nation and therefore the prosperity of any nation naturally depends on their well-being. They are comparable to blooming flowers of garden. The well-being of children reflects the growth of nation, by their becoming great personalities in various fields of life, whether it be industry, education, politics, social services, defense, civil services, science and technology, administration or anything else. They are the future custodians of hard-secured freedom, sovereignty, rule of law, justice, liberty, fraternity and finally peace and security. It is on the future of these children that destiny of the nation rests. Therefore, in one way, it could be fair to state that protecting and nurturing children shall help building up a strong nation.

1.1.1 CHILD AND SOCIETY

It cannot be denied that welfare of a community depends on the health and well-being of its children. The progress and development of the nation is determined largely by the manner in which it shapes its children in their early stages. A child by its very nature has plenty of capacities of its own, who must be helped to identify them to grow into proper citizens in all dimensions, emotionally, intellectually and spiritually.

Children by their very age, physical and mental immaturity require special protection. It is for this reason that each and every part of the globe concentrates more on its children and their welfare, duly realizing that children should be brought up in an atmosphere of love

and affection of their parents so that they attain full emotional, intellectual and spiritual stability.

Also realizing that a problem child will be a negative factor of a nation, obligation is cast upon every generation to bring up children who will be proper citizens of the nation tomorrow. If the children are brought up properly and better equipped with a broader human output, the society will feel happy. On the other hand, if the child is neglected, huge loss accrues to the society. If children are so neglected, they will be deprived of their childhood – socially, economically, physically and mentally. If they are deprived of their childhood, ultimately, the nation will get deprived of the potential human resources in aspects of social progress, economic empowerment and peace and order, the social stability and good citizenry.

Therefore, with a view to avoiding such deprivation of potential human resources, it is quite imperative to give vent to the thought of Hon'ble Mr. Justice Subba Rao who has rightly observed:

“Social justice must begin with children. Unless tender plant is properly tended and nourished, it has little chance to growing into a strong and useful tree. So, the first priority in the scale of social justice shall be given to the welfare of children¹”

While acknowledging the fact that children should be given priority in welfare measures, a question shall also arise as to why children should be nurtured with utmost care. It is well settled those children are the hope of parents and future of nation and in view of the same, they should be provided with sufficient opportunities for their full development. To attain such a goal, child must definitely get the care and affection from his parent and society. If a child does not get proper education, diet and other basic amenities in formative years, his very development into an attractive personality would be blocked. So, it becomes the duty of every state to protect children's right, right from formative stages.

¹ P.L. Mehta and S.S. Jaswal, Child Labour and the Law Myth and Reality of Child Labour Welfare 2 (Deep & Deep Publications, New Delhi, 1996) quoted from Suba Rao, Social Justice and Law, (1974), p.110.

A child development specialist, Bronfenbrenner, asked a question, 'On what basis can we predict how well a nation will survive and prosper?' In every country, developed or developing, the resources and abilities of its society are constantly being challenged in the search for strategies purely to meet the requirements of children. In the Third World, India having children in large numbers, and which is on rapid increase, has necessarily to equip itself to meet the needs of children. On the threshold of the twenty-first century, with globalization, liberalization, environmental dangers and fragility of power, investment in the young will have to be attended urgently. If children are the nation's aspirations, they too will have to accept the accelerating advances and changes brought about in the century².

Before going into the question of fulfilling the requirements of children, it may be appropriate to deal with practicalities of the situation in which children are placed. While transitional societies regard a child as an asset created by God and consider child as part of their family-cum-social order, modern developed society, perceives child as a product of wider human productive process. That is why child in the modern society should not be used as labour. On the other hand, investments in the form of education and health would enrich human capital³.

Thus, the development, growth and prosperity of a nation would basically depend on how its children are treated and what opportunities and facilities are made available to them to ensure them to enjoy healthy and happy childhood.

A question may arise as to who should provide children with opportunities and facilities to ensure children healthy and happy childhood. For this purpose, it would be easier to define a "normal" family which comprises of a husband and wife and children of their marriage than to define the rights and responsibilities of people in it. Although law makes a mention of parental rights, powers or duties, it does not provide a neat sketch or list of them to enforce them. While the whole object of parents is the upbringing of someone who is not

² Mina Swaminathan (Ed.,) *The First Five Years A Critical Perspective on Early Childhood Care and Education in India* 163 (Sage Publications, New Delhi, 1998)

³ G.P. Mishra & P.N. Pande, *Child Labour in Glass Industry 1* (A.P.H.Publishing , New Delhi,1996)

only too young to bring himself up but also too young to compel others to do it for him, State should ensure that parental responsibilities comprise acceptable standards of child care.

1.1.2 DEFINITION OF CHILD

Article 1 of the United Nations Convention on the Rights of the Child, 1989 defines “child” for the purposes of the Convention, to mean every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. The Children (Pledging of Labour) Act³⁶ defines “child” to mean a person who is under the age of fifteen years. The Factories Act defines “child” to mean a person who has not completed his fifteenth year of age. The Minimum Wages Act defines child to mean a person who has not completed his fourteenth year of age. The Plantations Labour Act defines “child” to mean a person who has not completed his fourteenth year. The Mines Act prohibits the employment of persons below fourteen years of age. The Merchant Shipping Act prohibits employment of ‘child’ under the age of fourteen. The Motor Transport Workers Act defines ‘child’ to mean a person who has not completed his fourteenth year. The Apprentices Act prohibits apprenticeship or training of a child under fourteen years. The Beedi and Cigar Workers (Conditions of Employment) Act defines ‘child’ to mean a person who has not completed fourteen years of age. Child Labour (Prohibition and Regulation) Act defines ‘child’ to mean a person who has not completed his fourteenth year of age. The Right of Children to Free and Compulsory Education Act⁴⁶ defines ‘child’ to mean a male or female child of the age of six to fourteen years.

1.1.3 DEFINITION OF LABOUR

The aggregate of all human physical and mental effort used in creation of goods and services. Labour is a primary factor of production⁴.

⁴ Business Dictionary available at www.businessdictionary.com/definition/labor.html (last visited on 20th July 2016).

According to Merriam-Webster Dictionary, Labour is expenditure of physical or mental effort especially when difficult or compulsory; human activity that provides the goods or services in an economy; services performed by workers for wages as distinguished from those rendered by entrepreneurs for profits; an economic group comprising those who do manual labor or work for wages; workers employed in an establishment; workers available for employment; organizations or officials representing groups of workers.

Labour is productive activity, especially for the sake of economic gain, by a body of persons engaged in such activity, especially those working for wages. The body of persons is considered as a class distinguished from management and capital. Labour is defined to mean physical or mental work, especially of a hard or fatiguing kind; toil or a job or task to be done⁵.

Labour in terms of industrial relations, is productive work, especially physical toil done for wages. It also means the people or class of workers. Labour is also defined to mean physical or mental exertion, especially difficult or exhausting work. It is a specific task or effort especially a painful or arduous one.⁵⁴ Labour is productive work especially physical toil done for wages by people, class or workers, especially in contrast to management, capital, etc., the work being an arduous one or especially of difficult nature.

According to Black's Law, more onerous and inferior kind usually and chiefly consisting in the protracted expenditure of muscular force, adopted to the accomplishment of specific useful ends. According to it, labor implies toil, exertion producing weariness, manual exertion of a toilsome nature.

1.1.4 DEFINITION OF CHILD LABOUR

The term "Child Labour" has been defined by various personalities in various ways. Some of the definitions are as follows:

⁵ Labour@Dictionary.com available at <http://www.dictionary.com/browse/labor> (last visited on 20th July 2016).

B.M. Otta defines child labour as follows – “Any activity performed by a child in the productive process in a more or less regular or casual basis with or without any remuneration attached to it⁶.

D.A. Naidu defines child labour as –

That act which deprives them of educational opportunities, minimizes their chances for vocational training, stunts their physical growth, hampers their intellectual development and forces them to remain as unskilled labourers with low wage all their life.

According to Shri V.V. Giri, the term ‘Child labour’ is commonly interpreted in two different ways first, as an economic practice, second as a social evil. Child labour therefore, can be defined as any work undertaken by children below 14 years in such works which are injurious to their health and harmful to their proper development.

Homer Folks, Chairman of the United Nations Child Labour Commission, defined child labour as. -

“Any work by children that interferes with their full physical development and their opportunities for a desirable minimum level of education or their needed recreation.

According to the International Labour Organization,

“Child Labour includes children permanently leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from their families frequently deprived of meaningful educational and training opportunity that could open up for them a better future⁷.

⁶ S.W.P. Prabhakaran, Child Labour in Hotel Industry 4 (Discovery Publishing House Pvt. Ltd., New Delhi, 2011) quoted from Braja Mohan Otto, Child Labour As An Adjunct to Domestic Mode of Production in Rehabilitation of Child Labour in India, ed. R.N. Pati, op. cit., p.196

⁷ Id. at 200

1.1.5 MEANING OF CHILD LABOUR

The term 'child labour' is used as synonym for 'Employed Child' or 'Working Child'. Child labour denotes employment of children in gainful occupations detrimental to their health and deprives them of development in their life. Child labour implies the working children in industrial and nonindustrial jobs, organized and unorganized sectors, which are detrimental to their physical, mental, moral and social development. Child labour is considered as a social problem in as much as it prevents the development of children.

Child Labour generally means the employment of child and the extraction of productivity for some economic gain for the child in return causing severe physical and psychological damage to the child. Thus, child labour is the work performed by children at the cost of their health or work safety or their over-all development.

It is also not always that children work for wages. Children often spend their time helping their families or engaging themselves in traditional family occupations. In doing the said jobs, they are unpaid workers, but learn skills out of their own volition that they consider may be useful to them in their future life. 'Child labour' is thus, that segment of child population that participates in paid and unpaid work⁸.

At the same time, there is difference between child work and child labour. While Child labour is restricted to the production of goods and services inclusive of household work, that is detrimental to the normal development of the child, child work refers to some work done by children that is normal and that is even advantageous and beneficial to them. Even the International Labour Organization (ILO) accepts such a position

Millions of young people legitimately undertake work, paid or unpaid, that is appropriate for their age and level of maturity. By doing so, they learn to take responsibility, they gain skills add to their families' and their own well-being an income, and they contribute to their countries' economies.

⁸ P.K. Padhi, "Child Labour: Yesterday, today and tomorrow" 2 LAB. I. C 177 (2004)

Therefore, child labour does not include activities such as helping out, after school is over and schoolwork has been done, with light household or garden chores, childcare or light work of such nature. According to ILO, to claim otherwise would trivialize the genuine deprivation of childhood faced by millions of children entangled in the web of child labour which ought to be seriously and effectively abolished.

1.2 STATEMENT OF THE PROBLEM

In this research work an attempt is being made to analyse the problem of child labour in view of the fact that in most of the unorganized sector, the children are employed in large number. The exploitation by extracting more work and payment of meagre wages is the order of the day. In this context the study focuses on the existing legal frame work, the efforts made at the International Level and how far the child labour laws have been implemented by the executives and the measures employed in order to curtail the growing tendency of the abuse of the rights of child.

The child labour is a serious and multi-dimensional problem across the world. Multiple causes are responsible for perpetuating problem of child labour. There are various practical difficulties involved in the design and implementation of laws. There is also a problem of differences in perception about what constitutes a child or child work or child labour.

There is also a problem with regard to prohibition and regulation of child labour. There is a difficulty in understanding, the term of child labour in hazardous and nonhazardous sectors. The Government policy has been framed to abolish child labour by immediately prohibiting it in hazardous sector of work and gradually eliminating from the nonhazardous sectors of work.

This is reflected in Child Labour (Prohibition and Regulation) Act,1986 and the National Policy on Child Labour1987. There is no clarity about the exact nature or content of the gradual method of eliminating Child Committee on Child Labour 1979, also called Gurupadswamy Committee, which presently exists in the regulated sphere. There has been little attempt to establish criteria for measuring the success of the progressive eliminationl

of child labour. Although the Government of India, in its National Policy on Child Labour 1987, attempts to lay down some components of the gradual method of eradicating child labour, there is no certainty that child labour would eventually be abolished, given their remedial nature and the absence of new concrete strategies to attack the roots of the problem.

The concept of child labour is classified in two types, legal and illegal child labour. Legal child labour is child labour who is above the minimum age but is not an adult, i.e., 14 to 18 years. On the other hand, illegal child labour is one who is below the specified age limit and working in the organized sector themselves. For example, hotels, garage, tea shops, house hold, industries, earlier not covered under the child labour legislation but now by amendment to the Child Labour Legislation 2006, same have been covered and recognized as illegal child labour.

Child labour in hazardous industries is another serious problem. Children's occupation is categorized as hazardous and non-hazardous on the basis of level of the risks involved in the occupations. Recent survey has shown that 91% children are working in hazardous sectors. Children working in agriculture sector in India is said to be the highest than rest of the sectors. Children working in agriculture throughout the world and often face hazards through exposure to biological and chemical agents.

Children can be found mixing, loading, and applying pesticides, fertilizers or herbicides, some of which are highly toxic and potentially carcinogenic which cause cancer. Early involvement of children in continuing family tradition work also causes child labour problem. Many Anthropological factors too contribute to this problem. The educational system adds yet another dimension to the prevalence of this problem

Defective education system, draw backs in laws, low economic growth, breaking of joint families, urbanization, migration, corporal punishments at the schools etc., are some of other factors responsible in perpetuating the child labour problem. Poor implementation of child labour provisions is another problem and consequently children receive low priority in implementation system. The enforcement machinery very often does not have proper

inclination to deal with the problem of child labour. The enforcement of the child labour law is vested in machinery controlled by both the Central and State Government is another problem perpetuating child labour. Gender inequalities is one of the important factor not addressing child labour problem, since gender discrimination cut across religion, caste and class which is a direct bearing particularly upon girl child labour.

There are several factors contributing towards low enrolment and high dropout in the education attainment system. Thus, there is a need to make an objective assessment of the socio legal framework to ascertain whether they are adequate to protect children from physical and economical exploitation, in order to eliminate the problem of child labour and also to conduct empirical study at the grass roots level to understand the ground reality, so that the problem can be tackled on the basis of actual knowledge of issues involved.

1.3 IMPORTANCE OF THE STUDY

Several researches have been done so far on child labour. Study of child labour among school children in urban and rural areas of Puducherry was done by Devi and Roy in schools situate in the service areas of Jawaharlal Institute of Rural Health Centre and Jawaharlal Institute of Urban Health Centre covering rural and urban areas of Puducherry. The study was conducted in select schools in rural and urban areas of Puducherry and among those, children who were working were further interviewed. In the said study, interview was conducted for working children alone in their houses with the help of certificate data collected. The study revealed that 32.5% of the children went to work. The study found that among the said working children, children working in the urban area comprised of 42.8% and 24.8% in the rural area.

In yet another study conducted by Niveditha and Roy regarding the prevalence of child labour among school children and related factors in Puducherry, selecting students from four Government schools from urban area studying from 5th to 9th standard during the academic year 2001-2002 with sample size of 1305 students, the research ended up in a finding that 150 per 1000 students were engaged in work outside school hours.

The said studies only related to part-time child labour and that too, relating to child labour in general and not specifically relating to automobile industry. Like-wise several studies have so far been conducted regarding child labour in automobile industry but none has been done with reference to Puducherry. A similar research has been done on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra by Usha P. Oomman, Ulhasnagar⁹. The said research endeavors to highlight the rampant prevalence of child labour in automobile workshops in the two cities of Kalyan and Ulhasnagar. The said paper also throws light on the various forms of exploitation of child labour in the form of low wages, long hours of work, poor sanitation and hygiene etc. The paper also suggests measures to overcome the problem of child labour. Likewise, another study is also found to have been conducted- on child labour in Automobile repairing workshops in Kalwa and Kharegaon, Thane district, Maharashtra which attempts to highlight the fact that lots of Automobile repairing workshops are seen in every city, town, suburban areas in the roadside of national highways, etc. They are not regulated and many of them use child labour. The study is a probe into the scenario of child labour in automobile repair workshops. The study is focused on the use of child labour in automobile repair workshop in Kalwa and Kharegaon, Thane District, Maharashtra which ended up with finding that most of child labourers work for 10 to 11 hours and that 45.45% of the child labourers had never attended school and that remaining 56.56% are school dropouts, for reasons such as dislike for school, parents not ready to send them to school, they regularly failed in their exams and parents were not sufficiently earning. Another article on Working Conditions and Health Status of Child Labour in Automobile Workshops seeks to explore the working conditions and health status of child labourers in Automobile Workshops of Tirupati town.

The said article brings about the unhealthy and hazardous conditions and environments of workplaces by taking 250 respondents working therein.

