ELIMINATION OF CHILD LABOUR: IMPLEMENTATION OF INTERNATIONAL NORMS IN INDIA

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DOCTOR OF PHILOSOPHY

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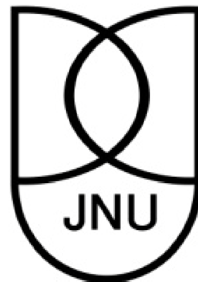

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DECLARATION

I declare that the thesis entitled "**Eliminaion of Child Labour: Implementation of International Norms in India** ", submitted by me for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own original work. The thesis has not been submitted for any other degree of this University or any other university.

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CHAPTER - 1
INTRODUCTION

> "Child labour is simply the single most important source of child exploitation and child abuse in the world today… and there is an emerging consensus that the world community has the duty and the obligation to combat especially those intolerable forms of child labour that still persist in much of industry, agriculture and services and in conditions of bondage and serfdom".
>
> \- (ILO 1996: 4)

Child labour is a social problem since long. It is one of the worst violations of human rights which exploit children physically, morally, and economically, and denying them access to education (Khan 2012:115). The continuing practice of child labour[1]even after six decades of the Universal Declaration of Human Rights (UDHR), which stands for inherent dignity and of the inalienable rights of all members of the human family is shameful to human kind. Throughout the world, the exploitation of child labour is a practice with a deep history and a devastating impact on children (Kern 2000: 195). The focus on child labour over the years has greatly increased public awareness on the conditions of children at work places.

Children need to grow in an environment that enables them to lead a life of freedom and dignity, where they are provided with ample opportunities for education and training to grow up as worthy citizens (Sekar 2005: 5). Children are the future citizens and hence their adequate development should be the utmost priority for all nations (Srivastava 2011: 3). Being among the most vulnerable groups, children need protection; thus, every child has the right to receive the best that the society can offer (Panjabi 2009: 429).

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[1] While interpreting the 'Practice of Child Labour' as mentioned in ILO Convention 138, the Government of India, Ministry of Labour and Employment gives it a broad interpretation in its newly enacted Child Labour (Prohibition and Regulation) Amendment Act, 2016 it says, 'No child shall be employed or permitted to work in any occupation or process [section 3(1)]'. Under this Act 'child' means a person who has not completed his 14 years of age or such age as may be specified in the Rights of Children to Free and Compulsory Education Act, 2009, whichever is more'; see, Abernethie, L. (1998), "Child Labour in Contemporary Society: Why do we Care?", *The International Journal of Children's Rights*, 6: 81-114 (defining 'child, work and labour to discover a possible reason behind the negativity of child labour); see, Cox, K. (1999), "The inevitability of Nimble Fingers?: Law, Development, and Child Labor", *Vanderbilt Journal of Transnational Law,*32: 122-127 (exploring the definition of the child and labour).

Violation of the rights of a child can occur through various forms of abuse: physical, sexual, and mental abuse; deployment of the child into labour; displacement or abandonment of the child; kidnapping and trafficking of the child; and corporal punishment inflicted on the child in institutions or within the family (Mathews *et al* 2011: 6). Children are more vulnerable to hazardous conditions than adults because their physical and psychological immaturity can result in serious developmental problems, including stunted growth and physical distortion (Camastra 2008: 339). Child labour is a hindrance to sustainable development. It is a violation of children's rights, a particular form of evil to be eliminated from the society (Abernethie 1998: 83).

Child labour is a destructive practice, a denial of the joy of childhood and access to social opportunities (Sachdeva *et al*. 2001: 5). This eventually impairs the personality and creativity of children, and their evolution and growth into successful human beings. This phenomenon is a consequence of the exploitative systems operating at the national and international levels (McElduff *et al* 1996: 589). This not only adversely affects the future of millions of children but also restricts their developmental prospects (McElduff and Veiga 1996: 589). The existence of child labour is a threat to overall human development, and to solidarity and peace in the world.

Child trafficking is one particular dimension of child labour which has been growing in recent years, along with the phenomenon of children being sexually exploited. Criticising merciless exploitation on gender based discrimination, the Supreme Court of India in its famous judgment in *Bandhua Mukti Morcha vs Union of India and Others*[2] reiterated that:

> "Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to the humanity. Mankind has best hold of itself. The parents themselves live

[2] Writ Petition (C) Nos. 12125 of 1984 with 11643 of 1985 (SC). Decision was reported in AIR 1984 SC 802.

> for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physically and mentally-the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizen…"

The roots of child labour can be traced back to the days of the Industrial Revolution, but emerged as an issue of debate in the mid 1980's (Fype 2007: 7). In the 1830s, Britain had introduced minimum age regulations in their administrative system to regulate the child labour (Fype 2000: 394). This was the first ever attempt to create a national child labour law and set international standards to protect children working in the industry (Fype 2000: 394). Industrialisation led to migration of labour, including child labour, from rural to urban areas in search of employment in factories, mines, etc. (Srivastava and Thorat 2004: 12). Employers exploited child labour in order to minimise their operational costs and to maximise profits (Das 1996: 15).

Moreover, extreme poverty and unemployment, parental illiteracy, the tradition of children being made to acquire skills linked to jobs that run in the family, lack of proper educational facilities for the children, and the inadequate formulation and implementation of legal measures force children to enter the work force at an early age (Jaiswal 2000: 145). There is, however, a cyclic causal relationship in the sense that the prevalence of child labour is a cause as well as the result of poverty and unemployment (Jaiswal 2000:149). The exploitative system, therefore, not only supports child labour but also is strengthened by its practice (Sekar 2007a: 7). This cyclic relationship prevails at the global level, as the discriminatory and imbalanced North-South relationship perpetuates, and in turn benefits, at least partly, from the system of child labour. However, case studies and field data indicates that the involvement of child labour in the work force is sporadic, opportunistic, transient, and often informal (Levison *et al* 2007:232).

1.1. THE PROBLEM OF CHILD LABOUR IN GENERAL

Child labour is a multifaceted and complex problem and a number of factors contribute to a family's decision to send a child to work (Fors 2012: 4). One probable reason for the increase in child labour in the contemporary times is the enhanced importance of export businesses in developing countries, leading to employers seeking children to work as labour as they are a cheaper workforce than adults (Harvey and Riggins 1994: 2). Also, it is easier to exploit children (Tucker 1997: 579) thus, child labour helps the employers to stay competitive in the market.

Some of the communities allow children to work because of the social acceptance of child labour cultures since ages in their respective social customs or traditions (ILO 1996:12). Surprisingly, this is prevalent even within families and societies with no financial dearth. They often have sufficient means to send their children to school and afford education, but they prefer their children to be involved with their family business to learn the necessary skills and to continue the family business (ILO 1996: 12). In some cultures, the elder family members deny education to the girl child as they regard the girl child as less important than the boys (Dinesh 1988:29).

However, poverty still remains one of the main and most obvious reasons for child labour. Quite often, child labour has been presented as a means for the survival of the family. Children easily get employment because they provide cheaper labour compared to adults, with the remuneration they earn influencing the decisions of elder family members to send their children for work. Study of child labour practices in India reveals that as working adults proportionately increases, child labour decreases (Sharma *et al* 1990:125). It is an accepted fact that child labour can be regulated by implementing compulsory schooling. Unfortunately, some of the countries lack the necessary financial and infrastructural wherewithal to provide education and implement the law regulating child labour. Therefore, lack of education and loopholes in the laws indirectly increase the exploitation of children (Sharma and Mittra 1990:125).

In addition, the Commission on Human Rights emphasized that the programmes initiated by the World Bank has partly influenced the rise in the child labour.[3] The United Nations Report on Child Prostitution notes:

> "Even in the poorest countries, there is often a tendency to spend too much on arms purchases and too little on the development and protection of children. In this perspective, the argument advanced by many countries to explain the sale and trafficking of children on their territory that they are due to 'poverty', is not totally convincing".

The above observation reaffirms the importance of elimination and reduction of poverty from the society—it raises an important point. As mentioned above, "poverty" weakens the economic condition of families, which contributes to the rise of child labour instances (Fype 2000: 393).[4] It is also proved that steps taken to regulate child labour without making improvements in family income will adversely affect family income and survival which, in turn, could incentivize engaging children in the work force (Fype 2000: 393).

Moreover, implementation of strict regulation on child labour by enacting proper legislations is a good idea but could be feasible only in a formal economy. Child labour is identified both in formal and informal sectors of the economy. It therefore becomes difficult to implement the legislations in the informal economies because the family-based businesses could get an easy escape from the scope of legislation (Moorehead 1990: 8). By using legislations, it might be easier to remove children from the formal economic sectors like industries, but difficult to rescue children who are working in illegal workshops (Moorehead 1990: 8). Furthermore, a major problem is fact that regulations only prohibit child labour but do not adequately improve the conditions of children, as children working in the informal economic sector are not covered under the law of the country as the real workforce (Grootaert and Kanbur 1995: 187).

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[3] The report further stated that "[m]any countries faced with the problem of the sale of children, child prostitution, and child pornography are under pressure from international financial agencies to adjust their economic programmes". See, Commission on Human Rights (1994), *Rights of the Child: Sale of Children, Child Prostitution and Child Pornography Report* submitted by Vitat Muntarbhorn, Special Rapporteur, in accordance with Commission on Human Rights Resolution 1193/82, U.N.Doc. E/CN.4/1994/84 (1994).

[4] Stating that in developing countries, the vast majority of children continue to contribute to the family economy.

Generally, it is agreed that legislation alone cannot successfully regulate child labour though there are different approaches to eliminate child labour from the grassroot level (Jayanthi 1998: 144). One of the approaches view poverty as the basic cause for child labour and hence suggest overall economic development as a durable means to protect the rights of children and gradually regulate the child labour (Enke 1963: 181). Developing countries adopted this view and justified industrial development, which, however, indirectly led to the rise in exploitation of child labour (Enke 1963: 182).

It is true that eradication of poverty is necessary to eliminate child labour, but it cannot be presumed that economic development would be a panacea for this problem (Strokke 1999: 143). In developing countries, particularly in Asia, the concept of economic growth has been proven and increased the wealth of people (Jayanthi 1998:144). On the other hand, the African and Latin American continents did not reach up to the mark (Jayanthi 1998: 145). Corrupt political systems in these countries indirectly harm economic development. Though these countries are taking initiatives to tackle poverty through economic development, it is still necessary to regulate the corrupt system. Unless this happens, abolition of poverty is impossible and, instead, could also adversely affect the goal of prohibition and regulation of child labour (Enke 1963: 182). This inter-related approach may involve time constraints when it comes to fixing poverty through economic development. Therefore, the question has been raised why the fight for elimination of child labour should not be pursued exclusively.

The second approach is that respecting labour rights in developing countries would help in regulating child labour (Stokke 1999:140). This view supports the betterment of working class and suggests recognition of freedom of association and collective bargain at work place. It may indirectly help adult workers to improve their working conditions which may lead to economic development even in their families (Stokke 1999:142). The approach suggests that when reasonable growth is achieved in family, it may automatically result in a decrease in child labour. It is generally agreed that children are working for survival of their family. Hence, when adults receive appropriate wages for their work, it will serve the family in a better manner and enable the children to engage in studies and avoid taking part in any work which

harms their health and well-being (Stokke 1999:142). On the other hand, workers' unions in developing countries are found to be not very strong when it comes to the campaign against child labour.

The above approach highlighted that improvement in working conditions and adult wages may sufficiently provide growth in their family income so that they can send their children to school instead of work (Jayanthi 1998: 145). It is also necessary to improve the education system and cultural attitudes in the society at large (Fype 2000:395). The prevalent perspective on the issue is that some form of direct action is necessary in the fight against child labour (Fype 2000: 397). Therefore, the method followed by the International Labour Organization (ILO), aiming at addressing the "worst forms of child labour, including child prostitution, bonded labour, hazardous working conditions, and employment of very young children, has received strong support" (Fype 2000: 397).

As discussed above, there are no uniform solutions to the problem of child labour. The problem differs from nation to nation, and from community to community, and therefore, hence custom-made solutions are required to address this problem. Improvements in national policies and legislations, global pressure on national governments and corporations, and domestic commitment to abolition of poverty also play an important role in elimination of child labour in a variety of states. Adding to the above, the sincere efforts aimed at uprooting the problem of child labour must be preceded by correct identification and origins of the problem (Datta 2001: 82).

1.2. CHILD LABOUR IN INDIA: CAUSES AND CONTRIBUTORY FACTORS

The problem of child labour in India cannot be viewed in isolation, because it is a deep-rooted social problem with symptoms existing at various levels (Hirway *et al* 1991: 25). From time immemorial the Indian society has been witnessing one or another form of child labour as a social phenomenon. Irrespective of their age, children in India have been extending their helping hand to their parents, mainly in the domestic and agricultural sectors, and also in other family-based or skill driven

occupations. However, these kinds of works are not clearly categorised under child labour because the children in these cases are under the direct control of their parents. The real concern to the society is the nature of occupations or trades in which children have been exploited. Children are employed in some most hazardous occupations and work under humiliating conditions. They do not hold the ability to resist the torture that has been depriving them of their childhood (Anandharajakumar 1998: 7). The nature of the work also causes physical, social and psychological harm to the children. In India, the lopsided development process in the background of an exploitative socio-economic structure has resulted in the marginalisation of the poor who have, in turn, ended up using children as labour for their traditional occupations,[5] or deploying them to take out a living for survival (Hirway *et al* 1991: 27). After seventy years of Independence, teenagers in India under the age of 15 years have been targeted and used as labour. Inequitable distribution of land, poor access of the weaker sections to resources including education, perennial destruction of the environment, the socio-political systems-all entail constraints on the poor that force them to resort to the meager incomes of children to support themselves (Hirway *et al* 1991: 27).Despite the government's efforts to introduce and implement various protective legislations[6] and policies[7] from time to time, the phenomenon of child labour shows only little sign of

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[5] Since ages the social system in India has been based on the caste system. Caste based jobs were predominantly followed until late 90's and continues to be the norm in rural areas. These include occupations like Blacksmith, Goldsmith, Carpenter, Pottery, Fisherman, Tailor, Craftsmen, Farmers etc. Even though the independent India has developed various legislations and policies to abolish the caste system and to improve the status of the lower caste people, it still stalky influences and dominates the Indian society. For more information also see Dasgupta, S. (1990), Child Welfare Legislation in India: Will Indian Children Benefit from the United Nations Convention on the Rights of the Child, *Michigan Journal of International Law*: 1301, 1308. Also, see Kornikova, A.A. (2008-09), "International Child Labor Regulation 101: What Corporations Need to Know About Treaties Pertaining to Working Youth", *Brook Journal of International Law*, 34: 207-237.

[6] The Government of India enacted several acts to curb the child labour since independence. They are: The Factories Act (1948), Minimum Wages Act (1948), Plantation Labour Act (1951), Mines Act (1952), Merchant Shipping Act (1958), Apprentices Act (1961), Motor transport Workers Act (1961), Beedi & Cigar Workers (Conditions of Employment Act (1966), State Shops and Commercial Establishment Act (1970), Contract Labour (Regulation and Abolition) Act 1970, Child Labour (Prohibition and Regulations) Act (1986), Juvenile Justice (Care and Protection of Children) Act (2000), The Commission for the Protection of Child Rights Act (2005), Right of Children to Free and Compulsory Education Act (2009), The Child Labour (Prohibition and Regulation) Amendment Act (2016) etc.

[7] The Government of India introduced several policies to improve the standards of the children with the view to eradicate the child labour so that children could be admitted to schooling. Some of the policies are as follows: National Policy for the Children (1974), The Gurupadaswamy Committee on Child Labour (1979), National Policy on Education (1986), National Policy on Child Labour (1987), National Charter for Children (2003), The National Plan of Action for Children, 2005, National Policy for Children (2013), National Plan of Action for Children (2016) etc.

diminishing, and far from being successful when it comes to its eradication.[8] However, it is clear that the government's efforts to identify and eradicate child labour seems to be palliative one as it has failed to provide protection to the children who are working in non-hazardous enterprises (Bhat 2009: 61).The child welfare policies of the state have focused on improving the working conditions of children, though not effective holistically in halting the engagement of children in family or household businesses (Datta 2001: 83).

Previous studies undertaken in India and globally prove that child labour and poverty are intimately linked (Rehman *et al*: 82). Several factors have combined together as causal so much so that no single cause can be isolated as a means to tackle this problem. However, other factors should not be ignored either. Apart from poverty, other reasons for the child labour in India include illiteracy, weak implementation of laws, population, unemployment, low wages, inequitable distribution of resources and economic policies. Children entering employment before attaining proper growth are deprived of love, care, protection and healthy development. This often leads to exploitation, abuse and a forceful life in unpleasant environment.

1.2.1. Socio-Economic Factors

Despite institutional norms and campaigns, international trade and commerce have not managed to place effective safeguards against child labour (Bullard 2002: 182). The quest for higher profits from foreign markets and the pressure of maintaining lower production costs has incentivized manufacturing bases, especially in the developing world, to resort to practices and methods that latently or patently promote child labour (Abernethie 1998: 84). Owing to the fact that, markets in the developed world gain cost benefits of using child labour while competing with cheaper goods in the international market (Nhenga-Chakarisa 2010: 173).Even multinational corporations, which are otherwise sensitive to such social causes in advanced

[8] The Government of India Census Data for working children since 1971 are as follows: 10.75% in 1971, 13.64% in 1981, 11.28% in 1991, 12.66% in 2001, and the latest data in 2011 revealed that a steep decrease in child workers and it is recorded as 4.35%. The detailed information and analysis provided in the coming side headings in the same chapter. For more information please see Ministry of Labour and Employment, Government of India, Census Data on Child Labour, Accessed 13 February 2017 http://labour.gov.in/sites/default/files/Census-2001&2011.pdf.

industrial bases, are alleged to have encouraged, or even owned, production bases and systems in the developing economies that employ child workers in order to minimise costs and maximise profits (Nhenga-Chakarisa 2010: 174).

Child labour and unskilled adult workers are serious threat to the development of a nation. Although this work force has its own importance in the labour market, it is ill-equipped to meet the needs of increasing globalisation, competition and technological development (Gupta and Voll 1999: 89).This influences the economic inequalities and broadens socio-economic imbalances which adversely affect the economic prospects of a nation (Gupta and Voll 1999: 89).It also enhances poverty and may intensify the social inequality and discrimination against the vulnerable sections of the population. The Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities observed that poverty and exploitation of child labour go hand-in-hand though "it is the poorest populations at the lowest levels of human existence who are forced to work the most prematurely" (Bouhdiba 1983: 11).

Poverty is one of the major factors contributing to child labour in India. Poor economic conditions of parents compel them to engage children in the workforce to support their family (Chandra 1998: 48). Nearly half of the population of India subsists below poverty line (Report of the Committee on Child Labour 1979: 3). It is an extreme human condition that has always evoked immense social interest (Pande 2006: 191) though the nexus between poverty and child labour cannot be rejected (Thazhaveetil 2017: 210). The evil of child labour is intertwined with wages of an adult worker in the family. The low wage of the adult worker forcefully engages the children in the workforce, so that parents are able to maintain their families without any hassle (Chandra 1998: 48).

Low-income and poor working conditions of parents are seen as among the major factors influencing the economic exploitation of children in India (Tucker 1997: 580). For example, the failure of employers to provide safety measures at the place of employment adversely affects the children as well as the adult workers. Employers forcefully engage juveniles and adults in unusually long working hours besides

putting tremendous pressure on them to achieve production targets in time. This results in children facing severe health problems and injuries at the workplace.

Alongside poverty, migration from rural to urban areas also encourages child employment. With growing commercialisation and usage of machines in irrigation work, family incomes in rural areas have drastically reduced and have forced large number of farm workers to migrate to urban centres or the cities (Saksena 2011: 51). The models of economic development that favour uninhibited industrialisation inherently neglect the agrarian sectors, and have compelled farmers to find alternatives for their livelihood. Placed in an unfamiliar environment and severe deprivation, children of migrant families are forced to join the workforce. The unemployment of parents also pushes children to join or seek opportunities in the job market and help in addressing the reduced family incomes. (Singh 1990: 13). At the same time, incentives for child labour also come from profit-seeking employers who engage children in work to get a good return out of their investments.

1.2.2. Educational Factors

Child labour is not merely a consequence of poverty. There is a correlation between the literacy rates and the magnitude of the child labour. Due to high degree of illiteracy and ignorance of parents, children are deprived of proper counselling for building up their future careers. Economic necessities of the family act as a prompting factor for children to enter into the job market (Shandilya and Khan 2003: 58). The Constitution of India, entered into force in 1950aimed to "provide, within a period of ten years from the commencement of the Constitution free and compulsory education for all children until they complete the age of fourteen years". Though the Indian Constitution is secured with the above-mentioned promise, the government has failed to provide compulsory primary or universal education in the country. The poor literacy rate in many parts of the country is an inherent causal for exploitation of child labour in India (Singh 1983: 23). In fact, most severe instances of child labour are found in states that have a continued low literacy and school attendance rates than the national average. Inadequate educational facilities and lack of compulsory education for all children below the age of 14 years also contributed to the growth of child labour (Dhawan 2009: 1). It also relates to school drop-outs, with incidence of child

labour being proportionally high in areas with high attrition rates. Moreover, education has become expensive in contemporary times with those who are unable to afford high cost of education indirectly encouraging their children to seek jobs instead of remaining unemployed. It has been proved that educational awareness can make parents to send their children to school and may help in controlling the phenomenon of child labour.

1.2.3. Legislative Factors

Combating child labour is one of the prime agenda of the Government of India. It has taken several steps to eradicate child labour from the grass-root level by using state and central agencies. Although the government has come out with several legislations to curb child labour, there are hardly any statutory provisions in India which define the term 'child labour' in precise terms (Rehman *et al* 2002: 160). Even the minimum age for admission to employment in various vocations has been fixed at different ages by different legislative provisions mainly due to the variations in the names of operations in which children are employed (Sekar 1997: 38). However, child labour, in a restricted sense, means the engagement of children in profitable works with a view to adding family income, a practice that is dangerous to the health of children which denies them the opportunities of development.

Child labour is a human rights problem. This has been given highest importance by two fundamental International Labour Organization Conventions. They are the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182), as well as by the United Nations Convention on the Rights of the Child (UNCRC). These Conventions emphasize that freedom from child labour is a human right and that the elimination of child labour is a universal and fundamental value (ILO 2017: 1). The key obstacle to reducing the incidences of child labour is the difficulty of defining the problem and collating data.

Child labour is indisputably one of the highly complex issues challenging national governments, international organisations, and academics. Although sincere efforts have been made from all the ends, child labour remained at the global and national level without much change. Experts have opined that strict enforcement of child

labour laws combined with facilitating education may abolish the child labour from the grassroots level (Ho 2006: 342). Providing compulsory education to the children might be helpful in regulating child labour. It may also economically and socially benefit developing countries in the long run, which could diminish societal drivers that perpetuate conditions for child labour (Ho 2006: 345). Compulsory education has been considered progressively contributing to the development of children. It leads to support the political will of the nation towards the elimination of child labour (ILO 1996: 17).[9]

Although comprehensive legislations are extremely necessary to eradicate child labour, a more popular view is that they are insufficient to tackle the problem (Grootaert and Kanbur 1995: 200). In the first phase, it may be easier to compel the employer to take adequate safety measures to protect the children from the exploitation and provide healthy environment at the workplace before aiming at eliminating child labour altogether. The International Labour Organization, the League of Nations and the United Nations have adopted Conventions and Declarations for eliminating child labour and for protecting the rights of the children through various instruments. In 1989, the United Nations Convention on the Rights of the Child was introduced. It provided an elaborate catalogue of children's rights mainly grouped into: (i) Right to Survival, (ii) Right to Protection, (iii) Right to Participation, and (iv) Right to Development (UN Doc 1989: 1449).

Child labour has become one of the major areas of international concern in the twenty-first century with the ILO, the United Nations Children's Fund (UNICEF), and other Non-Governmental Organizations prioritizing the problem as a central concern to be addressed (Kooijmans 2007: 38). In the international media, photographs, articles and films of emaciated young workers deprived of a childhood of play and education by unscrupulous brokers, trafficking agents and factory owners, are powerful reminders to people in developed and developing nations of the injustices of the global system (Kooijmans 2007: 38). The reality is much more complex. In the late 1990s, approaches to the issue of child labour appeared to be at

[9] This publication of ILO noted that the legislation encompassing factors such as education evidences a clear evolution of public policy and such policy formation can be effective if accompanied by direct, practical action.

crossroads. Although the international agencies and NGOs had spent considerable time on the issue of child labour by then, in the 1990s, the focus shifted to the most abusive forms of exploitation.

Due to a combination of circumstances, the record shows that many children have been continuously engaged in various occupations. In 1991, around 11.3 million children were working in India, of which 90 percent were from the rural areas. But the major concern was that, more than 2 million children were engaged in hazardous nature of work (Ministry of Labour & Employment, 1991: 3). Apart from this, the National Sample Survey Organization (NSSO) revealed that in 1999-2000 around 10.4 million children were engaged as working force in the country (Ministry of Labour and Employment: 3). The Census data revealed that in 2011 around 10.1 million children were working in India (Ministry of Labour & Employment 2016: 4). It is true that the supply and demand forces of industrial markets have been indirectly influencing the increase of child labour in developing countries. These include social and economic factors such as parental poverty, illiteracy, unemployment, and lack of access to basic education.

1.3. MAGNITUDE OF CHILD LABOUR

1.3.1. Global Scenario

It is important to recognise that child labour is not a phenomenon that is restricted to lesser-developed nations, but is also prevalent in well-developed countries (Kilkelly 2003: 328). In its Global Report, the International Labour Organization recognised that child labour is found in all countries, to a greater or lesser extent (ILO 2017: 2). Despite the existence of the global figure, and of countless other regional and national estimates, one of the most persistent basic issues concerning child labour relates to the difficulties in measuring it. The basic assumption is that if we do not know the magnitude of the issue, it is impossible to take appropriate action. Many of the macro level instruments available to measure labour force, such as Census or periodic labour force surveys, omit most data on child labour, as the conventional definition of labour force focuses largely on the population between the ages of 15 and 60 (or 65) years.

Despite its various forms, the data shows variations in the prevalence of child labour across the globe and that the statistical figures about child labour are very alarming

(Srivastava 2011: 2). According to ILO global estimates, there were some 218 million children still in the labour force (ILO 2017: 2). Among them, 152 million are victims of child labour. Over 73 million child labourers, which amount to half of the total estimates, are engaged in occupations of hazardous nature. The African region harbours the largest number of child labourers, i.e., 72.1 million. Which is almost half of the world figures in child labour, while Asia and Pacific consists of 62.1 million, 10.7 million in the Americans, 1.2 million in the Arab States, and 5.5 million in Europe and Central Asia (ILO 2017: 2). "Almost half of the 152 million children victims of child labour are aged 5-11 years; 42 million (28%) are 12-14 years old; and 37 million (24%) are 15-17 years old. Hazardous child labour is most prevalent among the 15-17 years category. Nevertheless, up to a fourth of all hazardous child labour (19 million) is done by children less than 12 years old. Among 152 million children in child labour, 88 million are boys and 64 million are girls. 58% of all children in child labour and 62% of all children in hazardous work are boys. Boys appear to face a greater risk of child labour than girls, but this may also be a reflection of an under-reporting of girls' being engaged in occupations, particularly in domestic segment. Child labour is concentrated primarily in agriculture (71%), which includes fishing, forestry, livestock herding and aquaculture, and comprises both subsistence and commercial farming; 17% in Services and 12% in the Industrial sector, including mining" (ILO 2017: 2).

1.3.2. Indian Scenario

Indian literature, including religious, political and sociological, has been respectful about the divinity of childhood (Sanghi 2001: 81). Evidently, all the religions in India have emphasized the importance of children and their activities with some festivals being celebrated in the name of children.[10] Even the judiciary in India has focused on children and has delivered a landmark judgment in *Sheela Barse vs The Secretary, Children Aid Society*.[11]In this case, the Supreme Court of India said that "every society must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they would receive adequate

[10] Hindu festivals Shree Krishna Janmashtami and Diwali, Islam festival Milad Al-Nabi (The Prophet Mohammad's birthday) has been celebrated throughout India especially the children.
[11]AIR 1987 SC 656.

training, education and guidance in order that they grew up". Unfortunately, the cruelty to which the children are exposed in India really mocks at the above literatures, religious practices and the Court decisions (Sanghi 2001: 111). It is also apparent that even after the above landmark judgment delivered by the Supreme Court of India, children in India continued to be engaged in different types of employment and are denied basic right to access compulsory education (Sekar 2015:211).

It is evident that the child labour has been a pressing issue for many years, leading to the problem becoming a part of the social and national consciousness. But the issue acquired a new meaning and significance in the context of contemporary competitiveness where labour cost is one of the important contributory factors (Mishra 2000: 22). In an effort to integrate the national economy with the global, the government of India launched economic reforms in 1991. Further to that, the issue of child labour has acquired a great deal of prominence in the wake of the conclusion of the Uruguay Rounds of Negotiations in 1994. In this negotiation, an agreement was signed at Marrakesh, to which India was a signatory (Mishra 2000: 21).

According to 1971 Census (Government of India) on child labour, at the time there were 10.75 million children involved in various occupations (Government of India 2012: 2). In 1981, 13.64 million children were engaged in various occupations, representing an increase of 26.88 per cent (Mishra 2000: 117). The Census data of 1991, however, revealed that the working children population was 11.28 million indicating that the number has declined by 17.3 per cent between 1981-91 (Mishra 2000: 118). In the 1991 Census data, the total working children were divided as full time and marginal child workers. The report said that there were 9.08 million full time child workers and 2.20 million marginal child workers (Mishra 2000: 119). However, the Census data of 2001 revealed that the working force of children has again increased to 12.7 million from 11.28 in 1991 (Mishra 2000: 119). On the other hand, the data also revealed that the proportion of child workers to child population between the age of 5 to 14 years has shown continuous decrease from 12.7%, 7.1%, 6.1% and 4.32% in 1961, 1971, 1981 and 1991 respectively (Mishra 2000: 120). It should be noted that nearly 85 per cent of child labourers in India are inaccessible, invisible and excluded, as they work largely in the unorganised sector, both rural and urban, within

the family or in household-based units (Ministry of Labour & Employment 2016: 4). Research shows that 44.98% child population were neither reported as full time workers, marginal workers nor students in 1991 Census data, and they considered under the 'Nowhere' category (Zutshi *et al* 2002: 122). The research disclosed that in 1991, 50.34% children were under the 'Nowhere' category (Zutshi *et al* 2002: 123). However, the Census data also revealed the steep reduction of child labour force from 12.7 million in 2001 to 10.1 million in 2011 (Ministry of Labour & Employment 2016: 4). It is true that the statistics might not have included the working children's details from all sectors, especially in the developing countries. Therefore, the exact measurement of the child labour is very difficult because of the lack of generally accepted definition of child labour.

1.4. OBJECTIVES OF THE STUDY

The present study is intended:

1. To explain the concept of 'child', 'work' and 'child labour', examining the definitional issues in international and domestic laws.
2. To examine the mechanism for the implementation at the domestic level of international obligations on the protection of children.
3. To assess the extent to which international norms and domestic legislations and policies successfully prohibited and regulated child labour in India.
4. To problematize the existing legal machinery to protect children from being exploited through labour.
5. To problematize the effectuation of international norms through domestic legislations in India.

1.5. SCOPE OF THE STUDY

This study examines the various instruments used by the Government of India and international organisations[12] to deal with the problem of child labour. It provides an

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[12] For the protection of the Children from exploitation, the ILO adopted the following Conventions since its inception: Minimum Age (Industry) Convention, 1919 (No.5); Night Work of Young Persons (Industry) Conventions, 1919 (No.6); Minimum Age (Sea) Convention, 1920; Minimum Age (Agriculture) Convention 1920; Minimum Age (Trimmers and Stockers) Convention, 1921; Medical Examination of Young Persons (Sea) Convention, 1921; Night work of Children and Young Persons (Agriculture) Recommendation, 1921 (R014); Forced Labour Convention, 1930 (C 029); Minimum Age (Non-Industrial Employment) Convention, 1932 and Recommendation (R041); Minimum Age (Family Undertakings) Recommendation, 1937 (052); Minimum Age (Sea) Convention, (Revised)

in-depth analysis of the national and international situation of child labour, causes and contributory factors for the child labour in India, and the magnitude of child labour in global and Indian scenario. It also explores various definitions and inter-related concepts relating to child labour i.e., 'child', 'work' and 'child labour' mentioned under different national legislations and international conventions and also examines their implications and effects on defining the child labour.

This study examines the process of elimination of child labour through implementation of international norms at the domestic level particularly in India. It makes an in-depth study of international norms and its mechanism for implementation. The study also looks at historical evolution of child labour laws and policies in India and analysing how far the domestic legislations and policies successfully regulate and prohibit child labour in India. Further, the study also explores to what extent the child labour laws adopted in line with the international conventions and declarations to protect the children from the exploitation of child labour in India. The study undertakes an in-depth study to find out the extent to which the national and international legal machinery has been effective in the elimination of child labour. This is made possible through an analysis of the relationship between international law and the domestic law, and the outlook of each on prohibiting and regulating the child labour.

1936; Minimum Age (Industry) Convention, (Revised) 1937; Minimum Age (Non-Industrial Employment) Convention, (Revised) 1946; Medical Examination (Sea-Farers) Convention, 1946; Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77); Medical Examination of Young Persons (Non-Industrial Occupation) Convention 1946 (No. 78) and Recommendation, 1946 (R 079); Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.79) and Recommendation (080); Night Work of Young Persons (Industry) Convention (Revised), 1948 (No.090); Abolition of Forced Labour Convention, 1957 (No. 105); Medical Examination of Young Persons (Under Ground Works) Convention, 1965 (No.124) and Recommendation 125; Minimum Age (Under Ground Works) Convention, 1965; Minimum Age Convention, 1973 (N0. 138) and Recommendation 146; Declaration of Fundamental principles and Rights at Work, 1998; and the Worst Forms of Child Labour Convention, 1999 (No.182) and Recommendation 190. Apart from the ILO, the League of Nations adopted Conventions Prohibiting Trafficking of Woman and Children, 1921 and the Slavery and Slave Trade Convention, in 1926. Moreover, the United Nations also adopted Slavery Supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and practices similar to Slavery, 1956; Universal Declaration of Human Rights; UN Declaration of the Rights of the Child, 1959; International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; and UN Convention on the Right of the Child, 1989 to protect the children from the exploitation.

