

**MINIMISING CHILD LABOUR IN INDIA - ISSUES 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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This is to certify that the dissertation titled, “*MINIMISING CHILD LABOUR IN INDIA - ISSUES AND CHALLENGES*” is the work done by *KARAN PANDEY* under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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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
- 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
- IPEC : International Programme on The Elimination of Child Labour
- P : Page
- PHC : Primary Health Centre
- PP : Pages
- SC : Schedule Caste
- SC : Supreme Court
- SCJ : Supreme Court Journal
- SCLEP : State Child Labour Eradication Programme
- SEC : School Education Committee
- Sec : Section
- SSA : Sarva Shikshana Abhiyana
- ST : Schedule Tribes
- UDHR : Universal Declaration of Human Rights
- UN : United Nations
- UNCRC : United Nations Convention on the Rights of the Child
- UNDAF : United Nations Development Assistance Framework
- UNESCO's : United Nations Educational Social & Cultural Organizations
- UNICEF : United Nation International Children's Emergency Fund
- UNO : United Nations Organization
- VIC : Village Implementation Committee
- WP : Writ Petition

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CHAPTER 1

INTRODUCTION

*“Child labour and poverty are Inevitably bound together And if you to continue to use The labour of children as the Treatment for the social Disease of poverty, you will Have both poverty and child Labour to the end of time.” **Grace Abbott***

1.1- INTRODUCTION: -

Almost one third of the world population comprises children. Therefore, they deserve to be cared and protected to keep up and improve posterity. They are an important component of the social structure and the potential future careers of culture. Social justice, therefore demands justice to children. The need for providing protection and safe guards to children have first been stated in the Geneva declaration of the Right of the Child, 1924 and was recognised in the universal declaration of Human Rights, 1948 and in the statutes of specialised agencies of U.N.O. Art 25 of Universal Declaration of Human Right, 1948 provides that “motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Right to free a compulsory elementary education to children is assured by Article 26.

1.2- Background: -

The story of child labour¹ is not new. During industrial revolution and Victorian age, children were working in mines, chimney sweeps and factories even in hazardous works. In 19C Great Britain, one third of the poor families sent their children to work as labours. There were domestic child labours and cases of child prostitution. According to UNICEF’s definition, “child labour is a harmful work for a child that exceeds minimum number of hours depending on age of the child and type of work. Child labour is an exploitation and considered illegal by law and custom.” ILO report says that there are 218 million child labour between 5-14 years of age, in the world which does not include domestic labours. In

¹ child labour, employment of children of less than a legally specified age.
<https://www.britannica.com/topic/child-labour>

India, in 1991 there were 11.2 million children aged between 5-14 in hazardous job, which was 12.6 million in 2001. Presently India has 17 million child labour (migrant, abundant or poor) as per government report, who are employed to do repetitive and tedious works like carpet weaving, embroidery, stitching, glass blowing, making fireworks and match stick, electro painting, lead mining, beedi making, shoe polishing, food selling, cleaning etc. and they work mainly in the informal sectors compared to registered organizations, in unhygienic conditions. Besides following article 32 of UN and article C-138 of ILO, Indian constitution (1950) had clauses like article 14, 39 E, 39 F and 45 to protect children. Based on Gurupadaswamy committee's recommendations, Child Labour Prohibition act (1986) was formulated to prohibit employment of children less than 14 years in harmful and

dangerous works and they identified 57 processes and 13 occupations as hazardous except works in family-owned businesses. In 1987, a policy was made for the working children to be rehabilitated. There are in existence, Factories act (1948), The Mines act (1952), The Merchant shipping act of 1958, The Motor transport Workers Act of 1961, Atomic Energy act (1962), Bidi and Cigar (employment) act of 1966, National labour policy (1987) and others. The 1986 act primarily does not meet the ILO standard age of 15 years. The law is rarely adhered to because punitive action for violation is negligible compared to the benefit in employing them. Moreover, the law does not include agriculture and domestic works. So there remains the loopholes of the law and rules, which allows exploitation Child marriages, child trafficking, sexual exploitation, violence against children, children without parental care, female genital mutilation, child in conflict and emergencies are also of great concern. Poverty, unemployment, social classifications amongst Indian population, illiteracy and population burst are some of the deep-rooted causes that contributes to child labour incidences. The factory owners or sweatshop runners find it easy to employ children because of cheap price and 'no union problem.' In India, organisations like CARE, CRY, CHORD, Pratham, global march against child laboured India 2010, NCLP, INDUS are working with some success stories towards eradication. In spite of the fact that there is supreme court judgment (1996) to list child labours and to send them to rehabilitation centres, and to set up funds with the contribution from the violators, there is only little achievement compared to the devastating incidences of child labour.

1.3-CHILD LABOUR HISTORY: - The Child labour in India can be well understood by bifurcating it into three perspectives that is: ancient, medieval and modern.

1.3.1- CHILD LABOUR IN ANCIENT PERIOD: - As regard child labour in ancient India, it can be said that it existed in the form of child slaves. Child slaves could be purchased or sold like commodities. To some extent, parents 'obligations were very often involved in working for the landlord on such low wages that it created conditions for the child to work in the farms for wages. They remained as bonded labour in the landlord 's house along with the parents for repaying or minimizing the debt which their parents had taken from the landlord. Children however helped their parents in household activities and family crafts. They learnt the skills by observing and participating in such activities. A predominantly rural society is inevitable characterized by small and marginal economic units. The economic status of the slaves, hired labourers and unskilled workers was worse. The same was the position of child when he was engaged in agricultural sector. It is revealed that child labour in ancient India was very common and could be witnessed in different occupations where they were engaged by the rich landlords to carryout activities directly or indirectly related to their agriculture sector.

1.3.2- CHILD LABOUR IN MEDIEVAL PERIOD: - Child Labour in medieval period was no exception. Increasing pressure on land led to fragmentation of holdings. Growing families had to look beyond personal cultivation for subsistence. A class of landless labourers came into existence, often bonded to the large landowners. These labourers used their children to help in their economic activities. The rural artisan rarely worked alone. Occupations were determined largely on the basis of heredity, and children were introduced to their traditional craft at a young age. Child labour in medieval India remained in existence on a large scale and even the rulers encourage it with an intention to make only traffic in child slaves. The child labour was found in the form of child slavery and rulers did not endeavour to weed out this practice and hence the result was that child was always exploited for this selfish end.

1.3.3- CHILD LABOUR IN MODERN ERA: - Children have always been used in economic activities. In pro-capitalist and socialist states including India, children were employed in guild and in trade occupations. In these societies, their workplace was an extension of the home and work relationships were informal relationship. The child grew up and found work within the family where the child was not given hazardous and difficult task. Work was a central aspect of their socialization and training. This

conception, however, underwent a dynamic change with the advent of capitalism in the industrialization during the 18th century and child labour began to be designated as a social problem. The new economic forces unleashed by capitalism destroyed the family-based economy. A large number of labourers were displaced due to mechanisation of agriculture – the farmers were alienated from their home-based work place. They became wage-earning labourers. Extreme poverty created a situation in which the child had to be introduced in the labour market, lack of alternative employment for adults and lack of education for children reinforced this process. The data on sectoral look in various occupation of child labour is taken from Census 2010. It is observed from the above table that child labour is more pronounced in urban areas with 15.55% in agriculture and 12.31% in manufacturing in rural areas. The minimum child labour with 1.71% in urban and 1.22% in rural in electric, gas and water are observed.

1.4 Statement of the problem-

“Child labour is a concrete manifestation of violation of a range of rights of children and is recognized as a serious and enormously complex social problem in India.” These children are deprived of different basic rights including education, and are forced to work for earning livelihood. Indian economy is showing a growth of 8-9% per year, but it is a complete paradox when we hear news of child abuses. Administration’s lack of control on the issue and half-hearted efforts are producing no result to overcome the problem. There are regulations to protect rights of children the most important being the ‘Child labour prohibition and regulation act, 1986’. But the efforts of Indian government and NGOs towards eradication have not produced satisfactory results; so, it seems that these efforts are not wholehearted efforts. Today there is a need for a modification in existing regulations and also there is a need for social and cultural reform. So, it may require that child labour should be legalized in order to combat poverty and to take care of the child’s future.

1.5- Importance of the study: - Child labour² is a phenomenon that is harming the children along with the evil of recycling poverty and illiteracy. According to UNICEF, “Twenty percent of children aged between 6 to 14 are still not in school [and] social distance arising out of caste, class and gender differences deny children equal opportunities.”

² In Europe, North America, Australia, and New Zealand, children under age 15 rarely work except in commercial agriculture, because of the effective enforcement of laws passed in the first half of the 20th century. <https://www.britannica.com/topic/child-labour>

This social evil cannot be allowed to be continued, because children are the foundations of the society and these resources cannot go wasted, else the socio-economic structure will be at stress. So, if the condition is not changed, it may lead to rotten culture of society and the backbone of a nation will be at a stress.

1.6- Purpose of the study: -It is difficult to find the actual number of children working in different sectors. The data does not reveal exact figures. The government report as per the 2001 census reflects that there were 12.6 million working children in hazardous work who were between 5-14 years. There was some doubt expressed by other reports that these numbers were under-reported. Presently as per government report, there are 17 million children working as laborers. If we consider the number of children who are out of school, the number shows an increase to approximately 50- 60 million. The activities undertaken to

combat the situation is inadequate. Media reports that “US brands can stop India sourcing if the country fails to establish that there are no children working in clothes-making units. “The MNCs are to go by chelator rules strictly for ‘fair trade’ to ensure that their supply is free from children sweat. But is it not a fact that the Indian government is not imposing strict enforcement on ‘Fair Trade Certificates’ on each product? Why it should be so? The main reason behind is the government is unable to feed every child. What’s the way out? What’s wrong if the MNCs come for outsourcing to India and feed millions of children by the way of paying them? Is it unethical for the MNCs to get profit out of it? What’s in the illusion of ILO’s agenda of eradicating child labour by 2016? Is it at all possible in the poor nations like India? What if the MNCs stop employing these children and customers stop buying the products made by millions of children in the poor nations? How much minor population will be forced to work as a prostitute? Isn’t it a better life for the child to work in a sweatshop and earn his livelihood in a dignified manner? Yes, the question is how much social responsibility is shown by these MNCs towards these poor children to make their future. Is there any other alternative? What is the way to feed huge number of children without the support from these MNCs?

1.7- The purpose of this study is: -

- To analyse the main causes, the social and economic issues that lead to the incidences of child labour
- to analyse the situation in neighbouring countries/ other countries along with success stories

- To analyse the cases where MNCs in India are using child labour
- To analyse the ethical issues and stakeholders' interest in child labour phenomenon
- to find out the draw-backs of present practices towards eradication of childlabour
- to find some initiatives that can be initiated by stake holders related, to combat the situation in a practical manner
- to find a do-able solution towards phased eradication (like withdrawing ban on child labour, categorise works as per age of the children, and provisioning of education/ formal training to child laborers with standard wages by the employers to ensure future competence of these children for professional skill development)

1.8- CONCEPTS AND DEFINITIONS: -

1.1.1 Adolescent: The Child and Adolescent Labour (Prohibition and Regulation) Amendment Act, 2016 has inserted new **Sec. 2(i)** which defines "adolescent" to mean-

A person who has completed his fourteenth year of age but has not completed his eighteenth year.

1.8.1- Child: Sec. 2(ii) defines "child" as 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. Prior to the 2016 Amendment, the Principal Act defined "child" as a person who has not completed his fourteenth year of age. The 2016- Amendment seeks to link the age of the child with the age defined in Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009), to bring it conformity with ILO convention 138

1.9- OBJECT AND SCOPE

There are a number of enactments which prohibit, the employment of children below 14 years and 15 years of age in certain specified employments. However, there is no procedure laid down in any law for deciding in A person who has completed his fourteenth year of age but has not completed his eighteenth year.

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OBJECT AND SCOPE

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laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working under exploitative conditions. Therefore, the child labour (Prohibitions and Regulations) Act, 1986 has been enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. this act seeks to achieve the following object:

- To ban the employment of children, i.e., those who have not completed their fourteenth year, in specified occupations and processes;
 - To lay down in procedure to decide modifications to the scheduled of banned occupations or processes;
 - To regulate the conditions of work of children in employment where they are not prohibited from working;
 - To lay down enhanced penalties for employment of children for violation of provisions of this Act, and other Acts which forbid the employment of children;
- To obtain uniformity in the definition of "child" in the related laws. In view of sub-section (2) of section 1 this act extends to the whole of India. Section 1(3) provides that the provisions of this act other than Part III, shall come into force once, Part III shall come into force on such date as employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working under exploitative conditions. Therefore, the child labour (Prohibitions and Regulations) Act, 1986 has been

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1.10- WHY CHILD LABOUR?

The evil of employment of children in agriculture and industrial sectors in India is a product of economic, social and, among others, inadequate legislative measures. Social evils involved in the employment of children are widespread illiteracy resulting in lack of development of child's personality (which may continue even in his adult life), negligence and indifference of the society towards the question of child labour. There is also lack of proper appreciation on the part of parents or guardian as to how continuance of children in education would benefit their employment prospects and improve their standard of living. The economic problems involved in the employment of children are in no way less significant. The poverty resulting in inadequate family income and the desire to supplement it compelled children to work. Indeed, the parents of low-income groups cannot afford to educate their wards even if education is free. For them an uneducated child is an asset; desire to be educated becomes a double liability because of

- loss of earning if the child did not work, and
- expenditure on education, howsoever small.

Moreover, the indifference of the legislature to provide adequate legislation to prohibit the employment of children continued at least till 2016 which resulted in the failure to minimize the growth of child labour.

For too long the issue of child labour has not been addressed properly and adequately. Even though the Child Labour (Prohibition and Regulation) Act, 1986 was enacted over three decades ago. The Act only prohibited employment of children who have not completed their fourteen years of age, in occupations set forth in Part A of the Schedule or

in any processes set forth in Part B of the Schedule as hazardous occupation. However, the scope of the Act was extremely limited inasmuch as was applicable only in 18 occupations and 65 processes. See Government of India, Report of the Committee on Labour Welfare, (1969).

1.11 - Forms of Child Labour -

The worst forms of child labour are slavery and similar issues such as the trafficking of children, debt, bondage, serfdom, children in armed conflict. Slavery is where one person is owned by and made to work for another person without having any say over what happened to them.

In factories like carpet making, lock making, export-oriented garments units, gem polishing export industry, leather units and diamond industry, etc.

1.12- CAUSES OF CHILD LABOUR: -

Children are most often involved in child labour because their parents or guardians consider it 'normal' for children to work, and sometimes for children's own survival and that of their families. When talking about child labour, it is important to understand it from the perspective of the children, families and communities themselves. Below are some of the root causes which make children particularly vulnerable to child labour.

1.12.1- Poverty: -

'Poverty is certainly the greatest single force driving children into the workplace': -

When families cannot afford to meet their basic needs like food, water, education or health care, they have no choice but to send their children to work to supplement the household income. Poverty is considered as one of the most important causes of child labour as it is

linked to other driving factors including: low literacy and numeracy rates, lack of decent work opportunities, natural disasters and climate change, conflicts and mass displacement. Poverty and child labour form a vicious cycle, without tackling one, we cannot eradicate the other.

1.12.2- Social and Economic backwardness:

Social and economic is also the main reason for child labour in India. Socially

backward parents do not send their children to receive an education. Consequently, their children are trapped in child labour. Due to illiteracy many times parents are not aware of various information and consequently the lack of awareness of their right among them have encouraged child labour. Also uneducated parents do not know about the impact of child labour on their children, the condition of poverty and unemployment give rural families a compulsive basis for engaging children in various tasks. In fact, feudal, Zamindari system and its existing remnants continue to perpetuate the problem of child labour in India.

1.12.3- Addiction, disease or disability:

In many families due to alcohol addiction, disease or disability, there is no earning and the child's wages are the sole means of family's sustenance. Population growth is also increasing unemployment, which has an adverse impact on child labour prevention. So, parents instead of sending their children to school, are willing to send them to work to increase family income.

1.12.4- Child Labour a Cheap Commodity:

With the advent of industrialization, the trend among employers is less quick on artists and more benefits. So, there were a large number of enrolment of children in a large number of factories in each country, which were paid very low wages, they were overworked and they were made to work under terrible conditions. Child labour³ is existed not because children are more competent workers, but because they can be hired for less money. Thus, preference for child labour by many employers is mainly due to the fact that it is cheap. Safe and without any problem. Child labour is not only very cheap, but also hassle-free

³ Child labour is far more prevalent in developing countries, where millions of children—some as young as seven—still toil in quarries, mines, factories, fields, and service enterprises. They make up more than 10 percent of the labour force in some countries in the Middle East and from 2 to 10 percent in much of Latin America and some parts of Asia. <https://www.britannica.com/topic/child-labour>

because children cannot organize their own movement and being minors; The membership of trade unions is not opened for them. Neither can they

demand any overtime, nor medical and other benefits. In this country, very young children are engaged for domestic work because they are very cheap. Middle-class families fall within low-income groups, especially boys and girls aged 8 to 14 years prefer to work in their homes as domestic servants and some pocket money for food. However, these employers, educated in the formal sense, appear to be the least concern for these children and then conscious hardly.¹⁶ Employers also find children more suited for discipline and control. They can be coaxed, warned, pulled and punished for default without endangering relationship.

