

**LAW RELATING TO CHILD LABOUR IN INDIA
WITH SPECIAL REFERENCE TO AUTOMOBILE
INDUSTRY IN PUDUCHERRY**

**THESIS SUBMITTED TO
THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES
FOR THE AWARD OF DEGREE OF**

DOCTOR OF PHILOSOPHY

**BY
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**UNDER THE SUPERVISION OF
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MAY 2017**

DECLARATION

I hereby declare that this thesis entitled “**Law relating to Child Labour in India with special reference to Automobile Industry in Puducherry**”, submitted to the National University of Advanced Legal Studies (NUALS), for the award of Degree of Doctor of Philosophy (Ph.D.) in Law is the outcome of the original work carried out by me under the Supervision and Guidance of Prof. Dr. Balakrishnan. K, NUALS.

The information, views and opinions taken from the existing literature and cited in the thesis have been indicated and duly acknowledged at appropriate places. I further declare that this thesis, either wholly or in part, has not been submitted to NUALS or any other University or Institution for the award of any other Degree, Diploma or Associateship or any other title or recognition from any University/ Institution.

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I further certify that the suggestions and modifications suggested by the Research Committee in Pre-Submission Seminar held on 23rd April 2016 have been incorporated in the thesis.

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PREFACE

The plight of children working in the automobile industry especially in the automobile repair workshops before the period of this research seemed to be an instigation to conduct an exclusive research on the subject. Though the research is actually on the Law relating to Child Labour in India, the study is restricted to automobile industry in Puducherry. The research question is whether the problem of child labour in the said industry in India with particular reference to Puducherry could be controlled or curbed.

This implies that the menace has to be controlled in the larger context in India as a whole with Puducherry being a part of it. An intensive analytical study has been made as to the measures that could contribute to eradication of child labour in India. In that way of the matter, a research on the position obtaining in developed and developing countries regarding child labour has also been made to find some innovative solutions from them.

Therefore the study itself seems to be divided, one with respect to India and the other with reference to Puducherry. While the analytical part of the research would help finding solutions for child labour in India, the empirical study would analyse the background, causes and probable solutions that would work out in Puducherry.

In the above context, the entire research falls within 5 chapters. The first chapter is devoted to defining child labour, tracing the historical roots of child labor, factors contributing to it and the need for controlling child labour. The second concentrates on the rights of the child in international arena and contribution of international instruments with respect to child labour and extent of implementation. The third is regarding the control measures in international and national perspectives in the light of judicial interventions. The fourth is devoted exclusively to child labour in automobile industry especially in Puducherry. The fifth chapter analyses the legislative background in the light of the existing context and comes out with workable solutions therefor.

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ABBREVIATIONS

ASDC	:	Automobile Skill Development Council
COBET	:	Complementary Basic Education
CRC	:	Convention of the Rights of the Child
DOL	:	Department of Labour
EDC	:	Education Development Centre
FLSA	:	Fair Labour Standards Act
FUNBEM	:	National Foundation for the Welfare of Minors
IARC	:	International agency for research on cancer
ILO	:	International Labour Organisation
IPEC	:	International Programme for Elimination of Child Labour
KIWOEDE	:	Kiota Women's Health and Development
NAECL	:	National Authority for Elimination of Child Labour
NAPC	:	National Anti-Poverty Council
NCLP	:	National Child Labour Project
NPE	:	National Policy on Education
NSDC	:	National Skill Development Corporation
OEMs	:	Original Equipment Manufacturers

PRS	:	Poverty Reduction Strategy
TBP	:	Time-Bound Program
UDHR	:	Universal Declaration of Human Rights
UNCRC	:	United Nations Convention of Rights of the Child
UNICEF	:	United Nations Children’s Fund
USAID	:	US Agency for International Development
USDOL	:	United States Department of Labour
VETA	:	Vocational Education Training Authority

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<http://www.thefreedictionary.com/labor>

<http://www.collinsdictionary.com/dictionary/english/labour>

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<https://www.ncronline.org/blogs/ncr-todaya/philippines-arcbishop-spend-stop-child-labor-notcondoms>

<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/philippines>

www.cetri.be/Made-in-Brazil-Confronting-Child?lang=fr

CHAPTER 1
INTRODUCTION

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INTRODUCTION

It is well known and universally accepted fact that children are a nation's asset. If the said fact is to be put to reality, the nation has to protect children from all harms and enable them to grow up into healthy and valuable citizens. In fact, they form the future of any nation and therefore the prosperity of any nation naturally depends on their well-being. They are comparable to blooming flowers of garden. The well-being of children reflects the growth of nation, by their becoming great personalities in various fields of life, whether it be industry, education, politics, social services, defense, civil services, science and technology, administration or anything else. They are the future custodians of hard-secured freedom, sovereignty, rule of law, justice, liberty, fraternity and finally peace and security. It is on the future of these children that destiny of the nation rests. Therefore, in one way, it could be fair to state that protecting and nurturing children shall help building up a strong nation.¹

1.1 .CHILD AND SOCIETY

It cannot be denied that welfare of a community depends on the health and well-being of its children. The progress and development of the nation is determined largely by the manner in which it shapes its children in their early

¹ Sunil Deshta & Kiran Deshta, Law and Menace of Child Labour, page 1, Amnol Publications Pvt. Ltd., New Delhi, First edition 2000.

stages. A child by its very nature has plenty of capacities of its own, who must be helped to identify them to grow into proper citizens in all dimensions, emotionally, intellectually and spiritually.

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

Also realizing that a problem child will be a negative factor of a nation, obligation is cast upon every generation to bring up children who will be proper citizens of the nation tomorrow. If the children are brought up properly and better equipped with a broader human output, the society will feel happy. On the other hand if the child is neglected, huge loss accrues to the society. If children are so neglected, they will be deprived of their childhood – socially, economically, physically and mentally. If they are deprived of their childhood, ultimately, the nation will get deprived of the potential human resources in aspects of social progress, economic empowerment and peace and order, the social stability and good citizenry.²

Therefore, with a view to avoiding such deprivation of potential human resources, it is quite imperative to give vent to the thought of Hon'ble

² R. Swaroop, CHILD LABOUR Welcome Measures, Half-hearted Actions, pages 5-7,(ALD Publications, Hyderabad, 2008).

Mr. Justice Subba Rao who has rightly observed:

“Social justice must begin with children. Unless tender plant is properly tended and nourished, it has little chance to growing into a strong and useful tree. So, the first priority in the scale of social justice shall be given to the welfare of children”³

While acknowledging the fact that children should be given priority in welfare measures, a question shall also arise as to why children should be nurtured with utmost care. It is well settled that children are the hope of parents and future of nation and in view of the same, they should be provided with sufficient opportunities for their full development. To attain such a goal, child must definitely get the care and affection from his parent and society. If a child does not get proper education, diet and other basic amenities in formative years, his very development into an attractive personality would be blocked. So it becomes the duty of every state to protect children’s right, right from formative stages.⁴

A child development specialist, Bronfenbrenner, asked a question, ‘On what basis can we predict how well a nation will survive and prosper?’⁵ In every country, developed or developing, the resources and abilities of its society are constantly being challenged in the search for strategies purely to meet the requirements of children. In the Third World, India having children

³ P.L. Mehta and S.S. Jaswal, Child Labour and the Law Myth and Reality of Child Labour Welfare 2 (Deep & Deep Publications, New Delhi, 1996) quoted from Suba Rao, Social Justice and Law, (1974), p.110.

⁴ Dipak Das, Child Labour in India Rights, Welfare and Protection 2 (Deep & Deep Publications Pvt. Ltd., New Delhi, 2011)

⁵ Bronfenbrenner, U.1970. Introduction. In Two Worlds of Childhood. New York: Russell Sage Foundation.

in large numbers, and which is on rapid increase, has necessarily to equip itself to meet the needs of children. On the threshold of the twenty-first century, with globalization, liberalization, environmental dangers and fragility of power, investment in the young will have to be attended urgently. If children are the nation's aspirations, they too will have to accept the accelerating advances and changes brought about in the century.⁶

Before going into the question of fulfilling the requirements of children, it may be appropriate to deal with practicalities of the situation in which children are placed. While transitional societies regard a child as an asset created by God and consider child as part of their family-cum-social order, modern developed society, perceives child as a product of wider human productive process. That is why child in the modern society should not be used as labour. On the other hand investments in the form of education and health would enrich human capital.⁷

Thus the development, growth and prosperity of a nation would basically depend on how its children are treated and what opportunities and facilities are made available to them to ensure them to enjoy healthy and happy childhood.⁸

⁶ Mina Swaminathan (Ed.,) *The First Five Years – A Critical Perspective on Early Childhood Care and Education in India* 163 (Sage Publications, New Delhi, 1998)

⁷ G.P. Mishra & P.N. Pande, *Child Labour in Glass Industry* 1 (A.P.H.Publishing, New Delhi, 1996)

⁸ INDUS Child Labour Project *Give them back their Childhood – Sensitization module for school children and youth on child labour* 2006 page 20

A question may arise as to who should provide children with opportunities and facilities to ensure children healthy and happy childhood. For this purpose, it would be easier to define a “normal” family which comprises of a husband and wife and children of their marriage than to define the rights and responsibilities of people in it. Although law makes a mention of parental rights, powers or duties, it does not provide a neat sketch or list of them to enforce them. While the whole object of parents is the upbringing of someone who is not only too young to bring himself up but also too young to compel others to do it for him, State should ensure that parental responsibilities comprise acceptable standards of child care.⁹

1.2 CHILD AND INTERNATIONAL COMMUNITY

UNICEF¹⁰ - the world organization working with Governments and the people for the welfare of children, canvassed through Human Rights agencies within and outside the United Nations system for adoption of a comprehensive treaty which would be binding on member States and framing of standards for legal protection of the best interests of children everywhere resulting in the Conventions on the Rights of the Child adopted by the United Nations General Assembly.¹¹ The said Conventions are more in the nature of

⁹ Brenda M. Hoggett (ed.) Social Work and Law Parents and Children (Sweet & Maxwell, London 1981)

¹⁰ United Nations International Child’s Emergency Fund

¹¹ Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; Entry into force: from 2 September 1990 in accordance with article 49 which states that the Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. And for each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of

treaty law, casting legal and constitutional obligation on the countries subscribing to the Convention.¹²

Article 32 of the said Convention emphasizes the right of the child to be protected from economic exploitation and from undertaking any work that is likely to be hazardous or interfere with the child's education, or to be dangerous to child's health or physical, mental, spiritual, moral or social development. It also calls upon State Parties to take legislative, administrative, social and educational measures to ensure implementation of the Article and in particular, provide for a minimum age or minimum ages for admission to employment, for appropriate regulation of the working hours and such other conditions of employment and for providing appropriate penalties and sanctions for strict enforcement of the Article.¹³

Employment of children below certain age amounting to child labour, the Convention regards Child labour as denial of child rights. The right of the child therefore encompasses right to rehabilitation, protection of child workers and improvement of their working conditions. Regulation of these aspects will have to be looked into on priority basis. Right to Education and recreation and to childhood itself are closely associated with the rights of the

ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

¹² Government of India, Report of the National Commission on Labour (Ministry of Labour and Employment and Rehabilitation, 1969)

¹³ M.P. Shrivastav, Child Labour Laws in India 17 (Law Publishing House, Allahabad, 1st edn, 2006)

child, for the concept of childhood is itself a recent one in the context of child rights.¹⁴

1.3. CONSTRUCTION OF CHILDHOOD

Childhood is construed as a distinct phase in the life of mankind, as opposed to the construction of childhood in the medieval period according to which children were young adults regarded as family pets, born and raised for offering their services to their families. The elements such as compassion, affection and emotional attachment were found to be totally absent. High fertility, high child mortality and usage of children as labour power were prevalent and predominant in this phase of social evolution.

Thus childhood as a formative phase in the earliest part of human life, which ought to demand attention of the adults, was virtually absent until the advent of industrial revolution. It was only with the emergence of affluent middle class in Western Europe that underage people were no longer considered as miniature adults. Society began to differentiate between children and adults. It was for the first time realized that they are very vulnerable seedlings to be protected and nourished for growth and development. Childhood is thus a period of adult support for their defenselessness.¹⁵

¹⁴ B. Ramaswamy (ed.) Child Human Rights Legal Perspectives 93 (Anmol Publications Pvt. Ltd., New Delhi 2013)

¹⁵ Sudip Chakraborty, Food Security and Child Labour 23 (Deep & Deep Publications Pvt. Ltd., New Delhi 2011)

Childhood is an unforgettable period of one's life. So a happy childhood is the right of every child and providing every child 'childhood' should be the concern and duty of every welfare State.

1.4. DENIAL OF CHILDHOOD AND LIKELIHOOD OF CHILD LABOUR

The happiness of childhood is not available to most of the children in India. In the absence of childhood, child is pushed by his family or relatives to an ugly stage of life of employment at very early stage called Child labour. Child labor means the employment of children under a specified legal age. Child labour is found in factories or other places of employment which either endangers their health or safety and interferes with or prevents their development. Rather children are the first victims of hunger and malnutrition in poor families.¹⁶

If a family cannot afford to provide food to its children that by itself may not constitute child labour, but there is a high probability of children being sent out to work or even sold to supplement family income. Or else, it may be a cause of child not being provided with education which ultimately ends up in child labour.¹⁷

A child labourer is differentiated from an adult worker on the basis of age. Children are involved in all types of work, such as agriculture, looking

¹⁶ Dr. N.C. Patnaik, "Child Labour in India: An uncontrolled crime against innocent" XVII Central Law Qry 1 (2004)

¹⁷ S.P. Gomango, Child Labour A precarious Future 5 (Authorspress, Delhi 2001)

after cattle and sheep, scaring away birds from fields, helping adults in sowing and harvesting. Some others help their families looking after younger siblings, collecting fire-wood and water and participating in other domestic and other non-domestic work such as cottage industry etc., In urban sector, they work in variety of fields such as factories, roadside cafes, motor repairing workshops or street vending, shoe-shining, newspapers selling etc., or working as domestic help in homes and even in beggary. Parents put their children to work when they are 6-7 years old.¹⁸

1.5. CHILD LABOUR – A SOCIAL PROBLEM AND STEPS TOWARD RELIEF

India, the problematic aspect of child labour became more prominent with advent of industrialization.¹⁹ It is problematic because it interferes with the basic needs of children and development of their basic skills and capabilities. Working children are therefore deprived of educational opportunities, vocational training, physical and intellectual development.²⁰

It is in this view of the matter that Article 15(3) of the Constitution of India empowers the State to make special provisions for women and children.²¹ Article 23²² prohibits traffic in human beings and beggar and other

¹⁸ Mohd. Mustafa and Onkar Sharma, *Child Labour in India A bitter truth 1* (Deep & Deep Publications, New Delhi, 1996)

¹⁹ Later half of the 19th century.

²⁰ Sumalata Bhomkar, “Child Labour-A problem” XXXIV Indian Socio-Legal Journal 76 (2008)

²¹ Article 15(3) Constitution of India

²² Article 23 Constitution of India. 23(1) Traffic in human beings and beggar and other forms of forced labour are prohibited and any contravention of this provision shall be an offence

similar forms of forced labour. Article 24 stipulates that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.²³

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

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

punishable in accordance with law. (2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

²³ Article 24 Constitution of India

²⁴ AIR 1982 SC 1473

employed before the age of 14 years, he is to be kept occupied in some educational institution.²⁵

So also Supreme Court in *Labourers of Salal Hydro Project v. State of Jammu & Kashmir*²⁶ reiterated that whenever the Central Government undertakes construction project which would or is likely to last for some time, the Central Government should provide that the children of construction workers living at or near the project site should be given facilities for schooling which may be done either by the Central Government itself or if the Central Government had entrusted the work to some contractor, necessary provisions for schooling may be made in the contract with the contractor.

Likewise, in *Unni Krishnan v. State of Andhra Pradesh*²⁷ the Constitution Bench of the Supreme Court held that though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21 having regard to the broad interpretation given by the Court.

Parliament, being conscious and determined to tackle the problem of child labour and being committed to democracy, thought it fit to carry out necessary amendments to make the provisions respecting education more effective. It also analyzed that the target of eradication of child labour could be achieved only if right to education is upgraded as fundamental right. With

²⁵ *Supra* note 3 at 48

²⁶ (1983) 2 SCC 181

²⁷ (1993) SCC 645

a view to making right to free and compulsory education a fundamental right, the Constitution (Eighty-Sixth Amendment) Act, 2002²⁸ [December 12, 2002] was brought about incorporating new Article 21A.²⁹

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

What is to be recognized is that continued existence of child labour and the inability of every child to access education ultimately means that State failed in its duty towards its children. No country has ever achieved anything worthwhile on the backs of such child labour or illiteracy that we have in India.³⁰

1.6 IMPORTANCE OF THE STUDY

Several researches have been done so far on child labour. Study of child labour among school children in urban and rural areas of Puducherry was done by Devi and Roy³¹ in schools situate in the service areas of Jawaharlal Institute of Rural Health Centre and Jawaharlal Institute of Urban Health

²⁸ The Constitution (Eighty-Sixth Amendment) Act, 2002 & published in the Gazette of India, Extra., Part II, Section 1)

²⁹ *Supra* note 2 at 152-153

³⁰ Enakshi Ganguly Thukral (Ed.,) Every Right for Every Child Governance and Accountability 169 (Routledge Taylor & Francis Group New Delhi 2011)

³¹ Devi K, Roy G. “Study of Child labour among school children in urban and rural areas of Puducherry” available at <http://www.ijcm.org.in/text.asp?2008/33/2/116/40881> (last visited on 20.9.2009)

Centre covering rural and urban areas of Puducherry. The study was conducted in select schools in rural and urban areas of Puducherry and among those, children who were working were further interviewed. In the said study, interview was conducted for working children alone in their houses with the help of certificate data collected. The study revealed that 32.5% of the children went to work. The study found that among the said working children, children working in the urban area comprised of 42.8% and 24.8% in the rural area.

In yet another study conducted by Niveditha and Roy,³² regarding the prevalence of child labour among school children and related factors in Puducherry, selecting students from four Government schools from urban area studying from 5th to 9th standard during the academic year 2001-2002 with sample size of 1305 students, the research ended up in a finding that 150 per 1000 students were engaged in work outside school hours.

The said studies only related to part-time child labour and that too, relating to child labour in general and not specifically relating to automobile industry. Like-wise several studies have so far been conducted regarding child labour in automobile industry but none has been done with reference to Puducherry. A similar research has been done on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra by Usha P. Oomman, Ulhasnagar.³³ The said research endeavors to highlight the

³² Nivedita T Roy G, "A study of child labour among school children and related factors in Pondicherry available at Indian J. Commun Med 2005:1:14-5 (last visited on 28.9.2016)

³³ Usha P Oomman, "An Empirical Study on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra" available at EPISTEME On line Journal Vol 1 No.3 (Sep 2012) ISSN No.2278-8794

rampant prevalence of child labour in automobile workshops in the two cities of Kalyan and Ulhasnagar. The said paper also throws light on the various forms of exploitation of child labour in the form of low wages, long hours of work, poor sanitation and hygiene etc. The paper also suggests measures to overcome the problem of child labour. Likewise, another study is also found to have been conducted- on child labour in Automobile repairing workshops in Kalwa and Kharegaon, Thane district, Maharashtra³⁴ which attempts to highlight the fact that lots of Automobile repairing workshops are seen in every city, town, suburban areas in the roadside of national highways, etc. They are not regulated and many of them use child labour. The study is a probe into the scenario of child labour in automobile repair workshops. The study is focused on the use of child labour in automobile repair workshop in Kalwa and Kharegaon, Thane District, Maharashtra which ended up with finding that most of child labourers work for 10 to 11 hours and that 45.45% of the child labourers had never attended school and that remaining 56.56% are school dropouts, for reasons such as dislike for school, parents not ready to send them to school, they regularly failed in their exams and parents were not sufficiently earning. Another article on Working Conditions and Health Status of Child Labour in Automobile Workshops³⁵ seeks to explore the working conditions and health status of child labourers in Automobile Workshops of Tirupati town.

³⁴ Nitinkumar N. Varade, “A Study of child labour in Automobile repairing workshops in Kalwa and Kharegaon, Thane district, Maharashtra” available at www.iosrjournals.org (last visited on 4.6.2016)

³⁵ Dr. K. Hymavathi, “Working Conditions and Health Status of Child Labour in Automobile Workshops” available at International Journal of Human Development and Management Sciences Vol.1 No.1-2 (Jan-Dec,2012) ISSN:2250-8714 (last visited on 4.6.2016)

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

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

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

On enquiry of persons working in the automobile industries, it was ascertained that in so far as Puducherry is concerned, no manufacturing is carried on and that the said industry is restricted to assembling of parts.

Therefore, the automobile industry in Puducherry is restricted to automobile repair workshops where children are likely to be employed to a large extent.

Though the study is concerned with automobile industry in India, in-depth study is made with special reference to child labour in automobile industry in Puducherry. In so far as Puducherry is concerned, since only assembling of parts of the vehicles is being done in automobile industries, particular attention has naturally to be directed towards engagement of children in automobile repair shops which are classified as ‘hazardous’ both in terms of occupations spelt out under Part A as well as processes spelt out in Part B of the Schedule to the Child Labour (Prohibition and Regulation) Act, 1986. It is in this view of the matter that an attempt has been made to study the conditions of employment of children in such shops, health hazards inherent in the occupation, the circumstance under which children are compelled to enter the avocation and whether there could be any remedy for such a situation prevailing in the country at large as well as this Union territory in particular which comprises of four regions, namely, Pondicherry, Karaikal, Mahe and Yanam. Karaikal, though part of the Union Territory, has been declared as separate District recently. For the purpose of the study, the region of Pondicherry has been taken as universe to represent the whole Union Territory.

1.7. DEFINITION OF CHILD

Article 1 of the United Nations Convention on the Rights of the Child, 1989 defines “child” for the purposes of the Convention, to mean every human

being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. The Children (Pledging of Labour) Act³⁶ defines “child” to mean a person who is under the age of fifteen years. The Factories Act³⁷ defines “child” to mean a person who has not completed his fifteenth year of age. The Minimum Wages Act³⁸ defines child to mean a person who has not completed his fourteenth year of age. The Plantations Labour Act³⁹ defines “child” to mean a person who has not completed his fourteenth year. The Mines Act⁴⁰ prohibits the employment of persons below fourteen years of age. The Merchant Shipping Act⁴¹ prohibits employment of ‘child’ under the age of fourteen. The Motor Transport Workers Act defines ‘child’ to mean a person who has not completed his fourteenth⁴² year. The Apprentices Act⁴³ prohibits apprenticeship or training of a child under fourteen years. The Beedi and Cigar Workers (Conditions of Employment) Act⁴⁴ defines ‘child’ to mean a person who has not completed fourteen years of age. Child Labour (Prohibition and Regulation) Act⁴⁵ defines ‘child’ to mean a person who has not completed his fourteenth year of age. The Right of

³⁶ Act 2 of 1933 as amended by Act 3 of 1951 and A.O.1950 s2

³⁷ The Factories Act (Act 63 of 1948) s2(c)

³⁸ Minimum Wages Act, 1948 (Act 11 of 1948) section 2(bb)

³⁹ The Plantations Labour Act, 1951 (Act 69 of 1951) s 2 (c)

⁴⁰ The Mines Act, 1952 (Act 35 of 1952) as amended by the Mines (Amendment) Act, 1983, w.e.f.31.5.1984 s40

⁴¹ Merchant Shipping Act, 1958 (Act 44 of 1958) s109

⁴² The Motor Transport Workers Act, 1961(Act 27 of 1961) s 2 (c)

⁴³ The Apprentices Act, 1961 (Act 52 of 1961) s.3

⁴⁴ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Act 32 of 1966) s 2(c)

⁴⁵ Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986) s 2(ii)

Children to Free and Compulsory Education Act⁴⁶ defines ‘child’ to mean a male or female child of the age of six to fourteen years.

1.8 NEED FOR PROTECTION

“Mankind owes to the child the best it has to give. The child shall enjoy the special protection and shall be given opportunities and facilities by law and other means to enable him to develop physically, mentally, morally, spiritually and socially in the healthy and normal manner and in conditions of freedom and dignity”⁴⁷

Children are the future citizens of our country. It therefore becomes the duty of State to provide them better care for their physical, mental and psychological growth. In a welfare State, it is the duty of the Government to protect children by way of welfare programmes, schemes and policies, so that they may not be exposed to any type of hazard- likely to damage their growth in any way.

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

⁴⁶ The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009) s.2 (c)

⁴⁷ Nuzhat Parveen, “Child Labour & Exploitation of Child Labour” Legal News & Views 12 (Sep.2000) quoted from United Nations General Assembly Declaration, 20.11.1959.

are subjected to servitude while they should be playing and enjoying their lives.⁴⁸

Child of today cannot develop to be responsible and productive member of tomorrow's society unless an environment conducive to his social and physical health is ensured. Every nation, whether developed or developing, depends for its future on the status of child. Children signify eternal optimism in human life and provide the potential for human development. If children of a nation are better equipped with ultimate broader output, the society will feel happy. Suppose children are neglected, it would result in loss to society. If children are deprived of their childhood, the nation gets deprived of potential human resources for attainment of social stability.⁴⁹

Thus, the significance and the importance of the child lie in the fact that the child is the universe. Without child there would be no humanity and without humanity there cannot be a universe. Moreover, children constitute a hidden source of potential development of a growing nation. The social and economic development of any nation depends on the importance given to welfare of its children. Therefore, if a nation has to thrive and prosper in all spheres of human activity, children will have to be given social and economic protection.⁵⁰

⁴⁸ Dr. C.L. Patel, "Child Labour is a disgrace to mankind (Causes and Suggestions) XVIII Central Law Qty 197 (2005)

⁴⁹ *Supra* note 2 at 7

⁵⁰ Dr. P.K. Padhi (ed.), Child Labour Retrospect & Prospect 170 (The Law, Cuttack, 1998)

1.9. LABOUR – DEFINITION

The aggregate of all human physical and mental effort used in creation of goods and services. Labour is a primary factor of production.⁵¹

According to Merriam-Webster Dictionary, Labour is expenditure of physical or mental effort especially when difficult or compulsory; human activity that provides the goods or services in an economy; services performed by workers for wages as distinguished from those rendered by entrepreneurs for profits; an economic group comprising those who do manual labor or work for wages; workers employed in an establishment; workers available for employment; organizations or officials representing groups of workers.⁵²

Labour is productive activity, especially for the sake of economic gain, by a body of persons engaged in such activity, especially those working for wages. The body of persons is considered as a class distinguished from management and capital.

Labour is defined to mean physical or mental work, especially of a hard or fatiguing kind; toil or a job or task to be done.⁵³

⁵¹ Business Dictionary available at www.businessdictionary.com/definition/labor.html (last visited on 20th July 2016).

⁵² Merriam-Webster Dictionary available at <http://www.merriam-webster.com/dictionary/labour> (last visited on 20th July 2016)

⁵³ Labour@Dictionary.com available at <http://www.dictionary.com/browse/labor> (last visited on 20th July 2016).

Labour in terms of industrial relations, is productive work, especially physical toil done for wages. It also means the people or class of workers. Labour is also defined to mean physical or mental exertion, especially difficult or exhausting work. It is a specific task or effort especially a painful or arduous one.⁵⁴ Labour is productive work especially physical toil done for wages by people, class or workers, especially in contrast to management, capital, etc., the work being an arduous one or especially of difficult nature.⁵⁵

According to Black's Law, more onerous and inferior kind usually and chiefly consisting in the protracted expenditure of muscular force, adopted to the accomplishment of specific useful ends. According to it, labor implies toil, exertion producing weariness, manual exertion of a toilsome nature.⁵⁶

1.10. TYPES OF LABOUR

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

1.10.1. Free Labour: The labour in which labourer was free to enter into contracts as to his work and wages is called free labour. In the absence of

⁵⁴ The free dictionary available at <http://www.thefreedictionary.com/labor> (last visited on 20th July 2016)

⁵⁵ Collin's Dictionary available at <http://www.Collinsdictionary.com/dictionary/english/labour> (last visited on 20th July 2016)

⁵⁶ Black's Law Dictionary available at thelawdictionary.org/labor (Last visited on 20th July 2016)

such contracts, his remuneration was determined and regulated by principles recognized by ancient customary law of the land.

1.10.2 Servile Labour: In contrast to free labour, there existed a trend of selling children into slaves. This system of slavery and slave trade was prevalent in India even before the period of Kautilya,⁵⁷ but none dared to abolish it. From time immemorial, there were several classes of slaves, they are, men captured in raids and battles, men condemned for heinous offences, men who sold themselves and their children for want of maintenance and children of men already slaves.⁵⁸

1.10.3 Contract Labour: Labour employed on contract basis is one of the most common forms of non-regular employment practice adopted by the principal employer in the present era of political economy. In this system of employment tasks assigned by the principal employer have to be carried out by the labourer without any direct employer-employee relationship. In this sort of employment, the relationship is provided by a middleman or a contractor who employs the labour under the principal employer.⁵⁹

1.10.4 Direct Labour: Direct labour differs from contract labour in terms of employment relationship with the principal establishment and method of wage

⁵⁷ Kautilya also Chanakya or Vishnu-gupta was prime minister of King Chandragupta

⁵⁸ Narayan Chandra Bandyopadhyaya, "KAUTILYA OR AN EXPOSITION OF HIS Social Ideal & Political Theory" 207-212 (Indological Book House, Varanasi, 1982)

⁵⁹ Dr. I. Sharath Babu, "The Contract Labour Claims and the Prevailing Judicial Ratio" II LLJ 9(2008)

payment. In direct labour pay is borne on the pay or muster roll of the establishment and employees are paid wages directly by the principal employer.⁶⁰

1.10.5 Casual Labour: The incidence of casual labour is determined by the nature of the task that is to be performed. Quite often, and very commonly, engineering departments engage casual labour to fill up vacancies caused by absenteeism and temporary pressure of work. Such casual engagements are common in the Railways, Public Works Department, Electricity Corporations and Departments of Central and State Governments and also in the private sector. This sort of employment is well recognized and not objected to. It is taken exception to mainly when such labour is continually employed for long periods to circumvent the provisions of law, which confer benefits to permanent workers with better working conditions, more amenities and the like, when used deliberately to restrict scope for regular employment.⁶¹

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

⁶⁰ *Supra* note 12

⁶¹ *Ibid*

education level or specialized experience is often available to the unskilled labour force.

1.10.7 Skilled Labour: Skilled labour is a segment of the workforce with a high skill level that creates significant economic value through the work performed (human capital). Skilled labour is generally characterized by high education or expertise levels and high wages. Skilled labour involves complicated tasks that require specific skill sets, education, training and experience and may involve abstract thinking.⁶²

1.10.8 Bonded Labour: Bonded labour can best be described in terms of debt bondage fixed for a time or a lifetime or hereditarily descending from father to son in some cases. The system grew out of acute indigence and helplessness of tribal and semi-tribal communities in the grip of a precarious subsistence economy.⁶³

1.10.9 Child Labour: Child labour includes all those children who are below 14 years of age and engaged in some productive work, whether paid or not, within the family or outside. The problem is universal.⁶⁴ Child labour implies working children in industrial and non-industrial jobs, organized and unorganized sectors which work damages their physical, mental, moral and social development.

⁶² Skilled and unskilled labour available at www.investopedia.com/term/u/unskilled-labour.esp (last visited on 21st July 2016)

⁶³ *Supra* Note 12

⁶⁴ Bhagwan Pd. Singh & Shukla Mahanty (ed.), *Children at Work* 14 (B.R. Publishing Corporation, New Delhi, 1993)

Since it affects the total growth and development of the child it is categorized as social problem.⁶⁵

1.10.10. Migrant Child Labour: Inevitable socio-economic changes in society like rapid urbanization, rural to urban migration, breaking-down of joint family and community structure gave rise to vulnerable class of children called migrant child labour. These children are neglected and suffer from deprivation of education, care and loving home, and struggle for their survival. Impoverished families and unfulfilled expectations result in rural-urban migration. These children having no legislation for safeguarding them, are the most exploited child labourers, are found rag-picking, selling lottery tickets, shining shoes, hawking newspapers, etc., They are neglected by the society and excluded from government policies, ultimately deprived of education and basic services and quite often tortured by unscrupulous persons and police on the roads.⁶⁶

1.11. IMPORTANCE OF LABOUR

Importance of labour is nothing but the role of human resource in development. Human resource is an important factor of economic development. As opined by Adam Smith the prosperity of a country is determined by the skill, efficiency and attitude of the labour used by that country. Many countries have been able to develop themselves due to the will, capacity and skill of their human resources. As for example, the

⁶⁵ Prachi Jaiswal, Child Labour (A sociological Study) 16 (Shipra Publications, Delhi, 2000)

⁶⁶ S.N. Tripathy, Migrant Child Labour in India 1 (Mohit Publications, New Delhi, 1997)

countries like Japan, Singapore, Germany and Hong Kong have been able to achieve economic miracle by mobilizing their human resource.

1.11.1. Utilization of Natural Resources: The natural resources like mineral, water, oil and forest are utilized by human resource. The utilization of natural resources increases the national income. The per capita income and living standards of the people increase. The dearth of proper human resource is one of the causes of non-utilization of natural resources in the world.

1.11.2. Compensates the Deficiency of Natural Resources: The utilization of human resources compensates the deficiency of natural resources. Many countries poor in natural resources have been able to achieve high economic and human development on the basis of the human resources.

1.11.3. Utilization of Physical Capital: The mere existence of physical capital is no guarantee of development. They should be properly utilized. They are utilized by human resources. Human resource is essential to operate machinery and equipment and to run factories and industry.

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

1.11.5. Reform In Tradition, Culture And Attitude: The tradition, culture, values, interest and attitude have been inimical to the development of

developing countries . The educated manpower reforms the tradition, culture and attitude.

1.11.6. Increase in Managerial Capacity and Entrepreneurship: Human resources increase the managerial capacity and entrepreneurship. It leads to innovation. The new production, technique, new market and new technology are developed. This increases the production and national income.

1.11.7. Development of Agriculture and Industry: The modern and superior technologies should be used for the modernization of agriculture and rapid industrialization. This is made possible only by human resource. Theodore Schultz observes “it is simply not possible to have the fruits of a modern agriculture and the abundance of modern industry without making large investment in human beings.” And lastly,

1.11.8. Removal of Economic Backwardness: Human resource helps directly to remove the economic backwardness.⁶⁷

1.12. CHILD LABOUR-PROHIBITION/REGULATION

To begin with, originally, the Child Labour (Prohibition and Regulation) Act, 1986⁶⁸ comprised of the following scheme:

⁶⁷ Role of human resource in development available at economicsworlds.blogspot.in/2010/02/role-of-human-resource-in-development.html (last visited on 22nd July 2016)

⁶⁸ Child Labour (Prohibition and Regulation) Act 1986 (Act 61 of 1986) Ss 2,3 & 6

Section 3 of the principal Act prohibited employment of children in certain occupations and processes as specified in the Schedule of banned occupations or processes annexed to the Act. Part A of the Schedule to the Act contained the names of the occupations in which no child could be employed or permitted to work; and in Part B, names of some processes had been mentioned in which no child could be employed or permitted to work. “Child” under clause (ii) of Section 2 of the Act, meant a person who has not completed his fourteenth year of age. The Act in section 6 also regulated the conditions of work of children in employment where they were not prohibited from working.⁶⁹

The Hon’ble Supreme Court in *Bandhua Mukti Morcha v. Union of India*⁷⁰ cautioned that total banishment of employment of child would be both unrealistic and counterproductive. Emphasizing need for pragmatic, realistic and constructive steps, the Apex Court suggested that child labour must be progressively banned. The Supreme Court observed that total banishment of employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and social risks etc., and that therefore, while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Observing

⁶⁹ R. Swaroop, *Child Labour Welcome Measures, Half-hearted Actions* 261 (ALD Publications, Hyderabad, 2008)

⁷⁰ AIR 1997 SC 2218

that immediate ban of child labour would be both unrealistic and counterproductive, it reiterated that ban of employment of children begin from most hazardous and intolerable activities like slavery, bonded labour and dangerous forms of labour and the like.