A highlight of this study is its examination of Constitution, Judiciary, and Legislation in India in order to explain the use of power, legal framework, authority, implementation and judicial competence in respect of both the domestic, as well as, international legal context, as revealed through judicial action. In the process, the study seeks to examine the achievements of both international law and the Indian laws through judicial orders, along with their shortcomings. The study in general also attempts to scrutinize the opportunities and prospects for improvement in the conditions of children engaged in various occupations. Equally significant will be the exploration of the means to bridge the gap between Conventions and Statutes, and, their actual implementation, and, the extent of relief and success they have provided to children.

1.6. HYPOTHESES

The primary hypothesis of this study is that child labour is prevalent world-wide and needs to be eliminated from the domestic level by enforcing stringent measures. On the basis of this primary hypothesis the following are supplements to the same.

- Poverty, lack of education, and weak implementation of the legislations are the major factors contributing to child labour in India.
- Simply adopting statutes and legislations alone cannot succeed in eliminating child labour in India.
- Strong implementation of laws relating to the prohibition and regulation of child labour along with rehabilitation of rescued children is important to eliminate the child labour.
- The concepts of child and child labour identified both in international Conventions and domestic legislations but the age of the child is varied in the Conventions and Statutes. Therefore, age of the child need to be fixed and should be same at national and international level.
- International and domestic initiatives to eliminate child labour are praiseworthy but need more efforts to reach the goal of a total ban on child labour.
- Role of Indian Judiciary is commendable while interpreting domestic legislations in line with the international Conventions.

- There is no proper/strict mechanism for the rehabilitation of rescued children—the government has failed to provide sufficient schooling and implement free education under the Indian Constitution and RTE Act.

1.7. CHAPTERISATION

The introductory chapter introduces the idea about the child labour in general, problem of child labour, causes and contributory factors for the child labour, magnitude of the child labour, objectives and scope of the study, and research methodology.

Chapter two explores the definitional puzzles of 'child', 'work' and 'child labour' in the context of defining 'child' in various international conventions, declarations and Indian legislations.

Chapter three explains the international norms aimed at elimination of child labour at the grassroot level. It includes Conventions and Recommendations of the International Labour Organisation focused on child labour, and the Declarations and Covenants of the United Nations protecting children from the exploitation of child labour.

Chapter four explains the historical evolution of child labour laws in India and the existing legal machinery to protect child labour at the domestic level. This chapter highlights the Constitutional provisions and legal frameworks prohibiting and regulating child labour in India.

Chapter five explains the implementation of international norms, and domestic legislations and policies for eliminating child labour in India. It is mainly focused on the role of international institutions, Indian judiciary, government agencies, and NGO's in promoting the welfare of the children and protecting the children from the exploitation of child labour in India.

Chapter six mainly highlights the gaps in the international conventions and the constitutional and legal framework in India. It also explains how the gaps may be

filled by strengthening the legal framework and implementation procedures to eliminate the child labour in India.

The concluding chapter will evaluate the discussion in the preceding chapters and make recommendations for the effective implementation of international norms at the domestic level to eliminate the child labour in India.

1.8. RESEARCH METHODOLOGY

The methodology adopted for this work is based on the historical, comparative, descriptive and analytical. The study has utilised both primary and secondary sources. The primary sources include Constitution of the ILO, relevant international labour conventions and recommendations on child labour, Governing body documents of the ILO, Official ILO reports and documents international, Covenants and Declarations of the United Nations, International Labour Organization Reports, UNICEF Annual Reports. The study explored the Reports of the Committee of Experts and Reports of the Conference Committee of ILO, and Human Rights Committee and Council reports. Moreover, the study also used the Constitution of India, different enacted legislations and policies of government of India, the Report of the Law Commission of India, Supreme Court Law Journal and the All India Report. The study also examined secondary sources such as books, journal articles and reviews of different authors.

CHAPTER - 2

UNDERSTANDING THE CONCEPTS OF "CHILD", "WORK" AND "CHILD LABOUR"

2.1. INTRODUCTION

The definition of "child" varies from country to country, particularly with reference to "age of the child" (UNICEF 1997: 27). Before explaining the legal aspects of child labour, it is important to understand its definitional intricacies and challenges. Children do variety of work in extensively different conditions; however, the age limits of such children differ from activity to activity and from country to country. The rights of the child is contingent on the prevailing image of childhood, which implies that the rights of the child changes according to the image of the childhood (Veerman 1992: 10). Fulfillment of certain social rites and traditional obligations may well be important requirements in defining "adult" and "child" status. Besides, in the absence of an effective age record system, even applying an agreed legal definition becomes highly problematic (Fype 1993: 6). This chapter analyses the concept of "child" and "work" with an aim to define "child labour".

2.2. ANALYSIS OF THE CONCEPT OF "CHILD", "WORK" AND "CHILD LABOUR" UNDER THE INTERNATIONAL NORMS

Defining child labour is not as simple and straightforward as it appears to be. It encompasses three difficult-to-define concepts: "child", "work" and "child labour" (Fype 1993:7). In some of the societies, especially the poor and rural ones, age may not be a sufficient basis for defining "childhood" (Fype 1993: 7) because it does not necessarily view the working child as something "bad", even if the child is eight or nine years of age (Grootaert and Kanbur 1995: 189; Ochaita 2000: 19).

The definition of "child" poses the first problem. The word "child" in the legal sense refers to a minor, though the conceptions about age of majority vary from country to country. In some cases, maturity is considered to be acquired at an earlier age through marriage. In non-legal parlance, the term "child" tends to connote pre-teens and early teens, in comparison to those in the age range of fifteen to seventeen years (Panjabi 2009: 423). The definition of "child" also varies according to different international

and national legislations (Cox 1999: 125). In its commonly understood meaning, the definition of “child” or “children” is linked to parentage and embraces only the first generation of offspring (Cox 1999: 125).[13] It has also been said that the primary meaning of the word “child” is an infant, and that the next allowable use in meaning is “one of tender years, young person, and a youth” (Cox 1999: 125).

Moreover, some societies approach the concept of “childhood” biologically rather than in terms of age (Fype 1993: 73). However, a child may take the responsibilities like an adult when they are biologically fit to do so, and she/he is allowed to take the responsibility even though the child is under the age of 18 years (Fype 1993: 73). In some of the languages, there is no mentioning of the period between childhood and adulthood and the word for “child” solely refers to a kinship relationship. Even when it comes to accepting a chronological approach to age, the cultures differ with opinions, though agreeing solely with what is held dear in the West (Fype 1993: 73).

The United Nations Convention on the Rights of the Child defines “childhood as extending to the age of eighteen unless domestic law provides otherwise” (UNCRC1989 ILM 28: 1448). The ILO has also used the chronological approach to define “childhood”, but by exercising caution when considering the view of developing countries. The Convention Concerning the Minimum Age for Admission to Employment states that “the minimum age of work must not be less than the age of completion of compulsory schooling and, that in no case, can it be less than fifteen years” (Art. 2(3)). Further, the Convention provides that for work that is “likely to jeopardise the health, safety or morals of young persons’, the minimum prescribed age should be eighteen years” (Art. 3(1). However, while considering the realities and hardship, the Convention allows and temporarily fixes the minimum age as 14 years for the developing countries whose “economy and educational facilities are insufficiently developed”. Similarly, the minimum age for hazardous work can be fixed as sixteen years “on condition that the health, safety and morals of the young persons have received adequate specific instruction or vocational training in the

[13] In *New York Life Insurance Co. v Beebe D.C.Md*., 57F Supp. 754, 757 (1944) the word “children” is commonly used to denote issue of the first generation only. It emphasized primary legal meaning of word Child or Children is immediate offspring, descendents of first degree, son or daughter of a named ancestor. In *Spencer v Title Guarantee Loan and Trust Co*., 132, 730, 731; 22 Ala, 485 (1931) the “child” or “children”, in common usage, means descendant or descendants of the first degree, and “grandchild” and ‘grandchildren” designates those of the second degree.

relevant branch of activity" (Art. 3(3)). The Convention also allows a child of thirteen years to engage himself/herself in "no harm" jobs. This means that if the job does not create any harm to their health and development, and obstruct their continuous schooling or any form of training for the skillful development, then it could not be unlawful (Art. 7 (1) & 7 (4)).

The term "work" also is difficult to define as it follows different age groups in different regions besides the standards applied at the global level. In Western countries, children are encouraged at a relatively young age to participate in part-time employment, e.g. under-aged children engaging themselves in babysitting or newspaper deliveries in western countries (Fype 1989: 10). Furthermore, the children also take non-remunerative work in almost all societies, which may be at the family unit or outside families (Fype 1989: 14). Traditionally, engaging children in a particular job or activity is generally seen as "a rehearsal for adult life…and given the absence of or the limited opportunities for vocational training, it performs an indispensable function in transmitting skills and in facilitating social adaptation" (ILO 1983: 15). In some communities, the engagement of children in the family business is considered to be an honorary work, which represents the solidarity in the family business as well as an element of pride in engaging the children in family business (ILO 1983: 15). The employment of children in family business or elsewhere need not always been as detrimental to the child or society. Therefore, Alec Fype described:

> "Child work can be a positive experience and, in the best circumstances, children's work can prepare them for productive adult life…. Therefore, children's work can be an integral part of family life and can contribute to their healthy development. It can also build their confidence and self-esteem. Child work can then be a painless and gradual initiation into adult life (Fype 1989: 14)".

The title of the Report of the Special Rapporteur clearly lays down that international law does not regard all child labour as constituting exploitation.[14] At the same time, on contrary to the above it is not true that engaging children in all kinds of family businesses are safe. It may turn out to be dangerous, especially if the business involves hazardous activity. It is, hence, necessary to protect those children engaged

[14]. UN Doc E/CN.4/Sub.2/479 Rev.1, p.5.

even in family businesses (Fype 1989: 10). In supporting this view in 1983, the Director-General of the International Labour Organization defined "child labour" as:

> "Work that places too heavy a burden on the child; work that endangers his safety, health or welfare; work that takes advantage of the defenselessness of the child; work that exploits the child as a cheap substitute for adult labour; work that uses the child's effort but does nothing for his development; work that impedes the child's education and training and thus prejudices his future (Meyer *et al* 1994: 659)".[15]

On balance, "child labour is a work that is both harmful to a child's physical, mental, or emotional development, and to the economic development of society as a whole" (Fype 1989: 14). One of its defining characteristics is "exploitation" i.e., children engaged in work generally have little choice when it comes to deciding "whether they work or under what conditions they work" (Fype 1989: 15). Peter Lee-Wright uses the example of Third World to distinctly highlight the differences between "child work" and "child labour,":

> "At about the age when most European children start full-time schooling, hundreds of thousands of their contemporaries start a life time of drudgery in the factories and fields of the Third World. By the hour at which the average European adult climbs out of bed, thinking of the eight-hour day ahead, many of those children labourers in the Third World will already have put in several of their 12 to 16 daily hours. For them, there is no overtime payment, no weekend off, no holiday and no future to speak of. These are not children doing a part-time paper-route to earn pocket money before going to school. They are the poor of the world; they work to save themselves and their families from starvation, and their number is increasing (Lee-Wright 1990: 7)".

The International Labour Organization, in its half century of active efforts to define child labour, has been primarily concerned with establishing the minimum age of employment—generally, fifteen in the developed countries and fourteen in the developing countries—while permitting part-time employment supplemental opportunities at the school level for comparatively younger teenagers (Panjabi 2009: 423). The primary focus of these early Conventions was formal employment, as exemplified by the broad exemptions made for "domestic work" within a family and

[15] For the detailed discussion see, Report of the Director General (1983), Child Labour, 69th International Labour Conference, Geneva: International Labour Office Publications, 3 (37).

the inability to identify specific age limits for agricultural employment "outside the hours fixed for school attendance". The word "child" was thus reserved for those younger than the minimum age of employment, and did not include "young persons" in the middle teenage years (Panjabi 2009: 424). The ILO Minimum Age Convention permits the developing nations to permit employment by age fourteen, and "light" work by those as young as twelve (Art. 2(4) & 7 (4)).

The International Labour Organization accepts fifteen years as the age below which no child should be in full-time employment and for whom compulsory schooling should be provided (ILO Convention 138). However, the Organization also accepts that "light" work may be undertaken by those between twelve and fourteen years of age and also makes provisions for protecting children up to seventeen years old against certain types of activities. The fundamental change in strategy occurred when the 1973 Minimum Age Convention articulated the goal of abolishing child labour. This abolitionist campaign, however, came without a clear definition of the evil to be abolished whether it was the key term of "child labour" or intrinsic concepts of "child" and "labour".

Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) only incorporates a general prohibition on the employment of children under certain age establishing a threat to their health or personal development (Art 10(3) of ICESCR). According to the United Nations Convention on the Rights of the Child, "…a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (UNCRC 1989: Art. 1).[16] Child labour statistics frequently focus on working children who are in the age-group of five and fourteen. Accordingly, the ILO Convention fixed the age of fifteen as a minimum age of employment in developed countries and fourteen for the developing countries (ILO 2006: 12).

It has been rightly said that there is no universally recognised definition of "child labour". Varying definitions of the term are used by international organisations, non-governmental organisations, trade unions and other interest groups. The "official"

[16] For detailed discussion see, UNICEF (1994), *The Right to Be a Child*, UNICEF India background Paper, New Delhi: UNICEF India.

definition of child labour, in conformity with the 1973 Minimum Age Convention, is seemingly flexible in nature because it potentially includes both: (a) activity which violates the minimum standards of the 1973 Minimum Age Convention, and (b) activity which is considered prohibited child labour under national law, even if national legal standards are more rigorous than the Convention's minimum standards and fulfill their mandate of progressively raising minimum age standards more often (Panjabi 2009: 945). Moreover, even if the "official" definition of child labour was restricted to the "minimum" standards of the 1973 Convention, significant ambiguities remain as a result of the Convention's failure to define "work", leaving the activities covered by the Convention largely under national laws. Thus, the International Labour Organization has attempted an official description of "child labour" that necessarily has no fixed definition, even as it defines abolition of "child labour" as a fundamental right at the workplace and the central goal of the international labour movement (Panjabi 2009: 945).

Homer Folks[17] has defined child labour as "…any work by children that interfere with their full physical development, their opportunities for a desirable minimum of education or their needed recreation" (Stein and Davis 1940: 14). The United Nations Children's Fund (UNICEF) tried to distinguish "work" based on variables like "beneficial" and "intolerable", and recognised that much of the work done by children falls into the grey area between these two extremes (UNICEF 1997: 24).[18] Therefore, "UNICEF holds that child labour is exploitative if it involves: (a) full time work at too early an age, (b) too many hours spent working, (c) work that exerts undue physical, social or psychological stress, (d) work and life on the streets in bad conditions, (e) inadequate pay, (f) too much responsibility, (g) work that hampers access to education, (h) work that undermines children's dignity and self-esteem, such as slavery or bonded labour and sexual exploitation, and (i) work that is detrimental to full social and psychological development" (Van Bueren 1998: 264).

The Encyclopedia of Social Sciences defines child labour as, "when the business of wage earning or of participation in self or families support conflicts directly or

[17] Homer Folks was the Co-founder of National Child Labour Committee, U.S. and became the Chairman of the same btween1935-1944.
[18] For further information's see, UNICEF, Exploitation of Working and Street Children, Executive Board Paper, 1986.

indirectly with the business of growth and education, the result is child labour" (Sunandamma 2014, 1). Francis Blanchard, Former Director General of ILO (1974 – 1979) stated that "a first problem is one of the definitions inherent in the notions of child work and labour". According to Blanchard, "child labour means children prematurely 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 education and training opportunities that could open up for them a better future" (Donnelly and Petherick 2004: 305). By analysing vast literature, Guy Thijs described child labour as comprising "work that is mentally, physically, socially or morally dangerous and harmful to children carried out to the detriment and endangerment of the child, in violation of international law and national legislation" (Thijs 2000: 3).

2. 3. ANALYSIS OF THE CONCEPT OF "CHILD", "WORK" AND "CHILD LABOUR" UNDER THE INDIAN LAWS

At the national level, India also defines all the three terms—the child, work, and child labour— in various legislations. Most of the legislations consider "age" as one of the most important factors to decide activities of children. Under Indian law, the definition of child labour varies depending on the "legislation" in question, and according to the "hazard" a particular occupation poses to a child worker (Govil 1975: 74).

Over the years, many legislations and legal instruments have been formulated in India to protect children from exploitation. Like in the global experiences, the major loophole in these laws also lies in the definition of the term "child". The age range that constitutes child labour has not been laid down anywhere. Different legislative enactments state different ages as to "who" constitutes a "child". Section 82 of the Indian Penal Code states that, "nothing is an offence which is done by a child under seven years of age" (Rajawat 2004: 45). It further "provides that nothing is an offence which is done by a child above seven years and under twelve who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on the occasion" (Section 83, IPC). Similarly, the Indian Evidence Act lays down that, "when a person is accused of any offence, the burden of proving the

existence of circumstances bringing the case within any of the general or special exception including that of childhood of the Indian Penal Code or any concerning law is upon him" (Section 105). Under the Code of Criminal Procedure, juvenile means "a person who is under the age of sixteen years". The Census of India defines "persons below the age of fourteen as child" (Khan 2012: 23).

According to the Indian Contract Act 1870, "a person below eighteen years has no capacity to enter into a legal contract". Therefore, any person below eighteen years of age is treated as a child. Under the Indian Majority Act, the age of majority has been fixed at eighteen years. It further says that if any guardian has been appointed by the Court of Justice, the child may attain the majority before the age of 18 years. The Hindu Minority and Guardianship Act, 1956 defines a minor, "as a person who has not completed the age of 18 years" (Section 4 (a)). Under the "Vaccination Act, 1880, children have been defined as persons who have not attained the age of fourteen years in case of boys and eighteen years in case of girls". Under the "Reformatory School Act, 1887, youth offender means any boy who has been convicted of any offence punishable with imprisonment for life or death and who at the time of such conviction, was under the age of 15 years".

Child Marriage Restraint Act (Sharda Act), 1929 defines "child as a male below twenty-one years and a female below eighteen years of age". However, the age of marriage fixed under the Prohibition of Child Marriage Act, 2006 is twenty-one years for boys and eighteen years for girls (Section 2 (a)). According to the Employment of Children Act, "no child who has not completed his fifteen years shall be employed or permitted to work in any occupation". "No child who has completed his fifteen years but has not completed his seventeenth year shall be employed or permitted to work in any occupation unless the period of work of such child for any day are so fixed at to allow an interval of rest for at least twelve consecutive hours which shall include at least seven consecutive hours between 10 pm and 7 am as may be prescribed". "No child, who has not completed fourteen year, "shall be employed or permitted to work in any workshop within any of the processes set forth in the schedule is carried on" (Section 3, Employment of Children Act). Under the "Motor Vehicles Act, a child has been defined as a person under the age of eighteen years".

The Factories Act, 1948, which is an elaborate and highly specific legislation relating to child labour, uses three different concepts to classify workers, *viz* a "child", a "young person" or an "adolescent" and an "adult". The Act specifies that "a person below the age of fifteen years is to be regarded as a child". Therefore, any physical labour undertaken by a child of below 15 years, either under compulsion or voluntarily in an organised or unorganised sector, qualifies as child labourer (Section 2 (c)). A "young person" or an "adolescent", according to this Act, refers to a person between fifteen and eighteen years of age, while a person above eighteen years of age is referred to as an 'adult' (Section 2 (b). The Apprentice Act, 1961 says a person can be attained to engage himself as an apprentice only at the age of 14 years (Section 4).

The Indian Constitution has laid down that "the State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years" (Art. 45). The Immoral Trafficking (Prevention) Act, 1986 says that "a child means a person who is not attained the age of 18 years" (Section 2(aa)).

According to Uttar Pradesh Children Act, 1951, "a child means a person under the age of sixteen years" (Section 2(d)). As per the Plantation of Labour Act, 1951, "a child means a person who has not completed his fifteenth year". It also lays down the following: "No child who has not completed his twelfth year shall be required or allowed to work in any plantation" (Section 24). According to Juvenile Justice Act, 1960, a child is defined as an individual who has attained sixteen years in case of a boy and eighteen years in case of a girl (Rajawat 2004: 53).

According to the Mines Act, 1952, "no person below eighteen years of age shall be allowed to work in any mine or part thereof" (Section 2(b)). The Young Persons Harmful Publication Act, 1956 classifies a young person as someone under the age of twenty years. Under the "Suppression of Immoral Traffic in Women and Girls Act, 1956, a girl means a female who has not completed the age of twenty-one years". According to "Orphanages and Charitable Homes (Supervision and Control) Act, 1960 a 'child' means a boy or girl who has not completed the age of eighteen years". The provisions under Children Act, 1960 says, a "child means a boy who has attained the age of eighteen years".

The Merchant Shipping Act, 1958 says that "employment of children below fifteen years as a seaman has ordinarily be prohibited". Persons below eighteen years cannot be employed as trimmers and stokers. The Motor Transport Workers Act, 1961 says "a child means a person who has not completed his fifteen years".[19] Under the Radiation Protection Rules, 1971 a child has been defined as a person below eighteen years of age. The U.P. *Dookan Aur Vanijya Adhishthan Adhiniyam*, 1962 describes "child" as a person who has not completed his fourteenth year (Section 2 (c)). In the Shops and Commercial Establishment Act passed by other states and union territories, 'child' has been defined as a person between twelve and fourteen years.[20] The Bidi and Cigar Workers (Conditions of Employment) Act, 1966 also defines "child as a person who has not completed fourteenth year of age" (Section 2 (b). Section 24 of the Act provides that "no child shall be required or allowed to work in any industrial premises.

According to the Committee on Child Labour (1979) "child labour" can broadly be defined as that "segment of child population in work either paid or unpaid". Based on a survey conducted in 1970s, the Indian Council of Child Welfare defines "every child below fourteen years who contributed to the family income or was gainfully employed including those marginally working should be treated as a worker".[21] The Delhi State Shops and Establishment Acts define the age of a child between twelve and fifteen years Section 2(2).

According to Minimum Age Convention, 1973, "a child may be a person below the general limit of fifteen years or, in special circumstances, fourteen years". As per the Child Labour (Prohibition and Regulation) Act, 1986 "child means a person who has not completed fourteen years of age" (Section 2(2)). The Juvenile Justice (Care and Protection of Children) Act, 2000 says "the age of majority for both boys and girls are

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[19] The Section 21 of the Act provides that "no child shall be required or allowed to work in any capacity in any motor transport undertaking." Section 22 lays down that "no adolescent shall be required or allowed to work as a motor transport worker in any motor transport undertaking unless, (a) certificate of fitness granted with reference to him…is in the custody of the employer, and (b) such adolescent carries with him, while he is at work, a token giving a reference to such certificate." According to Section 2 (a), "adolescent" means, a person who has completed his fifteenth year but has not completed his eighteenth year."

[20] It is because of this variation in age of child in different laws but the child labour will have to be defined in the context of a vocation in which a child is employed.

[21] The survey titled "Working Children in Urban Delhi: A Study of their Life and Work," was submitted to the Department of Social Welfare, Government of India in the year 1977. p. 125.

eighteen years" Section 2 (k). The objectives of the Commission for the Protection of the Child Rights Act, 2005 adopted the definition in line with the Convention on the Rights of the Child (CRC). It says, "a child means up to the age of eighteen years". The Right of Free and Compulsory Education Act, 2009, defines child to mean a male or female child of six to fourteen years Section 2(c)). The recent Child Labour (Prohibition and Regulation) Amendment Act, 2016 repeated the previous Act and said that "child means a person who has not completed fourteen years of age". Further to that it also mentioned that adolescent means the child between the age of 14 and 18 years old.

V. V. Giri expressed his view on child labour thus: firstly, "child labour is the employment of children in gainful occupations with a view to adding to the total income of the family", and secondly, based on the "character of the job in which children are engaged, the dangers to which they are exposed to and the opportunities of development which they have been denied" (Giri 1972: 360).

2. 4. SUMMING UP

The variety of definitions listed above illustrates the fact that no universal definition of a "child" exists at the international or national level. The legal conception of a "child" is not uniform and varies depending on the law which defines it. At the international level the upper age limit for the "child" is fourteen, fifteen and eighteen years of age. At the national level the age to be a child depends on a range of law, policy and administrative considerations, and pre-supposes coincidence of physical and mental maturity. Definitions of the term "child" covered under various Indian laws are not uniform and adequate. Depending on the severity of the circumstances, the age of the "child" has been fixed as fourteen, fifteen, sixteen, and eighteen years.

As shown in the numerous frameworks and cases above, it is clear that at the international and national level the age of the child is not aptly fixed or defined either for the "work" or for other circumstances. However, the recent Child Labour (Prohibition and Regulation) Amendment Act 2016, fixed the permissible children's age for "work" at fourteen years and for "adolescents" the age between fourteen and 18 years of age. Indeed, there is disparity in these age limits. The Indian laws do not

recognise a uniform age for the children, this often leads to complexities. However, the age of child labour has been unified—the most suitable and common definition conceives of "child labour" as children under the age of fourteen years in work or employment with the aim of earning a livelihood for themselves or for their families. It is better to have a single definition for the term "child" at international and national level which may help effectively streamline national and international efforts at combating child labour. Such uniformity in national and international standards is vital to protect childhood, ensure welfare of children including providing free education and a life of dignity in order to make them worthy citizens and members of the society.

CHAPTER - 3
INTERNATIONAL NORMS AIMED AT ELIMINATION OF CHILD LABOUR

3.1. INTRODUCTION

The international institutions have the following three interrelated advantages namely pressure, publicity, and legitimacy (Compa and Darricarrer 1995: 663). Although the international law is often criticised for being unenforceable, the role of international bodies should not be underestimated; they always remind the Member states their obligations to international treaties. The Treaties, Conventions and Recommendations from the international bodies can build pressure on Member states to oblige to their duties.

International Organisations have been giving much importance to the proliferating instances of human rights violations across the globe. Publicity of human rights issues across the world and the violation of human rights builds pressure on states to better fulfil their international obligations. At the same time, publicity may also put pressure on communities at large, prompting them to resist human rights violations like child labour (Perez-Lopez 1993: 1), and put more pressure on other actors to reduce the prevalence of child labour (Compa and Darricarrer 1995: 663).

The International judicial bodies like Tribunals or Courts are having the authority to deliver binding judgments. These judgements indirectly influence and put the pressure on states to comply with its obligations with regard to international treaties. On the other hand, the reporting procedure is common in human rights treaties and it is the duty of the member states to submit periodical reports detailing the compliance to the concerned human rights review body (Helfer and Slaughter 1997: 275 and Sardenberg 263 - 272). The mandatory reporting procedure also puts pressure on states to justify their actions. India has ratified the international human rights instruments, including

the International Covenant on Economic, Social and Cultural Rights,[22] the Convention on the Elimination of All Forms of Discrimination against Women, and several other International Labour Organisation's Conventions.

It is understood that international legal system has its own limitations and the judgment of an international tribunal cannot eliminate child labour altogether; it is not in itself a sufficient surgery for the issue, but the implementation of international instruments at the domestic level can be a step forward.

On realising the difficulties in the implementation of the judgements of the international courts and tribunals, the international community looks for alternative methods to curb child labour. Yet, the League of Nations, the ILO, and the United Nations adopted several conventions and declarations to eliminate child labour from the member countries. At the international level, the efforts to promote and protect children's rights started with the adoption of the League of Nations Conventions prohibiting trafficking of Women and Children (1921) and of Slavery and Slave Trade (1926) (Kubota 1989: 8 and Pappas 1983: 5). Simultaneously, the International Labour Organization (ILO) adopted various Conventions and Recommendations and made a series of actions aiming at the elimination of the exploitation of child labour. The ILO also established a framework for the protection of working children with regard to the terms and conditions of employment (Kooijmans 2007: 31-48).[23]

3.2. LEAGUE OF NATIONS

The Declaration of the Rights of the Child was adopted by an inter-governmental organization (Smith 2003: 739) and for the first time in history, it highlighted the importance of a "child" in the following strong words, "mankind owes to the child the best it has to give" (Saulle and Kojanec 1995: 3). The Declaration also called as the "Geneva Declaration of 1924" is the first comprehensive and significant international instrument for the promotion and protection of children's rights (Chanlet and Morier

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[22] International Covenant on Economic, Social and Cultural Rights, Dec.16, 1966, G.A.Res.2200 (XXI), U.N.GAOR, 21st Sess. Supp.No.16, at 49, UN Doc. A/6316 (1966), 993 UNTS 3, 6 ILM 360 entered into force Jan, 3, 1976.

[23] For more information's see, Report of the Secretary General, (1979), "The Exploitation of Child Labour", U.N.Doc. E/CN.4 Sub.2/433, pp.3-8.

1968: 4-5).[24] This Declaration set the ground for the progressive development of international norms and standards with regard to the rights and well-being of a child. It conveyed to the world community that the foremost duty of a human being is to "protect the children". This declaration also recognised the child's right to emotional and physical well-being, the right to a family, the right to aid in time of war or national disaster, the right to an education or training, and the right to recognition of their place and responsibilities in the human family (Saulle and Kojanec 1995: 3).

3.2.1. The Slavery Convention, 1926

Immediately after the adoption of Declaration of the Rights of the Child, the League of Nations adopted the first modern international treaty i.e., The Slavery Convention of 1926 to protect the human rights in particular from the slavery system (Nowak 2005:197 and Humbert 2009: 35-36). Initially, in 1924, the Temporary Slavery Commission identified different types of slaveries (United Nations 2000a: Para 18)[25] which influenced the League of Nations to adopt the Slavery Convention in 1926. Although the child labour is not specifically mentioned in the Slavery Convention the Convention included a form of domestic enslavement in the definition part (Humbert 2009: 37). The definition of 'slavery' defines in Article 1(1) of the Slavery Convention. It defines slavery as:

> "The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised".

The Convention also defines the 'slave trade' in Article 1(2) as:

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[24] In 1920 the Save the Children International Union disseminated the Declaration, which was later adopted by the Assembly of the League of Nations. Article 23 (a) of the League Covenant provides, "the member of the League will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations".

[25]. The identified list includes Slavery or serfdom at domestic level, practices restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery. For example: acquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs; Adoption of children with a view to their virtual enslavement, or the ultimate disposal of their persons; All forms of pledging or reducing to servitude of persons for debt or other reason… [and] system of compulsory labour, public or private, paid or unpaid.

> "…all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves".

Article 2 encourages the states parties to take the measures to "prevent and suppress the slave trade" and continue its efforts to "abolition of the slavery in all its forms". The Article 5 of the Convention states that "forced labour may only be exacted for public purposes" and states parties needs to "prevent compulsory or forced labour from developing into conditions analogous to slavery". Thus, it is argued that the phrases included in the definition part i.e., any or all the powers of ownership and abolition of slavery in all its forms, clearly emphasize and include child labour under the Slavery Convention (United Nations 2000a: Para 9).

Although the League of Nations adopted the Slavery Convention in 1926, the definition of slavery has caused controversies while in the implementation process. The differences mainly focused on which category of practices become slavery and the reasons for the elimination (Weissbrodt 2000: Para 6). The 1953 Report of the Secretary-General of the United Nations substantiates the above and mentioned in the draft that the drafters of the Slavery Convention pre-determined the concept of the authority of masters over the slave (Humbert 2009: 36-37 and Lassen 1988: 202).[26] The above arguments encouraged the UN to set up a Committee to study the definition of the Slavery Convention more deeply, however, in 1949 the Economic and Social Council (ECOSOC) appointed an Ad-hoc Committee of Experts on Slavery. After conducting a thorough and detailed study on the definition part of the Slavery Convention, the Committee concluded that the Convention has failed to include all ill-practices related to slavery and pointed out that the other severe forms of slavery should be included in the definition (United Nations 2000a: Para 10). The findings of the Committee of Experts recommended adopting another Convention to fill the gaps in the definition part of the Slavery Convention, 1926.

[26] For more information's see, United Nations (1953), "Report of the Secretary-General on Slavery, the Slave Trade, and Other Forms of Servitude", E/2357 (1953), para. 36.

3.3. INTERNATIONAL LABOUR ORGANISATION (ILO)

The ILO is an inter-governmental body created after World War I under the Treaty of Versailles to respond to the harsh working conditions spawned by the Industrial Revolution (ILO 1998a: 5 and Valticos 1969: 205). The 1919 Paris Peace Conference mainly focused on resolving the injustice at the employment, improving conditions of the labour including child labour, ensuring humane conditions at the employment in order to secure peace in the world (Hatschek 1930: 333 and Leary 1995: 476).[27] The conventions of the ILO played an important role in dealing with the problems faced by children. The protection of a child against exploitation in employment is one of the prominent conventions under the ILO. Mindful of the well-being of the children, the ILO adopted a total of 19 Conventions[28] specifically for the protection of children. These Conventions also provide certain norms and standards for working children.

The preamble to the ILO Constitution recognises that peace and harmony in the world are jeopardized when large numbers of people are subjected to inadequate pay and inhuman working conditions, stating that, "lasting universal peace can be established only if it is based upon social justice" (ILO 1919).[29] Also embedded in the preamble is a specific provision for the protection of "children". The ILO is not opposing the

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[27] In the Preamble of the Constitution of the ILO, the Member states declare that they are "moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world".