1.12.5- Large family size-

A family which is big in size with low income, cannot lead a happy life. As a result, family members cannot get better education, entertainment, health care and opportunities to grow into a healthy family environment. On the other hand, a family, which is limited in size and well-planned, assures all possible development opportunities for its member and helping them to protect themselves from the insecurities of life. This indicates that the nuclear family, which holds a low number of hand help, is producing a higher number of children. Large families with relatively low incomes may not have happy perceptions in their minds. As a result, they cannot protect and encourage their children's childhood. If a family is limited and well planned, there will be no scope for sending children to the labour market and the children can be carefully educated. Illiterate and innocent parents think the opposite. Thus, if the parent's family size is small, they can provide all the facilities that are necessary for mental, physical and social development to their children. But unfortunately, poor and illiterate parents think otherwise. They think that when God has given the body, he will feed him. They also consider three or four children better than having just one or two. For them, more children mean more income. They argue that while every human body has just one mouth to eat, it has two hands to feed it. but they forget.

1.12.6- Family tradition:

It is a shocking but bitter truth that in our society it is very easy to give child labour the name of tradition or custom in many families. The cultural or traditional family values play their role in increasing the problem of child labour in India at the voluntary level. Many

families believe that a good life is not their destiny. And the age-old tradition of labour is

the only source of their earning livelihood.

1.12.7- Compulsory Education:

Education is that factor, which leads to human resource development which includes a better and sustainable and valuable natural upbringing for all. The primary objective of the education system is to provide knowledge skills and to transmit certain values equally important. The resulting education package will vary economically in all countries and cultures. Child labour, in another dimension, has observed that the limited number of schools, their absence, the clash of school time and agricultural operations, and the cost of schooling as well as its limited nature of providing jobs opportunity to enter the labour market facilitates the route of children belonging to the state class. Children are ready to receive education, but only with the consent of the owners and parents. They have a very strong concern about fees and other expenses on education so they want it as free and near their home. Out of 140 million rural children in the age group of 5-14 years, more than 86 million rural children have not been enrolled in the school register. About 62% of children in rural areas are not present in primary schools. Whereas Article 45 (Directive Principles of State Policy), states that “The state shall endeavor to provide” within a period of 10 years, from commencement of this constitution for free and compulsory education for all children until they complete the age of 14 years.” Compulsory schooling for children as a part of assimilative measure is however, found deceptive. As such, the phenomenon of child labour is the product of such indifference to education. So, this phenomenon of child labour is the product of this indifference to education

1.12.8- Lack of access to quality education: -

‘The availability and quality of schooling is among the most important factors.’ School needs to be a welcoming environment, with appropriate class sizes, a curriculum designed for the local context, and affordable for rural communities. Getting children into school and out of harmful work is one thing but keeping them there a means creating **quality education** accessible for all.

1.12.9- Poor access to decent work: -

‘Children who were involved in child labour often lack the basic educational grounding which would enable them to acquire skills and to improve their prospects for a decent adult working life.’ If young people cannot access work which is safe, with social protection, fair pay, equality for men and women and which provides a space for workers to express their opinions, they often have no choice but to do work which is hazardous. When children above the minimum working age are doing hazardous work, this is also considered child labour.

1.12.10- Limited understanding of Child Labour -

‘The view that work is good for the character-building and skill development of children.’ When families do not understand the dangers of child labour, and how these impact on the health, safety, well-being and future of their child, they are more likely to send their children to work. Some cultural beliefs and social norms can also be drivers of child labour.

1.12.11- Natural disasters & climate change: -

‘In rural areas, farmers who see their crops destroyed on account of climate changes have no other choice but to send their children out to work.’ The effects of natural disasters and climate change is one which is becoming of increasing concern. Rural families who depend on reliable seasons for farming are particularly vulnerable to altered patterns of rainfall, soil erosion, or extreme weather. When crops are destroyed or farming land is ruined, families struggle to make a living and are more likely to send their children to work in neighbouring farms.

Conflicts & mass migration: -

‘There is a strong correlation between child labour and situations of conflict and disaster’ According to the ILO children make up more than half of the total number of people displaced by war. These children are particularly vulnerable to forms of exploitation, including child labour, due to an increase in economic shocks, a breakdown of

social support, education and basic services, and disruption of child protection services. The incidence of child labour in countries affected by conflict is almost twice as high as the global average. Children are also vulnerable to becoming involved in armed conflict, this is considered one of the **Worst Forms of Child Labour**.

1.13- CATEGORIES OF CHILD LABOUR:

Child labour is a term that need to be analysed, it cannot be used in panoramic modus operandi but engulf range and a variety of context in which children work⁴⁴

1.13.1- Child Labour:

The children have been paid as well as not paid for the work they have done in factories, mines, workshops and as a domestic worker. The ministry of labour Government of India has recruited the term 'Child Labour' only in the circumstances of children doing 'Precarious' work. By connotations, children who are not doing precarious work are not ponder to be child laborers and are vocalized to be doing child work. The consequences of this taper definition of child labour are that the Labour Ministries definition only encompass a very limited percentage of children who are in the personnel and leaves out million children who entail policy and programmatic underpin from the Government.

1.13.2- Street children: Children who are living on and off streets, like newspaper boys, rag pickers etc. The plight of the street children is totally different from that of child labour in factories and my areas. In this case most of the children have a place or home to take rest after the completion of their work in the evening where else the street children are completely solitary and are at leniency of their employers. They don't have an enduring pedestal and they often budge. So, their plight is more direct than that of children working in

⁴ Child labor involves at least one of the following characteristics:
Violates a nation's minimum age laws
Threatens children's physical, mental, or emotional well-being
Involves intolerable abuse, such as child slavery, child trafficking, debt bondage, forced labor, or illicit activities
Prevents children from going to school
Uses children to undermine labor standards
<https://laborcenter.uiowa.edu/special-projects/child-labor-public-education-project/about-child-labor/what-child-labor>

factories and living at home.

1.13.3- Bonded children: Children who have either been mortgage by their nurture for trifling sums of currency or those working to pay off the inherited debts of their patriarch. Bonded child labour is a dreadful complication in some states. Bonded children are in many ways the most strenuous to oblige because they are sequestered

1.13.4- Children used for sexual Exploitation: Thousands of young girl and boys aid the sexual appetites of men from all social and economic backgrounds. They have a head-on tie-up between the commercial sexual exploitation of children are countless. Children's have been sexually exploited in factories, street corners, homes etc. The children are not able to resist abuse caused by their employers either as perpetrators. In village areas they used to lend the money to their parents for which they must be paid back through the daughter's work. Because of this the child is been affected physically as well as psycho- social damage wreak by commercial sexual exploitation makes it one of the most precarious forms of child labour.

1.13.5- Migrant children: India faces a huge challenge with "Anguish seasonal migration". Children in migration are the ones who migrate from the age of 3-18 within or across the political country even without a proper legal document to migrate from one country to another. Many families are being obligator to leave their homes in search of their livelihood. Migrant population overall belong to the schedule cast, schedule tribes and other backward caste.

1.14- Research Methodology (The Legal Research Process) - Following are the major steps in this research work: a) Formulation of the problem (Planning for Research! - For my research work I have decided the research topic "CHILD LABOUR IS SOCIAL PROBLEM CHILD LABOUR LEGISLATION AND ITS EFFECTIVENESS". 'Children' and 'Childhood' are the terms which impliedly synonymous with the innocence, freedom, joy, play, etc. in every person's life. Children are more at risk from exploitation. Child labour is one of the major problems facing the developing world today. The spectacle of the child worker presents a picture where the child often works

continuously. Child labour is simply the single most important source of child exploitation and child abuse in the world today. Children may be involved in paid as well as unpaid work within the formal and informal sectors, or in urban or rural areas. The worst forms of child labour include slavery, prostitution, pornography, illicit activities and hazardous work. Child labour presented an explicit challenge to society at least since the Industrial Revolution, as it is the cheaper source of employment. As per the Global Report on the child labour released by ILO recently, there are 191 million economically active children in the world in the age group of 5-14 years in the year 2004. This has come down by 9.6 million from 211 million in the year 2000. The problem is on the increase in India. As per the Census 2001 there are

1.26 crores economically active children in the age group of 5-14 years, while the number was 1.13 crores in the 1991 Census. Figures of various researches indicate that child labour in particular of a hazardous and exploitative nature is becoming rampant. The problem is endemic and thus calls for urgent remedial action

1.15- Reviewing of Literature or Study of Literature (Search for Literature)

Literature Review in India, the actual figures of child labour vary to a large scale from state to state across the nation. The study of Tekla in the state of Maharashtra and Tamandu of India as mentioned in his article "Exploitation of child labour in India" 10 reveals that there is large number of child laborers working in pathetic and inhuman conditions. The author tries to establish the "desperate conditions affecting the rural as well as urban poor in India." Through the deep analysis of conditions of child labour in different unorganized sectors in these states, he describes the extent to which the children are being abused and are being deprived of "basic rights including education and joyful childhood." He brings out that "as much as 43.28% of Chennai city's total child workforce work in small hotels and are badly exploited, while medium hotels employ 29.10% and nearly 27.62% are employed by large units." The interviews taken with a number of child laborers reflect the fact how much they are exploited in respect of monetary terms compared to adults. He criticizes the actions taken by the government and comments that even when there are enough instances of child exploitation, "governments turn a blind eye to sweatshops."

Children aged between 6-14 years' work nonstop, in thousands of small Zari factories in Mumbai in an unhygienic and suffocating atmosphere. Even after raiding these types of sweatshops, the state police cannot take stringent actions because of loopholes in the legislation and also because of deep-rooted problems in the society. He criticizes the

political system in Tamil Nādu state where the politicians are making false promises of eradication of child labour but their acts don't lead to anything other than their political benefits. He argues that there is a real need for "ensuring a decent income to the parents to continue the education of tens of millions of children." The article helps in documenting the actual situation of child laborers in the two states which gives direction for further analysis in the study of finding fallacies in government policies. The enforcement on child labour laws and regulations becomes practically ineffective because of many loopholes. The child labour act, 1986 primarily does not meet the ILO standard age of 15 years. The law is rarely adhered to because punitive action for violation is negligible compared to the benefit in employing them. Moreover, the law does not include agriculture and domestic works. A.S. Shenoy, in his article 'Child labor'¹¹ argues about the minimum age limit for a person to work. By citing instances of differences of minimum age limits to work in different categories of Indian labour laws, he establishes that there is no uniformity in the definition of 'child' in the Indian context. There is need for reform in laws and decentralization of the enforcement activities. He also tries to define theoretical models in the role of the stakeholders in stopping child labour. It is a need for the society to act now. It will definitely include involvement of local representatives, religious leaders, social bodies, voluntary youth forums and government agencies. There is need for mass publicity about the ill effects, door to door campaign, road shows, regular workshops by NGOs, increase in women/ student/ and senior citizen welfare associations. Participation can reduce the gap in opinion differences and lead to co-operation among public and government. The article reveals that "one in eight children in the world is exposed to the worst forms of child labour which endanger children's physical, mental health and moral wellbeing." The major causes of child labour are poverty, lack of education, migration of adult labour, lack of social security network and also influence of mafia groups engaged in trafficking children. The hard reality of child beggars in cities controlled by "mafia gangs" is only decaying the existing social trust and norms. The impact of child exploitation on the child himself is likely to be psychological which can lead to development of anti-social behaviour or self-destructive behaviour. So, the responsibilities of stake holders are of importance. Here the stakeholders include "national government agencies, NGOs, people's forum, corporate entities and individual social service activists" who have definite roles in the mission of abolishing child labour, and he asks that the "stakeholders should jointly resist any form of child labour using whatever means available." He argues that "it is high time that India introduces an all-encompassing common act to safeguard the rights of a child." The article gives practical ideas in the direction of actions which are to be taken by the

major stakeholders for eradication of child labour. Lack of social security networks characterizes harsher types of child labour. In some parts, poor farmers are letting their children work as bonded labour for long period to the land owners who lend them money. The deep-rooted cause is inherited from an earlier era when there was discrimination among people in the society which led to formation of the caste system and that in turn generated lack of trust and bondage in the society. Dr K. Jamanadas¹² in his article “caste system contributed to child labour in India” refers to a news article of UNI (January 7, 1997) where it is reflected that “the rigidity of the caste system in India has among other things, contributed to the mushrooming of child laborers in the country.” This article analyses various ethnic groups in line with Dr B.R. Ambedkar, “an authority on caste” and the founder of the constitution of India, to see how the population has been gradually divided into several classes according to castes. Dr Jamanadas tries to analyse the fact “why the literacy rate in India is poor and why India has the highest number of illiterates in the world.” He explains that “from time immemorial, Brahmins, the upper caste people taught to the masses that all knowledge was stored in Vedas alone.” So, who were not supposed to read Vedas (lower caste people) had no purpose of learning to read and write? This discrimination continued for generations that “upper caste did not like other caste to learn.” He shows that most of the street children and beggars are from backward classes. Similarly, most prostitutes have come from backward classes due to their lack of rights, including education. The problems of masses were ignored by ruling classes for long time. But he also points that there is a hope as the situations are changing. This article gives an insight about the caste system in the society and reveals how it can lead to lack of social trust and social bonds. Kaushik Basu in the article “Child Labour: Cause, consequence and Cure, with Remarks on the International Labour Standards”, explores the very fact that from ages children are being exploited all over the world. We see that from ancient time, children were working in factories even in developed nations. It is no exception in present times. Only positive thing is that the awareness about working children is increased, which may be a result of globalization. Activities like banning products with children sweat or setting standard to be monitored by the ILO /WTO or labelling the products with child labour, giving customers an option to

boycott them, have increased. The paper provides an analytical survey on child labour with a theoretical foundation when aim of the orizing is to influence policy. As per ILO convention 138, any person below 15 years of age is termed as ‘child’ under normal circumstances. An ‘economically active’ child is a labourer who is ‘gainfully employed.’ As per ILO, “the age

bar for 'light work' is 13 years and 'for hazardous works it is 18 years.'" The author mentions clearly that "Child work can include 'doing light household chores' and can have some learning value (ILO 1995) while 'child labour' is being used to describe most pejorative part of child's work." The author explains that there is different interpretation about the minimum age and type of works (including household) carried out by the children and so the number of child labour shoots up when a strict definition is taken into consideration. The author presents statistical data for "participation rate" for children 10-14 years across main continental regions and some nations (China, India, Brazil, Italy) from 1950 with projections till 2010 in each decade where the trend to reduction seems to be encouraging because of growth in income. The author does emphasize that "growth of economy is by no means the only factor nor for that matter the most important factor, in the mitigation of child labour." It is debatable whether legislations can be made that are more important than economic growth. He explains about three kinds of interventions and institutions as policy to curb child labour: 'intra national', 'super national' and 'extra national'. Intra national effort is within nation's boundary, with a range of different institutions trying to eliminate child labour, not just with the question of "banning and not banning child labour." 'Super national interventions' are tried by the international organizations (WTO, ILO, UNICEF). The most powerful instrument is the international labour standard which all countries are expected to adhere to. Another terms these actions as extra national interventions e.g., Deterrence Act (Harkin's bill) that disallow the import of the goods to US which is produced by a child's sweat; Sander's amendment which seeks to amend Tariff Act (1930) to reject goods produced by boned child laborers. The author is of the opinion that intra national intervention – education and compulsory schooling is the main activity for reducing child labour. His finding is that "education and child labour are not only mutually exclusive activities but there may be important complementarities between them." He tries to focus on the fact that "for a child to work is not the worst thing that can happen." It is necessary to keep in mind that stopping child labour should not make the situation worse off, like starvation or bodily harm. He quotes Sarah Bachman (1995) who pointed that "attempts to bar children from working in the manufacturing sector in Bangladesh pushed some of them over to prostitution" The author emphasizes on identification of the context through theoretical analysis, when legal ban is appropriate. He brings out observations by Karl Marx, Alfred Marshall and Arthur Pigon. Marx was not supporting banning of child labour, he advocated for restriction on work hours and education of children (Marx 1875). Marshall (1920) pointed that "the most valuable of all

capital is that invested in human beings.” Pigon’s (1962) idea was to couple a ban with welfare of poor. Introducing different models for multiple equilibrium in labour market (Child labour and adult labour), he established that if child labour is banned then for unchanged demand condition, economy will settle at an equilibrium where market wages are high. As this is an equilibrium of original economy, the law banning child labour will no longer be needed. There are assumptions here like: “the luxury axiom (household will not send children to work if its income from non-child labour sources is sufficiently high) and substitution axiom (adult labour is a substitute of child labour).” The author, says that first axiom is contestable, citing many examples mainly from India where there are counter evidences for “granted parental altruism towards the child”. He uses a number of models for analysis of labour market behaviour and its distributional consequences and reiterates that if market wages rise, child labour may decline. If market contains oligopolistic elements, increase in minimum wage will help to enhance adults’ participation and the children may not be forced to work, but if market is competitive, the consequences of increase in wage may lead to ambiguity. The author emphasizes on the “dynamic consequence” of child labour which is large because if number of child laborers is increased, there will be less ‘human capital’. His model of “child labour trap” reflects that uneducated parent do not send children to school and that child again becomes an unskilled and uneducated adult in turn. He mentions about the fruitful government intervention and points out that in case of child labour trap, one generation is to be educated by large effort to get the economy rolling towards virtuous equilibrium. Keeping a close eye towards the international labour standards, he is particular about the context and says that the remedy of child labour will vary from context to context. Answering the question of banning child labour is not unconditional and seems to be impractical to be implemented in poor countries. Still there is a need for detailed empirical studies to decide whether banning is worthwhile. Banning should be accompanied by compulsory schooling as school attendance can be monitored easily. It is possible to combine schooling and work instead of considering them as mutually exclusive activities. The paper by K Basu is an excellent demonstration of child labour phenomenon. His models to investigate international labour standard presents theoretical understanding on the issue along with repercussion of family and employer. The number of citations from historical evidences of causes of child labour and the consequences and issues related to success in curbing child labour, provide ideas about situations which can be measured and analysed to the effect of context and behavioural change. This study helps as an informative tool of market analysis and context analysis to decide policy options for a step towards curbing child labour. Child laborers are seen worldwide from ages and there

are existing labour standards (international as well as national) to combat the occurrences of child laborers. It is seen that the phenomenon is most prominent in the developing countries and there seems to be issues of under reporting. The article “An Economic Analysis of Child Labour”, shows how poverty gives rise to child labour in developing countries and makes an argument that banning even enforceable, may lead to reduced overall welfare. Awareness on child labour increased because of globalization, ease of communication and information flow. “People became aware of the problem and the natural reaction is to seek ways to eliminate it.” The author mentions that the policy should be to ban it and to ban products made by children. He develops a model of developing countries mentioning that imperfections in credit market gives rise to child labour. The author analyses the paper written by Basu and Van (1998) where “they generate multiple equilibria situation in which a ban on child labour can move an economy from an equilibrium with low wage where children work to another with high wage where children do not work.”, the poor parents cannot overlook the earning of kids because of “non-existence of a market for loans against future earnings.” He says that poverty and ‘missing market for loans against future earnings’ are leading to the incidences. Redistribution of parental income may be one option to reduce child labour. There are three types of labourers in the market: “child labour, adult unskilled labour and adult skilled labour.” Skilled laborers are more efficient than unskilled labour and child labour is less efficient than the unskilled adult labour. He also analyses two types of household behavioural cases: with no constraint of credit and with closed credit market. In the first case with “two possibilities of action;