⁹ Usha P Oomman, "An Empirical Study on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra" available at EPISTEME On line Journal Vol 1 No.3 (Sep 2012) ISSN No.2278-8794

Thus, though there are several researches conducted generally in the area of child labour, no much work is done in the area of automobile industry. If at all there are some researchers found regarding automobile industry, no work seems to have been done with special reference to Puducherry. Even the research conducted by Devi and Nivedita regarding child labour in Puducherry is only with reference to school children who are at the same time working. The results cannot be used to conclusive assert on the scenario of child labour in Puducherry, for the data collected by them may not be accurate, since it is unlikely that children would come out with all correctness- for fear of school authorities or for various other related reasons.

In the absence of studies regarding child labour in Automobile industries with special reference to Puducherry, this study has been taken up. For this purpose, an enquiry was also made with the Labour Department, Puducherry from which it was ascertained that there are no child labour statistics with specific reference to automobile industry or any industry for that matter. In order to have a comprehensive picture of the automobile industry, employing children in Puducherry, this study was undertaken.

1.4 RESEARCH QUESTIONS

1. In what way do the laws related to child labour in India address the issue of child labour elimination from the perspective of the Rights of the child?
2. What are the objectives, scope and content of the Child Labour (Prohibition and Regulation) Act 1986 and other legislative provisions on child labour in India?
3. What are the factors within the legal system which facilitate or hinder the process of eliminating child labour?
4. What are the changes required to be made in the legal frame work for eliminating child labour from a perspective of the Rights of the Child?
5. What are the reasons for non- implementation of the policies framed by the government within the executives for eliminating child labour? 6. What are the changes required in the

intervention by NGO 's for eliminating child labour through the protection of the rights of the child?

1.5 HYPOTHESIS

The primary hypothesis of the study is that, the problem of child labour is quite rampant in India and the inadequacy of laws and their faulty implementation has contributed to its prevalence. From the above primary hypothesis following sub hypotheses have been formulated

- Large scale prevalence of the phenomenon of child labour is due to poverty, illiteracy and ignorance of people.
- Child labour is prevalent predominantly among under-privileged, backward communities of the society.
- International Conventions are to be viewed with positive efforts.
- Judicial response to curb the practice of child labour is praise worthy, but society as a whole should understand and contribute equally for the eradication of the child labour as judiciary alone cannot eradicate the child labour.

1.6 THE OBJECTIVE OF THE STUDY

The primary objective of the study is to examine the problem of child labour and to evaluate measures adopted by the State with a view to determine their implementation and effectiveness. The other related objectives are:

- To identify the problems pertaining to employment of child labour:
- To analyse the various forms of abuse of children;
- To study the concept of child and child labour and factors leading to child labour;
- To study the various international instruments dealing with child labour;
- To study the Existing Legal Regulations of Child Labour in India;
- To assess the role of the Judiciary with an objective that, how far it has been successful in this direction;

- To study the executive policies framed by the Government for eradication of child labour;
- The role of NGOs in the rehabilitation of child labour;
- To make an empirical study on the Implementation of Child Labour Laws by the Executives
- Lastly, to present the general findings of the study and to offer suggestions for effectively eradicating the problem of child labour in India.

1.7 IMPORTANCE OF THE STUDY

The importance of the study lies in the fact that, it analyses the inherent socio-economic factors in the society which are responsible for the perpetuation of the problem of the child labour and offers valuable suggestions for its eradication.

The study has provided excellent opportunity to understand complexity of child labour and various factors leading to child labour and to find out strategies to combat and elimination of child labour.

Further, the importance of the study lies in the fact that it analyses the inherent defects in Present Legislations and Law Enforcement Mechanism and offers valuable suggestions for their improvement.

It is believed that this study will be useful to the government in strengthening the legal machinery and will be highly useful for social activists, judges, advocates legislators and prosecutors to device suitable means to eradicate the problem of child labour.

Lastly, the importance of the study lies in the fact that it makes original contribution in the field of child labour legislation and to protect best interest of children and to ensure justice and equality to child labourers.

1.8 RESEARCH METHODOLOGY

The methodology adopted in the study is both doctrinal and empirical. Doctrinal study includes analysis of research articles, books, reports treaties, conventions, Statutes, mass media like newspapers, Journals, Periodicals, Bulletins, Websites and cases decided by courts. The study also includes empirical study for which data is collected from the implementing authority i.e. Labour Inspectors, Child Welfare Department, Ministry of Education, Government of Uttar Pradesh, Department of Labour, Government of Uttar Pradesh, Child Right Cell at each Anganawadi Centres, Block Education officer (B.E.O) and District Education Officer (D.E.O) etc.

During the study, the tools used for the collection of data are interview and questionnaires. Further the primary data is also collected from the employers of automobile/ workshops/ Garage/ Hotels/ Restaurants/ Brick-kiln industry and construction works to get the true picture of the problem of the child labour, by way of in-depth interviews by using a pre-structured set of open-ended questions.

1.9 REVIEW OF LITERATURE

The Literature collected by the Researcher has been discussed in detail in the following heads

The Researcher for the purpose of study has collected 27 books. Few important books have been discussed in detail.

The author Sri V.V. Giri has discussed the concept of Child Labour in two ways.¹⁰ Employment of children in gainful occupations with a view to add an income to their families. Purposeful oppression and exploitation of working children leading to deprivation of their legitimate opportunities of growth.

Sri Sharma A.M. in his book entitled —Aspects of Labour Welfare and Social Securityll reveals on the working the extent of exploitation and socio-economic background of child

¹⁰ V.V.Giri, "Labour Problems in India Industry", 2nd Edn. Madras, Asia Publishing House 1958, P. 360

labour found that 565 of the respondents had to work for 15 to 18 hours per day for earning their livelihood 44% for 10 – 15 hours per day. As far as payment of wages, 815 of the respondents were receiving upto Rs. 50/- per month, while only 35 respondents received more than Rs. 100/- per month.

Sri Singh R. in his book entitled —Legislation Protection to the Child Labour is of the opinion that implementation of various laws for the working conditions and welfare of child labour is concerned that employees had colossal ignorance about the existing laws. Only 20 were in favour of legislation for regulating employment of children.

Sri Weiner in his book entitled —The Child and the State in India expresses his view that historically in our country child labour has been seen as an economic phenomenon. As per his study the relationship between children and work is dictated to a great extent by the state of economic development or the system of production prevalent in the country. Another survey conducted by Vemuri and Anand (1998), reveals that child labour contributes to over 20 percent in India.

Sri Gangrade K. D. in his book entitled —The Child Labour in India Department of Social Work expresses his views on Child Labour. Child Labour is a product of such factors as customs, traditional attitudes, lack of school or reluctance of parents to send their children to school, urbanization, industrialization, migration.

Articles

Few importance articles have been referred by the researcher. They are

The article entitled —The Child Labour Problems and Prospects written by Sri Baldev Singh has discussed that it is the duty of the State to protect children's right by legislative and other means because the needs and requirements of the child is the prime ground norm of this universe.

Sri Dhingra C. I. In his article titled —Child Labour and the Law examines that the investment in the child is, therefore, investment in the future society of a nation. Today's

children are tomorrow's citizens. There is a great need to protect the interests of these children. Children are a very important section of a society. It is the duty of the society to ensure the proper upbringing of children. If the society provides all that the children would require, then, there is no need to regulate the society by means of laws and enactments. Laws are made for this very purpose, to ensure, the society provides for the needs of the children¹¹.

Sri Dutta H. In the article titled —Child Labour in India : Tracing the Root of the Problem says that a study conducted in urban Bangalore has found that the total number of hours spent on work increased progressively with age. The study demonstrates that a certain increase in family size, the number of respondents doing wage work increased. Further, the study stressed that over two-third of the girl children, whose brothers do not attend to work, it was manifested that about 60% of girls did wage work along with their own domestic work.

¹¹ Dhingra C-I "Child Labour and the Law" 8-9 Kurukshetra Law Journal, 1982-83, Thomas Paul : Ending Child Labour, Hindustan Times, 4th Nov. 1994

CHAPTER – 2

CHILD LABOUR – A SOCIAL PROBLEM

2.1 CHILDHOOD AND LIKELIHOOD OF CHILD LABOUR

The happiness of childhood is not available to most of the children in India. In the absence of childhood, child is pushed by his family or relatives to an ugly stage of life of employment at very early stage called Child labour. Child labor means the employment of children under a specified legal age. Child labour is found in factories or other places of employment which either endangers their health or safety and interferes with or prevents their development. Rather children are the first victims of hunger and malnutrition in poor families.

If a family cannot afford to provide food to its children that by itself may not constitute child labour, but there is a high probability of children being sent out to work or even sold to supplement family income. Or else, it may be a cause of child not being provided with education which ultimately ends up in child labour.

A child labourer is differentiated from an adult worker on the basis of age. Children are involved in all types of work, such as agriculture, looking after cattle and sheep, scaring away birds from fields, helping adults in sowing and harvesting. Some others help their families looking after younger siblings, collecting fire-wood and water and participating in other domestic and other non-domestic work such as cottage industry etc., In urban sector, they work in variety of fields such as factories, roadside cafes, motor repairing workshops or street vending, shoe-shining, newspapers selling etc., or working as domestic help in homes and even in beggary. Parents put their children to work when they are 6-7 years old.

2.2 CHILD LABOUR – A SOCIAL PROBLEM

India, the problematic aspect of child labour became more prominent with advent of industrialization.¹⁹ It is problematic because it interferes with the basic needs of children

and development of their basic skills and capabilities. Working children are therefore deprived of educational opportunities, vocational training, physical and intellectual development¹².

It is in this view of the matter that Article 15(3) of the Constitution of India empowers the State to make special provisions for women and children.²¹Article 23²² prohibits traffic in human beings and beggar and other similar forms of forced labour. Article 24 stipulates that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

So also, Supreme Court in **People's Union for Democratic Rights v. Union of India**¹³ reiterated that Article 24 of the Constitution provides that no child below the age of 14 years shall be employed to work in any factory, mine or engaged in any other hazardous employment and held that it is a constitutional prohibition which must be obeyed.

The framers of our Constitution having been fully aware of the fact that the only way to eradicate child labour would be introduction of free and compulsory education at least up to fourteen years introduced Article 45(as it stood then) under Directive Principles of State Policy of the Constitution of India emphasizing that State should “provide free and compulsory education within a period of ten years of the Constitution for all children until they complete the age of 14 years. This Directive signifies that it is not only confined to primary education but extends to free education whatever it may be up to the age of 14 years. Article 45 (as it originally stood) is thus supplementary to Article 24 on the ground that when child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institution.

So also Supreme Court in **Labourers of Salal Hydro Project v. State of Jammu & Kashmir**¹⁴ reiterated that whenever the Central Government undertakes construction project which would or is likely to last for some time, the Central Government should

¹² Sumalata Bhomkar, “Child Labour-A problem” XXXIV Indian Socio-Legal Journal 76 (2008)

¹³ AIR 1982 SC 1473

¹⁴ (1983) 2 SCC 181

provide that the children of construction workers living at or near the project site should be given facilities for schooling which may be done either by the Central Government itself or if the Central Government had entrusted the work to some contractor, necessary provisions for schooling may be made in the contract with the contractor.

Likewise, in **Unni Krishnan v. State of Andhra Pradesh**,¹⁵ the Constitution Bench of the Supreme Court held that though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21 having regard to the broad interpretation given by the Court.

Parliament, being conscious and determined to tackle the problem of child labour and being committed to democracy, thought it fit to carry out necessary amendments to make the provisions respecting education more effective.

It also analyzed that the target of eradication of child labour could be achieved only if right to education is upgraded as fundamental right. With a view to making right to free and compulsory education a fundamental right, the Constitution (Eighty-Sixth Amendment) Act, 2002 [December 12, 2002] was brought about incorporating new Article 21A.

Despite such efforts, with large numbers of children of school-going age out of school, it is inevitable that they join the labour force. Some markets are always ready to absorb them, for they are a source of cheap labour who can be compelled to work for long hours. Consequently, the child joining the labour market is condoned.

What is to be recognized is that continued existence of child labour and the inability of every child to access education ultimately means that State failed in its duty towards its children. No country has ever achieved anything worthwhile on the backs of such child labour or illiteracy that we have in India.

¹⁵ (1993) SCC 645

2.3 NEED FOR PROTECTION

Mankind owes to the child the best it has to give. The child shall enjoy the special protection and shall be given opportunities and facilities by law and other means to enable him to develop physically, mentally, morally, spiritually and socially in the healthy and normal manner and in conditions of freedom and dignity¹⁶.

Above all, children are innocent, vulnerable and dependent. At the same time, they are active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and cooperation. Their lives should blossom as their perspectives are broadened and should gain new experiences. But to most of the children, childhood is totally different when they find themselves in work places. They are subjected to servitude while they should be playing and enjoying their lives.

Child of today cannot develop to be responsible and productive member of tomorrow's society unless an environment conducive to his social and physical health is ensured. Every nation, whether developed or developing, depends for its future on the status of child. Children signify eternal optimism in human life and provide the potential for human development. If children of a nation are better equipped with ultimate broader output, the society will feel happy. Suppose children are neglected, it would result in loss to society. If children are deprived of their childhood, the nation gets deprived of potential human resources for attainment of social stability.

Thus, the significance and the importance of the child lie in the fact that the child is the universe. Without child there would be no humanity and without humanity there cannot be a universe. Moreover, children constitute a hidden source of potential development of a growing nation. The social and economic development of any nation depends on the importance given to welfare of its children. Therefore, if a nation has to thrive and prosper in all spheres of human activity, children will have to be given social and economic protection.

¹⁶ Nuzhat Parveen, "Child Labour & Exploitation of Child Labour" Legal News & Views 12 (Sep.2000) quoted from United Nations General Assembly Declaration, 20.11.1959.

2.4 TYPES OF LABOUR

Labour could be divided into a number of types. Accordingly, different types of labour, all of which differ on the basis of the nature of employment or terms and conditions of employment are discussed as follows:

- **Free Labour**

The labour in which labourer was free to enter into contracts as to his work and wages is called free labour. In the absence of such contracts, his remuneration was determined and regulated by principles recognized by ancient customary law of the land.

- **Servile Labour**

In contrast to free labour, there existed a trend of selling children into slaves. This system of slavery and slave trade was prevalent in India even before the period of Kautilya,⁵⁷ but none dared to abolish it. From time immemorial, there were several classes of slaves, they are, men captured in raids and battles, men condemned for heinous offences, men who sold themselves and their children for want of maintenance and children of men already slaves¹⁷.

- **Contract Labour**

Labour employed on contract basis is one of the most common forms of non-regular employment practice adopted by the principal employer in the present era of political economy. In this system of employment tasks assigned by the principal employer have to be carried out by the labourer without any direct employer-employee relationship. In this sort of employment, the relationship is provided by a middleman or a contractor who employs the labour under the principal employer.

¹⁷ Narayan Chandra Bandyopadhyaya, "KAUTILYA OR AN EXPOSITION OF HIS Social Ideal & Political Theory" 207-212 (Indological Book House, Varanasi, 1982)

- **Direct Labour**

Direct labour differs from contract labour in terms of employment relationship with the principal establishment and method of wage payment. In direct labour pay is borne on the pay or muster roll of the establishment and employees are paid wages directly by the principal employer.

- **Casual Labour**

The incidence of casual labour is determined by the nature of the task that is to be performed. Quite often, and very commonly, engineering departments engage casual labour to fill up vacancies caused by absenteeism and temporary pressure of work. Such casual engagements are common in the Railways, Public Works Department, Electricity Corporations and Departments of Central and State Governments and also in the private sector. This sort of employment is well recognized and not objected to. It is taken exception to mainly when such labour is continually employed for long periods to circumvent the provisions of law, which confer benefits to permanent workers with better working conditions, more amenities and the like, when used deliberately to restrict scope for regular employment.

- **Unskilled Labour**

Unskilled labour is a segment of the work force associated with a limited skill set or minimal economic value for the work performed. Unskilled labour is generally characterized by a lower educational attainment, such as a high school diploma, or lack thereof and typically results in smaller wages. Work that requires no specific education level or specialized experience is often available to the unskilled labour force.

- **Skilled Labour**

Skilled labour is a segment of the workforce with a high skill level that creates significant economic value through the work performed (human capital). Skilled labour is generally characterized by high education or expertise levels and high wages. Skilled labour involves

complicated tasks that require specific skill sets, education, training and experience and may involve abstract thinking.

- **Bonded Labour**

Bonded labour can best be described in terms of debt bondage fixed for a time or a lifetime or hereditarily descending from father to son in some cases. The system grew out of acute indigence and helplessness of tribal and semi-tribal communities in the grip of a precarious subsistence economy.

- **Child Labour**

Child labour includes all those children who are below 14 years of age and engaged in some productive work, whether paid or not, within the family or outside. The problem is universal¹⁸. Child labour implies working children in industrial and non-industrial jobs, organized and unorganized sectors which work damages their physical, mental, moral and social development.

Since it affects the total growth and development of the child it is categorized as social problem.