[28] For the protection of the Children from the exploitation the International Labour Organisation adopted the following Conventions since its inception, they are: (i) Minimum Age (Industry) Convention, 1919; (ii) Night Work of Young Persons' (Industry) Conventions, 1919; (iii) Minimum Age (Sea) Convention, 1920; (iv) Minimum Age (Agriculture) Convention 1920; (v) Minimum Age (Trimmers and Stockers) Convention, 1921; (vi) Medical Examination of Young Persons (Sea) Convention, 1921; (vii) Minimum Age (Non Industrial Employment) Convention, 1932; (viii) Minimum Age (Sea) Convention, (Revised) 1936; (ix) Minimum Age (Industry) Convention, (Revised) 1937; (x) Minimum Age (Non-Industrial Employment) Convention, (Revised) 1946; (xi) Medical Examination (Sea-Farers) Convention, 1946; (xii) Medical Examination of Young Persons (Industry) Convention, 1946; (xiii) Medical Examination of Young Persons (Non Industrial Occupation) Convention 1946; (xiv) Night Work of Young Persons (Non Industrial Occupations) Convention, 1946; (xv) Night Work of Young Persons (Industry) Convention, 1948; (xvi) Medical Examination of Young Persons (Under Ground Works) Convention, 1965; (xvii) Minimum Age (Under Ground Works) Convention, 1965; (xviii) Minimum Age Convention, 1973; (xix) Worst Forms of Child Labour Convention, 1999. Out of these Conventions 10 Conventions specifically deals with the minimum age for employment of children, five with medical examination of children to decide their fitness for employment and three with prohibitions of night work for children and one with the total prohibition of worst forms of child labour.

[29] The aims and purposes of the ILO were originally set forth in the Preamble to its Constitution and in a statement of methods and principles contained in Article 427 of the Treaty of Versailles. Further to that it also restated in Declaration of Philadelphia in 1944, which was incorporated in the Constitution of the ILO in 1946.

work that may benefit a child's development or the work involving only a few hours per week. It focuses on the work that is destructive to a child’s mental as well as physical well-being (ILO 1986: 6).

Member states’ compliance with ILO Conventions and Recommendations are important for the ILO because eliminating child labour could be actualized only through co-operation from the member states. Even though the member states are obliged to adopt ILO conventions and recommendations, the ILO has the duty to improve the legislation and ensure the compliance with the member states only then it can successfully convince the member states to implement the conventions domestically (Jenks 1970: 14). The ILO Constitution affirms that “all national and international policies and measures should be in line with the principle that all human beings, irrespective of race, creed, or sex, the right to pursue birth their material well-being and their spiritual development in conditions of freedom, dignity, economic security, and equal opportunity” (Wolf 1984: 273). The ILO has taken the initiative of setting international labour standards to curb child labour.

Most of the ILO Conventions have given more importance to the safety and health of the employees, especially at the workplace, and to the condition of children. Importantly, exploitation of children at workplace has been the main concern of the ILO since its inception. Moreover, worst forms of exploitation of children through debt bondage and child prostitution are examined by ILO supervisory bodies[30] in the framework of the Forced Labour Convention, 1930 (No. 29).

The former Director-General of the ILO, Juan Somavia, stated that “Child labour, in its worst forms, is an abuse of power. It is, adults exploiting the young, naive, innocent, weak, vulnerable and insecure for personal profit” (ILO 1999).

[30] The supervisory bodies mean the Committee of Experts on the Application of Conventions and Recommendations and the tripartite Committee on the Application of Standards of the International Labour Conference. The Committee of Experts is a body of independent experts entrusted with the technical examination of reports supplied by governments to the ILO, as well as other relevant information, concerning the application of ILO standards. The report of the Committee of Experts is discussed by the Conference Committee which reports to the Conference.

ILO has created several conventions that deal specifically with child labour (ILO 1986: 7). These conventions address the goal of eliminating harmful child employment along with adopting measures that will protect children, for the ILO recognises that the abolition of child labour will take time, particularly in lesser-developed countries (ILO 1986: 7). Since its inception, the ILO has introduced several Conventions to eradicate child labour. The major Conventions, Recommendations and Declarations are explained below.

3.3.1. THE ILO FUNDAMENTAL CONVENTIONS AND RECOMMENDATIONS ON CHILD LABOUR

Acting on the call for the protection of children and true to the Preamble of its Constitution, the first Convention for protecting children at workplace was adopted in 1919. The Minimum Age (Industry) Convention, 1919 (C 005)[31] prohibits "the employment of children under the age of 14 in any public or private industrial establishments or in any branch thereof, other than an undertaking in which only members of the same family are employed" (Article 2 of the Convention). Since then, the ILO has adopted ten more conventions and five recommendations for setting standards on the minimum age of admission to employment or work in the industry, agriculture, shipping and other non-industrial occupations. In addition, minimum age standards are specified in several other conventions concerned with safety, health and/or general conditions in particular industries.

Under the Minimum Age (Agriculture) Convention (C 010), "children under the age of 14 years may not be employed or made to work in any public or private agricultural undertaking, or in any branch thereof, save outside the hours fixed for school attendance". If at all the children has been employed outside the school hour, the employer needs to make sure that the children attended the school before they start their work (Article 1 of the Convention).

[31] The ILO Convention Fixing the Minimum Age for Admission of Children to Industrial Employment, 28 November 1919, 28 L.N.T.S. 81 (entered into force on 13th June 1921). The Convention was revised in 1937 by Convention No. 59 and in 1973 by Convention No. 138, URL: http://ilolex.ilo.ch:1567/scripts /convde.pl?C5. The earliest standards (1919-1932) generally fixed the basic minimum age at 14 years, and subsequent revisions (1936-1937) raised it to 15. This Convention has been ratified by India and consequently the Factories Act, 1948; the Mines Act, 1952; the Employment of Children, Act 1938; the Bidi and Cigar Workers Act, 1966 and the Motor Transport Workers Act, 1961 were passed.

According to Minimum Age Employment (Non-Industrial Employment) Convention, 1932(C033), “children under 14 years of age, or children over 14 years who are still required by national laws or regulations to attend primary school, shall not be employed in any work to which this convention applies except as otherwise provided for” (Article 2 of the Convention).The Minimum Age (Industry) Convention, (Revised) 1937(C059) raised the “minimum age for admission to industrial undertakings from 14 to 15” (Article 2 of the Convention).

Under Minimum Age (Under Ground Works) Convention, 1965 (C123), “persons under a specified minimum age shall not be employed or work in underground mines”. The convention also says “each member whoever ratifies this convention shall specify the minimum age in a declaration appended to its ratification”. Under this Convention, the employer is not allowed to engage any children under the age of 16 years in employment (Article 2 of the Convention). Moreover, before fixing the minimum age the employer should take the opinion of both employers and workers organisation (Article 3, 4 & 5 of the Convention). The Minimum Age (Underground work) Recommendation, 1965 (C124), “provides that where the minimum age for admission to employment or work in underground mines is less than 16 years, measures should be taken as speedily as possible to raise it to that level”.

3.3.1.1 Minimum Age Convention, 1973 (No. 138) and Minimum Age Recommendation (R 146)

After adopting series of above Conventions and Recommendations concerning Minimum Age, the ILO adopted Convention concerning Minimum Age for Admission to Employment (No. 138) at the 58th International Labour Conference session on 26th June 1973. This Convention replaced various above Conventions and Recommendations concerning the minimum age. One of the most important Conventions specifically dealing with the child labour is ILO Convention 138 and Recommendation 146, which mainly focus on the minimum age for employment (Creighton 1997: 362, 371).

Convention No.138 emerged as a strong convention to protect the children at the workplace. It consolidated principles from previous ILO instruments and fixed the minimum age to all sectors of economic activity. The Governing Body of the ILO

reached the conclusion that the "basic Conventions on the minimum age for admission to employment can no longer be an effective instrument of concerted international action to promote the well-being of children". In spite of the earlier efforts, it was evident that child labour remains a widespread and persistent phenomenon. All existing instruments on minimum age were indeed of restricted applicability, concerned only with a limited number of economic sectors or specific occupations. Accordingly, the ILO undertook a major revision and consolidation of standards. This led to the adoption of the Minimum Age Convention, 1973 (No.138). It took a very different approach compared to earlier standards, combining broader coverage with greater adaptability to national situations. Although limited exceptions are permitted, it is applicable to the sectors wherever economic activities are taking place and, like the earlier conventions, covers children whether or not they are employed for wages.

In 1973, the labour conference adopted Convention 138 (C138), which updated and combined all the previous Conventions relating to the minimum age for workers in various industries such as manufacturing, mining, agriculture, and fishing (ILO 1973). C138 is considered the "bedrock of national and international action for the eventual, total abolition of child labour" (ILO 1973). The C138 fixed the minimum working age at 15, with certain exceptions for "developing countries to initially specify the minimum age of 14, and 18 as the minimum age for work that is likely to jeopardise the health, safety or morals of young persons" (ILO 1973). Until September 2017, 151 countries have adopted C138 (ILO 1973). However, the United States is not among them. Together, C138 and C182 established the core conventions on human rights at the workplace.

The international and regional communities have been concerned about child labour and attempted to curb it at the first session of the ILO in 1919 by establishing "14 years as the minimum age for children" to be employed in the industry.[32] The Convention recommended for the adoption of a national policy for the minimum age

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[32] Convention Fixing the Minimum Age for Admission of Children to Industrial Employment (ILO No. *5), adopted* 28 Nov. 1919 *(entered into force* 13 June 1921), *revised in* 1937 by Convention No. 59 and in 1973 by Convention No. 138, Article 2, URL: http://ilolex.ilo.ch:1567/scripts/convde.pl?C5>.

for the employment by the member states to regulate the child labour. Article 1 of the Convention reads as follows:

> "Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons".

Thus, it is clear from the above that the Convention prompted states to come out with a national policy, encouraging progressive improvement.

Although the Convention specifically didn't mention the word 'child' anywhere in the Convention the Preamble of the Convention says "… Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and…". The inclusion of the word 'abolition of child labour' clearly speaks the objective of the Convention and which specifically speaks for the children and the abolition of their work. The Convention also made the differentiation between the light work and hazardous work. The Convention took a flexible approach towards the member states as it left open a provision for expansion of the age limit (Smolin 1999: 415). Under this Convention, the term 'child labour' does not include all kinds of work done by children but only included prohibited as per the ILO standards (ILO 1999d: 31). Summarily, the Convention defined, "child labour as an economic activity performed by a person under the age of 15, and prohibited it for being hazardous to the physical, mental and moral well-being of the child as well as for preventing effective schooling" (Van Bueren 1998a: 355).

The Member states are obliged to ratify the Convention and fix a minimum age for joining the employment in line with the ILO Convention. The Convention also encourages to create a national policy to protect the children from the exploitation at the workplace and the gradual abolition of child labour by ensuring implementation of minimum age in all sectors of the economic activity to promote the physical and mental development of young persons. The purpose of the convention is to protect and develop children in the fullest manner, and encouraging the advanced

development of standards and promoting sustained action to attain the objectives. The Convention encourages the member states to decide the age of the employment initially as 14 years which could be on the basis of the type of employment. It is highlighted in the Article 2 (4) of the Convention which reads as follows:

> "Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years".

Moreover, the drafters of this Convention also intended that this Convention should be acceded by more states (Van Bueren 1998a: 265), as it may easy to curb the child labour from the grass root level. However, the drafters adopted a flexible instrument and gave more power to member states to decide the ages for employment.

Recommendation No.146 supplements Convention No. 138 to protect children at workplace. The recommendation provides a comprehensive outline and vital policy measures to eradication and regulation of child labour. The minimum age for joining the employment is prime agenda of the convention and it also reiterated in recommendation 146. The member states need to fix the age for the children to join the employment in its national policy. ILO recommendation highlighted different minimum age for different types of work. However, it says the minimum age should not be less than 15 years of age which is equal to the age for completing compulsory schooling. The developing countries whose economy is moderate and educational facility are not up to the mark could be fixed the minimum age for joining employment should not be less than 14 years (Article 2(4) of the Convention). When fixing the minimum age for joining the employment, the worker's organisation and employers' association need to be consulted. However, Recommendation No.146 recommends raising the minimum age for joining the employment to 16 and stressing to implement this in all sectors of the economic activities.[33] Although the convention fixed the minimum age for employment as 14 years for developed nations and 15

[33] In the preparatory work on these instruments, it was explained that this provision was "intended to prevent, as far as possible, situations in which children ineligible for employment in a well-regulated sector are employed in sectors covered by lower standards with the result that the child labour is merely transferred rather than reduced or abolished".

years for developing nations, it mentioned gradual rise in the minimum age level for the employment. The inclusion of term 'compulsory education' in the Convention was the brilliant step which was taken by the drafters of this Convention which indirectly helps to curb the child labour and promotes and best use of the education for the children. This was also recalled and used in the definition of exploitative child labour of UNICEF.

Convention No.138 sets a higher minimum age for hazardous work, which may make harm to health, safety or morals of young persons. The Article 3 of the Convention reads as follows:

> "1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.
> 2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.
> 3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity".

This provision of the convention mainly focuses on the work which is "likely to jeopardise the safety, health or morals of a young person". The work should not cause any harm to the young person thus it needs to examine the nature and condition of the work before offering the employment to a young person (ILO 1996: 27). If some of the activities which are not considered as hazardous but in certain circumstance,s, it may be treated as hazardous, the competent authority needs to verify the circumstance prior to the young person joining the employment. The convention gave flexibility to member states to determine the nature of the work as hazardous by using national laws or regulations. It also recommended the Member states to decide the contents of

the activities which are coming under the hazardous nature of the work.[34] The convention also recommended for the prior consultation with the employers' organization and workers association to determine the activities of the work.

Although the Convention gave flexibility to Member states to determine hazardous occupation, on the other hand, the Recommendation No. 146 provides suggestions to apply the criteria to determine the hazardous occupation. The Recommendation states that the member states consider the relevant international labour standards while determining the hazardous occupation. It also suggested that to "pay special attention to dangerous substances, agents or processes (including ionising radiations), the lifting of heavy weights and underground work". It recommends for timely review of the hazardous occupation list with the view to the development of scientific and technological knowledge. It added that consultation should be made with the employers' and workers' organisations.

The Convention fixed the minimum age for the hazardous occupation is 18 years. However, the recommendation emphasizes that if the minimum age is below 18 years, the member states need to take proper steps to increase the age up to 18 years. The exception to this rule, the convention provides that "a lower age of 16 may be authorised if (a) the health, safety and morals of the young persons concerned are fully protected and (b) they have received adequate specific instruction or vocational training in the relevant branch of activity". For allowing the under 18 to take work, the consultation should be made with employers and workers organisation prior to engaging them in employment (Van Bueren 1998b: 266).

In addition, the Convention No.138 also recommended for a provision to make flexibility in the economic sectors of activities which are covered under the Convention. It permits the exclusion of limited categories of employment or work that raise special and substantial problems of application, though these are not defined further. Article 4 of the Convention reads as follows:

[34] The Convention has given the provision for the member states to decide the hazardous work from the provided list. The list of hazardous occupations and process in national legislation is contained in: ILO/IPEC/SIMPOC, Every Child Counts, Appendix 3: The example are carpet weaving, mining, work in quarries, carpet weaving etc.

> "1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.
> 2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.
> 3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article".

The employment of children in the family undertaking was discussed at the preparatory work of this convention. The family undertaking includes domestic services in the private households, without supervision work etc., (ILO 1996: 26).[35] The exclusion plan was mainly because of the practical difficulties in implementation of the conventions at the domestic level. It doesn't mean that there is no exploitation or abuse at family undertakings or domestic or household work (ILO 1996: 26).

The Convention also gives flexibility in the application of the convention for the developing countries. The developing countries could initially specify the activities which involved in the undertakings to which the convention will apply (Article 5 of the Convention). This Convention shall be applicable to the following sectors, i.e., "mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings but exclude family and small-scale holdings mainly producing for local consumption and not regularly employing hired workers" (Article 5(3) of the Convention). The types of work mentioned under this Convention resemble as hazardous in nature under the UNICEF thus, it is dangerous for the health and development of the children. Article 4 (3) reads as follows:

[35] The Home Work Convention (No.177) adopted in 1996 calls for the promotion of equality of treatment between home workers and other wage-earners in relation to minimum age, among other things; the Home Work Recommendation (No.184) suggests programmes to eliminate child labour in home work.

> "Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article".

The intention of the Convention is to curb the child labour but the Convention fully focussed on exploitative child labour and excluded the prohibition of those types of work so that the purpose of the Convention implemented through the national legislation without any hassle.

The Convention highlighted that the member states have to take initiatives to make the competent authority to monitor and implement necessary measures against the violators in the form of penalties. It may be helpful to ensure the effective enforcement of the provisions of the convention. Article 9 reads as follows:

> "1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.
> 2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.
> 3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age".

The Convention once again showed flexibility towards the member states to decide on the penalty on the basis of the domestic requirements. Penalties are defined in national legislation for violations of national laws of the member states, practically giving effect to the Convention. The main intention of this part of the Convention is to compel the member states to implement the Convention effectively. The Conventions requires the competent authority under the national law to take all necessary measures to ensure the effective enforcement of the Convention and to domestically curb the exploitation of children in the name of employment. Penalty or fine alone is not sufficient to curb the social evil, however, the states could also appoint inspectors to check the implementation of the provision domestically. The Convention also suggests that national laws could make legislation and inform the

employers to keep the records of the names and ages of the person who has not attained the age of 18 at their workplace.

As mentioned in the convention, the member states are required to ratify the convention at the earliest time period. It is the duty of the member states to oblige to the provisions of the convention. Once it is ratified, member states should submit regular reports explaining the initiatives taken by them to comply with the provisions of the Conventions. The compliance of the Member states with the provisions of the convention would be evaluated by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in a non-public examination (Creighton 1997: 362 and 371). The Committee may ask the concerned governments for further information if the report is unsatisfactory or does not have the necessary information (Ghebali 1989: 238). After the evaluation of the report, if the Committee thinks that the concerned government has failed to oblige to the requirements of the Convention, it can include “special paragraphs” in its assessment report or it may list as a “continued failure to implement a convention” (Ghebali 1989: 225). Once the assessment is ready the Committee will report it to the ILO Conference. On the basis of the assessment report, the Conference Committee on the Application of Conventions and Recommendations then hears the selected cases. The unique nature of the Committee includes representatives from member states, employers and employees organisation. The Plenary conference will adopt the reports of the Conference Committee.

Apart from the above the ILO also created some specialised mechanisms to efficiently implement its policies at the national level. The ILO governing body has created a special committee to deal with allegations of violations of the right of freedom of association. The special committee is named as “Committee on Freedom of Association” (Ghebali 1989: 238). Additionally, ILO also encourages representations from the international or national employer or employee organisations under Article 24 of the ILO constitution. The national and international employer or employee organisation can submit representations to ILO if the member states failed to implement the conventions at the domestic level (Creighton 1997: 383). The representation is examined by the Tripartite Committee of the governing body, further to that the report will be forwarded to the concerned national governmental

department for the response (Ghebali 1989: 238). In most of the cases, the government will respond to the Tripartite Committee within the time limit, if not, the representation may be published in the official record (Ghebali 1989: 238).

ILO also developed a mechanism for inter-state complaints under Article 26 of the ILO Constitution. The complaints from the Member states are entertained by the ILO governing body. Once a complaint is received from a member state against another member state, the governing body will examine the complaint carefully. If the governing body thinks that the complaint has some genuine issues and they come under the purview of the ILO, then it would be forwarded to the concerned member states for a response. The ILO governing body will try to settle the matter amicably. If not, the ILO will set up a "Commission of Inquiry" to assess the complaint systematically (Creighton 1997: 383). The inquiry includes verification of witness statements and relevant substantial documents, surprise visit to member states etc. When the "Commission of Inquiry" completes its inquiry, it will submit a report with a recommendation to the governing body and the member state in question and the complainant state. Once the member state receives the copy of the findings from the "Commission of Inquiry", it must reply to the Director General of ILO irrespective of whether they accept the recommendations or not. If the member states failed to accept the findings of the "Commission of Inquiry", both the parties can move to the International Court of Justice.

3.3.1.2 Worst Forms of Child Labour Convention, 1999 (No. 182) and Recommendation (R 190)

In June 1996, representatives from countries of the world attended the International Labour Conference in Geneva, agreeing to begin the process of drafting a new convention concerning child labour. They also decided to focus on 'intolerable' child labour while aiming to prohibit the "most exploitative", "most abusive" and "hazardous" forms of child labour (Blagbrough 1997: 123-127). Finally, on 17 June 1999 the International Labour Conference of the ILO unanimously adopted the Convention Concerning the Prohibition and Immediate Action for the Elimination of

the Worst Forms of Child Labour (No. 182) (ILO 1999: 1207). This "Convention is one of the four fundamental labour conventions of the ILO".[36]

This Convention mainly applies to children who are engaged in bonded labour and children involved in the dangerous and hazardous occupation. It also grapples with the exploitation of young children and the commercial sexual exploitation of children (ILO 1996: 34).

The Recommendation (R 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour supplements the Worst Forms of the Child Labour Convention (ILO 1999b: ILM 1207). The Recommendation calls for the immediate implementation of the programs of action referred to in Article 6 of the Worst Forms of the Child Labour Convention (ILO 1999b: Article 1 Para 2). According to the Recommendation, the program of action should take into consideration views of the families and children therein who are involved in hazardous occupations dangerous to their health and development and considered to be worst forms of child labour.

Under this Convention, Member states are obliged to take actions to prohibit and eliminate worst forms of the child labour (Article 1 of the Convention). The Convention also emphasises that the worst forms of child labour should not be tolerated, hence, it requires to eliminate such labour from the grass root level (ILO 1996: 112). Article 2 of the Convention applies to the age limit—it holds that the term "child shall apply to all persons under the age of 18" which is reflected in UNCRC. The Article 3 of the Convention specifically mentions the worst forms of child labour:

> (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
> (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

[36] The four fundamental labour Conventions are: C29 and C105 on the Abolition of Forced Labor; C87 and C98 on the Freedom of Association; C100 and C111 on Employment Discrimination; and C138 and C182 on Child Labour.

> (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
> (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".

The main difference between the Convention No. 138 and 182 is in their respective scope of application. The Convention No. 182 applies only to the unconditional worst form of child labour and hazardous work, whereas the Convention No. 138 applies to all eight types of exploitative child labour that are identified by ILO (ILO 1999e).[37] Another main difference is that the Convention No. 182 does not contain any exceptions as to the branches of economic activities, though the scope of the application is broader under this Convention.

Under this Convention, the member states first determine the types of work which are likely to jeopardise the health, safety or morals of children and list them under the national legislation. It also has the power to review the list periodically. Article 4 of the Convention reads as follows:

> "1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
> 2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
> 3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned".

The Convention mentions that the obligation of determining the types of the work lies with the Member states, but the Member state has to discuss with the organisation of "employers and employees" prior to the decision. Additionally, the Member states should also consider relevant international labour standards while determining the

[37] According to ILO there are 8 main types of exploitative child labour. They are hazardous working conditions, domestic service, street children, child labour in the informal economy, child slavery, trafficking and commercial sexual exploitation, children in armed conflicts and illicit activities.

types of the work (Paragraphs 3 & 4 of the Recommendation). These paragraphs mainly focus on the types of the work which are exploitative in nature, therefore, it is considered as worst forms of the child labour. Article 7 of the Convention focus on "effective and time-bound measures to prevent the engagement of children in the worst forms of child labour". Under this convention, the member states are obliged to provide assistance to remove the "children from the worst forms of child labour and for their rehabilitation and re-integration" (Article 7 (b) of the C 182). Keeping an eye on curbing the exploitation of children, the Convention also "ensure access to free basic education, arranging vocational training for all children removed from the worst forms of child labour" through member states (Article 7 (c) of C 182).

Under Article 8, this Convention also gave importance to "international cooperation and assistance for social and economic development and poverty eradication". As explained in the introductory part, poverty and development are very important to eradicate child labour. However, ILO added this important provision under this Convention to curb child labour effectively at the global level. Thus, the Convention provides the broadest space to member states to fulfil their obligation as per the provisions of the Convention. Simultaneously, the Recommendation 190 supplements this Convention through its recommendations for the implementation measures.

3.3.2. ILO CONVENTIONS ON PROTECTION OF CHILDREN AND YOUNG PERSONS

The ILO adopted few conventions to protect the children and young persons from hazardous work. These conventions can be divided into three categories, namely the occupation which require regular medical examination; prohibition of employment of children in night work; and work which are dangerous in nature. The ILO Minimum Age Convention, 1973 (C 138) has been replaced by the previous ILO Convention on dangerous occupations. The Conventions concerning Medical Examination and Conventions concerning night work are explained below.

3.3.2.1. Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)

The Medical Examination of Young Persons (Industry) Convention clearly states that "children and young persons employed in industries shall have medical examinations

to determine their fitness for employment" (Article 2(3) of the Convention). Under this convention, the industry should not appoint young persons under 18 years of age. If at all the industry would like to engage an under-18 child in an employment, it needs to be properly examined by an approved medical doctor and confirm through a certificate that the under-18 child concerned is fit for the said employment (Article 3(1) of the Convention).

The Convention gave flexibility to member states to list employments wherein there is the requirement of medical/fitness certificate for joining. The Convention emphasises that the member states should specify the mandatory requirements under their national laws or policies for categories of occupations which require "medical examinations and re-medical examinations for fitness for employment" (Article 4(2) of the Convention). The convention highlights that the high health risk employment requires fitness certificates from the approved medical authority mentioned under the national laws for children under the age of 21 years (Article 4 (1) of the Convention).[38] For maintaining the efficiency of the medical examination with regard to the fitness of children, the member states need to train and create a body of examining doctors. The doctors should be qualified in industrial hygiene and should have vast experience in industrial medical problems which the children may face while working in a given occupation.

3.3.2.2. Medical Examination of Young Persons (Under- Ground Work) Convention, 1965 (No. 124) and Conditions of Employment of Young Persons (Under-Ground Work) Recommendation 1965 (R 125)

The health risk is always the prime concern for the people who are working in "underground mines". Considering the health risks inherent in employment in underground mines, the ILO identified that industrial standards require "medical examination and periodic re-examination for fitness for employment in underground mines until the age of 21 years" (Article 2 (2) of the Convention).[39] The 1965 Convention has specified the nature of this examination. Until the age of 21 years, a

[38] In Indian case, in high health risk occupations re-examination of fitness fixed as till the age of 19 years. This provision has been incorporated in the Factories Act, 1948.

[39] Now a days procuring a medical fitness certificate is easy due to the massive corruption in the hospitals. So, the requirement of medical fitness certificate is a mere formality with little relevance in the field of employment.

thorough examination for fitness shall be carried out at least once in a year. This convention is supplemented with Recommendation 125. It recommends, in order to prevent children below 14 years from employment during their school hours only those who are medically fit are allowed to work in industries and in underground mines. The medical examinations are to continue till the age of 21 years.

3.3.2.3. Night Work of Young Persons (Industry) Convention, 1919 (No. 6)

According to this Convention (No.6), the young persons who are below 18 years of age should not be employed in the night hours at the premises of public or private industry. The Convention showed some flexibility to the family members who are running the industry. That is to say, in case of a family business, if the business has employed family members in the industry, it can engage children in employment even at the night hours, provided that such engagement is under full supervision. The convention also allows young persons above the age of 16 may be employed during the night in certain industries which, by reason of the nature of the processes, is required to be carried on continuously day and night" (Article 2 of the Convention). The day and night industry has special provisions under the national laws which provides for special facilities to be provided to children who are fit to work in the night time. Under this convention, the term "night signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the morning" (Article 3 of the Convention).

3.3.2.4. Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) Recommendation, 1946 (R080)

This Convention (No.79) applies to children and young persons working directly or indirectly and earning wages from the employment through non-industrial occupations (Article 1(1) of the Convention). Under this convention "children under 14 years of age who are admissible for full-time or part-time employment and children over 14 years of age who are still subject to full-time compulsory school attendance shall not engage in non-industrial occupation". The Convention also emphasizes that children whether under the age of 14 or over the age of 14, who are still in full-time schooling should not be engaged in employment at night hours in non-industrial occupation. The night hours are explained "as a period of at least

fourteen consecutive hours including the interval between 8 o'clock in the evening and 8 o'clock in the morning" (Article 2 of the Convention)."Children over 14 years of age who are no longer subject to full-time compulsory school attendance and young persons under 18 years of age shall not be employed nor work at night during a period of at least 12 consecutive hours, including the interval between ten o'clock in the evening and 6 o'clock in the morning" (Article 3 of the Convention).There is an exemption from this rule, that is, the countries where climatic conditions and national needs compel, the timings can be changed (Article 4 of the Convention). The recommendation emphasized that the Member states should ensure the provisions of the Convention 79 implemented at the national level rapidly as national conditions allow, and should report to the ILO as requested by the Governing Body of the ILO.

3.3.2.5. Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)

This Convention (C 90) clearly mentions that "children below 16 years are not to be employed during the interval between 10'o clock in the evening and 6'o clock in the morning" (Article 29(2) of the Convention). Under this convention, the term "night signifies a period of at least twelve consecutive hours". In some cases of "young persons who have attained the age of 16 years but are under the age of 18 years this period shall include an interval prescribed by the competent authority of at least seven consecutive hours falling between 10'o clock in the evening and 7'o clock in the morning" (Article 2(3) of the Convention). The resting period shall include "seven consecutive hours between 10'o clock in the evening and 7'o clock in the morning" (ILO 1985: 745). Special provisions for certain countries have been provided under the convention in Part II of the conventions (Article 5 of the Convention). Moreover, "young persons under 18 years of age shall not be employed or work during the night in any public or private industrial undertaking or in any branch thereof except as provided for" (Article 3 of the Convention).

3.3.3. FORCED LABOUR CONVENTION, 1930 (No. 29)

One of the fundamental conventions of the ILO which is vital in safeguarding the rights of children against worst forms of exploitation is Forced Labour Convention,

1930 (No. 29) (ILO 1996: 27). This Convention aims to suppress the use of forced or compulsory labour defined as "work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (ILO 1929: 189). In 1995, the Declaration of the World Summit was held in Copenhagen and it internationally recognised the labour standards. This Convention exemplifies one of the four internationally recognised labour standards (United Nations: 1995). Since, it applies to everyone, irrespective of age, it protects children from forced or compulsory labour. It is worth mentioning that this Convention is applicable to most intolerable worst forms of child labour, such as children in bondage, exploitation in prostitution and pornography etc.

Article 2 (1) of the Convention reads as follows:

> "For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

It is clear from the above that the 'coercion' and 'involuntariness' are the two main elements to define the Convention. The other part of the Article also revealed that the penalty should be there for the violation. It is not necessarily in the form of only 'sanction' but also prohibits the rights or privileges (Bartolomei de la Cruz 1996: 137).[40] Further to that Article 25 of the Convention says:

> "The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced".

With the intention to eliminate exploitative child labour, the ILO and other international organisations repeatedly exposed in its reports about the involvement of forced labour in domestic services and brick manufacturing units (ILO 2001: 10). It also highlighted that children and vulnerable are targeted, thus, victims of forced

[40] During the drafting process the discussion was raised and mentioned in the Record of Proceedings, International Labour Conference, 14th Session, Geneva, 1930, p.691 cited in ILO, "Forced Labour in Myanmar (Burma), Report of the Commission of Inquiry appointed under Article 26 of the Constitution of the International labour Organisation to Examine the observance by Myanmar of the Forced Labour Convention 1930 (No. 29)", *Official Bulletin,* 81 (1998), Series B, Special Supplement, 9.

labour. Further to that the report also connected slavery-like practices with forced labour. Added to that, the Supplementary Convention on Slavery underscores that the child labour is one form of the slavery-like practice. However, the child labour automatically comes under the purview of this Convention.

This Convention is mainly applicable to forced labour. The problem of forced and compulsory labour of children has been on the agenda and it has been discussed extensively at the Committee of Experts and the Conference Committee. These Committees also discussed the standard of application of this Convention with the Member states. Further to that, in 1994, the first time the Committee of Experts raised the issue of forced child labour, especially the exploitation of children for prostitution and pornography. Adding to that the member states also echoed the concern over forced child labour and supported the views of the Committee of Experts. The Committee of Experts argued that "the exploitation of children is one of the worst forms of forced labour which should be severely punished and abolished". The Committee has taken the initiative to curb the social evil of forced labour, especially in children. It not only discussed with the member states where the exploitation of children occurs but also requested other member countries to encourage and assist in its agenda of eliminating these worst practices.

The United Nations Working Group on Contemporary Forms of Slavery too has come to classify the sale and sexual exploitation of children as contemporary forms of slavery. The Committee of Experts of the ILO observed in 1995 that the nature of this form of child labour often brings it within the meaning of forced or compulsory labour. Each discussion in the Committee observed that the children are more vulnerable, therefore, it is highly impossible for them to give 'free consent' for the employment (ILO, World Labour Report 1993: 17). In that situation, normally parents have the full right on their children and they will be deciding for the consent of their children. Each and every parent might not be opposing the exploitative child labour because of their personal circumstances, however, they may disregard "best interest of their children" and give consent against the will of their child. Article 3 of the CRC reads as follows:

> "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
> 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
> 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision".

The above provisions of the convention clearly mean that though it is the duty of the "parents or legal guardians" to take care of their children, the state parties should make sure that the child is getting proper care and well-being as per the principles of the Convention. However, in the case of exploitative child labour only the "consent of the parents or legal guardians" is not sufficient. Added to that, the ILO in its second Global Report stated that the forced labour situations have commonality with slavery-likepractice as mentioned under the Supplementary Convention on Slavery (ILO 2005: 8).

The member states are automatically obliged to implement the provisions of the Convention domestically once they ratify the same. If at all a member state has not ratified the child labour convention but ratified the forced labour convention, then the member state would be obliged to implement the provisions of the forced labour convention.