- to send the child to work in the first period in which case the child earns the child wage in the first period and the unskilled adult wage in the second period,
- to send the child to school in the first period in which case the child earns skilled adult wage in the second period.” Comparing the life time utility in both the cases the author 14 Priya Ranjan. “An Economic Analysis of Child Labour.” Journal of Economic

Letters. 1999. a household prefers a child to go to school in spite of low income, if the “rate of return on education is greater than the rate of interest.” This is against the general idea of poverty being the only cause of child labour. If acquiring education seems profitable to the parents, they will send the children to school. In the second case (no market credit case) lending and borrowing are not happening, saving cannot be generated and income is exhausted when earned. Considering lifetime utility for both cases (sending children to school and sending children to work), the intuition is that utility lost by children’s attending

school is 'related inversely' to the family income. Due to 'diminishing marginal utility', utility lost is enough high. The utility advantage in next period by schooling of children is not related to family income. So, if family has low income, utility loss by compromising children's labour "offsets utility gain" achieved in next period of time by earning through skilled performance. It is natural that parent with low income send their children to work though "the rate of return on schooling justifies investment in human capital of children." The author explains that this arises because of the family is unable to borrow despite choices of earnings in future and so the poor parents are compelled to take advantages of their children's labour for running households. The author establishes that "child labour phenomenon is limited to missing market for loans against future earnings." He mentions, first best policy towards elimination of child labour will be to remove credit market imperfections. Alternative policies may be to provide "consumption support to poor families to compensate for foregone earnings of the child; government scholarship for poor students, redistributing parental income through proportional tax combined with lumpsum subsidy." He mentions that if some policy limits parent's choice, then the overall welfare will be reduced. There is high probability that a ban on the children to work informal sectors, can make the situation worse off as they will be forced to work in informal zones even in hazardous areas. His point is, enforcement on banning import of goods where children sweat shops are involved in supply chain, will be ineffective because of its inherent

limitation to be applicable to developing economies. To combat the situation, he emphasizes on financial support to poor families so that earnings by a child becomes unnecessary. This paper is useful in terms of analysis of the real situation in developing nations. The models which are simple enough, help to understand the consequence of behavioural change if poor parents in different context. But the idea of redistribution of parental income through proportional tax, seems to be little away from hard reality and government interventions to support consumption, urges for huge monetary support which is also of deep [concern for developing nations. However, the hypothesis of "simply banning reduces welfare" is very practical in the context of child labour eradication, though the alternative suggestions need further studies and analytical framework on the economic and social impact of the nation. In the article "Ethics in international business: multinational approaches to child labour" by Ans Kolk and Rob Van Tulder published in Journal of world business (2004), the authors say that there exists a 'moral free space' where the context matters and the, the authors say that there exists a 'moral free space' where the context

matters and the companies are to accept the dilemmas arising out of development of economy and social stigma. The host country norm related to child labour may be different from the home country norms and so mainly the MNCs are operating by the rules of host country. The concept of 'universalism' and 'relativism' towards child labour code is to be strategized by the companies depending on the situation. They have to make choice about the right thing at right time. The 'code of conduct' for an MNC is based on the legal, societal and ethical aspects and many times includes the code for child labour issues in the poor countries. The public is generally aware of the code of conducts but the policies are not open to them. So, the child labour codes if not included in the code of conduct, cannot be viewed by public. The research by the authors on fifty MNCs with child labour codes, revealed that the companies followed the host country laws and the "home country laws (which are usually stricter)." KMART mentioned that the suppliers are to obey local labour laws as in the

host countries whereas Hennes and Mauritz mentioned about following the international standards. In this research it was reflected that ethical norms related to child sweat shop has the break up like: host country laws followed by 52% of companies, international laws are followed by 26% of companies and none is followed by 22% of companies. The minimum age for the child to work also varies depending on the country specific or international standards of laws. And it was reflected that age requirement was country specific for 66% of companies, world standard specific for 6% of the companies and no specification for 28% of companies. The consumers at the home country may ask for banning of child labour, whereas the host country's regulations are loose and monitoring is imperfect. Shell points that the very strict policy on child labour may enhance its reputation but may force a child to prostitution or harsher jobs. The author's point is that the local suppliers need to support the communities and rather than seeking to eliminate child labour, a company can choose to change his nature of work. This can be in line with ILO and nation's labour policies. But there is a possibility that the groups who are not understanding the complexities of local dynamics may criticize such activities, even if the children get benefited from the reasonability of work hours and types of jobs. Shell formulates a plan to act on "case by case basis to develop an appropriate response in the context of host country and particular business sector, and thus respond to local needs through multi-local approach."¹⁵ Hennes & Mauritz expresses that the social obstacles due to which the children are compelled to earn, cannot be ignored and so the child labour issues cannot be addressed without 'broader policies.' So, it takes measures that is "in the best interest of the child." Nestle's code of

conduct states that “ill-considered policies and commercial measures can make the situation worse for children.” The authors conclude that the company’s ethics on child labour issue is specific to it and it may not be universal approach by all to address the issue. All these discussions reflect how complex the issue and how much is the ethical dilemma in making decisions

- **Formulation of Hypothesis** - The present study proceeds on the hypothesis that children are deprived of freedom due to child employment. Child labour is basically socio-economic problem and therefore welfare legislation alone cannot check it. Despite of adequate safeguards and numerous legislations, the problem of child labour is increasing day-by-day for want of poor execution of these welfare legislations the child labour problem has remained the same because of restraint on it. The working conditions of the child workers in various establishments are far from satisfaction when compared to the spirit of child labour legislation. Non-awareness of child labours about their rights is the reason for their exploitation, abasement, immoral trafficking, etc. Awareness in the child labours and society brings social and economic change in the world.
- **Collection of Data and Data-Analysis** - In my legal research work I collected data from so many sources - Internet, Case-Laws (having its source in precedents), Enacted laws (having its source in legislation), Customary law (having its source in custom), Conventional law (having its source in agreements), Statutory Interpretation, Codification, Public or official Documents, National Reports, Magazines and Newspapers. The research work is document based. References are made to text books, articles, conventions, newspapers, reports and various Statutes. Materials were also obtained from the internet.

CHAPTER 2

ROLE OF INTERNATIONAL LABOUR ORGANIZATION

ROLE OF INTERNATIONAL LABOUR

ORGANIZATION⁵: -

The International Labour Office is headed by a Director-General appointed by the Governing Body. Since 1919, the ILO has been led by: Albert Thomas of France (1919-1932), Harold Butler of the United Kingdom (1932-1938), John Winant of the United States (1939-1941), Edward Phelan of Ireland (1941-1948), David Morse of the United States (1948-1970), Wilfred Jenks of the United Kingdom (1970- 1973), Francis Blanchard of France (1973-1989), Michel Hansen of Belgium (1989-1999), and since March 1999 by Juan Somaiya of Chile.

2.1- INTRODUCTION:-

What Is the International Labour Organization (ILO)?

The International Labour Organization (ILO) is a United Nations (U.N.) agency. The goal of the ILO is to advance social and economic justice by setting international labour standards. The ILO has 187 member states and is headquartered in Geneva, Switzerland, with approximately 40 field offices around the world. The standards upheld by the ILO are broadly intended to ensure accessible, productive, and sustainable work worldwide in conditions of freedom, equity, security, and dignity.

⁵ The movement to regulate child labour began in Great Britain at the close of the 18th century, when the rapid development of large-scale manufacturing made possible the exploitation of young children in mining and industrial work. <https://www.britannica.com/topic/child-labour>. The first law, in 1802, which was aimed at controlling the apprenticeship of pauper children to cotton-mill owners, was ineffective because it did not provide for enforcement. In 1833 the Factory Act did provide a system of factory inspection.

2.2- Understanding the ILO: -

The International Labour Organization (ILO) was founded in 1919 under the League of Nations and incorporated into the U.N. as a specialized agency in 1946. The ILO is the first and oldest specialized agency of the U.N. The organization's goal is to serve as a uniting force among governments, businesses, and workers. It emphasizes the need for workers to enjoy conditions of freedom, equity, security, and human dignity through their employment. The ILO promotes international labour standards through its field offices in Africa, Latin America and the Caribbean, the Arab States, Asia and the Pacific, and Europe and Central Asia. The organization provides training on fair employment standards, offers technical cooperation for projects in partner countries, analyses labour statistics and publishes related research, and regularly holds events and conferences to examine critical social and labour issues. The ILO was awarded the Nobel Peace Prize in 1969. The organization was recognized for improving fraternity and peace among nations, pursuing decent work and justice for workers, and providing technical assistance to developing nations.⁶

The labour standards set forth by the ILO have been published in 190 conventions and six protocols. These standards recognize the right to collective bargaining, attempt to eliminate forced or compulsory labour and abolish child labour, and eliminate acts of discrimination in respect to employment and occupation. As a result, the protocols and conventions of the ILO are a major contributor to international labour law. The organization has a three-tiered structure that brings together governments, employers, and workers. The three main bodies of the ILO are the International Labour Conference, the Governing Body, and the International Labour Office. The International Labour Conference meets annually to formulate international labour standards; the Governing Body meets three times a year, serving as the executive council and deciding the agency's policy and budget; and the International Labour Office is the permanent secretariat that administers the organization and implements activities.

2.3- HISTORY OF INTERNATIONAL LABOUR ORGANISATION: -

The **International Labour Organization** was created in 1919 by Part XIII of the Versailles

⁶ An estimated 60% of child labor occurs in agriculture, fishing, hunting, and forestry.
<https://laborcenter.uiowa.edu/special-projects/child-labor-public-education-project/about-child-labor/what-child-labor>

Peace Treaty ending World War I. It grew out of nineteenth-century labour and social movements which culminated in widespread demands for social justice and higher living standards for the world's working people. In 1946, after the demise of the League of Nations, the ILO became the first specialized agency associated with the United Nations. The original membership of forty-five countries in 1919 has grown to 121 in 1971.

In structure, the ILO is unique among world organizations in that the representatives of the workers and of the employers have an equal voice with those of governments in formulating its policies. The annual International Labour Conference, the ILO's supreme deliberative body, is composed of four representatives from each member country: two government delegates, one worker and one employer delegate, each of whom may speak and vote independently. Between conferences, the work of the ILO is guided by the Governing Body, comprising twenty-four government, twelve worker and twelve employer members, plus twelve deputy members from each of these three groups. The International Labour Office in Geneva, Switzerland, is the Organization's secretariat, operational headquarters, research centre, and publishing house. Its operations are staffed at headquarters and around the world by more than 3,000 people of some 100 nationalities. Activities are decentralized to regional, area, and branch offices in over forty countries.

The ILO has three major tasks, the first of which is the adoption of international labour standards, called Conventions and Recommendations, for implementation by member states. The Conventions and Recommendations contain guidelines on child labour, protection of women workers, hours of work, rest and holidays with pay, labour inspection, vocational guidance and training, social security protection, workers' housing, occupational health and safety, conditions of work at sea, and protection of migrant workers.

They also cover questions of basic human rights, among them, freedom of association, collective bargaining, the abolition of forced labour, the elimination of discrimination in employment, and the promotion of full employment. By 1970, 134 Conventions and 142 Recommendations had been adopted by the ILO. Each of them is a stimulus, as well as a model, for national legislation and for practical application in member countries.

A second major task, which has steadily expanded for the past two decades, is that of technical cooperation to assist developing nations. More than half of ILO's resources are devoted to technical cooperation programs, carried out in close association with the United Nations Development Program and often with other UN specialized agencies. These

activities are concentrated in four major areas: development of human resources, through vocational training and management development; employment planning and promotion; the development of social institutions in such fields as administration, labour relations, cooperatives, and rural development; conditions of work and life – for example, occupational safety and health, social security, remuneration, hours of work, welfare, etc.

Marking the beginning of its second half-century, the ILO has launched the World Employment Program, designed to help countries provide employment and training opportunities for their swelling populations. The World Employment Program will be the ILO's main contribution to the United Nations Second development decade. There are some 900 ILO experts of 55 different nationalities at work on more than 300 technical cooperation projects in over 100 countries around the world.

Third, standard-setting and technical cooperation are bolstered by an extensive research, training, education, and publications program. The ILO is a major source of publications and documentation on labour and social matters. It has established two specialized educational institutions: the International Institute for Labour Studies in Geneva, and the International Centre for Advanced Technical and Vocational Training in Turin, Italy.

Since its inception the ILO has had six directors-general: - Albert Thomas (1919-1932) of France, Harold B. Butler (1932-1938) of the United Kingdom, John G. Winant (1938- 1941) of the United States, Edward J. Phelan (1941-1948) of Ireland, David A. Morse (1948-1970) of the United States, Wilfred Jenks (1970) of the United Kingdom.

2.4- How the ILO works: -

The ILO has a tripartite structure unique in the United Nations, in which employers' and workers' representatives – the "social partners" of the economy – have an equal voice with those of governments in shaping its policies and programmes.

The ILO also encourages this tripartism within its member States by promoting a "social dialogue" between trade unions and employers in formulating, and where appropriate, implementing national policy on social, economic, and many other issues.

Minimum international labour standards and the broad policies of the ILO are set by the International Labour Conference, which meets annually. Every two years, the Conference adopts the ILO's biennial work programme and budget, which is financed by member States.

Conference also provides an international forum for discussion of world labour and social problems. Each member country has the right to send four delegates to the Conference, two from the government and one each representing workers and employers. These delegates are free to speak and vote independently. Between annual sessions of the Conference, the work of the ILO is guided by the Governing Body of 28 government members and 14 worker and 14 employer members. The ILO secretariat, operational headquarters, research centre and publishing house, are based in the International Labour Office, Geneva. Administration and management are decentralized in regional, area, and branch offices in more than 40 countries.

The work of the Governing Body and of the Office is aided by tripartite committees covering major industries. It is also supported by committees of experts on such matters as vocational training, management development, occupational safety and health, industrial relations, workers' education, and special problems of women and young workers.

Regional meetings of the ILO member States are held periodically to examine matters of special interest to the regions concerned.

2.5- What the ILO does: -

The ILO has four principal strategic objectives:

- To promote and realize standards, and fundamental principles and rights at work.⁷
- To create greater opportunities for women and men to secure decent employment.
- To enhance the coverage and effectiveness of social protection for all.
- To strengthen tripartism and social dialogue.

These objectives are realized in a number of ways:

- Formulation of international policies and programmes to promote basic human rights, improve working and living conditions, and enhance employment opportunities.
Creation of international labour standards – backed by a unique system to supervise their

⁷ In 2005, an estimated 5.7 million children were in forced and bonded labor.
<https://laborcenter.uiowa.edu/special-projects/child-labor-public-education-project/about-child-labor/what-child-labor>

application – to serve as guidelines for national authorities in putting these policies into action.

□

A

n extensive programme of international technical cooperation, formulated and implemented in an active partnership with constituents, to help countries in making these policies effective in practice.

- Training, education, research, and xlak

2.6- ILO List of International Labour Standards: -

These are legal instruments created by governments, employers, and workers that set basic principles and rights at work. They take the form of either conventions/protocols, which are legally binding international treaties ratified by member states, or recommendations, which are nonbinding guidelines. The former is created and adopted at the annual International Labour Conference, after which they must be ratified by the governing bodies, such as a parliament or congress, of member states. There are eight fundamental conventions:

- Freedom of Association and Protection of the Right to Organise Convention, 1948.
- Right to Organise and Collective Bargaining Convention, 1949
- Forced Labour Convention, 1930 (and its 2014 Protocol).
- Abolition of Forced Labour Convention, 1959.
- Minimum Age Convention, 1973.
- Worst Forms of Child Labour Convention, 1999.
- Equal Remuneration Convention, 1951.
- Discrimination (Employment and Occupation) Convention, 1958.

There are also four governance conventions, which are considered important for “the functioning of the international labour standards system”.

- Labour Inspection Convention, 1947.
- Employment Policy Convention, 1964.
- Labour Inspection (Agriculture) Convention, 1969.
- Tripartite Consultation (International Labour Standards) Convention, 1976.

2.7- ILO Plans: -

The ILO has consolidated its current technical projects into five “flagship programmes designed to enhance the efficiency and impact of its development cooperation with constituents on a global scale”. These programme are -

2.7.1- Better Work

Devoted to improving working conditions in the factories of the garment and footwear industries, this program is jointly run with the World Bank Group’s International Finance Corporation. The emphasis is on “lasting improvements rather than quick fixes” and involves eight countries on three continents, working hands-on with 1,250 factories and in excess of 1.5 million workers. The program’s goal is to “prove that safe, dignified work means more productive factories, and a more profitable business model that benefits workers, managers, countries, and consumers alike.