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

Japan and Korea had accomplished universal literacy and compulsory education well before they had emerged from shackles of poverty. Their public investment on education and health care was relatively higher when their per capita incomes were relatively lower. Provision of quality primary education and quality health care build the pillar of human capital formation. Perpetuation of child labour in any country is the reflection of educational

failure. Child labourers are those children in a country who have no access to education, or put in other words, education delivery system has eluded numerous children. Child labourers along with many other hapless categories of deprived children fall within the category of educationally deprived children. Children who stay outside the portal of school remain unlettered, unskilled and untrained. They do not acquire the ability of numeracy, literacy and cognitive skills. They are sure to miss many opportunities that would come on their way. They are not only deprived of the benefits of educational development but also they themselves deprive the nation from their productive participation in national economic transformation. A country may suffer from supply side constraints in relation to availability of skilled manpower. Persistence of child labour is sure to cause supply side constraints through denying access to education of many children. Thus countries will miserably fail to accomplish a desired level of economic growth and flourish.

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

⁷¹ *Supra* note 11

⁷² Government of India deposited its instrument of accession to the Convention on December 11, 1992.

legislation framing policies and implementing programme accommodating the spirits and core values of the Convention.

Article 32⁷³ of the said Convention emphasizes the State to protect children from economic exploitation. According to the said Article, Child rights are inalienable. One type of right cannot be advanced at the exclusion of others. Child labourers are not only denied their right to protection against economic exploitation but also are denied their right to education and right to protection against many other forms of abuse and maltreatment and they are also denied their right to health. Child Labour (Prohibition and Regulation) Act can stop economic exploitation of children but that is only a step forward. There are other steps, to be undertaken, to reach the destination of decent childhood. All other rights should be simultaneously realized to give back those children their rights to childhood⁷⁴.

As a step forward and in consonance with the law laid down by the Supreme Court in *Bandhua Mukti Morcha v Union of India*⁷⁵, the Child Labour

⁷³ Article 32 Protection from Economic Exploitation

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

⁷⁴ *Supra* note 15 at 47-49

⁷⁵ *Supra* note 70

(Prohibition and Regulation Act), 1986⁷⁶ has recently been amended. The long title of the principal Act which reads as “An Act to prohibit the engagement of children in certain employment and to regulate the conditions of work of children in certain other employments.” has been amended as “An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto”⁷⁷.

Accordingly, the term “Adolescent” has been incorporated in the amended Act as section 2(i) to mean a person who has completed his fourteenth year of age but has not completed his eighteenth year and “Child” under section 2(ii) of the principal Act⁷⁸ has been amended to mean a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009,⁷⁹ whichever is more.

More so, with a view to totally prohibiting child labour, section 3 of the Principal Act⁸⁰ has been amended as follows:

“(1) No child shall be employed or permitted to work in any occupation or process.

(2) Nothing in sub-section (1) shall apply where the child,-

⁷⁶ Act 61 of 1986

⁷⁷ The Child Labour (Prohibition and Regulation) Amendment Act, 2016 No.35 of 2016

⁷⁸ *Supra* note 76

⁷⁹ The Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009)

⁸⁰ *Supra* note 76

(a) Helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule,⁸¹ after his school hours or during vacations;

(b) Works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except circus, subject to such conditions and safety measures as may be prescribed.

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

Explanation- For the purposes of this section, the expression

- (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;
- (b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;
- (c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of subsection (2)”

⁸¹ THE SCHEDULE (See section 3A) (1) Mines (2) Inflammable substance or explosives (3) Hazardous process. Explanation.- For the purposes of this Schedule, “hazardous process” has the meaning assigned to it in clause (cb) of the Factories Act, 1948. (63 of 1948)

Likewise, a new section 3A has been incorporated in the principal Act⁸² which reads as follows:

“No adolescent shall be employed or permitted to work in any hazardous occupations or processes set forth in the Schedule.

Provided that Central Government by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.”

Thus, if there has to be an end to child labour, focus must be on total abolition of child labour and in addressing the rights of children who are deprived of education.⁸³

1.13. DEFINITION OF CHILD LABOUR: The term “Child Labour” has been defined by various personalities in various ways. Some of the definitions are as follows:

B.M. Otta defines child labour as follows:

“Any activity performed by a child in the productive process in a more or less regular or casual basis with or without any remuneration attached to it.”⁸⁴

D.A. Naidu defines child labour as.-

“That act which deprives them of educational opportunities, minimizes their chances for vocational training, stunts their physical growth,

⁸² *Supra* note 76

⁸³ Sukhpal Kataria, *Exploitation of Women and Child Labour A Criminal Abuse* 6 (Signature Books International, Delhi, 2011)

⁸⁴ S.W.P. Prabakaran, *Child Labour in Hotel Industry* 4 (Discovery Publishing House Pvt. Ltd., New Delhi, 2011) quoted from Braja Mohan Otto, *Child Labour As An Adjunct to Domestic Mode of Production in Rehabilitation of Child Labour in India*, ed. R.N. Pati, *op. cit.*, p.196

hampers their intellectual development and forces them to remain as unskilled labourers with low wage all their life.”⁸⁵

According to Shri V.V. Giri, the term ‘Child labour’ is commonly interpreted in two different ways first, as an economic practice, second as a social evil. Child labour therefore, can be defined as any work undertaken by children below 14 years in such works which are injurious to their health and harmful to their proper development.⁸⁶

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

“Any work by children that interferes with their full physical development and their opportunities for a desirable minimum level of education or their needed recreation.”⁸⁷

According to the International Labour Organization,

“Child Labour includes children permanently leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from their families frequently deprived of meaningful educational and training opportunity that could open up for them a better future.”⁸⁸

⁸⁵ *Ibid* quoted from D.A. Naidu, Some Micro-Determinants of Child Labour in Rural South India: A Provisional Analysis (Paper Presented at a Seminar on Child Labour and Health Organized Jointly by Tata Institute of Social Sciences and World Health Organization, Bombay, 1982).

⁸⁶ Jayashree V. Doddawadmath, “Eradication of exploitation of child labour – A critique” XXXII (1&2) IBR 258 (2005)

⁸⁷ *Supra* note 48 at 199 quoted from S. Murty Child Labour in India, P.15

⁸⁸ *Id.* at 200

1.14. MEANING OF CHILD LABOUR

The term ‘child labour’ is used as synonym for ‘Employed Child’ or ‘Working Child’. Child labour denotes employment of children in gainful occupations detrimental to their health and deprive them of development in their life. Child labour implies the working children in industrial and non-industrial jobs, organized and unorganized sectors, which are detrimental to their physical, mental, moral and social development. Child labour is considered as a social problem in as much as it prevents the development of children.⁸⁹

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

It is also not always that children work for wages. Children often spend their time helping their families or engaging themselves in traditional family occupations. In doing the said jobs, they are unpaid workers, but learn skills out of their own volition that they consider may be useful to them in their future life. ‘Child labour’ is thus, that segment of child population that participates in paid and unpaid work.⁹⁰

⁸⁹ *Supra* note 65

⁹⁰ P.K. Padhi, “Child Labour: Yesterday, today and tomorrow” 2 LAB. I. C 177 (2004)

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

“Millions of young people legitimately undertake work, paid or unpaid, that is appropriate for their age and level of maturity. By doing so, they learn to take responsibility, they gain skills add to their families’ and their own well-being an income, and they contribute to their countries’ economies”.⁹¹

Therefore child labour does not include activities such as helping out, after school is over and schoolwork has been done, with light household or garden chores, childcare or light work of such nature. According to ILO, to claim otherwise would trivialize the genuine deprivation of childhood faced by millions of children entangled in the web of child labour which ought to be seriously and effectively abolished.⁹²

⁹¹ ILO, 2002, p.9

⁹² G.K. Lieten, “Child Labour and Work: Numbers, from the General to specific” 48 The Indian Journal of Labour Economics 32-33 (2005)

1.15. TRACING BACK THE HISTORICAL ROOTS OF CHILD LABOUR

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

1.15.1. CHILD LABOUR IN ANCIENT INDIA

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

The origin of child labour could be traced back to the early stages of evolution of societies, in which children learnt various crafts by working. This type of societal set up was considered necessary tool of social and economic upliftment. It was actually a part of survival process.⁹³

In the pre-industrial agriculture of India, children worked as helpers and learners of family occupations under supervision of adult members of the family. Workplace was nothing but an extension of home and characterized by personal informal relationship.⁹⁴

In the earliest period of history, in all societies there existed patriarchal system according to which the eldest male parent- the eldest ascendant was absolutely supreme in his household and had complete sway over all persons in

⁹³ Thomas Paul, "CHILD LABOUR-PROHIBITION v. ABOLITION: UNTANGLING THE CONSTITUTIONAL TANGLE" 50 JILI 145 (2008)

⁹⁴ *Supra* note 4 at 3

the family, whether it be male, female, children, their property, cattle and slaves. Parent's word was the sole command to the children. Parents worked for their landlords at very low wages and when they became indebted to the landlords, they forced their children too to work for their landlords in the landlords' houses as bonded labourers.⁹⁵

It is also noteworthy that child labour in India also existed in the form of child slaves. Child slaves could be purchased or sold like commodities. Slaves of tender ages even less than eight years of age were purchased for doing low jobs.⁹⁶

Records of slave trade show that the practice flourished around the 15th century by way of sale agreements and that it was not uncommon for lower caste parents to pledge their children as bonded labourers several years. Palm leaf manuscripts collected from Madurai district carry on it the reasons for the sale of family members that they were sold for money, grain and to tide over emergent situations. The manuscripts distinctively depict the castes of buyers and sellers, from which it is clear that buyers hailed from zamindar or landlord castes and that sellers hailed from socially and economically backward communities.⁹⁷

⁹⁵ *Supra* note 88

⁹⁶ *Supra* note 3 at 22

⁹⁷ Senthilir, "Slave trade was practiced with proper sale agreements" *The Hindu*, March 20th 2017.

Thus, the harsh reality of ancient India was that children of slaves were born as slaves, lived as slaves throughout their lives and died as slaves until their masters were pleased to monument them.⁹⁸

1.15.2 CHILD LABOUR IN MEDIEVAL PERIOD:

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

Their condition during the Mughal rule was all the more worse. Their condition was such that there was no difference between him and the commodity he produced. It was no better than slavery.⁹⁹

Kings enjoyed monopoly of slave and made money by trafficking in slaves and was himself royally served.¹⁰⁰

1.15.3 CHILD LABOUR IN MODERN ERA:

Until the advent of industrialization, children were employed in a family environment within their families wherein they were not given any hazardous work. But with the uneven industrialization, and in an atmosphere of extreme poverty, children were in compelling circumstances to work for their

⁹⁸ *Supra* note 1 at 41

⁹⁹ *Supra* note 3 at 25

¹⁰⁰ *Supra* note 88 at 179

families. The whole atmosphere all of a sudden took an entirely different shape wherein children were employed even in the most dangerous sectors rather than working and helping their family members in non-hazardous and light works which was like gradually getting trained in crafts.

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

In such a scenario, the first protective legislation for child labour was the Indian Factories Act, 1881.¹⁰¹ This Act prohibited employment of children below seven years in factories¹⁰² and in two separate factories on the same day.¹⁰³ It also restricted their working hours to nine hours a day¹⁰⁴ with a compulsion of four holidays a month with rest intervals.¹⁰⁵ It also made provision for fencing¹⁰⁶ of dangerous machinery.¹⁰⁷

¹⁰¹ The Indian Factories Act, 1881 (Act No.XV of 1881).

¹⁰² *Ibid* s.6

¹⁰³ *Ibid* s.9

¹⁰⁴ *Ibid* s.7

¹⁰⁵ *Ibid* s.8

¹⁰⁶ *Ibid* s.12

¹⁰⁷ *Supra* note 3 at 27-29

The drawback of the said legislation was its applicability only to those factories employing 100 or more persons.¹⁰⁸ To do away with the said defect, the Indian Factories Act, 1891¹⁰⁹ was passed. This Act increased the lower age limit to enter into employment from 7 to 9¹¹⁰ and increased the upper age limit from 12 to 14.¹¹¹ It also reduced working hours of children from 9 hours to 7 hours and prohibited children working during night.¹¹²

The modern era depicts a merciful condition of children working in mines. About 5000 children were working in mines and it is with a view to protecting children working in mines that the Mines Act, 1901¹¹³ was enacted. It prohibited employment of children below 12 years and empowered the Chief Inspector of Mines to prohibit employment of children in certain places, if he was satisfied that the employment conditions were dangerous to health and safety of children.¹¹⁴

Added to this, children were working in factories day and night and to safeguard them, the Factories Act, 1911¹¹⁵ came to be passed. It reduced the working hours of children to 7 hours a day¹¹⁶ and emphasized all child workers to necessarily carry with them a certificate of age and fitness¹¹⁷ for employment. The Act, apart from prohibiting children working in dangerous

¹⁰⁸ *Supra* note 99 s.2

¹⁰⁹ The Indian Factories Act, 1891 (Act No.XI of 1891)

¹¹⁰ *Ibid* ss.4, 5, &16

¹¹¹ *Ibid* ss.2, 4, 5 &16

¹¹² *Ibid* s.7

¹¹³ The Mines Act, 1901 (Act No.VIII of 1901)

¹¹⁴ *Supra* note 1 at 46

¹¹⁵ Factories Act, 1911 (Act No.XII of 1911)

¹¹⁶ *Ibid* s.23

¹¹⁷ *Ibid* s.7

processes,¹¹⁸ prohibited their working at night¹¹⁹ between 7.00 pm and 5.30 a.m.

In consonance with Convention of the International Labour Organization¹²⁰ the Indian Factories (Amendment) Act, 1922¹²¹ was passed defining ‘child’ to mean a person who has not completed his 15 years of age.¹²² The scope of the Act was extended to cover any premises where 20 or more persons were employed using mechanical power.¹²³ It fixed working hours of children at 6 hours with an interval of half an hour,¹²⁴ and required children to carry with them certificate of re-examination for continuing with their employment.¹²⁵ It prohibited employment of women and young persons under 18 in certain processes.¹²⁶

Parallel to this, Mines Act, 1901¹²⁷ was considered inadequate to tide over the conditions that were prevailing in the mines. This apart, the Act needed to be amended in consonance with the ILO Convention, 1919.¹²⁸ Hence the Mines Act, 1923¹²⁹ was enacted. The Act fixed the working limit at 60 hours per week to those working above the ground¹³⁰ and 54 hours per week to

¹¹⁸ *Ibid* s.19

¹¹⁹ *Ibid* s.23

¹²⁰ The Minimum Age (Industry) Convention (No.5), 1919

¹²¹ The Indian Factories (Amendment) Act, 1922 (Act II of 1922)

¹²² *Ibid* s.2(1)

¹²³ *Ibid* s.3(a)

¹²⁴ *Ibid* s.21

¹²⁵ *Ibid* s.8A

¹²⁶ *Ibid* s.19B

¹²⁷ *Supra* note 102

¹²⁸ *Supra* note 105

¹²⁹ Mines Act, 1923 (Act No.IV of 1923)

¹³⁰ *Ibid* s.22B

those working below the ground¹³¹ and raised the minimum for employment from 12 years to 13 years.¹³²

Again in 1931, the Indian Factories Act was further amended.¹³³ Provincial Governments were empowered under the Act to make certain regulation for taking precautions against fire.¹³⁴ The year 1931 is noted for publication of the report of Royal Commission on Labour.¹³⁵ The Commission recommended that children under 15 years should not be allowed to work without fitness certificate as to their health. It also recommended 5 hours a day for children at work with spread over at 7 ½ hours and to prohibit work by children between 7.00 p.m and 5.30 a.m.

As one more effect of the Royal Commission on Labour, the Children (Pledging of Labour) Act, 1933¹³⁶ was enacted to eliminate the evils of pledging of labour of children by their parents. The main aim of the Act was to eliminate the evil of pledging of children by parents for loan or an advance.

One year after this, the Factories Act was thoroughly overhauled in consonance of the recommendations of the Royal Commission on Labour. The Factories Act, 1934¹³⁷ was passed. It defined “Adolescent” to mean a person

¹³¹ *Ibid* s.22C

¹³² *Ibid* s.2(c)

¹³³ The Indian Factories Act, 1931 (Act No.XIII of 1931)

¹³⁴ *Ibid* s.37

¹³⁵ Established in 1929 to inquire into various relating to labour in this country submitted its report in 1931.

¹³⁶ The Children (Pledging of Labour) Act, 1933 (Act 2 of 1933)

¹³⁷ The Factories Act, 1934 (Act XXV of 1934)

who has completed 15 years but not completed 17 years of age.¹³⁸ It prohibited employment of children below 12 years.¹³⁹ It fixed the maximum working hours of children between 12 and 15 years at five hours a day.¹⁴⁰

The Indian Mines (Amendment) Act, 1935¹⁴¹ prohibited employment of children under 15 in mines.¹⁴² It laid down that adolescent between 15 and 17 years could be employed in underground work on production of medical certificate.¹⁴³ It fixed the working hours at 10 per week to those working above the ground¹⁴⁴ and 9 per week to those working underground.¹⁴⁵

During this period, the Factories (Amendment) Act, 1935¹⁴⁶ and Repealing and Amending Act, 1937¹⁴⁷ did not alter the general provisions of the Acts.

This era gains significance due to enactment of the Employment of Children Act, 1938.¹⁴⁸ The Act prohibited the employment of children under 15 in Railways and Port.¹⁴⁹ By way of amendment in 1939,¹⁵⁰ children under 12 were prohibited to work in industries connected with bidi-making, carpet-weaving, cement manufacturing, cloth printing, dying and weaving,

¹³⁸ *Ibid* s.2(a)

¹³⁹ *Ibid* s.50

¹⁴⁰ *Ibid* s.54

¹⁴¹ The Indian Mines (Amendment) Act, 1935 (Act V of 1935)

¹⁴² *Ibid* s.2(c)

¹⁴³ *Ibid* s.26A

¹⁴⁴ *Ibid* s.22B

¹⁴⁵ *Ibid* s.22C

¹⁴⁶ The Factories (Amendment) Act, 1935 (Act XI of 1935)

¹⁴⁷ Repealing and Amending Act, 1937 (Act No. XXV)

¹⁴⁸ The Employment of Children Act, 1938 (Act No.26 of 1938)

¹⁴⁹ *Ibid* s.3(1)

¹⁵⁰ The Employment of Children (Amendment) Act, 1939 (Act 15 of 1939)

manufacturing of matches, explosives and fireworks, mica cutting and splitting, shellac manufacturing, soap-manufacturing, tanning and wool cleaning.¹⁵¹¹⁵²

1.15.4. CHILD LABOUR AFTER INDEPENDENCE:

The first step soon after independence was the amendment of the Factories Act in 1948.¹⁵³ It was only therein that the minimum age for entry into employment was increased to 14 years.¹⁵⁴ A new section was introduced stating that the provisions relating to employment of young persons shall be in addition to and not in derogation of the Employment of Children Act, 1938.¹⁵⁵ The minimum age for children to enter workshops was also raised from 12 to 14 by way of an amendment in the Employment of Children Act, 1938.¹⁵⁶ Provisions relating to verification of child's age in case of dispute between employer and Inspector were introduced in the Employment of Children (Amendment) Act, 1939.¹⁵⁷

This apart, the Constitution of India which came into force on 26th January, 1950 made special provisions for protection of children.¹⁵⁸ The International Labour Organization (ILO) Convention relating to night work of

¹⁵¹ *Ibid* ss.3, 3A

¹⁵² *Supra* note 3 at 30-33

¹⁵³ Factories Act, 1948 (63 of 1948)

¹⁵⁴ *Ibid* s.67

¹⁵⁵ *Ibid* s.77

¹⁵⁶ Employment of Children Act, 1938 (Act 26 of 1938)

¹⁵⁷ Employment of Children (Amendment) Act, 1939 (Act XV of 1939) s.3C

¹⁵⁸ Constitution of India, Article 15(3), Articles 23-24.

young persons¹⁵⁹ was particularly responsible for bringing out an amendment in Employment of Children Act in 1951.¹⁶⁰ The Act made provisions for prohibition of employment of children between 15 and 17 years at night.¹⁶¹

Likewise, another development in the era is the passing of the Plantation Labour Act, 1951¹⁶². The said Act was passed with a view to preventing employment of children under 12 years in plantation.¹⁶³ The very next year, the Mines Act, 1952¹⁶⁴ was passed with a view to prohibiting employment of children less than 15 years in mines.¹⁶⁵ According to the said Act, adolescent could be employed for underground work as adult if he has a certificate of physical fitness from a certifying surgeon.¹⁶⁶

The Factories Act was again amended in 1954¹⁶⁷ in order to prohibit employment of adolescent below 17 years of age at night.¹⁶⁸ Also, Merchant Shipping Act¹⁶⁹ was passed in 1958 which prohibited children under 15 years of age to be engaged or carried to sea to work in whatever capacity may it be, in any ship, except in certain specific cases.¹⁷⁰

¹⁵⁹ Convention No.90 of 1948 concerning the Night Work of Young Persons (Industry) (Revised) 1948. The ILO adopted this Convention No.90 in its 31st Session held at San Francisco on 17th June, 1948.

¹⁶⁰ Employment of Children (Amendment) Act, 1951 (Act 48 of 1951)

¹⁶¹ *Ibid* s.3

¹⁶² The Plantations Labour Act, 1951 (69 of 1951)

¹⁶³ *Ibid* s.24

¹⁶⁴ The Mines Act, 1952 (Act IIIV of 1952)

¹⁶⁵ *Ibid* s.2, 45

¹⁶⁶ *Ibid* s.40

¹⁶⁷ Factories (Amendment) Act, 1954 (Act 25 of 1954)

¹⁶⁸ *Ibid* S.70

¹⁶⁹ Merchant Shipping Act, 1958 (44 of 1958)

¹⁷⁰ *Ibid* s.109

In 1961, two important Acts were passed to give better protection to children, namely, the Motor Transport Workers Act, 1961¹⁷¹ which prohibits employment of children under 15 in Motor Transport Undertakings and second, the Apprentices Act,¹⁷² for regulating and controlling trainees.¹⁷³

Another major legislation is Bidi and Cigar Workers (Conditions of Employment) Act, 1966¹⁷⁴ to protect children working in Bidi industries. This Act prohibited employment of children under 14 years of age.¹⁷⁵ It also prohibited employment of persons between 14 and 18 in any industrial premises at night between 7.00 p.m. and 6.00 a.m.¹⁷⁶

All these apart, in order to regulate those unorganized sectors, such as cotton ginning and weaving, carpet weaving, stone-breaking, bricklaying, handicrafts and road building, Contract Labour (Regulation and Abolition) Act, 1970¹⁷⁷ was passed. The Act covers all establishments and contractors employing 20 or more workers in the whole country.¹⁷⁸ There is no specific provision to control or regulate work being carried out by children in such sectors.

¹⁷¹ Motor Transport Workers Act, 1961 (27 of 1961)

¹⁷² Apprentices Act, 1961 (52 of 1961)

¹⁷³ *Ibid* s. 4

¹⁷⁴ Bidi and Cigar Workers (Conditions of Employment) Act, 1966 (Act 32 of 1966)

¹⁷⁵ *Ibid* ss.2(b), 24

¹⁷⁶ *Ibid* ss.2(q), 25

¹⁷⁷ Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970)

¹⁷⁸ *Ibid*. S.1

In 1973, the Apprentices Act, 1961¹⁷⁹ was further amended by Apprentices (Amendment) Act, 1973¹⁸⁰ to protect the rights of apprentice trainees.¹⁸¹ The Act prohibited undergoing apprenticeship training under 14 years.¹⁸²

Apart from the legislative measures undertaken by the Government of India, policies exclusively for welfare of children were framed. The National Policy for children¹⁸³ adopted in 1974 developed the idea that childhood and youth are to be protected against exploitation and that no child below the age of 14 shall be allowed to work in any factory, mine or any sort of hazardous works.¹⁸⁴

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

¹⁷⁹ *Supra* note i60

¹⁸⁰ Apprentices (Amendment) Act, 1973 (27 of 1973)

¹⁸¹ *Ibid* ss.13, 14, 15 & 16

¹⁸² *Ibid* s.3

¹⁸³ The National Policy for Children adopted by Resolution No.1-14/74-CDD dated August 22, 1974.

¹⁸⁴ *Supra* note 3 at 33-37

implementation and to tender opinion on remedial measures for improving the conditions of children.

The Committee, after extensive research and field study emphatically proclaimed that child labour is economically unsound, psychologically disastrous and physically and morally dangerous to the entire society as such. Analyzing that child labour deprived children of educational opportunities, hampered their growth both physically and intellectually and destined them to permanently low wages for their unskilled labour due to lack of vocational training, recommended that minimum age be prescribed and fixed at fifteen for entry into employment and existing laws amended accordingly and minimum education of at least up to elementary level be provided to children.¹⁸⁵

Considering the said recommendations and in a way to remedy the then existing situation, the Government of India deemed it fit to control and curb child labour in dangerous situations in hazardous industries and to regulate child labour in other non-industrial occupations and sectors. It was with this basic notion¹⁸⁶ that it enacted the Child Labour (Prohibition and Regulation) Act, 1986.¹⁸⁷

¹⁸⁵ *Supra* note 91 at 161-163

¹⁸⁶ *Supra* note 3 at 36-37

¹⁸⁷ Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986)

1.16. FACTORS CONTRIBUTING TO CHILD LABOUR IN INDIA

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

- I. ECONOMIC FACTORS
- II. SOCIAL FACTORS
- III. OTHER FACTORS

1.16.1. ECONOMIC FACTORS Economic Factors may comprise of poverty, insufficient income of parents, cheapness of child labour and non-implementation of Minimum Wages Act.¹⁸⁸

1.16.1.1. Poverty:

The most important cause of child labour is widespread poverty. India is still a developing country in which poverty thrives as a result of which parents are under compelling circumstances to send their children to some work or the other. Poverty is the result of unemployment or underemployment of adult members of the family which in turn pushes children into grave circumstances such as taking up jobs in non-hazardous or sometimes in hazardous establishments.¹⁸⁹

¹⁸⁸ *Supra* note 1 at 14

¹⁸⁹ *Supra* note 88

1.16.1.2. **Insufficient income of parents:-**

Inadequacy of wage of adult earning members of the family drives them to send their children to work. To fill this gap, children prefer any unskilled work and to some extent supplement the income of the adult.¹⁹⁰

1.16.1.3. **Cheapness of child labour:-**

Children can be engaged for more hours on payment of fewer wages. They are weak to bargain with employers and do not have any right to form trade unions. They do not retaliate. This condition of children puts employers in an advantageous position to even acquire profit from out of their services.¹⁹¹

1.16.1.4. **Non-implementation of Minimum Wages Act:**

In the organized sector, there are labour legislations laying down minimum wages, employers find it difficult to employ child labour at reduced or low wages.¹⁹² Though the statutes prescribe minimum wages, the employers with a view to evading the statutory minimum wage, adopt the mode of piece rate wage. In India, the Minimum Wages Act, 1948¹⁹³ provides for minimum time rate of wage, minimum piece rate of wages, guaranteed time rate of

¹⁹⁰ *Supra* note 48 at 203

¹⁹¹ *Supra* note 88 at 177-178

¹⁹² Bhagwan Pd. Singh & Shukla Mahanty (Eds.), *Children at Work Problems and Policy Options* 81 (B.R. Publishing Corporation, Delhi & Indian Society of Labour Economics, Patna, 1993)

¹⁹³ The Minimum Wages Act, 1948 (11 of 1948)

wages and overtime rate of wages for adults, adolescents, children and apprentices.¹⁹⁴ There is no fixed minimum rate of wages for payment to children. It not only varies from State to State but also from one occupation to another.¹⁹⁵

1.16.2. SOCIAL FACTORS: Some of the social factors contributing to child labour are enlarged families, child labour and fertility, increase in population, traditional education, illiteracy, school dropout and absence of Schemes for family allowances.¹⁹⁶

1.16.2.1. Enlarged families:

Large families with less income cannot provide their children with normal childhood by sending them to school. Instead, parents consider that the more the number of children in the family more will be the income to the family and send them to some sort of employment resulting in mushroom growth of child labour.¹⁹⁷

1.16.2.2. Child labour and fertility: A study conducted in four geographical locations namely Thanjavur, Anna, Madurai and Kamarajar districts in southern parts of Tamil Nadu shows that the existing socio-economic and demographic factors influence parental fertility. Families with non-working

¹⁹⁴ *Ibid* s.3

¹⁹⁵ *Supra* note 1 at 21

¹⁹⁶ *Id* at 23

¹⁹⁷ *Supra* note 88

fathers prove to have more fertility than regularly employed or working fathers. So is the case with mothers who are non-working.

The study revealed that 87 per cent of the families in Thanjavur had more than two children, 74 per cent in Madurai followed by 67 per cent in Anna and 62 per cent in Kamarajar district. The study further revealed that more the number of children in the families more were the child-labour practice. Thus fertility status of parents is very closely linked to child labour.¹⁹⁸

1.16.2.3. Increase in population:

One of the most critical problems the Nation faces is the rapid growth of population in 1991, India's population was 844 million and every year it increases by about 16 million. If the population increases at the same rate, the dependent children will become burdensome and the additional production and facilities would be consumed by the increased population while the quality of life of people will remain the same without any improvement. As a matter of fact, though in India, people adopted family planning, its reach is doubtful in remote and rural areas.¹⁹⁹

One of the demographic factors indirectly related to the problem of child labour is population grow rate. A simple correlation analysis of the variable,

¹⁹⁸ M. Sumangala & B.S. Nagarajan, Economics of Child-Labour and Fertility (Study of Peninsular India) 153,160-161(B.R. Publishing Corporation, Delhi, 1993)

¹⁹⁹ *Supra* note 1 at 24

population growth rate and (i) population per household, (ii) poverty (iii) percentage of children attending school in the age group of 5 to 9 years (iv) dropout rate at middle school suggests that States having higher population growth rate have the likelihood of higher child labour ratio.²⁰⁰

1.16.2.4. **Illiteracy:**

In India, there is a major sector of illiterate people, who regard schools as unnecessary and mere wastage of time and money. They do not realize that education is an effective tool to drive children away from work force. They fail to realize the long term gains of education and that is why they engage their children in some job or the other.²⁰¹

1.16.2.5. **Traditional education:-**

A very common justification normally given for child labour is that children by learning family traditional trade or crafts acquire skills of their traditional crafts.²⁰² In Indian society, there is a belief that children of particular caste should learn their parental occupation. The craftsmen prefer to transfer their traditional skill to their children and send them to get expertise from some organized establishments instead of sending them to schools. This attitude has in one way paved the way for child labour system in India,²⁰³

²⁰⁰ *Supra* note 192 at 67-68

²⁰¹ *Supra* note 65 at 57-58

²⁰² *Supra* note 47 at 13

²⁰³ *Supra* note 13 at 35

1.16.2.6. **School dropout:**

Child labour and non-schooling of children is common among poor sections of the society. Both go hand in hand. Though education up to 14 years is free, parents especially of rural and slum areas are not in a position even to bear the normal expenses such as books, stationery items, uniforms for their children. Parents primarily meet the basic needs of life and do not attach much importance to their children's education. They are not interested in putting their children in schools and even in case they put them schools do not want them to continue their schooling. Whenever they meet any financial crisis or constraint, the first thing they do is to stop their children's education. In the absence any sort of proper vocational training they are left with no alternatives but to choose some unskilled trades with no better scope for their future, which is nothing but child labour.²⁰⁴

1.16.2.7. **Absence of schemes for family allowances:-**

In India there are no schemes for family allowances or social security for the weak, poor and needy. Absence of such schemes or social security services renders children helpless, who enter avocations consequent upon

²⁰⁴ *Supra* note 1 at 27-28

death of their parents or any unforeseen events taking place. Thus they are compelled to enter labour market at very early stages in their life.²⁰⁵

1.17. OTHER FACTORS

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

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

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

²⁰⁵ *Supra* note 48 at 205

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

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

affected. Whatever a country may do for developing it, only if its people's attitude change, can there be improvement or upliftment.²⁰⁶

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

There are other factors contributing to growth of child labour. There are still prevailing in some families joint family system in which one member of the family alone would work for the whole family comprising of a number of members. There are also cases where the single bread-winner dies or meets with accident, the whole family is in grief with no member to earn. If there are children in the family they start seeking jobs in which they have interest.²⁰⁷

²⁰⁶ Katherine Cox, "The Inevitability of Nimble Fingers? Law, Development, and Child Labour" 32 Vand. J. Transnat'l L. 115 p.12-13

²⁰⁷ *Supra* note 50 at 69

1.18. NEED TO CONTROL CHILD LABOUR – A GROSS VIOLATION OF HUMAN RIGHTS:

India continues to host the largest number of child labourers in the world today. The Census 1991 showed that there were 11.3 million child labourers. The Census 2001 showed that there were 12.7 million economically active children between 5 and 14 years of age. In general workers are classified as main and marginal workers by the Population Census. Though the Census data depicts a picture of decline in the main workers from 4.3 per cent in 1991 to 2.3 per cent in 2001, Thus though there is decline in main workers from 9.08 million in 1991 to 5.78 million in 2001, the total number of children in work force increased. The increase is attributable to the increase in the marginal workers increasing from 2.2 million in 1991 to 6.89 million in 2001. This increase in the marginal workers shows the change in the nature of work done by children between 1991 and 2001 as main workers and marginal workers respectively.²⁰⁸

The aforesaid profile depicts that child labour as of now is an all-India evil, though its severity varies from one area to another. So, this issue has to be dealt with in all seriousness both by the Central Government and the State Governments.²⁰⁹

²⁰⁸ *Supra* note 83 at 1-2

²⁰⁹ Dr.Awasthi & Kataria (Eds.), Law relating to Protection of Human Rights 995 (Orient Publishing Company, New Delhi – Allahabad, 2nd edition, 2005)

According to the Convention on the Rights of the Child (CRC),²¹⁰ child labour is a denial of child rights. Right to education and access to recreation and to childhood itself is embedded in the Rights of the Child. The CRC devotes much greater attention to civil rights than to economic, social and cultural rights. While implementation of economic, social and cultural rights is subject to availability of resources, civil and political rights have corresponding obligations and progressive implementation of economic, social and cultural rights. The richness of any country is adjudged by the extent of resources utilized for addressing child labour effectively.

It is in this background that child labour is now considered in a humanitarian as well as human rights aspect. Child labour is therefore violation of civil and political rights or a violation of economic, social and cultural rights. All these rights are interrelated and therefore there is an urgent need to take effect steps to eradicate child labour – a serious violation of human rights.²¹¹

²¹⁰ *Supra* note 11

²¹¹ *Supra* note 14 at 93-94

CHAPTER 2
CHILD RIGHTS

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2.1. WHAT IS A RIGHT?