- **Migrant Child Labour**

Inevitable socio-economic changes in society like rapid urbanization, rural to urban migration, breaking-down of joint family and community structure gave rise to vulnerable class of children called migrant child labour. These children are neglected and suffer from deprivation of education, care and loving home, and struggle for their survival. Impoverished families and unfulfilled expectations result in rural-urban migration. These children having no legislation for safeguarding them, are the most exploited child labourers, are found rag picking, selling lottery tickets, shining shoes, hawking newspapers, etc., They are neglected by the society and excluded from government

¹⁸ Bhagwan Pd. Singh & Shukla Mahanty (ed.), Children at Work 14 (B.R. Publishing Corporation, New Delhi, 1993)

policies, ultimately deprived of education and basic services and quite often tortured by unscrupulous persons and police on the roads.

2.5 FACTORS CONTRIBUTING TO CHILD LABOUR IN INDIA

Factors contributing to child labour may for the purpose of convenient discussion, be classified as follows, namely: -

- i. ECONOMIC FACTORS**
- ii. SOCIAL FACTORS**
- iii. OTHER FACTORS**

ECONOMIC FACTORS

Economic Factors may comprise of poverty, insufficient income of parents, cheapness of child labour and non-implementation of Minimum Wages Act¹⁹.

Poverty

The most important cause of child labour is widespread poverty. India is still a developing country in which poverty thrives as a result of which parents are under compelling circumstances to send their children to some work or the other. Poverty is the result of unemployment or underemployment of adult members of the family which in turn pushes children into grave circumstances such as taking up jobs in non-hazardous or sometimes in hazardous establishments.

Insufficient income of parents

Inadequacy of wage of adult earning members of the family drives them to send their children to work. To fill this gap, children prefer any unskilled work and to some extent supplement the income of the adult. The mere existence of physical capital is no guarantee of development. They should be properly utilized. They are

¹⁹ Supra note 1 at 14

utilized by human resources. Human resource is essential to operate machinery and equipment and to run factories and industry.

Increase Production

The skilled, educated and healthy human resources increase the productivity and production. The production may be done even by the use of unskilled and semi-skilled manpower. But the production of goods, quality and variety of goods need skilled manpower.

SOCIAL FACTORS

Some of the social factors contributing to child labour are enlarged families, child labour and fertility, increase in population, traditional education, illiteracy, school dropout and absence of Schemes for family allowances.

Enlarged families

Large families with less income cannot provide their children with normal childhood by sending them to school. Instead, parents consider that the more the number of children in the family more will be the income to the family and send them to some sort of employment resulting in mushroom growth of child labour.

Increase in population

One of the most critical problems the Nation faces is the rapid growth of population in 1991, India's population was 844 million and every year it increases by about 16 million. If the population increases at the same rate, the dependent children will become burdensome and the additional production and facilities would be consumed by the increased population while the quality of life of people will remain the same without any improvement. As a matter of fact, though in India, people adopted family planning, its reach is doubtful in remote and rural areas. One of the demographic factors indirectly related to the problem of child labour is population growth rate. A simple correlation analysis of the variable, population

growth rate and (i) population per household, (ii)poverty (iii) percentage of children attending school in the age group of 5 to 9 years (iv) dropout rate at middle school suggests that States having higher population growth rate have the likelihood of higher child labour ratio.

Illiteracy

In India, there is a major sector of illiterate people, who regard schools as unnecessary and mere wastage of time and money. They do not realize that education is an effective tool to drive children away from work force. They fail to realize the long term gains of education and that is why they engage their children in some job or the other.

Traditional education

Avery common justification normally given for child labour is that children by learning family traditional trade or crafts acquire skills of their traditional crafts. In Indian society, there is a belief that children of particular caste should learn their parental occupation. The craftsmen prefer to transfer their traditional skill to their children and send them to get expertise from some organized establishments instead of sending them to schools. This attitude has in one way paved the way for child labour system in India.

School dropout

Child labour and non-schooling of children is common among poor sections of the society. Both go hand in hand. Though education up to 14 years is free, parents especially of rural and slum areas are not in a position even to bear the normal expenses such as books, stationery items, uniforms for their children. Parents primarily meet the basic needs of life and do not attach much importance to their children's education. They are not interested in putting their children in schools and even in case they put them schools do not want them to continue their schooling. Whenever they meet any financial crisis or constraint, the first thing they do is to

stop their children's education. In the absence any sort of proper vocational training they are left with no alternatives but to choose some unskilled trades with no better scope for their future, which is nothing but child labour.

Absence of schemes for family allowances

In India there are no schemes for family allowances or social security for the weak, poor and needy. Absence of such schemes or social security services renders children helpless, who enter avocations consequent upon death of their parents or any unforeseen events taking place. Thus, they are compelled to enter labour market at very early stages in their life.

OTHER FACTORS

There are several factors either directly or indirectly contributing to child labour. Some of the other miscellaneous factors may be as follows:

The International Labour Organization (ILO) and the United Nation's Children's Fund (UNICEF) consider shortcomings of a country's educational system to be a cause of child labour because opportunities for good schooling may tend keep children away from work. Even then some children do some light jobs at least to manage their school fees. To some children, even free education may seem costly. Thus there is a close link between child labour and education, for deprivation of education leads one to enter avocations unsuited to their age and strength. Therefore education, in the sense nonavailability of proper facilities for education may be the cause as well consequence of the child-working population.

Obviously, there is also a link between economic development and education. It is quite natural for any nation, that to comply with international obligation to provide free and compulsory education to its children, it shall need financial resources. Yet another fact also remains as to whether the family would be in a position to survive without the contribution of the child in the family. The link between education and development is arrived from the international instruments requiring the states to gradually see to that the right to free education is made available to their children progressively with development in the

economy. However, providing of educational opportunities alone also would not solve the problem of child labour. It also depends on the attitude of the child's family towards education. Therefore, it is also true that poverty is not always the cause of poor schooling. In view of economists, at macro level, investments in primary education add to returns, determining the country's development. This shows that education is solution not only child labour but also poverty and other evils that may be associated with it. Thus, education is a pre-requisite to economic development.

For children to attend schools or to attend work places, is dependent upon both the parental attitude as well as the community's version of education. Normally children who are seen to be working are found to be hailing from not only vulnerable societies but also from culturally and socially disadvantaged societies. Traditional notion of such communities apart from poverty results in non-schooling of children. In some localities people consider work practice of children at very early years to be one of use and experience to them. Some stick on to the traditional family trade or business and make their children look after it, considering it a family asset. Because of cultural and religious beliefs of elders, children's education is affected. Whatever a country may do for developing it, only if its people's attitude change, can there be improvement or upliftment.

Out of variety of miscellaneous factors blameworthy of increasing child labour manifold, there may also be somewhat uncommon factors influencing the mushroom growth of child labour. Negligence by the parents because of their own problems and out of social fear of giving an identification of their illegitimate children, create a sizeable number of street children. These types of children have to survive with no one to support them. They seek some odd jobs to sustaining themselves. When the State also becomes a silent spectator of such happenings providing no way out for them, they are forced to enter some small jobs or sometimes very dangerous also.

There are other factors contributing to growth of child labour. There are still prevailing in some families' joint family system in which one member of the family alone would work for the whole family comprising of a number of members. There are also cases where the

single bread-winner dies or meets with accident, the whole family is in grief with no member to earn. If there are children in the family, they start seeking jobs in which they have interest.

2.6 HISTORICAL ROOTS OF CHILD LABOUR

The history of child labour is traceable in four distinct eras, namely: -

2.6.1 CHILD LABOUR IN ANCIENT INDIA

Child labour is not a new phenomenon. It existed in some form or other in the past, it continues in the present and may continue in future also, given the ground realities of our country and the legal system existing in our country.

The origin of child labour could be traced back to the early stages of evolution of societies, in which children learnt various crafts by working. This type of societal set up was considered necessary tool of social and economic upliftment. It was actually a part of survival process²⁰.

In the pre-industrial agriculture of India, children worked as helpers and learners of family occupations under supervision of adult members of the family. Workplace was nothing but an extension of home and characterized by personal informal relationship.

In the earliest period of history, in all societies there existed patriarchal system according to which the eldest male parent- the eldest ascendant was absolutely supreme in his household and had complete sway over all persons in the family, whether it be male, female, children, their property, cattle and slaves. Parent's word was the sole command to the children. Parents worked for their landlords at very low wages and when they became indebted to the landlords, they forced their children too to work for their landlords in the landlords' houses as bonded labourers.

²⁰ Thomas Paul, "CHILD LABOUR-PROHIBITION v. ABOLITION: UNTANGLING THE CONSTITUTIONAL TANGLE 50 JILI 145 (2008)

It is also noteworthy that child labour in India also existed in the form of child slaves. Child slaves could be purchased or sold like commodities. Slaves of tender ages even less than eight years of age were purchased for doing low jobs.

Records of slave trade show that the practice flourished around the 15th century by way of sale agreements and that it was not uncommon for lower caste parents to pledge their children as bonded labourers several years. Palm leaf manuscripts collected from Madurai district carry on it the reasons for the sale of family members that they were sold for money, grain and to tide over emergent situations. The manuscripts distinctively depict the castes of buyers and sellers, from which it is clear that buyers hailed from zamindar or landlord castes and that sellers hailed from socially and economically backward communities.

Thus, the harsh reality of ancient India was that children of slaves were born as slaves, lived as slaves throughout their lives and died as slaves until their masters were pleased to monument them.

2.6.2 CHILD LABOUR IN MEDIEVAL PERIOD

In medieval India, consequent upon pressure on land, there was fragmentation of holdings. This gave rise to a class of landless laborers bonded to large land owners. This led the labourers work with their entire family members including children. Occupations were determined on the basis of heredity and children entered their traditional craft at a very young age.

Their condition during the Mughal rule was all the more worse. Their condition was such that there was no difference between him and the commodity he produced. It was no better than slavery²¹.

Kings enjoyed monopoly of slave and made money by trafficking in slaves and was himself royally served.

²¹ Supra note 3 at 25

2.6.3 CHILD LABOUR IN MODERN ERA

Until the advent of industrialization, children were employed in a family environment within their families wherein they were not given any hazardous work. But with the uneven industrialization, and in an atmosphere of extreme poverty, children were in compelling circumstances to work for their families. The whole atmosphere all of a sudden took an entirely different shape wherein children were employed even in the most dangerous sectors rather than working and helping their family members in non-hazardous and light works which was like gradually getting trained in crafts.

Thus, children had to work in factories and mines and other dangerous work places from morning till night. When children could hardly get proper food, they were not in a position to go to schools. Especially near the middle of 19th century, mechanized large scale production came into existence. Added to that, there were no State regulations to prevent the labourers from being exploited. Among the adult workers, children were employed in cotton and jute mills and coal mines in large numbers.

In such a scenario, the first protective legislation for child labour was the Indian Factories Act, 1881. This Act prohibited employment of children below seven years in factories and in two separate factories on the same day. It also restricted their working hours to nine hours a day with a compulsion of four holidays a month with rest intervals. It also made provision for fencing of dangerous machinery.

The drawback of the said legislation was its applicability only to those factories employing 100 or more persons. To do away with the said defect, the Indian Factories Act, 1891 was passed. This Act increased the lower age limit to enter into employment from 7 to 9 and increased the upper age limit from 12 to 14. It also reduced working hours of children from 9 hours to 7 hours and prohibited children working during night.

The modern era depicts a merciful condition of children working in mines. About 5000 children were working in mines and it is with a view to protecting children working in mines that the Mines Act, 1901 was enacted. It prohibited employment of children below

12 years and empowered the Chief Inspector of Mines to prohibit employment of children in certain places, if he was satisfied that the employment conditions were dangerous to health and safety of children.

Added to this, children were working in factories day and night and to safeguard them, the Factories Act, 1911 came to be passed. It reduced the working hours of children to 7 hours a day and emphasized all child workers to necessarily carry with them a certificate of age and fitness for employment. The Act, apart from prohibiting children working in dangerous processes,¹¹⁸ prohibited their working at night¹¹⁹ between 7.00 pm and 5.30 a.m.

In consonance with Convention of the International Labour Organization the Indian Factories (Amendment) Act, 1922 was passed defining 'child' to mean a person who has not completed his 15 years of age. The scope of the Act was extended to cover any premises where 20 or more persons were employed using mechanical power. It fixed working hours of children at 6 hours with an interval of half an hour and required children to carry with them certificate of re-examination for continuing with their employment. It prohibited employment of women and young persons under 18 in certain processes.

Parallel to this, Mines Act, 1901 was considered inadequate to tide over the conditions that were prevailing in the mines. This apart, the Act needed to be amended in consonance with the ILO Convention, 1919. Hence the Mines Act, 1923 was enacted. The Act fixed the working limit at 60 hours per week to those working above the ground and 54 hours per week to those working below the ground and raised the minimum for employment from 12 years to 13 years.

Again in 1931, the Indian Factories Act was further amended.¹³³ Provincial Governments were empowered under the Act to make certain regulation for taking precautions against fire.¹³⁴ The year 1931 is noted for publication of the report of Royal Commission on Labour.¹³⁵ The Commission recommended that children under 15 years should not be allowed to work without fitness certificate as to their health. It also recommended 5 hours

a day for children at work with spread over at 7 ½ hours and to prohibit work by children between 7.00 p.m and 5.30 a.m.

As one more effect of the Royal Commission on Labour, the Children (Pledging of Labour) Act, 1933 was enacted to eliminate the evils of pledging of labour of children by their parents. The main aim of the Act was to eliminate the evil of pledging of children by parents for loan or an advance.

One year after this, the Factories Act was thoroughly overhauled in consonance of the recommendations of the Royal Commission on Labour. The Factories Act²², 1934 was passed. It defined “Adolescent” to mean a person who has completed 15 years but not completed 17 years of age. It prohibited employment of children below 12 years. It fixed the maximum working hours of children between 12 and 15 years at five hours a day.

The Indian Mines (Amendment) Act, 1935 prohibited employment of children under 15 in mines.¹⁴² It laid down that adolescent between 15 and 17 years could be employed in underground work on production of medical certificate. It fixed the working hours at 10 per week to those working above the ground and 9 per week to those working underground.

During this period, the Factories (Amendment) Act, 1935 and Repealing and Amending Act, 1937 did not alter the general provisions of the Acts.

This era gains significance due to enactment of the Employment of Children Act, 1938. The Act prohibited the employment of children under 15 in Railways and Port. By way of amendment in 1939 children under 12 were prohibited to work in industries connected with bidi-making, carpet weaving, cement manufacturing, cloth printing, dying and weaving, manufacturing of matches, explosives and fireworks, mica cutting and splitting, shellac manufacturing, soap-manufacturing, tanning and wool cleaning²³.

²² The Factories Act, 1934 (Act XXV of 1934)

²³ Ibid ss.3, 3A

2.6.4 CHILD LABOUR AFTER INDEPENDENCE

The first step soon after independence was the amendment of the Factories Act in 1948. It was only therein that the minimum age for entry into employment was increased to 14 years.¹⁵⁴ A new section was introduced stating that the provisions relating to employment of young persons shall be in addition to and not in derogation of the Employment of Children Act, 1938.¹⁵⁵ The minimum age for children to enter workshops was also raised from 12 to 14 by way of an amendment in the Employment of Children Act, 1938.¹⁵⁶ Provisions relating to verification of child's age in case of dispute between employer and Inspector were introduced in the Employment of Children (Amendment) Act, 1939.

This apart, the Constitution of India which came into force on 26th January, 1950 made special provisions for protection of children²⁴. The International Labour Organization (ILO) Convention relating to night work of young persons¹⁵⁹ was particularly responsible for bringing out an amendment in Employment of Children Act in 1951. The Act made provisions for prohibition of employment of children between 15 and 17 years at night.

Likewise, another development in the era is the passing of the Plantation Labour Act, 1951. The said Act was passed with a view to preventing employment of children under 12 years in plantation. The very next year, the Mines Act, 1952 was passed with a view to prohibiting employment of children less than 15 years in mines. According to the said Act, adolescent could be employed for underground work as adult if he has a certificate of physical fitness from a certifying surgeon.

The Factories Act was again amended in 1954 in order to prohibit employment of adolescent below 17 years of age at night. Also, Merchant Shipping Act was passed in 1958 which prohibited children under 15 years of age to be engaged or carried to sea to work in whatever capacity may it be, in any ship, except in certain specific cases.

In 1961, two important Acts were passed to give better protection to children, namely, the Motor Transport Workers Act, 1961, which prohibits employment of children under 15 in

²⁴ Constitution of India, Article 15(3), Articles 23-24.

Motor Transport Undertakings and second, the Apprentices Act for regulating and controlling trainees.

Another major legislation is Bidi and Cigar Workers (Conditions of Employment) Act, 1966 to protect children working in Bidi industries. This Act prohibited employment of children under 14 years of age²⁵. It also prohibited employment of persons between 14 and 18 in any industrial premises at night between 7.00 p.m. and 6.00 a.m.