2.7.2- Global Flagship Programme on Building Special Protection Floors (SPFs) for All-

This program was launched in 2016 and its long-term intention is "to extend social protection to the five billion people who are partially covered or living without social protection and the dignity it affords."⁸

According to the ILO, 73% of the globe’s population lacks social protection, with five billion people living with daily anxiety. The ILO hopes to change that by creating “nationally appropriate social protection systems and measures for all, including floors.” It will “support governments, workers’ and employers’ confederations, and civil society organizations in 21 countries, in collaboration with other U.N. agencies.

The first goal of the Global Flagship Programme was to “change 130 million lives by 2020 through establishing comprehensive social protection systems in 21 countries and conducting a global knowledge development and education campaign. As of April 2021, the website gives no indication of whether or not that goal was met.

⁸ Of an estimated 215 child laborers around the globe: approximately 114 million (53%) are in Asia and the Pacific; 14 million (7%) live in Latin America; and 65 million (30%) live in sub-Saharan Africa
<https://laborcenter.uiowa.edu/special-projects/child-labor-public-education-project/about-child-labor/what-child-labor>

2.8- International Programme on the Elimination of Child Labour and Forced Labour (IPEC): -

According to the ILO, there are 152 million children performing child labour, 40 million men, women, and children in “**modern slavery**,” 24.9 million people in forced labour, and 15.4 million people in forced marriages. This program hopes to put an end to these scourges. It is a relatively new program that combined two older ones on child labour and forced labour. IPEC collaborates with the government, employers and workers to.

- Strengthen technical and governance capacity to create transformative change in public institutions, laws, and practices at all levels
- Encourage effective engagement and cooperation between the constituents and other stakeholders
- Significantly expand knowledge and policy-oriented advice and information

The goals are to eliminate child labour by 2025 and end forced labour and human trafficking by 2030, in accordance with the U.N.’s 2030 Sustainable Development Agenda, which was adopted in 2015.⁹

2.9- Safety and Health for All: -

Originally known as the Global Action for Prevention on Occupational Safety and Health (GAP-OSH) program, this was meant to “improve the health and safety of workers in small and medium-sized enterprises through fostering a global culture of prevention.” Created in 2016, it has been active in 15 countries and globally.¹⁰

According to the ILO, 2.78 million workers die every year from work-related injuries and illnesses and 374 million more suffer nonfatal ones. The lost workdays account for nearly 4% of the world’s annual gross domestic product (GDP). Its particular targets are.

⁹ Many children, especially girls, work in domestic service, sometimes starting as young as 5 or 6. This type of child labor is linked to child trafficking. Domestic child laborers can be victims of physical, emotional, and sometimes sexual abuse. <https://laborcenter.uiowa.edu/special-projects/child-labor-public-education-project/about-child-labor/what-child-labor>

¹⁰ Child laborers suffer extremely high illness and injury rates in underground mines, open cast mines, and quarries. Children as young as 6 or 7 years old break up rocks, and wash, sieve, and carry ore. Nine-year-olds work underground setting explosives and carrying loads.

- Hazardous sectors, such as agriculture and construction
- Workers with higher vulnerability to occupational injuries and diseases, including young workers (15-24), women, and migrant workers.
- Small and medium enterprises.
- Global supply chains.

2.10- Jobs for Peace and Pliability: -

This program focuses on creating jobs in countries where there are conflicts and disasters, with an emphasis on employment for young people and women. Its key objectives, which it hopes to achieve through building institutions, social dialogue, and establishing fundamental principles and rights at work, are

- Providing direct job creation and income security
- Enhancing skills for employability
- Supporting self-employment, enterprises, and cooperatives
- Bridging labour supply and demand

2.11- The Future of the International Labour Organization (ILO): -

In 2019 the ILO convened for the Global Commission on the Future of Work. In preparation for the conference, about 110 countries participated in dialogues at the regional and national levels. The ensuing report made recommendations for governments on how best to approach the challenges of the 21st-century labour environment. Among these recommendations were a universal labour guarantee, social protection from birth to old age, and entitlement to lifelong learning.

The ILO also assessed what impact a transition to a green economy would have on employment. According to the ILO, if the right policies are put in place, a transition to a greener economy could create 24 million new jobs around the world by 2030.

2.12- selected instruments of ILO in child labour: -

This fundamental convention sets the general minimum age for admission to employment or work at 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed.

2.13- Strategies and Programmes: -

2.13.1- Declaration of Philadelphia

In 1944, the International Labour Conference met in Philadelphia, USA, and adopted the Declaration of Philadelphia. This redefined the aims and purpose of the ILO by adopting the following principles:

- Labour is not a commodity.
- Freedom of expression and of association are essential to sustained progress
- Poverty anywhere constitutes a danger to prosperity everywhere.
- All human beings, irrespective of race, creed, or sex, have the right to pursue both their material wellbeing and their spiritual development in conditions of freedom and dignity, of economic security, and of equal opportunity.

2.13.2- Declaration on Fundamental Principles and Rights at Work

In 1998, the International Labour Conference adopted the Declaration on

Fundamental Principles and Rights at Work, which reaffirmed the commitment of the international community to “respect, to promote and to realize in good faith” the rights of workers and employers to freedom of association and the effective right to collective bargaining. It also commits member States to work towards the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in employment and occupation. The Declaration emphasizes that all member States have an obligation to respect the fundamental principles involved, whether or not they have ratified the relevant Conventions.

2.14- ILO conventions and recommendations-

One of the ILO’s original and most important functions is the adoption by the tripartite International Labour Conference (employers, workers and governments) of Conventions and Recommendations which set international standards. Through ratifications by member States, these Conventions create binding obligations to implement their provisions. Recommendations provide guidance on policy, legislation, and practice.

Since 1919, Conventions and Recommendations have been adopted covering practically all issues relating to the world of work. These include certain basic human rights (notably freedom of association, the right to organize and bargain collectively, the abolition of forced labour and child labour, and the elimination of discrimination in employment), labour administration, industrial relations, employment policy, working conditions, social security, occupational safety and health, employment of women, and employment of special categories such as migrant workers and seafarers.

Each member State is required to submit all Conventions and Recommendations adopted by the Conference to the competent national authorities for a decision on action to be taken. The ratifications of these Conventions have continued to increase in number. The ILO has established a supervisory procedure to ensure their application in law and practice, which is the most advanced of all such international procedures. It is based on objective evaluation

by independent experts of the manner in which obligations are complied with, and on examination of cases by the ILO tripartite bodies. There is a special procedure to investigate complaints of infringement of freedom of association.

2.15- Key ILO Conventions: -

2.15.1- Forced Labour Convention (1930): -

Requires the suppression of forced or compulsory labour in all its forms. Certain exceptions are permitted, such as military service, properly supervised convict labour, and emergencies such as wars, fires, earthquakes.

2.15.2- Freedom of Association and Protection of the Right to Organised Conventions-

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Freedom of Association and Protection of the Right to Organised conventions 1948:

Establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by public authorities.

Right to Organize and Collective Bargaining Convention (1949): -

Provides for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other, and for measures to promote collective bargaining.

Equal Remuneration Convention (1951): -

Calls for equal pay and benefits for men and women for work of equal value.

Abolition of Forced Labour Convention (1957): -

Prohibits the use of any form of forced or compulsory labour as a means of

political coercion or education, punishment for the expression of political or ideological views, workforce mobilization, labour discipline, punishment for participation in

strikes, or discrimination.

Discrimination (Employment and Occupation) Convention (1958): -

Calls for a national policy to eliminate discrimination in access to employment, training, and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origin, and to promote equality of opportunity and treatment.

Minimum Age Convention (1973): -

Aims at the abolition of child labour, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling.

Worst Forms of Child Labour Convention 1999-

Calls for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour which include slavery and similar practices, forced recruitment for use in armed conflict, use in prostitution and pornography, any illicit activity, as well as work which is likely to harm the health, safety, and morals of children.

2.16- Focus on child labour: -

Child labour is a pressing social, economic and human rights issue. As many as 250 million children worldwide are thought to be working, deprived of adequate education, good health, and basic freedoms. Individual children pay the highest price, but countries suffer as well. Ending child labour is a goal in itself; but it is also a powerful way of promoting economic and human development. The ILO Minimum Age Convention, 1973, containing the principle of the effective abolition of child labour, is strengthened by adoption of a new Worst Forms of Child Labour Convention, 1999, calling for immediate measures to eliminate as a

matter of urgency all of the worst forms of child labour – ranging from slavery and compulsory labour to use of a child in any illicit activity, and any work which is likely to harm the health, safety or morals of children. As the world has awakened to the abuses of child labour,

the movement against it has evolved into a global cause virtually unprecedented in its pace and intensity. It is a movement which transcends political boundaries, languages, cultures and spiritual traditions. Every segment of civil society – governments, employers, trade unions, NGOs, and religious organizations – has joined together to declare that exploitative child labour must end. The International Programme on the Elimination of Child Labour (IPEC) currently manages over 1,000 programmes worldwide promoting alternatives to child labour.

2.17- Gender and jobs: - Gender equality is a key element of the ILO agenda of Decent Work for All Women and Men. Gender equality, along with development, is one of the two cross-cutting issues of the four strategic objectives of the Decent Work agenda. The ILO's approach to gender equality is to mainstream gender concerns in all its policies and programmes. Women have transformed the labour markets of the world. In some cases, they have succeeded in obtaining greater opportunities and economic autonomy. Yet, gender inequalities still permeate every aspect of the employment problem. Women still form the majority of unpaid, atypical, or discouraged workers in most countries.

The ILO is committed to an integrated policy on women and work. This involves a number of responses, including:

- The International Programme on More and Better Jobs for Women. This programme promotes more jobs for women through employment creation, training, entrepreneurship development, improvement in access to the labour market, and equality of opportunity. It promotes better jobs through equal pay, occupational desegregation, health and safety, improved working conditions for non-standard employment, social security, family-friendly workplaces, and protection for vulnerable workers.
- The Capacity-building Programme on Gender, Poverty and Employment. This programme focuses on enhancing women's access to quality jobs, strengthening their

bargaining and negotiating power, and providing innovative ways of increasing social protection, especially in the informal sector. Decent employment and income Productive, freely-chosen employment is at the core of the ILO's mandate. Without productive employment, achieving decent living standards, social and economic development, and personal fulfilment remain illusory.

Globalization has brought both prosperity and inequalities, testing the limits of our collective responsibility. Even so, the Organization remains committed to achieving full employment worldwide. The ILO's mission is to help people around the world find decent work – in conditions of freedom, equity, security, and humandignity. It does this through permanent contact with workers, employers, and governments – the ILO's constituents – helping forge new and innovative employment, labour market, and training policies. Concern for the social costs of globalization increases the need for better international coordination of macroeconomics policies which can diminish its harmful consequences. The ILO is committed to providing research, analysis, and advice to its constituents, as well as to such stakeholders as banking, investment, trade and enterprise development specialists, and business managers, on how to create decent work. This includes promoting small enterprises, microfinance, and effective training systems. ILO employment objective

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2.19- ILO employment objectives include:

- Equipping constituents to analyse economic and labour market developments, and elaborate and negotiate effective employment promotion policies and programmes on the global and regional level¹¹
- Boosting employment through small enterprise development,

- Helping women get more and better jobs,

- Effectively implementing policies and programmes upgrading informal sector activities,
- Advising in the transition from centrally planned to market economies, particularly with respect to employment, labour market, and human resource policies,

- Adopting or strengthening targeted programmes enabling groups such as young workers, the disabled, migrants, and indigenous populations to find decent employment.

The focus on small enterprises is a key element in the ILO approach to job creation, an important aspect of which concerns enterprise restructuring.

2.20- Technical cooperation

Since the early 1950s, the ILO has been providing technical cooperation to countries on all continents and at all stages of economic development. In the last decade, an average of some US\$130 million was spent annually on technical cooperation projects. The

¹¹ About 14 million children are estimated to be directly involved in manufacturing goods, <https://laborcenter.uiowa.edu/special-projects/child-labor-public-education-project/about-child-labor/what-child-labor>

projects are implemented through close cooperation between recipient countries, donors, and the ILO, which maintains a network of area and regional offices worldwide.

The overall purpose of ILO technical cooperation is the implementation of the Decent Work agenda at a national level, assisting constituents to make this concept a reality for all men and women. An extensive network of offices throughout Africa, Asia, Latin America, Central and Eastern Europe and the Middle East provides technical guidance on policy issues, and assistance in the design and implementation of development programmes.

2.21- Wide-ranging programmes: -

Training entrepreneurs in small business administration, strengthening social security systems, assisting in the reintegration of ex-combatants into the national economy, assisting trade unions in occupational safety and health, setting up cooperatives in rural areas, working with governments to revise labour laws. These are just a few examples of the ILO's vast range of technical cooperation programmes operating in some 140 countries and territories. The focus of these programmes is on the areas covered by the ILO's four strategic objectives: the promotion of fundamental principles and rights at work, employment, social protection, and the strengthening of tripartism and social dialogue. Within this framework, the major portion of ILO technical cooperation is in the areas of development policies and programmes for poverty alleviation through job creation, and enterprise and cooperative development.

Particular attention is being paid to capacity-building and strengthening of the programmes' constituents, in particular of workers' and employers' organizations, and to the mainstreaming of gender. The protection of workers at the workplace and the development of social security systems are other areas of assistance.

The ILO's adoption of the Declaration of Fundamental Principles and Rights at Work has given a new impetus to the technical cooperation programmes in standards-related areas such as the promotion of freedom of association, social dialogue and collective bargaining, and to activities leading to the eradication of child labour – especially in its worst forms

2.22- Training, Education, Research, Publishing: -

International Training Centre With its large residential training facility located in Turin, Italy, the International Training Centre provides a wide variety of programmes in areas of priority concern to the ILO and the United Nations system at large. Designed to support economic and social development of member States and their constituents, the Centre seeks to assemble, package and deliver the best thinking, practice and experience concerning fundamental principles and rights at work, employment and income opportunities for women and men, social protection for all, management of the development process, tripartism, and social dialogue. It offers training/learning opportunities and related services to decisionmakers, managers, practitioners and trainers from governments, workers'

organizations, employers' organizations and their partner institutions. It has partnerships with regional and national training institutions and its services are available to the United Nations system as a whole, including ILO staff. To date, over 90,000 women and men from 170 nations have benefited from its services since it opened in 1965. The annual number of activities exceeds 300 standard courses, customized learning events, comprehensive training projects, advisory services, and training material design and production. Around half the activities take place on-campus and the rest in the field. Besides group training, the Centre organizes, on request, learning programmes for individuals who are placed in public and private institutions and organizations. Increasingly, it uses information technology, including the Internet, to offer distance learning and tutoring services.

2.23- International Institute for Labour Studies: -

The ILO International Institute for Labour Studies in Geneva promotes policy research and public discussion on emerging issues of concern to the ILO and its constituents – labour, business and government. The organizing theme of the Institute's programmes is the notion of "decent work". The Institute's programmes seek to contribute to the development of the analytical and empirical foundations of decent work and a broader understanding of the policy instruments necessary to implement it in practice

The Institute provides three major facilities:

- A global forum on social policy, enabling governments, business and labour to interact informally with the academic community and other opinion makers.
- International research programmes and networks linking academics with business, labour, and government practitioners, to explore emerging policy issues of potential relevance for the ILO and contribute to policy formulation.
- Educational programmes to assist trade unions, employers' organizations and labour administrations in developing their institutional capacities for research, analysis, and policy formulation in the economic and social fields.

The Institute's means of action include: research, social policy forums, public lectures, courses and seminars, internship programmes, a visiting scholar

programme, the Phelan Fellowship programme, and publications. It also organizes the Social Policy Lectures, endowed by the ILO's Nobel Peace Prize, and held, by rotation, in major universities of the world.

2.24- Library and Information Services: -

Most of the ILO's information services are based on an information network connected to the ILO Library in Geneva. The network seeks to enhance the capacity of ILO constituents, ILO staff and ILO partner institutions to make effective use of the ILO's information resources. The ILO Library offers an information consultancy service and provides access to a multilingual collection of over one million books, reports, journals, legal texts, statistical publications, and electronic information sources on all aspects of the world of work. It produces **LABORDOC**, a unique database providing worldwide coverage of social and labour affairs, which is available via the Internet, provides information research services, and develops projects and training courses for labour information specialists.

2.25- ILO Member States:

Afghanistan, Albania, Alheea, Angola

Antigua and Barbuda

Argentina

Armenia

Australia

Austria

Azerbaijn

Bahamas

Bahrain

Bangladeh

BarbadosBelarus Belgium Belize Benin Bolivia

Bosnia and HerzegovinaBotswana

Brazil Bulgaria Burkina FasoBurundi

CambodiaCameroonCanada Cape Verde

Central African RepublicChad

Chile China Colombia

Comoros

Congo Costa Rica Côte d'IvoireCroatiaCuba

Italy Jamaica Japan JordanKazakhsta

n KenyaKiribati

Korea, Republic ofKuwait Kyrgyzstan

Lao People's DemocraticRepublic Latvia

Lebanon Malaysia Myanmar Nepal Netherlands

New ZealandNicaragua Niger

Nigeria Norway Oman Pakistan Qatar

CHAPTER 3

CHILD LABOUR PROBLEM IN INDIA – AN OVERVIEW AND INTERNATIONAL LEGISLATION ON CHILD LABOUR

The Status Quo of Child labour in India While dealing with the issue of child labour in India, the definition of 'child' itself poses the first problem. "Some culture's view childhood biologically rather than chronologically." In certain languages there is no word for the period between infancy and adulthood. Developing countries argue that they lack the resources to keep children out of the workforce. In India 'Work' has been defined in census 2001 as "participation in any economically productive activity with or without compensation, wages or profit. Such participation could be physical and/ or mental in nature." The United Nations Conventions on the Rights of the Child ("UNCRC") defines childhood as "extending to the age of eighteen unless domestic law provides otherwise. "In the convention of Child Labour .it was specified that the 'minimum age of work' should not be less than age when schooling is completed and cannot be below fifteen years. Thirteen years old were permitted to do light work that are not harmful to health and that does not compromise with education or training. Developing countries can reduce this age by one year. The trend of child labour incidences has increased in recent years which is evident despite the fact of under reporting. The MNC's supply chain in India finds millions of poor children to work in informal sectors with little wage and without any education and nutrition facilities. There is an ethical dilemma of using child labour by the MNCs in their supply chain to poor nations and many a times they are accused of using child labour in their production units. On the surface it may seem that child labour in a MNC's supply chain is not justified considering the vulnerability of the children and the poor nations. But there lies the big question whether this life is better compared to harsher forms of child labour like prostitution or armed conflict? It is a common phenomenon that MNCs worldwide are being accused of using child labour time to time. No matter who is the MNC and its image, whenever the question of supply chain responsibility comes, and the outsourcing are in effect, it is seen that the cheap labour in the developing nations is being used to produce the products of the top MNCs even with the labour of children.