When reference is made to claiming of rights, what is to be claimed is access to resources necessary to acquire what people need. Rights are thus abstract acknowledgement of such claims. If one's claims are to be honoured, the rights acknowledging the claims have to be asserted.¹ In other words, rights provide legitimacy to campaigns, to pressure groups and help the disadvantaged group or individual or the ones excluded. Rights open the way to individuals who are at disadvantageous situations. In short, rights offer for an action. For otherwise, the excluded will have to request or beg or rely on those who are generous for getting things done but they cannot demand.²

Thus significance of rights is that without specification of rights in clear terms, only those who are very powerful or highly educated or influential or well-off would obtain all services readily and easily, whereas clearly established rights would empower the weak ones so that they may not be in disadvantaged position.³

¹ Lucy Williams (ed.), *International Poverty Law An Emerging Discourse* 34 (Zed Books, London/New York, 2006)

² Michael Freeman, "What's right with rights for children" 2 *International Journal of Law in Context* 89-98(2006)

³ B. Ramaswamy (ed.), *Child Human Rights Legal Perspectives* 48 (Anmol Publications Pvt. Ltd., New Delhi 2013)

2.2. WHY SHOULD THERE BE CHILD RIGHTS?

Childhood is a period of the greatest dependence and fullest innocence. Physical and mental development of the child takes place when it starts growing.⁴ This category of human beings requires care and protection, upbringing and emotional support owing to their physical and psychological immaturity. Childhood being formative phase in the earliest part of human life and being very vulnerable, should demand attention from adults for their growth and development.⁵

Thus, one section of persons who are ordinarily not aware of their rights and do not possess the resources to seek their enforcement are CHILDREN. But even among children there are some who, because of their having relatively better placement, enjoy the rights in greater measure as compared to their less fortunate brothers and sisters. There seems to be inequality even between the position of brothers and sisters, where brothers may be superior to that of the sisters both in law as well as in society. On the other hand, the children of parents who are at the lower income levels and social status are doubly disadvantaged and ultimately suffer. Whatever may be guarantees and declarations in law and policy, they are the first to suffer.⁶

⁴ Dr. Ashoka, Child and the Law 2 (Sudha Publication, Mysore, Karnataka, 2006)

⁵ Sudip Chakraborty, Food Security and Child Labour 23 (Deep & Deep Publications Pvt. Ltd., New Delhi 2011)

⁶ National Law School of India University, Report of a seminar on Rights of the Child (December, 1990)

Poor parents who do not have enough income to run their families depend on the wage of their children. They are under compulsion to send their children to work for wages. The problem of low wages of parents or adult workers contributes to child labour. The employer takes advantage of this situation which results in exploitation of child labour and sexual abuse of children in society.⁷ Education remains the privilege of only a few children. Children do not get nutritious food which is required for their growth and development. Health services provided to children are also not sufficient. They have to compete with elders for their basic needs of survival such as food, shelter and clothing.

It is in this type of situation that law is obliged to protect the weak against the strong in sharing the resources. No doubt, children are weak in an adult society and they need to be protected by law. The very nature of delivery of justice puts children's needs in jeopardy. Constant battle takes place between the weak and the strong in acquiring the resources. Practically speaking, protection is available only to those who seek it while children who are not even aware of their rights are not in a position to seek it or fight for it. It is in this sense that children deserve entitlements and preferential benefits for their development, and social policies and programmes delivered in recognition of which may be treated as rights.⁸

⁷ G.P. Mishra & P.N. Pande, *Child Labour in Glass Industry* 8 (A.P.H. Publishing, New Delhi, 1996)

⁸ *Supra* note 6

This apart, the view of all cultures is uniform that the younger the children, the more vulnerable they are, physically and psychologically, and the less they are able to fend for themselves.⁹ While people elsewhere in the world describe their childhood as a wonderful period, children in India, especially between the 5 and 14, find it as a harsh and unpleasant period. Fact remains that, these children, apart from not getting the basic necessities of life, are forced to work in the most inhuman and unhealthy conditions for paltry sums.¹⁰

Their workplace is such that they are exposed to serious health hazards. Children inhale wool fluff in the carpet industry or toxic fumes in the match and fireworks, or are exposed to intense heat in glass industries, exposed to silica which causes silicosis, which is a dangerous lung disease. Normally, workplaces which children are made to work are unhygienic, poorly ventilated and badly lit. They are often forced to work in an uncomfortable physical position. Above all, they do not even have the right to complain about the problems they face.¹¹

It therefore becomes the first obligation for any society to ensure immediate action for protection of children at work by prescribing safe working conditions. They have to be protected from any sort of hazardous condition that may affect their physical or mental development. Action must

⁹ Asha Bajpai, *Child Rights in India Law, Policy and Practice 2* (Oxford University Press, New Delhi, 2nd edn., 2006)

¹⁰ Garima Soni, "A Primer on Child Labour" From the Lawyers Collective 17 (May 2006)

¹¹ Deepak Miglani, "Compulsory Education and Child Labour" Legal News & Views 17 (Feb 2006)

be taken to ensure that they are not required to work at night or carry heavy loads. Their limited working hours and leisure should also be ensured.¹²

Therefore, obviously, child welfare is of supreme importance to mankind. A day would come when nations will be judged not by their military power or economic growth or strength or splendor of their capital cities but by well-being of the subjects, in respect of their health, nutrition and education, respect given to their civil and political rights and above all, by the protection afforded to their children.¹³

There is an urgent need for enhancing the expenditure on child protection. Only by doing so, rights of the children could be protected. Neglecting child protection issues would not only violate the rights of the children but would also increase their vulnerability to abuse and exploitation.

Constitution of India rightly recognizing the vulnerable position of children, in Article 15(3)¹⁴ guarantees special treatment to children through special laws so that their interests would be safeguarded.¹⁵

2.3. DEVELOPMENT OF THE CONCEPT OF CHILD RIGHTS:

The Geneva Declaration of the Rights of the Child 1924¹⁶, adopted by the fifth Assembly of the League of Nations, is the first international document

¹² Geetha Shrivastava, “Child Labour” XIII CILQ 55 (2000)

¹³ Dr. R.K. Sabharwal, “Child Labour-National and International Perspective” 3 S.C.J. 47(2001)

¹⁴ Article 15(3) Constitution of India

¹⁵ Bhanwar Lal Harish, “Child Labour: The Indian Scenario” 2 Lab IC 99(2007)

¹⁶ Declaration of the Rights of the Child, 1924, adopted by the fifth Assembly of the League of Nations

dealing with rights of children. The Declaration stipulates five principles that ensure that child must be given the means to develop both materially and spiritually, it should be fed when hungry, attended the first in times of distress, be put in a position to earn its livelihood and protected from exploitation and be brought up in the consciousness that its talent be dedicated to serve its fellow men.

The Declaration gains significance as it highlights the social and economic entitlements of children and establishes internationally the concept of child rights with a view to attaining acceptable standards of good health.¹⁷

Another remarkable event in the history of child rights can be traced to the establishment of United Nations Organization¹⁸ established at San Francisco on June 26, 1945.¹⁹ The members of the United Nations affirmed their faith in fundamental human rights along with dignity and worth of human persons in the United Nations Charter, 1945. In the said context, dignity and worth of human persons would also mean and include children.²⁰

The United Nations Organization adopted the Universal Declaration of Human Rights (UDHR)²¹ which provides that everyone is entitled to all the rights and freedoms set forth in the Declaration, which is again inclusive of

¹⁷Brenda M. Hoggett (ed.,) Social Work and Law Parents and Children 15 (Sweet & Maxwell, London 1981)

¹⁸ United Nations Organization established by way of the Constitutional document, namely United Nations Charter which came into force in 1945.

¹⁹ R.Swaroop, CHILD LABOUR Welcome Measures, Half-hearted Actions, 37,(ALD Publications, Hyderabad, 2008)

²⁰ *Supra* note 18 at 2

²¹ United Nations Organization adopted the Universal Declaration of Human Rights on 10th December, 1948.

children. The Declaration also recognizes several rights of children like right to life and personal liberty,²² prohibition of slavery, slave trade,²³ torture and inhuman treatment,²⁴ right to equality before law,²⁵ right to work and free choice of employment.²⁶

Similarly, the International Covenant on Civil and Political Rights, 1966²⁷ provides for necessary protection of child in case of dissolution of marriage between spouses²⁸ and right of the child to name and nationality.²⁹

Another landmark instrument in International law is the United Nations Declaration on the Rights of the Child 1959.³⁰ The said Declaration sets forth 10 principles. The Declaration ensures to children right to enjoyment of rights without any discrimination,³¹ right to special protection,³² right to name and nationality,³³ early childhood care for survival, growth and development,³⁴ special treatment for children with disabilities,³⁵ right to family environment,³⁶ right to free and compulsory primary education,³⁷ right to be the

²² The Universal Declaration of Human Rights, 1948 Article 3

²³ *Ibid* Article 4

²⁴ *Ibid* Article 5

²⁵ *Ibid* Article 7

²⁶ *Ibid* Article 23

²⁷ Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200-A (XXI) of 16th December, 1966 [Entry into force: 3rd January 1976]. Covenant acceded by India.

²⁸ International Covenant on Civil and Political Rights, 1966 Article 23

²⁹ *Ibid* Article 24

³⁰ Adopted on November 20, 1959 by the General Assembly of the United Nations

³¹ United Nations Declaration on the Rights of the Child 1959 Principle 1

³² *Ibid* Principle 2

³³ *Ibid* Principle 3

³⁴ *Ibid* Principle 4

³⁵ *Ibid* Principle 5

³⁶ *Ibid* Principle 6

³⁷ *Ibid* Principle 7

first to receive protection and relief,³⁸ right to protection against neglect, cruelty and exploitation,³⁹ and right to protection against discriminatory practices.⁴⁰

Another major highlight in the development of concept of child rights is that the United Nations General Assembly unanimously adopted Convention on the Rights of the Child (CRC) in 1989.⁴¹ CRC contains 54 articles dealing with rights of individuals less than 18 years of age⁴² to enable him or her to develop to his or her full potential, to enable him or her to be free from exploitation⁴³ and abuse.⁴⁴ The treaty is based on the principle that children have the right to benefit from out of it to secure his or her wellbeing and develop into responsible citizens. It protects not only the children's civil and political rights but also their economic, social and cultural rights. It emphasizes children to live in family atmosphere.⁴⁵

One of the most significant provisions in the CRC is Article 3. It prioritizes the right of children by stating that in all actions concerning children, the best interests of the child shall be primary consideration.⁴⁶ Likewise, Article 27 makes it obligatory on the part of the State to recognize that every child has a right to standard of living which would in turn ensure to

³⁸ *Ibid* Principle 8

³⁹ *Ibid* Principle 9

⁴⁰ *Ibid* Principle 10

⁴¹ Adopted on 20th November, 1989; Came into force on 2nd September, 1990; Government of India ratified the Convention on 11th December 1992.

⁴² United Nations Convention on the Rights of the Child, 1989 Article 1

⁴³ *Ibid* Articles 32, 36

⁴⁴ *Ibid* Article 19

⁴⁵ *Ibid* Article 9

⁴⁶ *Ibid* Article 3

him or her requisite physical, spiritual, moral, mental and social development.⁴⁷ So also Article 28 casts upon the State an obligation to recognize the right of every child to education and to that effect make primary education free and compulsory.⁴⁸ Article 32 casts an important obligation of every member state to recognize the right of the child to be protected from economic exploitation and from doing work of hazardous nature which may prove to be harmful to health of the child or in any way be detrimental to physical, mental, spiritual, moral or social development and to that end requires State Parties to provide for minimum age for admission to employment and to regulate hours of work and impose conditions of employment.⁴⁹ Article 35 requires all states to take appropriate steps to prevent abduction, sale or traffic in children for any purpose or in any form.⁵⁰

In the beginning of 20th century and even before the era of United Nations, certain principles of human rights were formulated. It is to be pointed out that those principles and aims already found place in the Constitution of the International Labour Organization (ILO), established as early as in 1919. The ILO's main aim was to ameliorate the conditions of working people around the globe⁵¹ and more particularly and much inclined to the abolition of child labour. The ILO's traditional approach to child labour being prescription of

⁴⁷ *Ibid* Article 27

⁴⁸ *Ibid* Article 28

⁴⁹ *Ibid* Article 32

⁵⁰ *Ibid* Article 35

⁵¹ Dipak Das, *Child Labour in India Rights, Welfare and Protection* 2 19-20 (Deep & Deep Publications Pvt. Ltd., New Delhi, 2011)

international labour standards through its conventions and recommendations,⁵² its role may be visualized in its very first convention in 1919 adopted for fixing minimum age for admission of children to industrial employment at fourteen years.⁵³ Its efforts to elimination of child labour system could be well traced from its conventions on minimum age, medical examination and night work.⁵⁴

Besides United Nations, ILO has been rendering yeoman services at global level towards eradication of child labour. According to the Constitution of ILO, Labour is not a commodity. ILO emphasizes that all human beings irrespective of race, creed or sex have the right to pursue both material well-being and spiritual development in conditions of freedom, dignity and economic security and equal opportunity.⁵⁵ It would not be out of place to mention that even the Geneva Declaration of the Rights of the Child, 1924⁵⁶ was the outcome of initiation of the ILO through “Save the Children Fund International Union” which promulgated certain rights of the child therein.⁵⁷

2.3.1. Minimum Age Convention The ILO, after adopting the first instrument setting the minimum age for admission to employment at 14 for industry,⁵⁸ at its subsequent sessions adopted various other conventions and recommendations fixing minimum age standards for admission to employment

⁵² *Supra* note 3 at 141

⁵³ The Minimum Age (industry) Convention (No.5) adopted by the ILO in 1919

⁵⁴ M.P. Shrivastav, *Child Labour Laws in India* 13 (Law Publishing House, Allahabad, 1st edn, 2006)

⁵⁵ P.K. Padhi, “Child Labour: Yesterday, today and tomorrow” 2 LAB. I. C 180 (2004)180

⁵⁶ Article 24 Constitution of India

⁵⁷ *Supra* note 58 at 20

⁵⁸ *Supra* note 60

in various sectors of economic activity. In 1973, the ILO adopted Minimum Age Convention⁵⁹ so as to apply to all sectors in general with a view to achieving total abolition of child labour and gradually replacing the existing conventions meant for limited sectors. The Convention provides that each member State should pursue a national policy to ensure effective abolition of child labour and to progressively raise the minimum age for admission to employment which would be consistent with the fullest physical and mental development of children. The Convention fixes the minimum age for entry into employment at 15. However, in exceptional circumstances it also provides for reduction in the age.

This Convention contemplates that Member countries while fixing the minimum age at levels higher than the age prescribed by the earlier Minimum Age Conventions should ensure that in no case, while so fixing, be less than 15 years.

The ILO adopted Recommendation No.146⁶⁰ in the same Session in which Convention No.138 concerning the Minimum Age for admission to Employment⁶¹ was adopted. The purpose of the recommendation is to ensure

⁵⁹ Convention No.138 of 1973 concerning Minimum Age for Admission to Employment adopted in its 58th Session held at Geneva on 6th June, 1973.

⁶⁰ ILO adopted Recommendation No.146 in its 58th Session held on 6th June, 1973 in which C.138 concerning the Minimum Age for admission to Employment was adopted.

⁶¹ *Supra* note 66

abolition of child labour effectively and to raise the minimum age for entry into employment gradually.⁶²

The ILO, in its eighty-seventh session in Geneva in June 1999, passed the Immediate Abolition of the Worst Forms of Child Labour Convention.⁶³

This Convention urges the ratifying member states to take immediate steps to prohibit and eradicate the worst forms of child labour, may it be slavery, forced labour, use of children for prostitution, pornographic performances, trafficking of narcotic drugs or whatever activity that may deteriorate the health, safety or morals of children.⁶⁴

With a view to providing protection to children, the ILO, apart from Minimum age conventions, adopted a number of Conventions in respect of children and young persons, namely, those concerning medical examination of children and young persons and the other concerning children and young person's working at night.

2.3.2. Medical Examination Conventions:

The ILO adopted Convention No.16⁶⁵ which provides for medical examination of children and young person's employed at sea. It also adopted Convention No.73 providing for medical examination of Seafarers which applies to every sea-going vessel but not applicable to vessels less than 200

⁶² Prof. Ahmedullah Khan, Commentary on the International Labour Organization and the Indian Response 142(Asia Law House, Hyderabad, 2005)

⁶³ Convention No.182 of 1999 concerning Worst Forms of Child Labour, adopted in its 87th Session held at Geneva on 1st June, 1999.

⁶⁴ Sunil Deshta & Kiran Deshta, Law and Menace of Child Labour, page 162, Amnol Publications Pvt. Ltd., New Delhi, First edition 2000

⁶⁵ ILO adopted Convention 16 in 1921

tons gross register tonnage, wooden vessels of primitive built and fishing vessels.⁶⁶It further adopted Convention No.77 which provides that children under 18 years and 16 years in case of India shall not be employed in industrial undertakings unless they are found fit after medical examination.⁶⁷ILO also adopted Convention No.124 providing for annual medical examination for all persons below 21 years of age as to their fitness for working in underground mines.⁶⁸

2.3.3. Night Work Conventions:

The ILO adopted Convention No.6 relating to night work of young persons in industry. It provides that young persons under 18 years of age should not work during night in any public or private industrial undertakings.⁶⁹ The ILO also adopted Convention No.79 concerning restriction of night work of children and young persons in non-industrial sectors. This includes all occupations like agricultural, maritime occupation etc., other than industrial ones.⁷⁰It also adopted yet another Convention No.90⁷¹ relating to night work of young person's working in industries. This Convention partially modifies Convention No.6 of 1919.

⁶⁶ ILO adopted Convention No.73 in 1946

⁶⁷ ILO adopted Convention No.77 in 1946

⁶⁸ ILO adopted Convention No.124 in 1965

⁶⁹ ILO adopted Convention No.6 in 1919

⁷⁰ ILO adopted Convention No.79 in 1946

⁷¹ ILO adopted Convention No.90 in 1948

2.4 EVOLUTION OF RIGHTS OF THE CHILD IN THE INTERNATIONAL ARENA:

In any society, child labour relates to the status of the children, their rights and privileges. The existence of child labour and its number therefore vary from one society to another. It is universally accepted that protection of children against exploitation is essential for their physical and mental-development. However, each country views child labour differently and, accordingly, the extent of protection of children against exploitation may vary from one country to another.⁷²

In Birmingham, Britain, children ranging from 10 to 16 work in abject conditions. In the United States of America, most of the child workers are engaged in agriculture, a major portion of them are from immigrant families. Thus child labour may be concentrated in developing countries and it is certainly not confined to the developing countries alone.⁷³

2.4.1. EVOLUTION OF CHILD RIGHTS IN BRITAIN:

A link between rights and work of children came to be established in the 1830s in the industrial revolution in Britain.⁷⁴ Britain served as the cradle of industrial revolution. During the said period, the needs of the employers for working in their factories increased manifold. At the same time, the needs of

⁷² *Supra* note 71 at 60

⁷³ *Supra* note 3 at 134

⁷⁴ Burns H.Weston (ed.), *Child Labour and Human Rights* 55(Lynne Rienner Publishers, Colorado/UK, 2005)

the families seeking employment for increasing their family incomes also increased. This gave rise to controversy between the familial interest and the interest in improving the prospects of their children.

According to contemporary observers, child work was viewed as one which would benefit children. Child labour as such has travelled nearly for more than half a century. Moreover, with the increase in the quantum of child labour, their exploitation also increased. Existence of child labour for such a long period and increase in the exploitation of children brought in the minds of critiques, a new revolutionary perception of childhood in 1830s- who argued that children had right to childhood and had a right to enjoy it.

The rights of children began to be voiced in the early 19th century from out of the enlightened revolutionary period. Ever since then, childhood was perceived as a time meant for growth and play. There was an “order of nature” by which family should provide for the fledging children. To the contrary, the order of nature was found to be reversed in the cotton factory.

This resulted in mass movement of protest in opposition to child labour held at the Castle Yard in York on April 24, 1832. Thousands of men, women, and children walked about twenty to fifty miles from factory districts for participating in the protest and heard speeches in dire weather condition for five hours. Another such meeting was held in Manchester wherein one hundred thousand persons gathered and raised their voices to draw the attention

of the press and representative assemblies demanding control of child labour by civil servants.

Many writers, following Elizabeth Barret Browning's famous poem "The Cry of the Children" were to claim to give voice to children, but few listened to children and recorded what children said. Thereafter in 1830s and 1840s by contrast, children were heard. Added to this, was the robust statement of Lord Macaulay in 1848 calling children as those who cannot protect themselves. He further asserted that children had a right not to work.⁷⁵

2.4.2. EVOLUTION OF CHILD RIGHTS IN THE UNITED STATES:

Opposition to children's rights dates back to the 13th century and earlier. The opponents believed that young people have to be protected by adult-centric world and that they are to be bound only by decisions and responsibilities of that world. They considered childhood as a time of innocence and play and free from responsibility. The opposition mainly emanated from national sovereignty, States' rights, parent-children relationship, financial constraints, and view that traditional values opposed children's rights. Amidst such situation, the concept of children's rights received little attention.

It was in 1796, in the United States, with the publication of Thomas Spence's Rights of Infants, the earliest in English literature concerning rights of children that the concept of child rights came to be asserted.⁷⁶ Rights of the child could yet be traced back to the juvenile court movement in the late 1800s

⁷⁵ Id. at 59-62

⁷⁶ *Supra* note 3 at 8-9

which gave to the children the positive right of being rehabilitated instead of being punished for offences they committed. Likewise, since 1912, in the United States, children had been entitled to certain positive rights to welfare services under federal law.⁷⁷

Following this, the strive for rights of children is traceable to the entire 20th century in which child rights activists organized for homeless children's rights and public education. In 1927, with the publication of *The Child's Right to Respect* by Janusz Korczak, literature concerning the field got strengthened. Dozens of international organizations are presently work for promoting rights of children.⁷⁸

Also mention will have to be made of non-governmental organizations which played a significant role in giving shape to rights of children. At the outset of 20th century, some British women in Cambridge surveyed the charitable societies which then existed to assess the protection provided to children. They worked throughout the First World War⁷⁹ sensitizing people about the plight of children in the war affected areas. It was they who founded the "Save the Children" movement which paved the way for recognition of the rights of the child in the League of Nations.⁸⁰

The evolution of child rights in the American history is also attributable to two principal children's movements, namely, the first, led by the

⁷⁷ Laurence D. Houlgate, *The Child & the State* 18-19 (The Johns Hopkins University Press, Baltimore and London, 1980)

⁷⁸ *Supra* note 3 at 5 (see Chap I)

⁷⁹ 1914-1919

⁸⁰ S.P. Gomango, *Child Labour A precarious Future* 150 (Authorspress, Delhi 2001)

Progressives which took place from a decade or more towards the end of nineteenth century up to the first two decades of the twentieth century and the second, which took place in 1960s commonly known as children's rights movements.

2.4.2.1 The Progressives consisted of social activists having long list of social reforms for children. They drew the attention of the State to the needs of children. Thus the American society shifted its understanding of children's well-being from mere parental responsibility to the extent of compelling State responsibility as well. Before such achievements by the Progressives, children's work was unregulated and they could work as long as the parents wished them to work. The aspect of protection to children was unknown and absent and it was simply the execution of will of the parents.

Thus modern society recognizes that it is the duty of the State to provide the child with free education. But the Progressives won the battle amidst several oppositions raised by parents themselves who stated that their rights of child-rearing were taken away. They even opposed to proposed legislation regulating child labour and establishing compulsory education for children. In 1918 the United States Supreme Court in *Hammer v. Dagenhart*⁸¹ declared the first child labour restriction law unconstitutional. At that time, the Court was at its peak of power and the Justices were themselves not in agreement with the social legislation enacted by Congress. Thus, there was a struggle between the Court and Congress as to who is more powerful over the other in matters of

⁸¹*Hammer v. Dagenhart*, 247 U.S. 251 (1918)

altering the legal landscape of the United States, which lasted up to the late 1930s.

Twenty years later when the fight between the Court and Congress was over, the Court upheld the 1938 Fair Labour Standards Act,⁸² which broadly regulated child labour. Another achievement of the Progressives is the creation of juvenile court. Progressives believed that such court would be child friendly to see why the child did a particular act instead of seeing what it actually did.

2.4.2.2. The 1960s and the beginning of the Modern Children's Rights Movement

The current world of children's rights is the outcome of the 1960s remarkable period of protests and activism. The only view of the activists of this period was that children are not treated equal to that of adults and that treatment denied to children their right to full humanity. They even went to the extent of finding fault with the very constitution of juvenile court. The success of the Progressive rests on the fact that, amidst all such protests by 1960s children rights advocates, all children were in schools. The child rights advocates of 1960s argued that it was an intervention on children's lives.

The 1960s children's rights advocates succeeded in 1967 when the Supreme Court decided what even today remains as the most significant case regarding children's rights in the history of the United States. *In re Gault*⁸³, the Supreme Court declared unconstitutional most of the practices of juvenile

⁸² Fair Labor Standards Act of 1938 (FLSA) 29 U.S.C. 201 et. seq.,

⁸³ *Re Gault*, 387 U.S.1, 13 (1967)

court. The Court held that the juveniles have got many procedural rights under the Federal Constitution and that they ought to exercise such rights. One ultimate result of the *Gault's* case is that, before 1960 children's representation in courts was unknown and if at all represented, it was only representation of parents of delinquents through lawyers. The 1960s strength lies in the fact that it gave rise to large number of children's rights advocates, it was expected that courts should give relief and the period was marked by a great shift from merely 'need' based attitude and approach to one of 'right' based. This shift was even manifested in the language of 1970 White House Conference⁸⁴ on children.⁸⁵

Developing countries of South Asia, Latin America and Africa show a high incidence of child labour, with Tanzania showing a peak of 29.9 per cent. To an extraordinary extent, child labour is found to be highly concentrated in Asian, African and Latin American countries. In so far as Asian countries are concerned, Philippines roughly has 2.7 million children working as full-time workers and if part-time child workers are added, the total child labour in the Philippines would range from 3 million to 8 million depending on the definition of child labour in the Philippines. There exists child labour in the

⁸⁴ Martin Guggenheim, *What's Wrong with Children's Rights* 8 (Harvard University Press Cambridge, Massachusetts and London, England 2005) cites White House Conference source of which is from Rochelle Beck, "White House Conferences on Children: A Historical Perspective," *Harvard Educational Review* 43 (1973):653, 662

⁸⁵ *Id.* at 1-8

Philippines, in almost every sector. Brazil having the greatest number of working children also gains significance for study as Latin American country.⁸⁶

Child labour being a thorough manifestation of the violation of the rights of children, especially, to education and development⁸⁷ and the problem having assumed serious dimensions to the extent that their continued and widespread engagement in work will ultimately result in denial of their basic rights,⁸⁸ study of the rights in the said countries becomes important.

2.4.3. EVOLUTION OF CHILD RIGHTS IN TANZANIA

Tanzania which became independent in 1961 pursued a mixed economy in which both the private sector and a centrally planned economy coexisted. The economic and social transformations by way of Poverty Reduction Strategies since independence have had and continue to have a significant bearing on realization of child rights especially in the areas of education and health. A large number of children from poor and non-poor households had access to education. Deteriorating economic conditions and consequent economic reforms carried out in the mid-1980s and 1990s reversed some of the social gains received from out of education and health for the poor. However, Tanzania continued its Poverty Reduction Strategy.

⁸⁶ *Supra* note 3 at 134 to 136

⁸⁷ Thomas Paul, "CHILD LABOUR-PROHIBITION v. ABOLITION: UNTANGLING THE CONSTITUTIONAL TANGLE" 50 JILI 151 (2008)

⁸⁸ *Supra* note 3 at 136

With the abolition of the universal primary education fee and campaigns facilitating enrolment of primary school-aged children, enrolment of children increased.

However with the economies creating differences in income and non-income poverties between urban and rural areas and across the country and with employment not keeping pace with the macroeconomic performance, unemployment increased from 3.6 percent in 1990-1991 to 5.1 percent in 2000-2001. This situation in Tanzania had every probability of engaging children from poor households to bear with grinding poverties, causing migration of children to economically active areas even losing parental and community support against economic exploitation.

In this situation, child labour became a major issue in Tanzania which was viewed only in the socio-economic context. It is only with the coming into effect of Universal Declaration of Human Rights (UDHR),⁸⁹ in 1948 and its universal acceptance in the wake of World War II and grief of the Holocaust forming the basis for the states for such acceptance, that child labour in Tanzania came to be viewed in the human rights angle.

Article 22 of the Universal Declaration of Human Rights (UDHR)⁹⁰ states that everyone, as a member of society has the right to social security and is entitled to realization through national effort and international cooperation and in accordance with the organization and resources of each state, of the

⁸⁹ *Supra* n. 28.

⁹⁰ *Id* Article 22

economic, social and cultural rights indispensable for his dignity and free development of his personality. It is therefore implied that poverty goes beyond the confines of income and contributes to deprivation of basic capabilities, freedom and other fundamental human rights. This understanding of the concept of human rights attributed to a great shift in attitude towards a rights-based approach to development, characterized by a combination of equitable and distributive processes, resource allocations, participatory decision making and effective justice system. This could be carried out only if quality social institutions are available, in the absence of which poverty would continue to exist as an obstacle in fulfilling the basic and fundamental human rights. Obligation is thus cast upon States to ensure that all its people get their allotments in basic social services sufficiently distributed by interplay of various institutions such as families, communities, markets and the State itself.

If the fundamental human rights are to be made available to everyone, the first step would be the recognition that children have rights and that children's development solely rests and depends on the effective implementation of such rights. Accordingly, in Cairo in May 2001, a decade after the adoption of the 1989 Conventions on the Rights of the Child (CRC),⁹¹ the Pan-African Forum for Children arriving at a consensus with the rights of the child contained therein drew upon the 1990 African Charter on the

⁹¹ *Supra* note 48

Rights and Welfare of the Child.⁹² This in content and essence reflected the principles and objectives of the CRC.

The African Charter⁹³ was adopted by the member States of the Organization of African Unity, (OAU),⁹⁴ of which Tanzania was a member. It consists of thirty-one articles encompassing all issues regarding children such as protection, survival, recreation, education, freedom of thought, expression, all of which rights were not available to African children due to strange factors relating to their socioeconomic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and resultant hunger. It calls upon all member States to make legislations in consonance with rights of children and the relevant provisions of the International Labour Organization relating to children.

It is also worth mentioning that Tanzania is a party to the 1999 ILO Convention (No.182)⁹⁵ Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour.⁹⁶

⁹² The African Children's Charter is the first comprehensive regional children's rights treaty specifically dedicated to children in Africa. African Charter on the Rights and Welfare of the Child (1990) OA doc CAB/LEG/24.9/49.

⁹³ The African Charter was adopted in 1981 by the 18th Assembly of Heads of State and Government of the Organization of African Unity (OAU), the official body of African states. It is also known as the Banjul Charter because a final draft was adopted in the capital of the Gambia, Banjul. The charter entered into force on October 1986 upon ratification by a simple majority of member states of the OAU.

⁹⁴ OAU – Organization of African Unity, the Official body of African states

⁹⁵ Convention No.182 of 1999 concerning Worst Forms of Child Labour, adopted in its 87th Session held at Geneva on 1st June, 1999.

⁹⁶ Burns H.Weston (ed.), Child Labour and Human Rights 169-176 (Lynne Rienner Publishers, Colorado/UK, 2005)

The efficiency of the African Union (AU)⁹⁷ to carry out the goals set by the international community through treaties adopted under its auspices depends on two interrelated factors, namely the political will of the member States and their capacity to translate the terms of the treaty undertaken into binding norms.

The ratifications of each and every Member State are assessed by the actual number of treaties signed by it in terms of percentage. According to the said analysis, 18 countries score high positive ratification-signature correlation ratios (85 per cent and above). Tanzania falls within this high score category obtaining 95 per cent. The presence of major regional powers in the said list such as Algeria, Nigeria, Senegal, South Africa and Tanzania will seemingly establish a demonstrable link between high ratification-signature correlation and the relative size and economic, diplomatic and political power of the member state. But that presumption may not always be true, for some member states though classified in the high correlation category such as Lesotho (85%) are not major regional power. Correct conclusion could be that member States in the high correlation category are particularly dedicated to some policy areas which inform their choices. The prevalence of major powers in the high correlation category may be taken to be the desire of the States to lead by

⁹⁷ The African Union (AU) was established by the Constitutive Act of the African Union, opened for signature 11 July 2000, 2158 UNTS 3 (entered into force 26 May 2001) ('Constitutive Act'). The Constitutive Act was adopted by the Assembly of Heads of State and Government of the Organization of African Unity ('OAU') on 11 July 2000 in Lome, Togo, to replace the OAU. The Constitutive Act entered into force on 26 May 2001, but under the terms of article 33, the OAU continued in existence for a transitional period, until the formal inauguration of the AU in Durban, South Africa, on 9 July 2002. All 53 previous member states of the OAU are members of the AU.

example in the policy areas or present themselves as regional or continental leaders. These regional powers tend to possess better technical capacity required for treaty negotiation and ratification.

Ratification of a treaty by some States on the basis of their dedication and commitment to a particular policy, may act as motivation for other States to ratify the same with a view to aligning themselves with the treaty norm and avoiding being branded as outliers. This is mostly true of international human rights treaties where the States, by ratifying the treaties, try to express a political position. This position is evident from the fact that African Union member States while expressing greater willingness to sign and ratify United Nations treaties on certain policy matters, are reluctant to sign and ratify OAU/AU treaties dealing with more or less the same subject matter in spite of having participated in the negotiation and adoption of the latter.⁹⁸

Likewise, while Article 31 of the African Children's Charter⁹⁹ deals elaborately with duties of the child, Article 29(1) of the Universal Declaration of Human Rights¹⁰⁰ states that everyone has duties to the community in which alone the free and full development of his personality is possible and does not codify these duties in detail. While critics suggest that the provisions of the African Children's Charter¹⁰¹ prescribing in detail the responsibility of the child are redundant, vague and open to misinterpretation, indirectly licensing

⁹⁸Tiyanjana Maluwa, "Ratification of African Union Treaties by Member States: Law, Policy and Practice" 13 *Melbourne J. of Int'l Law* 636

⁹⁹ *Supra* note 94

¹⁰⁰ *Supra* note 28

¹⁰¹ *Supra* note 94

harmful practices violating child rights, it is argued that they have misconceived the spirit and intention of the drafters as well the actual text of the provisions. Actually speaking, Article 31 is a valuable addition to the international human rights agenda.¹⁰²

From the Chart of Ratification of OAU/AU Treaties in Force as on 31 December 2011, Tanzania did not sign and ratify the African Children's Charter.¹⁰³

2.4.4. EVOLUTION OF CHILD RIGHTS IN PHILIPPINES

In Philippines, the crisis of child labour is fought only by rights-based approach which has been inculcated in the minds of Filipino children. The country's Governmental and non-governmental Organizations are now putting the Filipino children's child labour issues within the framework of child rights.

Originally, program initiatives supporting child rights and opposing child labour in the Philippines was led only by adults. Their task is nowadays increasingly done by children. They involve in organizing themselves and they become their own advocates.

It is also interesting to note that the Philippines also utilizes the resources and financial support of the International Labour Organization (ILO) and the United Nations Children's Fund (UNICEF) and other international donors for carrying out the nation's extended programs.