3.3.4. THE ABOLITION OF FORCED LABOUR CONVENTION, 1957 (No. 105)

In 1957, The International Labour Conference adopted the Abolition of Forced Labour Convention. This Convention supplements the earlier Forced or Compulsory Labour Convention, 1930 (No. 29). Article 1 of the Convention states that "Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour". So, it is clear that the forced or compulsory labour should be abolished

without any consideration. The supplementary nature of this Convention helped Committee of Experts on the Application of Conventions and Recommendations as they just avoided the definition part from re-defining it, however recommended that, the previous definition of Forced Labour Convention (No. 29) will be applicable to this new Convention as it could determine what establishes forced or compulsory labour (ILO 1979: Para 39). The use of the labour of the children for the economic development of the family is a kind of forced labour, as it in effect is the family's effort to ease their poverty by using child labour forcefully. The Committee of Experts stated that this Convention is applicable only when the forced or compulsory labour is used for the economic gain of their families. However, it is the obligation of the member states to abolish forced or compulsory labour. Article 2 of the Convention reads as follows:

> "Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention".

It is clear from the above that the Member states should come out with national law which is at par with the Convention, implementing domestically the international efforts to curb compulsory labour, therefore, child labour falls within the scope of the Article 1 of the Convention.

3.3.5. DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK, 1998

On 18th June 1998, the Declaration on Fundamental Principles and Rights at Work was adopted by the ILO in its 86th Conference. The Declaration follow-up aims to ensure that social progress goes hand in hand with economic progress and development. It covers four principles and rights. They are "the freedom of association and effective recognition of the right to collective bargaining; the elimination of all forms of forced and compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation".

By adopting the declaration, it asserted that all ILO member states, on the basis of existing obligations as members in the organisation, have an obligation to work towards fully respecting the principles embodied in the relevant (ratifiable) ILO Conventions (Sen and Dasgupta 2003: 168).These fundamental principles and rights provide benchmarks for responsible business conduct and are incorporated into the Tripartite Declaration of Principles of the ILO concerning Multinational Enterprises and Social Policy(Sen and Dasgupta 2003: 170).

The ILO Conventions which are focusing on fundamental principles have now been ratified by most of the member states (Van Daele 2008: 485-511). The follow-up to the declaration, also adopted in 1998, helps to determine the needs of ILO member states in improving the application of the principles and rights of the declaration.

For taking up the challenges of globalisation the ILO adopted the "Declaration on Fundamental Principles and Rights at Work" and included the labour standards at the workplace. The Commitment 3 of the Declaration of the World Social Summit in Copenhagen 1995 and Paragraph 54 (b) of the Programme of Action were the first steps enumerating basic workers' rights protected in ILO Conventions (UN Report 1995). This also includes the prohibition of forced labour and child labour, freedom of association and collective bargain and equal remuneration without discrimination. Further, the member states renewed their commitment to observe the labour standards at the WTO Ministerial Conference held in Singapore in 1996 (WTO 1996). It made the way to ILO to incorporate the worker's rights into this Declaration. This Declaration recalls that "all members by virtue of their membership have to respect, promote and realise the principles contained in the ILO Conventions".

3.3.6. IMPLEMENTATION MECHANISM AT 'ILO'

Child labour is both the least and the most controversial subject of labour standards which member states face during discussions at the international organisations and in domestic implementation. It is the least controversial because children are sentimentalised and are seen as properly outside the economic mechanism. There is no dissent on the view they should be playing and not working. Even though the national governments and international bodies are putting their effort to curb the child

labour, still it is persisting in most cultures around the world. It is one of the most controversial issues at the global level. Children work because their work is needed. In practice, it has to be said that many forms of child labour, including many of the worst forms which are prohibited by Conventions 182 are routinely practised globally, both in developed and developing countries (Dorman 2002: 79-88).

In each and every country, Children's earliest stages in their life have been considered as their golden age. At that age children are free to play most of the time. Even if, they do little household work it is mostly in the safe supportive environment of their home and guided by their own parents. Even before they properly grow up the little children are pulled out of their houses and forcing them to work at mines and mills at great cost to their health which only gives profit to their employers. Here, the problem of social injustice begins. It is then that the remedies suggested in social reform are to be applied and laws passed so that children could be saved from the exploitation of child labour. However, with the view of solving this evil from the society, the compulsory free education has been proposed by the national governments and international bodies (Dorman 2002: 79-88). Even though the national governments and international bodies trying hard to push the compulsory education as an alternative to child labour, in reality, the above narrative has been proven false. There is no golden age for children and they have always worked in each and every society, be it in developed or developing nations.

The ILO is one of the international bodies which have been active in "setting and implementing child labour standards through adoption of conventions and recommendations, and it engages governments, employers, and workers in the standard-setting process in a model known as the tripartite structure" (Cullen 2005: 87). Before 1973, the ILO generated standards for individual economic sectors, such as industry or agriculture, and focussed on 'child welfare' rather than child labour abolition. Two Conventions adopted at the first Session of the International Conference dealt with various aspects of the issues. They are Minimum Age (Industry) Convention 1919 (No.5), and Night Work of Young Persons (Industry) Convention 1919 (No.6) (Creighton 1997: 362).Between 1920 and 1965, the Conference adopted nine additional Conventions dealing with the minimum age of

entry into employment in various sectors of economic activity.[41] The Conference also adopted a number of recommendations dealing with this issue.[42]The 1973 Minimum Age Convention No.138, which is currently in force, was the first umbrella convention that covered all economic sectors and identified the goal of child labour abolition (ILO 1973). ILO Convention 138 focuses on minimum age and distinguishes between two categories of children. The youngest age of children who should not work at all. Children between 13 to 15 in developed countries and 12 to 14 in developing countries, who are permitted to do light work provided the work does not interrupt the children's schooling (Dorman 2002: 79-88). Children under 18 years of age generally may not engage in work "which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons".[43] This connection of age and the type of work created a new framework for defining child labour standards across the economic sectors (Kornikova 2008-2009: 219).

In the 1990's the ILO shifted its strategies in its policy on child labour and gave importance to recognizing and eliminating the worst forms of child labour. It shifted from traditional regulation of work conditions to criminal law areas of child labour in the trafficking and economic exploitation through sex work and army recruitment (ILO 1999a). The worst forms of child labour include "all forms of slavery or practices similar to slavery, debt bondage, and the use of children in various illicit activities".[44]The Worst Forms of Child Labour Convention applies to "children under

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[41] They are, Minimum Age Sea Convention 1920 (No.7); Minimum Age (Agriculture) Convention 1921 (No.10); Minimum Age (Trimmers and Stockers) Convention 1921 (No.15); Minimum Age (Non-Industrial Employment) Convention 1932 (No. 33); Minimum Age (Sea) Convention (Revised) 1936 (No. 58); Minimum Age (Industry) Convention Revised 1937 (No.59); Minimum Age (Non-Industrial Employment Convention (Revised) 1937 (No. 60); Minimum Age (Fishermen) Convention 1959 (No. 112); Minimum Age Underground Work) Convention 1965 (No. 123).

[42] Minimum Age (Non-Industrial) Employment) Recommendation 1932 (No. 41); Minimum Age (Family Undertakings) Recommendation 1937 (N0.51), Minimum Age (Coal Mines) Recommendation 1953 (No. 96); Minimum Age (Underground work) Recommendation 1965 (No. 124).

[43] Under the Minimum Age Convention, States may, however, upon consultation with the concerned organisations of employers and workers, authorize employment or work of persons from the age of sixteen, "on condition that the health, safety, and morals of the young persons are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity". ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment, 26 June 1973, 1015 UNTS 297.

[44] The unconditional forms of child labour under the Worst Forms of Child Labour Convention Article 3 includes (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for

the age of 18 years and focuses on unconditional worst forms of child labour and hazardous work".[45]It mainly focuses on intolerable forms of child labour; its scope might be limited but it has received more appreciation from the member states than the Minimum Age Convention No.138 (Dennis 1999: 943).The special feature of this convention is the "rehabilitation and social integration of children rescued from child labour and the provision for free basic education and vocational training to them" (Article 7 (2)(b) & (c) of the Convention). The convention also gave much importance to "reach out to children at special risk and prevents children from the worst forms of child labour" (Article 7 (2)(a) & (d) of the Convention). Further to that, the International Program on the Elimination of Child Labour (IPEC) and the Declaration of Fundamental Principles and Rights at Work, 1998, has created more opportunities for the ILO to develop its child labour standards.

The implementation mechanism of ILO is the backbone of the institution which protects human rights, especially child labour standards which relates to children at workplace. It owes its efficiency to the State Reporting and Complaints System which involves independent experts who review periodic reports by the Member states. It has a range of procedures for monitoring implementation of its treaties and also has the advantage of being able to make referrals to the International Court of Justice (ICJ) for seeking an advice even in individual matters. However, in practice, the ILO keeps the responsibility of interpretation of its Conventions within the ambit of its own authority, rather than making referrals to the ICJ.[46] The Member states of the ILO may consult the Director-General and request an advisory legal opinion or interpretation, and it is the duty of the Director-General to communicate to the Governing Body of the ILO which normally publishes the requests in the Official Bulletin. The interpretations of ILO Conventions by the Director-General through the procedures of an advisory opinion have more significance. In recent practice, the

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prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.

[45] The ILO Worst Forms of Child Labour Recommendation refers to the forms of child labour prohibited under Article 3(d) of the Convention as 'hazardous work', ILO Worst Forms of Child Labour Recommendation (No. 190) Article. 3, 17 June 1999.

[46] Previously, the ILO made the referral to Permanent Court of Justice in Interpretation of the Convention of 1919 Concerning the Employment of Women during the Night, PCIJ (ser. A/B) No. 50. Moreover, it also made referral in a Constitutional matter (regulating the agricultural labour - Competence of the ILO, Series B, No. 02-03 and regulating the personal work of the employer – Competence of the ILO, Series B, Mo.13).

interpretation of ILO Conventions by the Director-General is considered to be the supervisory machinery of the ILO (Cullen 2005).

The most important feature of the ILO is its 'tripartite structure', which refers to the special relationship of the social partners in ILO. The tripartite structure comprises of "Workers, Employers and Governments which contribute to the setting of workplace standards and protection of workers' rights worldwide" (Leary 1992: 584). In addition, there are supervisory bodies which regulate the ILO activities. The Committee of Experts is one of the supervisory body mainly managing the reporting system on the Application of ILO Conventions and Recommendations (ILO Handbook 1998: 21). The Committee consists of 20 independent experts acting in their individual capacity. The member states are obliged to report to the ILO periodically. Originally, the member states of the ILO are required to submit an annual report to ILO.

> "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request" (Article 22 of the Constitution).

In 1996, the Governing Body of the ILO revised the time period for the submission of annual reports for the ratified Conventions and fixed the same as every two years for the "priority conventions"(ILO 2001a: 15), however, "simplified reports are requested every five years" (Betten 1993: 397).[47] The detailed reports are normally requested by the Committee of Experts from the member states when the Committee thinks it is necessary to request the report on the basis of the comments received from the employers' or workers organization (Betten 1993: 15).

Apart from the reporting on ratified conventions, the ILO has also developed a system of reporting on unratified conventions and on recommendations by the member states. It encourages the member states to oblige to the system. This system was introduced in 1946 and added to Article 19, paragraphs (5)(e) and (6)(d) of the ILO Constitution

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[47] After the ratifications by the member states the first report must submitted within a year and the next two reports can be submitted biennial basis. The Committee of Experts is an independent body which is appointed by the Governing Body on the recommendation of the Director General of ILO. For more information, see ILO Governing Body Document GB.290/8, June 2004.

(McMahon 1965-66: 13-15). Further to that, in 1995 the Governing Body decided that the governments of all states which have not ratified the 'priority conventions' on child labour should be submitting their reports under Article 19 of the Convention (ILO Handbook 1998: 19). On the basis of this decision, since 1997, the Committee started requesting the reports from the member states for the non-ratified conventions once in a 4-year period.

The copies of the submitted reports from the member states should be sent to workers' and employers' organisations for comments and observations (ILO Handbook 1998: 25). Once the Committee of Experts receives the comments and observations, it may usually send it to the national government for the comments if any (ILO Handbook1998: 25). If the member states fail to respond to the comments of the Committee of Experts, then the member state has to submit a detailed report. Further, the Committee of Experts will examine the report on the basis of the observations from the national governments concerned and it may issue an observation in the report or a direct request (ILO Handbook 1998: 25). If it is a more serious form of criticism, the Committee of Experts may issue an observation, however, the direct request may be issued only when there is lack of information on a particular point (Leary 1992: 580). If the member states fail to resolve the issue on the direct request of the Committee of Experts, it may move to an observation. It is then passed on to the Conference Committee of the ILO for further recommendations (Leary 1992: 580). It is to be noted that the role of outside experts is important in this process.

The Committee of Experts is not a judicial body but it has the power to interpret Conventions while deciding whether Member states are satisfactorily carrying out the implementation of the provisions of the Convention (ILO Handbook 1998: 24). It is considered as the primary body responsible for the interpretation of the Conventions of the ILO (ILO Handbook 1998: 25). In most of the cases, the Committee of Experts examines the member states' reports in a closed session. Only the most serious failures of implementation are ever discussed publicly (ILO Handbook 1998: 25). Though, the supervisory procedures of the ILO include petitions as well as state reporting, all procedures exist within the framework of tripartitism (ILO Handbook

1998: 26). In 1998, the follow-up procedures were introduced by the ILO Declaration on Fundamental Principles and Rights at Work and superseded the above procedures.

The Committee of Experts mainly reviews evidential documents submitted by the Member states. The Committee has developed a direct contact system with the Member states to avoid criticism and to improve its procedural aspects to resolve the problems through dialogue with the Member states or parties (Betten 1993: 398). If the Director-General of the ILO feels that there is a necessity to develop direct contact with the Member states, representatives of the organization are sent to meet the concerned government officials, employers'/workers' associations, or any other organisation or individual that/who is party to the complaint (ILO Handbook 1998: 27). If the Director-General starts the procedure of direct contact with the Member states or the parties relevant to the complaint, the supervisory bodies of the ILO automatically suspend their activities of resolving the problem between the parties (ILO Handbook 1998: 27).

The second stage of the reporting procedure would be initiated by the Conference Committee of the ILO. It interprets the Application of Conventions and Recommendation. It is much more like a political body given that it holds non-governmental representatives in high importance. The influence of non-governmental representatives at the ILO Conference Committee builds pressure on the resolution of serious cases of infringement of conventions (Leary 1992: 580). The Conference Committee meets annually at the International Labour Conference to discuss mainly failures of implementation by member states with respect to most serious cases forwarded by the Committee of Experts (United Nations 2000c: 17). If necessary, the Conference Committee also looks into the general part of the report of the Committee of Experts (ILO Handbook 1998: 24).

The Conference Committee is labelled as a public body of the ILO, however, its reports can be highlighted with 'special paragraphs' that particularly focus on the failure of member states in the implementation of conventions appropriately (United Nations 2000c). On the basis of the findings of the Committee of Experts, the Conference Committee will request the concerned government representatives to appear for the meeting and request to respond to the questions (Leary 1982: 599).

Further to that, the Conference Committee will come out with a report and the report will be adopted in the Plenary Session of the Conference (Leary 1992: 599). The reminders would be sent to the government concerned if all the national government failed to submit their periodic report. The Committee also takes up this matter at the International Labour Conference and discusses with the government delegates (ILO Handbook 1998:17).

The main difference between the Committee of Experts and Conference Committee is that the Committee of Experts will examine and discuss each and every report submitted by the member states, however, the Conference Committee has limited jurisdiction as it discusses the most important issues identified by the Committee of Experts in their assessment of the report submitted by the member states (United Nations 2000b). The Committee of Experts' responsibility is more or less technical and legal but the Conference Committee prefers direct coordination with the member states irrespective of its political nature (Leary 1992: 600).

Moreover, the ILO has initiated two sets of contentious procedures which compel the member states which have ratified the conventions to fulfill their obligations as per the rules. These are "complaint procedure" and "representation procedure" (ILO Handbook 1998:18). The complaint procedure is considered purely inter-governmental, however, the representation procedure mainly focusses on employers'/workers' organisations (ILO Handbook 1998:18). As per Article 26 of the ILO Constitution, to raise any compliance issue under the complaint procedure, both the parties should be members who have ratified the convention in question. Article 26 (1) reads as follows:

> "Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

The employers'/workers' association follows the representation procedure to raise the issues of failure of the member states to implement a ratified convention under Article 24 of the ILO Constitution. The ILO Conference may convert the representation into a complaint (ILO Handbook 1998:17).

Apart from the abovementioned procedures, the delegates at the International Labour Conference have the authority to make a complaint. The Governing Body of the ILO can also initiate the procedure. If the Governing Body is not satisfied with the reports of the member states, it may appoint a "Commission of Inquiry" to investigate the complaint (Article 26 of the ILO Constitution). Article 27 of the ILO Constitution states that the member states must co-operate with the Commission of Inquiry initiated by the Governing body of the ILO. Three independent persons could be appointed under the "Commission of Inquiry" to investigate the allegation, but only with the consent of the parties to the case may the inquiry be commissioned.

Though the complaints procedure was initiated by the ILO to resolve problems between member countries, it lacks coercive powers. Much importance has been given to procedures of conciliation so that member states can be convinced through negotiations (Article 33 of the ILO Constitution). As per the procedure under Article 28 and 29(1), once the appointed independent persons are ready with the report it may be published and communicated to the member states who are involved in the matter, and may also be forwarded to the Governing Body. The parties to the complaint may accept or refuse the report of the "Commission of Inquiry". On the basis of the findings of the Commission of Inquiry, the "Committee of Experts and the Conference Committee" can follow up on the member countries who are the parties to the dispute. The member countries' compliance with the report of the "Commission of Inquiry" is also monitored by the "Governing Body" of the ILO.[48] If the member states refuse to accept the report, it may refer to the International Court of Justice (Article 29(2) of the ILO Constitution), either by ILO itself or any member states of the ILO.[49]

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[48] One of the example for the monitoring the compliance of the report of the Commission of Inquiry by the ILO was in the case of Burma in violation of Convention 29 on Forced Labour. In 1998 the report was published and the Governing Body in its 273rd Session examined the compliance of the State of Burma with the recommendations of the Commission of Inquiry. The compliance was reported from the State of Burma was only to changes in legislation, however the Governing Body decided to continue the monitoring of the implementation of the recommendations of the Commission of Inquiry. For more information see the ILO document GB273/5 (Oct. 6, 1998), Doc. GB 274/5 (Feb. 22, 1999), and Doc. GB.274/6 (Jan. 28, 1999).

[49] The ILO could request for an Advisory opinion from the ICJ and the Member States who is a party to the Convention 29 may request a binding ruling in accordance with the Article 37(1) of the ILO Constitution. For more information see Preparations for the Governing Body to Request an Advisory Opinion of the International Court of Justice, Doc. GB.298/5/2 (Geneva, March 2007).

The representations of NGOs within the ILO are examined by the "Tripartite Committee of the Governing Body". As per the Article 25 of the ILO Constitution, the Governing Body may publish the representation if the member states to the complaint fail to respond to it (Cullen 2007: 162). However, the role of the NGOs is less important in the reporting system compared to UN Human Rights treaty reporting procedures. In the latter, NGOs play a prominent role in each and every stage of the procedures; whereas in the ILO only the member states, or a workers' or employers' organisation can take initiative in the complaint procedure (Cullen 2007: 163). There is no role for the victim of a violation of a convention. This could have advantages in the case of child labour, as it is often difficult for children to access international human rights petition procedures. However, this procedure makes the victim heavily dependent on the state or employers'/workers' organisation. In practice, these procedures have not been a factor in the implementation of child labour conventions (Cullen 2007: 163).

In 1977, the ILO made an attempt to influence human rights when it developed a code titled the "Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy" (Pagnattora and Peirce 2007: 375-385). The declaration created voluntary guidelines for corporations in the area of employment, training, worker conditions, and industrial relations (Denay Brown 2011: 129-156). Moreover, it also included mechanisms for reporting abuses (Schilling 2000: 222) and problems and relied on governments to ratify and implement its provisions by implementing their own legislation to legally bind corporations (Pagnattora and Peirce 2007: 389). Unfortunately, because of the weak implementation procedure, the declaration did not have much influence on human rights and child labour.

After ILO initiating the implementation of child labour standards through member countries by using its mechanism, Transnational Corporations (TNCs) also started incorporating child labour standards into their compliance system. The compliance system at TNCs ensures that individual and collective behaviour within the corporation follows applicable laws (Kornikova 2009: 207). They initiated the

practices code of conduct system that includes 'labelling' to certify manufacturers and producers that comply with child labour standards.[50]

TNCs identified three categories of child labour violations under international law, i.e., unconditional worst forms of child labour, hazardous work, and employment of children under a minimum age.[51]Bonded child labour also fall under the realm of the unconditional worst forms of child labour. In the same way, the engagement of children in the application of pesticides and fertilisers without protective equipment may violate international law as a practice exposing children to hazardous substances. For avoiding the above situation TNCs implemented more stringent screening and monitoring measures to control child labour in their premises. They also use the help of "accounting and social monitoring firms experienced in evaluating supply-chain risk and compliance with child labour standards". The contract with the supplier should ideally address this concern and include the supplier's on-going certification of compliance with international and local child labour laws (Human Rights Watch 2003) and provisions, hence giving the representatives of TNCs to inspect the supplier's premises and records at any time without prior notice to the supplier. In order to ensure child labour compliance, the TNC may engage local unions in the monitoring process (Lieberwitz 2006: 641).

Although the ILO Conventions involved with human rights aspects cover the particular areas of child labour and discrimination with regard to wages, work hours, workplace health and safety, etc., (Meintjes 2000: 86) critics say that these guidelines are 'limited' (Meintjes 2000: 86). Moreover, the greatest weakness of the ILO is its difficulty in enforcing its judgements (Kern 2000: 177-178). The ILO embraces proper legislation to implement labour standards but has no practical means by which to mandate these standards (Kern 2000: 190). If member states fail to implement the conventions of the ILO, it does not have the power to take the member states into Court. However, it does have an established complaint procedure (Meintjes 2000: 92).

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[50]. For example, in South Asia the Rug Mark Foundation an international NGO certifies compliance in carpet manufacturing industry.

[51] For more detailed information's please see Article 3 of the ILO Convention (No.182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 17 June 1999; ILO Worst Forms of Child Labour Recommendation (No. 190); and ILO Minimum Age Recommendation (No. 146).

3.4. UNITED NATIONS

3.4.1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) is the first Declaration having a history of defining the terms "human rights" and "fundamental freedoms" to which all men and women, everywhere in the world, are entitled without any discrimination (United Nations 1988). UDHR consists of "Preamble and 30 Articles" covering both "civil and political rights and economic, social and cultural rights". The Preamble refers to "faith in fundamental human rights, in the dignity and worth of human persons and in the equal rights of men and women". These rights have been re-affirmed in the Charter of the UN. The UN Charter determines "to promote social progress and better standards of life for the people and provide larger freedom". The declaration also stipulates that "motherhood and childhood are entitled to special care and assistance" (Article 24 of the Convention). It is explained by Article 25 that childhood should be entrusted with "special care and assistance".

Article 4 of the Declaration reads as follows:

> "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms".

Article 4 of the UDHR could be divided into three parts i.e., slavery, servitude, and the slave trade. The idea of the drafters to include the 'slavery' was intended to incorporate trafficking in women and children (Lasen 1999: 106). The 'servitude' was covering the forced, compulsory or corrective labour (Lasen 1999: 106). It is clear from the above that the slavery, servitude and slave trade has been included in the Declaration as the consensus was emerged to include anti-slavery standards into the UDHR (Lasen 1999: 106). However, the definition part of the Slavery Convention of 1926 may be applied in the context of the UDHR (Article 1 of the Convention).

Although the Article 4 of the UDHR defines slavery and servitude the drafting process did not clarify whether the modern practices of slavery such as "economic exploitation" of child labour should come within the prohibition (Humbert 2009: 47). Apparently, as per the international law, the existing state practice proved that the prohibition of slavery is coming under the category of customary international law

(Shaw 2008: 204). Therefore, Article 4 of the UDHR should be interpreted as prohibiting the exploitation of child labour as defined by the ILO and UNICEF on the basis of the "Supplementary Convention of the Abolition of Slavery" (Humbert 2009: 53).

3.4.2. THE SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY, 1956

On the basis of the Ad-hoc Committee of Experts on Slavery which was appointed by the ECOSOC, the United Nations adopted the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It was concluded in 1956 and entered into force in 1957. This Convention was mainly intended to overcome the gaps in the definition part of the Slavery Convention, 1926. This Convention has given utmost importance to 'child labour' aspects of slavery, however, included the 'child labour' under Article 1(d) of the Convention and urged the Member states to ratify and implement the same at their domestic level. Article1 of the Supplementary Convention reads as follows:

> "Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:
>
> a. Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services…;
> b. Serfdom, that is to say, the status or condition of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person, and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
> c. Any institution or practice whereby…;
> d. Any institution or practice whereby a *child* or *young person* under the age of 18 is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour".

The Article 1(d) of the Supplementary Convention specifically refers to Children and clearly mentions Child Labour. It gave importance and encouraged the Member States to ratify and make necessary changes at the domestic level to abolish child labour.

Mindful of the practice of 'sham adoption' in society the drafters of the Convention made a provision to focus on 'children' (United Nations 2000b: Para 75). 'Sham adoption' is an ill-practice in a society which exploits children in different ways. If a family faces financial difficulty, the elder in the family sells or hands over their children to rich people for money and the children will be exploited and used for domestic work without giving freedom to enjoy their legal rights which the adopted children or their own children enjoy at their residence (United Nations 2000b: Para 75). The same situation also can be seen when parents send their school-going children to their relatives' house for better accommodation to facilitate their studies but instead of supporting the studies of the children the relatives exploit their labour by engaging them in work, household or otherwise.

The Supplementary Convention could also be interpreted in accordance with the Vienna Convention on the Law of Treaties. Article 31(1) of the Vienna Convention on the Law of the Treaties provides:

> "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty…".

The second principle of Article 31(1) Vienna Convention on the Law of Treaties states:

> "…the terms of a treaty have to be interpreted in their context and in the light of its object and purpose".

Article 31(2) Vienna Convention on the Law of Treaties lays down:

> "…the context includes the Preamble and Annexes to the treaty".

Applying the above principles of the Vienna Convention on the Law of Treaties in interpreting the Supplementary Convention on Slavery, one realises the extent of other forms of exploitation of child labour covered under the Supplementary Convention. The Article 1 of the Supplementary Convention has two common elements i.e. sub-section 'a' and 'b' use the term 'condition' or the juridical 'status' of a person arising out of certain practices. The other part sub-section 'c' and 'd' describe only institutions or practices whereby it is allowed to dispose of a woman and children or their labour (Humbert 2009: 40). The interpretation of Article 1 sub-

section ‘a-d’ in accordance with the principles of the Vienna Convention reveals that the enumerated practices would lead to the destruction of one’s juridical personality (Humbert 2009: 41). Although the word destruction of the judicial personality is not explicitly mentioned in the Convention the degree of control of the master over the other person, and the degree of dependency of the victim on the other person, indirectly justifies the interpretation. The interpretation also reveals that sub-paragraph ‘c’ refers to practices whereby the violator usually disposes of the woman and her labour (Humbert 2009: 41). However, simply we can say that the practice which is followed by a person to make economic exploitation of other and it can also be referred to as a slavery-like practice[52]. The ILO and UNICEF have been long condemning the exploitative child labour.[53] Comparing to adults the children are more vulnerable, and always depend on their parents. If the children are exploited by either parent or with their consent by another individual could lead to ‘slavery-like practice, however, child labour is clearly a slavery-like practice which is included in the Article 1 of the Supplementary Convention (Nowak 2005: 148).

Moreover, the Working Group on Contemporary Forms of Slavery sets the standards in relation to slavery and slavery-like practices. Although the Working Group’s documentation and recommendation are not binding, its analysis reflects global considerations (Yasmine 1999: 303-352 and Yasmine 2005: 809-855). The Working Group on Contemporary Forms of Slavery drafted a Programme of Action for the Elimination of the Exploitation of Child Labour and the same was adopted by the Commission on Human Rights in 1993 (United Nations 1993). With a view to the eradication of child labour, the Working Group recommended that the most hateful forms of child exploitation should be prioritized for curbing.[54] Further to that the Working Group also said that the member states should review their legislation to ensure absolute prohibition of employment of children before the normal age of

[52] For example: the exploitative child labour like industrial and plantation work, domestic service, forced labour, children in illicit activities, work for the family, bonded labour, trafficking in children, commercial and sexual exploitation, forced use of children in armed conflicts, and street work constitute a slavery–like practice.

[53] The exploitative child labour is a kind of child work that hampers the physical and emotional development of the child.

[54] Article 3 of the draft Programme of Action for the Elimination of the Exploitation of Child Labour recommended to priorities the horrible forms of child exploitation which includes debt bondage, child prostitution, employment in dangerous occupation; and the Article 5 addresses most dangerous forms of child labour and the elimination of work by children under ten years of age.

schooling, “work in dangerous or unhealthy conditions, night work, activities linked with prostitution, pornography and other forms of sexual trade and exploitation, and work concerned with trafficking in and production of illicit drugs” (United Nations 1993). From the above, it is clear that the types of child labour referred to as “exploitative” by ILO and UNICEF constitute a slavery-like practice prohibited by the Supplementary Convention (Schachter 1991: 340 and Humbert 2009: 45). However, the three categories distinguished by the ILO come within the scope of the Supplementary Slavery Convention (Humbert 2009: 19).

3.4.3. UN DECLARATION OF THE RIGHTS OF THE CHILD, 1959

In 1959, the UN General Assembly adopted the Declaration of the Rights of the Child - more than a decade after the adoption of the UDHR.[55] This was the first UN instrument exclusively devoted to the “rights of the children”. The Declaration affirms the rights of children as “to enjoy special protection; to be given opportunities to enable them to develop in a healthy and normal manner; to enjoy the benefits of social security, including adequate nutrition, housing, recreation and medical services; to receive education, and to be protected against all forms of neglect, cruelty and exploitation”. Most of the rights and freedoms mentioned under the Declaration were repetitions of the words in the Declaration of Geneva, the Universal Declaration of Human Rights and other earlier human rights documents (Kubota 1989: 9).

This Declaration includes a Preamble and 10 principles. Principle 2 of the Declaration introduced the term “best interest of the child”. It also included the freedom and dignity to enable the child to “develop physically, mentally, spiritually and socially in a healthy and normal manner”. The main focus of this Declaration is the “principle of best interest of the child” (Smith 2003: 740 and Van Bueren 1998b:12). The Declaration also states that the “child shall be entitled, from birth to a name and a nationality (Principle 3) and shall also be entitled to receive an education” (Principle 7). Further, based on a draft resolution from Poland, the UN started to work on a

[55] Declaration of the Rights of the Child, G.A Res. 1386, UN GAOR, 14th Sess., Supp. No. 16, p. 19, UN Doc. A/4059 (1959). It is interesting to note that all instruments of Children’s rights have, at least in words, a wide acceptance. The Universal Declaration of Human Rights was not adopted unanimously, as there were eight abstentions. Even more remarkable is the near universal ratification of the UN Convention on the Rights of the Child.

legally binding convention on children's rights in 1979. The Declaration took almost 10 years to adopt the final text. It was adopted by the General Assembly of the U.N. in November 1989.

3.4.4. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

The first legally binding international provisions protecting the rights of the child were enumerated in two human rights covenants, namely the "International Covenant on Civil and Political Rights (ICCPR)[56], and the International Covenant on Economic, Social and Cultural Rights (ICESCR)"[57] adopted by the United Nations in 1966. The Covenant once again gave importance to the term 'slavery' under Article 8 of the ICCPR. The covenant reads as follows:

> "No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
> No one shall be held in servitude.
> (a) No one shall be required to perform forced or compulsory labour;
> (b) Paragraph 3 (a) shall not be held to preclude in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
> (c) For the purpose of this paragraph the term 'forced' or compulsory labour' shall not include:
> (i) Any work or service, not referred to in sub-paragraph (b), normally required of a person …
> (ii) Any service of military character and,…
> (iii) Any service exacted in cases of emergency…
> (iv) Any work or service which forms part of normal civil obligations".

Although the Covenant failed to define "slavery" in its articles, it is clear from the above that the term slavery was understood in its usage as "the destruction of the juridical personality" (Dinstein 1981: 126 and Bossuyet 1987: 167). Here, we can recall the Supplementary Convention of 1956 Article 7, which says that "a person of

[56] The International Covenant on Civil and Political Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force on 23 March 1976, in accordance with Article 49, 999 *UNTS* 171. For the full text of the Covenant please visit http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

[57] The International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force on 3 January 1976, in accordance with Article 27, 999 *UNTS* 171.

servile status as a person in the condition or status resulting from any of the institutions or practices mentioned in its Article 1", i.e., "slavery-like practice". As per the Article 8 paragraph 2 of the ICCPR, the term "servitude" means a form of dominance and degradation of human beings by human beings, (Nowak 2005: 199) whereas the "slavery" means the destruction of the juridical personality of the victim (Lassen 1999: 109). Therefore, it is clear that the definition of servitude under the ICCPR covers "child labour" as it is identified as a "slavery-like practice" under the Supplementary Convention.

Further to the above the "Article 24 (1) of the ICCPR states that:

> "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his (or her) status as a minor, on the part of his family, society and the State".

The provisions under Article 24 of the ICCPR exclusively safeguard Children (Joseph *et al* 2000: 471) and guarantee protection through the state, society and from the child's family (Nowak 2005: 471). The Human Rights Committee stated in its General Comment "that children should be protected from the social and economic exploitation and measures should be taken to prevent "children from being exploited by means of forced labour or prostitution", or by the use of illicit trafficking of narcotic drugs or by any other means (UN Human Rights Committee 2004: 144). The Committee also mentioned in its comments that even though the "Child Labour Prohibition and Regulation Act of 1986" were enacted by the Government of India to curb the child labour, the progress in that direction is minimal (Joseph *et al* 2000: 485). Thus, from the above, it is clear that the state parties are obliged to protect the children from economic exploitation through Article 24 of the ICCPR hence the child labour was one of the reasons to draft this Convention.