All these apart, in order to regulate those unorganized sectors, such as cotton ginning and weaving, carpet weaving, stone-breaking, bricklaying, handicrafts and road building, Contract Labour (Regulation and Abolition) Act, 1970 was passed. The Act covers all establishments and contractors employing 20 or more workers in the whole country. There is no specific provision to control or regulate work being carried out by children in such sectors.

In 1973, the Apprentices Act, 1961 was further amended by Apprentices (Amendment) Act, 1973 to protect the rights of apprentice trainees.¹⁸¹ The Act prohibited undergoing apprenticeship training under 14 years.

Apart from the legislative measures undertaken by the Government of India, policies exclusively for welfare of children were framed. The National Policy for children adopted in 1974 developed the idea that childhood and youth are to be protected against exploitation and that no child below the age of 14 shall be allowed to work in any factory, mine or any sort of hazardous works.

Also, the National Committee on Child Labour under the chairmanship of M.S. Gurupadaswamy, which was appointed consequent upon the United Nations declaring 1979 as International Year of the Child, was entrusted the task of looking into causes leading to and problems arising out of employment of children. Originally, the terms of reference did not contain anything regarding eradication of child labour or imposing ban upon child labour. It is only when the Government realized that child labour was rampant

²⁵ Ibid ss.2(b) , 24

both in the organized and unorganized sectors that the Government insisted upon the Committee to examine the laws that were in vogue, their adequacy and their implementation and to tender opinion on remedial measures for improving the conditions of children.

The Committee, after extensive research and field study emphatically proclaimed that child labour is economically unsound, psychologically disastrous and physically and morally dangerous to the entire society as such. Analyzing that child labour deprived children of educational opportunities, hampered their growth both physically and intellectually and destined them to permanently low wages for their unskilled labour due to lack of vocational training, recommended that minimum age be prescribed and fixed at fifteen for entry into employment and existing laws amended accordingly and minimum education of at least up to elementary level be provided to children.

Considering the said recommendations and in a way to remedy the then existing situation, the Government of India deemed it fit to control and curb child labour in dangerous situations in hazardous industries and to regulate child labour in other non-industrial occupations and sectors. It was with this basic notion¹⁸⁶ that it enacted the Child Labour (Prohibition and Regulation) Act, 1986.

CHAPTER 3

LEGISLATIVE MECHANISM ON CHILD LABOUR

Children are our great hope and assets. In every civilized society, the welfare of children is well-recognized. They are our most vital national resource. The future of any problem is largely determined how its children grow and develop. The welfare of the entire nation, its growth and development, depends on the health and wellbeing of its children. The great poet Milton has said, Child shows the man as morning shows the day. A child is said to be national asset. Child care and child development programmes have been attracting the attention around the globe.

Article 15(3), Article 23, 24 and Article 39(e) and (f) of the Constitution of India stipulates that the tender age of the children should not be abused and they should be provided with opportunities of development in a healthy manner and in conditions of freedom and dignity. The Government of India has also in pursuance of these constitutional provisions adopted a national policy for children. Article 18 of the U.N. Convention on the Right of the Child, 1989, recognizes the rights of the child to be protected from economic exploitation and from performing any physical, moral, mental, spiritual or social; development. India too have pledged to the United Nation that it will try to eliminate child labour by the year 2000. Issue of child labour indeed is so important that attention of the Legislature, Executive or Judiciary alone will not do, but it requires the immediate serious attention of social reformists, research scholars, academicians, non- government organizations, and all those who care for the development of the nation.

With the growth of population, poverty and industrialization, the children are neglected everywhere. Because of lack of proper training, care and discipline, lack of health facilities and educational opportunities, they become victims of evil elements in the society. Many of them, who are known as criminals, are the victims of the circumstances prevailing in their family and society. However, no society can afford to neglect the uncured for and delinquent children, as it may have a far-reaching effect upon the welfare of the nation.

Concern for the welfare of children is also reflected in the Declaration of the Rights of the child adopted by the General Assembly of the United Nations on 20th November 1959. The International Labour Organization is instrumental in the process of gradual elimination of child labour and in the protection of children from industrial exploitation. Apart from our protective constitutional provisions, there are also certain legislations for the welfare of children, like the Child Marriage Restraint Act, 1929; Child Labour (Prohibition and Regulation) Act, 1986 etc.

In India there is estimated one child labourer in every three families and every fourth child aged between 5 to 14 years works as child labour. According to U.N.O. the maximum child labour in the world (approximately 20 percent) are in India. Whatever the figure may be, but it is certain that their number is in crores and illiteracy, unemployment, poverty and on account of a rapid increase in population; child labourers are increasing by leaps and bounds. We find millions of sad human faces of children in our industries in the form of child labour. They are depicting a sober picture of our modern industrialization.

Normally, there are three categories of children involved in child labour. They are broadly classified under the categories of street children, bonded children and working children. The street children are working on the street without the protection of permanent shelter, love and affection. These children are involved in petty thefts and related crimes. The bonded children are who have been either pledged by their parents for small sums of money or those working mainly in the rural areas to pay off the inherited debts of their parents, if they are brought by the owner of artisan or by a middle-class housewife, or by the landlord of the village. They may not allow them to escape from the bondage. Hence, the children must serve their lives in servitude till they get married and can sell their children to minimize their debt burden. The third category is the working children who are working as a part of family labour in agriculture and house-based work. If they are working 10-12 hours a day with their parents without any scope for education, their position much or less similar to that of children working for employers. Even within the child labour, girls have additional responsibility due to social customs and beliefs.

The Constitution of India embodies several articles guaranteeing rights and privileges to children. These are complemented with numerous legislations that are in operation. India has also demonstrated its political commitment to the cause of children by ratifying in 1992 the landmark United Nation Convention on the Rights of the Child 1989 (UNCRC). According to UNCRC, the rights of the child include;

- i) **Right to Survival**
- ii) **Right to Development**
- iii) **Right to Protection**
- iv) **Right to Participation**

As a signatory to the UNCRC, the Government of India is committed to protecting and restoring the rights of all children in the country.

3.1 CONSTITUTIONAL STATUS OF A CHILD

Concern for the welfare and development children is reflected in the provisions enacted in the constitution. Article 15(3) enables the State to special legislation inter alia, for children. Article 24 prohibits employment of children in factory, mines or engagement in any other hazardous employment.

Clause (c) and clause (f) of Article 39 of the Constitution of India provides inter alia that the State shall direct its policy towards securing inter alia that the tender age of children is not abused. Children are given facilities to develop in a healthy manner and in conditions of freedom and dignity. Article 41 makes a provision for right, to work, to education and to public assistance. Article 45 makes a provision for free compulsory education for children. Article 47 of the Constitution of India prescribes a duty on the State to raise the level of nutrition and the standard of living and to improve public health.

3.1.1 CHILD RIGHTS PROVISIONS IN THE CONSTITUTION OF INDIA IN GENERAL

1. Equality before law and equal protection of laws.

2. State can make special provisions for women and children²⁶.

Article 15 of the Constitution of India is extension of the doctrine of equality as enshrined in Article 14 of the Constitution of India. In the eyes of the law, everybody is equal irrespective of his or her place of birth, age, sex, religion or race. The doctrine of equality is the core of the Constitution and Article 15 of the Constitution of India simply extends that doctrine. This clause is an exception to the rule against discrimination provided by clauses (1) and (2) of Article 15 of the Constitution of India. Women and children require special treatment on account of their very nature. Article 15(3) empowers the State to make special provisions for them.

3. Right to freedom of speech and of expression, to form associations/ unions, move freely, etc.³

4. Right to life and liberty including right to food/clothing/shelter/health/basic necessities of life.

5. It further provides safeguards upon arrest.

6. It prohibits trafficking in human being and forced labour.

In *Peoples Union for Democratic Rights v. Union of India*²⁷ the Supreme Court has considered the scope and ambit of Article 23 of the Constitution of India in detail. —It is not merely beggar which is constitutionally prohibited by Article 23, but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values where a person provides labour or service to another for remuneration which is less than the minimum wages, the labour or service provided by him clearly falls within the scope and ambit of the word forced labour under this purported Article. Such a person would be entitled to approach the court for enforcement of his fundamental rights under Article 23 by requesting the court to direct payment of the minimum wages to him so that

²⁶ Article 15(3) of the Constitution of India

²⁷ AIR 1982 SC 1473.

the labour or service rendered by him ceases to be forced labour and the breach of Article 23 is remedied.

In *Bandhu Mukti Morcha v. Union of India*²⁸ the Supreme Court has held that when an action is initiated in the Court through PIL, alleging the existence of bonded labour, it is a good opportunity for the Government to examine whether labourers are made to provide forced labour. This is the constitutional obligation of the Government under Article 23. In the year 1976, the Parliament has enacted the Bonded Labour System Act, 1976.

It prohibits employment of child below 14 years in any factory/mine/hazardous employment.⁹ In *Peoples Union for Democratic Rights v. Union of India* a PIL was filed in the Supreme Court, complaining of violation of various labour laws and employment of children in various construction works. In this case, an argument was advanced that the Employment of Children Act, 1938 was not applicable to construction work. Rejecting the argument, the Court held that the construction work was hazardous work and therefore, a child below the age of 14 years should not be employed in it. The court advised the State Government to ensure that there is no violation of the Constitutional mandate of Article 24.

It ensures protection from abuse/exploitation/abandonment and ensures opportunities to develop. Though Article 39 falls under Directive Principles of the State Policy, and the directive principles are not justiciable, even then the State is bound to act in the consonance with the Directive Principles. In *Vishal Jeet v. Union of India*²⁹ a writ petition by way of Public Interest Litigation was filed in the Supreme Court, seeking prevention of sexual exploitation of children and flesh trade by CBI inquiry. In this case it was held that one of the objectives under clause (e) of 39 is that the State should, in particular, direct its policy towards securing that childhood and youth and protect against exploitation and against moral and material abandonment. These objectives reflect the anxiety of the Great Constitution makers to protect and safeguard the welfare of the

²⁸ AIR 1984 SC802.

²⁹ AIR1990 SC 1412.

children of our country. The Government of India has also, in pursuance of these Constitutional provisions of clauses (e) and (f) evolved a national policy for the welfare of the children. Further it was held by the Court in spite of the stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved.

Regarding the importance of Article 45 of the Constitution of India, in **M. C. Mehta v. State of Uttar Pradesh** the Supreme Court has said, —the spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years.

11. Promotes educational interests of the weaker sections of all people-protects them from social injustices and all form of exploitation.

12. State to improve public health and nutrition.

13. State to respect International law and treaty obligations.

3.1.2 CONSTITUTIONAL AND LEGISLATIVE PROVISIONS WITH RESPECT TO CHILD LABOUR.

Constitution provides for Equality before the Law. It states that the State shall not deny to any person equality before the law and equal protection of the laws within the territory of India. This Article employs two expression equality before the law and equal protection of the law. The equal protection of law is a corollary of the first expression equality before the law and it is difficult to imagine a situation in which violation of equal protection of law will not be the violation of equality before the law.

Constitution of India provides for the particular application of the general principle embodied in Article 14. Article 15(1) prohibits discrimination between the citizens on grounds only of;

A. Religion

- B. Race.
- C. Castes.
- D. Sex.
- E. Place of birth, or
- F. Any of them.

Constitution of India provides that no citizen shall be subjected to any disability, restriction or conditions on grounds only of religion, sex, caste, place of birth or any of them regarding access to shops, public restaurants, hotels and places of resorts, which are maintained wholly or partly out of State fund or which has been dedicated to the use of general public.

Article 14 of the Constitution of India applies to all persons while Article 15 of the Constitution of India applies to citizen only. Article 15(3) of the Constitution of India creates an exception to the general rules provided in clause (1) and (2) of Article 15 of the Constitution of India. Constitution of India empowers the State to make special provisions with respect to women and children as they need special care and protection as discussed above³⁰. In accordance with this theory our parliament has passed several enactments like Equal Remuneration Act, 1976, The Medical Termination of Pregnancy Act, 1971, The Child Labour (Prohibition and Regulation) Act, 1986, etc.

Constitution of India states that traffic in human beings and other similar forms of forced labour are prohibited and any contravention to this provision shall be an offence punishable in accordance with the law. On the basis of this our parliament has passed the Bonded Labour System (Abolition) Act, 1976, providing for the Abolition of the bonded labour system. It is true that Article 23 of the Constitution of India does not make an express mention of slavery system. But it is implied in the expression traffic in human being. In view of the authorization under this Article, our parliament has also passed the

³⁰ Article 15 (3) of the Constitution of India

Suppression of Immoral Traffic Act, 1956. Now this enactment is known as Immoral Traffic (Prevention) Act, 1956.

Constitution of India provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. In **M. C. Mehta v. State of Uttar Pradesh** the Supreme Court has delivered a very exhaustive judgment. In this case, the court has directed the setup of Child Labour Rehabilitation Welfare fund and ordered the offending employer to pay for each child an amount of Rs. 20,000-00 by way for compensation.

3.1.3 RIGHT TO EDUCATION UNDER ARTICLE 21A OF THE CONSTITUTION OF INDIA

India is a Socialist State, it aims to protect the standard of life and aims to provide a decent standard of living to its citizens. Thus, Article 21 of the Indian Constitution provides that

‘No person shall be deprived of his life or personal liberty except according to procedure established by law’

Over the years Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence. Therefore, it includes all those aspects of life which make a man’s life meaningful, complete and worth living with dignity. It aims at good quality of life.

The Supreme Court has implied Right to Education as a fundamental right from Article 21. The word life has been held to include education’ because education promotes good and dignified life. If this provision is read cumulatively with Directive principle contained in Article 38, 39(a), 41 and 45, the court opined that it becomes clear that the framers of the constitution made it obligatory for the State to provide education for its citizens.

Therefore, the Parliament in its 86th Amendment to the constitution in 2002 inserted Article 21A to the constitution which states that

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Hence, education became a fundamental for all children between the age of six to fourteen and the Right of Children to Free and Compulsory Education Act, 2009 was passed by the Indian Parliament. It aims to achieve universalization of primary education in India in line with UNESCO's education for all (EFA) goals and the Millennium Development Goals (MDGS).

3.2 OTHER LEGISLATIVE ENACTMENTS

3.2.1 PROVISIONS OF FACTORY ACT, 1948 FOR THE BENEFIT OF WOMEN AND CHILD

Enumerating the provision of the Factory Act, 1948, it is necessary first to appreciate the definition of Factory^{||} as given in S.2(m) of the Act, 1948. The definition is as under

^{||} Factory means any premises including the precincts thereof

(a) Whereon ten or more workers are working, or where working on any days of the preceding twelve months and in any part of which a manufacturing process is being carried on.

(b) Whereon twenty or more persons are working, or where working on any day of proceeding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

3.2.2 PROHIBITION OF WOMAN AND CHILD EMPLOYMENT NEAR COTTON OPENERS (SECTION 27)

No woman and child would be employed in any part of a factory for crossing cotton in which a cotton opener is at work. However, if the feed end of a cotton opener is in a room separated from the delivery end by a partition extending to the root or to such height as the

inspector may in any particular case specify in writing. Woman and children may be employed on the side of the partition where the feed end is situated.

CRECHES (SECTION 48)

In every factory where more than 30 workers are ordinarily employed, they should be provided with suitable rooms for the use of their children below six years of age. Adequate accommodation along with adequate light and ventilation should be provided in such rooms. The employer is liable to maintain such rooms in clean and sanitary condition.

INDIAN PENAL CODE, 1860

The code provides certain provisions to protect the interest of child considering their tender age. Act of a child under seven years of age. - Nothing is an offence which is done by a child under seven years of age³¹.

Act of a child above seven and under twelve of immature understanding Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

CODE OF CRIMINAL PROCEDURE, 1973

On the basis of reasonable restrictions and in view of special protection certain provision are provided in this Code for protection and separate treatment to the children which are as under

Order for maintenance of wives, children and parents.

In short, this provision is made for maintenance of minor child (legitimate and illegitimate) whether married or not unable to maintain itself and even after attaining majority (except in case of a married daughter) where such child is by reason of physical or mental abnormality or injury unable to maintain itself.

³¹ Section 82 of the Indian Penal Code

Police officer's power to require attendance of witnesses

Criminal Procedure Code provides a proviso clause that no male person under the age of fifteen year or women shall be required by any police officer making investigation to attend as witness at any place other than the place in which such male person and woman resides³².

When bail may be taken in case of non-bailable offence

The proviso clause provides that in case of a person under the age of sixteen years or a women or sick or infirm, provision has been made for releasing him/her on bail, even when there are grounds to believe that he/she has been guilty of an offence punishable with death or life imprisonment and even if he/she is a previous convict of an offence punishable with death or life imprisonment or imprisonment for seven years or more, or when he/she has been previously convicted twice or more for a non-bailable and cognizable offence.