¹⁰² J. Sloth-Nielsen, "A Dutiful Child: The Implications of Article 31 of the African Children's Charter" *Journal of African Law*, 52, 2 (2008), 159-189

¹⁰³ Tiyanjana Maluwa, "Ratification of African Union Treaties by Member States: Law, Policy and Practice" 13 *Melbourne J. of Int'l Law* 636

Participation of youth in the Philippines in raising voice against sexual exploitation of children is reflected in a 2000 report titled Proceedings: Changing Our Lives-International Conference on Young People's Participation Against Commercial Sexual Exploitation of Children. During a national conference in October 1999, they drew up their own youth plan of action realizing the increased incidence of child abuse and sexual exploitation.

In the Philippines, a number of non-governmental organizations join together to conduct workshops on child labour. One of such workshops was conducted in September 2002 in southern Mindanao. The workshop was organized by two important Non-governmental organizations to make all the children of commercial plantations, with a view to uniting them, and creating net-work among themselves and sharing their experiences in their respective work places and the rights they have as children.

The insight of children regarding child rights is seen from the fact that children who participated in the Bangkok children's forum modified the language constructed by adults-"most intolerable forms of child labour" as "unacceptable forms of child labour".

One more progressive step toward improving child rights is that, the Government of Philippines, ten years after its having ratified the United Nations Conventions on the Rights of the Child¹⁰⁴ in 1990, with a view to

¹⁰⁴ United Nations Convention on the Rights of the Child, 1989

implementing the Convention in all seriousness, entered into an agreement with UNICEF to call “Child-Friendly Movement.”

As an outcome of the Philippines-UNICEF Agreement and on the basis of the 1987 Philippine Constitution,¹⁰⁵ a programming context of children’s rights, the Philippines Plan of Action for Children for the Year 2000 and Beyond,¹⁰⁶ and the Philippine Child and Youth Welfare Code¹⁰⁷ were invoked. The Code defines the rights of children, rights and liabilities of parents and role of institutions such as community, religious institutions and schools in promoting welfare of Filipino children.¹⁰⁸ The Code also recognizes special categories who require immediate, rehabilitative and development services to be provided in collaboration with established institutions such as Councils for the Protection of Children etc.¹⁰⁹ In the agreement between the Philippines Government and UNICEF, the Social Reform and Poverty Alleviation Act R.A. No.8425¹¹⁰ was cited. The Act provides for adoption of area and sector based interventions for poverty alleviation empowering every Filipino family to meet its basic requirements, such as food, nutrition, health, water, sanitation, income security etc.¹¹¹

All these apart, local governments and municipal governments in Philippines readily come forward duly framing policies for children and to

¹⁰⁵ Constitution of the Republic of Philippines (1987), art.II (Declaration of Principles and State Policies”), sec.13; art.XV (“The Family”), sec.3

¹⁰⁶ Government of the Philippines, Philippine National Plan of Action for Children

¹⁰⁷ Philippine Child and Youth Welfare Code.

¹⁰⁸ *Ibid.*, art.1 (Declaration of Policy”); art.3 (“Rights of the child”)

¹⁰⁹ *Ibid.*, chap.2, sec.A, art.87.

¹¹⁰ Philippine Social Reform and Poverty Alleviation Act.

¹¹¹ *Ibid.*, sec 4

great extent help Philippines in carrying out the directives of the CRC. Children also take part in local children's plans and budgeting.

Another highlighting factor in the Philippines is that the Non-governmental organizations make the children participate in great events and occasions such as the 1995 National Anti-Poverty Summit and create separate Children's Basic Sector within the National Anti-Poverty Council (NAPC). The Non-governmental organizations also help promoting children's rights by obtaining funds from the US Agency for International Development (USAID) for their various projects. The Non-governmental organizations act as support groups to the children's coalition.

By 2001, awareness of children regarding their rights was very high. According to Filipino children, their rights are very much respected and their role as child rights advocates is very significant. In the Philippines, children feel that they are heard and that the idea of children having rights is only gradually being accepted and acknowledged.¹¹²

2.4.5. DEVELOPMENT OF CHILD RIGHTS IN BRAZIL

The Brazilian Constitution¹¹³ emphasizes protection of children's rights. The intention of the Brazilian society is portrayed in the 1988 Federal Constitution which mandates realization of the rights of children as a matter of

¹¹² *Supra* note 81 at 198-201

¹¹³ The Brazilian Federal Constitution of 1988

priority.¹¹⁴ Laws also provide that children shall be given top priority on public resources.¹¹⁵ Despite such legal protection given to children in all respects including prohibition of child labour, in practice, it continued to be tolerated by the Government, nonprofit organizations and grass root movements until the mid-1980s.

In the 1970s Brazil was under Military dictatorship. Though Child rights movements in Brazil started at the early part of 1980s, the seeds were sown during the military regime in 1970s. Therefore the development of rights of children in Brazil has to be ultimately traced from the 1970s which took place in several phases as follows.

2.4.5.1. The 1970s: Military dictatorship.

The 1970s for Brazil was a period of both economic growth as well as democratic reversal in the sense that social and popular movements were utterly dismantled by the military regime. In the mid-1970s, the efforts of the military to modernize the country not only proved futile but also brought in social inequalities widening the gap between rich and poor and increasing disparities among different areas thus resulting in high infant mortality rate, decreased life expectancy, entry of children into labour market and living on the streets.

¹¹⁴ Article 227: It is the duty of the family, the society and the state to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence and oppression.

¹¹⁵ Enakshi Ganguly Thukral (Ed.,) Every Right for Every Child Governance and Accountability 250 (Routledge Taylor & Francis Group New Delhi 2011)

For the first time, the military categorized young persons as children and adolescents, officially recognizing them as two systems and providing them social policies especially in areas of health and education.

2.4.5.2. The 1980s: Initiation of children's rights movement.

The 1980s witnessed relief from military regime but economically witnessed disastrous cycles of inflation. However, this period was marked by legal advances which proved to be positive and significant. It was in this phase that many social movements including children's rights movement sprang up. It is also to be pointed out that all these developments in the form of social movements were resultant of indignation toward violence against children and adolescents. The movements were thus born from out of the sense that the violence against the young persons was violation of their human rights. A few years later this movement incorporated child rights agenda explicitly and this took place in two phases.

2.4.5.3.1980–1984: Gestation phase-the movement of community alternatives

Between 1980 and 1984, various programs emerged for welfare of minors, especially of street children. The programs were modeled on community perspective with special concern for services in the areas of health, nutrition, education, work and leisure which had in common an underlying philosophy that child should be considered a subject of pedagogical process, and not merely an object in the policy making processes. During this period, the

UNICEF (United Nations Children’s Fund), the National Foundation for the Welfare of Minors (FUNBEM) and Social Action Secretariat of the Ministry of Social Security and Action developed a Project known as ‘Alternatives for Care of Street Children Project’ and took up such other programs on the same model during the 1980s for welfare of children.

2.4.5.4. 1985-1989: National organizations set and develop the rights paradigm

In the course of mobilizing the alternative programs, Brazilian Movement of Street Boys and Girls was formed followed by formation of other networks in 1985 at national level. For quite some time in 1985, there was in existence the National Front for the Defence of Children’s Rights comprising of progressive officials of municipal administration. National Bishops’ Conference set up its own network modeled on the original Sao Paulo established in 1978. From this time onwards, the movements broadened, extending their activities with inclusion of new participants and creation of coalitions coordinating their efforts.

Permanent National Form of Nongovernmental Organizations in Defence of Children’s Rights, popularly called the DCA, was created as the main national coalition. It concentrated mainly on two agendas, namely, combating violence against children and pressurizing Congress to include children’s rights in the 1988 Brazilian Constitution.¹¹⁶ The DCA succeeded in

¹¹⁶ *Supra* note 114

its efforts in incorporating articles for protection of children's rights into the Constitution. As regards its efforts to combat violence against children, it succeeded in its task employing the tool of human right norms and strategies. The DCA's another major achievement is the approval of the ECA statute,¹¹⁷ which is nothing but the national version of 1989 Conventions on the Rights of the Child. From this moment, the guiding philosophy was "the child as a subject of rights." Thus, in Brazil, ever since then, children legally acquired right to have rights.

2.4.5.5. The 1990s: From the alternative to the alternative- the building of new forms of institutionalism and redesigning of social policies for children

This phase experienced a stable currency with low inflation at the cost of social policies. This phase was marked by continuous inflow of new actors from private sector and foundations linked to private corporations which were involved in the social movement on children's behalf. They espoused the rights of children. This rights paradigm contributed to great shift in attitude, entirely different from that of the earlier charitable and philanthropic organizations'. This broad social movement mainly aimed at implementation of the ECA statute. The task being huge, it warranted creation of new institutions such as Child and Adolescent Rights Councils and Children's Guardianship Councils each of which was assigned the role of designing and monitoring social policies for Brazilian children. The implementation of the

¹¹⁷ The Statute of the Child and Adolescent-ECA (Law No.8069) in 1990

ECA statute therefore paved the way for shift in the movement's focus from national to local level, fact being that it has to be implemented by states and municipalities.

By mid-1990s, Brazil focused its attention at the national level for combating three specific forms of violations of children's rights, namely, child labour, child prostitution and the treatment of adolescents in conflict with law. Child-protagonism (Children as political actors) became a part of the children's rights movement. Construction of children as political actors is certainly one of the greatest conquests for children in the last century.¹¹⁸ Developments in Brazil are evident from the fact that as early as in 1989, in Porto Alegre, the capital of the State of Rio Grande do Sul, children had participated in budgeting, which had direct bearing on the quality of life of children, for instance, reduction of mortality rate of infants from 20 to 12 deaths per 1000 live births. Likewise, about 200 Brazilian cities have made remarkable achievements in providing access to basic social services adopting similar strategies.¹¹⁹

2.5. CONTRIBUTION OF HUMAN RIGHTS CONVENTIONS AND CONVENTIONS OF THE INTERNATIONAL LABOUR ORGANIZATION

It is only with the adoption of the United Nation's Convention on the Rights of the Child that children's human rights came to be recognized or even addressed separately, based on the recognition of citizenship rights of children.

¹¹⁸ *Supra* note 81 at 214-215

¹¹⁹ Enakshi Ganguly Thukral (Ed.,) *Every Right for Every Child Governance and Accountability* 28 (Routledge Taylor & Francis Group New Delhi 2011).

Indeed, it would not be wrong to state that is also with the requirement of reporting on the general measures of implementation as part of the countries' reports to the UN Committee that special attention began to be paid to governance for children. Although most societies may have informal mechanisms for children's participation, the recognition of children's own agency and their right to be heard in decisions concerning them came to be openly discussed and addressed following the United Nations Convention on the Rights of the Child.

But even much earlier the Geneva Declaration on the Rights of the Child, 1924 adopted by the League of Nations, was the first convention in which the right of the child were considered. In 1945, the members of the United Nations affirmed their faith in fundamental human rights and dignity and worth of human beings in various provisions of the UN Charter. It is to be noted that the dignity and worth of human being stated there also includes children. Following this, the Universal Declaration of Human Rights, 1948, embodying some more measures to protect the children, and through it; a "common standard" of achievement for all people and all nations was adopted. It provides that everyone is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind. Naturally the standard set forth includes children also. This apart, the adoption of the Declaration of the Rights of the Child by the General Assembly of the U.N. on November 20, 1959, was indeed a very important event as regards the international recognition of the right of the child. The General Assembly affirmed that the

child has the right to enjoy special protection and to be given opportunities and facilities to be able to develop in healthy and normal manner.

Fundamental to this recognition is state action by formulating legislation, policies and programmes and also through the systems it sets up to implement them-the executive, legislature and judiciary. By ratifying the UNCRC, 191 countries, including India, have agreed to ensure implementation of children's rights. The obligation to fulfill these rights necessitates that governments fulfill the rights of children, through the implementation of legislative, administrative, adequate and appropriate budgetary, judicial and other measures.¹²⁰

The CRC's central goal is the explicit international recognition that children are not just individuals who become human beings but are human beings with their own rights. Article 24 of the International Covenant on Civil and Political Rights (ICCPR) states that the right to such measures of protection as are required by his status as a minor. Various articles of the CRC elaborate on this right to protection, and the two optional protocols to the CRC outline the contours of this right by prohibiting the involvement of children in armed conflict¹²¹ and child prostitution and child pornography¹²².

¹²⁰ Enakshi Ganguly Thukral (ed.), *Every Right for Every Child Governance and Accountability 8-9* (Routledge, London/New York/New Delhi, 2011)

¹²¹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res 54/263, U.N. Doc. A/Res/54/263 (May 25, 2000) [hereinafter Armed Conflicts Protocol].

¹²² Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography, G.A. Res.54/263, U.N. Doc.A/Res/54/263 (May 25, 2000) [hereinafter Child Prostitution and Pornography Protocol]

In addition, the CRC recognizes the child as a bearer of economic, social, and cultural rights, including the right to education, to health care, to social security benefits, and to an adequate standard of living.¹²³ The CRC recognizes that the child's "right to express her/his views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".¹²⁴ Article 12 implies that the child should participate in all decisions affecting her/him and be recognized as a social actor. It also means that the child should not be excluded from societal activities because he has not yet reached the age of majority. This aspect of the CRC has given rise to many discussions on the competence of children to exercise their rights, and some authors have questioned the viability of giving children a role in decision-making.¹²⁵

For the past hundreds of years, human society had least regard for children. They were not ready to accept them as human beings but rather considered and treated them as if they were commodities or objects to own.

It was only with advancement of humanity from medieval and pre-modern phase to modernity, ushering of industrial revolution, large number of cities arising, coming up of the middle class, advancement and spread of science and technology and change of attitude regarding children which

¹²³ Articles 24, 26-28 Convention on the Rights of the Child

¹²⁴ Article 12 Convention on the Rights of the Child.

¹²⁵ Jaap E.Doek, "Looking ahead to the next 30 years of child Advocacy Symposium:Presentation:The eighteenth Birthday of the Convention of Rights of the Child: Achievements and Challenges" 41 U.Mich.J.L.Reform 61 (2007)

period is considered the dawn of enlightenment in Europe all of which factors contributed to the change in attitude towards their young members.

The said shift in attitude is attributable to the period from Geneva Declaration of the Rights of the Child, 1924¹²⁶ under the auspices of the League of Nations until the adoption of the United Nations Conventions of the Rights of the Child, 1989¹²⁷ and is considered a remarkable phase in the recent history of development of human rights for children.

It is from then on that the world treats children as bearer of rights and more so as individuals. Now, the world community recognizes and agrees that children are active participants in so far as their rights are concerned and not just passive recipients. They carry with them a bundle of rights such as right to protection, right to provision, right to survival and physical well-being, right to participation and to development. Now that children are the bearers of several such rights, they cannot be muted by their parents, who all this time exercised all their rights over them. Thus, the conferment of such rights upon children by the world community would mean that they have accepted children as individuals.

The key behind the success is the United Nations Convention on the Rights of the Child, 1989.¹²⁸ The contribution of the United Nations lies in its rendering of the said convention which is a great leap forward in the advancement of the movement at the global level for protection of children. Its

¹²⁶ *Supra* note 23

¹²⁷ *Supra* note 105

¹²⁸ *Ibid*

success is attributable to the recognition of childhood as a vulnerable phase in the lives of human beings during which they need to be protected from all odds that are dangerous or likely to be dangerous to childhood. Credit goes to the CRC which emphasizes that all children in the world are entitled to a decent childhood. It is on account of this emphasis of the United Nations that the States, communities and families get to be bound to ensure to the children decent childhood. The United Nations Convention on the Rights of the Child is, thus, unique in being an enforceable international treaty obliging all States to enforce the same through their respective legislation.

Article 32 of the said Convention¹²⁹ provides for rights of the child to protection against economic exploitation. In the said Article it calls upon the State parties to recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. This Article together with the United Nations introduction to the world community the concept of decent childhood, makes perpetuation of child labour not only violation of Article 32 of the said Convention but also ultimately the guarantee of decent childhood.

As regards the International Labour Organization, known to the world by her abbreviated name, i.e. I.L.O, is highly concerned over the labour

¹²⁹ *Supra* 105 Article 32

problems globally. Ever since its creation in 1919¹³⁰ immediately after the First World War, she took up the role of eliminating child labour. Her contribution to the world community is so great that she deserves appreciation for well-known Convention No.138 adopted in 1973.¹³¹ Her greatness is depicted in the Convention fixing the minimum age at 15 years for entry into employment, and at 14 in developing countries and 18 in respect of hazardous works.¹³² Thus, the International Labour Organization which plays significant role in the gradual elimination of child labour with target to protect children from exploitation, focuses on five main issues, namely, prohibition of child labour, protection of child labour at work, attack of basic roots of child labour, providing support to children to adapt to future work and protecting the children of working parents.¹³³

The Organization sets its voluntary standards by way of launching conventions in social and labour fields. Since one of its main functions is setting international labour standards, it is also referred to as “World-Parliament of Labour. Unlike Parliaments which legislate, the International Labour Organization does pre-legislative work by means of its conventions and recommendations.¹³⁴

¹³⁰ ILO had its origin in Part XIII of the Treaty of Versailles

¹³¹ *Supra* note 66

¹³² Sudip Chakraborty, Food Security and Child Labour 22-28 (Deep & Deep Publications Pvt. Ltd., New Delhi 2011)

¹³³ Dr.C.L. Patel, “Child Labour is a disgrace to mankind (Causes and Suggestions) XVIII Central Law Qty 219 (2005)

¹³⁴ Government of India, Report of the National Commission on Labour 12 (Ministry of Labour and Employment and Rehabilitation, 1969)

Likewise, support provided by UNICEF and other organizations like Save the Children etc., for Children's Movement for Peace in Columbia owes credit to the acceptance of child rights by the organizations. The success actually lies in the Conventions on the rights of the Child of the United Nations,¹³⁵ for without which the Children's Movement for Peace would never have attained its target.¹³⁶

The position is even true of India for, though it claims to be the largest democracy in the world, important initiatives for eradication of child labour flow only from sources outside India. But for the pressure of the ILO and the United Nations, India might not have set the fight against child labour as one of its political goals.

So also, the United Nations' achievement rests on its Declaration on the Rights of the Child, 1959¹³⁷ in which many principles such as right to education, which should be free and compulsory at least up to elementary level were found to be embedded. At the same time, comparatively it had better entitlements than Geneva Declaration on the Rights of the Child, 1924.¹³⁸

United Nations' very first and bold step in the international sphere was the Universal Declaration of Human Rights¹³⁹ adopted by its General Assembly on 10th December 1948. Credit goes to United Nations for the said instrument,

¹³⁵ *Supra* note 105

¹³⁶ Sara Cameron, "The Role of Children as Peace-makers in Columbia" 44 *Development* 43(1): Children's Rights in Conflict and Peace

¹³⁷ Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1959.

¹³⁸ *Supra* note 1 at 161

¹³⁹ *Supra* note 28

for it was first international document realizing and declaring the dignity and worth of human beings.¹⁴⁰

The most remarkable task of the International Labour Organization is its unanimous adoption of the Worst Forms of Child Labour Convention, 1999 (No.182),¹⁴¹ the ILO member states took a bold step towards liberating millions of children in slavery, debt bondage, prostitution and pornography, dangerous work and forcible recruitment for armed conflict. The ILO's important achievement is that in the said Convention it set the minimum age at 18 for soldiering.¹⁴²

Yet another contribution of the ILO is that it offers technical cooperation to its member States to enable them to bring their national laws closer to the model set out in the international labour standards. The ILO also involves itself in addressing child labour through programs and projects at national and local level utilizing the services of International Programme for Elimination of Child Labour (IPEC).¹⁴³

The International Labour Organization has contributed to the world community by providing a workable definition of child labour as any work that is damaging to children, duly taking into account its Convention No.182.¹⁴⁴

¹⁴⁰ *Supra* note 58 at 22

¹⁴¹ *Supra* note 70

¹⁴² Pragnya Bhattamishra, "International Conventions on Child Labour-A Critical Analysis" 29(3&4)226-227(2002)

¹⁴³ *Supra* note 22 at 156-157

¹⁴⁴ *Supra* note 81 at 51

The International Labour Organization has further contributed by rendering a definition for hazardous and other worst forms of child labour as a matter of urgency since the adoption of Convention No.182 in 1999 .¹⁴⁵

A series of international conventions especially the United Nations Conventions on the Rights of the Child, 1989¹⁴⁶ and the ILO Convention No.138¹⁴⁷ have been used as benchmarks to define child labour. While the ILO provides definition of child and the minimum age for entry into employment, the United Nations Conventions on the Rights of the Child deals with the nature of work. Even the ILO which prescribes the age limit allows persons above 15 years of age as persons having right to participate in economic activities. The significance of the ILO lies in its distinguishing between child work and child labour. This distinction seems convincing because in economically backward societies children above 15 year of age are necessitated to undertake light works which may not be harmful to their health or strength.¹⁴⁸

The Convention on the Rights of the Child recognizes the exceptional vulnerability of children and its success lies in proclaiming that childhood is entitled to special care and protection. The United Nations achievement lies in

¹⁴⁵ Richard Anker, “The economics of child labour: A framework for measurement” 139 International Labour Review 269(2000)

¹⁴⁶ *Supra* note 122

¹⁴⁷ *Supra* note 66

Rasheda Khanam and Mohammad Mafizur Rahman, “Child Labour in Developing Countries: The Role of Education, Poverty and Birth Order” 10 Journal of Social and Economical Development 174-175 (2007)

¹⁴⁸ Rasheda Khanam and Mohammad Mafizur Rahman, “Child Labour in Developing Countries: The Role of Education, Poverty and Birth Order” 10 Journal of Social and Economic Development 174-175 (2007)

its guiding principle of a “first call for children” that deliberates that the needs of children should be given the highest priority in the allocation of resources at all times. It requires the State to ensure that children get a fair and equitable deal in society. .

Apart from all these, its advocacy for public action by individuals, Government and non-government, local, national, regional and international bodies to promote the rights of children is far reaching. The United Nation’s contribution lies in its instrument, namely the CRC which is instrumental in empowering children and creating an atmosphere so that all children can live freely and realize the rights in full potential.¹⁴⁹

ILO conventions and recommendations are mostly welcome by India for its flexibility in prescribing minimum standards for developing countries when compared to developed countries. Labour laws in India on minimum age, requiring medical examination, fixing maximum working hours and prohibiting children from working in night shifts are only based on the various and conventions and recommendations of the International Labour Organization.¹⁵⁰

United Nations command for equality of all human beings is reflected in its first document for protection of human rights. It emphasizes a common standard of achievement and equal rights and freedom for all people.¹⁵¹ . The role of the United Nations in having rendered to the world community two covenants, namely, the International Covenants on Economic Social and

¹⁴⁹ *Supra* note 3 at 199

¹⁵⁰ S.N. Jain, “Child Labor” 23 JILI 338 (1981)

¹⁵¹ *Supra* note 133 Article 1

Cultural Rights, 1966 and International Covenants on Civil and Political Rights, 1966. Both are aimed at providing for protection and assistance to all children, parenthood and family hood etc. Likewise its convention on rights of the Child has taken shape of complete code.¹⁵²

6. CHILD RIGHTS VIS-À-VIS-CHILD LABOUR:

Child labour is certainly a gross violation and deprivation of a number of rights which children possess, such as, right to education, right to play, leisure and healthy growth, free physical, psychological and spiritual growth, right to childhood itself, right to gain technical skills and training, resulting in perpetual poverty.¹⁵³

Article 32 of the Convention on the Rights of the Child, 1989 stipulates that perpetuation of child labour is violation of child rights. A child labourer is basically denied her right to education. A child labourer working for long hours in an unhealthy factory shed is vulnerable to diseases of serious nature jeopardizing her physical and mental health. Her spiritual and moral development are derailed. All these apart, during the course of her employment she undergoes several types of abuses such as physical, sexual or psychological. Thus, the child is deprived of protection against all sorts of exploitation and abuse.¹⁵⁴

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¹⁵³*Supra* note 88 at 151-152

¹⁵⁴Sudip Chakraborty, Food Security and Child Labour 27 & 33 (Deep & Deep Publications Pvt. Ltd., New Delhi 2011)

Several other rights of the child including right to mid-day meal, right to participate in society, right against child marriage etc., could be safeguarded only if the child is at school and not at workplace. That is why Article 21A has been incorporated in the Constitution.¹⁵⁵ The Second Labour Commission of Government of India also noted that the only way to prevent child labour is to recognize that right place for children is school and not workplace. It is also clarified that child labour and right to education cannot go together.¹⁵⁶ The reason being that child cannot be at two places at the same time in school and in work place. That means quality formal education is the only way to give the child meaningful education and not non-formal education. In this respect, State has the highest responsibility to educate the child and it shall not cast burden on the parents who are already overburdened with multifarious tasks and financial crisis. If only the State takes up the responsibility of educating the child, can it be assumed that it has taken the problem of child labor seriously and that it would be put to an end in the near future.

In the version of Krishna Iyer J., child labor is the enemy of child rights. Further right to life by itself means and includes right to education and development. This implies that while the right to education brings along with it a bundle of rights, such as right to development, child labour makes one lose

¹⁵⁵ Article 21-A was inserted by the Constitution (Eighty-sixth Amendment) Act, 2002

¹⁵⁶ *Supra* note 11 at 19

not only the right to education but also all the other rights which are essential for life.¹⁵⁷

Also going by the Convention on the Rights of the Child, child labour may be regarded as a denial of child right. Under child rights would come rehabilitation, protection of child workers and improvement of their working conditions. Accordingly, these aspects of child labour are to be regulated. Under what constitutes child rights, are the right to education and right to childhood itself.

The concept of childhood is relatively of recent significance, particularly in the context of child rights. Rights of man emerged only from the French Revolution during which time emerged rights such as equality, fraternity and dignity of human being. In the 19th century, children were not given any special attention or importance since they were not aware of their rights. They were so innocent that they were brutally treated and subject to all kinds of torture, such as misuse of their labour and comfort. During that period, child labour was considered as reflection of poverty. But actually child labour is due to the negative thinking of the parents and of the society at large. Child labour lot of experience and exposure. Children suffered from malnutrition, ailments etc., and neither they were cared by poor parents nor by the society. It is in this context that the declaration of the rights of the child in 1959 containing the principle of best interest of the child is significant. Now-a –days International Labour Organization, UNESCO and other international agencies pay special

¹⁵⁷ *Supra* 88 at 173-174

attention in securing to the child, rights more specifically against exploitation of child labour.

In so far as the CRC is concerned, it gives more importance only to civil rights than to social, economical and cultural rights, in as much as social, economical and cultural rights could be implemented subject to economical conditions obtaining in the country. Whereas civil and political rights have corresponding obligations and progressive implementation of economic, social and cultural rights. As a matter of fact, the richness of a country is judged by how valuable resources are utilized to address child labour effectively. It is in this view, that child labour is considered in a humanitarian as well as human rights aspect. Therefore it could naturally be concluded that child labour is a serious violation of civil and political rights or violation of economic, social and cultural rights. Therefore all these rights should be acted upon child labour to gradually eradicate it.

It could be seen that the Convention on the Rights of the Child contains effective provisions relating to child labour-discrimination, abuse, encroachment to privacy and recreation impeachment on the child's education and safety and security of the child. Child labour is mainly closely related to exploitation, discrimination, powerlessness, caste and gender operation. Even the World Bank imposes restrictions on child labour. It is well-known fact a child who goes to school and grows up in an atmosphere duly getting his 'childhood' is found to be more resourceful when compared to a child toiling

all day. Rather the child who had proper childhood would be capable of earning six times of his actual expenditure on education.

Whatever may be the legislation prevailing in a country and whatever be their number, child labour cannot be controlled without effectively fetching to children their rights such as right to childhood, education which in turn would provide all other rights to the child.¹⁵⁸

¹⁵⁸ *Supra* note 3 at 93-95

CHAPTER 3
CONTROL OF CHILD LABOUR

CHAPTER 3

CHILD LABOUR AND CONTROL

3.1. INTRODUCTION The subject of Child labour in recent years has become the concern of academicians, officials and the media. There are very few topics that gain as much importance and passion as that of child labour. The subject being highly sensitive in nature has moved from national to international level. Notwithstanding that it has universally been agreed that child labour is undesirable, there is a lot of disagreement on how to tackle this problem.¹

Poverty Alleviation, Food Security, Right to Development and Social Justice are the main challenges faced by all societies. Development does not just mean economic growth but it denotes to what extent state provides dignified life to its people. Development includes increasing people's access to basic needs such as nutrition, health, education and gainful employment. For achieving the said goals, people should in the first instance be ensured income security, food security and social justice.²

The Declaration on Fundamental Principles and Rights at Work of the International Labour Organization aims at ensuring progress of social justice and economic development go hand in hand. The Declaration clarifies the

¹ Ranjan Ray, "Simultaneous Analysis of Child Labour and Child Schooling Comparative Evidence from Nepal and Pakistan" 5215 Economic and Political Weekly Dec 28, 2002

² Dr. Manmohan Singh, "Realization of Human and Legal Rights of the People – Role of NALSA" VIII Nyaya Deep 5 (2007)

position that the rights mentioned therein relating to its 8 Core Conventions namely Convention Nos.29³, 87⁴, 98⁵, 105⁶, 100⁷, 111⁸, 138⁹ and 182¹⁰ are universal, applicable to people of all States irrespective of their economic position. The Declaration emphasizes that rights of people with more essential social needs especially those who are unemployed and migrant workers are to be prioritized. The concept underlying the Declaration is that mere economic level of any member state is not sufficient to achieve equality, social justice and eradication of poverty.¹¹

There is general notion that child labour is caused by poverty and inadequate economic growth. Even statistical data shows that child labour, poverty and economic development are all closely interlinked.¹² Further data also indicates that children in developing countries are more likely to be engaged in work compared to industrialized countries.¹³ However, in so far as

³ Forced Labour Convention, 1930 (No.29) adopted by ILO in its 14th session held at Geneva on 10th June, 1930

⁴ Convention relating to Freedom of Association and Protection of the Right to organize, 1948 (C.No.87) adopted by ILO on 9th July, 1948 in its 31st Session held at San Francisco.

⁵ Convention relating to Right to Organize and Collective Bargaining, 1949 (C.No.98) adopted by ILO on 8th June, 1949 in its 32nd Session held at Geneva.

⁶ Abolition of Forced Labour Convention, 1957 (No.105) adopted by ILO on 5th June, 1957 in its 40th Session held at Geneva.

⁷ Equal Remuneration Convention, 1951 (No.100) of ILO

⁸ Discrimination (Employment and Occupation) Convention, 1958 of ILO

⁹ Convention No.138 of 1973 concerning Minimum Age for Admission to Employment adopted in its 58th Session held at Geneva on 6th June, 1973.

¹⁰ Convention No.182 of 1999 concerning Worst Forms of Child Labour, adopted in its 87th Session held at Geneva on 1st June, 1999.

¹¹ Prof. Ahmedullah Khan, Commentary on the International Labour Organization and the Indian Response 212(Asia Law House, Hyderabad, 2005)

¹² Ranjan K. Agarwal, "The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India" 21 Ariz. J. Int'l & Comp. Law 663 (Fall, 2004) Source: Carol Bellamy, The State of the World's Children: Focus on Child Labour at 27 (1996)

¹³ *Ibid* Source: ILO, International Program on the Elimination of Child Labour, Governing Body Document on Child Labour Committee on Employment and Social Policy, ILO Doc.GB.264/ESP/1(November 1995) available at <http://www.ilo.org/public/english/standards/ipecc/publ/gb/index.htm>.

India is concerned, though India has developed, it is unlikely to eradicate child labour through economic growth. India has experienced tremendous growth since liberalizing its economy in 1991. Its direct foreign investment rose to over two billion dollars (U.S) per year.¹⁴ Despite all these economic successes, India faces only increase in child labour rather than decrease. This implies that India has to do more to combat child labour in multifaceted manner.¹⁵

Whatever may be statistical portrayal of child labour, children of all countries suffer of child labour due to neglect and destitution due to different reasons. Child labour is not a phenomenon new to our age. Child labour in each country varies with its history, status of the child, his rights and privileges offered in that country. The need for protection of children from exploitation having been realized, each country handles the problem in its own way, may it be developing or developed country.¹⁶

3.2. TECHNIQUES ADOPTED TO CONTROL CHILD LABOUR AT THE INTERNATIONAL LEVEL

3.2.1. Control of Child Labour in the United Kingdom

The modernization model posits the pre-industrial era at which time child labour as was noticed during the industrial revolution from later part of the eighteenth century till the middle of the nineteenth century was unknown. It was only with the industrial revolution that child labour came to be widespread. It is this manifold increase in child labour with intolerable work conditions that

¹⁴ *Ibid* Source: Brooke Unger, Survey: The Plot Thickens, Economist, June 2, 2001 at 3

¹⁵ *Ibid*

¹⁶ Sunil Deshta & Kiran Deshta, Law and Menace of Child Labour, page 60-61, Amnol Publications Pvt. Ltd., New Delhi, First edition 2000.

provoked the reformers to agitate for eradication of child labour. This reformatory thought spread all over the country by 1830s from out of which was born a new concept of childhood and that it had the right to childhood and right to enjoy it. It was this view which arose after the middle of the nineteenth century which became dominant contributing to decline of child labour. The reduction in child labour is also attributable to the labour laws within which was embedded a sense of child rights. In so far as England and Wales are concerned there was a general pattern of decline in the count of working children. The decline trend was inconsistent and at times agonizingly slow. The sharpest decennial decline in child labour was found during the period between 1871 and 1881.¹⁷

It is to be noted that the reduction in child labor in England is attributable to the passing of the Factory and Workshops Act, 1878¹⁸ which prohibited employment of children less than ten years of age and brought in compulsory education for children up to ten years. Added to this was the Education Act of 1880¹⁹ which introduced compulsory schooling up to the age of 10 leaving an option for children between ten and thirteen to discontinue if they had attained the ability to read, write and do some basic arithmetic.

Though these laws prohibiting child labour and introducing compulsory schooling came to be passed, child labour could not be wiped out completely

¹⁷ Burns H.Weston (ed.), *Child Labour and Human Rights* 55-63(Lynne Rienner Publishers, Colorado/UK, 2005)

¹⁸ The Factory and Workshop Act 1878 (41 & 42 Vict. C.16) which brought all the previous Acts together in a consolidated form.

¹⁹ The Elementary Education Act, 1880 (39 & 40 Vict. C.79) and shall be construed as one with Elementary Education Act, 1876 and both cited together as the Elementary Education Act, 1876 (33&34 Vict. C.75) and 1880.

and children continued to work. With the advent of industrial revolution in the late eighteenth century in Britain, technology improved manifold. With the upcoming of new heavier and more complicated machinery requiring skilled adult males to operate them, child labour started to decline. Thus the industrial revolution brought along with it a standard of living which prompted parents to keep their children safe at home.²⁰

Gradual elimination of child labour in Britain is marked by slowly raising the age for entry into certain key childhood occupations in consonance with the International Labour Organization (ILO) laying down ages²¹ below which child work is categorically illegal. It however took nearly a century to achieve the target.²² At the same time, while it is quite common for children in high income countries to work usually for earning their pocket money before or after school hours or during vacation,²³ the same is the case with children of Britain. In Britain, most children, particularly nearing the school leaving age, combine school with work either before or after school hours.²⁴

3.2.2. Control of Child Labour in the United States

It is not uncommon for any society to have children working for elders within their families or serving in trades as apprentices or in jobs that are not hazardous. This position was true of the United States during pre-industrial

²⁰ “Child Labour during the British Industrial Revolution” available at <https://eh.net/ecyclopedia/child-labor-during-the-british-industrial-revolution/> (last visited on 1.9.2016)

²¹ *Supra* note 9

²² *Supra* note 17 at 63

²³ Sudip Chakraborty, *Food Security and Child Labour 257* (Deep & Deep Publications Pvt. Ltd., New Delhi 2011)

²⁴ *Supra* note 17 at 64

period. With the advent of industrialization and wage labour, child labour began to be perceived as a social evil that was to be compulsorily eradicated.