3.1- The Root causes: -

The reason behind huge number of child labour incidences in India is mainly poverty as the case in other poor countries but this is not affecting the number of incidences in one-to-one basis. Denial to education and parental illiteracy become another issue which contributes to child labour. Poor families who lack of education have many children and it is seen that women literacy is contributing to the fertility rate in the states. So, when parents are uneducated and have many children, they send them to work preferring not sending them to school. They think that free primary education cannot earn a good wage for the child. So poor children are forced to work from very young age to earn for their livelihood. Because of seasonal migration of families to align to the agricultural season changes, makes it difficult for the issue of “over- population of India (more than 1.17 billion) has a very strong impact on the nation’s per capita GDP.” The adult unemployment in India gives a scope for children to work to feed the families. The social and cultural system in India is also a prominent cause for child labour incidences. The caste system contributed to the fact that there are mainly children from backward classes who work as child laborers. There are incidences of dowry from the brides’ parent to the grooms’ parents and so the poor father sends his sons to work as child labours. There is lack of awareness about the human rights specially of children and there is also lack of proper educational infrastructure, mainly in the villages, that contribute to the fact that children are out of the school, they do not enrol, and drop out even if they enrol in the primary school. The exploitation of unrecognized labour is so common as the factory owners or sweatshop runners find it easy to employ children because of cheap price and no union problem. The laws for penal actions are having scope of loopholes and so the wrong doers can escape by paying some money to the parents and the evil continues.

3.2- Problems in the Law and present approach: -

While dealing with child labour, the main hindrance comes with the definition of a child which varies largely from one law to another even in Indian scenario. According to the ‘Convention on the Rights of the Child’, article (i) defines “The child as every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. “The Indian Penal Court (IPC) defines the child as being 12 years of age. Indian Traffic Prevention Act 1956 defines a “Minor” as a person who has reached the age of 16 the children to continue schooling and it becomes inevitable that the children are having no

option other than working in the field. years. Section 376 of IPC which punishes the perpetrators of the crime of rape defines the age of consent to be 16 years of age. Section 82 and 83 of the IPC states that a child under the age of 7 years cannot be guilty of an offence and further a child under 12 years is not considered to have attained sufficient maturity to have an understanding of the nature of the Act and the consequences of his conduct. Juvenile Justice Act 2002 defines a male minor as being below 16 years and a female minor as being below 18 years of age. So, it is seen that the Indian legislations define child's age differently in different contexts. It is not uniformly defined which leaves a loophole in the implementation of child labour laws and so the wrongdoers can escape easily taking help of the gaps in the legal system. The Indian government ratified the UN Convention on the Rights of the Child in 1992 and introduced various legislations to eliminate child labour. The Ministry of Labour in India has imposed a ban on children under age 14 from working as domestic help in hotels. The employment of children in hazardous industries including the manufacture of fire crackers, carpet making, glass making etc. is banned under Child Labour Act 2002. Violations of these laws attract penalties including imprisonment. "The Child Labour (Prohibition and Regulation) Act 1986 prohibits child labour in certain occupations and processes alone." The penal provision is not strict enough. The law does not prohibit child labour if the child works for own family, and no demarcation is made for the hazardous works in own family. There are lapses because the law does not cover the agricultural sector where a large number of children are working as laborers. The NCLP (National Child Labour Project, 1988) program, released as a supplementary part of the Child Labour (Prohibition & Regulation) Act, frames laws to rehabilitate working children along with provisioning of education.

3.3- Analysis of the Obstacles¹²: -

The main drawbacks in the present regulations related to child labour and education are:

- Loose enforcement on free and compulsory education.
- Penal Action not strict on labour law violation.
- Loopholes in the present laws which makes employers escape.
- NCLP is confined to those working children who work in the industries as notified in the Act. So, a huge number of children are left behind to get rehabilitated.
- Monitoring is not enough.
- Definition of child and strict compliance on birth registration is a problem area.

¹² Roughly 160 million children were subjected to child labour at the beginning of 2020, with 9 million additional children at risk due to the impact of COVID-19. <https://www.unicef.org/protection/child-labour>

- Definition of hazardous works vs sectors outside purview is problematic.
- No control on sweatshops/ domestic laborers.
- Problems in constructive rehabilitation even if children are taken out of work

because of the poor infrastructure of the schools and problems in accessibility.

- There is no change in the line of action by the government.

The Act could not protect rights of the working children as “it was based on wrong premises of justifying and legalizing child labour on account of passing ‘traditional craft’ and ‘harsh social reality. The Child Labour Act and the child labour policy of 1987 are not located. in the inseparable processes of child labour and universalization of primary education but in the Hindu hierarchical mindset.” In the review of present approach, we see that, there is lack of focus on children who are out of school. There has been no effort to make public aware of the situation or the harm. The activities of NGOs are also confined to specific region / scattered. There is a gap of co-ordination between the works of the government and NGOs. Significant contribution from the media is lagging. Government’s silence on actual data / statistics creates suspicion of hidden agenda. Social trust is far away from what is expected. No act can help to eradicate child labour until and unless there are efforts from all parts of the society. There is involvement of local representatives, religious leaders, social bodies, voluntary youth forum and government bodies. There is need for mass publicity about the ill effects, door to door campaign, road shows, regular workshops by NGOs increase in women/ student/ senior citizen welfare associations. There is need for reform in laws and decentralization of the enforcement activities. It is required to enhance budget and foreign donations. It is required that all the activities should be harmonized at local, state and national level. Provision of better education to poor children by free and compulsory schooling with mid-day meal program, social awareness and rehabilitation of child labour can be a step towards the solution.

3.4- Solutions¹³: -

3.4.1 How can the problem be best tackled?

The ILO’s experience is that a combination of several types of action is most effective, such as:

- Improving the collection of data on children at work and occupational accidents and

¹³ Progress to end child labour has stalled for the first time in 20 years, reversing the previous downward trend that saw child labour fall by 94 million between 2000 and 2016.
<https://www.unicef.org/protection/child-labour>

illnesses, including analysis of the sex and age of children involved;

- Awareness-raising, so that both adults and children recognise the dangers;
- Developing policies and up to date regulations to protect children;
- Promoting effective law enforcement through integrated labour inspection services working in concert with other actors; and
- Working with workers' representatives and employers' organizations to help ensure that work is safe for all.

3.5- WHO NEEDS TO ACT?

The major actors/ institutions in this case are mainly the government (central and state), administrative authorities, political leaders, social institutions/ NGOs, local community welfare groups and people as a whole. The activities undertaken in the country are insufficient compared to the severity of the problem.

- The government has to give assurance on job aspects for at least one poor family member. There must be schools and women education centre in each village with adequate teaching and classroom resources. If required government may seek help for international fund/help to reduce poverty. There may even be need for "distribution of world resources and socio-economic restructuring". The national and state government agencies need to enforce strict monitoring on sweat shops. Some special units in the administration may be formed to restructure enforcing ministries for certification of products conforming "fair trade practice". It is required that mandatory birth registration in remote parts is monitored, else children will be again vulnerable to exploitation.
- NGOs should make mass awareness program. They should arrange demonstrations whenever necessary against sweat shop owners or against government agencies for not performing their jobs. They can sensitize people in the society to get information about the sweat shops in their localities and inform government. NGOs like CHORD, CRRC, CACL, child line, CRY have to increase rehabilitation programs to shelter children and they have to reach every part by seeking political help if necessary.
- MNC authorities have to incorporate the agenda of child labour as a part of their vision and corporate-social strategy and introduce welfare norms for their workers and their families. They have to provide mandatory education and nutrition to children for their development along with skill building through work. They should also introduce methods to monitor the entry of child labour in their companies/ associated sub units/ outsourcing partners.

- As media has strong influence on all aspects of social life today, it is to play some active role to bring out news of sweat shops or any information of child labour immediately as true journalist without any form of biasness (towards politicians, industrialists/ factory owners or specific social groups). Any success story is to be highlighted in local/national TV in massive scales.
- Every citizen has responsibility in this case. Civil society/ people's forum can play active role to find sweat shops in their society/neighbourhood. They can start youth action group in the community. They have to observe child labour day (June 12) to have impacts.

3.6- WHAT IS NEEDED TO BE DONE¹⁴?

Bill Gates, Founder, Micro Soft: "I believe that if you show people the problems and you show them the solutions they will be moved to act". India has huge number of poor populations who are illiterate. So, it is really difficult to reduce the number of working children as they are deprived of basic needs of life. The enforcement activities cannot produce any satisfactory result even though penal actions are predefined for violation of regulations. In spite of court regulations, child labour is continuing for last half century. A whole hearted approach from all is needed and it should definitely include involvement of local representatives, religious leaders, social bodies, voluntary youth forum and government bodies. There is need for mass publicity about the ill effects. door to door campaign, road shows, regular workshops by NGOs, increase in women/ student/ senior citizen welfare associations. There is need for reform in laws and decentralization of the enforcement activities. It is required to enhance budget and foreign donations. It is required that all the activities should be harmonized at local, state and national level. Provision of better education to poor children by free and compulsory schooling with mid-day meal program, social awareness and rehabilitation of child labour will be a step forward. The policy in this direction can be considered in two parts:

- legal intervention and
- collaborative intervention i.e., public action. India is a democratic country and people in the society can have impact on policy issues by being sensitive to the issue and by reacting. But who are the people to react? Is it difficult to find the public in true sense?

Here public, if we consider them as interest groups (poor people) are the voters and as they are the affected, they can select representatives through elections only when these representatives fulfil their duties of taking the issue as their primary concern. In India no

¹⁴ 30 million children live outside their country of birth, increasing their risk of being trafficked for sexual exploitation and other work. <https://www.unicef.org/protection/child-labour>

single political party dominates. So, the public has fair chance to alter the decision makers and their situations. They can have impact on political forces as participatory mechanism can increase the justice of democratic governance by replacing the decision maker/ compelling him to act justly. Archon Fung says citizen's participation serves three core democratic objectives: Legitimacy, justice and effectiveness, so in case of a move towards change in the status of child labour, it can have impact if there is people's participation. So social networking is again necessary effective tool. The fact driven information is to be transferred to wisdom which can make the process effective. Partnership of citizen's group and public officials will lead to increased participation and increased efficiency. Daniel Yankelevich suggests "judicious use of dialogue can transform the public into an invaluable partner of leaders and elites in shaping policy because dialogue brings forth the wisdom inherent in the collective public experience. Method of Archong Fung also suggests to engage lay stake holders who has deep interest in the concern. The retired government or private officials / senior citizens can take this responsibility voluntarily. Also, they can sensitize local clubs or residents through dialogue as people can then convert their raw opinion into considered judgments. 'Bonded' labours¹⁵ are existing in some parts where poor farmers are letting their children work as bonded labour for long to the land owners who lend them money. So where is the social trust, norm and network security? Robert Putnam's theory on social capital can play a special role to induce mutual trust in society. The concept of micro lending among poor people who lack capital (like Grameen bank concept of Dr Iunus in Bangladesh) or some form of voluntary cooperation (like RCA) must have to be widely introduced in order to develop the status of the poor, so that there is employment to unemployed families. This in turn will also enhance trust and social capital. Building of social capital is not easy, but it is the key to make

democracy work. The story Brazil's success by conditional cash transfer (CCT) to poor parents can be tried to be replicated by the administrative authorities. Professional politicians are to play model role here. They have to build their constitutions as zones having every child educated even if they work. They have to get fund to run the schools or even provide banking to the poor families. They have the social and political power which is to be utilized to invite the rich industrialists for arranging donations to schools for grant of food, book and other

¹⁵. In 2005, an estimated 5.7 million children were in forced and bonded labor.
<https://laborcenter.uiowa.edu/special-projects/child-labor-public-education-project/about-child-labor/what-child-labor>

accessories. James Fishkin says “to make a democracy that works, we need citizens who are engaged, communications that function and media that speak for us as well as about us”. The role of public discussion and open dialogue is important in value formation which is called the “constructive” role of democracy. It will be a workable solution to telecast face to face comments of ruling and opposition leader, people’s representative and NGOs in public hearing. A firm action for widespread deliberation by experts in the issue, is required to protect the vulnerable. A pilot project in a state can be started and success factors can be telecast to give wide publicity and to have mass support.

3.7- INTERNATIONAL BILL OF RIGHTS: -

It may be stated again that the United Nations’ interest in the promotion and encouragement of respect for human rights and fundamental freedoms corresponds to the increasing concern of the international community for the rights and aspirations for dignity of all human beings everywhere and the specific inclusion of promotion and encouragement of respect for human rights and for fundamental freedoms for all among the purposes of the United Nations is nothing but the consequence of such reflection. It is indeed unfortunate that such an illuminating document on human rights is bereft of a precise definition; nor is there any catalogue of such rights and fundamental freedoms to serve as a source of guidance. Though unfortunate was such an omission, still it was not to be regarded as serious lapse in as much as at the San Francisco Conference which drafted the Charter of the United Nations, a proposal to embody an international bill of rights in the Charter itself was put forward but not proceeded with for the reason that it required more detailed consideration. However, in stark contrast to temporary deferment, its total absence would have rendered the instrument totally inadequate thus forcing the efforts taken in pursuit of such internal concern to go waste. Hence, the adoption of the Universal Declaration of Human Rights was another milestone in the history of mankind. Falling in line with the directive in the Charter, preliminary steps essential to the formulation of an international bill of rights were taken. It is worth recounting that such steps even preceded the establishment of the United Nations and presumably, the heightened conscience for the promotion of human rights outlined in the Charter might have been the sole urge. The Universal Declaration of Human Rights was adopted in the form of a resolution of the General Assembly on 10 December 1948. Remarkably, the resolution was adopted without dissent, but, of course, with 8 abstentions and 2 assentions. The adoption of the Declaration was the result of a compromise solution emphasising the need to divide the international bill of rights positively into two or more international instruments and eventually the Declaration emerged as the first of these several instruments. The Declaration's concern for human rights is more revealing. The concern so expressed is not merely immediate but

also deep and pervasive, given the nature and content of the provisions. This is more amply stated in the Preamble of the Declaration authenticating the nature of the document and the purpose it was intended to serve. It reads: The General Assembly, Proclaims this Universal Declaration of Human Rights, as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. The Declaration further stresses in paragraph 1 of its Preamble that "recognition of 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", while recalling that "disregard and contempt for human rights resulted in barbarous acts which have outraged the conscience of mankind". In an attempt to facilitate the fulfilment of the pledge undertaken by the Member States under Article 56 of the Charter, the Declaration consciously underscores "the importance of a common understanding of the rights and freedoms" envisaged by the Charter and dwells at length in its provisions. Though the Universal Declaration was humanity's unanimous response to the authoritative and repressive regimes and the horror of the Second World War, it was, in fact, conceived from the start as a global "Bill of Rights" to be carried

through the succeeding covenants to be formulated by the United Nations. The provisions of Articles 1 and 2 are general in nature. While proclaiming that "all human beings are born free and equal in dignity and rights", the Declaration states that "everyone is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind, such as race, colour, sex, language, religion, political or other status". It is further stated that "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty". Articles 2 to 21 deal with the traditional civil and political rights. Articles 22 to 28 of the Declaration set forth, mostly in general terms, the economic, social and cultural rights. They are of a more novel nature. Possibly the most novel provision of the Declaration is to be found in Article 28 which declares that "...everyone is entitled to a social and economic order in which the rights and freedoms set forth in the Declaration can be fully realised". The Declaration, also called as Bible of luminists, despite its innovative and welcome enumeration of the catalogue of

human rights and fundamental freedoms, has failed to stir the human conscience.” The words and deeds of the national governments in respect of human rights are often at much variance with the proclaimed standards in the Declaration.⁷⁻² The accusations charging human rights violations by one nation against another are not infrequent. It must be admitted that considerable part of the Universal Declaration consists of well-meaning platitudes that any government on earth can happily assent without altering its existing policies by one iota, for casual assent entails no risk, demands no sacrifice. However, this is not to undermine the significance of the Declaration. Notwithstanding its non-binding character, it has proved to be the starting point of a new legal order and it is profoundly claimed that the process of transformation from constitutionalism to internationalism of human rights issue, initiated by the Charter, received a great fillip with the adoption of the Declaration. The adoption of the Charter in the first instances and the Universal Declaration of Human Rights as the next step in the direction towards the formulation of the global bill of rights, though courageous and welcome one, still fall short of standard adequate to translate the words into action. The attempt made was so feeble leaving behind a void in the midst of concern continuing with the same spree. The void was so fundamental to incapacitate the realisation of objectives and was capable of becoming irretrievably