GUARDIAN AND WARDS ACT, 1890

The Act casts a legal duty on the Court to consider the welfare of minor while appointing guardian. The Act states that matter to be considered by the Court in appointing guardian relating to welfare of the minor³³. The provision is directly related with the child labour, because sometimes the problem arises on account of irresponsible act of parents and guardians saddling their evils on their children. If analysed critically, the problem of child and bonded labour system is connected with the inspection of human race, when women and children were considered as property and commodity of man. In ancient days and in early jurisprudence, the duty was cast on each individual male to look after and to maintain his wife and children even by committing theft. The concept of treating wife and children as property compels the debtor to serve the creditors for realization of debt. Sometime even the father or guardian started pledging the labour of their child and wife to the creditor. In extreme situation there were cases, even to sell the wife and children, resulting bonded and

³² Section 160 of the Criminal Procedure Code

³³ Section 17 of the Guardian and Wards Act, 1890

child labour system in the society. Basically, slavery is the outcome of this system. As published in some print-media that in —Kalahandil some time the mothers sell their child to fulfill their own hunger also.

CHILDREN (PLEDGING OF LABOUR) ACT, 1933

This is an important Act to prohibit the pledging the labour of children. Apart from employer, the Act provides provision to punish even the parents and guardians making agreement to pledge the labour of a child. The Act is more relevant in the present scenario, especially for the parents and guardians who are irresponsible and saddling their evils to their children and instead of taking benefits of various component plans, they are sitting idle, but enjoying their life on the earning of their tender age children. Now the time has come that such parents and guardians should be dealt seriously under this Act. But unfortunately, the Act do not provide for proper action. The government should now think over on this issue for effective implementation of the Act.

BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Though the Act, 1976 is not directly concerned with the child labour, yet the entire object is to protect the interest of poor, unorganized and illiterate work-force. The basic object of this Act is to check the miseries of ill-fated persons deprived of basic human needs and are compelled for beggar and forced labour. The Act, 1976 has been enacted basically to prevent the economic and physical exploitation of the weaker sections of the society. Moreover, the Act, 1976 is related with the constitutional provisions of Article 23 and Article 24 of the Constitution of India. Traffic in human being, beggar, forced labour and other similar forms of labour practice by any one is within the sweep of Article 23 of the Constitution. In view of the observation of Hon'ble Apex Court in **People's Union for Democratic Rights and others v. Union of India**³⁴ and **Bandhu Mukti Morcha v. Union of India** an exceptional clause has been inserted under section 2 of this Act vide Act no. 73 of 1985.

³⁴ 1982 (3) SCC 235

JUVENILE JUSTICE ACT, 1986 (ACT NO. 53 OF 1986)

This Act was enacted prior to Child Labour (Prohibition and Regulation) Act, 1986. The field of operation of both the statutes are quite different, but the provision of this statute has impact on the problem of child labour in the country. This Act, 1986 deals with and provides for the care, protection, treatment, development, and rehabilitation of neglected and delinquent child and juveniles and for the adjudication of certain matters relating to them. The term juvenile is defined under the Act, 1986 means a boy who has not attained the age of eighteen years. Neglected Juvenile has been defined under the Act, 1986 means a juvenile who

(i) is found begging or;

(ii) is found without any home or settled place of abode and without any ostensible means of subsistence and is destitute;

(iii) has a parent and guardian who is unfit or incapacitated to exercise the control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the prostitution, or is found to associate with any prostitute or any other person who leads an immoral drunken or deprived life;

(v) who is being or likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.

If this wide definition of neglected juveniles is tested on the touch stone of the definition of —child labour, it is obvious some of the juvenile below the age of fourteen years may become the child labour, but child labour having their place of abode and residence and consent of their parents and guardian and having their employer cannot be called juvenile delinquent. The Juvenile Justice Act deals only and concerned with those children who are delinquent and living in the conditions explained and enumerated under section 2(e) of the Act, 1986. However, the Act, 1986 has provided separate procedure and machinery to deal with such juveniles.

THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986.

This is a comprehensive and special enactment on the prohibition of employment of child labour in certain occupations and processes and regulates the working condition of the child labour in other establishments in which none of the occupations or processes referred in Part A or Part B of section 3 of the Act, 1986 is carried on. Specific provision has been made under the Act, regarding amendment of schedule. Constitution of technical advisory committee, amending the provisions of some other enactments relating to minimum age and penal clause, as well as regulatory provisions for the children working in non-hazardous occupations processes and establishments. This Act of 1986 has given wide coverage to combat with the elimination of child employment and its related problems, but still there is scope for amendments which are being proposed from various corners.

The child is also a citizen of the country under Article 5 of the Constitution of India, and he has full right to get ample protection against infringement of their fundamental as well as their human rights, guaranteed under the constitution of India. Simultaneously Article 15(3) of the Constitution provides the power to enact special provisions for women and children. Considering the plight of child labour, as well as the flaws in the laws on the subject, the Parliamentary Standing Committee on labour and welfare had recommended that the employer may be converged within the frame work of some law to contribute some share from their own profit for education, health and welfare of the child labour of the country. National Labour Institute was also asked to conduct social survey regarding social and economic scenario prevailing around the child labour.

CHAPTER 4

CHILD LABOUR-PROHIBITION/REGULATION

4.1 Child Labour (Prohibition and Regulation) Act, 1986

To begin with, originally, the Child Labour (Prohibition and Regulation) Act, 1986³⁵ comprised of the following scheme:

Section 3 of the principal Act prohibited employment of children in certain occupations and processes as specified in the Schedule of banned occupations or processes annexed to the Act. Part A of the Schedule to the Act contained the names of the occupations in which no child could be employed or permitted to work; and in Part B, names of some processes had been mentioned in which no child could be employed or permitted to work. “Child” under clause (ii) of Section 2 of the Act, meant a person who has not completed his fourteenth year of age. The Act in section 6 also regulated the conditions of work of children in employment where they were not prohibited from working.

The Hon’ble Supreme Court in **Bandhua Mukti Morcha v. Union of India** cautioned that total banishment of employment of child would be both unrealistic and counterproductive. Emphasizing need for pragmatic, realistic and constructive steps, the Apex Court suggested that child labour must be progressively banned. The Supreme Court observed that total banishment of employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and social risks etc., and that therefore, while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Observing that immediate ban of child labour would be both unrealistic and counterproductive, it reiterated that ban of employment of children begin

³⁵ Child Labour (Prohibition and Regulation) Act 1986 (Act 61 of 1986) Ss 2,3 & 6

from most hazardous and intolerable activities like slavery, bonded labour and dangerous forms of labour and the like.

The position being so, a question arises as to why elimination of child labour is necessary: Child labour must be eliminated in India for two reasons. Firstly, the elementary logic in development economics says that child labour thwarts the human capital formation process. Child of today is human capital of tomorrow. All human beings are not poised to turn in to human capital automatically. They are to be made. Education and health care comprise of this making process. The resultant of this making process is perfect human capital. No country can prosper with endowment of physical capital only. Human capital and physical capital must work hand in hand to ensure economic growth. History of economic development of the first world countries and most prominently of our south-east Asian neighbours buttresses the role of massive public investment on education ‘particularly, on elementary education and provision of quality health care.

Japan and Korea had accomplished universal literacy and compulsory education well before they had emerged from shackles of poverty. Their public investment on education and health care was relatively higher when their per capita incomes were relatively lower. Provision of quality primary education and quality health care build the pillar of human capital formation. Perpetuation of child labour in any country is the reflection of educational failure. Child labourers are those children in a country who have no access to education, or put in other words, education delivery system has eluded numerous children. Child labourers along with many other hapless categories of deprived children fall within the category of educationally deprived children. Children who stay outside the portal of school remain unlettered, unskilled and untrained. They do not acquire the ability of numeracy, literacy and cognitive skills. They are sure to miss many opportunities that would come on their way. They are not only deprived of the benefits of educational development but also they themselves deprive the nation from their productive participation in national economic transformation. A country may suffer from supply side constraints in relation to availability of skilled manpower. Persistence of child labour is sure to cause supply side constraints through denying access to education of many

children. Thus countries will miserably fail to accomplish a desired level of economic growth and flourish.

The second reason for immediate elimination is prompted by the issue of human rights for children. The United Nations Convention of Rights of the Child⁷¹ (UNCRC) was adopted at the General Assembly in 1989. India ratified the Convention in 1992.⁷² The Convention being an international treaty that comes into force in the national legislation through ratification, this exercise is not only a positive gesture to any UN resolution but a legally binding action. All state parties, on ratification of the Convention, has to conform by enacting legislation framing policies and implementing programme accommodating the spirits and core values of the Convention.

Article 32⁷³ of the said Convention emphasizes the State to protect children from economic exploitation. According to the said Article, Child rights are inalienable. One type of right cannot be advanced at the exclusion of others. Child labourers are not only denied their right to protection against economic exploitation but also are denied their right to education and right to protection against many other forms of abuse and maltreatment and they are also denied their right to health. Child Labour (Prohibition and Regulation) Act can stop economic exploitation of children but that is only a step forward. There are other steps, to be undertaken, to reach the destination of decent childhood. All other rights should be simultaneously realized to give back those children their rights to childhood.³⁶

As a step forward and in consonance with the law laid down by the Supreme Court in *Bandhua Mukti Morcha v Union of India*,³⁷ the Child Labour (Prohibition and Regulation Act), 1986⁷⁶ has recently been amended. The long title of the principal Act which reads as “An Act to prohibit the engagement of children in certain employment and to regulate the conditions of work of children in certain other employments.” has been amended as “An Act to prohibit the engagement of children in all occupations and to prohibit the

³⁶ Supra note 15 at 47-49

³⁷ Supra note 70

engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.³⁸

Accordingly, the term “Adolescent” has been incorporated in the amended Act as section 2(i) to mean a person who has completed his fourteenth year of age but has not completed his eighteenth year and “Child” under section 2(ii) of the principal Act⁷⁸ has been amended to mean a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009 whichever is more.

More so, with a view to totally prohibiting child labour, section 3 of the Principal Act has been amended as follows –

- (1) No child shall be employed or permitted to work in any occupation or process.
- (2) Nothing in sub-section (1) shall apply where the child,- (a) Helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule,⁸¹ after his school hours or during vacations;
- (b) Works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except circus, subject to such conditions and safety measures as may be prescribed.

Provided that no such work under this clause shall affect the school education of the child.

Explanation- For the purposes of this section, the expression

- (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;
- (b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

³⁸ The Child Labour (Prohibition and Regulation) Amendment Act, 2016 No.35 of 2016

(c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of subsection (2)”

Likewise, a new section 3A has been incorporated in the principal Act³⁹ which reads as follows:

No adolescent shall be employed or permitted to work in any hazardous occupations or processes set forth in the Schedule. Provided that Central Government by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.

Thus, if there has to be an end to child labour, focus must be on total abolition of child labour and in addressing the rights of children who are deprived of education.

Supreme Court Judgements on Child Labour

In the past there has been plethora of Supreme Court decisions which prohibits child labour and makes it punishable offence. Following are the cases;

The Supreme Court observed that right to life under Article 21 embraces not only physical existence of life but the quality of life. It is notable that a child labour is not given opportunity to lead a life of quality and hence this practice is violation of Constitution of India.

Going ahead a step further the apex court in J. P. Unnikrishnan Case⁴⁰ held that the primary education is an aspect of personal liberty and thus elevated it to the level of child’s fundamental right. A child has fundamental right to free education upto the age of 14 years, added the court. By declaring the right to education as fundamental right the court has obligated the State to create circumstances facilitating schooling of below 14 years

³⁹ Supra note 76

⁴⁰ (1993) 1 SCC 645

children. This in turn connotes where a child goes to work place only because there is no adequate arrangement for him to exercise his basic right to education or he is forced by his parents to go to work place instead of school or not sent to the school or is taken out of school by anybody or he does not go to school for education because of his own compulsions, the State shall be violating constitutional mandate to see that every child of prescribed age goes to school. It must take care of such child and ensure his schooling. This is possible only when primary education is made compulsory.

It is a pious obligation of State to see that each and every child of the country goes to school and takes education. If parents err and do not understand the importance of education for the children the State is supposed to teach and train them. The child employment and education are mutually opposed. The two cannot go together. So while the primary education is the fundamental right of the child under Article 21, the child labour is violative of this right and hence ultra vires to Constitution of India.

In case of **People Union for Democratic Right v. Union of India**⁴¹ the Supreme Court considered the meaning and scope of the phrase hazardous employment. In this case inter alia, the question before the Supreme Court was that whether the employment of children in the construction work amounts to employments in hazardous concerns and whether it violated the Employment of Children Act, 1938. The Union of India, the Delhi Administration and the Delhi Development Authority contended that this act is not applicable in case of employment in the construction work since construction industry is not a process specified in the Schedule and is, therefore, not within the provision of subsection (3) of section 3 of the Act, which prohibits the employments of children under the age of 14 years in hazardous concerns.

The Supreme Court pointed out that this was a sad and deplorable omission which must be immediately set right by every State Government by amending the Schedule so as to include construction industry. This could be done in exercise of the powers conferred under section 3A of the Employment of Children Act, 1938. The Supreme Court said that

⁴¹ AIR 1991 SC 1473

every State government will take the necessary step in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment under the age of 14 must be prohibited in every type of construction work. That would be in consonance with convention 59 adopted by the International Labour Organization and ratified by India. But apart altogether from the requirement of Convention No. 59 we have Article 24 of the Constitution which provides that no child below the age of fourteen shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The Supreme Court held that Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. This is a constitutional prohibition which, even not followed up by appropriate legislation, must operate proprio vigore.

Further The Apex Court observed that —there can be, no doubt that notwithstanding the absence of specification of construction industry in the Schedule to the employment of Children Act, 1938, no child below the age of 14 years can be employed in construction and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country.

Through this judgement the Apex Court explore the doctrine of Locus Standi by saying that not only aggrieved persons have a right to approach the court for redress their problems but also public spirited institution or any person affect by the interest of the some persons can approach the court on behalf of the aggrieved persons who are not in a position to come for relief. In that case the Apex Court took notice on this point that no doubt constructive industry did not come into the Category of schedule of Section 3of the Employment of Children Act 1938 but it violates the fundamental rights of the children by engaging them in a construction site which is considered to be hazardous one and Article 24 of the Constitution also prohibits the employment of children below the age of 14 years in factory or mine or any other hazardous employment it is very irony that instead of giving them education they puts employment of children in construction sites this operates

proprio vigore of Art 24 of the Constitution . So they go further extent by giving directions to the State Governments for looking out the benefit of children and take stand in the absence of Child labour legislation for the welfare of the children

In **Neerja Chaudhary v. State of Madhya Pradesh**⁴² is another momentous decision of the apex court where the judiciary has taken a serious note of the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating the bonded labourers in the country. The present case is based on a letter of September 20, 1982 addressed to one of the judges of the apex court by a petitioner who is a civil rights correspondent of Statesman in an article written by her and published in the issue of Statesman dated 14th September, 1982 in which she set out how these bonded labourers were without land and work, facing immense hardship and near starvation in the absence of any rehabilitation assistance by the State Government. It seems that once these freed bonded labourers were brought back to their villages, the administration of the State Government thought they had discharged their duty and then they conveniently forgot about the existence of this unfortunate specimen of humanity. When the petitioner interviewed some of these bonded labourers they said that they would rather go back to the stone quarries for work then starve and added —we might have been killed there, but we are also dying here. The petitioner pointed out this statement in the leading newspaper in the country. The petitioner stated that 135 bonded labourers who were working in the stone quarries in Faridabad had been released from bondage by an order made by this court in the first week of March, 1982 since they were found to be bonded labourers with in the meaning of the Bonded Labour System (Abolition) Act, 1976 and on release, they had been brought back to their respective village in Bilaspur District of the State of Madhya Pradesh with a promise of rehabilitation by the Chief Minister of that State. But when she visited three villages namely, Kunda, Pandhari and Bhairavapura in Mungeli Taluka of Bilaspur District in September 1982, with a view to ascertain whether or not the process of rehabilitation as promised by the Chief Minister had commenced, she found that most of the released bonded labourers belonged to these three village had not yet been rehabilitated

⁴² AIR 1984 SC1099

though six months has passed since their release and they are living almost on the verge of starvation. It may be pointed out that out of 135 released bonded labourers, about 75 belonged to these three villages and 45 out of them were from village Kunda. The petitioner also pointed out that some of the released bonded labourers owned land at one time but they had lost it to the money lender and some of them had pledged their jewellery and other small belongings to raise money for their subsistence. Therefore, the petitioner argued that it was statutory obligation of the State Government to ensure rehabilitation of the free bonded labourers and failure to do the same amounted to violation of the fundamental right of the freed bonded labourers under Article 21 of the Constitution. The petitioner prayed for a direction to the State Government to take steps for the economic and social rehabilitation of the freed bonded labourers released in March, 1982.