The consequences of child labour in the United States were so severe that some states slowly began to enact child labour laws setting standards such as minimum age for entry into employment, but none of those laws was effectively implemented. This necessitated enactment of Federal Legislation, work for which did not begin until the twentieth century. One important development in the United States in 1912 was the creation of the Federal Children's Bureau as a fact-gathering agency and clearinghouse for information on child labour. Though the Bureau had no power to regulate its investigations on conditions of labour throughout the nation proved to be useful to the politicians.

Two years later, the Congress passed the Keating-Owen Federal Child Labour Act²⁵ setting minimum age for entry into occupations at 14.²⁶ But the said Act was struck down by Supreme Court in 1918 in the case of *Hammer v. Dagenhart*²⁷ as unconstitutional.²⁸

Likewise, the Child Labor Tax Law²⁹ assessing 10% tax on profits of manufacturing units using child labour in violation of minimum age

²⁵ Keating-Owen Act on Child Labour, Pub. L. No.64-249, 39 Stat. 675 (1916)

²⁶ *Id.* s.1, 39 Stat. at 675

²⁷ *Hammer v. Dagenhart*, 247 U.S. 251 (1918)

²⁸ Thomson (ed.), 2 Encyclopedia of American Law (GALE, Detroit, 2nd edn).

²⁹ Child Labour Tax Acts, Pub. L. No.65-254, 1200, 40 Stat. 1057, 1138 (1919)

requirements was struck down by the Supreme Court in *Bailey v. Drexel*³⁰ as unconstitutional.

In the mid-1930s, the United States suffered from an economic depression at which point of time many Americans realized that child labour caused fixing of low wages and underemployment of adults. To combat the situation a uniform federal law was very much essential. Ultimately, the Congress passed the Fair Labour Standards Act (FLSA) in 1938³¹, including child labour provisions in it.

The FLSA was a step forward in establishing national standards. However children continued to be employed in sectors which were abusive and beyond the reach of the Act. It prohibits children under eighteen years from entering into occupations which are notified as hazardous.³² The Act prescribes the minimum age of 16 for entry into employment but the Secretary, Department of Labour has got power to allow children between 14 and 16 to work, if he is satisfied that the work will not affect schooling.³³

If an employer violates the child labour provisions of the FLSA, the Department of Labour (DOL) shall determine and impose appropriate penalty for the violation.³⁴ The Act which originally contained only provisions for penalties now provides for civil remedies as well.³⁵

³⁰ 259 U.S. 20 (1922)

³¹ Fair Labor Standards Act of 1938 (FLSA) 29 U.S.C. 201 et.seq.,

³² 29 C.F.R. 570, 120 (2003)

³³ 29 C.F.R. 570.1-570.129

³⁴ 29 U.S.C. 216 (e)

³⁵ *Id.*, 216

All these apart, a wide range of organizations carry out activities to combat child labor through education interventions. Several projects are carried out for increasing awareness about child labour, its implications and the role of education in combating it. The United States simultaneously through organizations promotes vocational education and skill training.³⁶

Another remarkable technique adopted by the United States is that it devotes huge share of its resources to education right from kindergarten up to higher education. The amount it spends for education exceeds even the amount that it spends on military. It's spending on education ranks second to its expenditure on health.³⁷

3.2.3. Control of Child Labour in Tanzania

The Government of Tanzania in collaboration with other development partners is keen in implementing the Poverty Reduction Strategy (PRS), for Tanzania believes that the main cause of child labour lies in poverty. It also believes that as a part of its Poverty Reduction Strategy, it is important to increase household income so that parents of poor households may not be tempted to send their children to work. It also considers that prioritizing the education sector, especially the basic education, will go a long run in improving the economy of the country. Especially with a view to eradicating child labour, the Government abolished fees for primary education.

³⁶ “Best Practices in Preventing and Eliminating Child Labor through Education Drawn from the Global CIRCLE Project”, Community-based Innovations for the Reduction of Child Labour through Education (CIRCLE) Project available at www.crin.org/en/docs/BestPractices(last visited on 23.8.2016)

³⁷ Henry M. Levin, “Classroom Politics: A Symposium on Education Reform: Article: The Economics of Education”, 4 Alb. Gov’t L. Rev. 395 (2011)

Government of Tanzania's target also extends to those children who are overage for admission to primary school enrolment, education by means of program called Complementary Basic Education (COBET).

All these apart, the Government also provides for vocational training through the Vocational Education Training Authority (VETA) which is being fine-tuned for meeting the needs of current labour market by providing both formal and informal technical training to youth. It also provides over-all health services to its people to fight diseases like HIV/AIDS etc.

Tanzania plays an active role in collaboration with Save the Children-UK in tackling poverty by providing quality education so that children may not be pushed into work and holding discussions with children as to what could be done to save children toiling in hazardous occupations.

Tanzania Government implements time-bound program (TBP) for elimination of worst forms of child labour. With support of TBP, the Education Development Centre (EDC) and ILO work together to broaden educational opportunities to working children. Under this program high quality education is provided to working children. Non-Government Organizations such as Kiota Women's Health and Development (KIWOEDE) actively involves itself in withdrawing children from prostitution and in bringing about attitudinal changes through music, drama and dance using the withdrawn children. Likewise Tanzania's services extend to school feeding program to retain children in schools and to create interest in school.³⁸

³⁸ *Supra* 17 at 177-180

Though Tanzania works for promoting primary education at schools, children from rural areas suffer for want of education due to cost of uniform and associated supplies and lack of transport facilities linking rural areas and schools. But amidst all these issues, Tanzania has made significant progress in achieving universal primary education and has done well in boosting gender parity. Its success lies in having got more girls on rolls in schools.³⁹

3.2.4. Control of Child Labour in the Philippines

Philippines is known for its promotion of awareness of children's rights among children. Children between nine and seventeen were found to know that they have rights and that they are aware of their rights.⁴⁰

In the said backdrop, it is noteworthy to state that the Philippine Department of Labor and Employment, which heads the National Child Labour Committee convened a series of consultative as well as assessment workshops inviting many government agencies and non-government agencies which involve themselves in combating child labour in the Philippines. The said programs were convened with the financial support of International Labour Organization (ILO) and United Nations Children's Fund (UNICEF).

The Philippines' major accomplishment lies in its having increased public awareness about child labour mobilizing broad alliances across sectors. It has by doing so, improved its services, increased research on child labour,

³⁹www.huffingtonpost.com/the-conversation-africa/tanzania-cant-stop-child_b_9570502.html.

⁴⁰ A regional opinion survey among young people aged nine to seventeen by UNICEF ("Speaking Out!")

built capacities of children, families and communities, and monitored work places for health and safety of workers.⁴¹

The President of the Catholic Bishops' Conference of the Philippines, relying on the 2011 Survey on Children in the Philippines conducted by National Statistics Office in collaboration with the International Labour Organization and the United States Department of Labour (USDOL) which estimated about 5.5 million of 29 million Filipino children between 5 and 17 years of age working with about 3 million of them working in hazardous establishments, urged the Government to spend money allocated for contraceptives on programs to control and curb the high incidence of child labour in the Philippines.⁴²

The success of Philippines lies in the fact that in 2015, it made a significant advancement in efforts to eliminate the worst forms of child labour. Government agencies signed a joint memorandum on the Rescue and Rehabilitation of Abused Domestic Workers, as per the protocol established for interagency coordination on efforts to rescue and assist domestic workers including children.

This apart, the Inter-Agency Council Against Trafficking established five new regional task forces to support enforcement of criminal laws relating to child labour. Added to this, it also provided training on trafficking in persons to 3693 government personnel and 5972 non-government participants. This apart, the Inter-Agency Council Against Child Pornography adopted a

⁴¹ *Supra* 17 at 198-201

⁴² <https://www.ncronline.org/blogs/ncr-todaya/philippines-arcibishop-spend-stop-child-labor-notcondoms>

new strategy to eradicate child pornography in Philippines. Despite such efforts child labour continues in sugar cane sector, and in forced domestic work and commercial sexual exploitation. Enforcement of child labour laws remain challenging due to limited number of enforcement machinery.⁴³

3.2.5. Control of Child Labour in Brazil

Brazil fully tolerated child labour even until mid-1980s until the advent of children's rights paradigm. Programs designated "education for work" did not produce results as it concentrated on providing children with training which seemed they were equipped for labour market. Whereas other social programs designated "education through work" conducted by nonprofit organizations, was based on work as an educative force. Training was on the lines of establishing relationship with capital critically and to question the prevailing system of production. Trainees were equipped in planning and production decisions, proper scientific and technical know-how about the things they produced and in participation in defining destination on profits achieved by joint efforts of workers and capital.

New strategies like involving families and schools to remove children from dangerous environment, using socio-educational interventions to retain children in schools, mobilization of children themselves against child labour and organization of working adolescents and inclusion of social clauses in commercial and labor contracts and through introduction of labels for those

⁴³<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/philippines>

companies which neither employ children nor exploit adolescents, instead training adolescents professionally in trades they have entered.

Brazil's notion of eradication of child labour is visible from its campaign during 1991 to 1994 to place elimination of child labour and protection of working adolescents on the national agenda.

However, the four most innovative methods that Brazil adopts for eradicating child labour are media mobilization, children's participation, labeling child labour products and school grants.

As regards media, the role of *Agencia de Noticias dos Direitos da Infancia* (ANDI; News Agency for Children's Rights) along with other NGOs working for eradication of child labour is appreciable for its increasing the coverage of child labour, and for change in perception of child labour from virtue to vice and violation of human rights.

This media's work contributed to the eradication of child labour in 1990s when there was a turning point in perception of public about child labour, especially when investigative reporting began to examine the exploitation of child labor at the end of production chain, focusing on who exactly are the beneficiaries from out of child labour. ANDI not being agency of government is independent in disseminating information regarding child labour.

In Brazil many service providers, both governmental and non-governmental, run the PETI⁴⁴ Child Labour Eradication Programs as after

⁴⁴ In 1996, the Brazilian federal government created PETI, a program for eradication of child labour run by the Ministry of Social Welfare.

school hours. Several activities are taught to children and in such way they are also enlightened about social evils such as child labour, its consequences on the lives of children.

Third of these is social label. This is a kind of authentication for standardization. The grant of such labels is subject to companies fulfilling the following requirements, namely, non-employment of children, non-usage of child labour and that a portion of amount obtained on sales would be utilized for benefit of children and adolescents.

School grants. Key component of PETI⁴⁵ is families grant, a modality of school grant. In the beginning, these grants were just given to poor families as a minimum financial aid to help sustain themselves. But, after the 1990s, these grants are being employed to retain children in schools and to bring children away from streets and from child labour.

All these apart, the Ministry of Education has also implemented several policies to keep children in schools and improve their performance. Though this may not reach the working children, UNICEF celebrates this program as a grand success because it makes families pay more attention to the performance of their children at school. It also helps in reducing absenteeism and dropout rates of school going children.⁴⁶

Another highlighting factor regarding Brazil is that it has the strongest economy in Latin America, with large agricultural mining, manufacturing and service sectors and its presence is very much expanding on the world stage.

⁴⁵ *Supra* note 44

⁴⁶ *Supra* note 17 at 209, 215-230

Though it attained record growth in 2007 and 2008, it experienced two quarters of recession since September 2008 in the world market. Nevertheless, it soon recovered from the crisis and has become an important trade partner for a number of developed countries, receiving much of the attention of the media in the process. Brazil's increasingly high profile certainly has the potential to place pressure on it to improve its record on child labour.

Certainly, it is note-worthy that number of working children in Brazil has been declining in recent years on its concerted efforts to reduce poverty, which is demonstrably the main cause of child labour.⁴⁷

3.3. Control of Child Labour in the Indian Scenario

In the pre-industrial agriculture of India, children worked in the familial atmosphere just giving a hand to family members. By doing so, they also learnt traditional occupations of the family, but at the same time they performed the works dictated by family members under the supervision of elder members of the family. There was no master servant relationship and it was only extension of home and work was characterized by personal informal relationship. However, this scenario changed with the advent of industrialization and urbanization, where children had to undertake paid employment with formal master-servant relationship which also carried with it

⁴⁷ Made in Brazil:Confronting Child Labor available at www.cetri.be/Made-in-Brazil-Confronting-Child?lang=fr (Last visited on 5.9.2016)

handling of dangerous machineries. Protection of children therefore became an issue of paramount importance in India as well as abroad.⁴⁸

Child labour has become a common phenomenon in India. Child labour in carpet industry is the oldest of all. Children work in carpet industries in Mirzapur of Uttar Pradesh in appalling conditions tightly packed into sheds with hardly any space to move. Likewise match and fire work industry in Sivakasi, the glass bangle industry in Firozabad of Uttar Pradesh, Zari making industry in Lucknow in the State of Uttar Pradesh, precious stone polishing industry of Jaipur, lock industries of Aligarh and slate industry in Markapur in Andhra Pradesh are the major sectors in which children are employed in large numbers.⁴⁹

All these apart, children also work beyond coverage of the law in invisible unorganized sectors, for even the data of child labour will be bereft of the children working in hidden unorganized sectors and figures could be arrived only on guess work. Even beyond this children are self-employed and are found to be hawkers, newspaper vendors, potters, shoe shine boys, sweepers and scavengers etc.,⁵⁰

Such a list not being exhaustive, would also include street children wandering on streets, begging for alms, vending goods, smoking beedies, sitting at corner places and indulging in quarrels. These are typical of urban

⁴⁸ Dipak Das, *Child Labour in India Rights, Welfare and Protection* 3 (Deep & Deep Publications Pvt. Ltd., New Delhi, 2011)

⁴⁹ Dr.P.K. Padhi (ed.), *Child Labour Retrospect & Prospect* 62 (The Law, Cuttack, 1998)

⁵⁰ *Jayashree v. Doddawadmath*, "Eradication of exploitation of child labour – A critique" XXXII (1&2) IBR 260 (2005)

areas. Children are pushed out of home mainly due to financial constraints or acute poverty due to large families and they dwell on streets as mark of neglect. These children do some odd jobs, like rag picking for meeting their basic needs. Living on pavements, they feel insecure and experience deprivation, and most often under clutches of street gangsters who use them for their criminal activities.⁵¹

The reasons for such an ugly picture are manifold while crippling poverty and illiteracy top the list. It happens that the parents of these children are so abjectly poor that they even sell their children for paltry sums. To abolish child labour in India, the Government has to in the first instance attack the socio-economic causes that drive children to work. In India, since several factors like ancient notion regarding women employment, notion of parents that schools are useless and their children spending time therein would be of no avail to them and problems related to caste, religion and class all of which attribute to child labour have to be eradicated. All these problems in India cannot be solved by legislation alone. The main legislation regarding child labour, namely the Child Labour (Prohibition and Regulation) Act, 1986 cannot solve the problem single handedly. Moreover it suffers due to several loopholes therein.

Many gaps still remain in the legal provisions against child labour and even if gaps in law are set right, without proper enforcement and rehabilitation, results cannot be expected to be effective. Above anything else, for real

⁵¹ Dr. Ashoka, Child and the Law 9-10 (Sudha Publication, Mysore, Karnataka, 2006)

change to occur, the root causes of child labor such as lack of coherent education policy, insufficient schools, poverty, marginalization, migration etc., have to be addressed. A solution to this massive problem could be arrived at through socio-economic educational strategies which would in turn overcome the other factors influencing child labour in India.⁵² In this context, even the Constitution in Article 39(e)⁵³ casts a duty on the State to prevent the children from entering into jobs unsuited to their age and strength and 39(f)⁵⁴ requires the State to protect children against exploitation and moral and material abandonment. In pursuance of the said Constitutional mandate, India adopted a Policy regarding children known as National Policy for Children in 1974⁵⁵. The National Policy contains the measures which the Government of India proposes to adopt for attainment of objectives set out in the prefatory introduction which deals with protection of children against neglect, cruelty and exploitation and strengthening of family ties. The Policy fairly gives high priority to maintenance, education and training of orphans and destitute children. It also stresses the need for voluntary organizations to play a vital role in the field of education, health, recreation and social welfare services of children and emphasizes the State to encourage and strengthen such voluntary organizations.⁵⁶

⁵² Bhanwar Lal Harish, “Child Labour: The Indian Scenario” 2 Lab IC 97-102(2007)

⁵³ Constitution of India Article 39(e)

⁵⁴ *Ibid* Article 39(f)

⁵⁵ Govt. of India adopted the National Policy for Children by Resolution No.1-14/74-CDD dated August 22, 1974.

⁵⁶R.Swaroop, CHILD LABOUR Welcome Measures, Half-hearted Actions, 12-13(ALD Publications, Hyderabad, 2008)

Government of India, committing itself entirely to the cause of child welfare, apart from enacting the Child Labour (Regulation and Prohibition) Act, 1986⁵⁷, announced a well-conceived National Policy called the National Child Labour Policy, 1987⁵⁸(NCLP). This Policy is based on the following three-tier action plan, namely, Legislative Action Plan, Action on Development Programmes Meant for Benefiting Child Labor and Project-based Action Plan.

- (i) Legislative Action: The Central and State Governments are to ensure that provisions in Child Labour (Prohibition and Regulation) Act, 1986⁵⁹, Factories Act, 1948⁶⁰ and Mines Act, 1952⁶¹ in so far as they relate to children are enforced. In pursuance of the 1986 Act⁶², Child Labour Technical Committee was constituted to advise the Government on addition of occupations and processes to the schedule to the Child Labour (Prohibition and Regulation) Act, 1986.⁶³ State Governments were empowered to make rules ⁶⁴in order to protect the interests of children.
- (ii) Action on Development Programmes Meant for Benefiting Child Labour: As per the Policy, Government agencies under NCLP have to implement various development programmes in directions of education, health, nutrition, integrated child development and employment and

⁵⁷ Act 61 of 1986

⁵⁸ Announced in the middle of August, 1987 by the Union Ministry of Labour

⁵⁹ *Supra* note 57

⁶⁰ Factories Act, 1948 (63 of 1948)

⁶¹ Mines Act, 1952 (35 of 1952)

⁶² The Child Labour(Prohibition and Regulation) Act, 1986 s.5

⁶³ *Supra* note 57

⁶⁴ *Supra* note 62 s.18

income generation for the poor, in such a way that children may be encouraged to attend schools.

- (iii) Project-based Action Plan: Projects are implemented in areas of high concentration of child labour. Especially children from hazardous employments are drawn from such jobs and given training. Stipend is also paid to such trainees apart from compensation being provided to parents of the children for having withdrawn them from work.

Measures for rehabilitation of child labour:

Apart from all these, the Ministry of Labour also constituted the National Authority for Elimination of Child Labour⁶⁵ (NAECL) with a view to withdrawing children from hazardous work places and rehabilitate them through special schools. In pursuance of its goals to eliminate child labour, the Ministry of Labour has signed a Memorandum of Understanding with International Programme on the Elimination of Child Labour⁶⁶ (IPEC) which is the most important constituent of the International Labour Organization (ILO). The Ministry also ensures that laws concerning working children in terms of the Conventions of the International Labour Organization are implemented in their proper spirit.⁶⁷

⁶⁵ The Union Ministry of Labour constituted National Authority for Elimination of Child Labour (NAECL) on 26th September, 1994. It is headed by Union Minister for Labour with Secretaries of the Ministries/Departments of Labour, Human Resource Development, Information and Broadcasting Social justice and Empowerment, Rural Development, Textiles, Expenditure, Health & Family Welfare & Women and Child Development as its members.

⁶⁶ Memorandum of Understanding signed in December 1991

⁶⁷ O.P. Maurya, "Child Labour in India" 36 IJIR 495-496(2001)

The work done by National Child Labour Project is evident from the fact that over 400 children rescued from labour from different parts of Tamil Nadu have passed the X standard examination securing an overall 92 per cent. It is stated that the said children withdrawn from their work were admitted into proper schools after having been given effective training. Even in cases where their parents could not afford to educate them, the NLCP has enrolled them getting sponsors apart from enrolling the parents in Government Schemes.⁶⁸

Likewise, Government of Andhra Pradesh initiated Back to School Program with an aim to withdraw at least one lakh children from work and admit them in formal schools. The Government, before admitting them in formal schools also provides them with bridge education, conducting summer camps with intensive training, and accommodate them at the class from which they dropped out. After such training, the children are admitted to nearby schools and Social Welfare hostels on priority.⁶⁹

Likewise Kerala's achievement lies in its providing children with good education in its Government financed school. The education in Kerala is free apart from free meals to students. Above all, the minimum wage in Kerala is higher than any other State in India. Anyone who has not enrolled his son or daughter in school will have to undergo pressure of their neighborhood, Thus due to high literacy rate, there is no child labour in Kerala.⁷⁰

⁶⁸ Editorial, "Former child labourers come out with flying colours" The Hindu, May 26, 2016.

⁶⁹ National Law School of India University, Report of national consultation on Right to Education: A strategy to eliminate Child Labour (May, 1998)

⁷⁰ Thomas Paul, "Child Labour – Prohibition v. Abolition: Untangling the Constitutional Tangle" 50 JILI 153-154 (2008).

As regards Puducherry, ‘Punnagai’ a project which imparts vocational training to destitute children, also finds them jobs. Punnagai being supported by Rotary Club offers training to orphans and drop outs for a period of one year with scholarship and offers placement on completion of their training.⁷¹

3.4. CONSTITUTION AS PROTECTOR OF CHILD RIGHTS

The Constitution of India is regarded as the source of all laws in vogue in this country. A Constitution of a country is expected to represent the aspirations and to solve the problems of the people of that country. Interpretation of its provisions should therefore always fit in with the social set up of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people.

In such way of the matter, Indian Constitution provides Fundamental Rights to ensure that the liberty of the citizens of India would be a reality and not merely a promise. The Directive Principles of State Policy as enshrined in the Constitution assures the citizens a better life where in social and economic justice will be available. These two together constitute the conscience of the Constitution and represent the basic rights inherent in human being in this country. They are equally relevant to promote the aims and objectives of the Constitution as fully explained in the preamble.

The Preamble of our Constitution declares to secure to all its citizens:

JUSTICE, social, economic and political:

⁷¹ Editorial, “Giving street children a reason to smile” The Hindu, August 27, 2015.

LIBERTY of thought, expression, belief, faith and worship:

EQUALITY of status and of opportunity: and to promote among them all:

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation.

The inclusion of the expression 'social justice' in the preamble is the recognition of the greater good to a larger number without depriving accrued rights to anybody. This social justice demands equality along with liberty. In a developing country like ours, the State must try to improve the lot of the down-trodden and weaker sections including children and accordingly provisions have been made in the Constitution.

Thus the main objectives intended to be secured by the Constitution are thus expressed by the words 'Justice', 'Liberty', 'Equality' and 'Fraternity'. For the welfare of the children, for their protection from exploitation, for eradication of the problem of child labour from the society, the Constitution provides certain provisions which are given due weightage from time to time while deciding various labour problems on the basis of principles of socio-economic justice and social security.

Fundamental Rights represent the basic values cherished by the people of the country and are aimed at protecting the dignity of the individual and creating conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of

human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions.

Children as a class constitute the weakest section of human society. While they are the future citizens of India, sufficient attention was not paid to them in the Constituent Assembly deliberations. However some bare references are found in the Constitutional promise. The nation's promise to children begins with Article 15(3)⁷² which states that nothing in the Article shall prevent the State from making any special provision for women and children. The nation's promise to children can broadly be divided into the following categories depending upon the services and guarantees it provides:

- (a) Ensuring to children facilities for health and development;
- (b) Protecting children from all types of exploitation;
- (c) Protecting neglected and deserted children.

In so far as ensuring to children, facilities for health and development is concerned, Articles 39(e) and 39(f) hold the field. Article 39(e)⁷³ requires the State to ensure that health and strength of workers, men, women and children of tender age are not abused and that children are not compelled by economic circumstances to enter avocations which do not suit their age or strength. Likewise, Article 39(f)⁷⁴ requires the State to direct its policy towards ensuring that children are provided with opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity and childhood and youth

⁷² Constitution of India Article 15(3)

⁷³ Constitution of India Article 39(e)

⁷⁴ *Ibid* Article 39(f)

are protected against exploitation. It also directs the State to secure to children, protection against moral and material abandonment.

In so far as the State's guarantee to children of their right to health is concerned, Article 47⁷⁵ of the Constitution governs the field. It imposes a primary duty on the State to raise the level of nutrition and resultantly the health of public in general and impliedly children in particular.

As regards protecting children from all types of exploitation, there are certain provisions apart from Article 39(f), specifically entitling children to safe environment. Article 23⁷⁶ which deals with Traffic in human beings and beggar are a right guaranteed against exploitation. It puts an end to the inhuman practices of bonded labour by making it an offence punishable under law. Although this article does not make a specific reference to children, their constituting the most valuable section of the society, the article very much applies to them. In fact they are the first to be victimized even by their parents at times of extreme economic crisis. They are even deprived of education, being made to do all types of work injurious to their health. Sometimes children suffer in extreme exploitative conditions being pledged by their parents or relatives to landlords etc. for paltry sums.

The word "beggar" used in the article is of wider connotation in the sense that it need not necessarily mean absolute deprivation of wages. Even inadequate amount paid to children for their work would constitute "beggar".

⁷⁵ *Ibid* Article 47

⁷⁶ *Ibid* Article 23 reads: Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

This includes even the most heinous crime committed against helpless children, like maiming of children's parts of the body to make them beg or enticing them to flesh trade. All these acts violate article 23.⁷⁷

Another Constitutional provision against exploitation of children is Article 24.⁷⁸ According to this article children under 14 years of age are provided with right not to work in hazardous occupations. This employment of children below 14 years in hazardous occupations is a Constitutional prohibition and even in the absence of appropriate legislation, must operate *proprio vigore*.

In the third category, namely, protecting neglected and abandoned children, Article 41⁷⁹ comes into picture. Article 41 which deals with right to work, to education and public assistance in other cases of undeserved want. The Article directs the State to make provisions for securing to its citizens, right to work, to education and to public assistance within its economic capacity, in case of unemployment, old age, sickness, disablement etc., According to the said Article, State should endeavour to provide social assistance to all children who suffer for want of even basic necessities of life. This provision shall ensure to children the right to enjoy proportionately the distributive justice.

⁷⁷ *Ibid*

⁷⁸ Constitution of India Article 24 reads: "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

⁷⁹ *Supra* note 74 Article 41

Article 24⁸⁰ guarantees to children the right against exploitation. It is therefore a Constitutional mandate not to employ children in factories, mines and other hazardous occupations. A fundamentalist reading of the said article gives an implication that any occupation per se is hazardous in as much as it confiscates his child hood as such. While so, the Constitutional intent to protect childhood and promote it, is reflected in Article 45⁸¹ as it then stood, requiring the State to endeavour within the first decade of independence, to provide free and compulsory education to all children until they completed 14 years of age.

Despite such a direction, India could not achieve the said goal even after lapse of several decades from the stipulated time period. However, the said task gained momentum after the announcement of the National Policy on Education (NPE) in 1986.⁸² The Government of India in collaboration with State Governments took several steps to fulfill the mandate but it remained far from satisfactory. It was at this juncture that it was felt that an explicit provision should be made in the Constitution under Fundamental Rights.

Consequent upon this, Article 21-A⁸³ was inserted in the Constitution, conferring on all children between 6 and 14 years of age, the right to free and compulsory education. Thus with a view to achieving the goals of social, economic and political justice, Constitution guarantees special protection to

⁸⁰ *Supra* note 79

⁸¹ *Supra* note 79 Article 45

⁸² National Policy on Education adopted by Parliament in May, 1986

⁸³ Article 21-A was inserted by the Constitution (Eighty-sixth Amendment) Act, 2002

children, makes special provisions to make the status of children at par with other sections of the society.⁸⁴

3.5. LEGISLATION REGARDING CHILD LABOUR:

The Child Labour (Prohibition and Regulation) Act, 1986⁸⁵ is the most important national law regarding child labour. This is the only law that determines the occupations in which working of children should be banned. The Act bans the employment of children below 14 years of age in certain occupations and regulates the conditions of children working in employable employments. Thus the Act does not prohibit employment of children in all occupations. The occupations which are banned find place in Part A of the Schedule to the Act and those processes which are banned find place in Part B of the Schedule to the Act.⁸⁶

According to the Child Labour (Prohibition and Regulation) Act, 1986, “child” means a person who has not completed his fourteenth year of age.⁸⁷ Section 3⁸⁸ is prohibitory in nature and emphasizes that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any of the processes set forth in Part B of the Schedule to the Act. However the proviso to the section states that the said section shall not apply to workshops wherein any process is carried on with the aid of his family

⁸⁴ P.L. Mehta and S.S.Jaswal, *Child Labour and the Law Myth and Reality of Child Labour Welfare* 51 (Deep & Deep Publications, New Delhi, 1996)

⁸⁵ *Supra* note 57

⁸⁶ Katherine Cox, “The Inevitability of Nimble Fingers? Law, Development and Child Labor” 32 *Vand.J.Transnat’l L.* 115 p.17

⁸⁷ *Supra* note 57 s.2(ii)

⁸⁸ *Ibid* s.3

or to any school established by or receiving assistance or recognition from Government.

Section 4⁸⁹ of the Act empowers the Central Government to add any occupation or process to the Schedule after giving notification in the Official Gazette of not less than three months' notice of its intention to do so, and by like notification, add any occupation or process to the Schedule. Upon doing so, the Schedule shall be deemed to have been amended accordingly.

Section 5⁹⁰ empowers the Central Government to constitute an Advisory Committee referred to as the Child Labour Technical Advisory Committee for the purpose of advising the Central Government with regard to addition of occupations to the Schedule.

It is pertinent to mention that according to the section 4 of the Act and in pursuance of the advice rendered by the Committee constituted under section 5 that in 2006, certain establishments such as dhabas (roadside eateries), restaurants, hotels, motels, tea-shops, resorts, spas or other recreational centers, were added to Part A of the Schedule.⁹¹

Another feature of the Act is that it is partly prohibitory and partly regulatory in the sense that Part II prohibits employment of children in certain occupations and processes while Part III regulates the conditions of work of children. It is therefore explicit that only those occupations set forth in Part A of the Schedule and those processes set forth in Part B of the Schedule are

⁸⁹*Ibid* s.4

⁹⁰ *Ibid* s.5

⁹¹ Notification No.1742 (E), dated 10.10.2006 and published in the Gazette of India, (Ext.), Pt. II, Section 3 (ii), dated 10.10.2006.

prohibited and all other occupations and processes are permitted and are only to be regulated. The dual nature of the statute contributes to the permeability which leads to permissibility of child labor in the country.⁹²

14⁹³ of the Act states that whoever employs any child or permits any child to work in contravention of the provisions of section 3⁹⁴ shall be punishable with imprisonment for a term not less than three months but may extend to one year or with fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees or with both.

Even the punishment prescribed in the Act is not implemented properly. The conviction rate fixed by the Act is abysmally so low that it is hardly deterrent for employers. Moreover there are no provisions for rehabilitation. Unless enforcement mechanisms and provisions for rehabilitation are made, adding to the list, prohibited employments would be of no avail.⁹⁵

However, the Child Labor (Prohibition and Regulation) Act, 1986 has recently been amended and enacted as the Child Labour (Prohibition and Regulation) Act, 2016.⁹⁶In the amended Act, the term ‘child’ in the 1986 Act has been defined to mean a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.⁹⁷ Also a new term “Adolescent” has been introduced and defined to mean a person who has

⁹² K. Latchoumy, “Does Permeability Lead to Permissibility? Contribution of Labour Legislations to the Mushroom Growth of Child Labour-A Critical Analysis.” II LLJ 104(2008)

⁹³ *Supra* note 57

⁹⁴ *Supra* note 91

⁹⁵ *Supra* note 52 at 98

⁹⁶ The Child Labour (Prohibition and Regulation) Amendment Act, 2016 (No.35 of 2016)

⁹⁷ *Supra* 99 s2(a)(ii)

completed his fourteenth year of age but has not completed his eighteenth year of age.⁹⁸

In the new Act, section 3(1)⁹⁹ stipulates that no child shall be employed or permitted to work in any occupation or process. However, proviso to the said section states that where a child helps his family or family enterprise, the enterprise not being hazardous one as mentioned in the schedule, after his school hours may not amount to child labour. Likewise, child working as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or such other entertainment or sports activities except circus subject to precautionary measures of safety shall not amount to child labour.

Section 3A of the new Act prohibits employment of adolescent in hazardous occupations or processes mentioned in the Schedule. However the Central Government may by notification specify the nature of non-hazardous work to which an adolescent may be permitted to work.¹⁰⁰

In the new Act, the punishment has been raised to minimum period of 6 months imprisonment with a maximum period of two years for employing children and fine for the said offence has been fixed with a minimum of twenty thousand up to a maximum of fifty thousand or with both.¹⁰¹ So is the case of punishment for employing adolescents.¹⁰² However in both cases of employment of children or adolescents parents or guardian shall not be punished.

⁹⁸ *Ibid* s.2(a) (i)

⁹⁹ *Ibid* s.3(1)

¹⁰⁰ *Ibid* s.3A

¹⁰¹ *Ibid* s.14(1)

¹⁰² *Ibid* s.14 (1A)

The offences under the Act have been made cognizable.¹⁰³ Provision has also been made in the new Act for constitution of Child and Adolescent Labour Rehabilitation Fund by the Appropriate Government, for two or more districts to be operated from the fine collected from employers for employing child or adolescent workers.¹⁰⁴ The amount so deposited shall be paid to the child or adolescent as the case may be.¹⁰⁵ The Act provides for rescue and rehabilitation of children and adolescents¹⁰⁶ and for compounding of offences.¹⁰⁷

The new Act empowers the appropriate Government to confer powers on the District Magistrate who shall ensure that the provisions of the Act are properly carried out. The District Magistrate may specify any officer to exercise all or any of the duties duly prescribing the local limits.¹⁰⁸ The Act also ¹⁰⁹provides for inspection and monitoring of hazardous workplaces by appropriate Government.

¹⁰³ *Ibid* s.14A

¹⁰⁴ *Ibid* s.14 B

¹⁰⁵ *Ibid* s.14B (4)

¹⁰⁶ *Ibid* s.14C

¹⁰⁷ *Ibid* s.14 D

¹⁰⁸ *Ibid* s.17A

¹⁰⁹ *Ibid* s.17B

3.6. RE-INTERPRETATION OF THE CONSTITUTION AND LEGISLATION IN TUNE WITH JUDGMENTS OF THE SUPREME COURT

The Supreme Court of India at the apex has been assigned a very important role and has been the guardian of the Constitution¹¹⁰ which is the yardstick of fundamental norms for other legislation. This role and its concerted effort is reflected in its epoch-making judgments which have almost brought about a revolution in the life of child workers in India.

Our Constitution has created some of the institutions for welfare of the society and the country as a whole. These institutions being legislature, executive and judiciary, each of them having an important task in the field of enactment of laws, implementation of laws and interpretation of laws respectively work separately with a common goal, namely, welfare of the people. This is possible only if the citizens of the country are protected. It is vividly seen that danger to the country is not from external sources but only from out certain practices which are injurious to the health and strength of the country. One of such practices being child labour, it could be combated only with concerted efforts of each of the three wings of the country.