3.4.4.1 Implementation Mechanism at ICCPR

The Human Rights Committee was established under the Article 28 of ICCPR, which is called as the guardian of the ICCPR (Opsahl 1992: 396). The Human Rights Committee consists of 18 members elected by the states parties of the ICCPR. Article 28 of the Convention reads as follows:

> “1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
> 2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
> 3. The members of the Committee shall be elected and shall serve in their personal capacity”.

Although the members of the Committee have been selected by the State Parties, the elected members serve the Committee in their personal capacity. Members should have high moral character and good knowledge of human rights and preferably the necessary legal experience. Although the Covenant included the clause for the appointment of the Human Rights Committee members, it failed to achieve clarity on the role of the members. It has been questioned by the international scholars as to whether the organ was meant for promotion or for supervision (Opsahl 1992: 396).

For the better implementation of the Articles of the Covenant, the reporting system was introduced as the first step. Article 40 of the covenant reads as follows:

> “1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;(b) Thereafter whenever the Committee so requests.
> 2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
> 3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
> 4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
> 5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Under this Covenant, the States Parties are obliged to submit its periodic reports on the actions they have taken to protect the rights recognised under this Covenant. The report has to be submitted to the Secretary-General of the United Nations. The Secretary General will forward the report to the Human Rights Committee for consideration. If the States Parties are having any difficulties to implement the Covenant, they should mention the reason for the difficulties in the report. The Committee will evaluate the report and give their comments on the report, if necessary the Committee may forward the comments to the States parties. Further to that, the Committee will forward the report along with the 'general comments' to Economic and Social Council. Initially, the report should be submitted within one year of the entry into force, thereafter whenever the Committee requests.

The intention of including "general comments" by Human Rights Committee upon the State Reports is to improve and assess the Report. The "general comments" immensely helped the States Parties to cooperate with each other and use the experienced view of the Committee Members to make improvement in their reporting procedures about the implementation of ICCPR at the national level. The "general comments" from the Human Rights Committee also guide the State Parties with respect to their reporting obligation (Van Bueren 1998a: 384). For improving the Report from the State Parties the Committee also introduced guidelines in 1977 and subsequently in 1981 (Opsahl 1992: 401).

Although the Covenant has clearly mentioned that the report should be submitted upon request of the Committee, these days the States Parties are delaying the same, however, the Committee has been sending reminders to States Parties under its rules of procedure to submit the report (Opsahl 1992: 398). Most of the time the States Parties of the developing countries replied to the Committee that delay for the submission of the reports occurs because of lack of resources. In order to study each and every nation's report in-depth, the Committee planned for 'constructive dialogue' with the States Parties (Opsahl 1992:402). It took a decision in 1981 to submit the periodic reports once every five years (Opsahl 1992: 399). Further, the Committee also introduced the Programme of Advisory services in 1985 and conducted seminars for civil servants for the preparation of the reports (Opsahl 1992: 399).

Added to the above, the Human Rights Committee started a new method of conveying the message to States Parties for their dues in the report, it has introduced a separate list in its annual reports (Alston 1997).

The "general comments" of the Human Rights Committee is of particular importance for children to raise the issue of economic exploitation and economic and social measures for the protection of the children (Article 24(1) of the ICCPR). In 1992, the Human Rights Committee came out with an advanced view to improve the reporting mechanism system, however decided that after the "general comments", at the end of the consideration of report from the state parties, particular comments would be adopted country wise, which may express the opinion and concerns of the Committee (Shaw 2008: 236). These particular comments are called "Concluding Observations" and refer to "positive aspects", "principal subjects for concern as well as suggestions and recommendation".

The Covenant also provides the States Parties with the interstate complaints procedures under Article 41. It reads as follows:

> "1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. …"

The States Parties can initiate an interstate complaint against another member state by alleging a violation of the obligations under the ICCPR committed by them, provided that it has to make a declaration to enable the "Human Rights Committee" to receive and consider the communications from the other States Parties. The Covenant also encourages an amicable solution. Article 41 states that the Human Rights Committee "make available its good office to the states parties with a view to a friendly solution of the matter". If the states parties have failed to solve the issue amicably, the Human Rights Committee may establish an ad-hoc Conciliation Commission under Article 42.

In 1966, the Covenant also introduced individual complaint procedure under the "First Optional Protocol to the Covenant on Civil and Political Rights". "Individual complaints" procedure is one of the most effective complaint procedure in the human rights treaty bodies (Schmidt 1992: 645-659). The individuals may submit a complaint before the Human Rights Committee once they finish all the available remedies domestically. The complaints may be entertained by the Committee only if it includes violations of the rights recognised under the Covenant. The "Human Rights Committee" considers the complaints in closed doors and forwards its opinion to state party concerned (Article 4 & 5(1) of the Optional Protocol). Thus, the Human Rights Committee has made extensive improvement in handling the complaint procedure mechanism and guided states parties specifically in the reporting system with its new ideas for implementation of Covenant at the domestic level.

3.4.5. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

On 16th December 1966, the UN General Assembly adopted the International Covenant on Economic Social and Cultural Rights (ICESCR) and it became effective from 3rd January 1976.[58] The core objective of this Covenant is that "children should be protected from economic and social exploitation and from employment in work that is harmful to their morals or health, or is dangerous to life, or is likely to hamper their normal development" (Article 10 (3). It declares that states should set age limits below which the paid employment of child labour should be prohibited and punishable by law" (Article 10 (3)). It also covers "children's employment in work and indicates that Article 10(3) is directed towards children who are employed and not those working in other contexts. In addition, it declares that only states have a duty to set age limits for "paid employment", which is even narrower than the right recognised. In international law, Article 10 (3) of the ICESCR was the first treaty law prohibiting the economic exploitation of child labour (Craven 1995: 22). This Covenant also promotes compulsory free primary education.

The ICESCR states that:

[58] The International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force on 3 January 1976, in accordance with Article 27, 999 *UNTS* 171.

> "Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions" (Article 10 (3)).

The Covenant further says that:

> "Children and young persons should be protected from economic and social exploitation, and their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law…".

Article 10 (3) of the Covenant has given more importance to prevent the economic and social exploitation against children. In accordance with the ILO and UNICEF, the Covenant differentiated the exploitative child labour and tolerable child work. Although the drafters know and accepted that the child labour issue has been dealt under the ILO, but they accommodated child labour provision by including an Article exclusively for the protection of children from economic exploitation under the draft Covenant.

3.4.5.1. Implementation Mechanism at 'ICESCR'

The mechanism of reporting system at ICESCR obliges states parties to report on the measures adopted by themselves and progress the states parties achieved on the basis of the rights recognised in the Covenant. Under Article 16 to 22 of Part-IV of the Covenant included the reporting system. Article 16 of the Covenant reads as follows:

> "1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
> 2.(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
> (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which is also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments".

Under this Covenant, the States Parties should submit their report to the Secretary-General of the UN's. Further to that, the UN Secretary General will forward the copies of the report to Economic and Social Council and other specialized agencies, if relevant, for consideration. Article 17 of the Covenant says that the "States Parties should furnish their reports within one year of the entry into force of the Covenant". The reports "may indicate factors and difficulties affecting the degree of fulfillment of obligations under this Covenant" (Article 17(2)). Further, the specialized agencies report to the ECOSOC on progress achieved in observance of the Covenant (Article 18). The "Commission on Human Rights" may receive the copies from both the states and agency reports. On the basis of that, it may make general recommendations (Article 19). Further, the States parties and the specialised agencies may submit comments to the ECOSOC (Article 20).

Article 21 of the Covenant states that the ECOSOC may submit the report to the General Assembly with recommendations received from the states parties. The ECOSOC has taken the first step to establishing a "Sessional Working Group" to consider the reports under the ICESCR (Alston 1992: 473-508). Further to that in 1985, the "Committee on Economic, Social and Cultural Rights" replaced for "Sessional Working Group" (Craven 1995: 42). Apart from the periodic report, the Committee may also request ad-hoc reports from the States parties in cases of serious Human Rights violations (Craven 1995: 62). Although the Covenant included the periodic reporting system, the States Parties have failed to comply with the same. For addressing the delay the Committee started the procedure of sending reminders to States parties and a list of defaulting states to the ECOSOC (Simma 1998: 38). The Committee also started the follow-up procedure with the States Parties even if the submitted report is incomplete. Although the Committee has taken the above measures to help State Parties fulfill their obligation, still the reports are overdue.

3.4.6. UN CONVENTION ON THE RIGHTS OF THE CHILD, 1989

Twenty years after the adoption of the Declaration of the Rights of the Child, the United Nations declared 1979 as the International Year of the Child. Since then, the Commission began its preparation of a draft convention on the Rights of the Child. The drafting process involved consultations with numerous governments, non-governmental organisations, and other UN bodies. Towards that end, the drafters

achieved consensus and produced a single comprehensive text that incorporated "civil and political rights together with economic, social and cultural rights". They succeeded in bringing single text standards and principles concerning children that were previously included in more than eighty different legal and human rights instruments, as well as in incorporating certain new rights that had not previously existed (Cohen 1989: 1448). The long-awaited "Convention on the Rights of the Child (CRC) was adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 on 20th November 1989".[59] The Convention has entered into force on 2nd September 1990 in accordance with Article49 of the Charter of the United Nations (Detrick 1992). The CRC is the only treaty that has been nearly universally ratified. Every member of the UN has ratified the CRC, except the US and Somalia.

CRC working group has worked on the basis of consensus and there has never been recourse to voting. Hence, some of the proposals that had absolute majority was not included in the convention (Van Bueren 1998a: 311). The adoption of the convention is a great achievement as pointed out by Deirdre Fottrell, children's rights have become mainstream in the UN and are discussed and prioritised at every level of UN activity (Fottrell 2000: 13).

CRC is an international agreement establishing "a comprehensive set of goals for individual nations to achieve on behalf of their children" (Amnesty International 2009). This convention defines "children as the person under the age of 18 unless the age of majority is attained earlier". The main purpose of this Convention is to protect a wide range of children's rights, which includes "the right to be protected from economic exploitation and from performing any work that is likely to be hazardous, or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development".

Although the CRC mainly focuses on child rights, it also has an exclusive provision for child labour. "Article 32 of the Convention provides:

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[59] UN Convention on the Rights of the Child, G.A.Res. 44/25, UN GAOR 61st preliminary meeting, pp. 166. UN Doc. A/44/736 (1989), reprinted in 28 *ILM* 1448 (1989) with corrections at 29*ILM* 1340 (1990), entered into force in 2 September 1990. The full text of the Convention is available at URL: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx.

1. States Parties recognize the rights of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other inter-national instruments, States Parties shall in particular:

(a) Provide for a minimum age or for minimum ages for admission to employment;
(b) Provide for appropriate regulation of the hours and conditions of employment;
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article".

The above provision of Article 32 emphasised both exploitation approach mentioned in "Paragraph 1 of the International Covenant on Economic, Social and Cultural Rights", and the ILO Minimum Wage Convention in place prior to Convention 182 in Paragraph 2. It also follows the approach of Article 10 (3) of the ICESCR which prohibits the employment of children and threat to their health (Humbert 2000: 68).

Article 32 of the CRC divided into two subsections i.e., section (1) affirms "the child's right to be free from exploitative and harmful labour", while subsection (2) requires "states to take an active role in preventing child labour through national implementation". Under the CRC the term "work" covers both "employment and work" not within an employment relationship, however Article 32 has a broader scope of application comparing to 10 (3) of the ICESCR (Humbert 2009: 69).In its periodic Report the "Committee on the Rights of the Child" specifically mentioned the "work includes both in the formal and the informal sectors (Committee on the Rights of the Child 1996), thus aims to protect children from working in certain occupations and also providing protection to those children who are eligible to work" (Van Bueren 1998a: 32).

The ILO Minimum Age Convention mentioned that the States may exclude certain employment sectors from the scope of the application of the Convention No. 138. But Article 32 (1) of the CRC protects the children against economic exploitation and children engaged in the work which is hazardous in nature or harmful to the overall development of the children. Therefore, the scope of the application of Article 32 (1)

is greater than that of Article 10 (3) of the ICESCR. The CRC prohibits "…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". Then again, Article 10 (3) of the ICESCR prohibits "…work harmful to their morals or health or dangerous to life or likely to hamper their normal development". Thus, CRC focuses more on individual development of the child rather collectively (Humbert 2009: 70).

Moreover, Article 32 (2) of the CRC mentioned that the "state parties to take legislative, administrative, social and educational measures to ensure implementation and, in particular, to provide for (a) a minimum age or minimum ages for admission to employment, (b) appropriate regulation of the hours and conditions of employment, and (c) appropriate penalties or other sanctions to ensure the effective enforcement of its provisions". On the other hand, the Convention on Minimum Age for Admission to Employment, No. 138 has given power to states parties under Article 3 to decide which type of works is harmful to the children's health and safety of young persons.

Along with the ILO Convention, No. 138, Recommendation No. 146 also supplements and provides guidance on the conditions to be followed while determining the hazardous nature of the employment.[60] The Recommendation also encourages periodic review of the employment in consultation with the employers and workers organisations to prevent and protect children from the hazardous employment. The Convention No. 138 also prohibits states parties from excluding certain activities from the application of the Convention (Article 5(3) of the C 138) because such types of works are considered to be harmful to the children's development.

The ILO and UNICEF have always argued that these types of work are exploitative in nature. Evidently, the Article 32 of the CRC also included these types of works under its prohibitory list of child labour. It has prohibited the work of a child at a young age

[60] For the full text of the recommendation see, www.ilo.org/ilolex/english/recdisp1.htm. The Recommendation 146 states that the member states should make sure that the international labour standards have been followed strictly as per the procedure and to pay attention to dangerous substances, agents or processes, the lifting of heavy weights and underground work.

which interferes with his/her education and harmful to physical, moral and mental well-being.

Added to the above, the ILO followed a procedure of sending periodic reports to a pre-session working group of the “Committee on the Rights of the Child”. This periodic report is related to the application of the relevant provisions of the instrument. The “Committee on the Rights of the Child” examines the reports of state-parties with regard to the application of the Convention. In 1993, the “Committee on the Rights of the Child” opened a discussion on economic exploitation of children (Committee on the Rights of the Child 2001: 11). The discussion mainly focusses on structural and procedural obligations of states to implement child labour norms and the prohibition of harmful forms of child labour (Committee on the Rights of the Child 2001: 11). The above clarifies that the child labour is clearly coming under the scope of application of the Article 32 of the CRC.

Moreover, the CRC also contains other provisions which highlight other extreme forms of child labour. They are “sexual exploitation and sexual abuse, the abduction of, the sale of or traffic in children for any purpose or in any form, and all other forms of exploitation prejudicial to any aspects of child’s welfare”.

Article 34 of the CRC reads as follows:

> “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For those purposes, States parties shall, in particular, take all appropriate national, bilateral and multilateral measures to prevent:
>
> a) the inducement or coercion of a child to engage in any unlawful sexual activity;
> b) the exploitative use of children in prostitution or other unlawful sexual practices;
> c) the exploitative use of children in pornographic performances and materials.”

Article 35 of the CRC reads as follows:

> “States Parties shall take all appropriate national, bilateral, and multinational measures to prevent the abduction of, the sale or traffic in children for any purpose or in any form”.

The CRC is the first international treaty that introduced a responsibility on states parties to protect the children from all forms of sexual exploitation and abuse through the above clause. But ICESCR only includes the implication of prostitution in its Article 10. Although the word 'unlawful' is introduced in Article 34 (a) and (b) is genuinely to protect the children because their sexual activities reach earlier than the majority age in some of the states (Van Bueren 1998a: 276), but it is disappointing, as the use of the children in activities related to sex and exploitation could lead problem other being unlawful (Van Bueren 1998a: 276). As per the Article 1 (1) of the Suppression of Traffic Convention (1949), the states agree to punish the person who "procures, entices or leads away another person for the purposes of prostitution even with the consent of that persons". The children are easily induced to give their consent for the prostitution by giving money or pressure, therefore it is necessary to include voluntary prostitution. Therefore, the CRC should be interpreted by considering Suppression of Traffic Convention which states that prostitution is "incompatible with the dignity of the human person and endangers the welfare of the individual" (Preamble of the Convention). Therefore, it is submitted that the under-age prostitution should be considered and include in the Convention.

For the purpose of prohibiting adoption, the CRC introduced a first international provision to tackle the above social stigma under Article 35. It pertains to prevent all forms of trafficking or sale of children (or their organ) including national or international level. The trafficking mainly appears in relation to sexual exploitation, forced labour or inter-country adoption however it leads to unlawful interference of an individual's family which is also prohibited under CRC (Van Bueren 1998a: 277).

Further to the above, in May 2000, the United Nations General Assembly adopted the "Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography" to clarify and enlarge the scope of the Article 34 and 35 of the CRC. The first international definition of the terms "sale of children, child prostitution, and child pornography" was introduced under this Protocol. It mainly focuses on combating "sexual exploitation of children" and follows the implementation measures by the states parties.

The CRC also mentioned the applicability of humanitarian law explicitly to children under "Article 38, which reads as follows:

> "1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
> 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
> 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
> 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict".

The Article 38 (1) mainly highlighted the protection of children at the time of armed conflict. The protection means protection which children need from the hostilities. However, it mentions only the "children below the age of fifteen years should not take a direct part in hostilities" but the Convention provides space for indirect participation of the children in hostilities. Through this Convention, the "states parties are obliged to respect humanitarian rules and ensure the protection of the children" from the direct involvement in hostilities. Although the States Parties are obliged to CRC it has been criticised for only feasible measures and not insisting for compulsory measures. When the criticism started pouring from the States Parties the drafting Committee started working on the above criticism and adopted the "Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts" in May 2000. It boosts Article 38 of the CRC stronger and raises the specific issues of a child soldier and introduced a minimum age of compulsory and voluntary recruitment of the children.

The CRC also calls on states to take all appropriate measures to promote the physical and psychological recovery and the social reintegration of a child victim of neglect, exploitation or abuse. The child's rights for the education is also recognisedby this convention. The convention emphasises that "primary education should be

compulsorily provided and should available free of cost to all children". As an instrument promoting the inclusion of children in human rights by giving them specific human rights provisions, the CRC follows a flexible approach (Brems 2002: 21-45). A record number of 61 states signed this convention in a single day and indicated its subsequent ratification. The only two States that have not ratified it so far are Somalia (which cannot ratify the CRC because it does not have an internationally recognised government), and the United States (which signed the CRC in 1995, but has not ratified it) (Doek 2003: 126).

The CRC is appreciated as the first globally binding treaty exclusively for protecting children's "civil, political, economic, social and cultural rights". The "Committee on the Rights of the Child" quoted the following, "a child is no longer considered as merely a vulnerable human being needing special care and assistance, but as a subject of fundamental rights and freedoms having the same spectrum of rights as adults." It also emphasises that the "child must be regarded as an active subject of rights" (UNICEF 1998a: 145). The definition of "child" under the CRC clearly identifies the beneficiaries of this convention. It defines "child, as every human being below the age of 18 years, unless under the applicable law majority is attained earlier" (UNICEF 1998a: 1).[61] It can be said that after a long wait for the protection of the children's rights, the CRC has finally provided a bill of rights for children.

The CRC is divided into a preamble and 54 articles. It is called the "world constitution of the children's rights" (Lopatka 1996: 251-263). Marta Santos Pais, a member of the "Committee on the Rights of the Child" stated that, the CRC is striking a successful balance between "the child as the holder of fundamental rights and freedoms and the child as the recipient of special protection designed to ensure his/her harmonious development as individuals and to help him/her play a constructive role in the society" (Pais 1992: 75 and Kohn 1996: 297).

As the first legally binding children's rights treaty at the international level, the CRC created a "milestone in the history of mankind" by giving children the knowledge and

[61] For more information about the interpretation of the Convention see, *Convention on the Rights of the Child: India First Periodic Report 2001* (Department of Women and Child Development, Ministry of Human Resource Development, Government of India).

understanding that can facilitate them to claim their rights. One of the fundamental principles of the CRC is explained in Article 2 of the Convention.[62] It has also put more emphasis on the participation of children through "rights of access to information (Article 13 of the CRC), the rights to freedom of thought, conscience, and religion (Article 14 of the CRC), and rights to freedom of association and assembly" (Article 15 of CRC). Another important achievement of the CRC is the feat of including and interpreting the phrase "best interest of the child". Article 3 (1) of the convention specifically mentions that, "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration" (Article 3(1) of the CRC). Apart from this, the convention also provides children the "right to express their opinion and assures that their views will be given due weight in accordance with the age and maturity of the child" (Article 12 of the CRC).

3.4.6.1. Implementation Mechanism at 'UNCRC'

The Convention is praiseworthy because of its serious concern towards improving the welfare of children. However, it is difficult to implement, which needs practical and intellectual support from the States Parties. The individual states, agencies of the UN, intergovernmental organisations and NGOs took the prime responsibility for disseminating information about the content of the convention in question. The result of a huge campaign was that it came into force within a short span of time (ten months) after its adoption. The implementation of the Convention is not only the responsibility of those States Parties that have ratified the convention but also the specialised agencies of the UN, i.e., the UNICEF and other UN Organisations as well as various competent bodies (Article 45 (a) & (B) of CRC).[63] While implementing the Convention, the "States Parties should undertake all appropriate legislative,

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[62] Article 2 of the Convention on the Rights of the Child obligates State parties "to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

[63]. The word "competent bodies" were specifically mentioned here as Non-Governmental Organizations. The Committee on the Rights of the Child has interpreted this word in a broad manner to include all other organizations or institutions that have information relevant to the examination of State Parties reports.

administrative and other measures for the implementation of the rights recognised in the Convention" (Art 4 of CRC). To strengthen the States Parties, the CRC has included the capacity to monitor children's rights is one of the main objectives of the reporting process (Lansdown 2000: 113).

The reporting system of the CRC is important in making the States Parties accountable for their obligation to the Convention. For making this system efficient, the "Committee on Rights of the Child" initiated a Committee to review the periodic state reports. Part II, Article 42 to 45 of the CRC explains the implementation mechanism of the Convention. The implementation mechanism under CRC mainly included reporting combined with technical assistance (Van Bueren 1998a: 389).

Under Article 43 of the CRC the Committee on the Rights of the Child was established which is "examining the progress made by the States Parties in achieving the realisation of the obligation undertaken in this Convention". The Committee consists of eighteen expert members who have recognised competence in the field (Article 43(2) of CRC). Each State Parties may recommend one name from its own national for the member's committee. Once the list is ready the voting will commence through a secret ballot voting system to select 18 expert members from the list (Article 43(3) of CRC). The election will be conducted every second year at the meetings of States Parties convened by the Secretary-General at the United Nations Headquarters (Article 43(4) of CRC). The Committee normally meets once in a year at the United Nations Headquarters or at any other convenient place as determined by the Committee (Article 43(10) of CRC).

Article 44 of the CRC says that the States Parties are obliged to submit a report to the Committee within two years of the entry into force of the Convention on the measures which they adopted to implement its principle. The States Parties should submit the periodic reports once in every five years (Article 44(1)(b) of CRC). The guidelines for initial and periodic state reporting system under the CRC has been provided by the CRC Committee. The CRC Committee has divided the issues under thematic

headings. Child labour and related issues[64] were grouped as 'Special Protection Measures'. The initial reports from the States Parties should include relevant information such as legislative, judicial, administrative measures in combating the child labour, the difficulties encountered while implementing the convention, progress in the implementation of the convention, and specific goals for the future action towards implementing the convention.[65]

Guidelines for the subsequent reports come in detailed form—they not only elaborate conventions extensively but also once again included legislative, administrative and practical protective measures.[66] Added to that, the States Parties reports may also include any factor which is obstructing to implement provisions of the convention. The report should be provided with sufficient information with regard to the progress and implementation of the provisions of the convention in letter and spirit (Article 44(2) of CRC). If the Committee thinks that the provided information is not adequate, it may request further information from the States Parties about the programmes which have been newly initiated to eliminate child labour as per the Convention (Lansdown 2000:113-123). The activities of the Committee have to be reported to the General Assembly every two years through the Economic and Social Council (Article 44(5) of CRC).

Article 45 of the Convention explaining the co-operation with the specialised agencies. It reads as follows:

> "In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:
> (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee

[64] The related issues which are mentioned under the Convention are sexual exploitation of children, children in armed conflict and trafficking.

[65] CRC General Guidelines regarding the Form and Content of Initial Reports Submitted by States Parties Under Article 44 Paragraph 1 (a) of the Convention, CRC/C/5 (October 30, 1991).

[66] CRC General Guidelines regarding the Form and Content of Initial Reports Submitted by States Parties Under Article 44 Paragraph 1(b) of the Convention, CRC/C/58 (November 20, 1996). The guidelines paragraphs 123-131 explains armed conflict, 151-154 explains child labour, 158 explains sexual exploitation, 159-162 explains trafficking of children.

> may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities".

Moreover, on behalf of the State Parties, the Committee may make contacts with the specialized agencies, UNICEF, and other competent bodies and make a special request for the technical advice or assistance to implement provisions of the conventions (Article 45 (b) of CRC). The Committee may also recommend for the specific study on rights of the child by the Secretary General through General Assembly (Article 45 (c) of CRC). The Committee may also make suggestions and general recommendations which could be forwarded to any State Party concerned (Article 45 (d) of CRC).

The guidelines on Article 32 of the Convention highlighted the "need to prevent children from engaging in hazardous work" and "work that interferes in their education". The guidelines also request the states to indicate the special provisions for hours of the work for children while they are studying which mainly guarantee that the children give more importance to education and less to work. The Committee devotes more time to examine the laws and practices which the States Parties have identified as means for addressing child labour.[67]

The Committee also focuses its work on children's service in agriculture, mining and domestic work. It urges the States Parties to seek help from the ILO and the UNICEF to curb the exploitation of children in these sectors and requested them to ratify international treaties, especially, ILO Conventions 138 and 182. It gives more importance to protecting children engaged in child labour, as against focusing on eliminating child labour. It has highlighted the co-existence of education and work in

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[67]. The Committee's efforts were clearly identified in the case of Philippines and Nepal. The Committee expressed its concern over enforcement of laws related to child exploitation (including sexual exploitation and child labour) and child trafficking. This can be seen in Committee's reports considered in 2005 and concluding observation's in those reports. For more information's Concluding Observation's, Philippines, CRC/C/15/Add.258. paras. 79 and 84-86 (03rd June 2005) and Concluding Observations, Nepal, CRC/C/15/Add.260 (3rd June2005).

the “best interest of the child”, even though it has also criticised the States Parties’ approach where work prevents children from receiving the education (Cullen 2007: 176).

Although the Committees General Comments do not constitute binding interpretations, they carry a certain amount of authority such as the Committee introduced a single method of a monitoring system for the protection of “civil and political rights; and economic, social and cultural rights” (Van Bueren 1998a: 392).Moreover, the Committee is very careful and strictly safeguards four important principles of the CRC and make sure of compliance with other rights (Lansdown 2000: 116).[68] The Committee has given more importance to advocacy, education and campaigning for awareness of the rights the individual (Karp 2000: 35-44) and encouraging the States Parties to publish their reports and make available of the same for the public as mentioned under Article 42 of the CRC. The Committee also discussed the economic exploitation of children however introduced “General Discussion days” and encouraged States Parties and UN to act in the issue of rights of the child (Committee on the Rights of the Child 1993).

The Committee has introduced field visit to combine the reporting process with other related activities. With this direction, the Committee took the first step as “urgent action procedure” in 1992(Committee on the Rights of the Child 1993: Paras 54 and 56). Under this procedure, if the Committee realises that there would be a risk of deterioration then it will take up the case in the ‘spirit of dialogue’ in a non-accusatory way (Committee on the Rights of the Child 1992: Para 55), provided the Committee should inform the States Parties before the field visit. Most of the time the Committee handled the serious situations confidentially and informed the States parties and asked to protect rights of the children at the national level (Weston and Teernik 2006). The Committee also involves NGO’s in its campaign and conducts awareness programs and inviting them for the pre-sessional working groups and discusses the nation’s report on children’s rights.

[68] The four important principles explained under the CRC are Non-discrimination (Article2); Best interest of the child (Article 3); The rights to life, survival, and development (Article 6); and the right of children to participate in decisions affecting them (Article 12).

Although the Committee under the CRC has been very active and trying hard to implement the principles by giving comments on state reports and other actions, it has been criticised for not having a mechanism for redressing individual complaints. For example, in the case of the Convention Against Torture,[69] or the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)[70] and Human Rights Committee. The Optional Protocol to CEDAW contains two procedures, i.e., "(i) a communications procedure allowing individual women, or groups of women, to submit claims of violations of rights to the committee on the Elimination of Discrimination against Women (ii) an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights" (Smith 2003: 742).

3.4.7. UNITED NATIONS HUMAN RIGHTS COUNCIL

The Commission on Human Rights which was established by the ECOSOC as per Article 62 and 68 of the UN Charter were replaced by the Human Rights Council in 2006 (UN General Assembly 2006: Para 1). This Council follows the extra-conventional procedure to deal with the "promotion and protection of human rights which is the objective of the newly established Council". The Council has 18 Member states delegates and the 47 Member states are elected for three years (UN General Assembly 2006: Para 7). The Sub-Commission on the Promotion and Protection of Human Rights assists the Human Rights. The sub-Commission is appointed with independent subject experts in the field (Baum and Volger 2002: 202-206). The Human Rights Advisory Committee is the think-tank of the Human Rights Council which consists of 18 expert members in the field (UN Human Rights Council 2007: Para 65). These members are serving in their personal capacity and assisting the Human Rights Council for the "promotion and protection of human rights" (UN Human Rights Council 2007: Para 65). The Council started its work to improve and maintain the system of special procedures, expert advice and complaints procedures since its establishment in June 2006.

[69]. The Convention Against Torture providing both reporting system and individual complaints.

[70]. Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women provides individual complaints system.

3.4.8. SUMMING UP

Although the international institutions have been enacting several Conventions and Recommendations to eliminate child labour through international organisations, the Member States have failed to curb the child labour completely at the national level. The reason for this failure is mainly the lack of strong implementation mechanisms. Moreover, limitations of the international legal systems make it hard for the international organisations to enforce international rules at the national level. The Member states of international organisations should take the initiative to implement the provisions of international Conventions and Recommendations in their own countries.

CHAPTER - 4

DOMESTIC NORMS TO PROTECT CHILDREN AGAINST THE EXPLOITATION OF CHILD LABOUR IN INDA

4. 1. INTRODUCTION

Every nation could be a welfare state only when all sections and communities get an equal opportunity to live and enjoy their life without exploitation. "Child labour" is an exploitation against children which needs to be addressed in the interest of children. It is true that both at the national and international levels tremendous efforts have been taken to improve the well-being and welfare of the children. Yet, child labour is still prevalent. At the international level, the United Nations and its specialised agencies have focused on spreading awareness about the need of primary and universal education to overcome the child labour.

Child labour is prohibited under many international Conventions. So is the case with agreements such as the Millennium Goals.[71]Apparently, the Member states of the United Nations have an obligation to implement the international Conventions and Recommendations at the domestic level. The Government of India has included some of the "child welfare" and "child protection" provisions under the Indian Constitution[72] and enacted Legislations and Policies in line with the international conventions and recommendations to regulate and prohibit child labour in India.

India has a long history of providing legal protection against child labour and adopting constitutional, statutory and developmental measures that are required to eliminate child labour. The basic objectives of having a legal framework are to prevent the menace through suitable legal interventions to a certain extent, and to regulate the entry of children in the labour market. The existing Indian legal framework starts with Constitutional provisions both in the articles pertaining to Fundamental Rights and in the Directive Principles of State Policy. It also comprises

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[71] The UN Member States committed in 2000 to its Millennium Declaration, in which they pledged to achieve universal primary education, and protect children from harm and exploitation of child labour.

[72] Provisions related to 'child labour' and 'child welfare' has been specifically incorporated in Part III and Part IV of the Indian Constitution. Part III deals with Fundamental Rights and Part IV deals with Directive Principles of State Policy. Full text of the Constitution of India available at https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text. Accessed 28 April 2018.

specific legislations made in this regard and other administrative and policy measures.

Implementation of international norms into domestic realm is possible only through appropriate executive, legislative and judicial action (Mani 1995: 145). Action from executive and legislature, and interpretation from judiciary in harmony with the articles of the Constitution of India, has always proved to be instrumental in the realisation of rights enshrined in international treaties and other instruments. Implementation of international law involves recognition and effectuation of rights and obligations as well as core values underlying the norms warranting community action (Mani 1995: 146). However, such recognition is based on an interpretation, value judgment and prioritisation preferred by each member states of the international community (Mani 1995: 146). The provisions in the Indian Constitution to implement international law through domestic legislations are mentioned under Article 51, 73 and 372.

4. 2. CONSTITUTIONAL PROVISIONS

Even before Independence, the British Government in India appointed the Whitley Commission and the Labour Investigation Committee (1946) to evolve suitable remedial measures to control and prevent child labour (Shandilya and Khan 2003: 15). The architects of Independent India dreamed of creating a free India to enable the children of coming generations to avail the benefits and joys of living without any fear. The Constitution of India carries an important expression of the government policies against the abuse of child labour (Shandilya and Khan 2003: 15). The drafting committee members were aware of the need for the provision of facilities for the healthy development of children, protection of childhood and youth against the exploitation, and the provision of free and compulsory education within a period of 10 years for all children until they complete the age of 14 years (Varghese 1989: 3). Cognizant of the need to curb child labour, the Drafting Committee, incorporated several Articles which may protect children from the exploitation and protect their right to live with dignity. The provisions for children's welfare expressed in the Constitution of India can be divided into 'explicit' and 'implicit' provisions. "The explicit provisions are:

> "Article 15(3) – Empowers the State to make special provisions for Women and Children.
> Article 24 – Prohibits the employment of children in factories etc.
> Article 39 (e) and (f) – Obligates the State to safeguard the health of children and afford opportunities to grow with dignity.
> Article 45 provides for free and compulsory education for children".