detrimental, if not redeemed earlier. Existence of such void was well contemplated and not the consequences of the experience gained subsequent to the entry into force of the Charter and the Universal Declaration. What was intriguing was the smart failure on the part of the international community to respond to the concern in the manner it was earnestly warranted to bring the covenants on the statute book. Thus, the concern to highlight the concern for promotion of human rights through appropriate instruments was lacking. For avoidable reasons, the adoption of two covenants was delayed by nearly 20 years and finally both covenants received sufficient ratifications to enter into force by early 1976. A decisive factor then that was focused to shift the blame for dithering spirit and attitude in this regard was the reversal of United States policy, largely as the result of the opposition of many Senators to any treaty dealing with human rights. The then position of the United States appeared to be that it would participate in discussions but would not be a party to any treaty or treaties. The international concern for human rights thus came to be reckoned as new force in international affairs to point the way towards international peace and international co-operation. To make the force vigorous and effective, the concern must be consciously directed towards making the human person the centre of international attention and the overriding problems of man, the deliberate aim of international co-operation, was the consensus. In the process, thus

emerged was man as the ultimate common denominator and the point at which all conflicting interests ultimately converge. Man became the mean of all international endeavour, as in their essentials, man's interests are the same everywhere and they spring from the same inalienable sources. The preservation of their individual liberties and their participation in the distribution of political, economic and social rights and privileges, are goals shared by all men. The Charter of San Francisco is commended as a unique opportunity to lead the world to its triumphant emergence from the struggle for national advantage into a new era of constructive co-operation for the good of man. It is graciously acknowledged that the introduction of human rights into the sphere of international relations was a revolution of tremendous proportions; and what marked the emergence of the United Nations on the scene of history was its commitment to the proposition that "the eventual objective of all its functions and activities is the well-being of individual men and women". There is no other concept on the horizon than the concept of international concern with human rights that is more attuned to the needs and opportunities of

man and society. Because it so forcefully sketches the dimensions of the world's needs, international concern with human rights plots the surest course to international peace and justice as its triumphant climax. The Charter envisaged what might be said to be a universal regime founded on the dignity of the human person everywhere and his enjoyment of human rights and fundamental freedoms under the protection of the organised international community. This purpose was to be served by the covenants on human rights. Its provisions on human rights thus in a broader perspective create a setting for consistent and comprehensive development in all areas of human activity and provide a context for social, political, economic and cultural innovations which are full of opportunities for expansive thought and action. They embrace and define everything the international community may hope to achieve and everything it may intend to fulfil. Human rights are more than a collection of formal norms; they are conditions - political, social, economic, judicial as well as moral, cultural and philosophic - which define the intrinsic value of man and his inherent dignity. Their total realisation calls for thought and action which are at once cause and effect of the transformations in the affairs of man necessary to bring peace, freedom, justice and plenty into this troubled world. Reacting to the sentiments wishing the evolution of standards of human rights underscoring the intrinsic value of man and his inherent dignity, the stage was set with the adoption by the General Assembly of covenants binding on governments willing to subscribe to them. By doing so, the United Nations committed itself not only to the idea of international treaties as the most appropriate means of realising human rights goals set by the

Charter, but tacitly accepted the thesis that implementation, in the sense of enforcing certain international standards of practice and observance, was inseparable from the covenants. This marks the beginning of a long process of investiture of a great idea with the substance of power capable of producing effective change in all realms of personal, national and international life- These international treaties are binding commitments of states towards their own citizens, towards one another, and towards the community of nations to ensure, observe and safeguard the rights and freedoms which are today almost universally acknowledged as being emanations of human personality. The imperative need to provide a framework of international relations in terms of honest human values that make the covenants so eminently relevant today. It is common knowledge that no state is any longer in a position to guarantee to its citizens freedom from war, nor secure to them the blessings of permanent peace. The national governments are not capable of guaranteeing against arbitrary deprivation of life and liberty of its subjects by their own agencies, the least, either. It is these covenants, through expression of obligation of states, provide the depth of inspiration to all contemporary international cooperative efforts to elevate the material conditions of man and to promote his social and spiritual welfare. They are the vehicle through which the great social ideas and ideals can express themselves forcefully in international relations and become far and away the most potent instrument of peaceful change. At last, the persuasive function of the Universal Declaration, reinforced by binding commitments to forthright deeds under international guidance and accountability, were geared to creative action capable of heralding a new dawn of human history. Pursuant to the directive of the General Assembly embodied in resolution 543 [IV] that the two covenants should contain as many similar provisions as possible, the provisions of the Preamble and of Articles 1,3 and 5 of the International Covenant on Civil and Political Rights are almost identical with the provisions of the Preamble and of Articles 1, 3 and 5 of the International Covenant on Economic, Social and Cultural Rights. The Preamble to each Covenant which sense as an introduction to the articles to follow, sets forth general principles relating to the inherent dignity of the human person, portrays the ideal of freeman in accordance with the Universal Declaration of Human Rights, reiterates the obligation of states under the Charter of the U.N. to promote human rights, and reminds the individual of his responsibility to strive for observance of human rights. These Preambles reiterate the untint commitment undertaken by the United Nations to the mankind. Perhaps to flush out the ambiguity and uncertainty created by the Universal Declaration, they seek to unfold the common object, which they intend to achieve, through distinctively characterised provisions enumerated in the Covenants. The triptych construction of the international Bill of Human Rights conveyed a sense of interrelatedness of its parts in a self-

balancing system based on a plausible conception of structure. According to U Thant, they are a "Magna Carta" for mankind. While the first treaty, the Covenant on Economic, Social and Cultural Rights, recognises the right to work and to free choice of employment, to fair wages; to form and join unions; to social security; to adequate standards of living; to freedom from hunger; to health and education, the second one, the Covenant on Civil and Political Rights, recognises, inter alia, the right of every human person to

life, liberty and security of person. Bread and liberty thus constitute two sides of the same coin

3.8- Right to life as a Human Right -

The basic international standards on the right to life are contained in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights. It may be noted that Article 6 is the only article of the Covenant where the inherency of a right which is expressly referred to. The protection of life is an essential prerequisite to the full enjoyment of all other human rights. If there is no security to life there is nothing left to human dignity. Hence, the right to life is regarded as the most basic, the most fundamental, the most primordial and supreme right which human beings are entitled to have and without which the protection of all other human rights becomes either meaningless or less effective. Similarly, the United Nations General Assembly, in a resolution which it adopted on 18 December 1982, expressed its firm conviction that all peoples and all individuals have an inherent right to life and that the safeguarding of this foremost right is an essential condition for the enjoyment of the entire range of economic, social and cultural, as well as civil and political rights. The General Assembly, therefore, requested the Commission on Human Rights, in its future activities, to stress the need to ensure the cardinal right of everyone to life, liberty and security of person, and to live in peace. Adorning the inherent right matching the distinguishable spirit and letter, Article 2(1) of the Covenant speaks of responsibility and accountability of the State Party to the covenant to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant without distinction of any kind. In the above backdrop, the content of the right to life assumes significance. The exposition of the provision reveals that the right to life has both negative and positive dimensions. There is a school of thought which argues that Article 6 of the Covenant is limited to arbitrary deprivation of life such as by homicide and thus the right to live is not to live as one wishes. The above view is dismissed as restrictive virtually amounting to emasculation of the content of the supreme right. On the contrary, obliging the compulsions arising out of dynamic and changing events of the world today, a broad spectrum of the right encompassing the positive obligations by the state as well

is considered to be necessary with the possible adoption of liberal interpretative technique. The circumstances warranting such liberal interpretation are more convincing. Can a civilised nation boast of honouring its commitments to human rights covenant when it is really shutting its eyes to the problem of mass casualties of its subjects as a result of hunger and malnutrition? This is admittedly

different from the question to come which is simple from the point of view of answer. Whether any civilised state will dare to go on public record expressing reservation about the need for promotion of human rights at all. While the straight answer for the latter is emphatic, the former admits of no such answer with ease. It is found from UNICEF reports that 40,000 children die each day as a result of hunger and malnutrition. According to the World Bank, nearly 800 million persons live below any acceptable level of human decency. In the words of Mr. McNamara, ex-President of the World Bank. '1.2 billion do not have access to safe drinking water or to a public health facility. 700 million are malnourished. 550 million are unable to read or write. 250 million living in urban areas do not have adequate shelter. Hundreds of millions are without sufficient employment'. Viewed from the above context, it would be legitimate to ask whether the millions of poor people around the world have rights at all? If they have some rights at all wouldn't the right to survive come among the foremost of rights? If their right to survival is denied wouldn't such a denial violate Article 6

Right to Freedom from Hunger In response to these searching questions, the telling effects of hunger and disease on the values of mankind afflicted must be evaluated properly. They are as tall as the concern for human values, it is claimed. The situation is so harmful and panicky that no individual could remain unperturbed by such shocking revelations. Highlighting such affects, Mr. Willy Brandt stated: "We have learned that 800 million people in the world live in a condition known by the experts as 'absolute poverty'.... Yet behind every digit in this total... lies the fate of a human being with a right to life, a right to unimpaired health and a right to an existence imbued with dignity, a human being capable of paying a meaningful role in our human society, a human being who could take part in the things which make life worthwhile... the fate of every single hungry person in the areas of mass poverty... constitutes a crime against the values, the principles and the goals which allegedly inspire the lives of those of us who do not suffer from hunger Even in

the countries where people get enough to eat, a sense of indignation is growing about the failure to take action, about the incompetence of a number of governments and the complacency of a number of bureaucracies, about the indifference of our fellow humans". The clinching evidence of heavy death toll as a result of hunger and disease points to the

derogation of human values substantively. The devalued human spirit cannot provide unflinching support anymore to the concern for the protection of human rights and the whole of the international bill of

Human Rights must fall to the ground as the avowed object for which they stand vanished. right has meaning or value once starvation strikes. it is an ultimate deprivation of rights, for without food, life ends, and rights are of value only for the living Moreover, without adequate nutrition, the value of rights is greatly diminished malnutrition curtails growth, constrains mental and physical development, and limits the possibilities of action". As long as law sustains and fortifies a system which tolerates the prevalence of hunger and malnutrition on an extensive scale, its legitimacy must be open to question. as the rule of law by any standard is itself only legitimate if it is based upon respect for human rights. Dignity and dignified existence are life lines of Bill of Rights which can be made more vibrant only when human beings are assured of basic needs. Integrating human dignity with the concept of equality, Justice K.K. Mathew said: " no human being can possibly be replaced by another.

What entitles him to a place in this sphere is simply his having human dignity; it is a quality intrinsic to his being. This very thought is expressed in the common place remark that the dignity of every human being respected. Dignity here connotes not pride or manner, but the intrinsic worthiness of every human being, without regard to his intelligence, skills, talents, rank, property or beliefs". Quoting Abraham Lincoln having said, with considerable display of clear thinking and eloquence, on American Declaration of Independence, Justice K.K. Mathew proceeded to recite. "

Authors of that notable instrument intended to include all men, but they did not intend to declare all men equal in all respects. They did not mean to say all were equal in colour, size, intellect, moral developments, or social capacity. They defined with tolerable distinctiveness in what respects they did consider all men created equal - equal "with certain inalienable rights among which are life, liberty, and the pursuit of happiness". Summing up the - principle of equality within the broad spectrum of moral values, Justice succinctly puts: "Human beings are entitled to be treated as if they are equal on all matters important to them and matters really important to them are matters that are common to them". Descending on to the next and equally important aspect of equality namely the principle of equal respect for all, it is said: ", that every human being is of an equal intrinsic value and hence equally entitled

to respect or as Frankenia puts it, the meaning of the equal intrinsic value of all persons, is that we should be concerned for the good lives of every individual, that the just society, must, so far as possible, provide equally the conditions under which its members can by their own efforts achieve the best lives of which they are capable. This means that the society must at least maintain some minimum standards of living, education and security for all its members". Hence it sounds loud urging that quality of life is the watchword as Ernst Block wrote: "human dignity is not possible without economic liberation, economic liberation is not possible without human rights No

genuine human rights can be established without the end of exploitation. No genuine end of exploitation can be arrived at without human rights". incompatibility to any degree, the least or the most or the middle path, with the obligation aforesaid by any standard of civilised society is apologetic. Human dignity is desideratum. Food security to all especially children may be the obvious solution. "With all emphasis at our command that freedom from hunger is man's first fundamental right". This is an unmistakable signal made as early as by a Special Assembly of eminent personalities of world stature which met in Rome and issued a Manifesto on Man's Right to Freedom from Hunger. In the same wave length the First World Congress which assembled in 1963 adopted a Declaration in which they asserted "that the persistence of hunger and malnutrition is unacceptable morally and socially, is incompatible with the dignity of human beings and the equality of opportunity to which they are entitled, and is a threat to social and international peace". In 1966, the FAO Conference acknowledged as a gesture of reciprocity to the designation of 1968 as International Year for Human Rights by declaring "that the future of mankind and the peace of the world cannot be secure unless man's fundamental right to be free from hunger is universally realized". The Conference also requested all FAO Member States to explore the possibility of ratifying the international Covenant on Economic, Social and Cultural Rights, "and to undertake all necessary measures to achieve man's right to freedom from hunger and want". In 1974 the World Food Conference made an unambiguous call urging; "that all Governments should accept the removal of the scourge of hunger and malnutrition, which at present afflicts many millions of human beings, as the objective of the international community as a whole, and should accept that within a decade no child will go to bed hungry, that no family will fear for its next day's bread, and that no human being's future and capacities will be stunted by malnutrition". "Hunger and malnutrition must be eliminated as soon as possible and certainly by the end of this

century" was the resolve earmarked by the International Development Strategy for the Third United Nations Development Decade -21 Further the U.N. Conference on the Least Developed Countries called upon the states to "prepare strategies, plans and policies which will

... hunger and malnutrition as rapidly as possible and at the latest by so". In 1981 Prime Minister Gandhi of India, addressing the FAO Conference specifically endorsed an earlier proposal made by President Kaunda of Zambia for the drawing up of a "Hunger Elimination Treaty". In 1984, there was another proposal by the FAO for the preparation of a "World Food Compact" which would be a codification of already agreed food security objectives. The plethora of instruments speaking commitments through consensus started flowing unchecked during the next four decades following the address of President Roosevelt to Congress in 1944 urging the adoption of second bill of rights dealing with economic issues. Among the rights to which he referred were "...the right to earn enough to provide adequate food. ... the right of every farmer to raise and sell his products at a return which will give him and his family a decent living...and the right to adequate protection from the economic fears of old age, sickness, accident and unemployment". True to his desire, in 1975 the US Congress adopted a joint "resolution declaring as national policy the right to food", in which it resolved, every person in this country and throughout the world has the right to food - the right to a nutritionally adequate diet

- and that this right is henceforth to be recognised as a cornerstone of S policy; and this right becomes a fundamental point of reference in the formation of legislation and administrative decision in areas such as trade, assistance, monetary reform, military spending and all other matters that bear on hunger...". The commitments so undertaken all through are unanimous whether spoken in the context of global statements of policy such as the Universal Declaration on the Eradication of Hunger and Malnutrition or the strategy for the Third United Nations Development Decade or in specific instruments such as the Food Aid Convention, or through institutional arrangements such as those relating to FAO, IFAD, or the WFC, is the unmistakable conclusion which one cannot escape. The obvious is the right to freedom from hunger. In the result, wider grasp of the right to life is the best available choice to restore the values lost. It is the satisfaction of survival requirements that can make good the loss of human values. If deprivation of the lives of millions of people through lack of access to survival requirements is not a

right to life issue, it can only be said that the whole concept and notion of the right to life in its restricted and narrow sense does not apply to more than a billion people around the globe. The survival requirements have very often been identified as having absolute priority. In biological terms, this appears to be justified. Commendable indeed was the observation of the Government of Australia which overwhelmingly emphasised the twin elements of the right to life similar to the sentiments reflected in the public opinion referred above. The Government of Australia in its reply to the invitation for comments on the draft, international covenant is stated " Two elements have engaged the attention of the draftsmen during the preparation of the article. These may be described as, firstly, expression of what might be termed a traditional imperative of all civilised societies - "Thou shalt not kill" - and secondly, some positive provision concerning the right to life which, although not defined in the covenant or in the Universal Declaration, may be assumed to mean the right of every person to present action and enjoyment of his existence as an individual. In the earlier drafts, attention was concentrated on the first element, but at the sixth session of the Commission, attention was given to the second element by providing that 'the right to life shall be protected by law'. Expressing similar views, the Inter-American Commission on Human Rights rightly pointed out: 'The essence of the legal obligation incurred by any Government in this area is to strive to attain the economic and social aspirations of its people, by following an order that assigns priority to basic needs of health, nutrition and education. The priority of the "rights to survival" and "basic needs" is a natural consequence of the right to personal security'.¹⁻²⁹ Similarly the European Commission on Human Rights.

CHAPTER 4

INDUSTRIAL LEGISLATION AND CHILD LABOUR IN UNORGANISED SECTOR

INTRODUCTION:-

Children - the ragpickers, shoeshine boys, Dhaba or cafe workers, coolies - came in droves taking procession under the scorching sun in New Delhi on 10th December, 1993 to mark the Human Rights Day. Excitement was not writ large on their faces but they looked grim. This exercise was not part of celebrations undertaken usually in commemoration of recognition and observance of human rights. Rather it was part of their endeavour to remind the senior citizens generally and the administrators in particular that they are also designated as human specimens like children of theirs and hence deserve a better deal. Such an exercise is not a news to come through for the first time but an event being re-enacted every year but in vain. It is nothing but the spectre of child labour which has been assuming an increasingly scary visage in India. This presents an issue of contrast in nature. Instead of flocking into school, they are flocking into factories. The issue of their premature employment thus takes on human rights smartly under the strict vigilance of the welfare administration in India. The contrast is patent. Children are to be told of the human rights in the school, says T.G.Liyer, as growing children should know what they really want and should exercise their voting rights in a way that representatives elected would protect these human rights. —Tilting the scales, the other way in reality, children are forced to demand those rights through demonstration under public gaze without being told about them. A peep into the statistics revealing the magnitude of the problem will unfold the sad story of teeming millions of children. Children are made to run after workshops instead of school shops thus virtually putting them on trial to learn rights by experience in sweatshops. 'Learn while earn' is this what it actually implies in the Indian context, it is apprehended. "For every labour there is a reason, and a child for every labour under heaven;

A child to hoist, and a child to tow; A child to hire out, and a child to lock in; A child to reap, and a child to sew; A child to push, and a child to pull; What gain has the child from his toil?