When the writ petition came up for preliminary hearing, the court asked the State Government for providing information regarding the framing of scheme for rehabilitation including constitution of vigilance committee as well as the steps taken for rehabilitating 135 released labourers living in the village in Mungeli Taluka of District Bilaspur. An affidavit was filed by the Assistant Labour Commission informing the court of the various steps taken by the State Government for identification, release and rehabilitation of bonded labourers.

The court expressed its disapproval of the information supplied by the State Government. It found that the attitude of the State government was indifferent and the State was not willing to admit the existence of bonded labour as according to it, unless a workman was able to show that he is forced to provide labour to the employer in lieu of an advance received by him, he cannot be regarded as a bonded labourer within the meaning of the definition of that term as laid down in the Act of 1976. But having regard to the decision of the **Bandhua Mukti Morcha case**⁴³. The court reasserted its stand in the following word. It would be cruel to insist that a bonded labourer in order to derive the benefits of this social welfare legislation should have to go through a formal process of trial with the

⁴³ AIR 1984 (3) SC 161

normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well as obliterate this Act from the statute book.

Justice Bhagwati observed that whenever it is shown that a labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is, therefore, a bonded labourer. Unless the employer or the government rebuts this presumption, the court shall presume that the labourer is a bonded labourer entitled to the benefit of a provision of the Act.

In the facts of the case it came to conclude that the court has, issued direction to the State government to include in the vigilance committee representatives of Social Action for identification, release and rehabilitation of bonded labourer. It also made a number of suggestions and recommendations for improving the existing state of affairs. One such suggestion is related to their re-organization and activation of vigilance committees.

It is submitted that the observations of the Apex Court in *Neerja Chaudhary* made in the context of rehabilitation of free bonded labourers provide a new impetus to the observance of provisions of labour welfare legislations as failure on the part of the State to implement the same would contravenes the provisions of the Article 21 of the Constitution . It was a unique case where the court compelled the State to implement with the directions issued in favour of the bonded labourers.

In *Labourers Working on Salal Hydro project v. State of Jammu and Kashmir and other*⁴⁴ Justice Bhagwati observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no child below the age of 14 years can be employed in construction works by reason of the prohibition enacted in Article 24 and this constitutional prohibition must be enforced by the Central Government.

⁴⁴ AIR 1984 SC 177

In this case honourable Supreme Court also agreed that child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed to augment their meagre earnings. And child labour is an economic problem, which cannot be solved by mere legislation .Because of poverty and destitution in this country it will be difficult to eradicate child labour, so attempts should be made to reduce to eliminate child labour because it is essential that a child should have be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development in the country. They must concede that having regard to the prevailing socio-economic conditions it is not possible to prohibit the child labour altogether and infact, any such move may not be socially or economically acceptable to large masses of people .That is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments clearly construction work is a hazardous employment and no child below the age of 14 years can therefore be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this Constitutional prohibition must be enforced by the Central .

The Supreme Court also suggested that whenever the Central Government undertakes a construction project which is likely to last for sometime, the Central Government should provide that children of construction, workers which are living it or near the project site should be given facilities for schooling because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country. It is conceded that, having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact; any such move may not be socially or economically acceptable to large masses of people.

86th Amendment- judicial effort

Nani Palkhivala in his book ‘We, the Nation, The Lost Decades’¹ writes that Education is the rock on which India must build her political salvation. Our country will be built not on

bricks but on brains; not on cement but on enlightenment. If we cannot afford education, we cannot afford to remain a civilized society. It is acknowledged all over the world that value based education is the only instrument for transmuting national talent into national progress. Amongst the important countries of the world, India is not adequately educated. Article 45 of our constitution enacts; The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. He concluded that Education is an end in itself; and not merely a means to an end like financial well- being. There should be no profit motive in liberal education, any more than in friendship. Then alone can knowledge ripen into wisdom. The timeless lesson of ancient Indian culture is that man is more than man, and there is more to the world than the world. Hence Palkhivala comments that the education system in India is not satisfactory & does not create intellectually wise elites.

The 86th Amendment to the constitution of India gave all children between the age of 6 years and 14 years a fundamental right to free and compulsory education. Various educationists have expressed their opinions after creation of such a fundamental right. The elevation of elementary education to the status of a justiceable fundamental right does not explain how such a move would reverse the conditions that prevented the universalization of elementary education in the last 61 years of operation of the Indian Constitution. It would lead to bureaucratic rush to make substantive law and the need to decide on procedural aspects like curriculum, pedagogy, teacher orientation and appropriate institutional arrangements are likely to be neglected. The new constitutional amendment seeks to make elementary education free and compulsory for children in the age group of 6 to 14 years. The ambit of meanings of the key terms —free¹¹ and —compulsory¹² is to be explicated by subsequent legislation, a Central law serving as a framework for a plethora of State laws. Commentators have been quick to point out that the crucial age segment of zero to six has been left out, and that there is no state commitment to quality. In addition, there is the important issue of deciding as to whose legal liability it is, if the child does not go to school once the state has made the provision for free schooling. Voices are rising

apprehending that the quality of education will degrade as the earlier concern for overall development will be replaced by a preference for behaviouristic, necessarily superficial, symptoms of learning. The National Human Rights Commission in response to a petition submitted by some social activists has said that the right to education can only be safeguarded by a democratically oriented system that is capable of providing education of a certain quality. The Commission said that the law has merged the issues of equality and quality. I think that the status of education as a fundamental right extends to the character and the quality of the education provided.

Therefore, the need for good quality free education is required for our children. The Right of Children to Free & Compulsory Education Act, 2009 aims to achieve such objectives. This act will be analysed as to how far it has been successful in achieving its aim.

Conceptual Framework

As desired by our constitutional forefathers, the Union of India is trying along with its machinery to make India a welfare state. Amendments are made to various substantive laws to achieve the goal of our forefathers. One such example is Article 21A to our constitution. Article 21 guarantees protection of life and personal liberty of individuals. The obligation of the State to protect the life all the persons in the country includes the obligation of the State to guarantee an individual reasonable standard of living & with human dignity. The term —personal liberty⁴⁵ has been given a very wide amplitude covering variety of rights which constitutes personal liberty of citizen. This right includes the right to a fair trial, right to free legal aid, quality of life, right to livelihood, right to education, protection from sexual harassment, the right to privacy, right to health. The march of Article 21 still continues. The frontiers of article 21 are expanding.

In case of **Mohini Jain v. State of Uttar Pradesh**⁴⁵ the Supreme Court in a number of cases (before 2002) had implied that the right to education is a fundamental right which

⁴⁵ 1992 SC 1858

flows directly from Article 21. The word 'life' has been held to include education because education promotes good and dignified life. The facts of the case are as follows.

With a view to eliminate the practice of collecting capitation fee for admitting students in educational institutions, the Uttar Pradesh legislature passed an act purporting to regulate tuition fee in private medical colleges in the State. Candidates admitted against government seats were to pay lesser amount than those admitted from non-aided category. The students from outside the State had to pay more than two times the amount paid by the State category students. The Supreme Court quashed the notification under Article 14 of the Indian Constitution and held that —charging capitation fee in consideration of admission to educational institution is a patent denial of a citizen's rights to education under the constitution. The court accepted that the Constitution does not expressly guarantee the right to education, as such, as a fundamental right. But reading cumulatively Article 21 along with the Directive Principles of State Policy contained in Article 38, 39(a), 41 and 45, the court opined that —it became clear that the framers of the constitution made it obligatory for the State to provide education for its citizens. The court also held that without making the right to education under Article 41 a reality, the Fundamental Rights would remain the reach of many illiterate citizens; The Fundamental Rights including the Freedom of Speech and Expression and other rights guaranteed under Article 19, cannot be fully appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity. Hence it was held that —the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The provisions frequently cited from the Indian Constitution are as follows:

Article 38 of the Indian Constitution which aims at the state to secure a social order for the promotion of welfare of the people and reads as follows⁴⁶

- i) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

⁴⁶ Inserted in the Constitution of India by the Forty-fourth amendment Act, 1978

- ii) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39 provides that the shall, in particular, direct its policy towards securing

- a. that the citizen, men and women equally, have the right to an adequate means of livelihood;
- b. that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

Article 41 enshrined in Part IV of the constitution aims to provide the right to work, to education and to public assistance in certain cases: It reads as follows:

The state shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45 aims at providing for early childhood care and education to children below the age of six years⁴⁷.

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Article 46 aims at promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. It reads as follows:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the

⁴⁷ Substituted by the Constitution (Eighty-Six Amendment) Act, 2002.

Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Further in this case, it was laid down that —the Directive Principles in Part IV guarantees the dignity of man. It is the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man. The framers of the constitution were aware that more than seventy percent of the people to whom they were giving the constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights 1948 emphasises Education shall be directed to the full development of the human personality. Article 41 in Chapter IV of the Constitution of India recognizes an individual's right to education. It says that the State shall within the limits of its economic capacity and development, make effective provision for securing the right to education.¶

In the case of **Unni Krishnan J.P. and others etc v. State of Andhra Pradesh**⁴⁸ court has reiterated the proposition that the right to education to the life is implicit in, and flows from the right to life guaranteed by Art. 21. But, the parameters of this right, which is not absolute, have to be determined in the light of the Directive Principles contained in Arts. 41, 45 and 46. The court has now limited the State obligation to provide educational facilities as follows:

- a) Every citizen has a right to free education until he completes the age of 14 years;
- b) Beyond that stage, the State obligation to provide education is subject to the limits of the economic capacity and development¶ of the State.

⁴⁸ (1993) 1 SCC 645

In case of **P. Cherriyakaya v. Union of India**⁴⁹, the Supreme court observed that:—The right to education that has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. Without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. The right to education is implicit in the right to life and personal liberty guaranteed under Article 21. This right to education is to be understood in the background of Articles 45 and 41 of the Constitution and the State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right’||

In case of **Bandhua Mukti Morcha v. Union of India**⁵⁰ another broad theme of life and dignity is to be found. Court gave its expanded interpretation of Article 21 that —live with human dignity, free from exploitation, it must includes protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity. No government can take any action to deprive a person of the enjoyment of these basic rights.||

In case of **Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidhayala**⁵¹, the court recognised the importance of higher and secondary education. The court observed that. The National Policy on Education, 1986, as modified in 1992 envisages the improvement and expansion of education in all sectors, elimination of disparities in access and laying greater stress on improvement in the quality and relevance of education at all levels, including technical and professional education. It also emphasizes that education must play a positive and interventionist role in correcting social and regional imbalance. The nation is firmly committed to providing Education for all, the priority areas being free

⁴⁹ A.I.R. 1994 Kerala (2)

⁵⁰ 1984 (3) SCC 161

⁵¹ (2006) 9 SCC 1

and compulsory primary education, covering children with special needs and eradication of illiteracy.¶ It is clear that Article 21A would cover primary as well as secondary education.

In case of **Ashok Kumar Thakur v. Union of India**⁵², one of the questions before Justice Dalveer Bhandari was that an the fundamental right under Article 21 be accomplished without laying emphasis on primary education? The Honourable judge reiterated that free and compulsory education of children has now become a fundamental right. He said that in order to achieve a casteless and an egalitarian society, this right has to be guaranteed right from the beginning. He said that the State is duty bound to implement Article 21A and its provisions on a priority basis. There has been a great laxity in its implementation which is affecting citizens in every walk of life. The court directed the Union of India to implement this right within a set time limit of six months or the latter would have to necessarily intervene. The root cause of all the problems in our country is poverty and if the State wants to uplift the socially, educationally and economically backward class in the society, then it must implement Article 21A. Thus by providing educational facilities from day one, the need for reservations at the university level will not be felt in a few years time. Also the allocation of more funds for primary and secondary education was necessary. In almost all the major countries of the world like Britian, U.S.A, Spain, France, Germany, Switzerland, Austria education is free and compulsory. The State should ensure that compulsory education is feasible. The State has to take some efforts to materialize Article 21A, one such effort is SSA (Sarva Shikshana Abhiyan). The bill in order to make education free and compulsory should punish defaulting parents with six imprisonment. Scholarships, hostel facilities should also be provided. It is the goal of Article 21A to achieve universal and quality education children. The court made the following concluding remarks.

- i) Provide low income parents financial incentives so that they can afford sending their children to school.
- ii) Criminally penalise those who receive financial incentives and yet they fail to send their children to school.

⁵² MANU/SC/1397/2008

- iii) Penalise employers who do not allow children to go to school or do their homework.
- iv) The government should increase the education budget every year until the aim of free and compulsory education is achieved.
- v) The State is under an obligation to implement Article 21A in to.

Thus the chapter reveals that the role of judiciary in India has been quite significant in promoting child labour welfare. The study discloses that judiciary has always given a lead to save the child workers from exploitation and improve their conditions. Judiciary has shown a generosity towards poor child workers by relaxing the rules of locus standi. It has always been made efforts to benefit the poor child workers by entertaining their problems and giving them relief to them despite the limitations of locus standi. The observations made by the judiciary in various decided cases show that it is always committed to the cause of the child-workers.

Inspite of the various efforts of the judiciary in promoting child welfare, there has been tremendous increase in the child labour. Poverty, illiteracy and unawareness about the government policies and programmes are the main reason for the increase in child labour. Though the government has been taking measures, but always lack behind in implementation. Also, in the process of promoting and establishing new industries, the government of India has turned a blind eye to the continued utilization of children at exploitative wages in hazardous conditions, a fact that its own jurisprudence has considered illegal.

4.2 ROLE OF NON GOVERNMENTAL ORGANISATION IN CHILD LABOUR

NGO stands for Non – Governmental Organization. It is also called as Non – profit organization. They are mainly established for a cause and combat primarily social issues any organization working for betterment of society or social welfare can be said as an NGO. NGOs may be in the kind of association society, trust or a community. There is no hard and fast yard stick to determine the NGO. But, to attain the status of NGO certain characteristic features have to be imbibed.

Essential characteristic features of an NGO

Not officially registered as part of the Government.

- Doesn't work for profit.
- Works within the legal framework, either locally, nationally or internationally.
- If the definition of NGOs is expended to that of a civil society organization, NGOs can be considered part of the sphere of social interaction between the household and the state characterized by:
 - a. Community co-operation
 - b. Structures of Voluntary association
 - c. Networks of public communication

Need for NGOs

To solve problem and address issues not being covered / inadequately covered by governments.

Recognized NGOs and brief description on NGOs working towards elimination of child labour

NGO functioning for welfare of children and eradication of child labour engages:

- Making Surveys
- Raids
- Rescue operations
- Operations with the Government
- Rehabilitation of children
- Awareness program

Out of the above mentioned functions, rescuing and rehabilitate child labourers attempt to mainstream them, that is to admit them to regular government schools. The mainstreaming becomes the ultimate goal of the entire attempt to eradicate child labour.

Uttar Pradesh enjoys the distinction of fostering a healthy relationship between the government and NGOs. Such partnerships are established in the hope of greater synergy, and even though they may bring conflicts in their wake, Uttar Pradesh has chosen to manage these tensions rather than abandoning NGO partnerships altogether.

The State Child Labour Eradication Programme (SCLP) is an ambitious project of the government which had aimed at abolishing child labour all over Uttar Pradesh by 2007 with the help of the NGOs. The partnership between NGOs and the government is the fulcrum of the programme and is envisaged in three stages: the identification and rescue of child labourers, their rehabilitation and their mainstreaming. The programme is run through the department of labour and envisages enlisting of local NGOs all over the state. The department issues a public notice to enlist NGOs with at least two years of experience in child labour-related work. These NGOs are supposed to be situated at the district or sub-district (taluk) level. Once they are selected all the line departments of the government are supposed to assist them in identifying, rescuing, rehabilitating and admitting the child workers in the schools. These are four tiers of implementation involved in this.

Bonded Labour Liberation Front (BMM)-Bandhua Mukti Morcha, New Delhi

The main aim is to identify adult bonded labour, child bonded labour/child labour, in the various sectors of the economy, liberate them from slavery and follow up their rehabilitation by the government under the laws of the country, lobby governments and the United Nations, undertake legal casework on behalf of children, work with media and press, children working and living on the street, individual cases of violations, sexual exploitation of children.

Bachpan Bachao Andolan (BBA), New Delhi

It is not a conventional NGO or a typical institution; it is the ray of hope in millions of hearts, the first dream in their eyes, and the first smile on their faces. It is the sky and wings together for innumerable children, excluded from human identity and dignity, with a desire to fly in freedom. It is the tears of joy of a mother who finds her rescued child back

in her lap after years of helplessness and hopelessness. It is a battle to open the doors of opportunities, a fire for freedom and education in the hearts and souls of thousands of youth committed to wipe out the scourge of slavery and ignorance from the face of mankind. Its vision is to create a child friendly society, where all children are free from exploitation and receive free and quality education.