"The implicit provisions are:

> "Article 14 – Equality before the law.
> Article 23 – Prohibition of traffic in human beings and forced labour.
> Article 38 – Endeavours to secure a social order for the protection of welfare of the people.
> Article 41 – Right to work, education and public assistance in certain cases.
> Article 42 – Provisions for just and humane conditions of work and maternity relief.
> Article 46 – Promotion of education and economic interests of Schedule Castes, Schedule Tribes and other weaker sections.
> Article 47 – Obliges the state to raise the level of nutrition and the standard of living and to improve public health".

Article 14 of the Constitution guarantees "equality before the law and equal protection of the law to all persons within the territory of India". At the same time, Article 15 "prohibits discrimination on the grounds of religion, race, sex, caste, class or place of birth or any of them". The Indian Constitution enables its states to adopt special provisions for the favourable treatment of the children. Article 15 (3) reads as follows:

> "Nothing in this article shall prevent the State from making any special provision for women and children".

Article 15(3), in fact, serves as an exception to Article 15 (1) and 15(2). The Constitution provides specific provisions for the "protection of the rights of children in employment" with special reference to their psychological and physical development. Article 20 of the Constitution provides for the "protection of life and personal liberty" of the people including children. In *Francis Coralie Vs. Union Territory,*[73] the Delhi High Court observed that "right to life" is not merely an

[73]Francis Coralie vs. Union Territory, Delhi, AIR 1981 SC 746.

“animal existence”, it should validate with human dignity and values,[74] including the need to protect children from all forms of exploitation including child labour.

Provisions relating to child labour and child welfare have been specifically incorporated in Part III and Part IV of the Indian Constitution in line with the relevant international conventions, UN covenants and declarations. Part III deals with the Fundamental Rights and Part IV deals with the Directive Principles of State Policy. The Fundamental Rights preserves civil and individual rights notwithstanding the representative character of political institutions and also limits the powers of the legislative, executive and government (Ram Chandran 1974: 1). Fundamental Rights are enforceable but the Directive Principles are neither enforceable nor justiciable, though they are fundamental to the governance of the country (Rajawat 2004: 85). The underlying spirit of the Directive Principles of State Policy is “to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution” (Art. 38 of the Constitution of India). The Directive Principles of State Policy is also meant to protect and promote welfare of the citizen which includes children as well. Thereby, the implementation of the above objectives of the Constitution indirectly also focuses on prohibition of exploitation of child labour and promoting child welfare.

Article 24 of the “Constitution explicitly prohibits employment of children below 14 years” of age in factories and also prohibits certain kinds of employment for children. Similarly, although the Article 23 does not speak specifically about children, it has a strong relevance in the context of child labour (Venkat Kanna 2002: 31). Considering that children are deprived of access to education and are compelled to do all kinds of work, which are harmful to their well-being and protection. Article 23 of the Constitution protects and prohibits trafficking of human beings and other forms of forced labour which include “begging” and “forced labour”. The word “beggar” or “forced labour” could also be considered as insufficient remuneration for the job carried out by the children. It is evident that the “begging” business is flourishing in India with children being the foremost victims (Rahman 2016). Criminal gangs are indulged in criminal actions by targeting helpless children. Thus “begging” is one

[74] Sheela Barse vs. Union of India, AIR 1986 SC 1773.

kind of exploitation of child labour that implicitly violates Article 23 (Sharma 1989: 12).

Moreover, in rural areas, children are pledged by poor parents to landlords as servants to work in domestic or agricultural property which also leads to denial of education. Similarly, in urban areas this practice is as rigorous with children being exploited in various employment levels. This exploitation clearly amounts to violation of fundamental rights enshrined in the Constitution (Sharma 1989: 12). Although the government has been taking initiatives to curb such exploitation of children, it has generally failed to implement the Constitutional principles adequately (Sharma 1989: 12).

Article 21 of the Constitution provides for protection of life and personal liberty. It makes one step further by guaranteeing Rights to Education in Art. 21 (A) which reads:

> "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine".[75]

Children are affected far worse than adults by forced labour. Forced labour completely damages the personality and personal growth of children. Clauses (e) and (f) of Art. 39 in the Directive Principles of State Policy are closely related to the prohibition of child labour. These clauses direct the states to evolve and direct its policy towards eliminating abuse of children, and to free children from the circumstances of economic necessity that may force them to enter the works unsuitable to their age and strength (Venkat Kanna 2002: 33). Further, Article 39 also state that "children should be given opportunities and facilities to be able to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are to be protected against exploitation and against moral and material abandonment" (Sachdeva et al 2001: 15). The above listed articles of the Constitution are at par with the ILO Conventions on 'forced labour'.

[75] Inserted by the Constitution (Eighty-sixth Amendment) Act, 2002. S.2.

Article39 (e) and (f) provides "the State shall, in particular, direct its policy towards securing… (*e*) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (*f*) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment".[76]

The above provisions of Article 39 are applicable for the protection of each and every individual and could be implied as the right of every citizen to "live with human dignity and honour, and free from the exploitation". Under this provision the state can make law for the welfare of the children, giving them preferential treatment over other individuals in the society. The principle articulated in this Article is unexceptionable however includes children as well.

Article 41 of the Constitution deals with the right to work and right to education, and public assistance in certain cases. It says "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want".

Article 41 does not specifically have reference to children though the last part of the section ends with "…and in other cases of undeserved want". Thus it is clear that the principle covered children as the suffering children deserved the least fate as in no case they can be held responsible for their past sins. Hence, it is the "responsibility of the state" to provide social assistance to all the children who suffer for want of basic necessities of life. The implementation of this provision is also about promoting welfare of the children proportionately and to ensure distributive justice to them.

Adding to the above, Article 45 includes the provision of "free and compulsory education for children". It says, "the state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory

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[76] Subs. by the Constitution (Forty-second Amendment) Act, 1976, s.7 for cl. (f) (w.e.f. 03-01-1977).

education for all children until they complete the age of fourteen years".[77] It is argued that without proper dissemination of basic education to children, child labour - an atrocious form of human rights violation - cannot be overcome (Pal 2003: 80). Acknowledging this fact, the Government of India amended and inserted Article 21A in the Constitution which says, "the state shall provide free and compulsory education to all children who are between the age of six and fourteen years in such manner as the State may, by law determine".[78] Further, the Parliament passed "Right of Children to Free and Compulsory Education Act, 2009" which came into effect on 01st April 2010. This Act provides that "every child between the ages of 6 and 14 years has the right to free and compulsory education in a school in the neighbourhood until completion of elementary schooling".[79] Providing compulsory education to children is also a mission pursued by the United Nations. The above points underline the Indian Government's efforts to implement the objectives of UN Conventions with regard to providing education through its Constitution and instruments like the Right to Education (RTE) Act. Lack of education is primary catalyst for child labour despite the Constitution and RTE Act indirectly supporting the prohibition and regulation of child labour.

Moreover, Article 42 and 43 guarantee the right of workers to earn suitable wage, good working conditions, civilised normal life and freedom to enjoy with family and friends in their holidays, and social and cultural opportunities which is in line with the "ILO Declaration of Fundamental principles and Rights at Work, 1998". Article 46 "provides that the state shall promote with special care, the educational and economic interests of the weaker section of the people, and in particular, of scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation". "Implementation of this provision indirectly promotes the welfare of the children from sections of the society" who need welfare measures owing to poverty and socio-economic backwardness of their parents. Article 47 imposes a "primary duty upon the state to raise the level of nutrition and the standard of living

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[77] Article 45 of the Constitution of India, shall stand substituted by the Constitution (Eighty-Sixth Amendment) Act, 2002, s.3.

[78] Inserted by the Constitution (Eighty-sixth Amendment) Act, 2002. S.2.

[79] The full text of the Right of Children to Free and Compulsory Education Act, 2009 (No. 35 of 2009), Accessed 12 April 2017, URL: http://ssa.nic.in/rte-docs/free%20and%20compulsory.pdf.

of its people and improvement of public health”. Thus, it is the responsibility of the state to provide nutritious food to the children as the word ‘people’ includes not only adults but children as well. Perhaps, this provision is more relevant to the children as malnutrition can cause irreparable damage to the personality of the children though mental retardation and blindness.

Although the above Articles provided protection for the children from exploitation including child labour under the Indian Constitution, the implementation part is not fully fulfilled. There is a major contradiction in Article 24 and 45. Article 24 “prohibits employment of children” but it only applies to “factories, mines, and hazardous employment” partially prohibiting child labour. The Constitution has neither defined nor explained what amounts to ‘hazardous’ nature of the work. Apart from the above works which are dangerous for the children, some of the works in the agriculture sector also pose danger to children, e.g. modern agriculture practices and methods including the usage of chemicals and toxic substances, which are dangerous to human body and need to be considered as ‘hazardous’.

Article 45 provides free and compulsory, primary and elementary education under the Constitution. The reality is that although it is mentioned in the Constitution, the states have failed to attract children from poor communities to school, leaving them with no option but to explore labour means. Considering that some forms of employment were still open for children, will it not affect the ability of states to “provide free and compulsory primary education” and implement Article 24 and 25 of the Constitution? Under Article 24 of the Constitution, children are prohibited only in factories, mines and other hazardous forms of employment, but indirectly allows them to work in other forms of employment. Article 24 does not advance the argument that there should be a “complete ban on the employment of children under the age of 14”. It only prohibits employment in “factory or mine or in any hazardous occupation”. Moreover, even with respect to children above the age of 14 years, all agreements either expressly or implicitly are voidable or are of doubtful validity in case of exploitation as the Constitution has nowhere mentioned the status of children between 14 and 18.

In order to fulfill the constitutional provisions, the state should initiate steps to alleviate the distress of parents by providing them with alternative livelihoods and sensitize them about the importance of the education for their children. Only then would parents send their children to the school instead of subjecting them to exploitation of child labour.

Although these directives are not enforceable by the Court, they are nonetheless been declared to be "fundamental in the governance of the country (Pal 1980: 459). It is the obligation of the state to apply these principles in making laws. Thus, in all respects, the relevant provisions contained in the Indian Constitution makes it abundantly clear that "it is the duty of the state to promote the welfare of the child worker" and help them to grow into good citizens of the country. The Directive Principles of State Policy and Fundamental Rights has laid down under the Constitution that the "state should direct its policy towards recurring good health and strength of workers and that the tender age of children, are not exploited or abused". A child must be given "opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and no citizen will be forced by economic necessity to enter avocations unsuitable to their age or strength".

4. 3. LEGAL FRAMEWORK TO REGULATE AND PROHIBIT CHILD LABOUR IN INDIA

Law is a framework, and an enabling mechanism. Labour laws like labour policy are the society's response to certain basic needs of the individual, the society, and the nation. The roots of legal initiatives to regulate child labour could be traced to pre-independence days. Till 1881, there were no statutory provisions for regulating the employment of children in India. The first Indian law defining child labour was passed in the year 1881 (Deshta and Deshta 2000: 120), and it set the "minimum age of employment at 7 years, with a maximum of nine hours of work permitted per day". In 1891, the Factories Act was amended and the "minimum age for employment in a factory was increased to 9 years" (Ahmad 2011: 61). The Factories Act was amended once again in 1911 with the intention to "prohibit the employment of children in some dangerous processes and introduced the requirement of a certificate of fitness from a medical doctor".

In 1929, under the chairmanship of John Henry Whitley, the Royal Commission on Labour had a significant impact on the recognition and legislative treatment of child labour (Ramanathan 2009: 783). It reported widespread prevalence of child labour in a range of industries including carpet, *beedi*, textile, matches and plantations. The Commission, therefore, recommended legislation to fix the minimum age for employment of children at a higher level than was practiced in many industries. A series of laws followed thereafter: the Indian Ports Act of 1931 set "12 years as the minimum age of workers handling goods in ports"; the Tea Districts Emigrant Labour Act of 1932 provided "that no child below 16 years be employed, or allowed to migrate, unless accompanied by parents"; "the Factories Act of 1934 prohibited children below 12 years of age from being employed in factories" and "restricted work to five hours a day for children between 12 and 15 years of age". "In 1935, the Mines Act raised the minimum age to 15 years and required a certificate of fitness for children between 15 and 17 years" (Ramanathan 2009: 783).

Apart from the constitutional provisions and directives, many notable legislative enactments were enacted not just to combat child labour but also to provide legal protection to children in various occupations (Sen and Dasgupta 2003: 93). Legislation has a vital role to play in combating deployment of child labour in hazardous occupations. These laws have been amended, repealed and revised from time to time in order to minimise the exploitation of children and other most vulnerable groups of the society in line with international norms as well as relevant provisions of Indian Constitution. These acts have concentrated on aspects such as reducing working hours, increasing minimum wage, and "prohibiting employment of children in certain occupations and processes" detrimental to their health and development.

4.3.1. Child Labour (Prohibition and Regulation) Act, 1986

The prime objective of this Act is to "prohibit the engagement of children in certain employment and to regulate the conditions of work of children in certain other employment". The Act "prohibits employment of children below 14 years of age in specified hazardous occupations and processes". Before the enactment of this Act,

various committees[80] were formed by the Government of India to discuss and review the conditions or status of child labour in India. On the basis of the recommendations from these committees, the Government of India adopted the Child Labour (Prohibition & Regulations) Act 1986.

This Act made clear distinctions in regulation and prohibition of child labour (Agarwal 2004: 664). Four important conclusions were drawn from the review done by the above-mentioned committees. They include: "children working with their parents or at home are less susceptible to exploitation as compared to children engaged in wage labour; the prohibition of child labour is not practical and it is hence better to regulate the conditions of work, including the hours of work and wages; children removed from prohibited work must be rehabilitated, especially to avoid a return to work in secret; areas with high incidence of child labour must be targeted" (Agarwal 2004: 664). The fundamental theme behind these assessments was the realisation that incomes should be strengthened along with employment generating programmes in these areas.

This Act repealed the Employment of Children Act, 1938, but reproduced its Schedules 'A' & 'B' (Sekar 1997: 117). It consists of four parts.[81] In the previous Act, there was no provision to decide on the type of employment, occupations or processes in which the employment of the children should be banned (Sekar 1997: 118).

Section 2 (ii) of the Child Labour (Prohibition and Regulation) Act 1986 defines the "child as a person who has not completed his fourteenth year of age". This Act provides "to ban employment of children below the age of 14 years in occupations and processes listed in the schedule to the Act, and to regulate the working conditions of children in other employment". The Act clearly divided child labour into two parts

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[80] Significant among them are the National Commission on Labour (1966-69), Gurupadaswamy Committee on Child Labour (1979), and the Sanat Mehta Committee (1984).

[81] The Child Labour (Prohibition and Regulation) Act, 1986 could be divided into four parts. Part I contains definitions. Part two explains the Prohibition of employment of children and regulation of child labour in those establishments where children under 14 may be permitted to work can be seen in Part III. Penalties for the violations of the provisions of the act are listed in Part IV.

as to what are the work children should not do and which work should be regulated. Section 3 of the Act reads 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 process set forth in Part B of the Schedule is carried on".

In the first part of the Section 3, it says the act "prohibits the employment of children in certain occupations". The second part allows the children to work in non-prohibited occupations and processes. However, the Act also added that child labour should be regulated through assessment of work conditions. The prohibited occupations were identified and listed in Part 'A' and Part 'B' of the Schedule. While Part 'A' listed the occupations that came under total prohibition of child labour, Part 'B' of the Schedule covered those occupations in which child labour prohibition is partial.

The Schedule initially provided for "prohibiting employment of children in five occupations and eleven processes". The list of prohibited activities can be increased over time by the recommendations of a Child Labour Technical Advisory Committee, which was set up to advice the central government on the additional occupations and processes in which "employment of children below 14 years of age should be prohibited". Through various notifications from time to time, the list of occupations and processes has been increased in the Schedule to 13 and 57, respectively (Advocacy Unit 2001: 13). It has notified certain sectors where the employment of children can only be availed after they have completed 14 years of age (Section 7 (2) of the Act).

The hours and period of work for the children is explained under section 7 of the Act which says "no child shall work for more than 3 hours before he has had an interval for rest for at least one hour" in between commencement of next hour shift (Section 7 (2) of the Act). It also says the double employment is prohibited (Section 7 (6) of the Act). Section 9 of the Act provided for a Notice to Inspector, which says that "the occupier in relation to an establishment in which children were employed needs to inform the inspector about the name and situation of the establishment, name of the person of the establishment, address of the establishment, and the nature of the

occupation or processes carried on in the establishment" (Section 9(1) of the Act). It further says "nothing in Sections 7, 8, and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving or recognition from government" (Section 9 (3) of the Act). From the above, it is clear that if the establishment is receiving helping hand from his own family, he/she will be exempted from the application of Section 7, 8, and 9 of the Act even if it indirectly promotes child labour.

The Act of 1986 also "regulates the conditions of work for children in other occupations". The employer or the agents will be punished for appointing any child against Section 3 of the Act. The punishment will be imprisonment up to one year with a fine of Rs. 10,000 to Rs. 20,000. The repeated offender will receive stringent punishment with imprisonment for more than six months up to two years (Section 7 (2) of the Act).

The Act, however suffers from some limitations. It covers only those children employed in the organised sector and not in the unorganised urban and rural sectors and family units. The unorganised sector has been exploiting children massively. The Act excludes child labour performed for and owned by the family, and thus allows for sub-contracting even in hazardous occupations within the family (UNICEF 1998: 24). Children are prohibited from working in large factories, but otherwise they are free to work elsewhere without an age limit (Weiner 1994: 122). The Act creates no serious disincentive for employers who deceive inspectors vulnerable to bribe.

Under the Schedule of this Act, many occupations which are really hazardous are not included, such as the glass and bangle factories, the state industry, etc. Moreover, the failure of the Act to regulate government-training programmes is also problematic (Jaiswal 2000: 63). There are 200 carpet weaving centres in Varanasi, many of which are employing children in violation of the Act. On the other hand, private training centres are prohibited from appointing children. The exception to government training centres is then naturally a violation of the Act.[82] Similarly, carpet weaving,

[82] 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.

despite being a hazardous industry owing to the use of chemicals, has nonetheless seen the employment of children in large numbers (Agarwal 2004: 678).

This Act does not specify how the welfare, health and safety of working children are to be protected by the employer. Instead, the Government itself has taken the task of providing all welfare measures leaving the employers free from their responsibility despite the implications for the government exchequer.

A notable merit of the Child Labour Act of 1986 is only that it brings about uniformity in the "definition of the child, minimum age for employment and conditions of work", by repealing the Employment of Children Act of 1938 and making necessary amendments in the other Acts. Moreover, this Act is in line with the provisions of ILO Minimum Age Convention, forced labour, slavery, UN Conventions and Declarations however prohibits and regulates the exploitation of child labour.

4.3.2. The Child Labour (Prohibition and Regulation) Amendment Act, 2016

The statistics of Census data shows a general decline in child labour between the period of 2001 and 2011 (Ministry of Labour & Employment, 2016). However, the protection of all children and their universal access to education has been the toughest challenge for the government and the gaps continue to remain the same (Ministry of Labour & Employment 2017). This debate was seen throughout the decade at domestic and international levels, which compelled the Indian government to take tough decisions in line with the Constitution of India and fulfill the obligation of international treaties. In line with changing national and international discourse on children rights, education and child protection, the Indian government amended the legal and policy framework.[83] Following upon the insertion of Article 21A to the Constitution and the enactment of RTE Act, 2009, the Child Labour (Prohibition and

[83] To provide free and compulsory education to all children between the age group of six and fourteen years as a Fundamental Right has been inserted to the Indian Constitution through 86th amendment of the Constitution in 2002 under Article 21-A. Further to that in 2009, the Government of India enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A. Article 21-A and the RTE Act came into effect on 1 April 2010.

Regulation) Amendment Bill, 2012[84] was approved in the Parliament followed by the President's assent on 29th July 2016.

The main objective of this Act is to "prohibit employment of children in all occupations and processes", besides enabling the proper implementation of RTE Act 2009 by "providing free education to children between 6 and 14 years of age". It also prohibits appointment of "adolescents in the hazardous occupations and processes" and however fulfilling the States obligation to ILO Convention 138[85] and Convention 182.[86] The new Act separated "child" and "adolescent". As per the new Act "child" means a person who has not completed his 14th 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" (Section 2 (ii) of the Act). On the other hand, "adolescent means a person who has completed his 14th year of age but has not completed his 18th year" (Section 2 (i) of the Act). While the previous Act prohibited the appointment of children in certain types of occupations and processes[87] and regulated only the conditions of work of children in other occupations," the new Act takes progressive steps towards banning child labour (Sekar 2017: 2).

The previous Child Labour (Prohibition and Regulation) Act, 1986 "prohibits employment of children below 14 years in 18 occupations and 65 processes".[88] The

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[84] The full text of the Child Labour (Prohibition and Regulation) Amendment Bill, 2012, Accessed 12 March 2017, URLhttp://www.prsindia.org/uploads/media/Child%20Labour/Child%20Labour%20(Prohibition%20and%20Regulation)%20(A)%20Bill,%202012.pdf.

[85] ILO Minimum Age Convention (No. 138) provides minimum age of entry into work shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

[86] ILO Worst Forms of Child Labour (No.182) provides immediate and effective measures to prohibit and eliminate the worst forms of child labour as a matter of urgency.

[87] In total, 18 types of occupations are prohibited under this Act included in the Part-A of the Schedule of the Act and 65 processes explained under Part-B of the Schedule of the Act.

[88] The 65 processes explained under Part-B of the Schedule of the Child Labour (prohibition and Regulation) Act, 1986 are: Beedi-making; Carpet-weaving including preparatory and incidental process thereof; Cement manufacture, including bagging of cement; Cloth painting, dyeing and weaving including processes, preparatory and incidental thereto; Manufacture of matches, explosives and fire-works; Mica-cutting and splitting; Shellac manufacture; Soap manufacture; Tanning; Wool-cleaning; Building and construction industry including processing and polishing of granite stones; Manufacture of slate pencils (including packing); Manufacture of products from agate; Manufacturing processes using toxic metals and substances, such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos; 'Hazardous process' as defined in section 2 (cb) and 'dangerous operation' as notified in rules under section 87 of the Factories Act 1948 (63 of 1948); Cashew and cashew nut descaling and processing; Soldering processes in electronics industries; Aggarbatti

new Act, instead, provides a complete ban on employment or work of children below 14 years in any occupation (Section 3 (1) of the Act). Considering the Right of Children to Free and Compulsory Education Act, 2009, the new Act recommended "the ban on employment of children who are not attained the age of 14 years" in all occupations except in "family"[89] or "family enterprise"[90] or "artist[91] in an audio-visual entertainment industry" (Section 3 (2) of the Act). The children should not be employed even in family enterprises if the business is considered as hazardous in nature or processes set forth in the Schedule (Section 3 (2A) of the Act). As per the new Act, "adolescents" could accept the work except in hazardous occupations as specified in the schedule supplement to this Act (Section 3 (A) of the Act). But the Central government may by notification specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act (Section 3 (A) of the Act). After the enactment of new Act, a Technical Advisory Committee was

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manufacturing; Automobile repairs and maintenance including processes incidental thereto, namely welding, lathe work, dent beating and painting; Brick kilns and roof titles units; Cotton ginning and processing and production of hosiery goods; Detergent manufacturing; Fabrication workshops (ferrous and non-ferrous); Gem cutting and polishing; Handling of chromite and manganese ores; Jute textile manufacture and coir making; Lime kilns and manufacture of lime; Lock making; Manufacturing process having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, crystal glass mass, sanding or scrapping of lead paint, burning of lead in enameling workshops, lead mining, plumbing, cable making, wire patenting, lead casting, type founding in printing shops, store typesetting, assembling of cars, shot making and lead glass blowing; Manufacture of cement pipes, cement products, and other related work; Manufacturing of glass, glassware including bangles, fluorescent tubes, bulbs and other similar glass products; Manufacture of dyes and dye stuff; manufacturing or handling of pesticides and insecticides; Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry; Manufacturing of burning coal and coal briquettes; Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather; Moulding and processing of fiberglass and plastic; Oil expelling and refinery; Paper making; Potteries and ceramic industry; Polishing, moulding, cutting, welding and manufacture of brass goods in all forms; Process in agriculture where tractors, threshing and harvesting machines are used and chaff cutting; Saw mill – all processes; Sericulture processing; Skinning dyeing and processes for manufacturing of leather and leather products; Stone breaking and stone crushing; Tobacco processing including manufacturing of tobacco paste and handling of tobacco in any form; Tyre making, repairing, re-treading and graphite benefication; Utensils making, polishing and metal buffing; 'Zari' making; Electroplating; Graphite powdering and incidental processing; Grinding or glazing of metals; Diamond cutting and polishing; Extraction of slate from mines; Rag picking and scavenging; Processes involving exposure to excessive heat and cold; Mechanised fishing; Food-Processing; Beverage Industry; Timber handling and loading; Mechanical Lumbering; Warehousing; Processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries, agate industry.

[89] 'Family', in relation to a child means parents, brothers, sisters, father's sisters and brother, and mother's sisters and brothers.

[90] 'Family enterprise', means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons.

[91] '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 sub-section (2).

constituted to review the previous Schedule on hazardous occupation.[92] The Committee submitted its report on 02nd February 2017 and recommended with two parts in Schedule (Ministry of Labour & Employment (2017).

The new Act provides stricter punishment for the employer, parents, or family members who are responsible for the employment of "children or adolescents" by violating the provisions of the Act (Section 14 (1) of the Act). The new Act exempted the punishment for the parents or guardians of the children unless they permit children for commercial purposes. Under this Act, the offence is treated as cognizable one with a punishment that will be "imprisonment for not less than six months but may extend up to two years". The punishment may also include a fine of 20,000 to 50,000 for the first-time offender. For repeat offenders, the imprisonment will be more than one year and extended up to 3 year with fine up to 10,000 rupees (Section 14 (2) of the Act).

The new Act also mentioned that the work place of the children and adolescents should be inspected by the inspectors to make sure of the implementation of the Act as per its provisions (Section 17 (B) of the Act). The District Magistrate is the designated officer who has the responsibility to confirm the same to the concerned authority to ensure the provisions of the Act are properly carried out. The District Magistrate can allocate duties and powers to their subordinate officers to implement the provisions of the Act appropriately. The new Act provides with rehabilitation procedures to accommodate the rescued children from the workplace (Section 14 (C) of the Act). For the rehabilitation of children and adolescents who are rescued from the employment, the new Act provides that the Government shall constitute a Fund in every district or for two or more districts, named as the Child and Adolescent Labour Rehabilitation Fund. The amount collected from the employer of the child and adolescent as a punishment to employing the children will be credited to the Rehabilitation fund. It should be within the jurisdiction of the case where it has been decided. Moreover, the concerned government also contributes 15,000 rupees to the Fund for each child and adolescent who has been rescued from the employer.

[92] The two parts are named as Part 'A' and Part 'B'. Part 'A' covering a list of hazardous occupations and processes in which 'adolescents' are prohibited to 'work' and 'children' are prohibited to 'help'. Part 'B' covering a list of occupations and processes in where children are prohibited to 'help' in family 'enterprises' (in addition to Part 'A').

The new Act has set a clear agenda to send all children who are between five and fourteen year old to the school as prescribed under the "Right of Children to Free and Compulsory Act 2009". By banning child labour, the government encouraged and paved the clear way for children to enroll at the primary schools. The introduction of strict punishment for the offence has served as a deterrent to the employers, parents and relatives who are indulging in child labour.

Criticism of the Amended Act

As said above, although the government has made good efforts to regulate the child labour by enacting the Child Labour (Prohibition & Regulation) Amendment Act, 2016, it was criticised for taking away basic protections for some of the most vulnerable workers by giving exemptions in some of the provisions of the Act.

First of all, exception to Section 3 (2)(a) & (b) of the new Act allows children to help "family or family enterprises or allows the child to be an artist in an audio-visual entertainment industry". This exception is a clear blow to the new Act because the main objective of the new act is "complete ban on child labour". If there is an exception under the provision of section 3 (2)(a) & (b) how can be the new Act will act against the child labour? Moreover, maximum number of child labour in India is handling the community based occupation and only economically downtrodden families involved in inter-generational debt bondage. It is very difficult to differentiate whether the child is "helping" the family or child is under "bondage" with other family members.

In India, most of the child labourers were rescued when they were working with their families. It would be extremely difficult for the government to tackle the problem as per the new Act because the identification of the family running enterprises is very hard. The original owner of the business might be different person who might not be running the family enterprises in reality. But the record may prove that the enterprise is run as a family business however exempted from the rule. In the case of family run business, the children may go to school for few years and simultaneously continue their work with the so-called family members. However, there may be a chance of most likely discontinue the education and it indirectly affecting the implementation of

the free compulsory education to children and the “prohibition of the employment of the children and adolescents in the hazardous occupations”.

Secondly, the new Act does not define the hours of the work after the school. The section 3(2)(a) simply states that “children may help his family or family enterprise, and work after his school hours or during vacations”. There is no clarity on the hours of the work the child can work “after his school hours or during vacations”.

Thirdly, according to UNICEF, a child who is between the age of 5 and 11 years can do at least “one hour of economic activity, or at least 28 hours of domestic work in a week”. If the children are aged 12 and 14, fourteen hours of economic activity or at least forty-two hours of domestic work per week is considered as child labour. But the new Act did not have clarity on hours of the work that the children can do in their family or family enterprise. The new Act silent on hours of the work the children can do in the family or family enterprises.

Fourthly, the ILO Minimum Age Convention allows exception to children between 12-14 years old exclusively for developing countries “to do light work as long as it does not threaten their safety, health or education”. Under the new Act, working in chemical mixing units is not treated as hazardous work however didn’t prohibited. The new Act failed to consider the ill effect of exposure of these chemicals on health of the children. The dilution of law leads to violation of ILO convention.

Fifthly, the National Policy on Child Labour (1987) adopted strict implementation of child labour laws to focus on the root cause of child labour like poverty and social status. It also focused on “rehabilitation of children working in hazardous occupations”. Section 3A of the new Act says even the listed occupation is a hazardous work, could be removed not by parliament but by government authorities at their own discretion.

Finally, according to UNCRC, "every child has a right to be heard. The International Working Group on Child Labour, which came up with the Kundapur declaration,[93] stated that children should be consulted, their products recognized, and their work be regulated and made safe, along with access to education and health and security being provided to them". But the new Act is not followed the above however there is a less hope of the fulfillment of the purpose of the Act to reach up to children.

4.4. LEGAL FRAMEWORK FOR THE PROTECTION OF CHILDREN AND YOUNG PERSONS

4.4.1. The Children's (Pledging of Labour) Act, 1933

The Recommendation of the Royal Commission on labour that were finalized in 1931 came up for discussion in the Legislative Assembly and the Children (Pledging of Labour) Act, 1933 was passed. The Children (Pledging of Labour) Act was the first acknowledgement of the problem of bondage of children in India. The main objective of this act was to avoid the situation of the parents who compelled to pledge their own children to the employer to waive of their own debts (Deshta and Deshta 2004: 121). This practice of pledging labour of children was found to be prevalent in areas such as Amritsar, Ahmedabad, Chennai, etc., in carpet and *beedi* factories (Sekar 2006: 24). The children in these situations were found to be working under extremely unsatisfactory working conditions (Sekar 2006: 24). Hence, the Royal Commission recommended that the expediency of penalising the labour of a person below 15 years on account of any consideration should be void.[94] This recommendation was introduced in the Legislative Assembly as the Child (Pledging of Labour) Bill in 1932 which was later converted into an Act. Previously, the Act extended to the whole of India, except Jammu and Kashmir, but after September 1, 1971, it was extended to Jammu and Kashmir too.

Under this Act, "child means a person who has not completed the age of 15 years". The Act introduced penalty system against any "parent, middleman, or employer" involved in making or executing a pledge for a child labour. The Act declares "an

[93] Certain principles were agreed by representatives of Working Children's Organisations from Africa, Asia, and Latin America at the first international meeting of Working children in Kundapur, Karnataka in 1996.

[94] The Commission observed, 'the system is indefensible, it is worse than the system of indentured labour is, when he enters on the contract, a free agent while the child is not'.

agreement, written or oral, to pledge the labour of a child by the child's parents or guardians as void and makes contracting parties liable for penalties".[95] Under this Act, "any agreement by which a parent or guardian pledges its labour or services against consideration of the benefits to be received in lieu thereof, shall be null and void" (Rai 2002: 304). However, any such agreement "that is not detrimental to the child and has been made in consideration of any benefit, though other than reasonable wages, in lieu of the child's services, and is terminable at not more than a week's notice, shall not be deemed to be illegal under the Act" (Rai 2002: 304). The penalty provided for breach of law is a fine of up to Rs.200 for the employer and Rs.50 for the parent. Further, the employment of a child whose labour had already been pledged elsewhere has also been made an offence punishable with a fine that may extend up to Rs.200 (Rai 2002: 305).

4.4.2. The Employment of Children Act, 1938

This Act is the first initiative at the Indian level focusing on the child labour issue after the ILO conference in 1937. This Act is enacted with the view of ILO Minimum Age (Industry) Convention, (Revised) 1937. The Act recommends that "children under the age of 13 years shall not be employed or work in the transport of passengers, or goods, or mails, by rail or in the handling of goods at docks, quays or wharves, but excluded transport by land. Children under the age of 15 years shall not be employed or work in any occupation to which this Act applies and is scheduled as dangerous or unhealthy by the competent authority".

This Act is also applicable to the whole of India and "prohibits the employment of children below the age of 15 years in any occupation connected with the transport of passengers, goods or mails by railways, or a port authority within the limits of any port" (Section 3 (1) of the Act). The restrictions also stand for the employment of children above 15 years but below 17 years of age, with the exception of children employed as apprentices or trainees. The period of rest is to include at least seven such consecutive hours between 10 p.m. and 7 a.m. as may be prescribed by the appropriate government. This Act further "prohibits the employment of children

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[95] The penalty for the breach of law is a fine up to Rs.200 for employer and Rs.50 for guardians. The Children (Pledging of Labour) Act, 1933.

below the age of 14 in workshops connected with *beedi* making, carpet weaving, cement manufacturing, cloth printing dyeing, weaving, manufacture of matches, explosives and fire work, mica cutting and splitting, manufacture of shellac, soap, tanning and wool cleaning" (Section 3 (3) of the Act). The exemptions to this Act allows the children to take work at workshops under the guidance of occupier or family or the government aided schools.