This highlights the exploitation of children through child labour in this country and in countries abroad. The highlight march on the Human Rights Day only adds the voice of the voiceless to those who are raised against this evil practice. Where children are available as cheap labour, without unions to protect them, and above all with many friends of the same age, they will be exploited. It is child abuse. Here, it is child abuse not by neglect of the child's right to full physical and mental development by failing to provide children with education, food and shelter, but through positive act of trooping them into the place of employment under the fragile shelter of economic necessity. There could be no worse rationalization of the callous exploitation of the child than to say that the economic interests of parents dictated it. It is abuse in the latter case as the premature entry into labour force steals the opportunity of development into personhood. Nothing is more abhorrent than child labour. Expressing serious concern sentiments, Francis Blanchard, Director - General in his report to the International Labour Conference (69th Session) held in 1983, said:

"The persistence of child labour is an affront to our conscience: the effective abolition of child labour is a challenge to the international community".

If an enlightened society" believes that children should not be employed, then a vigilant society must prevent the abuse. This is more so when there is total unanimity in the perception about the special vulnerability of children and the social duty to guarantee their protection. The first protection they require is against avoidable illness and death. Once survival is assured, however, children need protection to develop their physical, intellectual, emotional and social capacities. It is here that actions regarding child labour are important for exploitative work arrangements have clearly demonstrated to be detrimental to the health and normal development of children. Work can stunt development during the period of growth, prevents children from going to school, and creates cheap labour. It tends to lead to unemployment, poor health and finally to the vicious circle of poverty for future families as child labour makes children "less employable" as adults. Thus, children who are made to work for economic and other development reasons are "at risk" in terms of individual growth and development. Children who are warmly wrapped by pernicious effects of poverty are the most under-privileged and for that reason they are more prone to employment at an early stage of their life. In order to avoid their jeopardising their future, children must benefit from protective measures to guard against any subsequent damage to their physical, intellectual and moral development.

Children, our most precious resource, are literally the key to the future of our planet. Every effort should be made to provide the young of our species with the time to grow, to play and to learn during that period which we call childhood, to provide them from the beginning with the potential for being better adults. The value we accord to life is affirmed in our treatment of children. Any obstacle to such development is to be hit with a firm hand. It is more so in the case of child labour as the effects of child labour are well pronounced as atrocious.

Ironically, premature employment interferes with human rights and fundamental freedoms of children like right to life, health, education and so on thus making a posture of conflict much to the discomfiture of the international community. Perspectives vary. There are those who write from an "Abolish all child labour" stance against a "Look at the children's high capacity for social and economic independence". It becomes a matter of focus: the overwhelmingly negative elements on the one hand and the positive side on the other. When one gets horrified by the former, it is not surprising if the first cry is "Away with it". An emphatic understanding of the human rights approach to the problem of child labour was underlined saying:

"Fully conscious of the fact that the struggle for the recognition of the rights of children is inextricably linked and is, in fact an integral part of the overall struggle for human rights, not only civil and political, but also socioeconomic and other human rights this seminar of lawyers, journalists and social activists' advocates that the strategies employed in the overall human rights struggle be applied in combating the practice of child labour"

Hence there is guarantee of freedom against of children as individuals, social beings, spiritual entities and inhabitants of the planet, said the Chairperson of the Indian Council for Child Welfare Trust.

4.2- LEGISLATION: -

When in the 20th Century, child labour became so prominent that news of factory hazards and mis happenings taking innocent children's life, flashed all around in the newspapers, then was the time, a need for legislations and statutes were felt to prohibit the mal practice of child labour. Today, there are sufficient statutes condemning and prohibiting child

labour such as:

4.2.1- The Factories Act of 1948:

The Act prohibits the employment of children below the age of 14 years in any factory. The law also placed rules on who, when and how long can pre-adults aged 15–18 years be employed in any factory.

4.2.2- The Mines Act of 1952:

The Act prohibits the employment of children below 18 years of age in a mine. Mining being one of the most dangerous occupations, which in the past has led to many major accidents taking life of children is completely banned for them.

4.2.3- The Child Labour (Prohibition and Regulation) Act of 1986:

The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law. The list was expanded in 2006 and again in 2008.

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

This law made it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage. This act provides punishment to those who act in contravention to the previous acts by employing children to work.

4.2.5- The Right of Children to Free and Compulsory Education Act of 2009:

The law mandates free and compulsory education to all children aged 6 to 14 years. This legislation also mandated that 25 percent of seats in every private school must be allocated for children from disadvantaged groups and physically

challenged children.

4.3- HAZARDOUS OCCUPATIONS: -

Part III of 'The Child Labour (Prohibition and Regulation) Act of 1986 provides for the Prohibition of employment of children in certain occupations and processes. The Schedule gives a list of hazardous occupations in two parts, via; A and B

Part A provides that, no child shall be employed or permitted to work in any of the following occupations:

- Transport of passengers, goods; or mails by railway
- Cinder picking, clearing of an ash pit or building operation in the railway premise.
- Work in a catering establishment at a railway station, involving the movement of vendor or any other employee of the establishment from one platform to another or into or out of a moving train.
- Work relating to the construction of railway station or with any other work where such work is done in close proximity to or between the railway lines.
- The port authority within the limits of any port.
- Work relating to selling of crackers and fireworks in shops with temporary licenses.
- Abattoirs/slaughter Houses
- Automobile workshops and garages.
- Foundries
- Handling of taxies or inflammable substance or explosives
- Handloom and power loom industry
- Mines (Underground and under water) and collieries
- Plastic units and fibre glass workshop

Part B provides that, no child shall be employed or permitted to work in any of the following workshop wherein any of the following processes is carried on.

- Beedi making

- Carpet Weaving
- Cement manufacture including bagging of cement.
- Cloth printing, dyeing and weaving.
- Manufacture of matches, explosive and fireworks.
- Mica cutting and splitting.
- Shellac manufacture
- Soap manufacture
- Tanning.
- Wool cleaning
- Building and construction industry
- Manufacture of slate pencils (including packing)
- Manufacture of products of agate
- Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos
 - All Hazardous possess a defined in section 2(cb) and dangerous operations as notified in ruler made under section 87 of the factories Act 1948
- Printing (as defined in section 2(k) of the factories Act 1948
- Cashew and cashew nut descaling and processing
- Soldering process in electronic industries
- Incense Stick (Agarbathi) manufacturing
- Automobile repairs and maintenance (namely welding lather work, dent beating and printing)
- Brick kilns and Roof files units
- Cotton ginning and processing and production of hosiery goods
- Detergent manufacturing
- Fabrication workshop (ferrous and non-ferrous)
- Gem cutting and polishing
- Handling of chromite's and manganese ores
- Jute textile manufacture and of coir making
- Lime kilns and manufacture of lime
- Lock making
- Manufacturing process having exposure to lead such as primary and secondary

smelting, welding etc.

- Manufacture of glass, glass ware including bangles fluorescent tubes bulbs and other similar glass products
- Manufacturing of cement pipes, cement products, and other related work.
- Manufacture of dyes and dye stuff
- Manufacturing or handling of pesticides and insecticides
- Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo enlarging and soldering processes in electronic industry
- Manufacturing of burning coal and coal briquette
- Manufacturing of sports goods involving to synthetic materials, chemicals and leather
- Moulding and processing of fiberglass and plastics
- Oil expelling and refinery
- Paper making
- Potteries and ceramic industry
- Polishing, moulding, cutting welding and manufacture of brass goods in all forms.
- Process in agriculture where tractors, threshing and harvesting machines are used and chat cutting
- Saw mill all process
- Sericulture processing
- Skinning dyeing and process for manufacturing of leather and leather products
- Stone breaking and stone crushing
- Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form
- Tyre making repairing, re-trading and graphite beneficiation
- Utensils making polishing and metal buffing
- Zari Making (all process)

4.4- HOURS OF PERIOD AND WORK: -

No child shall be required or permitted to work in any establishment in excess of number of hours prescribed (Section-7)

The period of work on each day shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. No child shall be permitted or required to work between **7 p.m. and 8 a.m.**

No child shall be required or permitted to work overtime. (Section-7).

4.5- PENALTIES: -

Violations under Section-3 shall be punishable with imprisonment which shall not be less than three months which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both. Continuing offence under section (3) shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

Any other violations under the Act shall be punishable with simple imprisonment, which may extend to one month or with fine, which may extend to ten thousand rupees or with both.

4.6- EFFORTS BY GOVERNMENT OF INDIA TO CONTROL CHILD LABOUR -

The child labour (Prohibition and Regulation) Act 1986 prohibits the employment of children below the age of 14 years in 16 occupations and 65 processes that are hazardous to the children's lives and health. Many states including Haryana have constituted the child labour rehabilitation cum-welfare funds at district level and separate labour cells are being formed to address the issue. National child labour projects have been implemented by the central government in states from 1988 to provide non-formal education and pre-vocational skills. From 2001, Sarve shiksha Abhiyan has been launched to educate poor and employed children in all states. Ministry of women and child development has been providing non-formal education and vocational training. Establishment of Anganwadies is also a big step by the government for the welfare of children and their physical, mental and educational development.

4.7- Committees on Child labour: - From time to time many committees were constituted to look into and suggest various policy measures/provisions to eradicate the child labour. They are as follows.

4.7.1- Royal Commission on Child Labour (1929):

The Royal Commission studied the intensity and prevalence of child labour in various activities. The committee categorically reported that the child labour is found in Beedi, Textile, Carpet Match and Fireworks etc. The committee in its report recommended the legal prohibition of children below the age of ten from work and the entry of all the names in wage books and provisions to prohibit the engagement of children working overtime and taking work time.

4.7.2- Rege committee (labour investigation) on child labour (1944):

The committee observed the prevalence and incidence of child labour especially in small industries like match industry in Tamil Nādu, Cement industry in Rajasthan, Spinning industry in Kerala and the Carpet weaving industry in Kashmir. The committee recommended to adopt positive measures to abandon child labour in the said industries.

4.7.3- Gurupada Swamy Committee 1979-

Unlike other committees, Gurupada Swamy Committee probed into various dimensions of child labour including the status of child labour and loopholes in the implementation of child labour legislation. In its report, the committee recommended to setup child labour Advising Board, and formulation of an effective education policy with special emphasis.

4.7.4- Child Labour Acts:

Hereunder an attempt is made to brief some of the important Acts that were passed either to abolish or regulate child labour.

4.7.5- Children Act, 1933:

This Act lays down that an agreement, written or oral to pledge the labour of a child below 15 years by the child's parent or guardian in return for any payment or benefit shall be avoided. It prohibits making agreements to pledge the labour of children and taking advance from land lords.

4.7.6- The employment of children Act, 1938:

This Act prohibits on the employment of children below 14 years of age in some industrial organizations such as Bidi making, carpet-weaving, cement manufacturing, cloth printing, dyeing, wearing, explosives and fireworks, wool cleaning, mica cutting and splitting tanning and soap manufacture. However, these provisions are inapplicable to workshops where the work is done by the occupier with the aid of his/her family only or to any idea or recognized school by any state government.

4.7.7- Beedi and Cigar workers (conditions of employment) Act, 1966:

According to this Act, no child (below the age of 14 years) shall be employed in any industrial premises subject to provisions of the Act. However, young persons who have completed their 14th year, but not completed 18th year may be allowed to work during

7.00 p.m. to 6.00 p.m. This Act also contains provisions regarding offences and penalties. However, it does not provide for severe punishment. The provision for inspecting staff Act has been incorporated to ensure observance of the Act.

Supreme Court Directions on child labour The Honourable Supreme Court of India has given social direction (10th December 1996) regarding the manner in which the children working in hazardous occupations as defined in child labour Act, 1986 are to be withdrawn from work and to be simultaneously rehabilitated. The directions were also given to regulate and improve the working conditions in the non-hazardous occupations. Several measures were proposed by the **Supreme Court to solve the problem of child labour.**

The measures include, free and compulsory education for children collecting penalties from the offending employer of a child in contravention of Rs.5,000/- by the state to compensate the family of the child against loss of income. However, this amount has to be deposited in a fund called child labour rehabilitation cum welfare fund.

4.8- Government of India National Child Labour Policy, 1987: -

Looking into the seventy and negative efforts on the child's development, the Government of India has paid much attention to strengthen the enforcement machinery related to child labour. Soon after the enactment of the comprehensive child labour Prohibition and Regulation Act, 1986, the Government of India adopted a National Child Labour Policy in 1987 in accordance with the constitutional provisions and various legislations on child labour. The policy consists of three complementary measures.

- **Legal action Plan:**

- The Child Labour Policy envisages strict enforcement of the provisions of the child labour (prohibition & Regulation) Act, 1986 and other child related legislation,

- Focus on general development programmes benefiting children wherever possible. This policy specifies the development of an extensive system of nonformal education for working children withdrawn from work and increasing the provisions for employment and income generating schemes meant for their parents. A special child labour cell was constituted to encourage voluntary organizations to take-up activities like non-formal education, vocational training, provisions of health care, nutrition and education for working children.

- **Area specific projects:**

To focus on areas known to have high concentration of child labour and to adopt a project approach for identification, withdrawal and

rehabilitation of working children.

Besides the above mentioned International and National institutions, legal legislations, committees and various Child Labour Acts, Central Advisory Board on Child Labour, Child Labour Technical advisory Committee, National Child Labour Projects, status of free and compulsory education is some of the important initiatives taken up for the cause of child labour

4.9- CHILD LABOUR IN UNORGANISED SECTOR:

CHILD LABOR IN UNORGANIZED SECTOR Unorganized sector can be defined as a sector which lacks basic element of an organized sector. An unorganized sector is run by unregulated, low-paid and poorly skilled workers. Such industries will be quite simple and can even be done by a small child for example, match box industry, beedi industry, fragrance stick industry etc. while defining an unorganized sector we can say that they give less importance to the surrounding, nature of environment where the workers work, it is completely ignorant about the health of the workers and most of the employees are illiterate and uneducated. And unorganized sector is run with a very low capital investment and very low number of workers. According to National Commission on Enterprises in the Unorganized Informal Sector in 2004 an unorganized sector consists of less than 10 workers and it is a private enterprises. It is clearly there in laws that children should not be forced or recruited for doing works but since unauthorized industries are providing jobs for children it is clear that they are not obeying any of the order from the government and they don't have a formal employer and employee relationship and even they may even exceed the minimum duration of work allotted for the employee. Child labour in unorganized sectors have reduced to some extent because of the implementation of strict rules and regulations which is very beneficial for the development of a country. There is a vast difference between unorganized sectors work in rural and urban areas, that is in case of rural area people much concentrate on caste and community which is less or absent in urban areas. Children from poor family background are mostly involved in unorganized work for maintaining their day-to-day livelihood. There are many countries which are really poor but has very less child labour in their country. Children are also counting in such workplaces because of the unavailability of an alternative option to escape for that

situation. according to social researchers the foremost reason for child labour in India is high range of poverty in India which blocks all the doors for the development of a child but opens its path only for working or daily wage. unorganized sectors won't provide proper wage for the work done by the children. also, their working time will be too high. It is clear that unorganized industries will suck the working capacity of a worker until they get drained. Unorganized sectors won't even provide proper safety measures. If anything wrong happens to the worker. Crackers industry is the worst industry where every year a considerable amount of death is occur but no precaution or further actions taken till date.

4.10- PROBLEM FACED BY CHILD LABOR IN UNORGANIZED SECTOR:

Unorganized sector is completely different from an organized one, they don't have any rules or regulations or proper working environment as mentioned by the government. There are several refugee children who are coming from different countries for survival in India. Most of them doesn't even have parents they are forced to do work, in their work place they are facing lots of problems such as sexual abuse, overwork which a child can't afford and most of the children who are left from parents are used for human trafficking. ¹³child trafficking is a serious issue prevailing in India. according to a report submitted by US department of state, India is the source, transit country and destination for children subjected to forced labour and sex trafficking. ¹⁴India is under a great need for the implementation of child protection mechanism. Still many children working in brick kilns, construction sites, and agricultural land, trafficking for the sake of forced child labour and for the gain of certain working-class people. Apart from this girl below the age of 9 who are coming for work are forced to engage in sexual work and forced into the sex trade. Child labour reduces the knowledge of a child from developing side and makes them to live in a poor working condition. A proper safety or security is not been provided to any of the child. Many places' children are working even though that are not well or not able to do the work. Even though they working for long time and giving their maximum outputs to their owners are not giving them sufficient wage for their work. there won't be any justice for these children until there is a strong implementation of the legislature. LAWS INVOLVED After the independence from colonial rule Indian government has implemented large number of constitutional acts and laws for the protection of children from child labour. Also, the constitution of India has provided fundamental rights and the directive principles of state policies prohibits children below the age of 15 from working in factories, mines or

in any place which is hazardous which is mentioned in art 24. Our Indian constitution also promises that compulsory education should be given to children of age group between 6 to 14 years. Since India is having a federal form of government, child labour is considered to be a serious issue in which both central and state government should take a clear decision by implementing law and regulations. Following are the major legislatures present in India.