Bachpan Bachao Andolan on 12th September 2011, with the help of Delhi Police rescued 9 children from Model Town Area of North Delhi District. The operation is a part of a nation wide campaign against child labour and trafficking called the India Action Week (organized by BBA from 12 to 18 September 2011). 8 boys and 1 girl were rescued who have all been trafficked from Badayun district in Uttar Pradesh⁵³.

The children were working as a wire cutter in a switch wire manufacturing unit in Mahendra Enclave. These children were forced to work for 12-14 hrs in a day and paid merely Rs. 1500. Police has arrested the employer and has prosecuted him for offence of child labour and cruelty to children.

Strategies, Policies and programmes adopted by NGOs in eliminating child labour.

In most societies where child labour has been eradicated or eliminated, multi pronged strategies were used. Stringent laws were passed which made child labour illegal. In addition the educational system was strengthened so that children removed from work could go to school. It is widely recognized that any strategy for the elimination of child labour must have two critical components: Stringent laws and a strengthened school system where children removed from work can be sent.

Most initiatives regarding child labour are focused on eradication; organization striving for regulation and rights of children as workers are neither widespread nor common. It is important to stress however, that the clear distinction made between the two legal and ideological constructs (regulation and abolition) is less defined at the level of practice. There are many forms of child labour that are deemed to be intolerable even by those

⁵³ <http://www.childlabournews.org/> last visited 18/01/2012 at 2:56 p.m

pleading for regulation and some organization that uncompromisingly argue the case for abolition, like the ILO and UNICEF, actually run and support measures at the grassroots levels that are aimed at phasing out work gradually, recognizing that immediate withdrawal could have severe and unwanted consequences. At grass root levels, organizations adopt a pragmatic approach with a certain amount of flexibility⁵⁴.

The strategy adopted by the Andhra Pradesh State Government was:

- a. To make every citizen aware of the problem of child labour.
- b. To adopt a multi – pronged approach by involving all the stakeholders at various level (in process of elimination of child labour)
- c. To strengthen enforcement machinery for implementation of all the laws relating to elimination of child labour.
- d. To provide institutional support by involving government, NGOs social partners and community.
- e. To provide adequate resources to fund the programme of action.

⁵⁴ Working children organization in India. By Heike Roschanski – Studying child labour policy implications of child centers research presentation the Hague.

CHAPTER-5

INTERNATIONAL EFFORTS IN ERADICATING CHILD LABOUR

5.1 U. N. CONVENTION ON THE RIGHTS OF THE CHILD, 1989 (CRC)

- The CRC is an international treaty that recognizes the human rights of children, defined as persons upto the age of 18 years. The Convention establishes in international law that States Parties must ensure that all children-without discrimination in any form-benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in, achieving their rights in an accessible and active manner.

International community monitor and support progress on the implementation of the Convention

The Committee on the Rights of the Child, an internationally elected body of independent experts that sits in Geneva to monitor the Convention's implementation, requires governments that have ratified the Convention to submit regular reports on the status of children's rights in their countries. The committee reviews and comments on these reports and encourages States to take special measures and to develop special institutions for the promotion and protection of children's rights. When necessary, the committee calls for international assistance from other governments and technical assistance from organizations like UNICEF.

The new vision of the child in the Convention

The convention provides a universal set of standards to be adhered to by all countries. It reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision of the child as an individual and a member of a family and a community, with rights and responsibilities appropriate to his or her age and

stage of development. Recognizing children 's rights in this way firmly sets a focus on the whole child. Previously seen as negotiable, the child 's needs have become legally binding rights. No longer the passive recipient of benefits, the child has become the subject or holder of rights.

Impact of convention - the impact of the convention can be described as follows, the convention

- 1) is the force in virtually the entire community of nations, thus providing a common ethical and legal framework to develop an agenda for children? At the same time, it constitutes a common reference against which progress may be assessed.
- 2) was the first time a formal commitment was made to ensure the realization of human rights and monitor progress on the situation of children.
- 3) indicates that children 's rights are human rights. Children 's rights are not special rights, but rather the fundamental rights inherent to the human dignity of all people, including children. Children's rights can no longer be perceived as an option, as a question of favour or kindness to children or as an expression of charity. They generate obligations and responsibilities that we all must honour and respect.
- 4) was even accepted by non-state entities. The Sudan People's Liberation Army (SPLA), a rebel movement in Southern Sudan, is one such example.
- 5) is a reference for many organizations working with and for children—including NGOs and organizations within the UN system.
- 6) reaffirms that all rights are important and essential for the full development of the child and that addressing each and every child is important.
- 7) reaffirms the notion of State accountability for the realization of human rights and the values of transparency and public scrutiny that are associated with it.
- 8) promotes an international system of solidarity designed to achieve the realization of children's rights. Using the Convention's reporting process as a reference, donor countries are required to provide assistance in areas where particular needs have been identified; recipient countries are required to direct overseas development assistance (ODA) to that end too.

9) highlights and defends the family's role in children's lives.

Number of countries ratified the Convention on the Rights of the child

More countries have ratified the Convention than any other human rights treaty in history – 192 countries had become State Parties to the Convention as of November 2005.

Who has not ratified the Convention on the Rights of the Child and Why?

The Convention on the Rights of the Child is the most widely and rapidly ratified human rights treaty in history. Only two countries, Somalia and the United States, have not ratified this celebrated agreement. Somalia is currently unable to proceed to ratification as it has no recognized government. By signing the Convention, the United States has signaled its intention to ratify –but has yet to do so.

As in many other nations, the United States undertakes an extensive examination and scrutiny of treaties before proceeding to ratify. This examination, which includes an evaluation of the degree of compliance with existing law and practice in the country at State and federal levels, can take several years—or even longer if the treaty is portrayed as being controversial or if the process is politicized. Moreover, the US Government typically will consider only one human rights treaty at a time. Currently, the Convention on the Elimination of All Forms of Discrimination against Women is cited as the nation's top priority among human rights treaties.

UNICEF using the Convention on the Rights of the Child

The Secretary General of the United Nations has called for the mainstreaming of human rights in all areas of UN operations for example, the Office of the United Nations High Commissioner for Refugees (UNHCR) in its mandate for refugee children, or the International Labour Organization (ILO) in its commitment to eliminate child labour. In the case of UNICEF, the Convention has become more than just a reference, but a systematic guide to work of the organization. As expressed in its Mission Statements, UNICEF is mandated to advocate for the protection of children's rights and it strives to

establish childrens rights as enduring ethical principles and international standards of behaviour towards children. UNICEF promotes the principles and provisions of the Convention and the mainstreaming of childrens rights in a systematic manner, in its advocacy, programming, monitoring and evaluation activities.

The Convention on the Rights of the Child provides UNICEF with guidance as to the areas to be assessed and addressed, and it is a tool against which UNICEF measures the progress achieved in those areas. Integrating a human rights approach in all UNICEF's work is an ongoing learning process that includes broadening the framework for UNICEF's development agenda. In addition to maintaining a focus on child survival and development, UNICEF must consider the situation of all children, better analyse the economic and social environment, develop partnerships to strengthen the response (including the participation of children themselves), and support interventions on the basis of non-discrimination and act in the best interests of the child.

Steps of the Convention on the Rights of the Child and the Committee on the Rights of the Child encourage governments to undertake through its reviews of country reports, the committee urges all levels of government to use the Convention as a guide in policy-making and implementation to-

- a) Develop a comprehensive national agenda for children.
- b) Develop permanent bodies or mechanisms to promote coordination, monitoring and evaluation of activities throughout all sectors of government.
- c) Ensure that all legislation is fully compatible with the Convention.
- d) Make children visible in policy development processes throughout government by introducing child impact assessments.
- e) Carry out adequate budget analysis to determine the portion of public funds spent on children and ensure that these resources are being used effectively.
- f) Ensure that sufficient data are controlled and used to improve the plight of all children in each jurisdiction.

- g) Raise awareness and disseminate information on the Convention by providing training to all those involved in government policy-making and working with or for children. 8) Involve civil society including children themselves in the process of implementing and raising awareness of child rights.
- h) Set up independent statutory offices ombudspersons, commissions and other institutions to promote children's rights.

Work of UNICEF

In addition to support of country programmes, how does UNICEF assist governments in promoting children's rights? UNICEF's work involves advocacy, cooperation and technical assistance.

- a) UNICEF undertakes advocacy –through publications, awareness campaigns and participation in major international
- b) UNICEF cooperates with both donor governments and governments in the developing world. UNICEF assisted programmes seek to ensure the social and economic rights of children by delivering essential services such as health and education and improving access to good nutrition and to care. UNICEF also focuses attention on national budget spending, encouraging governments to allocate 20 per cent of budgets to basic services. Further, UNICEF supports efforts to redress inequitable practices and discrimination, which are direct and underlying causes of children's and women's deprivation.
- c) UNICEF cooperates with other international organizations particularly those with in UN system, as the United Nations Development Assistance Framework (UNDAF) process illustrates – and international financial institutions.
- d) UNICEF works to build partnerships with civil society organizations, involving children, families and other members of communities.
- e) UNICEF provides technical support and assistance to the committee on the Rights of the Child.

- f) UNICEF focuses on sustainable results and encourages ongoing monitoring and evaluation of programmes.

5.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly Resolution 217 A (III) as a common standard of achievements for all people and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

This Declaration also contains certain provisions for the welfare of the children. They are as follows:

There shall be a right of every child to a standard of living adequate for the child 's physical, mental, spiritual, moral and social development⁵⁵.

State parties recognize the rights of the child to education and with a view to achieve this right progressively and on the basis of equal opportunity, they shall, in particulars⁵⁶.

- 1) Make primary education compulsory and available free to all.
- 2) Encourage the development of different forms of secondary education including general and vocational education make them available and accessible to every child., and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.
- 3) Make higher education accessible to all on the basis of capacity by appropriate means.
- 4) Make education and vocational information and guidance available and accessible to all children.

⁵⁵ Article 27 of the UDHR

⁵⁶ Article 28 of the UDHR

- 5) Take measures to encourage regular attendance at schools and reduction of dropout rates.

States parties shall take all appropriate measures to ensure that school discipline is administered in the manner consistent with the child's human dignity and in conformity with the present convention.

State parties shall promote and encourage international co-operation in matters relating to education, in particular, with a view to contribute to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and of the needs of developing countries⁵⁷.

State parties shall recognize the right of the child of rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural rights and arts.

State parties recognize rights of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health physical, mental, spiritual, moral and social development.

State parties shall take legislative, administrative, social and educational measures to ensure the implementation of it. To this, having regard to the relevant provisions of other international instruments, State parties shall in particular

5.3 RIGHT OF THE CHILD UNDER VARIOUS CONVENTIONS

1. Convention on the Rights of the Child, 1989 (CRC)
2. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OPSC), 2000
3. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC), 2000

⁵⁷ *ibid*

4. Minimum Age Convention, 1973
5. Worst Forms of Child Labour Convention, 1999

Convention on the Rights of the Child, 1989

The State Parties to the present Convention, considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Bearing in mind that the peoples of the United Nations have, in the charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom., Recognizing that the United Nations has in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Recalling that in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitles to special care assistance, convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be offered the necessary protection and assistance so that it can fully assume its responsibilities within the community, recognizing that the child, for the full harmonious development of his or her personality, should grow up in family environment, in an atmosphere of happiness, love and understanding, considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and

recognized in the Universal Declaration of Human Rights, in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10) and in the Statutes and relevant instruments of specialized agencies and international organizations concerned with the Welfare of Children. Bearing in mind that, as indicated in the Declaration of the Rights of the Child, —the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth, Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special reference to Foster Placement and Adoption Nationally and Internationally; the United Nations standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the declaration on the protection of Women and Children in Emergency and Armed Conflict, recognises that, in all countries in the World, there are children living in exceptionally difficult conditions, and that such children need special consideration, Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000

The States Parties to the present Protocol, considering that, in order to further to achieve the purpose of the Convention on the Rights of the Child and the implementation of its provisions, especially Articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography. The Convention on the rights of the Child recognizes the rights of the child to be protected from Economic exploitation and from performing and work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography. Deeply concerned at the widespread and continuing

practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography, that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited. Concerned about the growing availability of child pornography on the internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, international possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry, Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, disfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children. The efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all sectors and improving law enforcement at the national level. Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on protection of Children and co-operation in respect of Inter-country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, enforcement and cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child, recognises the importance

of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and child pornography and the declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies.

Minimum Age Convention, 1973

The General Conference of the International Labour Organization, having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its fifty-eighth session on 6 June 1973, and having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and Noting the terms of the Minimum Age (Industry) Convention 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965 and considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of the child labour, and it determined that these proposals shall take the form of an International Convention, adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three the following Convention, which may be cited as the Minimum Age Convention, 1973.

Worst Forms of Child Labour Convention, 1999

The General Conference of the International Labour Organization, having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and considering the need to adopt new instruments for the

prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to slavery, 1956 and having determined that these proposals shall take the form of an international Convention, Adopt this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Effect of Conventions

The international community has fought the practice of child labour for the past four decades. National and international laws make the use of child labour a crime. Nonetheless, enforcement is elusive.

Adopted by the International Labour Organization (ILO) in 1973, C138 binds ratifying countries to pursue a national policy for the abolition of child labour and to progressively raise the minimum age for employment or work to a level consistent with the fullest physical and mental development of young persons. This minimum age should be 15 years, or the age reached by the completion of compulsory schooling. According to the convention, the minimum age for work that is likely to jeopardize the health, safety or morals of young persons is 18. to date 144 countries have ratified C138, including Nepal in 1997. India and Pakistan are yet to ratify Convention 138⁵⁸.

The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights for children, including civil and political rights as well as economic, social and cultural. Article 32 states that children have the rights to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The Convention is the most universally accepted human rights instrument in history and has been ratified by 192 countries – every country in the world except two, the United States and Somalia⁵⁹.

5.4 INTERNATIONAL LABOUR ORGANIZATION AND RIGHTS OF THE CHILD

International Labour Organization is an association of States, united to work for lasting peace based on social justice. It was founded in 1919 as a part of peace settlement that followed the First World War. For many years it was association with League of Nations. In the year 1946 it become the first specialized agency associated with the United Nation. It deals with international labour and social problems. It is tripartite agency in which representatives of employers and workers as well as representatives of government take part in its work. Its motto is Poverty anywhere, constitutes a danger prosperity everywhere. Protecting the working people is the primary object of International Labour

⁵⁸ Minimum Age Convention [c-138], 1973.

⁵⁹ Convention on Rights of Child [CRC, 1989]

Organization through adopting international labour standards in the form of Conventions and recommendations. Child labour has been one of the key areas of concern for the International Labour Organization since its inception, and has always been an area of special concern. The Organization provides a world forum for the discussion of social and labour problems of concerns to governments, employers and workers in all member countries. India is one of the important members. The organization wrote a new chapter in international relations by launching its system of voluntary standards in the social and labour field. Since one of the main tasks of the organization is to set international labour standard, it is normally referred to as World-Parliament of Labour. Though it cannot legislate like Parliament, yet it performs a well-defined Pre-legislative function, through its conventions and recommendations.

Conventions adopted by International Labour Conference are a legal instrument regulating some aspect of labour administration, social welfare and human rights. It creates obligation of bonding nature on countries who have ratified it. After ratification of the convention, it requires complete compliance with all its provisions.

Apart from conventions, a recommendation contains provision which are generally in nature of guiding principles for action and it may be implemented progressively and in parts. On the issue of child labour, the role of International Labour Organization may be visualized, that in the very first session, a convention was adopted fixing minimum age for the admission of children to industrial employment at fourteen years.

Conventions adopted by ILO

Since its inception various conventions and recommendation mainly in respect of children and adolescents indicate the approach of International Labour Organization towards the elimination of child labour system. These conventions are –

- 1) Minimum age convention.
- 2) Medical Examination Convention, and
- 3) Night work convention.

ILO in India

Virtually from the very beginning International Labour Organization is committed to work for elimination of child labour system gradually and for promotion of well being of the children working in the field. Even the Hon'ble Apex Court of India emphatically stated that the International Labour Organization has been playing an important role in the process of gradual elimination of child labour and to protect the child from industrial exploitation. The main focus has been:

- 1) Prohibition of child labour.
- 2) Protecting child labour at work.
- 3) Attacking the basic causes of child labour.
- 4) Helping children to adopt to future work.
- 5) Protecting the children of working parents.