The Act also requires the railway and port authorities to maintain registers showing the names, dates of birth, rest intervals, etc., of children under the age of 17. The penalty for breach of this Act is "imprisonment up to one month or fine up to Rs.500 or both".

4.4.3. The Factories Act, 1948

The Factories Act of 1881 was revised in 1891, 1911, 1922 and 1934. The 1881 Factories Act covered the factories employing hundred or more persons. Under this Act, the minimum age of a child for employment was fixed as seven years. The only piece of legislation that can be termed as the forerunner of statutory protection of child worker in India is this Act (Varghese 1989: 3). It "prohibits the employment of children above 7 years of age" over 9 hours a day with a stipulation of at least 4 holidays in a month. In the revision of 1891, the minimum age was increased to 9 years. The 1922 amendment was undertaken to implement ILO Convention (No.5). The 1922 Factories Amendment Act increased the minimum age limit to 15 years. The Factories (Amendment) Act, 1926, provided for certain penalties on parents and guardians for allowing children to work in two separate factories on the same day. Again, changes were brought into these provisions through the Factories (Amendment) Act of 1934. It elaborated the provisions for regulating the employment of children of various age groups with regard to factories. The general prohibition was on children under 12 and 15 years of age, and their employment was restricted to five hours a day. For children between 15 and 17 years, certain restrictions on employment were imposed.

The 1948 Act repealed all the previous enactments on factories and "increased the minimum age for employment to 14 years".[96] This Act was undertaken to implement the ILO Minimum Age (Industry) Convention (No.5), 1919. Section 67 of the Factories Act, 1948 "prohibits employment of young children" and it reads, "no child who has not completed his fourteenth year shall be required or allowed to work in any factory".

According to this Act, "child means a person who has not completed the fourteenth year of age", and the "young person means a person who is either a child or an adolescent". An "adolescent is a person who has completed his fifteenth year but not over his eighteenth year". Thus "young persons" may be divided into three categories as given below: Person who is under 14 years of age; between 14 and 15 years of age; and between 15 and 18 years of age. "A person who has completed 14 years, but not completed 18 years", can work in a factory provided a certificate of fitness is granted to him by a certifying surgeon, and if he carries a token to that effect while at work". Such certificates are valid only for a period of one year. Restrictions are also applied on their employment in certain dangerous occupations. The hours of work of children are limited to "four and half hours" on any day; or the period of work should be two shifts and spread over to five hours a day.

With an amendment to the act in 1954, "a prohibition of employment at night of persons below 17 years" was introduced. This amendment was in line with the ILO Convention on Night Work of Children and Young Person. "Night was defined as a period of 12 consecutive hours, including the hours between 10 p.m and 7 a.m".

The Factories Act, 1948 "prohibits the employment in factories of persons who have not completed 14 year of age". In *Walker T. Ltd. vs. Martindale*,[97] it was held that the "prohibition is absolute and not restricted to employment in one of the manufacturing processes". The Court observed that even if the children is not involved in manufacturing processes but attending his work as a sweeper in the same factory will

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[96] The Factories Act, 1948 (Act No. 63 of 1948), as amended by the Factories (Amendment) Act, 1987 (Act 20 of 1987), Accessed 12 May 2014, URL: http://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm..

[97] 1916 85 JLFKB, 1543.

lead to violation of the Act. Persons aged 14 and 15 can only be appointed under certain conditions under sections 68, 69 and 71 to 75 of the Act. The conditions are "(i) such a person should have a certificate of physical fitness for employment issued by a surgeon and should carry a token thereof; the certifying surgeon should follow procedure provided under Section 69 of the Act; they should not work at night, that is, during twelve consecutive hours, including the period from 10 p.m. to 6 a.m.; they should not work for more than four and half hours a day; the working hours of the factory should be limited to two shifts; the shifts should not overlap; each child has to be employed in one relay; the spread-over should not exceed five hours and should also not change except in 30 days; they should not be employed in two separate factories on the same day; the employer should display a notice regarding the periods of work for such children; the manager of the factory should maintain a register in respect of such child workers; and the child can be employed only for specified hours displayed through a notice and in accordance with the entries against his name in the register of child workers".

The inspectors who have been empowered by Section 75 of the Act can prevent the person continuing in his employment until he gets a re-examination certificate from an authorised surgeon. A person between 15 and 18 years can be employed as an adult provided he possesses a certificate of physical fitness issued by the certifying surgeon and carries with him a token of such certificate. An adolescent below 17 years is not allowed to work at night.

In *Jhunjhunwalla vs. B.K. Patnaik*, the High Court of Orissa observed that where the occupier of a glass factory was severely punished for appointing young children in the hot place at the premises, which is a hazardous occupation, without any certificate of fitness as per the Sections 68 and 69 of the Factories Act, 1948. The Court ordered that the object of these statutory restrictions on the employment of young persons were made to prevent exploitation of young labourers and to provide for their safety, and should be strictly implemented.[98]

[98]Jhunjhunwalla vs. B.K. Patnaik (1964) 11 LLJ. 551.

The Court further held that, the Section 69 deals with the procedure to be followed by the certifying surgeon when a young person is sent to him for medical examination. He has to decide whether a certificate of fitness should be issued to the young person to work in the factory as a child under Clause (a) of Section 69 (2), or as an adult under Clause (b) of Section 69 (2). Section 70 (2) provides that if the certifying surgeon does not grant a certificate of fitness to a young person to work in a factory as 'an adult' that person shall be deemed to be 'child' for the purpose of the act. By analysing Sections 69 and 70 together, an inference may be drawn that if a young person is refused a certificate to work as an 'adult' by the certifying surgeon, the deeming provision, as contained in Sub-section (2) of Section 70, would automatically apply to him and he will get covered by the definition of 'child'. But, it is not so, because even a child who has completed his 14 years is prohibited by Section 68 from being employed in a factory unless he is granted a certificate of fitness by the certifying surgeon. The deeming provision is not available to him and he must present himself again before the certifying surgeon for the fitness certificate. Where there was no evidence to show that in the instant case 14 workers were actually produced before the certifying surgeon by the petitioner (occupier), the court held that Sub-section (2) of Section 70 had no application and the petitioner was rightly convicted.

In another case, the Court observed that it was the duty of the employer to ascertain through reasonable means that the applicant was of the requisite age and merely the statement of child about his age should not be treated as a sufficient evidence of his age.[99]

The Factories Act also provides that "no young person should be allowed to clean, lubricate or adjust any part of a prime mover or transmission machinery in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the young person to risk of injury from any moving part either of that machine or of any adjacent machinery". The act lays down "no young person should work at any dangerous machine to which Section 23 applies, unless he has been fully instructed as to the risks involved and the precautions to be

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[99]Mechnitosh vs. First Brook Book Co. 1904 CLT 370.

taken, and has received sufficient training in work at the machine, or is under adequate supervision of a person who has a thorough knowledge and experience of the machine".

The State of Uttar Pradesh, under special power, has declared power presses, other than the hydraulic milling machines used in the metal trades, guillotine machines, circular saws and platen-printing machines, as of a dangerous character.

The act further prohibits "the employment of children in any such part of the factory for the job of pressing cotton in which a cotton opener is at work, except where the feed end of the cotton opener is in a room separated from the delivering end". The act "empowers the State Governments to make rules prescribing the maximum weights which may be lifted by adolescents and children". Besides "a weekly day of rest, every child-worker who has worked for a period of 240 days or more in a factory during a calendar year is entitled during the subsequent year for leave with wages at the rate of one day for every 15 days work as against every 20 days in the case of an adult worker". The act also requires that there must be rest-shelters and canteens, etc., for all workers including children.

The act lays down a penalty of "imprisonment up to one month, or fine of up to Rs. 50 or both" for using a false certificate of fitness or a certificate granted to another person. The parent or guardian shall also be liable to pay fine of up to Rs. 50 for permitting double employment of a child.

The penalty for employing a child in contravention of the provisions of Section 67 of the Factories Act, 1948, is "imprisonment for a term which shall not be less than three months, but which may extend to one year or with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 20,000 or with both". And the "continuing offence shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years".

The Factories Act 1948 included the provisions of ILO Conventions on Minimum Age, Night work of children and young persons, and Medical Examination of Young Persons (Industry) Convention. Therefore, it is clear from the above that the

government of India enacted the Factories Act in line with the ILO conventions and prohibiting and regulating the exploitation of the child labour.

4.4.4. The Minimum Wages Act, 1948

The Minimum Wages Act was enacted in 1948 with the objective of “fixing, reviewing, revising and enforcing the minimum rates of wages relating to scheduled employments to be notified under the law by the appropriate government”. The intention of the Act is to provide minimum wages to an employee as a remuneration for his/her work. Although, as such ‘minimum wage’ has not absolutely mentioned in the Act, however it indirectly compels the employer to pay basic remuneration as per the work and which should not undermine the work of an employee.

This Act provides for fixation of “minimum rates of wages” for employments specified in the Scheduled to the Act, which can be enhanced through a notification by the appropriate government. Under this Act, “appropriate government means: (i) in relation to any Scheduled employment carried on by or under the authority of the Central Government or a railway administration or in relation to a mine, oil field or major port or any corporation established by a Central Act, the Central Government; (ii) in relation to any other Scheduled employment, the State Government”.

The Minimum Wage “Act defines the child as a person below 15 years of age”. It provides for minimum wages for children and apprentices”. “It also has a provision regarding hours of work and physical fitness”. This Act empowers the Central Government to make rules for certain purposes, including the fixation of the normal working day.[100] According to this Act, “child means a person who has to complete his 14th year of age”, while “adolescent means a person who has completed his 14th year of age but has not completed his 18th year of age”. The Act does not contain any important prohibition in regulatory provisions applicable to child labour. But, it lays down that in “fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for adults, adolescents, children and apprentices”.

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[100] The full text of the Minimum Wages Act, 1948 (Act No. 11 of 1948),Accessed 15 May 2017, URL: https://labour.gov.in/sites/default/files/TheMinimumWagesAct1948_0.pdf.

In *Reptakos Brett and Co. Vs. Others*[101] the Supreme Court of India held that the recommendation of Indian Labour Conference should include the following norms and criteria i.e., "Children's education; Medical requirement; Minimum recreation; Provision for old age; and Marriage". The Supreme Court added that "expenditure on the above components should constitute 25 percent of the total minimum wages and that should be brought to the notice of the State governments/Union Territories as a guideline for fixation of minimum wages".

Under this Act there are two provisions in the law that have a direct relevance to child labour. They are sub-section 3 of section 3 (a) and Rule 24 which reads as follows:

> "3. In fixing or revising minimum rates of wages under this section:
> (a) Different minimum rates of wages under this section:
>   (1) Different scheduled employments;
>   (2) Different classes of work in the same scheduled employment;
>   (3) Adult, adolescents, children, and apprentices…"
>
> "Rule 24 reads as follows:
>   (1) The Number of hours of work which shall constitute a normal working day shall be
>   (a) In the case of an adult nine hours;
>   (b) In the case of child four and a half hours.
>   (2) The working day of an adult worker shall be so arranged that inclusive of the intervals of rest, if any, shall not spread over more than twelve hours on any day".

There are two anomalies arising out of the above provision. Firstly, in rural areas and in the unorganised and informal sectors of employment it is extremely difficult to fix the hours of work and also to enforce the hours so fixed. Secondly, the method of payment of wages (Sec. 11).

This act empowers the Central Government to make rules for certain purposes, including the fixation of the 'normal working day'. Rule 34 of the Minimum Wages (Central) Rules, 1950, made under this Act, provides, *inter alia*, that the number of hours which shall constitute a 'normal working day' in the case of child shall be four and half hours a day in the employments to which the present act applies.

[101] Reptakos Brett and Co. Vs. Others, Civil Appeal No. 4336 of 1991.

4.4.5. The Plantation Labour Act, 1951

Plantation legislation grew with cultivation of tea in Assam. Owing to scarcity of workers in those regions, they were being brought from other parts of the country. Before the Act of 1951, there were quite a few numbers of legislations, which were criticised as acts of pro-planters (Venkat Kanna 2002: 64). A few among the early legislations are the Workmen's Breach of Contract Act, 1859, the Employment and Workmen's Dispute Act, 1860, the Assam Labour and Emigration Act, 1901, the Madras Planter's Act, 1903, the Jalpaiguri Labour Act, 1912, the Coory Labour Act, 1926.

This act applies to plantations in tea, coffee, rubber, cinchona and cardamom plantations using areas of 10.117 hectares or more in which more than 30 or more persons are employed.[102] The act extends to the whole of India except the State of Jammu & Kashmir (Section 1(2) of the Act). Section 24 of the Plantation Labour Act, 1951 prohibits employment of young children which reads as follows:

> "No child who has not completed his twelfth year shall be required or allowed to work in any plantation".

Section 26 of the Act explain Non-adult workers who carry tokens. The section says "no child who has completed his twelfth year and no adolescent shall be required or allowed to work in any plantation unless:

(a) a certificate of fitness granted with reference to him under section 27 is in the custody of the employer; and
(b) such child or adolescent carries with him while he is at work a token giving a reference to such certificate".

As per the Act the "employment of children below the age of 12 years is prohibited in plantation". A child worker can be allowed to work if he or she is above 12 year old and only employed between 6 a.m. to 7 p.m provided submitting a fitness certificate. The total maximum hour in a week for a child and an adolescent prescribed under the act is 40. "A child who has not completed his 12th year and an adolescent will not be

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[102] The full text of the Plantation Labour Act, 1951 (No. LXIX of 1951), Accessed on 16 May 2017, URL: http://labour.nic.in/upload/uploadfiles/files/ActsandRules/Service_and_Employment/The%20Plantation%20Labour%20Act,%201951.pdf..

allowed to work in any plantations unless he is certified to be fit by a duly appointed certifying surgeon and such a child or adolescent is required to carry with while he is at work a token giving a reference of such certificate" (Deshta and Deshta 2000: 126). The certificate granted under section 27 of this act remains valid for a period of one year. The act contains the usual provision for offences and penalties on the lines of the Factories Act, 1948. The act lays down penalty for using false certificate of fitness and being imprisoned for a month (Rai 2002: 287). If a person who has been convicted of any "offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment, which may be, extend to six months, or with fine, which may be extended to one thousand rupees, or with both".

The act prescribes some welfare measures in the nature of "suitable rooms for the use of children below the age of six years" and education for the children of worker employed in plantations. The act was enacted with the sole purpose of regulating the conditions of work in plantations and to provide welfare measures for them.

A bill to further amendment of the Plantations Labour Act was introduced in parliament on 3rd March 1975, but it has not been enacted into law (Deshta and Deshta 2000: 127). The bill sought to extend the coverage of the act by applying to small plantations as well, i.e., to plantations, which measures five hectares, and employ 15 persons and to bring within its coverage other plantations namely, citronella grass, cardamom, areca nut, medicinal herbs, banana, apple, pineapple, cashew nut, olive, cocoa, or coconut.

In 1986, Sec. 24 of the Plantation Labour Act, 1951 was replaced by Sec. 24 (b) of the Child Labour (Prohibition and Regulation) Act, 1986. The definition of child was also amended as "a person who has not completed 14 years". Section 26 of the Act was amended to read as "no child and no adolescent shall be required or allowed to work in any plantation unless:

(a) a certificate of fitness granted with reference to him under section 27 is in the custody of the employer; and
(b) such child or adolescent carries with him while at work a token giving a reference to such certificate".

The implications of the deletion of Sec. 24 and amendment to Sec 26 of the Act is that a child can work in any plantation provided he is granted a certificate of fitness by a doctor.

4.4.6. The Mines Act, 1952

The first ever Mines Act was passed in 1901.The Mines Act of 1901 had empowered the Chief Inspector of Mines to "prohibit employment of children of less than 12 years of age in mines". In 1921, children below 12 years of age constituted 3.5 percent of the total labour force in mines (Verma 1994: 30). This act was replaced by the Indian Mines Act, 1923, which prohibited the "employment of children less than 13 years of age in any part of a mine", which was below ground. Under this act, "no child could be employed in a mine or be present in any part of mine, which was below the ground or, in any open excavation in which any mining operation was being carried on". In 1936, the minimum age for employment of children was raised to 15 years. Persons between the ages of 15 to 17 years could not be employed as adults or allowed to work underground unless they were certified to be medically fit to work as adults (Verma 1994: 30). An adolescent not certified to fit to work as an adult cannot be employed on above ground for "more than four and half hours on any day between 6 p.m. and 6 a.m".

In order to update the mines legislation on par with the Factories Act, the Mines Act was re-enacted in 1952.[103] The new act "prohibits the employment of children below 15 years of age and their presence in any part of a mine, which is below the ground, or in any open excavation in which any mining operation was being carried on" (Section 45 (1) of the Mines Act).

The Mines Act was again amended by the Mines Act of 1959, and then substantially amended by the Act of 1983. The present position is that "no person below 18 years of age can be allowed to work in any mine or in any part thereof". Only trainees and apprentices, not below 16 years old may be entertained after "prior approval of the chief inspector or inspector".

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[103] The full text of the Mines Act, 1952 (Act No. 35 of 1952), Accessed 04 April 2017, URL http://faolex.fao.org/docs/pdf/ind132410.pdf.

4.4.7. Merchant Shipping Act, 1958

The Merchant Shipping Act[104] is applies to sea-going ships. It has also some provision regulating employment of children. It bans employment of a person below 14 years "in any capacity in a ship except school ship or training ship in accordance with the prescribed conditions or ship in which all persons employed are members of one family, or in a house trade ship less than two hundred tons gross or where such person is to be employed on nominal wages and will be in the charge of his father or adult near male relative" (Section 109 of the Act). Similarly, "employment of young person's less than 18 years of age as trimmers and stokers is also made conditional in any ship to the extent of production of medical fitness certificate from a competent authority". Furthermore, the act empowers the government to make necessary rules regarding employment of young persons as and when the occasion demand.

This act applies to the ships registered in India. The provisions relating to young persons who have not completed their 18th year of age are contained in Sections 109 to 113 of the Act. However, children under 14 years are allowed to be employed as trimmers and stockers: "(i) in a school ship or training ship; or (ii) in a ship which is mainly propelled otherwise than by steam".

The act also provides that "where at any port, a trimmer or stoker is required for any ship, other than a coasting ship, and no person over 18 years of age is available, two young persons over 16 years of age may be engaged and carried to sea to do the work which would otherwise have been done by one person of over 18 years of age". Such persons, if employed, are required to produce a certificate of fitness. The act also requires maintenance of a register of young persons employed in a ship. Further to that, the act empowers the government to make necessary rules in relation to the employment of young persons, as and when the occasion demands.

The act also imposes a fine of up to Rs.50 on any person contravening the provisions of the act. However, the penalty for employment of a child in contravention of

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[104]. The full text of the Merchant Shipping Act, 1958 (No. 44 of 1958) Accessed 20 April 2016, URL http://labour.nic.in/upload/uploadfiles/files/ActsandRules/Service_and_Employment/The%20Merchant%20Shipping%20Act,%201958.pdf.

provisions of Sections 109 of the Merchant Shipping Act, 1958, is “imprisonment for a term which shall not be less than three months, but which may extend up to one year or with line which shall not be less than Rs. 10, 000 but which may extend up to Rs. 20,000 or with both”. And the “continuing offence shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend up to two years”.

4.4.8. The Apprentices Act, 1961

Proper and effective utilisation of trained manpower is essential for the rapid industrial growth of the country. Giving training is a key to human resources utilisation and thereby to the development of industry (Venkat Kanna 2002: 67). Apart from this, in a developing industrializing society like India systematic and scientific training arrangements are necessary to produce requisite skills of all types, to provide trained manpower to industry that can fold every job in every vocation (Venkat Kanna 2002: 67).

There was no comprehensive law relating to matters of “training of apprentices and their service conditions before the Apprentices Act, 1961”.[105] The only statutory provision regarding apprentices was found in the model standing orders framed under the Industrial Employment (Standing Orders) Act, 1946. Several bodies like Indian Labour Conference (1951), the Technical Training Committee of Small Scale Industries Board (1958), the Special Apprenticeship Committee of the Small-Scale Industries Board (1958), the Working Group of Technical Education (1959), and the National Council for Training in Vocational Trades (1960), have recommended legislation to regulate and enforce apprenticeship training in the country. The Government of India appointed an expert committee to examine the matter and to recommend for undertaking a separate legislation regulating the training of Apprentices Act, 1961.

The Government of India enacted the Apprentices Act in 1961 to “supplement the programme of institutional training with job training and to regulate the training

[105] The full text of the Apprentice Act, 1961, Accessed 22 April 2014, URL http://dget.nic.in/schemes/ats/Act1961.htm.

arrangements in industry" (Venkat Kanna 2002: 67). The act came into force on 1st March, 1962 and extended to whole of India including Jammu and Kashmir (Section 1(2)). Since, January 1963, it has become very important vocational training scheme for the production of the skilled work force needed for the industrial growth and economic development of India. The main objectives of the act are the training of apprentices in industry with a view to organise on a systematic basis and to meet the increasing demand for skilled craftsmen and the full utilisation of the facilities available with the industry for the training of apprentices. The other objectives include ensuring the training of apprentices in accordance with the programmes, standards and syllabi drawn up by the expert bodies and improving the employment opportunities for educated young people by equipping them with various types of employable skills.

The act "provides for the regulations and control of training of apprentices in trades and for matters connected therewith". The act also provides that a person less than 14 years of age will not qualify for apprenticeship training (Section 3 of the Act) and prescribes that in case of minor, the "contract of apprenticeship has to be entered into by guardian" and it should be registered with the Apprenticeship Advisor (Section 4 (1) & (2) of the Act). The weekly hours of work of apprentices should be 42 to 48 hours and apprentices undergoing basic training shall ordinarily work for 42 hours per week. No apprentice other than a short-term apprentice shall be engaged in such training between 10 pm and 6 am. The Act applies to such areas or industries as may be specified by the Central Government. This Act is in line with the provisions of the ILO Minimum Age Convention however prohibits and regulates exploitation of child labour.

4.4.9. The Motor Transport Workers Act, 1961

This act seeks to provide welfare for workers of motor transport and intend to regulate the conditions of their work.[106]The act covers every motor transport undertaking employing five or more transport workers. The local governments are empowered to apply all or any of its provisions in organisations employing less than five persons. It prohibits "employment of children below 14 years in a motor

[106] The full text of the Motors Transport Workers Act, 1961 (No. 27 of 1961), Accessed 23 April 2014, URL http://www.upsrtc.com/act/motortransport_workers_act_1961.pdf.

transport undertaking" (Section 21of the Act). An "adolescent" is a person who has completed 14 but not 18 years of age, not allowed to work as motor worker unless a certifying surgeon grants a certificate of physical fitness (Section 22 of the Act). The certificate is valid for a period of one year, but can be renewed. Adolescents can work only for six hours including a rest interval of half-an-hour and also between 10 a.m. and 6 p.m. only (Section 14 of the Act). The contravention of the provisions of the act shall be punishable with "imprisonment up to three months or fine of up to Rs.500 or both" (Section 30 of the Act).

The penalty for employment of a child in contravention under this act is "imprisonment for a term which shall not be less than three months, but which may extend up to one year, or with fine which shall not be less than Rs. 10,000 but which may extend up to Rs.20,000 or both". And the continuing offence shall be punishable with "imprisonment for a term which shall not be less than six months, but which may extend up to two years". This Act is in line with the provisions of ILO Minimum Age Convention however prohibits and regulates exploitation of child labour.

4.4.10. The Atomic Energy Act, 1962

The Atomic Energy Act 1962 fixed the minimum age as 18 years.[107] In 1971, the Radiation Protection Rules have been framed under section 30 of the Act. Rule 5 of this Act prohibits the employment of the persons who have not completed 18 years as radiation worker except with the prior written permission of the competent authority, i.e., an officer or authority appointed for this purpose by the central government by issuing necessary notification. Though this Act is not directly helping the eradication of child labour, but protecting the children from the 'radiation' by fixing a minimum age of 18 as a requirement for the appointment.

4.4.11. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

This act "covers all industrial premises wherein any manufacturing process connected with making Beedi, or Cigar or both is being, is ordinarily carried on with or without

[107] The full text of the Atomic Energy Act, 1962 (No. 33 of 1962), Accessed 26 April 2017, URL: http://dae.nic.in/?q=node/153. Accessed 26 April 2017.

the aid of power" (Section 2 (i) of the Act).[108] The act "prohibits the employment of children below 14 years of age in any such premises (Section 24 of the Act). The employment of young persons between 14 and 18 years of old is prohibited between 7 p.m to 6 a.m" (Section 25 of the Act). Young persons are entitled to annual leave with wages at the rate of "one day for every 15 days of work performed by them during previous calendar year" (Section 26 (1) (ii) of the Act). The act extends to the whole of India, except the State of Jammu and Kashmir (Section 1 of the Act). The act provides penalties for breach, which may be for the first offence with "fine, which may extend to Rs. 250 and for a second or any subsequent offence with imprisonment for a term which shall not be less than six months or with a fine which shall not be less than Rs. 100 or more than 500 or with both" (Section 33 (1) of the Act).

4.4.12. State Shops and Commercial Establishments Act, 1969

Different states have enacted their own statutes for regulating conditions of workers in shops and establishments. These Acts were passed with the view of regulating the conditions of workers in shops and commercial establishments. They apply to shops, commercial establishments, restaurants and hotels and places, of amusement. This particular Act "prohibits the employment of children in shops and commercial establishments". They cannot be employed even as a family member of the employer. This Act has been amended from time to time in order to meet the needs of changing situations.

The definition of 'child' is pegged at between 12 and 15 years. Under this Act, "the working hours of the children are generally from 6 a.m. to 7 p.m. The maximum number of hours of work allowed for children is usually 5 hours per day or 30 hours per week; for adolescents, it may be higher at 7 hours per day or 42 hours per week". These provisions regulate the daily and weekly hours of work, rest intervals, payment of wages, overtime, pay, holidays with pay, annual leave, employment of children and young persons.

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[108] The full text of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Accessed 27 April 2017,URL:http://labour.nic.in/upload/uploadfiles/files/ActsandRules/Service_and_Employment/beedi%20act.pdf.

4.4.13. Juvenile Justice (Care and Protection of Children) Act, 2000

With the intention to unifying the laws with regard to juveniles, the government of India introduced this Act[109] in the year 2000. The purpose of introducing this Act is to combine and amend the laws which was at a time showed conflicts while implementing at the court of law. Some of the laws were stringent to children however violated best interest of the children and were unable to give proper care and protection to the children. The friendly environment at the time of court trial may ease the children from the stress. The prime objective of this Act is to assure the children safety and protection and ultimately rehabilitating them at a secure place.

Under this Act, the Official Gazette of the State government may announce a notification to create district wise Welfare Committees to protect the children as per the provisions of this Act (Section 29 of the Act). The social integration is very important for the development of the child who face the trial under this Act. The re-integration of the child would begin while child's stay at the re-habilitation home. Under the provisions of the Act alternatively the rehabilitation could be "carried out through adoption, foster care, sponsorship and the child will be sending to an after-care organisation" (Section 40 of the Act). This Act is in line with the provisions of UNCRC and prohibits and regulates the exploitation of child labour.

4.4.14. The Commission for the Protection of Child Rights Act, 2005

This Act provides for the "constitution of the Commission for the Protection of Child Rights, and Children's Courts for providing speedy trial of offences against children or of violation of child rights and implements the UN Convention on the Rights of the Child (acceded 11th December 1992), and the National Charter for Children, 2003".[110] This Act is enacted in line with the provisions of the UNCRC to protect the rights of the children.

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109. The full text of the Juvenile Justice (Care and Protection of Children) Act (No 56 of 2000), Accessed 01 May 2017, URL: http://wcd.nic.in/childprot/jjact2000.pdf.

110 The full text of the Commission for the Protection of Child Rights Act, 2005 (No. 4 of 2006), Accessed 22 May 2017, URL: http://wcd.nic.in/The%20Gazette%20of%20India.pdf.

4.4.15. Right of Children to Free and Compulsory Education Act, 2009

The government of India passed the above Act in 2009 and came into effect on 01st April 2010. This Act provides "every child between the ages of 6 and 14 years old has the right to free and compulsory education in a school in the neighbourhood until completion of elementary schooling".[111]The amendment to the Constitution of India in 2002 inserted the Article 21 A in the Constitution and further to that the Act was introduced in 2009. The prime objective of this Act is to "provide free and compulsory education of all children in the age group of 6 to 14 years as a Fundamental Right in such a manner as the State may, by law, determine".

The Right of Children to Free and Compulsory Education (RTE) Act, 2009, guarantees all the children with full time primary education at free of cost, and the facilities should not be compromised with the quality of the education which the other same age children receives in a normal school. The essential requirements which is carried out by the State or Central government should be followed while implementing this Act.

On 01st April 2010 the RTE Act effectively came into force however confirmed the implementation of Article 21-A. The words "free and compulsory" which is used in the Act has great importance and focusing on the prime objective of the Act. The Act says that the children should be provided with "free and compulsory education". But it has also another interpretation in the Act which says that "Free education means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education". However, it is clear that the Act is applicable only to the government run school or government aided schools and the children should receive free education only in these institutions. If the children admitted to any private school which is not running under the government aid is excluded from this Act, and need to pay the fees which is demanded by the private school authorities.

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[111] The full text of the Right of Children to Free and Compulsory Education Act, 2009 (No. 35 of 2009),Accessed 20 June 2017, URL: http://ssa.nic.in/rte-docs/free%20and%20compulsory.pdf.

The Central and State governments are obliged to provide compulsory free education to the children under this Act. This is the duty of the government make sure the child with the age between 6 and 14 years of age admitted to the proper school and also make the facility to monitor the child's regular attendance to the classes and completing the course without break. The government should appoint education officers to monitor the progress of the students at the school hours and should report to the government if any concerns pointed at any of the school. The education officers are duty bound to implementing this Act in their jurisdiction and regular report should send to the concerned authorities as specified under the Act. By implementing this Act, India has moved forward and delivered the rights to the children who are protected under the Constitution of India.

This Act is important and correlate with eliminating the child labour. Children between the age of 6-14 deprived with education because of poverty of the parents coupled with non-functioning of schools.[112] The non-functioning of school is adversely affect the children however there will be less enrolment, school dropout, pull out or push out of children leading to child labour. Moreover, some time the children also migrate with their parents however children can easily deprive from the schooling facility because of the language problem. The migrated place might not be having the same language in the school which the child followed in his/her previous school. It may discourage the parents to enroll their children in the different language schools. In those situations, the parents may allow children to work however it may lead to child labour. For avoiding this situation and retaining the children at the schools the parents or guardians should fulfill the fundamental duty enshrined under the Art 51A of the Constitution.[113] Further to that the government should also provide the following: "arrange school building, procurement of teaching learning aids in time; finalizing curriculum, course content and textual materials which will be attuned to the needs of day to day life; selection, orientation and training of teachers; curbing teacher's absenteeism; teaching learning process; how to make the same joyous,

[112] The non-functioning of schools included absent of teachers or staff members, deprived of facilities such as such as books and other study materials, bench and desks, etc.

[113] Article 51A guarantees children between 6 and 14 years should be allowed to schooling thus provided with education.

exciting, interesting, innovative, relevant and worthwhile; monitoring and evaluation of the content, process and outcome of learning".

4.5. SUMMING UP

The Indian Constitution is clearly mentioned and justifies the socio-economic and political justice to each and every citizen of its nation through its preamble and provisions underlying in each and every section. At the same time, the special provisions also provided for protecting the children from the exploitation of child labour in line with the international conventions and declarations. The provisions also compelled the States and local governments to make sure the safety of the children and young persons against the exploitation by the family in the name of family sustenance which leads to child labour. The above analysis of different provisions of the Constitution of India makes it clear that the State is duty bound, and obliged to provide protection to the children and promote the welfare of the children as per the provisions enshrined in its provisions. Moreover, the government of India enacted different Acts in line with the international norms to protect the children from the exploitation of child labour and promote the welfare of the children. The above clarifies to what extent government of India took the initiatives to protect children from the exploitation of child labour by enacting different acts in line with the provisions under the Indian Constitution and the international Conventions.

However, in spite of the Constitutional provisions, with regard to prohibition and regulation of child employment, several laws were enacted to fulfill the spirit of the Constitution with an objective of improving working conditions of such children and in protecting them against abuse, exploitation and health hazardous in line with the international norms, but their implementation is not up to the expectation (Blakely 2009). Although the Constitution of India, supplement with legal frameworks and national policies widely taking initiative to implement and protect the welfare of the children and prohibition of them from the exploitation of child labour, still the legal loopholes and failure of the implementation procedure blocking the main purpose of the child welfare schemes. In order to avoid the same, a comprehensive law on child, placing the 'child' in concurrent list by amending the Constitution would help in

proper implementation of welfare programmes for the children and the comfortable co-operation between Centre and States would render quick administrative actions.

The penal provisions of various labour legislations are inadequate in respect of violation of working hours and thereby the employer remains undeterred. It is, therefore, desirable to prescribe certain deterrent punishment so that the commission of similar offence is not repeated and such punishment may also set an example to other employers not to violate the legal prescriptions. In spite of crystal clear statutes to prohibit and regulate working children in India, the government need to come out with stringent punishment to the violators and facilitate the alternative facilities to the downtrodden families in the society to uplift them socially and economically, only then the social evil child labour could be tackled with full strength.