While the legislature does its task of framing laws to combat such evils, Supreme Court of India has played an important role in interpreting those laws.¹¹¹

¹¹⁰ The Constitution of India

¹¹¹ *Supra* note 87 at 79-80 & 93

In the history of judiciary there had been times when infringement of fundamental right was a pre-condition for invocation of Article 32 of the Constitution of India. Therefore, unless a fundamental right has been infringed no one has the right to complain and no other question could be determined in a proceeding under Article 32. Scope of Article 32 being confined to fundamental rights, naturally no petition would lie under Article 32 unless complaint of alleged infringement of right is against State or an authority within the definition of Article 12.¹¹² The petitioner for his claim to succeed would have to establish that his fundamental right is infringed and the violator should be the State. Unless these are ensured, enforcement of fundamental right Under Article 32 cannot be enforced.

However, with the passage of time, the traditional rule with regard to locus standi that redress is available only to those who are affected or who have suffered a legal injury due to violation of his legal right by the State has in the recent years been relaxed by the Supreme Court. Where there was a legal wrong on the part of the state, and the petitioner alone was combating in the court the said issue, and burdened with threat he cannot approach the court if he was at a disadvantaged position by reason of his economic backwardness or his physical incapacitation, any member of the public could appear on behalf of him. But he should be a person who is genuinely acting on behalf of that person and not for personal gains. This trend in judiciary was a turning point in

¹¹² Constitution of India Article 12 Definition of State

its history when from then on, the judiciary took up several public interest litigations to the cause of poor and needy.¹¹³

The judgment of the Supreme Court in *People's Union for Democratic Rights v. Union of India* (Asiad Worker's Case)¹¹⁴ re-interpreting Article 23 of the Constitution is a revolution in the history of judiciary. It is important herein to highlight the status of Article 23¹¹⁵ as it stood then, for when the Constitution makers enacted Article 23; they did the same in the light of Article 4 of the Declaration of human rights¹¹⁶. While in Article 4 of the UDHR, they banned traffic in human beings, which is an expression larger in import than slave trade, they also interdicted "beggar and other similar forms of forced labour". The sweep of Article 23 is thus wide and unlimited and strikes at traffic in human beings and beggar and other similar forms of forced labour in whatever form it may manifest itself. In this case, the Supreme Court has gone to the extent of holding that even if a person has contracted with another person to perform service, and there is in consideration of such service in the form of liquidation of debt or even remuneration, and that remuneration so paid is lesser than the minimum wage prescribed for it, there is a breach of Article 23 of the Constitution. It boldly held that he cannot be forced by compulsion of law or otherwise, to continue to perform such service, as it would amount to forced labour within the inhibition of Article 23 of the Constitution.

¹¹³ *Supra* 56 at 164, 170-171

¹¹⁴ AIR 1982 SC 1473; (1982) 3 SCC 235

¹¹⁵ *Supra* 113 Article 23

¹¹⁶ Universal Declaration of Human Rights, 1948

In *Bandhua Mukti Morcha v. Union of India*¹¹⁷ the Supreme Court elaborated its interpretation of Article 21¹¹⁸ of the Constitution reiterating its judgment in *Francis C. Mullin v. Administrator, Union of Delhi*¹¹⁹ where it interpreted Article 21¹²⁰ to mean to live with human dignity, free from exploitation and that neither the Central Government nor the State has the right to take any action which will deprive a person of the enjoy the basic essentials required to enable a person to live with human dignity. This bold step of the Supreme Court was the result of interpreting Article 21 of the Constitution in the light of the directive principles of State Policy, particularly clauses (e)¹²¹ and (f)¹²² of Article 39 and Articles 41¹²³ and 42.¹²⁴

In *Salal Hydro Projects v. State of J&K and others*¹²⁵ the Supreme Court stressing the need to educate children has suggested that whenever the Central Government undertakes a construction project which is likely to last for some time, the Central Government must provide children of construction workers who are living near the project sites facilities for schooling or otherwise this could be done by the Contractor himself.

¹¹⁷ AIR 1984 SC 802; (1984) 3 SCC 161

¹¹⁸ Article 21 Right to life and Personal liberty

¹¹⁹ AIR 1981 SC 746; (1981) 2 SCR 516

¹²⁰ *Supra* 113 Article 21

¹²¹ Constitution of India, Article 39(e) that health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited by their age or strength.

¹²² Constitution of India, Article 39(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against moral and material abandonment.

¹²³ Constitution of India Article 41 Right to work and livelihood

¹²⁴ Constitution of India Article 42 Provision for just and humane conditions of work and maternity relief.

¹²⁵ AIR 1984 SC 177

In *M.C. Mehta v. State of Tamil Nadu*¹²⁶ Supreme Court held that children are means under Article 45¹²⁷ of the Constitution to be subjected to free and compulsory education until they complete 14 years of age observing that Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to age of 14 years are supposed to be in school, economic necessity forces grown up children to seek employment.

In *Unni Krishnan v. State of Andhra Pradesh*¹²⁸ Supreme Court elevated the right to education to the level of Fundamental right reading Article 45¹²⁹ of the Constitution with Article 21 of Constitution.¹³⁰

In *Rajangam, Secretary, Distt. Beedi Workers Union v. State of Tamil Nadu*¹³¹ the Supreme Court passed directions for implementing certain protective and welfare schemes to improve the conditions of children working in cigar and beedi rolling industry. It therein directed that every worker should be insured for a minimum amount of Rs.50,000/- and that premium should be paid by the employers and not recovered from workers.

In the landmark judgment in *M.C.Mehta v. State of Tamil Nadu*¹³² the Supreme Court held that children below the age of 14 years cannot be employed in any hazardous industry, mines or other workers and laid down exhaustive guidelines how the State authorities should protect economic, social and humanitarian rights of millions of children, working illegal in public and

¹²⁶ AIR 1991 SC 417

¹²⁷ Article 45 of the Constitution as it stood originally - Right to free and compulsory elementary education

¹²⁸ AIR 1993 SC 2178; (1993) 1 SCC 654

¹²⁹ *Supra* note 127

¹³⁰ *Supra* note 119

¹³¹ AIR 199 1 SC 216; AIR 1993 SC 404; (1992) 1 SCC 221

¹³² AIR 1997 SC 669; (1996) 6 SCC 756

private sections. It also issued many guidelines with respect to child welfare such as creation of child rehabilitation fund, educational institution and separate wing under the State body for control of child labour.

It is significant to note that the new Child Labour law of 2016¹³³ has incorporated provision for rehabilitation and creation of fund¹³⁴ for rehabilitating child labourers.

In *Bandhua Mukti Morcha v. Union of India*¹³⁵ Supreme Court directed the Government of India to evolve principles of policies for progressive elimination of employment of children below 14 years of age and to provide for compulsory education by the industries themselves or by State Government for children of employees of factories, mines or any other industry, organized or unorganized with timing adjusted to suit compulsory education.

In *People's Union for Civil Liberties (PUCL)*¹³⁶ the Supreme Court held the State Government liable to pay compensation to the family of the child victim, who was killed on procurement by the employer for work.

In *Public Union for Civil Liberties v. State of Tamil Nadu and others*¹³⁷ Supreme Court directed the NHRC to file reports every six months of bonded labour found and to monitor it effectively. It also directed all Gram Panchayats and local bodies to report incidents of bonded labour to the District Magistrate who will take follow up action in that regard.

¹³³ *Supra* note 99

¹³⁴ *Supra* note 107

¹³⁵ AIR 1997 SC 2218

¹³⁶ (1998) 8 SCC 485

¹³⁷ (2013) 1 SCC 585

Thus judicial institutions have played an important role in providing political, social and economic justice to the poor child workers in the country. No efforts seem to have been spared by the judiciary to rendering justice to the poor. The court has always been considerate to the cause of children while interpreting and applying law to the poor and needy.¹³⁸

¹³⁸ *Supra* 93

CHAPTER 4
CHILD LABOUR IN AUTOMOBILE
INDUSTRY

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CHILD LABOUR IN AUTOMOBILE INDUSTRY

4.1. AUTOMOBILE INDUSTRY AND LABOUR

With 6.7% contribution to India's G.D.P, the automobile industry is one of the key manufacturing sectors in India. India is currently the sixth largest passenger car producer in the world with an annual turnover of around 55 billion USD in Financial Year 2013 and employs around 18.5 million people (directly and indirectly). Direct employment includes personnel working with automobile OEMs (Original Equipment Manufacturers) and auto component manufacturers (about 30% to 40%). Indirect employment includes personnel working in enabling industries, such as vehicle finance and insurance, vehicle repair, vehicle service stations, vehicle maintenance, vehicle and component dealers, drivers, etc., (about 60 to 70%).

In the last few years, the passenger vehicle industry was largely driven by strong economic growth. However, a host of domestic factors in the form of increasing fuel prices, the weakening rupee and prolonged high interest rates led to rising vehicle financing costs, thus leading to a slowdown in the demand for cars. While the demand for micro or small SUVs provided a boost to India's passenger vehicle market, passenger car sales fell during FY 2013 for the first time in a decade by 6.7% to 1.9 million units. Despite OEMs

launching 22 special editions in the previous months, giving interest-free repayment and discounts up to 20% to catch customers at dealerships, the car industry faces the decades' worst slowdown.

Just two years ago, India was seen as the world's hottest growth market after China and major OEMs invested in capacity expansion. Within these 2 years assembly capacity in India rose by around 25 % to over 5.8 million units in 2013.

To keep pace with slowing demand and bridge the gap between sales and output, leading OEMs scaled back their production recently and block closures have become a regular theme in India. At least 50 to 60 days of production days have been lost as Companies are now shutting down production at their plants to cope with an inventory pile-up at stockyards and dealerships in the past six to eight months.

Although demand for vehicles in India increased over the past year, motorization in India increased over the past years, motorization in India in terms of vehicle penetration and sales per capita is still among the lowest compared to other markets. However, low car penetration coupled with a huge population and a growing middle class with increasing purchasing power makes India still a high potential growth market for major OEMs to keep investing in.

With a vehicle density per 1000 population at around 22.5 and vehicle sales per 1000 at 2.73, India falls far behind other emerging markets. Vehicle

sales remains low largely due to relatively low per capita income levels combined with high acquisition costs and increasing fuel prices. One of the key growth drivers was the strategy by automakers to build a range of cheap, smaller and more fuel-efficient and affordable cars to cater not only to local customers, but also to use India as an export hub for small car manufacturing. To assemble these low-margin vehicles profitably, car manufacturers are investing in local production to cut costs and ramp up volumes with exports seen as an opportunity to expand the volume base and create scale.¹

This situation is met by employment of Indian auto workers on short-term poverty-level wage contracts, laboring in harsh and highly exploitative conditions where serious work accidents are commonplace. About 80 per cent of Maruti Suzuki employees are on short-term contracts, 75 per cent at Ford India and 82 per cent at Hyundai. Thus India's auto-manufacturing industry directly employs 7.6 million people with another 12 million in the auto distribution, retail and service sectors. Most of the country's auto manufacturing is located in three regions – the southernmost and largest near Chennai in Tamil Nadu, a northern cluster near New Delhi and the Gujarat-Manesar industrial belt in Harayana, and a newly-emerging industrial area in Gujarat.²

¹ “Automobiles: The economic outlook and employment situation” available at www.pwc.in/assets/pdfs/publications/2013/automobiles-the-economic-outlook-and-employment-situation.pdf (last visited on 26.9.2016)

² “Indian auto workers fight to defend wages and conditions” available at <https://www.wsws.org/en/articles/2016/03/26/inau-m26html> (last visited on 27.09.2016)

A report by the National Skill Development Corporation (NSDC) suggests that the State of Harayana currently leads in the production of passenger cars, motor cycles and tractors, contributing 50% of the total passenger cars and two-wheelers produced in India.

As global companies explore India as a manufacturing base to either shift their operations from Europe to India or set up new plants here and in other south east Asian countries, India and other BRIC nations are expected to emerge as major manufacturing hubs due to the availability of cheap labour and other advantages. A number of global auto component manufacturers, which have a manufacturing presence in India either through joint ventures or other alliances, are focusing on exports as excise duty on completely knocked down (CKD) units is low.

Industry growth, fast changing technologies, a growing economy, larger disposable income and shorter life cycle for new cars in the hands of consumers have in the recent past necessitated a growing need for fresh skilling and up-skilling in the sector. Commenting on the report, Dilip Chenoy, M.D. and CEO, NSDC said, to meet the incremental human resource requirement in the sector, the entire ecosystem has been scaling up its training initiatives and aligning themselves to industry recognized national occupational standards.³

Obviously, for realizing occupational standards, “the workforce needs to be trained to meet the demands of the industry in the long term. Availability of

³ “India’s auto industry will need 15 million skilled workers by 2022” available at www.autocarpro.in/analysis-reports/india-auto-industry-million-skilled-workers-2022-8811 (last visited on 26.9.2106)

skilled manpower has always been a key competitive advantage for both automakers and suppliers. According to SIAM estimates, the direct employment in the industry is close to 13 million. However, for this number to be sustainable over the long term (7 to 10 years), another 35 million are needed for employment in the industry. Industry associations SIAM, ACMA and FADA have taken the first and crucial step to set up an Automobile Skill Development Council (ASDC), which is yet to be fully operational. To meet long term objectives, remedial actions are needed.

Skill gaps exist in various sections of the value chain among component suppliers, vehicle manufacturers, sales, service and support functions. To address these gaps, a common roadmap and a national level assessment of skills, training development programmes and technical certification need to be identified. A national level assessment of skills, training development programmes and technical certification need to be identified.⁴

Absence of such skill training is being evidenced in the auto industry in the Gurgaon-Manesar region near New Delhi which is one of the largest automotive hubs in India with an estimated workforce of 80,000. Of these, over 1,000 workers meet with serious industrial accidents every year – a rate of incidence that is testimony to the casualization of labour, non-existent training, long working hours, poor pay and absence of basic safety in the automotive sector, and especially in ancillary units. This happens despite a slew of safety

⁴ “Automobiles: The economic outlook and employment situation” available at www.pwc.in/assets/pdfs/publications/2013/automobiles-the-economic-outlook-and-employment-situation.pdf (last visited on 26.9.2016)

laws and monitoring agencies. Such incidents are only increasing by the day, claims the report.

In so far as pre-accidental care is concerned, there was no training provided to workers. In 8 of 20 cases, there was no system of machine/safety regulation inspections in the factories. In another 5 cases, the safety inspections were irregular and ad-hoc. No automatic safety control system was found in 14 out of 20 cases. Appropriate quality safety gear/equipment was not provided in any of the cases. Very few workers (only 8 out of 20) had ESI cards prior to the accident, risking their post-accident care and compensation. However, in almost all cases, workers' knowledge of ESI processes was inadequate. The age profile of accident victims varied from 18 years to 52 years; however, the majority (15 out of 20) were under 23 years of age.

In so far as post-accidental care is concerned, in half of the cases employers showed complete apathy, especially where the worker was easily replaceable. Most workers (14 out of 20) were first treated at small private hospitals instead of ESI hospitals. The choice of hospital appeared to be influenced by convenience, previous experience of dealing with similar accidents at workplace, distance to the hospital, and availability of doctors during evening and night shifts at the concerned hospital. The employers and employees due to ESIC's time-consuming procedures and attitude saw ESI hospitals as unattractive. Though not clearly evident, preference towards private hospitals was often driven by non-compliance of employers towards

ESI registration and procedures. In 18 cases, the victims lost their jobs after the accidents.

The report notes that when an industrial robot killed a 23 year old employee of an automobile factory, while the employee was trying to fix a metal sheet that had been dislocated, it was subsequently reported that 113 out of 118 robots lack sensor barriers pointing to the abysmal adherence to safety norms by most companies.

To keep their cost of operations low, many a times those companies overlook the aspect of safety for their employees. Unsurprisingly, while laws in the factory regulate workplace safety, post-accident care and compensation do exist, there is an absence of strong and effective institutional mechanism to support their implementation. This had led to unnecessarily hazardous working conditions, a low level of safety, consciousness and training and inadequate post-accident treatment, care, compensation and rehabilitation. Injured workers are, therefore, often left with long term psychological and physical damage, with its consequent financial implications.

Through interviews with 20 workers who suffered serious injuries, the research has highlighted how in 80 per cent of the cases there was no training provided to workers.⁵

⁵ “India:Report highlights precarious work conditions in India’s automotive sector” available at <https://business-humanrights.org/en/india-report-highlights-precarious-work-conditions-in-indias-automotive-sector> (Last visited on 27.9.2016)

4.2. CHILD LABOUR IN INDIA IN THE AUTOMOBILE INDUSTRY:

The term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical-mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children, and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work. The statistical figures about child workers in the world have variation because of the differences in defining categories of age group and engagement of children in formal and informal sector. Policies curbing child labour exist but lack of enforcement of labour restrictions perpetuates child labour. The International Child Labour office reports that children work the longest hours and are the worst paid of all workers.

An empirical study on child labour in automobile workshops in Kalyan and Ulhasnagar of Thane District of Maharashtra highlights the rampant prevalence of child labour in automobile workshops in the said two cities. The study reveals that out of a total number of 50 workshops across the said cities which were all four wheeler workshops, a total of 120 children ranging between 5 and 14 were found to be working. It also reveals that 60% of the

child labourers were from Uttar Pradesh, 20% from Andhra Pradesh and the rest were from Madhya Pradesh, Jharkand and interior parts of Maharashtra.

Most of the child labourers earned between Rs.50 and 100 per day depending upon their age and previous experience. 80% of child labourers had only one meal a day usually dinner and more than 50% of the child labourers were addicted to tobacco and its related product. 30% of the child labourers had never been to school; there are no safety standards maintained by the employers and in case of minor accidents/bruises/cuts they are provided first aid or medical help at the nearest medical dispensary.⁶

It is noteworthy that though the Factories Act, 1948 and Child Labour (Prohibition and Regulation) Act, 1986 prohibit child labour before completion of 14 years, in practice we observe, child labour is uncontrolled in our society. It may be any society, if it is not regulated, we can see child labour there. Specially, we find one of them is the Automobile repairing workshops. It was observed that, lots of Automobile repairing workshops are seen in every city, town, suburban areas in the roadside of national highways, etc. They are not regulated and maximum of them use child labour. It is required to find out the scenario of child labour in Automobile repairing workshops. From a study focused on use of child labour in automobile repairing workshop in Kalwa and Kharegaon, Thane District, Maharashtra, it has been observed that most of the child labourers' income lies between Rs.85 and Rs.95 and that they work for 10

⁶ Usha P Oomman, "An Empirical Study on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra"

to 11 hours. Out of the total child labourers found to be working in such repair shops, 45.45% never attended school and remaining 56.56% regularly failed in their exams and owing to the reason that parents were also not sufficiently earning, they worked in the automobile repair shops.

The reasons behind child labour in workshops, is that they are quick learners and hence expert in their work. They are very flexible and hence capable to move under the vehicles. They do not waste time like many senior workers who take frequent breaks during working hours and therefore they complete maintenance of more vehicles. They are from poor families and hence they are punctual in their work. They are needy and hence ready to work on low wages. They are not aware of any rules and regulations and hence forced to work long hours in low wages.⁷

Particularly in automobile workshops and vehicle repair sector there are 49,893 children working (Report of the Working Group on Child Labour for the 11th Five Year Plan – Planning Commission), enduring miserable and difficult lives. They earn little and are abused much. They do not go to school and more than half of them will never learn the basic skills of literacy.

Andhra Pradesh has the second highest number of working children in the country. According to 2001 census, 13.6 million of children in the age group 6-14 are working in the State of Andhra Pradesh. According to the Census 2001 & SSA (Sarva Siksha Abhiyan) Reports, 26.17% of children in

⁷ “A study of child labour in Automobile repairing workshops in Kalwa and Kharegaon, Thane district, Maharashtra” available at www.iosrjournals.org (last visited on 4.6.2014)

Andhra Pradesh are out of school. Of these 54.83% are girls. According to UNICEF report, World's Children 2006, India has the largest number of working children and 17 per cent of them are under the age of 15. A study conducted in Tirupathi of Chittoor District of Andhra Pradesh identified 181 workshops, out of which 138 workshops were found to have child workers and the remaining 43 workshops did not have child labourers. In the said 138 shops, 264 child workers were identified through baseline survey. A majority of the children stopped their studies at Primary educational level due to economic compulsions in the family, and phobia of school due to irregularity to school which motivates children to discontinue schooling.

A higher percentage (46.8 percent) of the child workers go by walk to their houses from the work spots. A majority (54.8 percent) of the child workers, work for more than 12 hours a day. Employers are exploiting the children because they could not question the employer regarding hours of work and easy to handle children than adult workers, so that they extract work from them squeezing them.

Despite extracting so many hours of work from children, the employers paid very low wages to child workers due to non-availability of job in other areas; Moreover, parents forcing children to work due to poor economic conditions are the main reasons for paying of low wages to children. Apart from all these, an additional current income that a macro point of view, the opportunity cost of his withdrawal from knowledge and skill acquisition

possibility and the consequent handicap in terms of the time earning is more important.

Thus parents and employers abuse children and they are subjected to unfavorable working conditions. One can understand in single word all these disturbances are happening due to ineffective, improper and indistinguishable legislations and policies so that there is lot of need to look at, rectify and revisit those policies and legislations to bring uniformity in the definition of child to control or to alleviate the problem of child labour.⁸

4.3. STUDY OF CHILD LABOUR IN AUTOMOBILE INDUSTRY IN PUDUCHERRY

4.3.1. Methodology

A questionnaire/schedule was designed based on the requirement of the study to survey the prevalence of child labour in Automobile Industry in Puducherry. A field study was conducted using survey methodology and sample techniques used were random sampling method.

Samples were selected randomly by inspecting the automobile workshops which were open during the time of survey and second attempt was also made to survey those automobile workshops which were closed during the previous visit.

⁸ Dr. K. Hymavathi, “Working Conditions and Health Status of Child Labour in Automobile Workshops” 1 International Journal of Human Dev. & Management Sciences 83-91 (2012)

Out of 450 workshops, 310 were surveyed with a total per cent of (68.88%). The study covered both rural and urban areas.

4.3.2.Procedure

All the 310 shops were surveyed indirectly by observation and thereafter directly by interaction/interview. It was analyzed that before conducting the interview with child labourers, one should gain their confidence. For this, help of the President of automobile workshops Association as well as the persons closely related to the areas under research were identified and the approach was made through them. Therefore the employers were removed of the fear and they readily accepted the researcher's visit to the work spot. Having had an introduction about the researcher, the employers readily came forward to spare some time for the enquiry. In some cases, it happened that the owners of the workshop stated that the workers had to complete their job on hand and requested the researcher to come the next day. Accordingly when the researcher went and approached the employer/owner, he was ready to spare the workers for the interview.

4.3.3. Factors

The interview with each and every shop was very delightful for the boys since they were heard by someone for the first time in their life. Most of the children nearly accounting for 65% stated they were working only during evenings and were attending school as well and that they were doing the same just to have some technical knowledge and to give some financial support to

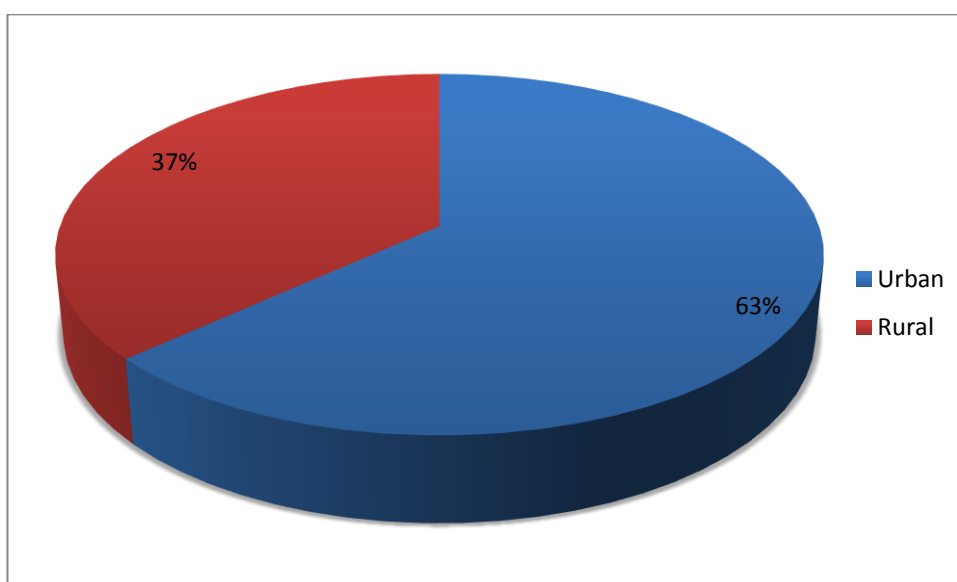
their family. Out of the remaining 35 per cent, 20% of the children stated that they were forced by economic compulsions to work. The said children when came out with their reply as to whether they were not interested to study in school, that the money they earned for the family just helps them sustain their lives with some educational opportunities provided to younger siblings. From their narration, it was felt that they were more responsible than other children of their age who remain in schools. A high sense of responsibility was found in their narration. They elaborately described the background of their families, which were suffering from either single parentage, addiction of the father to alcoholism, indebtedness, etc., Out of the remaining 15%, 10% of them stated that they wanted to learn certain technical skills which would help them to obtain some job in future. Remaining 5% stated that they had no hope in education since in their opinion all those educated are not finding jobs. They said moreover they did not have any interest in school going and learning process which is cumbersome. They said that they were paid rupees hundred a day and that would help their families sustain as of now until they establish their own workshops on learning the skill.

4.4. ANALYSIS OF THE REPORT

A survey was conducted to find out the prevalence of child labour in Automobile industry covering rural and urban areas of Puducherry. A schedule was used to gather the data. The data were analyzed based on descriptive statistics and inferential statistics.

Table 1. Frequency of automobiles surveyed in Urban and Rural**Puducherry**

Place	Frequency	Percentage
Urban	196	63.23
Rural	114	36.77

Figure 1. Frequency of automobiles surveyed in Urban and Rural**Puducherry**

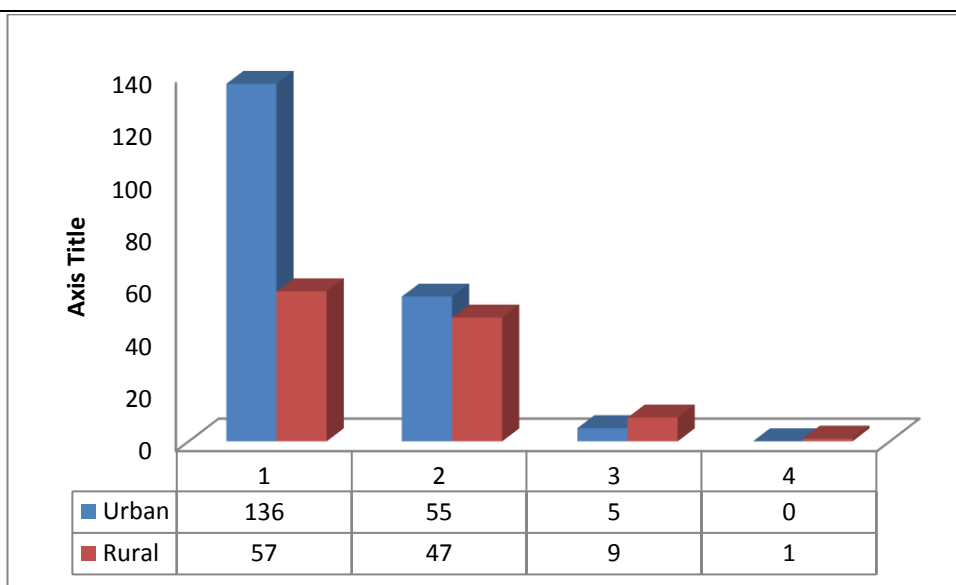
The results revealed that out of 310 Automobile workshops surveyed, 196 were from urban and 114 were from rural areas covering a total of 13 municipalities and commune panchayats. Areas were selected in a random manner. Urban areas covered by the study were Muthialpet, Mudaliarpet, Lawspet, GingeeSalai, Bharathi Street, Saram, Jipmer, Thattanchavady, Gandhi Nagar, Reddiarpalayam and Yellapillaichavady. Rural areas covered by the

study were Ariyankuppam, Thavalakuppam, Poornankuppam, Abishekapakkam, ChinnaKalapet, PeriaKalapet, Kirumampakkam, Bahour, Karikalampakkam, Villianur, Embalam, Thondamanatham, Arasur, Chinna Kalapet and Periya Kalapet.

Table 2. Frequency of adult working in automobiles surveyed in Urban and Rural Puducherry

Place	Frequency of Adults				Total
	1	2	3	4	
Urban	136	55	5	0	196
Rural	57	47	9	1	114
Total	193	102	14	1	310

Figure2. Frequency of adult working in automobiles surveyed in Urban and Rural Puducherry

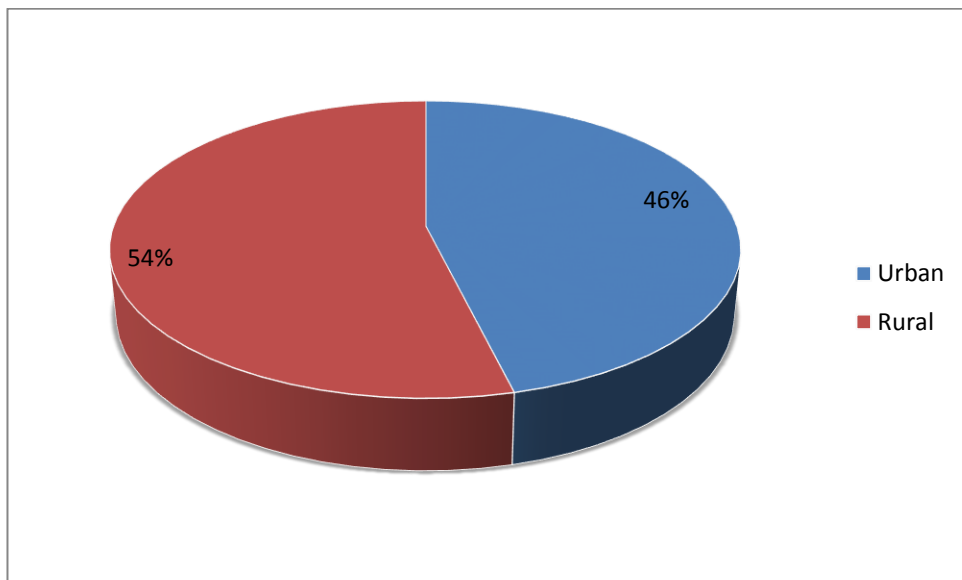


In Automobile Industry, the frequency of adult employed between urban and rural showed a significant difference in the distribution with a chi-square value of 14.42, $P < 0.05$. In the urban areas there were more number of adults employed in Automobile industries when compared to the rural. It was noticed that those places in urban areas located at the heart of the city did not daringly engage child labour. When enquired the owners of the shops situate at the heart of the city, the owners invariably stated that they never engage children for fear of frequent raids by the officers of the Labour Department and that they are scared to face the risk. Some of the owners said that they did not employ children but they visit the shops after school hours just for the sake of learning skills.

Table 3. Frequency of children working in automobiles surveyed in Urban and Rural Puducherry

Place	Frequency of children	Percentage
Urban	12	46.15
Rural	14	53.85
Total	26	100

Figure3. Frequency child working in automobiles surveyed in Urban and Rural Puducherry

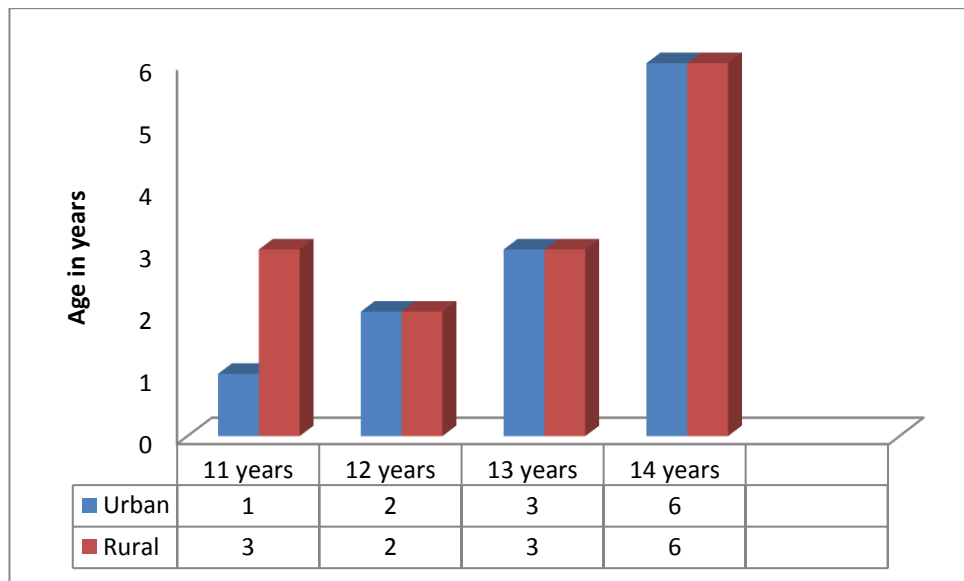


The survey data revealed that there were 26 children being employed in automobile industry in Puducherry in this study. 12 (46%) were from urban and 14 (54%) were from rural.

Table 4. Age distribution of children working in Automobile in Puducherry

Place	11 years	12years	13years	14years	Total
Urban	1	2	3	6	12
Rural	3	2	3	6	14
Total	4	4	6	12	26

Figure 4. Age distribution of children working in Automobile in Puducherry

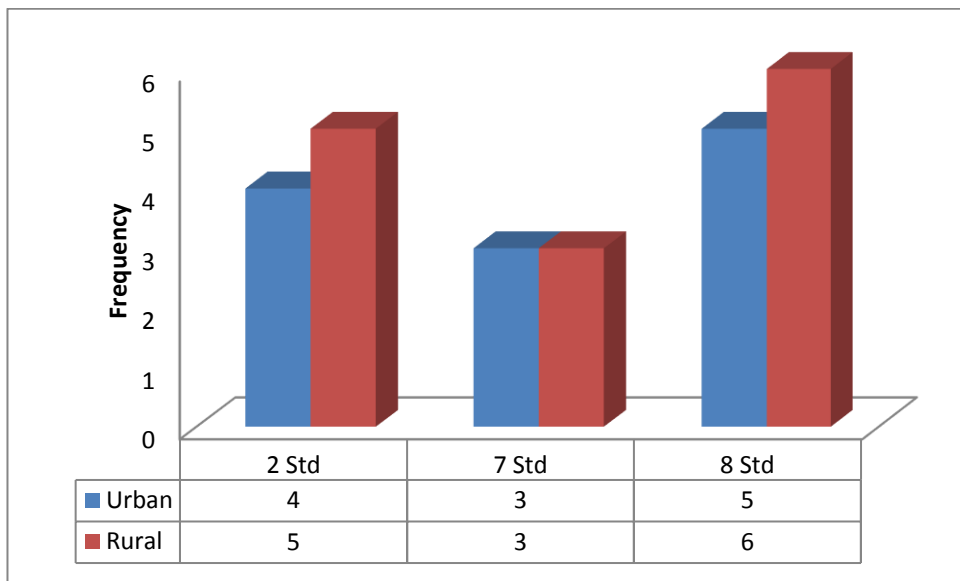


The age distribution of children showed there is no significant difference between rural and urban. Out of 26 children found during the survey, they were in the age of 11-14 years.