International year of the Children and measures by UN

To give the practical shape, the United Nation also declared the year 1979 as a —International year of the Childrenl. In response to resolution of United Nations, the International Labour Organization has also endorsed the declaration and appealed to its member States to act for elimination of child labour system, and till its complete elimination, the working conditions may be improved, regulated and humanized. Again in November, 1989 the General Assembly of the United Nations adopted Convention on the rights of the child as under –

- a) Everyone is entitled to all the rights freedom set forth therein without distinction of any kind such as race, colour, sex, language, religion
- b) Region national or social origin, rich or poor birth or other status.
- c) Childhood is entitled to special care and assistance.
- d) The family as the fundamental group of society and the natural environment for the growth and wellbeing of its members and particularly children should be afforded

the necessary protection and assistance so that it can fully assume its responsibilities within the community.

- e) The child for full and harmonious development of his/her personality should grow up in a family environment, in an atmosphere of happiness, love and understanding.
- f) The child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the United Nations Charter and in particular in the spirit of peace, dignity, tolerance, freedom equality and solidarity

Approach of India

In view of the difficult conditions in which children are to live all over the world, the United Nations in its Convention on the right of the child has included forty two Articles covering various aspects of child right and welfare of the children. The Convention was adopted unanimously on 20th November, 1989 and was opened for signatures in September, 1990. this Convention affirms that children's right requires special protection and it aims, not only to provide such protection, but also to ensure the continues improvement in the status of children, all over the world, as well as their development and education in conditions of peace and security. As such the convention protects the civil and political rights of the child, and extends protection to economic, social, cultural and humanitarian rights of the child. India has also signed the instrument and submitted to United Nations on 11th December, 1992, which contains as following

While fully subscribing to the objectives and purposes of the Convention realizing that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resource and within the frame work of international co-operation, recognizing that the child has to be protected from exploitation of all forms including economic exploitation. Nothing that for several reasons children of different ages do work in India having prescribed minimum wages for employment in hazardous occupations and in certain other areas, having made regulatory provisions regarding hours and conditions of employment, and being aware that it is not practical immediately to prescribe minimum

age for admission to each and every area of employment in India, the Government of India undertakes to take measures to progressively implement the provisions of Article 32 of the Convention particularly para-2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party. Article 32 of the Convention reads as below

1) State parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2) State parties shall take legislative, administrative, social and educational measure to ensure the implementation of the present Article. To this end having regard to the relevant provisions of the international instruments, States Parties shall in particular,

- a) Provide for a minimum age or minimum ages for admission to employment,
- b) Provide for appropriate regulation of the hours and conditions of employment,
- c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article. ||

International Program on Elimination of Child Labour

Motivated by manifold efforts —International Program on Elimination of Child Labour|| (IPEC) came into existence in the year 1990, with the object to motivate regarding implementation of practical programs connected with child labour and to provide technical advisory service and assistance to member countries whenever asked for . The object of the program is based on the hope that child labour system can be effectively combated and progressively eliminated with the help and active participation of government, employers and workers organization, Nongovernmental organizations, educationists, parents, social activists and reformers, and other institutions concerned with this social evil.

Jurisdiction of IPEC-

A concerted effort may help to combat against the worst abuses of child labour like hazardous work, bonded child labour, forced child labour and problem of street children.

The functional jurisdiction of IPECl is –

1. To train the enforcement agency of Central and State Government.
2. To organize motivational seminars for Trade Unions and employer's organization to motivate them for active participation in child welfare programmes and elimination of child labour system.
3. To organize nationwide major programmes to give awareness into common man through nongovernmental organization.
4. To organize various training programmes to educate the society regarding various evils and abuses of child labour system and generate sensitiveness against the social evil of employing child labour.

The International labour Organization and Government of India signed Memorandum of Undertaking (MOU) in 1992 and formally it was launched on 20th January, 1993 in India.

CONCLUSION AND SUGGESTIONS

CONCLUSION

Children constitute the nation 's valuable human resources. The future wellbeing of the nation depends on how its children grow and develop. The great poet Milton said —Child Shows the man as morning shows the day. So it is the duty of the society to look after every child with a view to assuring full development of its personality. Children are the future custodians and torch bearers of the Society: they are the messengers of our knowledge, cultural heritage, ideologies and philosophies. Children are really future components in the form of great teachers, scientists, judges, rulers, doctors, planners, engineers, politicians on whom the entire society founded (rests). Unfortunately, millions of children are deprived of their childhood and right to education and thereby they are subjected to exploitation and abuse.

The age of the child has been differently defined in different laws. There is no definite criteria or scientific parameters in defining the age of the child. The Constitution of India under Art.24 defines Child's any one below the age of 14 years and who shall not be employed to work in any factory or mine or engaged in any other hazardous employment. Under Child Labour (Prohibition and Regulation) Act, 1986 Child 'means a person who has not completed his 14 years of age. Article 21-A of the Constitution states that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by law determine. Now, amended Article 45 of the Constitution states that, the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years. But according to Art.1 of the United Nations Convention on the Rights of the Child 1989, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. Under Juvenile Justice (Care and Protection of Children) Act, 2000 the age is fixed at 18 years. Thus, there is no uniform fixation of the age of a child.

Unfortunately, the children in India are subjected to various forms of abuse. National Study on Child Abuse recorded its findings very exhaustively on various forms of abuse of children. They are child labour, physical abuse, emotional abuse, substantial abuse, Girl child neglect, sexual abuse etc.

Socio-economic conditions prevailing in the society are strongly responsible for the abuse of child in different forms. Poverty, illiteracy, not aware of the child rights and low literacy rate, equally contribute to the problem of child labour. Among the various forms of abuse of children it would be more pertinent and relevant to focus on child labour. Child labour is a abuse and exploitation of children and children prematurely leading a life like an adult. They receive low wages and work for long hours under conditions that are likely to damage their health as well as physical and mental development. According to a National Study on Abuse of Children, out of 12,447 children, 19.70% are found to be at work. Only 17% of working children are paid for their work. Thus, child labour is being largely underpaid, overworked and exploited.

Child Labour is not a phenomenon or feature peculiar to India. This has been there all over the world. The concept of child labour is complex in its nature. It is very difficult to define and give a valid definition of child labour.

This implies that work which does not detract from other essential activities for children such as leisure, play and education are not child labour. Child labour, therefore, is the work which involves some degree of exploitation, namely, physical, mental, economic and social and therefore implies the health and development of children. Thus, child labour is a subset of child work which implies that all child labour can be termed as child work but all child work cannot be child labour. Thus, there is a gap between two concepts, although, both appears to be one and the same, when it is investigated forensically difference can be made out. Children work in difficult forms/sectors, namely in the agrarian sector, industrial sector and service sector.

There are various factors responsible for leading to child labour. Child labour is a socio-economic problem. In a country where millions of children go to bed hungry, without

having a single full meal of the day, total elimination of child labour by mere Legal recourse can never be said to be a practical proposal. It may suppress the malaise but cannot cure it. Samuel Johnson opined that, —Poverty is a great enemy to human happiness; it certainly destroys liberty, and it makes some virtues impracticable and others extremely difficult. Children thus become instrument to augment family income and are seen as a means to alleviate poverty. Thus, there is vital link between poverty and child labour. Weak and tardy enforcement of the child labour legislation and defective legislation and polices also contribute more for the incidence of child labour.

Thus, the phenomenon of child labour is multi-dimensional complex problem and deep-rooted in society. So it may not be wise to rely on one single approach to deal with it. So a comprehensive integrated approach is required to tackle and combat the problem of child labour.

International Labour Organization is committed to the abolition of the worst forms of child labour and gradually other forms also. This is the first child labour convention, which prohibited, the work of children under the age of fourteen in industrial establishments. The protection of child against exploitation in employment is one of the major concerns of this Convention. It has moved totally 19 Conventions. International Labour Organisation's Worst Forms of Child Labour Convention, 1999 (No.182), Minimum Age Convention,1973 (No.138), Minimum Age Recommendation,1973 (No.146) and International Programme for the Elimination of the Child Labour (IPEC) .

Thus, in the Specialized Agencies of the United Nations, International Labour Organization plays a vital role and directly committed for elimination of child labour. Apart from ILO, there are other specialized agencies like United Nations Educational, Scientific and Cultural Organization, United Nations Children's Emergency Fund (UNICEF), South Asian Association of Regional Countries (SAARC) and World Health Organization (WHO) etc.

Thus, International Instruments provides codification of children rights into one international document and recognizing aspirations which mankind has for its children. It

can be said that, Conventions and Declarations make provisions and set high aspirations. But the State parties face practical difficulties in implementation due to socio-economic and cultural and political systems.

There are no implementing provisions either in the conventions or in declarations. There is no responsibility and accountability upon the state parties for their acts and omissions.

It is found that, the practice of child labour in India or in any country of the world is an age old phenomenon. Since ancient time child labour existed in the Indian society in one form or the other. During ancient time the child labourer were regarded as child slaves'. Tender aged children who were under eighteen by the custom treated them as chattels. The practice of child labour was existing in ancient India in the form of slavery. Thus children were engaged in different occupations and even in agricultural sector and exploited by landlords.

During the medieval period child labour was prevailing in India and working as slaves. Landless labourers used their children to help in their economic activities and children were required to help them in rendering their traditional crafts or family occupations at the young age. Children were frequently mortgaged and sold like movable properties. The rulers made no effort to abolish this practice.

In the modern era, during British rule significant changes were brought by the then Government. The first protective Child Labour Act was enacted in 1881; this was known as Indian Factories Act, 1881. During the Modern era, before independence efforts had been made by bringing various legislations for elimination of child labour.

At present there are 14 legislations to control and regulate child labour in India. Children (Pledging of Labour) Act, 1933 was the first statutory enactment dealing with child labour. Then, the Employment of Children Act, 1938 was enacted which had been in force till repealed and replaced by Child Labour (Prohibition and Regulation) Act, 1986. The main object of the Act was to prevent the employment of children under the age of 14 years to work in occupations and curbed the exploitation of the Child Labour. One of the

drawbacks of the Act was it had not provided any provision with regard to the health, safety, medical examination and welfare of children. This Act was amended as many as five times during the year 1939, 1948, 1949, 1951 and 1978 only to ameliorate working conditions of children.

The Factories Act, 1948 raised minimum age of employment of children in factories to fourteen years and section 67 of the Act enacts an absolute prohibition of employment of child in any factory. The Minimum Wages Act, 1948 defines a child as a person below 15 years and it provides for minimum wages for children and apprentices. The Plantation of Labour Act, 1951 prohibited the employment of children under 12 years in plantations and now by amendments under the provisions of Child Labour (Prohibition and Regulation) Act 1986, age of the child has been increased to 14 years. The Merchant Shipping Act 1958 prohibits children under 15 to be engaged to work in any capacity in any ship, except in certain specified cases. Again the Motor Transport Workers Act, 1961 prohibits the employment of children who are less than 15 years in any motor transport undertaking. In the same year the Apprentices Act 1961 was enacted which prohibits the apprenticeship / training of a person of less than 14 years. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 prohibits (a) the employment of children under fourteen year in any industrial premises manufacturing beedies or cigars and (b) persons between fourteen and eighteen years from working at night between 7 pm and 6 am.

Further Article 24 of Constitution prohibits employment of children below 14 years in factories, mines and in any other hazardous employment. In order to fulfill the constitutional mandate after 66 years of independence and to respond to the National Policy for Children 1974. Government has enacted Child Labour (Prohibition and Regulation) Act, 1986 which prohibits the employment of children below 14 years and imposes stringent punishment in cases of violation of the Act.

Constitution contains several provisions under Article 15(3), Article 21, Article 24, Article 39(e) and (f) and Article 45 for preventing exploitation and protecting children. In all the Five Years Plans progressive steps were taken by the Government of India for the

elimination of child labour. National Policy of Children, 1974 was introduced and it recognized that, —The Nation's children are supremely important asset and declared that —the nation is responsible for their nurture and solicitude. In February 1979 Government constituted 16 member committee on child labour under the Chairmanship of Shri M.S. Gurupadaswamy to look into the cause leading to and the problems arising out of the employment of children in organized and unorganized sectors. After a detailed study, Committee found that —Child Labour involves the use of labour at its point of lowest productivity, hence it's an inefficient utilization of labour power. Child labour represents pre-mature expenditure rather than saving. Committee remarked that, child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful.

National Child Labour Policy 1987 was introduced and implemented National Child Labour Projects in 1988 for the rehabilitation of child labour. In the dawn of the new millennium, Government of India brought various legislations and made amendments to the existing laws. The Second National Commission on Labour, 2002 which has recommended the repealing of the existing Child Labour (Prohibition and Regulation) Act, 1986 and suggested a new model Act as Child Labour (Prohibition and Rehabilitation) Act, To prohibit Employment of children in all employments and to regulate employment of children where permitted.

SUGGESTIONS

1. Though there are a number of legislations dealing with the menace of child labour, there is no explicit provision under the constitution fixing the age within which a person is deemed to be child labour. Article 24 of the Constitution should be as —No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other employment.
2. The object of law in this field is merely the prohibition and regulation of child labour. The present title of Child Labour (Prohibition and Regulation) Act, 1986 should be

amended as Child Labour (Prohibition and Rehabilitation) Act, so that more focus should be given to rehabilitation rather than regulation.

3. Children are used under the defence of family occupations. For example Match box and Crackers manufacturing industries. Proviso annexed to section 3 of Child Labour (Prohibition and Regulation) Act, 1986 should be amended to prevent the misuse of this provision by employers under the heading of family occupations and no exceptions should be provided. Section 3 of the Act, should be amended as, —it shall be presumed that occupier is also the employer for the purpose of the Act and the onus to prove that the child is a member of his or her family would rest on the occupier.

4. Most of the cases of hazards exist even in processing industries. For example: match stick and crackers manufacturing industries. Distinction made between Part-A and B Schedules annexed to section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 should be removed, as both Schedules namely, occupations and processes, are equally hazardous to the health of children. Therefore prohibition to employ a child should exist in both.

5. Accountability regarding non-employment of child labour is not insisted at the licensing level itself. Under section 9 of the Child Labour (Prohibition and Regulation) Act, 1986, it should be made mandatory that every occupier after establishment should send a notice to the Inspector containing the information regarding the employment of a child, either in the affirmative or in the negative, annually.

6. There is no provision for welfare of the employed children in the age group of 14-18 under the existing law. The age of the child provided under Child Labour (Prohibition and Regulation) Act, 1986 i.e., 14 years should be enhanced to 18 years so as to bring it on par with United Nations Convention on the Rights of the Child, 1989.

7. Power to add occupations and processes is time consuming and bureaucratic. The Advisory Function of the Technical Advisory Committee under section 5(1) of the Child

Labour (Prohibition and Regulation) Act, 1986 should be expanded so that it shall receive petitions from individuals etc, for addition of occupations and processes to the Schedule.

8. Punishment for violation of law is meagre. The punishment for violation under section 14(3) of Child Labour (Prohibition and Regulation) Act, 1986 shall be enhanced to three months, simple imprisonment or fine which may extend to fifty thousand rupees or with both along with the licence of that industry must be cancelled

9. Disposal time is short under Section 16 of Child Labour (Prohibition and Regulation) Act, In Section 16 of Child Labour (Prohibition and Regulation) Act, 1986 a time limit from Six months to One year should be fixed for the disposal of the case so that, the aggrieved party may get relief on time.

10. The Indian government is slow in ratifying and adopting international treaties in this regard. Government of India should ratify the Convention No.182 and Recommendation No.190 which deal with the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour. The Convention was adopted in 1999 but the Government has not yet ratified it.

11. Specialised mechanism to deal with rehabilitation is not found. A separate and independent body should be constituted under Labour Ministry at Centre, State and District level for monitoring the affairs of child labourers after 14 years who were rehabilitated and mainstreamed.

12. Most of the state governments are yet to frame rules under RTI Act for proper implementation of the Act. Every State Government shall frame Rules under the Right to Education Act, 2009 immediately for the proper implementation of the provisions of the Act.

13. No complimentary between child labour prevention and education laws. Laws on child labour and Education should be implemented in a mutually supportive way.

14. General principles of adjudication are not always feasible in child labour cases. The Judiciary in M C Mehta case has ordered to give 50,000 for entire family as compensation. But that has not been given and this is a drawback of the implementing authority.

15. Comprehensive legal machinery is not found to monitor NGOs working in this area. Government should encourage the NGOs for elimination of child labour by granting proper budget periodically and accountability should be fixed on NGOs to ensure that the funds are utilized for the purpose for which it is given.

16. Apathy and indifference on the part of law enforcing authorities. To deal with apathy and indifference on the part of the law enforcing agencies in the discharge of their duties, there is need to conduct periodical orientation and training programmes to sensitize them adequately.

17. Enforcement of laws by enforcing machinery is relatively ineffective. It is suggested to give more focus on implementation and enforcement of child labour laws and other laws meant for the protection of the children.

Child labour menace is a very complex problem which requires multidisciplinary approach and further research in various other discipline can assist policy makers in overcoming this problem. People participation, awareness is a must for complete eradication of child labour. Those who get service from child labour should also be punished because it is their duty to refuse the service by child labour

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