4.11- THE CHILD LABOR PROTECTION ACT 1986, AMENDED IN 2016(“CLPR ACT”)

This child labour and protection act is one of the most discussed and debated topic regarding living children in India. This article gives a clear idea on how a child has to work and where a child should not. Work in this there are different parts that separately deals with when and where a child can be allowed to work and when the child should not. The child labour protection act was again amended in the year 2016, by including some more provisions.

Amended act completely banned the intake of children below the age of 14 except those business which is run by their own family, provided their education should not be affected.

They also added a new category of persons called adolescents. People from the age of 14 to 18 years are considered to be adolescents. And they should not be provided with job in any hazardous occupations. They added a provision for providing fund for rehabilitation of children. Earlier we had 83 hazardous occupations but after the amendment of this act it reduced to 3 which is of great impact. And those three occupations are inflammable substances, mining and hazardous processes which is mentioned under factories act. Union government is having a special provision to add and omit any jobs under hazardous category. District magistrate got some powers for checking whether the acts are properly implemented and protected. Periodic inspections were implemented in order to facilitate a smooth flow of the society

4.12- THE JUVENILE JUSTICE ACT, 2015: -

The act was passed in the year 2015 and its main provisions is to protect children. The main need of this law is to protect and take care of children through proper treatment, development, social re integration, and by adopting a social friendly method for handling children. And juvenile justice acts also dealt with conflicts or any heinous offences created or involve by any juvenile and will be held in juvenile court. And people from the age of

16 to 18 are considered to be adults. Whereas, our constitution clearly states under clause (3) of article 15, 16, article 47 and clauses (e) and (f) of article 45, 18, that the state has to ensure all the needs of children and their basic human rights should be protected. The juvenile sector is there for the protection of the rights of children and making them realize their mistakes. There are many cases where a number of people below the age of 18 years who are coming under juvenile justice are committing most serious offences which a normal person can't even think.

4.13- THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT OF 2009:

The Right of Child to Free and Compulsory Education Act was passed in the year 2009 and the first amendment was made in the year 2014. In 2017 another bill was passed for the second amendment of the right of children to free and compulsory education. In that bill there were many changes from the Right to Education Act 2009, that is according to the 2009 act all the children should complete the elementary schooling, till 8th class without any retention. But this bill amends that provision by keeping exams in class 5 and class 8 at the end of each academic year. If the child is unable to crack that examination or fails in any examination then the child will be given an extra chance of writing the exam called re-examination. If he could not complete that too then the school automatically can retain the child from passing the class and going to the next academic year. This bill was introduced in Lok Sabha in the year 2017. Later the bill was referred to the standing committee on the same year and the report came from them on 9 Feb of 2019.

CHAPTER -5

CASE STUDY

5.1- The First Period, 1982 – 1992:

- In **Peoples Union for Democratic Rights vs. Union of India**¹⁶: Commonly known as ‘Asian workers case’, it was escorted to the notice of the Supreme Court that children under 14 years of age employed in the construction activity. It was said that construction activity is plainly a dangerous work and it is definitely important that the employment of children above the age of 14 years must be restricted in every kind of construction task. Cite to Article 24, Justice P.N.Bhagwati and Justice Bahrul have held that “apart from the need of International Labour Organization, we have **Article 24 of the Constitution** which even if not attend up by suitable legislation, must “Proprio vigour” and construction act plainly and absolutely a hazardous employment, it is open that by ground of constitutional prohibition no child under 14 years can be allowed to be unavailable in construction work”.
- In **Francis Coralie Mullin vs. Union Territory of Delhi**¹⁷: The court held that **Article 21** covers protection of health and strength of workers, men, women and minorities of children versus abuse. According to the court, the occasion and services for children to grow and build in a healthy way and in order of freedom and decorum and educational benefits.
- On 25 April 1984 in **Laborers Working on Salal vs. the State Of Jammu And Kashmir** a bench of Justice P Bhagwati, R Mishra directs “That no child under the age of 14 years is employed by any contractor/sub- contractor on any factories in the schemes. In case any child labourer is included by any contractor/subcontractor prompt orders for their break should be furnished forthwith and an outline report provided to the sanction”.
- In **Bandhua Mukti Morcha v. Union of India and others**¹⁸, Justice

¹⁶People Union for Democratic Right v. Union of India, AIR 1991 SCC 1473

¹⁷ Francis coralie Mullin v. Administrator Union Territory of Delhi, AIR 1981 SC 746

¹⁸ Bandhua Mukti Morcha v. Union Bank of India 1984 (3) SCC 161

Bhagwati remarked that “it is a problem which needs urgent attention of the Government of India and the State Governments and when the Directive Principles of State Policy have obligated the Central and State Government to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and the handicapped. It is not right on the part of the concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected”. It is therefore essential that whichever be the State Government it should, where there is bonded labour, admit the existence of such bonded labour, and make all possible efforts to eradicate it. By doing so, it will not only be performing a humanitarian function but also discharging a constitutional obligation and strengthening the foundations of participatory democracy in the country”.

5.2- The Second Period, 1992 –2002

- In **Sheela Barse v. Union of India**, the court held “it was held that child is a state blessing, and it is the responsibility of the state to focus behind the child with a perspective to guarantee proper development of its personality. Judicial institutions have played an essential role not only for fixing issues but also has regularly attemptto grow and expand the law so as to answer to the desire and dreams of the people who are looking to the judiciary to give life and fulfilled to the law”.

- In the year 2002, In **TMA Pai Foundation v. Union of India**, “The court provided that, it is the fundamental duty of a parent or guardian to provide opportunities for education to his child who is under the age of 14 years. In completion of this development in the sector of education accept it as a fundamental right, the Parliament has enacted the **Right of Children to Free and Compulsory Education Act, 2009** which impart for free and compulsory education to all the children of the age of 6 to 14 years”.

- On 10 December 1996 in **M.C. Mehta vs State Of Tamil Nadu And Others**, a bench of Kuldip Singh, B.L. Hansaria, S.B.

Majmudar observed, “Taking advice therefrom, we are of the vision that the affront employer must be demand to pay compensation for every child employed in violation of the provisions of the Act a sum of Rs. 20,000 and the inspectors, whose arrangement is envisioned by Section 17 to secure consent with provisions of the Act, should do this task. Under Section 17 inspector scheduled to examine that each child employed under violation of this act, each concerned employer will pay Rs. 20,000 given amounts will be deposited in a fund to be known as

- In **Bandhua Mukti Morcha v. Union of India and others**, “public interest litigation was filed alleging employment of children aged below 14 in the Carpet Industry in the State of Uttar Pradesh Reports of a Commissioner/Committee appointed by the Supreme Court confirmed forced employment of a large number of children, mostly belonging to SCs and STs and brought from Bihar, in carpet weaving centres in the State. It was held by the Court that the State is obliged to render socio-economic justice to the child and provide facilities and opportunities for proper development of his personality”.

- On 6 June 1997 in **A. Srirama Babu Vs. The Chief Secretary**, a bench of V M Kumar court has observed, “This needs a relook and an abolition of such difference would certainly go a long way in increasing employment potential for grown up and dissuade the employer from employing child labour”. So, it is essential that the state should step in to retard the trend to employ child labour and directs that the State shall take every step to educate the people to prevent child abuse and child labour and the State should create a separate independent department concerned with child welfare. Moreover, the State should maintain a record of the

birth and progress of the child.

It should monitor the same. A child, after he is born, should not be allowed to melt and disappear in the vast society. The State should be able to monitor his education, health, progress, etc. The State should maintain records till he attains the age of 14 and should take such effective steps to prevent vagrant child roaming in the city and towns, organising and maintain aftercare home to take over the vagrant children. Appropriate legislation is made and is enforced strictly against vagrancy of children. Court also directed State to establish as many after-care homes as are feasible where the street children are taken care of and are trained to be useful citizen of the Country and the State should clothe itself with the power to proceed against the parents or guardians who wilfully neglect the welfare of the children or their wards and who encourage them to lead a vagrant life. Begging in the street by children or employing children for begging to be made an offence and such provisions should be strictly enforced”.

- On 11 April 2000 in **Mahesh Kumar Garg and Ors. Vs. State Of U.P. And Ors**, a bench of Pradeep Kant held “I, therefore, provide that in all cases of like nature an inspection has to be made by the Inspector and in case, the Inspector is of the view that the Child Labour has been engaged in contravention of the Act, a show-cause notice shall be issued to the offending employer/occupier who within the time stipulated, may file objection against the said inspection report raising the plea regarding the age or any other relevant objections”.
- On 12 January 2001 in the **State of Guj. vs Bhupendra Kumar Jagjivandas**, a bench of D Mehta held “the sentence imposed by the Trial Court shall stand modified as – it is ordered that the accused shall pay a fine of Rs. 10,000/- (Rupees Ten Thousand only) for violation of provisions of **Section 27 of the Factories Act, 1948**, in default thereof the accused shall undergo simple imprisonment of three months. It is clarified that the amount of fine that may have already been paid shall be deducted and only the balance amount shall be payable by the accused”.

5.3- The Third Period, 2003- 2012:

- On 5 April 2006 in **Ganesh Ram vs State Of Jharkhand And Ors.** a bench of S Mukhopadhyay, N Tiwari held “If a person, below 14 years of age, is appointed, penal order can be passed against the employer under the Child Labour (Prohibition and Regulation Act 1986) but no order, penal in nature, be passed against the employee”.
- On 24 December 2010 in **Bachpan Bachao & Ors. vs Union of India & Others.** “Delhi High Court decides upon the duties of the Commission and the Committee.
- The Bench and the Jury shall entertain complaints made by the domestic workers herself/himself or through her/his guardian, NGOs managing Childline services, the employer or the police in appropriate cases.
- The Commission and the Jury may hear the following types of cases:
 - Abusive working conditions which are after the physical extent of the child in situations where persons between the ages of 14 and 18 are employed;
 - Long hours of work;
 - Absence of principal services including medical care and food.
 - The Bench or the Committee shall determine the objection build within a duration of 30 days”

5.4- The Last Period, 2011 and onwards:

- On 20 March 2012 in **Roshan Gupta V. The State Of Bihar & Ors.** “the writ petition has been filed challenging the orders contained in Annexures 1 and 2 by which the petitioner has been imposed a fine of Rs.20,000/-The main submission on behalf of the petitioner is that without giving him an opportunity to explain the circumstances under which Ravi Kumar was working in the shop, fine has been imposed on the ground that the petitioner had employed a child as labour in his shop. In the meantime, operation of the order contained in Annexure 1

and 2 shall remain stayed. The writ petition is disposed of with the aforesaid observation and direction”.

- On 4 September, 2015 in **Jayakumar Nat & others vs State Of NCT Of Delhi & others.** “Delhi High Court directs the Govt. of NCT of Delhi to come out with a proper scheme to address the issue of rehabilitation of these rescued children by providing some kind of economic help so that the parents or guardians do not force them to work as child labourers again to meet with their basic needs and to supplement their income for their basic survival On 18 January 2016 Whether This Case Involves **A vs. As In Both The Appeals.** “Gujarat high court held that any child/children or their parents/guardians can approach before the State Commission for the protection of child rights under Section 31(3) of the Act for ventilating the grievance and appropriate action shall be taken for inquiring into the complaints as per Section 14 of the Protection of Child Right Act,2005 and further action under Section 15 of Protection of Child Right shall be taken in accordance with law”.

- On 11 November 2016, In **Court On Its Own Motion vs The State Of Jharkhand.** “Petitioner said nothing has been done with regard to settlement of the child labour and further the State has also not disclosed anything as to how they will cope with this horrifying situation of child labour where Jharkhand High Court directs to file an affidavit about the stage of investigation which will also indicate that how many schemes have been implemented in the State of Jharkhand by the Child Welfare Department to combat and rehabilitate child labour”.

- **BHAGATRAM YADAV V. THE STATE OF MADHYA PRADESH: -**

Vandana Kasrekar, J.-Heard.

□ The petitioner has filed the present writ petition challenging the order dated 07/04/2014 passed by respondent No. 4 whereby the petitioner has been directed to pay compensation of Rs. 20,000/- to be deposited in the Child Labour Rehabilitation-cum-Welfare Fund. On inspection, it was found that the petitioner has employed child labour. The petitioner has challenged the said order mainly on the ground that the Labour Officer is not competent to impose any penalty under Section 14 of the Child Labour (Prohibition and Regulation) Act, against the petitioner. He also submits that under the provisions of Section 10 of the Child Labour (Prohibition and Regulation) Act, only the Court of Metropolitan Magistrate or Magistrate First Class is competent to try any offence.

□ The respondents have filed their reply. In the reply they have stated that the respondents have already filed a complaint against the petitioner before the Judicial Magistrate First Class on 28/10/2013.

Thus, in the light of the reply filed by the respondents and as the complaint has already been filed by the respondents before the Judicial Magistrate First Class, the impugned order cannot be sustained.

□ Accordingly, the writ petition is allowed. The impugned order dated 07/04/2014 passed by respondent No. 4 is hereby set aside. The concerned Magistrate may proceed with the case.

□ Certified copy as per rules.

□ **SURESH LAL V. STATE OF KARNATAKA: -**

K.N Phaneendra, J: -

□ This petitioner has earlier approached this Court for grant of Anticipatory Bail and he withdrew the same.

□ The brief allegations are that Deputy Superintendent of Police registered a case against the petitioner and others for the offences punishable under Section 370 of IPC, Sections 26 and 23 of Juvenile

Justice Act, 1986 and Sections 3 and 14 of the Child Labour (Prohibition and Regulation) Act, 1986 on the allegations that the petitioner used to brought the children from villages and make them to work without providing sufficient facilities to them and thereby, he violated the Child Labour (Prohibition and Regulation) Act, 1986.

- The entire investigation has been done and charge sheet has already been filed in C.C No. 1086/2016. It clearly in dictates that the petitioner is not required for custodial investigation. Even then, considering the nature of the allegations and the gravity of the offences, I feel it just and proper to allow the petition on stringent conditions upon the petitioner. Hence, the following order:

- The petition is allowed. The petitioner is ordered to be released on bail in the event of his arrest or he voluntarily surrender before the Jurisdictional Court within a week from the date of receipt of copy of this order in connection with Cr. No. 224/2015 for the offences punishable under Section 370 of IPC, Sections 20 and 23 of Juvenile Justice Act, 1986 and Sections 3 and 14 of the Child Labour (Prohibition and Regulation) Act, 1986 subject to the following conditions:

- **Justice Act, 1980 and Sections 3 and 14 of the Child Labour (Prohibition and Regulation) Act, 1980: -**

subject to the following conditions:

- The petitioner shall execute a personal bond for a sum of Rs. 50,000/- (Rupees Fifty Thousand Only) with one surety for the like sum to the satisfaction of the Investigating Officer or the Jurisdictional Court as the case may be.

- The petitioner shall surrender himself either before the Investigating Officer or before the Jurisdictional Court within a week from the date of receipt of copy of this order.

- The petitioner shall not indulge in hampering the investigation or tampering prosecution witnesses.

- The petitioner shall appear before the Investigating Officer on all future hearing dates unless he is exempted for any valid reasons The petitioner shall mark his attendance once in a week on every Sunday between 10.00 am to 5.00 pm for one month so as to enable the Investigating Officer to collect any information from him, if any.

CONCLUSION AND SUGGESTIONS

Various laws and initiatives have been found to be adopted but their implementations are quite weak. It is relevant to mention that the Judiciary played a very important role in the protection of child labour. The Judiciary has always taken preventive measures to safeguard them from the employer by fixing their working hours, providing medical facilities, fixed the number of wages etc. The Judiciary has also directed State authority to create an environment where the child can grow and develop his personality without facing any abuse as mentioned in our constitution. What this paper calls for, more than anything, is a context-sensitive approach to understanding child labour in a country as large and diverse as India.

In the case of People's Union for Democratic Rights v. Union of India, the Supreme Court observed that it was a clear breach of Article 24 of the Constitution to employ children below the age of 14 in construction work. The court proceeded to prohibit any kind of violation of Articles 23 and 24 and further laid emphasis on strict observance of fundamental rights by private individuals and spoke strongly against any form of forced labour. The Supreme Court, in the case of Bandhua Mukti Morcha v. Union of India & Others, took into cognizance the employment of children in the carpet manufacturing industry in Mirzapur, Uttar Pradesh. It instructed the district magistrate to conduct raids, and subsequently got 144 children, who were under the forced custody of the owners, released. In the case of Sheela Barse & Others v. Union of India, under the direction of the Supreme Court, children who were being exposed to chemical fumes and coal dust from working near furnaces in the glass industry were released from their employment. In the landmark case of M.C. Mehta v. State of Tamil Nadu, the Supreme Court gave directions to the government to eliminate child labour, which included the conducting of surveys for the identification of working children, ensuring the withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions. In cases where a child was withdrawn from work, the Supreme Court directed the Government to ensure that at least one adult member of the child's family receives employment.

Suggestions-

1. Child Labour laws which prohibit the child labour are used in most of the cases for exploiting the owners of factories and other establishment while the real purpose behind these laws are always ignored. The laws must be used for genuine reasons for prohibition of child labour but not for the exploitation of owners.
2. The Child labour is happening at least everywhere even it is quite visible in front of government buildings where children can be seen doing some kinds of difficult jobs. The laws are very rarely applied here to stop the cases of child labour while if some person has to be implicated in some police cases then very quickly child labour laws are imposed on that person and in most of the cases it is based on the concept of revenge. In this way it has become very necessary to stop the misuse of laws.
3. Many children are still recruited in various activities and hazardous jobs, it is possible due to the lack of implementation and lack of awareness of laws. Hence, the laws must be made applicable very strictly as well as the awareness process must be very strong which can spread valuable information to at least all the establishments and factories.
4. Hence child labour must be prohibited very strictly and the laws must prohibit child labour in all cases circumstances not just in one or two cases or not only for implicating some owners in organizing child labour.

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