Table 5. Distribution of Education of Child working in Automobiles in Puducherry

Place	2 nd Std	7th Std	8th Std	Total
Urban	4	3	5	12
Rural	5	3	6	14
Total	9	6	11	26

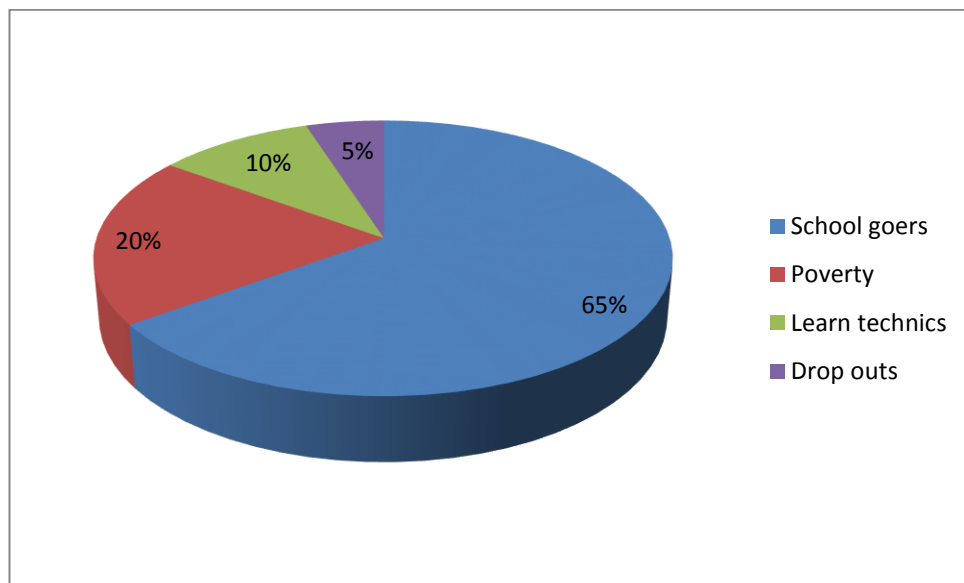
Figure 5. Distribution of Education of Child working in Automobiles in Puducherry



The educational status of the children found during the survey showed that they had studied and are studying second standard to eighth standard. The distribution of education between rural and urban did not show any significant difference. But even then, out of the 12 children totally engaged in the urban

areas, 8 children were found to have studied or are studying 7th or 8th standard and only the rest of the 4 had studied or are studying 2nd or 3rd standard. Out of 14 children totally engaged in rural areas, 9 children were found to have studied 7th or 8th standard and remaining 5 had studied or are studying only 2nd or 3rd standard. But whatever may be the level of education, children engaged both in rural and urban areas were found to be intellectually good and capable of understanding the questions put to them and answering them in an apt manner. They were also found to be quick in grasping technical issues in the repair workshop.

Figure 6. Reason for Employment in Automobiles



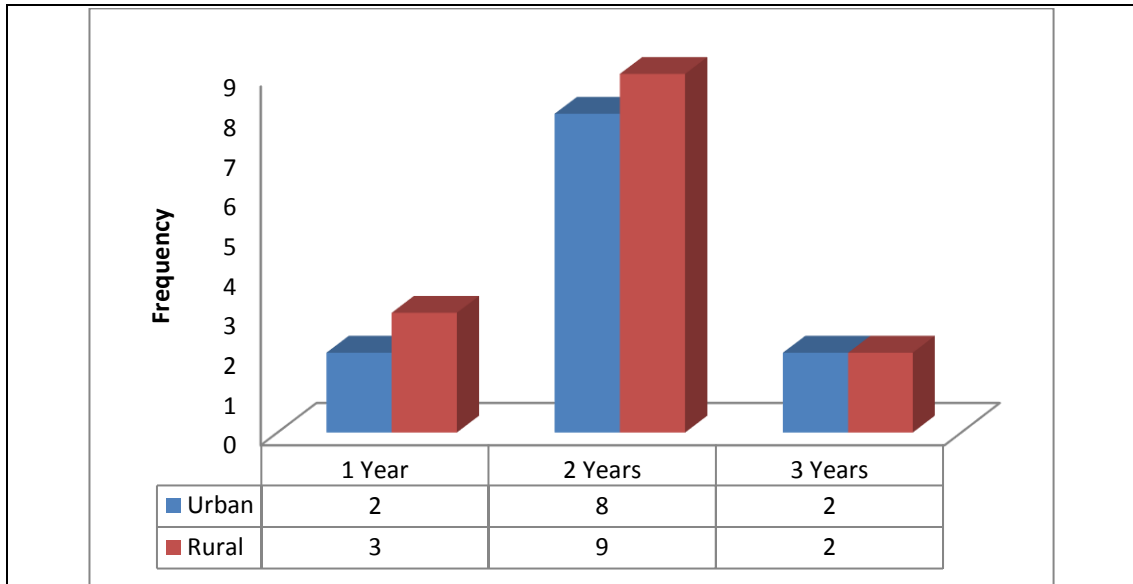
When asked for the reasons for being employed in the automobile industry, both urban and rural children revealed that poverty and learning a technique or acquiring vocational skill as the main reasons. Further interesting information was found that, out of the total of 26 children 17 children (65%)

were going to school and involved in the job as part-timers. Out of the remaining 35%, 20% of them cited poverty as the chief and primary cause and 10% stated that they wanted to learn some technical skills that would serve for their livelihood in future and remaining 5% showed reluctance to education stating that they would do better technically than study their lessons and expressed that lessons were boredom to them.

Table 6. Duration of employment in Automobile industries

Place	Duration			Total
	1 year	2 years	3 years	
Urban	2	8	2	12
Rural	3	9	2	14
Total	5	17	4	26

Figure 7. Duration of employment in Automobile industries



When asked about the duration of employment in automobile industry the children revealed that they are working for nearly 1 to 3 years. Among the 26 child workers population identified, 5 children stated that they only had an experience of a year or so. They said that during the first six months they were only asked to wash vehicles and purchase tea/coffee for their boss and that only recently they have started to assist the adult and adolescent workers engaged in the shop and that they are becoming familiar with the various tools that are used in the shop to repair the vehicles. Out of the remaining 21 children, 17 had continued for more than two years but less than three years who said they are in the process of learning and are capable of identifying and doing small repair works. The remaining 4 children stated they had already completed

more than 3 years and are running the fourth year and are capable of assisting the adult workers apart from identifying certain minor or major defects.

Physical health status of children surveyed in the automobile industry showed that only one child in the rural area was found to be having physical health issues. Out of the total of 26 children employed in the said industry all were happy to state that their health was in good condition except the one child who complained of asthma and that he is undergoing treatment. Apart from the children's health, in the course of enquiry 2 adolescents revealed that they suffered for quite some time from tuberculosis and after due treatment and recovery they have started working and that they are perfect now.

Psychological health status of children surveyed in the Automobile industry showed that none of the children showed any psychological health issues. When all the 26 children were enquired they did also seem to be suffering from any sort of mental ill-health. Rather they exhibited keen receptivity and observation and spontaneous remarking over issues or questions.

4.5. STUDY OF CHILD LABOUR IN AUTOMOBILE INDUSTRY IN PUDUCHERRY – A discussion

Child labour is a common field of study in which many persons researches especially students of community medicine under take studies to check whether there are social issues among school children. In that way of the matter several researches have been done so far on child labour. But these

studies are done only among school children. In the study of child labour among school children in urban and rural areas of Puducherry done by Devi and Roy⁹ in schools situate in the service areas of Jawaharlal Institute of Rural Health Centre and Jawaharlal Institute of Urban Health Centre covering rural and urban areas of Puducherry, the study was conducted in certain select schools in rural and urban areas of Puducherry and among those, children who were working were further interviewed. In the said study, interview was conducted for working children alone in their houses with the help of certified data collected. The study revealed that 32.5% of the children went to work. The study found that among the said working children, children working in the urban area comprised of 42.8% and 24.8% in the rural area.

Yet in another study conducted by Niveditha and Roy,¹⁰ was done in schools in urban areas regarding the prevalence of child labour among school children and related factors in Puducherry. For the said data collection, they selected students from four Government schools from urban area studying from 5th to 9th standard during the academic year 2001-2002 with sample size of 1305 students. The research ended up in a finding that 150 per 1000 students were engaged in work outside school hours.

The said studies only related to part-time child labour and that too, relating to child labour in general. But however no specific study has been

⁹ Devi K, Roy G. “Study of Child labour among school children in urban and rural areas of Puducherry” available at <http://www.ijcm.org.in/text.asp?2008/33/2/116/40881> (last visited on 20.9.2009)

¹⁰ Nivedita T Roy G, “A study of child labour among school children and related factors in Pondicherry available at Indian J. Commun Med 2005:1:14-5 (last visited on 28.9.2016)

made in the field of child labour particularly relating to automobile industry. In the same way though several researches had been conducted in India Like-wise several studies have so far been conducted regarding child labour in automobile industry but none has been done with reference to Puducherry. A similar research has been done on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra” by Usha P Oomman, Ulhasnagar.¹¹ The said research endeavors to highlight the rampant prevalence of child labour in automobile workshops in the two cities of Kalyan and Ulhasnagar. The said paper also throws light on the various forms of exploitation of child labour in the form of low wages, long hours of work, poor sanitation and hygiene etc. The paper also suggests measures to overcome the problem of child labour. Likewise another study is also found to have been conducted, on child labour in Automobile repairing workshops in Kalwa and Kharegaon, Thane district, Maharashtra¹² which attempts to highlight the fact that lots of Automobile repairing workshops are seen in every city, town, suburban areas in the roadside of national highways, etc. They are not regulated and maximum of them use child labour. The study is a probe into the scenario of child labour in Automobile repairing workshops. The study is focused on the use of child labour in Automobile repairing workshop in Kalwa and Kharegaon, thane District, Maharashtra which ended up with finding that

¹¹ Usha P Oomman, “An Empirical Study on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra” available at EPISTEME On line Journal Vol 1 No.3 (Sep 2012) ISSN No.2278-8794

¹² Nitinkumar N. Varade, “A Study of child labour in Automobile repairing workshops in Kalwa and Kharegaon, Thane district, Maharashtra” available at www.iosjournals.org (last visited on 4.6.2016)

maximum number of child labourers work for 10 to 11 hours and that 45.45% of the child labourers had never attended school and that remaining 56.56% are school dropouts, for reasons such as dislike for school, parents not ready to send them to school, they regularly failed in their exams and parents were not sufficiently earning. Another article on Working Conditions and Health Status of Child Labour in Automobile Workshops¹³ seeks to explore the working conditions and health status of child labourers in Automobile Workshops of Tirupati town. The said article brings about the unhealthy and hazardous conditions and environments of workplaces by taking 250 respondents working therein.

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

¹³ Dr. K. Hymavathi, “Working Conditions and Health Status of Child Labour in Automobile Workshops” available at International Journal of Human Development and Management Sciences Vol.1 No.1-2 (Jan-Dec,2012) ISSN:2250-8714 (last visited on 4.6.2016)

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

In this study, on enquiry of persons working in the automobile industries, it was ascertained that in so far as Puducherry is concerned, no manufacturing is carried on and that the said industry is restricted to assembling of parts and nothing else. Therefore the automobile industry in Puducherry is restricted automobile repair workshops where to a large extent children are and are likely to be employed.

Whereas in this study, data was collected by directly contacting the children and interviewing them with a view to making the result reliable and effective to act upon. As a result of such a study, altogether 26 children were identified to be engaged in the automobile repair workshops.

The present study purely deals with child labour in Automobile Industry. Only after interview the child labourers are classified as part-timers or full-time child labourers. The study revealed that 65% of children are attending school as well as working in the evenings after school hours. It also revealed that they work to gain some technical knowledge which would help

them acquire some job in future. At the same time the study revealed that they could also help sustaining themselves and their families by doing some job until they learn skills and establish automobile workshops.

The gist of the study is that while 65% per cent of children worked for sustaining themselves and their families apart from learning some skills, the remaining 35% were employed as full-time child labourers, in which 20% attributed their engagement to poverty, 10% to learning skills and 5% to non-interest in education.

From the study conducted in automobile workshops in Puducherry, it is understood that poverty is the chief cause of child labour. It is to be noted that despite the Government offering education to children free of cost, parents are reluctant to send their children to school because of the extreme poverty underlying the families arising out of single parentage, drunkardness of father, insufficient income of mothers, etc., If the Government is really to eradicate child labour it has to essentially set right these issues by way of giving incentives to such parents who send their children to school.

The other cause clarified from out of the study is that the interest in children towards learning some technical skills apart from education. If child labour has to be eradicated, obviously education has to be provided but it should be of worth. The education shall thus comprise of both subjects as well as skills or inculcation of technical knowledge which would help children as well as their parents to have some trust on education. Therefore education

should be wholesome, meaningful, technical-oriented as well as have good standards so that children on completion of their education can compete in the fast developing world, getting due employments.

Though only 5% of the children stated that they are not interested in studies and said that school is full of boredom, it is suggested that care should be taken to see that schools are made places of interest. For retention of children at schools, identifying the talents of children and diverting and encouraging them in skills appropriate would be of great help. It is also well settled that child labour is deprivation of child rights. It is also suggested that if children should enjoy all the rights meant for them, they should be aware of their rights. For this purpose, subjects such as child rights and child labour should be included in the syllabus and taught to them as subjects.

4.6 THREATS TO CHILD FROM AUTOMOBILE INDUSTRY:

Motor vehicles have become essential part of today's life. Vehicle repair and maintenance need has led to the emergence of a really large sector named repair and maintenance, which is also known as workshop. This is an informal sector also categorized as small and medium size enterprise. It's a labour-intensive sector, and its size of enterprise, number of workers and job characterization vary considerably. Employes of all ages are routinely seen at these workshops. From health and safety point of view, this is a tough sector to

tract and supervise. Hundreds and thousands of risks and hazards go unnoticed.¹⁴

A majority of children are forced by their parents to work in the workshops and they are working as temporary workers and most of them joined in the said industry just to supplement the family income. They work for more than 12 hours in a day, they are paid daily and get low wages. The children in the automobile workshops have an experience of 4 to 8 years. The child workers have very less time as rest but that too is not in a stipulated time. This apart, they have their lunch at odd times after finishing their given task at whatever time it may be. All these apart, if they violate the rules framed by the employer or when they make mistakes in the work they are punished by the employer in the form of verbal and physical abuse and it is also in the form of wage reduction very rarely. Thus these children endure miserable and difficult lives. They earn little and are abused much. They do not go to school; More than half of them will never learn the basic skills of literacy.

Children have rights to get love, affection, education, health and recreation for their proper growth and development. But unfortunately many children are deprived of such amenities. Socio-economic compulsions drive number of children into child labour. For satisfying the family basic needs parents send their children to work. Child workers suffer from family deprivation and hence they are found deficient in the acquisition of skills. A higher percentage of

¹⁴ Ijaz Ahmad, Mohammad Rehan, et. al. "Review of Environmental Pollution and Health Risks at Motor Vehicle Repair Workshops: Challenges and Perspectives for Saudi Arabia" 2(1) Int. J. Agri. Environ. Res. 3 (2016)

child labourers (43.2 percent) of the child labourers started to work from 10-12 years.

Child workers were compelled to take up employment for supplementing family income, due to the death of parents or either parent or caregivers, incapacity (from illness or old age) of family members, unemployment or irregular employment of the chief wage earner to take regular employment and the combination of lower irregular employment of the chief wage earner to take regular employment and the combination of lower irregular wages. “Cycle of poverty theory” points that the notion of predestination of certain people to a life of (economic) poverty. The idea seems to be that one inherits poverty through his colour, caste, his socio-economic status, or the occupation of his parents. While there is little systematic explanation of this concept, there seems to be a general agreement that social status is associated with certain level of income, education, family structure and community reputation. These become a part of the vicious circle in which each factor acts on the other to perpetuate the social structure and the individual family’s position.

When a family does not get adequate nutrition even when all the members spend their resources of time, energy and money on bread winning activities, it knows poverty as a total experience. Almost every member contributes to the family income. In a majority of such cases, even the children are involved in procuring cash or kind for their wherewithal for survival. Thus a number of basic societal conditions influenced the employment of an

individual. They argued that the association between social grouping and specific environmental factors is not directly causal, but is mediated by more basic societal conditions, such as unemployment, poverty and inequality of opportunity in various areas.

On account of the above factors, children work for more than 12 hours a day. On account of long working hours, children become very weak; it will affect children's health and development; they are working in unhygienic working environment, due to this reason there is lot of chance for contracting diseases.

The imbalance between demands of employment and capabilities of the child causes stress, which has a depressing effect on the working child. Thus the child workers' health status is average; Child workers are working in unhealthy, hazardous working conditions and environments with long hours of work and to cope with heavy work stress they are trying to use unhealthy substances which gives slight sedation and mental relief for a temporary period, and get addicted to things like gutkha, smoking, alcohol etc., Such addicted children are exploited much by the employers and sometimes most of the children are punished by their employer both physically and verbally sometimes in the form of wage cutting for not completing the assigned task in the stipulated time. Apart from all these, children are suffering from under nutrition and malnutrition. Malnourished children are poorer in at least language skills than the healthy children.

Child workers are deprived of adequate food due to low family income. Majority of child workers are denied food by their parents for not contributing their income to the family, because child worker's family incomes are very low, and the size of the family is high; that their parents could not supply sufficient food and also it is a method used by the parents to control the children to get all the income from them.

Children working in automobile workshops come from that majority of the respondents belong to weaker sections, their family size is higher, parents are illiterates and their family income are very meager which forces children to enter into the workshops; even though their wages are very little which combined with tough tasks and long hours of work in the unsafe and insecure risk environments by which causing more damage for their physical, mental or psychological growth. It will reveal how deprived they all are of education, health, nutrition, recreation and a safe environment, how these children are routinely subjected to heat and noise pollution, exposure to chemicals, in addition to physical and mental abuse. These difficulties all are facing only for supplementing or contributing some income to their families to meet their basic needs with greater responsibility. These children are exploited a lot by their parents and employers and sometimes by their co-workers who are seniors in the work. The employers also do not extend any support to the children at the

time of injury, because the automobile workshops are covered by unorganized sector where legislations are not effectively implemented.¹⁵

Apart from all these, children lose several opportunities of childhood. It becomes difficult for children to attend school or receive vocational training. Obviously, children working long hours have trouble in attending school on regular basis, if at all. Since children in the Indian workforce are uneducated, the work they do is often unskilled and simple and provides little opportunity for further training. Even if children are not working long hours, stress and fatigue affects their attendance and participation in school activities.¹⁶ Coming to the basic necessities, most of the workshops do not have toilet facilities within their premises and most of them do not have a direct water connection within the premises and hence water is stored in drums from the nearby municipal tap. The same water is used for both drinking and washing by all workers. All child labourers use petrol/kerosene to remove grease, oil, paint, wax, polish from their person at the end of the day.¹⁷

4.7 HEALTH, ECONOMIC AND OTHER SOCIAL DEVELOPMENT ISSUES:

The International Labor Office reports that children work the longest hours and are the worst paid of all labourers. The negative impact on the

¹⁵ Dr.K.Hymavathi, “Working Conditions and Health Status of Child Labour in Automobile Workshops” 1 International Journal of Human Dev. & Management Sciences 83-93 (2012)

¹⁶ Ranjan K. Agarwal “The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India” 21 Ariz.J.Int’l & Comp. Law 663 (Fall.2004)

¹⁷ Usha P Oomman, “An Empirical Study on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra” available at EPISTEME On line Journal vol 1 No.3 (Sep.2012) ISSN No.2278-8794

physiological and psychological levels of children includes specific concerns of child labour and its consequences on mental health.¹⁸ There is high prevalence of respiratory, digestive and skin conditions as well as migraines, insomnia, irritability, enuresis and asthma.¹⁹

Working children may be exposed to a variety of hazards. Children are found around the world pumping leaded gasoline, cutting rock in stone quarries, tanning leather, electroplating metals, scavenging garbage for food, tending goat and sheep, and any of hundreds of menial tasks.

There have been studies of the impact of a variety of substances on children's health. Perhaps the best studied of these substances is lead. Children are more likely to absorb lead than are adults. Similarly children are at a significantly higher risk of developing irreversible neurological damage. Studies have also been conducted on the impacts of mercury and carbon monoxide on development. Data indicate that both substances have a significant impact on early growth and development. These substances are also well-documented reproductive hazards.

Most child labourers are offered little or no protective equipment. When available, the equipment has been designed for adult use and is virtually useless for child protection. However, children are frequently found working in occupations with exposures well defined and related to diseases. Therefore

¹⁸ Kalpana Srivastava, "Child labour issues and challenges" 20(1) *Ind Psychiatry J.* 2 (2011)

¹⁹ Usha P Oommen, "An Empirical Study on Child Labour in Automobile Workshops in Kalyan and Ulhasnagar, Thane District, Maharashtra"

obviously, a child who begins work at an early age has many more years to develop a problem compared to adults with similar exposure.²⁰

Workers while working at Motor Vehicle Repair Workshops are exposed to many solvents, adhesives, resins, poly aromatic hydrocarbons and heavy metals. The hazards and risks depend upon the exposure type, time, route of exposure, magnitude and personal susceptibility. The major exposures are:

Benzene: Benzene is a constituent of gasoline and a proved cancer causing agent. Due to its carcinogenic nature its exposure is strictly regulated and monitored throughout the world. Different studies cited that its exposure damages biomolecules, micronuclei, breaks of DNA strands, and chromosomal aberrations. Exposure assessment of benzene can be performed using t, t-muonic acid a urinary metabolite, and is regarded as an effective biological monitoring instrument. The other such techniques used to evaluate DNA damage and genotoxicity are comet assays and micronucleus assays.

Lead: Lead exposure is common among vehicle repairers. This constitutes 0.9% of global health burden and most affected population is among developing countries. Health hazards due to lead are globally recognized for many decades. There was an epidemic of lead poisoning in an automobile industry in the USA as far back as 1924 (ILO,2012). In adults, occupational exposure is the main cause of lead poisoning. These occupational exposures have adverse effects on workers as well as on their family's health. Workers

²⁰ David L. Parker, "Article: Sixteenth Annual International Law Symposium 'Rights of Children in the New Millennium': CHILD LABOR: The Impact of Economic Exploitation on the Health and Welfare of Children" 21 Whittier L. Rev. 177 (1999)

may also transfer lead contents through their clothes to families and indoor environment. The automobile technicians exposed to lead including battery manufacturers and repairers, panel beaters, spray painters and radiator repairers. There have been reported cases of lead poisoning and deaths from ingestion and inhalation of gasoline among mechanics. Automobile mechanics were also reported to suck petrol and use it to wash hands with, which leads to absorption of tetraethyl lead through mucosa, and this with inorganic lead from exhaust fumes, may lead to elevated blood levels.

PAHs: International agency for research on cancer (IARC) has categorized some PAHs as carcinogens to humans, particularly to the workers continually inhaling fumes, vapors and mist of used gasoline engine oil (UGEO) like auto repair workers. Different studies proved that both virgin oils and UGEO contain carcinogenic contents. Also, the PAHs having three or more than three rings are responsible for 70% carcinogenicity of UGEO. Other reported health effects associated with long and short term exposure to crude or petroleum oil are tumors, blood disorders, reproductive problems, reduction in growth, morphological problems and nephrotoxicity.

During work at Motor Vehicle Repair Workshops, workers come across a number of occupational health hazards which depend upon the type of job they perform. Some routine hazards are accidental, physical, chemical, biological and ergonomic.

Accidental hazards include fall hazards, injury hazards, crushed toes, eye injury, electrocution, musculoskeletal disorders, burns, acute musculoskeletal injuries, burns, soldering, brazing and welding operations. Other accidental hazards include carbon monoxide poisoning, fires and explosions, cuts, abrasions, punctures, tires bursting and accidents to steam water pressure cleaners.

Physical hazards include exposure to lubricants, brake fluids, used gasoline oils, degreasers, adhesives, asbestos, detergents, paints, solvents, antifreeze and epoxy resins which can pose serious health hazards to workers. During break drum cleaning and body spraying asbestos exposure causes asbestosis and mesothelioma. Exposures to benzene, toluene, ethylene and xylene have reportedly caused hematological changes. Inhalation of diesel exhaust fumes, NO_x and respirable particulates, and ingestion of adhesives causes increased risk of brain damage, acute eye and mucous membrane irritation, headaches, breathing difficulties and chest tightness.

Biological hazards are also called biohazards. The biological materials which pose threat to humans refer to biological substances that pose a threat to the health of living organisms, primarily that of humans. These are the hazards caused by living organisms while performing jobs at workshops. The commonly used adhesives may promote growth and contamination of microbes and these microbes may cause infections among workers, exposed to adhesives.

Ergonomic hazard is a physical factor which can harm workers while at work. The main factors with working environment are repetitive movement, lifting and handling heavy loads, unsuitable body postures, workstation height, task design and manual handling. The outcomes are acute musculoskeletal injuries i.e. hernia, back bone stress, strain and pain, intervertebral disk rupture, tendon rupture etc.,

Motor Vehicle Repair Workshop workers face psychosocial hazards such as stress due to long working hours under time pressure, carpal tunnel and trauma damages due to repetitive work schedules. At vehicle repairing workshops, workers perform variety of jobs. While performing repairing and maintenance tasks their main role is to investigate the problem immediately and quickly using their senses, experience as well as electronic gauges. Their job might be to fix or repair a single part or more parts interconnected. The auto mechanics use to suck oils using a tube through mouth can easily expose the worker. They are also exposed to fuel oils while washing different parts of vehicles. Exposure to automotive gasoline most likely occur from breathing in its vapors at workshops by sniffing, washing, degreasing mechanical engine repair works while fixing of atomizer and diesel oil pump, pistons rings etc.,²¹

These apart, children working in Motor Vehicle repair workshops suffer from diarrhea, skin diseases, jaundice (liver dysfunction because of insufficient nutritious food) caused through usage of contaminated or polluted water. In

²¹ Ijaz Ahmad, Mohammad Rehan, et. al. "Review of Environmental Pollution and Health Risks at Motor Vehicle Repair Workshops: Challenges and Perspectives for Saudi Arabia" 2(1) Int. J. Agri. Environ. Res. 10-13 (2016)

addition to that the employers are not providing safe drinking water at work place for these child workers. Very frequently child workers in the workshops are prone to injuries for their external body parts; in such circumstances these children may not get any medical benefits and leaves form the employer. Even the employer's are not maintaining any first aid kit at workplace. These apart children suffer from under nutrition and malnutrition.²²

Apart from physiological injury, there are also psychological injuries. But Law has laid emphasis on physical injury that affects the physiology of a child but the “psychological injury” is left as such. Psychological injury can have disastrous impact to shape the personality of a child. Types of non-hazardous occupations where children are involved at work, methods, Ericson's developmental stages of children affected by child labour activities, assessing psychological effects, constitutional provisions, psychosocial analysis all of which conclude that once a child gets employed he or she loses the freedom to spend his or time by his own free will.²³

Child labour not only has physical and psychological effects on children but also has serious socio-economic effects. They often work long hours and are required to undertake tasks that they are physically and developmentally unprepared to do. Moreover, child labourers are often underpaid, if at all Children receive a fraction of the wage adults earn, even when employed in the

²² Dr.K.Hymavathi, “Working Conditions and Health Status of Child Labour in Automobile Workshops” 1 International Journal of Human Dev. & Management Sciences 89 (2012)

²³ Psychological Injury to children at work : A Review of the Literature available at www.igi-global.com/article/psychological-injury-to-Children-at-work/139197 (last visited on 28.9.2016)

same type of work. Also, children do not receive employment benefits, insurance, or social security. The other problem is that, it is difficult for children to attend school or receive vocational training. Obviously, children working long hours have trouble attending school on regular basis, if at all. Since children in the Indian workforce are uneducated, the work they do is often unskilled and simple and provides little opportunity for further training. Even if children are not working long hours, stress and fatigue affects their attendance and participation in school activities.²⁴ Apart from orientation to helplessness are feeling of powerlessness, there exists a paradigm of culture of poverty i.e., poverty as structural component produces a threefold motivation pattern characterized by low need for achievement, low need for extension and high need for dependency and when a family does not get adequate nutrition even when all the members spend their resources of time, energy and on bread winning activities, it knows poverty as a total experience.

Parents and employers abuse children and they are subjected to unfavourable working conditions. They are abused in various forms such as physical injuries, mental injuries, negligent treatment or maltreatment, continuous verbal abuse. Their jobs and working conditions are positively not satisfactory since working conditions are excessive, strenuous and difficult. They are subjected to long working hours and harsh treatment. The nature of child maltreatment depends upon the quality of the environment in which the person and family develop the level of family support in the environment. The

²⁴ Ranjan K. Agarwal “The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India” 21 *Ariz.J.Int’l & Comp. Law* 663 (Fall.2004)

lesser the family support, the greater is the risk of maltreatment of children. Children are not able to fulfill their minimum needs with their family income. With this, the child workers are paid low wages and exploitation of wages is high and they are depressed, therefore they are not able to fulfill their minimum needs. Thus, non-availability of job in other areas, parental forcing children to work are the key influencing children to get low wages.

Social and economic deprivation may be characterized as a condition in which particular behavioral alternatives for achieving self-fulfillment of needs are absent. It is considered that social deprivation is a relative term referring exclusively to specific types of working environmental factors. Therefore, any environment factor may be considered deprivational when these factors are associated with certain social groupings such as socio-economic status or race and when the environmental variables is associated with impaired performance.

Among the traits attributed to the poor are some of the following low self-esteem, a sense of inefficacy and passivity, preference for the familiar and simplification of experience, relationship structured in terms of power, restriction of language and linguistic modes of communication and reliance upon non work friendships and kinship contacts for social support and resources.²⁵

²⁵ Dr.K.Hymavathi, “Working Conditions and Health Status of Child Labour in Automobile Workshops” 1 International Journal of Human Dev. & Management Sciences 89-90 (2012)

4.8 IDENTIFYING FACTORS CONTRIBUTING TO CHILD LABOUR AND INABILITY TO CONTROL/REGULATE:

The study reveals that the prime factor is poverty. Despite the Government's effort to provide children with free education, it also has to see to that there is no poverty to such an extent not to send children to school. If even education is offered free of cost, reluctance is seen in parents sending children to schools, it only means, the Government has failed in its attempts to remove poverty from the State. For this purpose, child labour has to be identified periodically and see if there is any improvement in children's enrolment etc. Even for the information that poverty remains the cause for non-enrolment or drop out, it is essential to have firsthand information on the data of child labour and the causes due to which child labour exists. Unless Government has firsthand information and statistical report on child labour and identify the causes underlying the said problem, it would never be able to wipe out the problem. Sometimes it happens that Government keeps statistical report merely for the purpose of accounting. The main lacuna is that mere accounting of the status would not serve the purpose. Apart from accounting, what is more important is that, the analysis of the report, which would lead to the factors contributing to the problem.

Most of studies have found that poverty is the chief cause of child labour. Even the present study finds the same. The condition being so, Government

has to probe into the problem and by all means try to eradicate poverty. Only by doing so, child labour can be eradicated. It is known fact that poverty perpetuates child labour which in turn ends up in poverty. Therefore if poverty is allowed to continue, cycles of poverty would continue generations after generations. The main task of the Government should therefore be eradication of poverty. The main lacuna lies in the fact that Government is unable to control or curb poverty and ultimately, child labour.

The other lacuna lies in the loopholes existing in the Child Labour (Prohibition and Regulation) Act, 1986. The Act is suggestive of both prohibition and regulation which leads to ambiguity. It is prohibitive only in hazardous industries and in other industries it is regulatory. For this purpose, it is suggested that the entire Act has to be revamped.

The study is also suggestive of the fact that children are interested in learning skills, which is not to be found in the curriculum. Most children both working on part-time basis as well as on full time basis, express their readiness to learn techniques/skills. The present education system fails in its attempts to provide some technical knowledge to children in schools apart from providing normal education. Unless technical training is combined with education, education will not receive any welcome by parents, who cannot afford to spare their children to schools who according to them would be wasting their time and energy learning nothing.

Moreover the study reveals that 5% children are not interested in studies and feel it a boredom. Schools will have to be made more child friendly and motivating so as to help retention of children in schools. Schools being places of threat of punishments and teaching not effective in motivating children contribute to non-enrolment and drop-out rates of children.

Above all, there is lack of proper enforcement machinery. Even the authorities show no interest in identifying working children and let them lose on the ground of poverty. This type of attitude both among the officers and public should change. Public should also come forward to report such incidence of child labour anywhere it comes to their notice. Moreover, child labour is less enforced in rural areas. At least in town areas workshop owners have some fear of raids conducted by Labour Department which is totally absent among village folk. The Labour Department states that there is no conviction during the last five years. It is also ascertained therefrom that the owners show certain proof in support of their argument and get themselves relieved from the enquiry at the preliminary stage itself. Therefore non-stringent views of the Government in dealing with child labour also contributes to uncontrolled growth of child labour.

CHAPTER 5
CONCLUSION AND SUGGESTIONS

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5.1. INTRODUCTION

Child labour is basically violation of child rights. By affecting the rights of the child, it affects the destiny of the nation as a whole, for children are assets of every nation. Thus the future wellbeing of a nation depends on how its children grow and develop as the great poet Milton admirably put it when he said:

“Child shows the man as morning shows the day”.

It may not be out of place to state that several international instruments have played a pivotal role in initiating the concept of child rights and developing it. The history of child rights, brings to light the fact that children in olden days were treated as chattel by parents. It is only with the gradual coming up of the international instruments, children found some place as human beings and for the first time realized that they too have rights equal to that of adults. The only problem with children is that though their rights are recognized today, their rights are not prioritized. This situation occurs due to the fact that adults who are powerful to claim their rights are themselves not getting their rights fulfilled on account of shortage of resources. One can imagine the extent of children getting their rights fulfilled when they do not know their rights and cannot raise their voices. It is in this view of the matter

that the Supreme Court as early as in 1984 rightly held in *Gramophone Co. v. Virendra Bahadur Pandey*¹ that Parliament is empowered to make legislation for giving effect to international agreements by Article 253 of the Constitution of India. It is worth mentioning that though there were legislation even before this, it gave rise to several legislation only thereafter. Given the problem of child labour, though it is well known that legislation alone cannot solve the issue, legislation are important in at least providing solutions to the problem and curbing the problem to some extent. The extent of controlling a problem effectively not only depends on the existence of a legislation, but also on its extent of implementation and enforcement. However effective the legislation may be, if enforcement is weak, the legislation as such is futile.

But even beyond all these, there are lacunae in the existing legislation because of which the very purpose of combating the evil is defeated. For study of any problem in detail, the legislation regarding the said issue, loopholes in the legislation, its implementation, extent of its working and success will all have to be analysed. The legislation governing the said issue is the Child Labour (Prohibition and Regulation) Act, 1986.

5.2 POINTING OUT INADEQUACIES IN LEGISLATION TO TACKLE THE ISSUE:

In so far as the issue of child labour is concerned, the governing legislation is Child Labour (Prohibition and Regulation) Act, 1986. In the Child

¹ AIR 1984 SC 667

Labour (Prohibition and Regulation) Act, 1986, the very nomenclature suggests that it is both prohibitory as well as regulatory. The dual nature of the Act is clear from Part II of the said Act which is prohibitory only to some extent in as much as section 3 of the said Act runs as follows:- “No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on:

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

“The main legislation relating to child labour, namely the Child Labour (Prohibition and Regulation) Act, 1986, is partly prohibitory and partly regulatory in the sense that Part II prohibits employment of children in certain occupations and processes and Part III regulates the conditions of work of children. Naturally, it is explicit that only certain occupations set forth in Part A of the Schedule and processes set forth in Part B of the Schedule are prohibited and that all other occupations are permitted and are only to be regulated. The dual nature of the statute contributes to the permeability which leads to permissibility of child labour in the country.”²

² K. Latchoumy, “Does permeability lead to permissibility? Contribution of Labour legislations to the mushroom growth of child labour – A critical Analysis” II LLJ 103-104 (2008)

This apart, the proviso to section 3 of the Act which states that nothing in the section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government. The Act once again secludes from its purview, child labour taking place in the guise of children helping their families. Here again the Act is dual in nature thus distinguishing between children being employed for wage and children being engaged by family members for assisting them. This proviso has its own disadvantage in the sense that children often are made to say that they are employed without wages in the shop of their relatives. It is owing to such type of defence mechanisms provided by the Act itself, that it becomes extremely difficult to label child labour.

Section 4 of the Act states that the Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to be amended accordingly.

Thus going by section 4 of the Act, only those occupations and processes that are contained in the schedule would be taken care of. In view of policy makers and researchers, child labour is deprivation of opportunities of childhood to children, and exploitation. "The Report of Child Labour Committee (1979) states that labour becomes an absolute evil in the case of the child when the child is required to work beyond physical capacity, when hours

of work interfere with child education, recreation and rest; when the wages are not commensurate with the quantum of work done and when the occupation the child is engaged, child's health and safety.”³

While any child labour is a great problem to the society at large, the said legislation distinguishes between hazardous and non-hazardous forms of labour and identifies certain processes and occupations from which children are prohibited from working and leaves large range of activities where children are exploited. Moreover, the Act does not contain any measures for rehabilitation of the rescued child. Apart from anything else, penal provisions should be stringent and the implementation part of it should be very scrupulously done.

Section 2(ii) of the Child Labour (Prohibition and Regulation) Act, 1986 defines “child” to mean a person who has not completed his fourteenth year of age. While so section 15 of the Act reads as follows:-

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

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

³ Sumalata Bhomkar, Child Labour – A problem XXXIV Indian Socio-Legal Journal 75 (2008) Source:Report of Child Labour Committee

- (a) Section 67 of the Factories Act, 1948;
- (b) Section 40 of the Mines Act, 1952;
- (c) Section 109 of the Merchant Shipping Act, 1958; and
- (d) Section 21 of the Motor Transport Workers Act, 1961.”⁴

While applying section 14 of this Act which deals with penalties, for offences committed under aforesaid provisions of the respective Acts, section 40(1) of the Mines Act, 1952 states that after the commencement of the Mines (Amendment) Act, 1983, no person below 18 years of age shall be allowed to work in any mine or part thereof. Whereas under the Child Labour (Prohibition and Regulation) Act, 1986, child is defined to mean a person who has not completed his fourteenth year of age and under section 14 only whoever employs a child or permits any child to work shall be punishable. Therefore for such an extended application of section 14 to other enactments under section 15, there should be uniformity in the definition of child to take cognizance of such offences under the Child Labour (Prohibition and Regulation) Act, 1986 or necessary amendment should be incorporated in the definition of child to include person under eighteen years of age in terms of Mines Act, 1952. Likewise section 11 of the Child Labour (Prohibition and Regulation) Act, 1986 states that there shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during

⁴ Child Labour (Prohibition and Regulation) Act 1986 (Act 61 of 1986) section 15

working hours or when work is being carried on in any such establishment, showing the name and date of birth of every child so employed or permitted to work; hours and periods of work of any of such child and the intervals of rest to which he is entitled; the nature of work of any such child; and such other particulars as may be prescribed. While many industries mostly carry on their business utilizing the services of children in private houses, the requirement contained under section 11 of the Child Labour (Prohibition and Regulation) Act, 1986 to maintain register in respect of children employed will itself be futile. While clause (b) of sub-section (3) of section 14 of the Child Labour (Prohibition and Regulation) Act, 1986 provides that whoever fails to maintain a register as required by Section 11 or makes any false entry in any such register 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, such industries carried out in private houses will go unnoticed, making the legislative attempt to punish the offenders miserably fail.

Above all, punishment laid down under section 14 for contravention of section 3 of the Child Labour (Prohibition and Regulation) Act is only imprisonment for a term which shall not be less than three months but which may extend to one year or with a fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both. In terms of sub-section (2) of the said section, whoever, having been convicted of an offence under Section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six

months but which may extend to two years. Thus punishment provided for contravention of Section 3 is altogether very meagre and is to be amended if only child labour is to be controlled effectively. Above all, the Child Labour (Prohibition and Regulation) Act, 1986 has to be amended to make the offence under the Act cognizable.

However recently the Child Labour (Prohibition and Regulation) Act, 1986 has been amended as the Child Labour (Prohibition and Regulation) Amendment Act, 2016 (No.35 of 2016). The new Act has to some extent been amended to fill the gaps of the earlier 1986 Act. But the best part of it is that it totally prohibits employment of children in any occupation, whether hazardous or otherwise, introducing a new definition for child in relation to the Right of Children to Free and Compulsory Education Act, 2009. Another highlight of the Act is that it introduces definition of adolescent to mean a person who has completed his fourteenth year of age but has not completed his eighteenth year of age. As respects children it dilutes the concept of hazardous and non-hazardous occupations and processes, directly hitting heavily upon employment of children in any industry whatsoever.

It is delightful to note that India while acceding to the United Nations Convention on the Rights of the Child, 1989 did so only with an undertaking to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party. Article 32 of the said Convention requires gradual elimination of child labour especially in

hazardous occupations and processes by progressively raising the minimum age of child. However, Government of India acceded to the said Convention with exception of Article 32 bearing in mind the economic conditions prevailing in India and the compulsion under which children enter occupations of hazardous nature. Therefore by passing the new Act, Government of India is deemed to have complied with the said international obligation, pending for quite a long time. In this way of the matter, the new Act is a welcome one.

Now therefore the scheme of the Act is that it completely prohibits employment of children in all occupations and prohibits employment of adolescents in hazardous occupations and processes. It is as good as saying that the age of children for entry into hazardous occupations has been raised to 18.

One main reason for the problem of child labour to continue at highly explosive rates, as has also been stated in this Chapter is that the penalty prescribed for employing children in contravention of section 3 of the earlier Act is very low ranging from ten thousand to twenty thousand rupees. The new Act seems to have a heavy hand on employers employing children by increasing the penalty as ranging from twenty thousand to fifty thousand.

Another highlight of the new Act is that it has made offence under the Act cognizable. This apart, the new Act makes provisions for rehabilitation of children by constituting a fund for rehabilitation, which was absent and lacking

in the earlier Act. This seems to be an act in consonance with judgments of the Supreme Court time and again.

Moreover the earlier Act provided a single machinery, namely, the appropriate Government alone to control child labour which proved a failure for want of inspecting machinery. Whereas in the new Act, appropriate Government confers power on the District Magistrate to ensure compliance of the Act apart from duty being cast upon itself to inspect child labour concentrated areas periodically and monitor the issues relating thereto. Though the new Act is designed to cure child labour, good result would still be dependent on how scrupulously the provisions of the Act are implemented.

5.3. NEED TO ADDRESS CONTRADICTIONS WITHIN LABOUR LABOUR LEGISLATION AND AMONG LABOUR LEGISLATION AND SUGGESTIONS FOR AMENDMENTS:

The main lacuna in most of the legislation is the presence of provisos. The earlier child labour Act in Section 3 stated that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on, with a proviso that nothing in this section shall be applicable to cases where child works with his family or in any school receiving assistance or recognition from Government.

The new Act also is likely to suffer from its weakness in providing that child can work with his family after school hours or during vacation, or as artist in audio-visual entertainment industry, including films, television serials or

such other entertainments or involve himself in sports activities except the circus industry. This proviso is also likely to produce the like results as that of the earlier Act, the only difference being that children attend schools apart from doing works. This amendment seems to be in consonance with the observations of the National Commission on Labour, 1969.

Apart from the above, there still seems to be varying definitions of child in parallel labour legislation. As per the newly amended Child Labour Act, child means a person who has not completed his fourteenth year of age. The Mines Act, 1952 under section 40(1) states that after the commencement of the Mines (Amendment) Act, 1983, no person below 18 years of age shall be allowed to work in any mine or part thereof. Under the Children (Pledging of Labour) Act, 1933, “child” means a person who is under the age of fifteen years. This contradiction in defining child differently in different legislation would pose or tend to pose chaos in taking cognizance of the offence under the Acts.

In certain cases, even within the same legislation, there are variations in defining child. While Section 2(c) of the Factories Act, 1948 defines child to mean a person who is under the age of fifteen years or has not completed his fifteenth year of age, Section 67 which deals with prohibition of employment of young children states that no child who has not completed his fourteenth year shall be required or allowed to work in any factory and Section 71 of the said Act prescribes working hours for children. Thus there is contradiction

within the Factories Act, 1948 as well as there is contradiction among other labour legislation.

Wage being an essential ingredient of labour, the legislation relating to wages like the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965 etc., could be classified as parallel legislations.

Section 3(3)(iii) of the Minimum Wages Act, 1948 empowers the appropriate Government to fix or revise rates of wages in respect of adults, adolescents, children and apprentices.

Similarly, sub-section (5) of Section 8 of the Payment of Wages Act, 1936 which deals with Fines states that no fine shall be imposed on any employed person who is under the age of fifteen years. So also, Section 10 of the Payment of Bonus Act, 1965 which prescribes 8.33% of salary or wage or one hundred rupees, whichever is higher as minimum bonus, in its proviso states that where an employee has not completed fifteen years of age at the beginning of the accounting year the provision of this Section shall have effect in relation to such employee as if for the words “one hundred rupees” the words “sixty rupees” were substituted.

All the provisions afore-cited seem to be either explicitly or impliedly permissible which help in breaking the prohibitive barriers of the legislation. If our dreams to eradicate child labour were to come true and all our efforts to weed child labour are to be effective, it is suggested that the provisions need to

be amended in such a way that they are free from contradictions, ambiguity and deviations whatsoever. Thus it is further suggested that the permeable clauses in all such labour legislations be removed to the effect that the legislation are rigid and strictly enforceable. If only child labour is to be kept under control, all these complicating permeable clauses will have to be attended seriously.

5.4 OTHER SUGGESTIONS TO ERADICATE CHILD LABOUR:

The problem of child labour in our Country is so high that solutions have to be drawn simultaneously from following several angles, such as:

5.4.1 Training of women to enhance family income

From the study conducted in the previous chapters it is obvious that one of the main causes of child labour is acute poverty. To overcome the said curse, the only way open is to enhance the income of the family by promoting women employment. India being a traditional country the traditional view of most of the families in rural areas that women should not undertake employment outside their homes still subsists. It is in this view of the matter that the girl children in the families were educated or technically trained only if there were resources residual after providing qualification or technical training to male members of the family. The lack of educational qualification or technical training makes the employers to employ women on jobs which mostly require technical skills. The employer cannot run a loss for equipping women by providing them with training, bearing the cost of the same. At this angle, though there are several training institutes run by Government for

providing technical training to girls, private organizations as well shall take up the task of providing women with some sort of training so as to enable them to be independent financially and educate their children without wasting the potentialities of children by sending them to work at very early years before they attain majority and before they could at least acquire basic education.

5.4.2. Promoting education

Abolition of child labour is preceded by the introduction of compulsory education: Compulsory education and child labour laws are interlinked. Article 24 of the Constitution bars employment of child below the age of 14 years.⁵ Article 45 is supplementary to Article 24 for if the child is not to be employed below the age of 14 years he must be kept occupied in some educational institution.⁶ It is only in compliance with the said provisions that Government of India adopted the National Policy on Education, 1986, the main thrust of which is universal enrolment and universal retention of children up to 14 years of age in elementary education. Thus, the economic development of the Nation should promote social development by ensuring right to education to all children. Since children's right to education and child labour are interconnected problems, States have to devise schemes to attract more and more children to schools. More emphasis on right to education to children would reduce the incidence of child labour.⁷ In this context, what we need to recognize is that continued existence of child labour, and the inability of every

⁵ Constitution of India: Article 24

⁶ Constitution of India: Article 45 (as it stood before amendment)

⁷ Dr.P.K.Padhi (ed.), Child Labour Retrospect & Prospect 137-138 (The Law, Cuttack, 1998)

child to access education means that we have failed our children. No country has ever achieved anything worthwhile on the backs of such child labour or illiteracy that we have in India. The worst pockets in some of the Indian States are worse than the worst in the world, countries such as Rwanda or Burundi in Sub-Saharan Africa. More specifically, we must acknowledge that the problem of child labour and illiteracy are two sides of the same coin, and we cannot universalize education without eliminating child labour.⁸

Connecting child labour with education seems very logical, as it has been discussed in the definition of child labour that an economic activity of a child can be classified as child labor if it affects the child's leisure, health and particularly educational activities. Therefore, it points to a normative view that every child, regardless of his or her background, should have the right to receive at least a minimum amount of schooling. This is because childhood is considered as the best time for acquisition of education, so it should be devoted to the accumulation of human capital, particularly through formal schooling. Hence, any discussion of child labour will lose importance if education or schooling is not incorporated into it.⁹

By definition too, child labour denies a child of her right to education. Indeed, it is made clear in the Convention of the Rights of the Child (CRC), 1989, that a child should not work if it interferes with her education. The

⁸ Enakshi Ganguly Thukral (ed)., Every Right for Every Child Governance and Accountability 169 (Routledge, London/ New York/New Delhi 2011)

⁹ Rasheda Khanam and Mohammad Mafizur Rahman, "Child Labour in developing countries: The Role of Education, Poverty and Birth Order" 10 Journal of Social and Economic Development 178 (2008)

consequences of having no education, or trying to juggle education and work, are not hard to appreciate. It has been documented that above a certain threshold in respect of hours of work, which varies according to age and type of activity, a child's learning capacity can be impaired. According to American researchers, the academic performance of young persons between twelve and seventeen years old is adversely affected if they work fifteen hours a week. Clearly, children need not even be working full time to suffer educationally.

However, the relationship between child labour and education goes beyond this. Education has a role to play in both the incidence of and the solution to child labour. Thus, the link between labour and education cannot be limited to the mere impossibility of working and studying at the same time. Furthermore, if one of the reasons child labour is abhorrent is that a child is not able to exercise her free will, then education is vital because it is the means by which a child acquires the knowledge to make informed choices about her life.

The ILO and UNICEF consider shortcomings of a country's educational system to be a cause of child labour, primarily because opportunities for education tend to stem the flow of labour into the work force. Even if children do have the opportunity to go to school, they may work to help pay for schooling; even "free" schooling is expensive. Thus, there is clearly a link between child labor and education, and education can be regarded as part of both the cause and solution to the problem.

Obviously, there is also a link between economic development and education. The ability of a country to provide free elementary education in line with its international obligations largely depends on its ability to fund such programs. It also depends on whether children and their families can survive without a child's income. The link between development and education is arguably recognized in international instruments, as states need only progressively secure the right to education as they acquire means to do so. However, access to educational opportunities is not entirely dependent on development. It also depends on whether a child's family or society values education. Thus, poor schooling rates cannot always be blamed on poverty alone.

Furthermore, studies show that at the macroeconomic level there is a high rate of social return on investments in primary education and that such investment are essential to generate economic growth and reduce poverty. This suggests that education is part of the solution, not only to child labour, but also to poverty. Arguably, the provisions of education should be pursued, not as economic development occurs, but as a prerequisite to economic development.¹⁰ Certainly, "quality elementary education is crucial to the prevention and reduction of child labour. Economic compulsions often leave children with little alternative but to enter the labour market where they are often forced to work in hazardous and exploitative conditions. While primary education is generally free in India, child worker families perceive an

¹⁰ Katherine Cox, "The inevitability of Nimble Fingers? Law, Development, and Child Labor" 32 Vand. J. Transnat'l Law 10-13 (1999)

opportunity cost to educating their children. Given the proven role of access to education in reducing the incidence of child labour, the National Child Labour Project recognizes the need to strengthen the primary education infrastructure in the country.¹¹ Thus “elimination of child labor and the universalization of elementary education are regarded as ‘inseparable processes’, and the entire strategy should be based on the ‘norm that no child should work and all children should be in schools.’ This is an important contribution to the debate. The Study Group¹² has adopted a child-centred approach and such an approach can only be holistic: universal education and the assault on ‘child labour’ go hand in hand.”¹³ Although the realization of the economic, social and cultural rights are subject to the availability of resources, child labour denotes a violation of a whole range of rights – not only economic, social and cultural rights but also civil and political rights. Child’s right to education as well as the right against exploitation has to be viewed within the context of other rights of the family which stand violated. Very often, these violations at the family level and the community level are intrinsically linked to the emergence and perpetuation of child labour and a beginning of a life of missed opportunities. Although education is not the only strategy to eliminate child labour, it is the key strategy to ensure that children are not available to be employed. Elimination of child labour and realization of the fundamental right to

¹¹ Helen R. Sekar, “Impact of Technological Change on the Demand for Child Labour in Brassware Industry of Moradabad” (V.V.Giri National Labour Institute, Noida, Uttar Pradesh, 2007)

¹² Study Group (2001): Report of the Study Group on Women and Child Labour, National Commission on Labour, New Delhi.

¹³ Pius Antony, V. Gayathri, “Child Labour: A Perspective of Locale and Context” 5195 Economic and Political Weekly (December 28, 2002)

education is essentially a matter of political choice and a willingness to put children first.¹⁴

Myron Weiner, a strong advocate of compulsory education for children to combat child labour in India, maintains that without the iron frame of legislation to compel at least few years of elementary education, millions of Indian parents will never send their children to school, employers will never release their grip on a nimble fingered, easy to hand and cheap source of labour and India will continue to head the international illiteracy league well into the coming century.

The importance of education in curbing child labour cannot be underestimated. By taking the example of the State of Kerala, this statement can be corroborated. Child labour is almost non-existent in Kerala and the literacy rate is almost touching cent per cent. Historical and political factors explain this success.

Historically, the Christian missionaries who started arriving in the State since 1498, built churches (palli in Malayalam) and along with it schools (pallikoodam) and enrolled children, regardless of caste, religion or their parents' income. Over the years, the number of schools kept rising, even if they did not cover the needs of the whole population.

¹⁴ Dr.Archana Mehendale (ed.,) National Consultation on Right to Education: A Strategy to Eliminate Child Labour, 8 (Centre for Child and the Law, National Law School of India University, Bangalore 1998)

Kerala's Government financed schools also proved to be increasingly successful since independence. Enrolment is free and free school meals encourage poor families to send their children. The minimum wage, which is higher than elsewhere in India, allows parents to survive without their children having to go out to work. Anyone who has not enrolled his son or daughter in school comes under pressure from the other inhabitants of the village. Even primary teachers before the beginning of the school session go about looking for children to be enrolled. Thus, it can be seen that a whole range of factors have contributed to Kerala's success story in the field of education and resultantly, almost eradication of child labour from the State.¹⁵

“Education is thus a very important part of development. Children who are drawn to child labour are basically driven because of economic deprivation, lack of schooling and engagement of family for daily needs. Studies have found low enrolment with increased rates of child employment. Schools are the platform for early intervention against child labour, as it restricts their participation in menial jobs. Hurdles in this approach are economic reasons. Unless economic change is brought about, children will not be able to attend school. Child labour can be controlled by economic development increasing awareness and making education affordable across all levels, and enforcement of anti-child labour laws.

¹⁵ Thomas Paul, “Child Labour – Prohibition v. Abolition: Untangling the Constitutional tangle” 50 JILI 153-154 (2008)

The Government of India has taken certain initiatives to control child labour. The National Child Labour Project (NCLP) Scheme was launched in 9 districts of high child labor endemicity in the country. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the GOs in the district. Under the Scheme, these children are provided formal/informal education along with vocational training, and a stipend of Rs.100 per month. Health check-up is also done to them.”¹⁶

“Over 400 children rescued from child labour in different parts of the State have passed the class 10 examination, securing an overall 92 per cent. According to officials from the Child Labour Monitoring Cell of the Labour Department, of the 469 children who appeared for the examination, 429 passed. The children were mainstreamed under the National Child Labour Project. ‘We are in talks with our field officers to counsel and enroll these children in better schools according to their stream preferences for class 11 and 12,’ said P.Amudha, Labour Commissioner.”¹⁷

The United States and most other countries devote a huge share of their resources to education. In 2008-09, the United States spends considerably more than one trillion dollars in institutional expenditures on education from kindergarten through higher education. What is notable is that this figure

¹⁶ Kalpana Srivatsava, “Child labour issues and challenges” 20(1) Ind Psychiatry J 2-3 (2011)

¹⁷ S.Annamali & R.Aditi, “Former child labourers come out with flying colours” The Hindu, May 26th, 2016.

does not include preschool or spending on education and training by businesses or the military. Nor does it include private tutoring or the types of specialized lessons provided to children and adults by public and private entities such as the YMCA, Boys and Girls Clubs, and after-school academies. Even so, the official spending statistics accounted for almost eight percent of Gross Domestic Product, a percentage that would surely rise to over ten percent if all educational spending were included, more than one of every ten dollars of national income. This amount considerably exceeds the spending on the military and is second only to the health care sector. Moreover, this spending has doubled in real times between 1986 and 2008-09.

Presumably this huge resource commitment is justified by the large benefits of education in generating higher productivity and income, technological and cultural progress, and preparation of the young for adult roles as citizens in the economic, political and social life of our society. And it is the challenge that is at the heart of economics, how to allocate a scarcity of overall resources to a multiplicity of competing ends.¹⁸

Thus abolition of child labour practice and the achievement of universal basic education for children are inseparable processes. One cannot be achieved without the other. Children of the underprivileged are denied effective access to school education and have landed up as child labourers. With the enactment of the Right of Children to Free and Compulsory education, there is a new

¹⁸ Henry M. Levin, “Classroom Politics: A Symposium on Education Reform: Article: The Economics of Education” 4 Alb. Gov’t L. Rev. 394 (2011)

mood sweeping the country demanding equitable quality education for millions of under privileged children of our society who are engaged as child labourers in order to attain the fundamental right of the child which places the onus on State to provide free, compulsory and universal access to primary education to all children up to the age of 14 years by bringing all children of the school going age who are out of school working as child laborers with the help of suitable programmes by which quality school education to the child labourers can be achieved.¹⁹

5.4.3. Providing Education – As an alternative to child employment – A way out

With the passing of the Right of Children to Free and Compulsory Education Act, 2009, right to education of children up to elementary level has become mandatory in terms of section 3 of the said Act. This Act coincides with the Constitutional Mandate provided under section 21-A for free and compulsory education up to 14 years. The First National Commission on Labour headed by Dr.P.B.Gajendragadkar recognizing the fact that the employment of children in India is more of an economical problem than anything else felt that education of children could be ensured by fixing the employment hours of children so as to enable them to attend to schooling. It also recommended that where the number of children is adequate, the employers with the assistance of the State Governments,

¹⁹ Niranjana Radhya V.P, Samuel Sathyaseelan et al., “Frequently asked Questions (FAQ’s) on Child Labour in India” 81 (Centre for Child and the Law (CCL) National Law School of India University (NLSIU) 2015)

should make arrangements to combine work with education. The new Act allowing children to work after school hours in certain establishments such as entertainment industry inclusive of cinema and serials seems to have been based on the said recommendation. This system of combining work with school has been quite successful in Pakistan and Bangladesh. In high-income countries too, it is common for school children to work. In the United Kingdom for example, majority of children had experienced some type of paid employment by ages 14-15.

5.4.4. Commencing of Night Schools

These apart the Government shall also provide night schools for children and adults separately with a view to eliminating illiteracy. Adult education shall go a long way in coming to know the value of education so as to provide their children education at least in the days to come.

5.4.5. Improving School Environment

School is the main alternative to child labour and especially in today's changing technological environment and globalizing economy, literacy and basic mathematical skills are more important than ever. In most developing countries the quality of education is so poor that schools could be considered as hazardous, even abusive to children. In many schools children are made to sit in the same position hours together, in small crowded rooms paving way to transmission of diseases, subjected to mental abuse, being repeatedly criticized and humiliated and subjected to physical

abuse where corporal punishment is used. It is therefore suggested that schools should be designed to be the safest and the best place for acquiring knowledge and all-round development.

5.4.6. Improving Quality of Education

From the study conducted so far it is found that parents do not have any hope for better future by putting their wards in schools. Schools should provide children not only knowledge of subjects but also teach them life-oriented skills and insist on morality rather than on mere education. Children also lose hope in the education system which does not help them build their skills or capacity to lead a good life. It is therefore suggested that in schools run by Government, Corporate and private sectors, the education should be of good standard to enable students to meet life in good spirit and with hope.

5.4.7. Curricula should be life oriented

The syllabi prescribed for school children should be more practical and life oriented and provide children with technical know-how and their applications.

5.4.8. More number of Technical Training Institutions be commenced

Most of school children may have more technical aptitude and interest in acquiring technical knowledge or skills. In order to shape their future

and to make them useful citizens, more and more technical institutions should be started to offer them technical skills.

5.4.9 Awareness of harms of child labour right from earlier classes in schools

Many children working in workshops or other workplaces when enquired do not reveal their true age and instead provide wrong information as to their age as taught by their employers. They do not realize that by doing so, they are ruining their own lives by continuing to be child labourers. To prevent this, it is felt necessary that an awareness regarding ill-effects of child labour especially in hazardous industries has to be brought out to school children right from their very early years.

5.4.10 Awareness among Industrial and Factory Workers and in Trade Unions

There should be awareness among industrial and factory workers that the employer should not engage children for various industrial occupations. The Labour Department should quite often conduct awareness programmes in industries, factories and often conduct meeting with employers of all industries and factories.

5.4.11. Drop box for each Commune/Village/Area

With a view to eradicating child labour throughout there shall be drop box placed for every commune/village as per convenience for children to let

out their grievances and there shall be committee comprising of some responsible senior citizens who shall once in a month or so open and set right the grievances of children in the matter of education or accommodating them in some child care centres, providing education as well. This project shall be carried out keeping in view the best interest of the child. This will help in the long run to eradicate the evil practice of child labour.

The new Child Labour Act also has its own flaws for, the mischief in the original Act will continue to persist in as much as there is no restriction in children carrying out business with their family members.

It is therefore suggested that the said proviso encouraging children to carry out their business with their family needs attention of the legislators.

5.4.12. Starting of mobile schools

To cover all children who have been deprived of education due to child labour, mobile schools could be started. These mobile schools can go a long way in curbing child labour.

Education could also be provided to children through radio and television as is done in Brazil. This will also help them at least to be educated to some extent instead of completely being illiterate.

5.4.13. Awareness to Children regarding their Rights

The main lacuna is that children are not aware of their rights. Unless and until they are aware of their rights they will not know what the State should do to them. Therefore right from lower classes they should be taught about their rights. As is the case of Philippines, awareness of rights of children should be brought about by various social movements.

PROFORMA FOR COLLECTING DATA FOR Ph.D WORK

1. Sl. No :
2. Name of the Workshop :
3. Place : Rural Urban
4. Name of the Owner :
5. Address :
6. Name of the Child :
7. Name of the Adult :
8. Name of Adolescent :
9. Father's name :
10. Date of birth :
11. Age :
12. Address :
13. Educational qualification :
14. Total no. of family members :
15. Reason for employment :
16. Duration of employment :MonthsYears
17. Health status :
18. Whether going to school/
Dropped out :

PROFORMA FOR COLLECTING DATA FOR Ph.D WORK

1. Sl. No : 50
2. Name of the Workshop : Annai Auto Works
3. Place : Rural Urban **RURAL**
4. Name of the Owner : Palani
5. Address : Pondy-Cuddalore Road, Thavalakuppam, Puducherry.
6. Name of the Child : Vignesh Kumar
7. Name of the Adult : Palani
8. Name of Adolescent : nil
9. Father's name : Shankar Naadaar
10. Date of birth : 1.10.2004
11. Age : 13
12. Address : 32/7 Abdul Kalam Street, Varnavasi, Kancheepuram 631
604 Tamil Nadu
13. Educational qualification : VIII
14. Total no. of family members : 4
15. Reason for employment : to learn technical skills, to earn due to acute poverty
owing to father's drunkardness mother being coolie
16. Duration of employment : 3.....Months 2.....Years
17. Health status : looks short. No health issues
18. Whether going to school/dropout : Dropped out. Discontinued VIII Std

**Form of application for seeking information
under the Right to Information Act, 2005.**

I.D. No
(For official use)

To

The Public Information Officer,

LABOUR DEPT.
(ENFORCEMENT WING)
PUDUCHERRY.

1. Name of the Applicant : K. LATCHOUMY
2. Address : PLOT No. 89, IV Cross St,
Sri Mookambigai Nagar, Thavalakuppam,
Puducherry.
3. Particulars of information :-
- (a) Concerned department : Labour Dept. (Enforcement)
- (b) Particulars of information required :
- i. Details of information required : as furnished in the annexure
- ii. Period for which information asked for : -
- iii. Other details : -
4. A fee of Rs 10/- (Rupees ten only) has been deposited in the office of the Public Information Officer vide receipt No..... dated.....

Place : Puducherry

Date : 27.9.2016

K. Latchoumy
Signature of Applicant

E-mail address, if any klakohmisundar2015@gmail.com

Tel. No. (Office)

Mobile : 9789171412

(Residence)

Note :- (i) Reasonable assistance can be provided by the Public Information Officer in filling up the Form 1.

Received
27/9/16

0413-2277780

Annexure

Please furnish a copy of the following:

1. Report of child labour (general) year-wise survey in Puducherry for the last five years.
2. Report of child labour year-wise survey in automobile workshops in Puducherry taken during the last five years.
3. No. of cases filed against employers engaging child labour during the last five years.
4. No. of cases that ended up in conviction.

Form of application for seeking information
under the Right to Information Act, 2005.

I.D. No
(For official use)

To

The Public Information Officer - cum - State Project
Director, SSA, Dte of School
Education, Puducherry.

1. Name of the Applicant : K. LATCHOUMY
2. Address : PLOT NO. 89, 90 "SRI RAMAKIRUPA"
SRI MOOKAMBIGAI NAGAR, THANAMPALAYAM,
THAVALAKUPPAM, PUDUCHERRY-7.
3. Particulars of information : As per enclosure.
 - (a) Concerned department : SSA, Education Dept.
 - (b) Particulars of information required :
 - i. Details of information required : Drop out of boys for
 - ii. Period for which information asked for : 2007 till 2016
 - iii. Other details : Year of implementation of
Compulsory promotion policy.
4. A fee of Rs 10/- (Rupees ten only) has been deposited in the office of the Public Information Officer vide receipt No. dated

Place : Puducherry

Date : 6.3.2017

K. Latchoumy
Signature of Applicant

E-mail address, if any : klakshmisundar 2015@gmail.com
Tel. No. (Office) : 2201928

(Residence) (Mobile) 9789171412

Note :- (i) Reasonable assistance can be provided by the Public Information Officer in filling up the Form 1.

1. No. of drop outs among boys in 2007, 2008, 2009.
2. No. of drop outs among boys in 2010, 2011 up to 2016 year wise.
3. Year from which compulsory promotion policy was implemented.

Annexure - 4 (1)

GOVERNMENT OF PUDUCHERRY
O/o LABOUR OFFICER (WELFARE SCHEMES),
II Floor, Labour Department Complex, Vazhndavur Road,
Gandhi Nagar, Puducherry-9.

No.717/LO (WS)/ AIL-I/2016/212

Puducherry, the 19/10/2016

To

Tmt K Latchoumy,
Plot No 89, IV cross street,
Sri Mookambigai Nagar,
Thavalakuppam,
Puducherry

Madam,

Sub: LO(WS) - Form of Application received for information under
Right to Information Act,2005 - Reply furnished - Reg.

Ref: Your application for seeking information No. Nil
dt. 27.09.2016 Puducherry.

With reference to your application for seeking information under R.T.I Act 2005,
I am to furnishing herewith the reply to your question no.1 to 4 in the enclosed
Annexure for your kind information.

Yours faithfully

Ammal
19/10/16

(A.MALAR)
LABOUR OFFICER-CUM-
PUBLIC INFORMATION OFFICER,
UNDER RTI ACT, 2005

Encl: As stated.

ANNEXURE

QUESTION	REPLY
1. Report of Child Labour (general) year-wise survey in Puducherry for the last five years.	No survey on child labour (general) has been conducted during the last five years hence, requested information not available in this office. ✓
2. Report of Child Labour year-wise survey in automobile workshops in Puducherry taken during the last five years	No survey in automobile workshop on child labour has been conducted during the last five years hence, requested information not available in this office. ✓
3. No. of cases filed against employers engaging child labour during the last five years.	-Nil ✓
4. No. of cases <u>that</u> ended up in conviction	-Nil ✓

Ammap
14/11/16

(A MALAR)
LABOUR OFFICER-CUM-
PUBLIC INFORMATION OFFICER,
UNDER RTI ACT, 2005

SUPPLY OF INFORMATION TO THE APPLICANT UNDER RIGHT TO INFORMATION ACT, 2005.

No. 744/SSA/RTI/2017

Puducherry, dt: 27-03-2017

From
The Public Information Officer-Cum-State Project Director,
Sarva Shiksha Abhiyan,
Puducherry.

To
K. Latchoumy,
Plot No.89&90, Sri Mookambigai Nagar,
Thanampalayam,
Thavalakuppam,
Puducherry-600 007.

Madam,

Sub: Information sought for under RTI Act, 2005 - Reg.

Please refer to your RTI application, dated 06-03-2017, addressed to this office. The information is furnished hereunder:

Sl. No.	Information sought for	Information furnished																	
1.	No. of drop outs among boys in 2007, 2008, 2009.	The information is not available in this office.																	
2.	No. of drop outs among boys in 2010, 2011 up to 2016 year wise.	The information is not available till the year 2012-13, in this office. The information for the remaining years is furnished hereunder: <table border="1" data-bbox="699 1137 1091 1323"> <thead> <tr> <th rowspan="2">Year</th> <th colspan="2">Drop-out</th> </tr> <tr> <th>Boys</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>2013-14</td> <td>125</td> <td>0.62</td> </tr> <tr> <td>2014-15</td> <td>132</td> <td>0.11</td> </tr> <tr> <td>2015-16</td> <td>121</td> <td>0.10</td> </tr> <tr> <td>2016-17</td> <td>124</td> <td>0.13</td> </tr> </tbody> </table>	Year	Drop-out		Boys	%	2013-14	125	0.62	2014-15	132	0.11	2015-16	121	0.10	2016-17	124	0.13
Year	Drop-out																		
	Boys	%																	
2013-14	125	0.62																	
2014-15	132	0.11																	
2015-16	121	0.10																	
2016-17	124	0.13																	
3.	Year from which compulsory promotion policy was implemented.	From the Academic Year 2010-2011 onwards, 100% pass criteria for promotion for Standards from I to VIII has been implemented in all schools of Puducherry.																	

As per Section 19 of the Right to Information Act, 2005, you may file an appeal to the First Appellate Authority of this Department within 30 days of the issue of this order.

Name and address of the
First Appellate Authority
Thiru L. Kumar,
Director of School Education,
Perunthalaivar Kamarajar Centenary Educational Complex,
Anna Nagar, Puducherry - 605 005.

Yours faithfully,

Mohinder Pal
27/03/17
(MOHINDER PAL)

PUBLIC INFORMATION OFFICER-
CUM-STATE PROJECT DIRECTOR

Copy to:

The Deputy Director(Admn),
Directorate of School Education,
Puducherry.

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