CHAPTER - 5

ROLE OF THE INTERNATIONAL INSTITUTIONS, INDIAN JUDICIARY AND DOMESTIC POLICIES IN ELIMINATING CHILD LABOUR IN INDIA

5.1. INTRODUCTION

The general rule of the international law is that the member states have binding legal obligations to implement International Conventions, Recommendations and Declarations at the national level. As abovementioned, international law has been criticised for the absence of proper enforcement mechanisms. It is true that there arenumber of hurdles to the effective implementation of international standards on child labour. These hurdles include jurisdictional limitations on national laws; lack of resources to find out where child labour exists, to rescue and rehabilitate child labourers; and the lack of coordination between state and non-state actors who are working for the elimination of child labour (Cullen 2007: 225). Here comes the role of the international institutions and Indian judiciary to help the member states to implement international norms at the domestic level. It mainly comes in the form of technical assistance programmes, court decisions, national policies etc.

As an important subsidiary organ of the UN, the ILO has been playing an important role in providing technical assistance to member states through its International Program on the Elimination of Child Labour (IPEC). This chapter explains the role of the international institutions especially International Labour Organisation (ILO) and other specialised agencies and the role of Indian Judiciary, relevant policy frameworks, role of the National Human Rights Commission and role of the Non-Governmental Organisations in regulating and prohibiting child labour in India. The provisions of the international Conventions, Indian Constitution and national legislations enforced through courts will be examined in detail. Additionally, the policy decisions and programmes from the government agencies and non-governmental organisations which are undertaken nationwide to eliminate child labour will also be examined in this chapter. Apparently, an analysis of different mechanisms which help to regulate child labour in India in line with the international norms and domestic legislations would be helpful for the further explorations in this regard.

5.2. ROLE OF THE INTERNATIONAL INSTITUTIONS

The activities of UN and other specialised agencies are commendable—they have tirelessly supported the elimination of child labour by initiating different programmes at the grassroots level and providing technical assistance to the member states. ILO is one of the important agency of the UN system which has been taking various initiatives in this direction and a prominent one is IPEC. It is established with the objective of eliminating child labour through education, social mobilisation, sensitisation, legal enforcement, and strengthening of institutional capacity (Hilowitz 1997: 249). Apart from this, the ILO also supported member states to enhance their planning and implementation through Child Labour Action Support Project (CLASP) and National Child Labour Project (NCLP). Moreover, other specialised agencies like UNICEF, UNESCO, UNDP, WFP, and World Bank also helped India to promote child welfare policies and eliminate child labour.

5.2.1. INTERNATIONAL LABOUR ORGANIZATION (ILO)

ILO is one of the specialized agencies of UN which has been working on child labour and adopted international Conventions and Recommendations to curb child labour at the global level. Its activities could be divided into three stages. Firstly, the legislative stage. At this stage, ILO adopted various Conventions and Recommendations and application of International Labour Standards to curb child labour at the national level (Stokke 1999: 144). In the second stage the ILO tried to expose the problem of child labour to the public through its publications and awareness programmes, and meetings, highlighting the results of its above actions (Stokke 1999: 145). Thirdly, providing a helping hand to member states through technical assistance Mishra & Mishra 2004: 62). The first stage of ILO's action which is the adoption of Conventions and Recommendations to protect children from exploitation has been explained in the previous chapter. The second and third stages are explained in this chapter.

Beginning in the early 1980s, the ILO began a new approach to combat child labour, initially through a public information campaign. Further, in December 1991 the ILO launched the IPEC (ILO What is IPEC). IPEC provided with technical and other

assistance to requested member countries on a step by step basis to eliminate child labour (ILO Child Labour 1996: 20). IPEC has prioritised its aim to eradicate child labour in its worst forms with the help of national governments. As a first member country to join the IPEC programme, India signed a Memorandum of Understanding (MOU) in 1992.

The priority programmes which are targeted under the IPEC at the initial stage are "children working under forced labour and are in bondage; hazardous working conditions and occupations; vulnerable children who can be targeted for exploitation and abuse" (ILO Child Labour 1996: 34).

Apart from the above, the IPEC also sets the following broad-based objectives to help member states to eliminate the child labour at the domestic level. They are "motivating a broad alliance of partners to acknowledge and act against child labour; carrying out a situational analysis to find out child labour problems in a country; assisting with developing and implementing national policies on child labour; strengthening existing organizations and setting up institutional mechanisms; creating nationwide awareness on the issues; coordinating with communities and workplaces; promoting the development and application of protective legislation; supporting direct action with (potential) child workers for demonstration purposes; replicating and expanding successful projects into the programmes of partners; mainstreaming child labour issues into socio-economic policies; making programmes and budgets and building awareness of national obligations under international law" (ILO What is IPEC: 7).

The IPEC is flexible in responding to the country's needs in addressing the specific issue they face on child labour (Joseph 1997: 45). Its programme is a "multi-sectoral strategy that starts with a country-wise situational analysis of the child labour" (ILO-IPEC 1996: 12). It has been working towards achieving its objectives through country-based programmes and campaigns to promote an "effective implementation of ILO child labour conventions" (ILO Child Labour 1996: 8). Through these programmes, children facing exploitation are withdrawn from the workplace and are rehabilitated at schools or engaged in healthy and developmental activities (ILO What is IPEC: 7).

Believing that child labour will only be eliminated through national efforts, IPEC aims to strengthen national capacities and promotes worldwide campaigns to generate awareness about the severity of the problem. In that direction, IPEC initiated programmes to "develop and implement measures which aim at preventing child labour, withdrawing children from hazardous work and providing alternatives, and improving the working conditions as a transitional measure towards the elimination of child labour" (ILO-IPEC 1996: 12).

IPEC becomes available for the member states by signing an MOU with ILO and by demonstrating their commitment towards the elimination of child labour (Lansky 1997: 245). As per the MoU with the governments of member states, the ILO execute the Action Programme through a sub-contract with NGO's (ILO-IPEC Highlights 1996: 9). Further, the National Steering Committee will be appointed to look into the development of the said programmes. The national programme coordinator will oversee the daily activities and implementation of the programme and update the National Steering Committee. The Director of the ILO Area Office supervises the national coordinator (Mishra and Mishra 2004: 66).

Apart from the National Coordinating Committee, the Programme Steering Committee (PSC) also reviews the general strategy of IPEC and the national programmes (ILO 1999c: 12). The review also includes checking the budget and designing a work plan for two years. The PSC consists of one member each from the ILO, the donor, the national governments, representatives of the employers and employees, and UNICEF and observers from UNESCO (ILO What is IPEC). The Office of the Coordinator submits an annual report to PSC on the basis of that the PSC will prioritise the programme (ILO What is IPEC). Initially, the ILO fixed the time period of ten years for the IPEC, but it recommended for a flexible nature depending upon the country and nature of the exploitation of child labour in that country. The IPEC determines the ultimate goal as rehabilitation of the children through providing non-formal education.

The IPEC partners are playing a major role in implementing its objectives. There are different ministries at the national level, those which deal with children, adolescents,

social welfare, education, youth affairs, etc., and central coordinating units such as National Planning Commission and other departments, workers organisation and NGOs (ILO What is IPEC). The concerned ministries coordinate with IPEC and national level partners to implement the objectives of the particular projects. The NGOs and workers organisations are mainly focused on conducting awareness programmes with the working children, their parents, employers and local communities to implement action programmes (ILO What is IPEC). NGO's also helped with media, students at the universities, judiciaries etc., in the fight against child labour and further to that rehabilitation of the children and enrolment of them in non-formal education (ILO What is IPEC).

Additionally, the IPEC also conducts simultaneous programme "Action against the Most Intolerable Forms of Child Labour" during the period between 1997 to 2001 (ILO What is IPEC). This programme is specially meant for abolishing the bonded child labour, trafficking in children, hazardous child labour, and domestic child labour.

5.2.1.1. International Programme on Elimination of Child Labour (IPEC) and India

The IPEC was established in 1992 and India was one of the first member states to join the IPEC.[114] At that time, the Indian government estimated that around 11.28 to 17.2 million children are engaged in various types of child labour (Kerpelman 2000: 5). But according to non-governmental sources the figures are between 44 to 110 million (Kerpelman 2000: 5). A survey said that through IPEC programme in India, the first year itself approximately 1,00,000 children were rescued from hazardous occupation and rehabilitated them in schools (Kerpelman 2000: 6).

At the initial stage of the programme, the key objectives of IPEC in India included "strengthening the capacity of the government, industrials groups, trade organisations, workers' unions and NGOs to develop and implement measures geared towards the elimination of child labour; promote initiatives to withdraw children from hazardous

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[114] In 1992, India became the first country to sign a Memorandum of Understanding with the ILO to implement IPEC as a supplement to its National Child Labour Project.

work and provide them with alternatives; improve working conditions where immediate withdrawal from work was not possible”.[115]

Apart from the above, the IPEC supported many action programmes over the last decade in order to fulfil the objectives.[116] Its initiatives also included a considerable number of action programmes that were implemented through NGOs. Through this programme, IPEC has been developed a strategy to co-operate more with NGOs which are already working for the welfare of the children (ILO What is IPEC).

In India, IPEC also made alliances with trade organizations and workers unions mindful of gaining faster and result-oriented eradication of child labour.[117] The year 1993 was marked as the year of IPEC-Trade Union alliances and to celebrate the success of this alliance. On this occasion, the V.V. Giri National Labour Institute (VVGNLI) invited industrialist, trade unions, NGOs and other partners for a child labour workshop. The outcome of the discussions was the trade unions to enter into an agreement on a “common platform for action” in combating child labour.

Moreover, IPEC has built close working relationships with the government institutions and made them partners under this programme.[118] Following a Memorandum of Understanding between IPEC and CBWE, the latter agreed to introduce the subject of child labour as a module in its training programmes. The

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[115] The key objectives of the IPEC is foundation for the programme. The full information about the IPEC is available at http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipec/responses/india/action.htm. Accessed 09 August 2017.

[116] The IPEC supported two important large scale projects were the Integrated Area Specific Project and the Andhra Pradesh State Based Project against Child Labour. The State wise percentages of Coverage of Action Programmes in between 1992-2004 are 10% in Kerala, Karnataka, Gujarat, Bihar and Manipur; 20% Maharashtra, Madhya Pradesh and Orissa; 30% Rajasthan and Uttar Pradesh; and 40% Tamil Nadu, Andhra Pradesh and West Bengal. IPEC’s Coverage Action Programmes divided between Civil Society Organizations (1992-94); Focus on Trade Unions and Employers Organizations (1994-98); Complementing action by Central and State Governments (1998-2003) and Large interventions with Sectoral and Area Based focus (2003-2004).

[117] The Trade Unions which are acted as partners of IPEC were All-India Trade Union Congress (AITUC), Bharatiya Mazdoor Sangh (BMS), Centre of Indian Trade Unions (CITU), Hind Mazdoor Sabha (HMS), and Indian National Trade Union Congress (INTUC). Initially these Trade unions were hesitant to work on child labour, but eventually they recognized the impact of the child labour that wherever children worked, the wages of adult workers were significantly depressed.

[118] The partner government institutions are Central Board of Workers’ Education (CBWE), VVGNLI, Maharashtra Institute of Labour Studies and the Gandhi Labour Institute. The CBWE has always played an important role along with IPEC to eradicate child labour in India and providing education to workers in its regional centres.

IPEC has also taken a step further for holding dialogues with employers' associations and promoting partnerships. The co-operation between the worker's and employer's associations have enabled the IPEC to mobilise broad-based campaign against child labour across the communities. The effects of these campaigns are widely visible. For example, on one hand, the trade unions have strengthened the struggle against child labour at grass-root levels, on the other hand, more and more industries have brought about changes in technology so as to discourage child labour and increase adult employment in various sectors.

Apart from alliances with workers' union and government agencies, IPEC also coordinated with family members of the children who work in the different industries. IPEC assessed the impact of its measures on the family of the child workers when the latter was taken out of work. A study revealed that the children are engaged by their parents in the industry work only for the benefit of the family (Anker et al 1998: 13). These findings motivated IPEC to work with World Bank and other research institutions throughout India. After five years of the initiative, a four-party evaluation meeting was conducted under the supervision of ILO.[119] The meeting recommended for advancing combined programmes to eliminate child labour. Therefore, the IPEC expanded the programme with the NCLP[120] which was a Government of India project have been in existence since 1987. The Andhra Pradesh State-Based Project (APSBP)[121] was another important initiative for the elimination of child labour. Through this project, IPEC increased its influence with state governments by which its intervention directly benefited a number of children who were rehabilitated and admitted to schools.[122]

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[119] The four parties included representatives from the Indian government, trade unions, employers and NGOs.

[120] The Government of India record shows that it was able to target and rehabilitate around 40,000 children within the first three years of IPEC in India. The expansion of the NCLP project has given better results with an increase from nine to fourteen in 1994 and has since continued to expand considerably. This project is exclusively funded by the central government and upon this project and ILO's strong initiative, the state governments prepared for legislations to eliminate child labour at the grass root level. State governments also initiated some of the policies for making awareness about child labour and admission of children in schools.

[121] The Andhra Pradesh State Based Project has been involved in indirect measures as well as policy action against child labour. This is another key project with the co-operation between government of India and IPEC. But this project mainly focus on Andhra Pradesh.

[122]The ILO report shows the figures of benefited children through IPEC's intervention. Through respective partnerships with NGOs, trade unions and employer organizations, the figure of children who are benefited increased to 90, 999, 7,820, and 280 respectively. Employers have mostly been

The ‘intermediate partners action programme’ is another major IPEC initiative to combat child labour.[123] The prime objective of this initiative was that influencing the parents to send their children to schools instead of the workforce. IPEC’s assessment revealed that the awareness of risk and negative consequences of child labour should be understood by the parents. Until then, eradication of child labour is difficult. By keeping this formula, the action programme adopted some of the strategies to make awareness among the different communities.

Under this programme, India also has undertaken research to understand the implications of child labour. It also conducted labour inspectors’ training and training project-partners like NGOs and other institutions related to child labour (Mishra and Mishra 2004: 65). Under this programme, the government also initiated to set up Child Labour Cell in the National Institute of Rural Development at Hyderabad to assist governments in introducing policy changes to combat child labour in rural areas (ILO-IPEC 1995: 10).

The first stage of the IPEC started in the year 1992 and ended in 1999. IPEC’s main objective of “eliminating child labour ensures that children are not only protected from hazardous and exploitative work but also allowed to develop into productive adults” (ILO-IPEC 1995: 11). On the basis of this, the programme identified three broad aspects i.e., “withdrawal of working children from the workforce and their rehabilitation; improvement of working conditions for older children and reduction in their working hours; and prevention of potential child labourers from entering the labour market” (ILO-IPEC 1995: 11).

The programme tried to withdraw the working children from the workforce and provided with primary education and rehabilitation as per their age so that children could be away from the workplace and gradually mingle with the mainstream (ILO-

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involved in indirect action against child labour. Over 1,42,299 children have directly benefited from IPEC intervention between 1992-2002, which includes the 36,000 children under the integrated Area Specific Project and 7,200 through the Andhra Pradesh State Based Project; see, www.ilo.org.

[123] The intermediate partners’ groups are very influential in local communities. This strategy of IPEC successfully includes parents, teachers, and employers; employer and workers organizations, factory and labour inspectors, research and training institutions, government ministries and departments at the national and local level, and NGOs.

IPEC 1995: 9). Moreover, the programme included with re-structuring of school curriculum provided with facilities for pre-vocational skill development. It also introduced a transitory rehabilitation centre to influence, get admission and retain the working children.

The IPEC action programmes directly focus on parents of the working children, create among them an awareness of the severity of child labour, and enlighten them on existing child labour regulations (ILO Evaluation Report 1998b: 28). It also tried to explain the parents and communities about the exploitation of the children by not paying proper wages for their work, consequences of child labour, extra working hours, etc. (ILO Evaluation Report 1998b: 28). Apart from the above, IPEC also informed the judicial officials about the consequences of the child labour through submitting genuine reports on the problem. Based on that the judicial officers started taking stringent actions against the violators (ILO Evaluation Report 1998b: 29).

Moreover, this programme also puts more effort on creating educational awareness among the families of children, as most of the families are less uneducated. This programme mainly focuses on children of five and seven years old and encourages them to enroll in elementary education. The programme also initiated some of the strategies for making the schools attractive and friendly to the working children (ILO Evaluation Report 1998b: 29).

Another major strategy of IPEC for eliminating child labour is counselling parents through training programmes and also making strategies to increase the income of the parents. It is automatically zeroing the dependency of the parents on the income of the children. Moreover, a few programmes have specifically targeted mother of the children who is rescued, rehabilitated and enrolled in non-formal schools, which included training on entrepreneurial development and skill upgrading of these mothers (ILO Evaluation Report 1998b: 30).

The role of the teachers is also very important for eliminating child labour. Therefore, IPEC came out with a strategy to engage teachers in their awareness programme. The strategy included *inter alia* innovative teacher-training programmes and urging teachers to attend the same. Through this training programme, the IPEC successfully

engaged teachers in spreading awareness about the severity of child labour to society at large.

“Community mobilisation” is another strategy adopted by the IPEC to attract working children towards the school. The programme used trained mobilisers and social workers to motivate children to “leave the work and join the schools; convincing parents to send their children to schools; educating employers to refrain from recruiting child labourers; and encouraging trade union leaders to sustain pressure on employers” (Khurana 2003: 125-132). This programme also made a strategy to generate public awareness against child labour. It engaged trade unions, student community, religious leaders, women’s groups, legal professionals etc., in promoting awareness programmes.

Moreover, the IPEC also made a strategy of awareness programme through a combination of several identities and their interventions effectively to reach the children and their parents who are exploited by the employer or family. Along with that, a celebration of “Anti-Child Labour Day, Children’s Day, May Day and World Day against Child Labour” influenced much in the society and enlighten the children’s rights. To this end, the IPEC successfully used rehabilitated child labourers to influence the general public and other children through this awareness generation programme (Khurana 2003: 125-132). These above awareness programmes created pressure groups and make alliances in local and national levels to eliminate child labour.

The second stage of the IPEC was started in1999 and completed in 2002. The initial stage of the IPEC did foundation work. The smaller action programmes and approaches are influenced much in the first stage of the programme therefore, the ILO decided to continue the same programme at an advanced level in the second stage. The collaboration between the government institutions, NGO’s and other social partners made the second stage successful (Joseph 1996: 13).

Apart from the above, the IPEC and the Government of India jointly planned for two bigger projects with the view to grapple with child labour more effectively. These are Integrated Area-Specific Project (IASP) and APSBP.

In 1999, the IASP was introduced in India and divided between six districts in four States[124] and implemented through NCLP. The strategy was mainly implementing the three-fold direct intervention policies for stopping children influencing towards workforce (ILO-IPEC Evaluation Report 2003: 29). It encouraged parents to put their children to schools. It also identified and rescued children from the hazardous industries and rehabilitated Transitory Educational Centres (TECs). Further, the children are also provided with formal education or skill development training (ILO-IPEC Evaluation Report 2003: 29).

The report shows that the project has successfully reached its target and approximately 9,600 children were rescued and rehabilitated at TEC's (ILO-IPEC Evaluation Report 2003: 30). They were provided with formal education and other facilities to improve their health and nutrition. The report also said that the community groups' efforts received good results (ILO-IPEC Evaluation Report 2003: 30).

This project influenced parents of the rescued children to communicate with other people in the community and made them aware of the importance of education. This project also helped family members of the rescued children to be free from the debt or bondage. The project has three-fold benefits to the family members of the children, e.g. escape from the debt trap of moneylenders, financial empowerment, and formation of a collective pressure group at the local level. The strategy also included collecting resources from the civil society in order to conduct an awareness programme for eliminating child labour from society. This project is implemented at both the macro[125] and micro[126] levels.

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[124] The six districts in four states are Coimbatore and Virudhunagar in Tamil Nadu; Mirzapur and Ferozabad in Uttar Pradesh; Jaipur in Rajastan; and Markapur in Andhra Pradesh.

[125] The macro level focused on sensitizing the public at large through mass media and interventions at the district level (workshops, presentations, photography and poster competitions, plays and exhibitions, etc.).

[126] The micro level believes with the awareness generation were towards forming a community support structure, other activities were directed at village and individual levels. To this end, community support groups (CSGs) - which typically consisted of a chairman, secretary, village administrative officer, post master, NGO representative, rural welfare officer, bank manager, president and secretary of SHGs, head teacher, NCLP and IASP field officers, voluntary health nurse, employers, trade union representative, and representatives of relevant government programmes such as the Integrated Child

This project also developed a tripartite system under which the employers' association and trade unions were involved with the decision-making process. They helped to run the bridge schools and awareness programmes in the community and at the workplace. This resulted in the decrease of child labour in organised sectors. They also helped to remove children from informal sectors by developing action plans to make parents of the children aware of the problem (ILO-IPEC Evaluation Report 2003: 29).

The second joint project APSBP was introduced between 2000 and 2004. This project was formulated through collaboration between the Government of Andhra Pradesh, UKDFID and ILO (ILO-IPEC Evaluation Report 2003: 32). The primary objective of this project was to enroll the maximum children to school. The Government prepared a policy for universalisation of education until 15 years of age.

This project was worked out a strategy in three stages namely macro, meso and micro levels. At the macro level, government departments received assistance for the strong policies to eradicate child labour within the time period.[127] At the "meso" level employer's, worker's associations and other ILO partners have influenced the government policies on child labour. The result was "federation of unions to control the child labour". The micro-level strategy was to eliminate the child labour from grass root level.

The APSBP second stage institutionalised the previous projects of the first stage and assisted for the strong governance. In Andhra Pradesh, the project was implemented in Mahabubnagar, Kurnool and Hyderabad city by using convergence models to eliminate child labour (APSBP 2004).

Development Services (ICDS) - were formed in each village. These CSGs acted as a kind of 'neighbourhood watch' on the issue.

[127] Work with the state government took place at four levels of governance. At the state level, the project worked with the departments of education, labour, and women and child development to channel the experiences and learning that emerged from its work at the grassroots level. The project also worked with senior policy-makers in government, particularly with the chief, education and labour ministers and with the secretaries of these respective departments. At the district level, the project worked with district collectors and with the district administration. At the mandal (administrative unit) level, the project sensitized mandal officials on child labour issues and helped considerably in capacity-building programmes. The project also worked directly with village officials.

Another major project carried out under the IPEC was INDO-USDOL (INDUS).[128] The prime objective of the project was rescue and rehabilitation of the children aged between 8 and 14. The project was identified with five states in India and carried out its objectives. The selected five states in India are Uttar Pradesh, Madhya Pradesh, Tamilnadu, Maharashtra, and Delhi.[129] The project identified 10 hazardous sectors from the twenty-one districts across the selected five states. The project target was to rescue and rehabilitate 80,000 child labourers but the project has successfully reached the target and rehabilitated 1,03,152 children before the end of the project.[130]

The project was initially started with identifying children who are working in the hazardous occupation. For achieving this, a survey has been carried out in the working area of the children in the particular identified districts. Then targeted the children who are working in hazardous occupations and tried to withdraw them from the workplace. The project followed the next step of providing transitional education to rescue children from the child labour and subsequently made arrangement of systematic education under the mainstream education.

The project also made arrangement to protect the families of the children withdrawn from the child labour because most of the families are depending on the children's earnings. However, income generating alternatives are viable to solve this problem. Moreover, the Department of Education contributed and encouraged the strengthening of public education to benefit the child workers. The objectives of this project also included with "monitoring the child labour; social mobilization against the child labour; capacity building of national, state and local institutions, and raising interest towards Action against Hazardous Child Labour in other States" (APSBP 2004).

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[128] The INDUS project was implemented in India between 01st January 2003 and 31st March 2009, jointly funded by the Department of Ministry of Labour, Government of India and the Department of Labour, United States of America (USDOL). The full information about the project is Accessed 20 December 2017, URL: http://www.ilo.org/newdelhi/whatwedo/projects/WCMS_124679/lang--en/index.htm. see, https://labour.gov.in/childlabour/indus, Accessed 20 December 2017.

[129] The project has selected few states in the particular states on the basis of the high density of child labour exploitation. Under this project the selected districts in are Moradabad, Allahabad, Kanpur Nagar, Aligarh and Ferozabad in Uttar Pradesh; Damoh, Sagar, Jabalpur, Satna and Katni in Madhya Pradesh; Kanchipuram, Thiruvannamallai, Tiruvallur, Nammakkal and Virudhunagar in Tamilnadu; Amravati, Jalna, Aurangabad, Gondia and Mumbai Suburban in Maharashtra; and NCT Delhi.

[130] For the detailed information see, http://www.ilo.org/newdelhi/whatwedo/projects/WCMS_124679/lang--en/index.htm

After completion of the INDUS project, the new USDOL project was started in March 2009. The prime objectives of the project are "contribute to the prevention and elimination of hazardous Child Labour, including trafficking and migration of children for labour".[131] This project identified five states of Indian territory. They are Orissa, Bihar, Gujarat, Jharkhand, and Madhya Pradesh. From these five states, the project was identified two each district where child labour is in maximum numbers.[132] This project was contributed by the United States with the amount of US$ 6,850,000 was run up to 42 months implemented jointly (Ministry of Labour & Employment 2009).

5.2.2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

UNESCO is one of the specialised agencies of the United Nations was established in the year 1946 (United Nations 1997: 143). It aims at promoting co-operation among nations through education, science and culture, and thereby contributes to peace and security and enhances universal respect for justice, fundamental freedoms and human rights, including child labour.[133] Through spreading the importance of education, the UNESCO has been trying to enroll the children more into schools thus indirectly helping the elimination of child labour.

UNESCO's work includes many aspects of the welfare of the community at large concerning human rights in particular. The Convention Against Discrimination in Education, 1960,[134] can be compared with the ILO Convention concerning 'discrimination' which includes "any distinction, exclusion, limitation or preference which being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has a purpose or effect of nullifying or impairing equality treatment in education" (UNESCO 1995: 50).

[131] The New IPEC project Converging against Child Labour is called as USDOL and fully funded by US Department of Labour. For more information's see, https://labour.gov.in/childlabour/new-ipec, Accessed on 29 December 2017.

[132] The selected districts are covered under this project are Cuttack and Kalahandi Orissa; Sitahmari and Katihar in Bihar; Surat and Vadodara in Gujarat; Ranchi and Sahibgnj in Jharkhand and Jabalpur and Ujjain in Madhya Pradesh.

[133] UNESCO's founding vision was born in response to a world war that was marked by racist and anti-Semitic violence. For more information about the activities of the UNESCO is available at URL: https://en.unesco.org/about-us/introducing-unesco. Accessed 05 November 2017.

[134] This Convention was adopted on 14th December, 1960 and entered into force on 22nd May, 1962; Full text of the Convention is available at UNTS, vol.429, p. 93; For more information see, http:www.unesco.org/most/rr4.educ.htm. Accessed 17 November 2017.

UNESCO believes that although promotion of education is important for eradication of child labour, the “poverty is the foundation for the growth of child labour”. Thus, tackling poverty is as important and it should take place in the first place. UNESCO has been engaging its organisational strength and introduced different programmes to eradicate poverty and spreading literacy at the world at large including India. UNESCO believes that it is important to provide education to every child including street and working children, but emphasised that only this will not eliminate child labour from the society. It also believes that facilitating every child with education is a better idea, that will help to bring back the children including child labour and street children into the mainstream of the schooling and they can enjoy their right with their own family and friends.

The education will build a future for the children (UNESCO 1995: 50). Therefore, UNESCO comes out with a programme called “Basic Education for All”. This programme mainly intended to help the member countries to make awareness of education and involve the government authorities and NGO’s to spread the importance of education. So, the message will reach the prospective learners, especially girls and women and certain particularly disadvantaged groups including child labour (UNESCO 1995: 50). This programme indirectly helping to curb the child labour as the programme designed to reach every child at the national level. Moreover, the United Nations advocacy against child labour is benefiting much from UNESCO’s countrywide network of schools.[135] This network of schools especially focussing on domestic child labour, and mobilising and providing them with support to join the school by leaving the workforce. The main beneficiaries of this programme are the domestic child labour.

Since 1990, the UNESCO has been taking initiatives to educate street and working children in India. The initiatives have been coordinated jointly by the Government of India and UNESCO. One of the important initiatives in this regard is “Education Programme for Children”. Through this programme, UNESCO contributed substantial financial and technical support for educational activities for the needy

[135]. UNESCO promoted Associated Schools Programme (ASP) network, in which more than 100 schools are involved and indirectly supports eliminating child labour through promotion of education.

children. For achieving the goal, the UNESCO collaborated with government and other agencies and encouraged mobilisation of the resources. The cooperation also continued to promote group analysis, project designs and its implementation with the help of expert members. Cooperation also extended to the regional level and influenced the other partners to join the programme. UNESCO holds the regular meetings with the regional partners and discussed the importance of the education of the children who are prohibited from the schooling for different reasons including child labour. The meeting also focussed on the needs of the particular region for improving the facility to provide the education to children within the framework of "Education for All" programme (UNESCO 1995: 55). Under this programme, UNESCO supported different projects in India with the intention to provide education which indirectly helps elimination of child labour.[136] The support which the needy children received from the UNESCO has changed the life of the many children. Through this programme, the street children and child labour has been rescued from the urban area of the Kolkata and initially rehabilitated in non-formal schools, and then gradually shifted to mainstream schools.

Apart from the above, with the intention to provide "Education for All" the UNESCO also supported Delhi based NGO, "PRAYAS". The assistance received by this NGO from UNESCO mainly focussed on developing innovative educational material to complete the needs of street and working children who are rescued from the street and workforceat the urban areas.[137] These above activities of UNESCO indirectly helping the Government of India to prevent and regulate child labour, thus it is substantiating the role of UNESCO in eliminating child labour in India.

5.2.3. UNITED NATIONS CHILDREN'S EMERGENCY FUND (UNICEF)

UNICEF is one of the important specialised agency of the United Nations which has been playing an important role in child welfare. Founded in 1946, initially to care for

[136] Under the Education for All programme, the UNESCO collaborated with two prominent NGOs in Calcutta namely, CINI-ASHA and Don Bosco Ashalayam. The main objectives of these two NGO's are providing education to working children and the street children. Moreover, through the help of UNICEF these NGO's running the Platform schools for children in and around Railway Stations.

[137] PRAYAS is an NGO working in the field of Child Welfare. It is one of the Partner of Global Education for All program, facilitated by UNESCO. For more information's URL: http://www.prayaschildren.org/project.html. Accessed 25 November 2017.

the children of war-torn Europe, its mandate was gradually expanded. Within the United Nations structure, apart from ILO, both the UNICEF and UNCHR has been contributed much for curbing the child labour (UNICEF 1997: 10).[138] One of the primary objective of the UNICEF to protect children from the exploitation and providing primary education to children.[139] UNICEF urges and focuses on immediate "elimination of hazardous and exploitative child labour and urgent support for education". Apart from encouraging free education for the children, the UNICEF has also taken initiatives to strengthen child development, child protection, promotion of family income, and overall basic facilities (UNICEF Report 1996:12). For promoting the above objectives, the UNICEF and Government of India jointly collaborated in some of the programmes. UNICEF has also provided financial and technical assistance for promoting education and legal enforcement along with workshops and discussions on child labour at the national and state level (UNICEF Report 1996: 12).

It believes that child labour is a social evil, could be eliminated if appropriate policies are implemented and it also believed that it can be eliminated within a specific period of time. The UNICEF's initial focus was on the "elimination of child labour in hazardous industries, in prostitution and the elimination of bonded child labour".

> In its Mission Statement on "rights of the children and women," the UNICEF emphasised that "it is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards Children. UNICEF aims, through its country programmes, to promote the equal rights of women and girls and support their full participation in the political, social, and economic development of their communities".[140]

The major achievement for the UNICEF was in 1990 when most of the member states consented to its Convention on Rights of the Child. This is the powerful framework provided by the UNCRC to protect the children's rights and promote the welfare of

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[138] This is one of the major reports published by UNICEF concerned with the worldwide incidence of child labour. In 1993, the Commission on Human Rights adopted the Programme of Action for the Elimination of the Exploitation of Child Labour.

[139] UNICEF initially provided large scale emergency relief to the child victims of World War II. Later stage it started promoting child welfare and included eradication of child labour through education in its agenda. Available at URL: https://www.unicef.org/what-we-do. Accessed 7 December 2017.

[140] The full text of the document is available at URL: https://www.unicef.org/about/who/index_mission.html. Accessed 12 November 2017.

the children. For developing a strategy to implement the UNCRC, the UNICEF closely worked with the Committee on the Rights of the Child and NGO Groups and formed a Child Rights Information Network. This received good response across the member states and NGOs and decided to exchange the information on legislation, policies and programmes through this network.

NGO's played an important role in the success of UNICEF's agenda for promotion and protection of child rights. UNICEF's work with NGO's during 1995 "included a special focus on child labour, sexual exploitation of children and children in armed conflict". Further, one of the meetings of UNICEF Child Labour Consultation for South Asia agreed on a common definition of child labour so as to UNICEF and NGOs could work easily. Moreover, UNICEF also played an important role in "World Congress against Commercial Sexual Exploitation of Children".

In view of combating child labour and promoting children's education, UNICEF focuses on programmes to rescue the child labour from the work place and rehabilitation them into schools. It also initiated anti-poverty programmes to promote better livelihood for the entire family. Through its State offices, UNICEF seeks to provide assistance in key states for the development of inter-sectoral programmes.

In its Report of 2000, it was mentioned that the UNICEF was advocating for the new vision for children in the 21st Century (UNICEF Report 2000: 7). It was planned for meeting the goals of the 1990 World Summit for Children.[141] The report also emphasised that poverty and malnutrition, natural disasters and wars may lead to an increase in child labour.

With the intention to curb the child labour, the UNICEF had adopted a policy in May 1995. It stated that it would promote and purchase the products only which comply with the national legislation on child labour and CRC. Therefore, in India, the UNICEF promoted 'Rugmark programme'.[142] Under this programme, the employer

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[141] The goals of the 1990 World Summit are full and healthy life for children with rights secured and protected, healthy life for infants, caring environment and a basic education of good quality for all children and opportunities to develop fully and participate in their societies.

[142] The UNICEF continued to work with carpet manufacturers and national and international NGO's to promote the 'Rugmark' programme, which got under way in three States in 1994. As a result,

should give the guarantee that they do not "employ children under 14 years old and their workers receive at least the official minimum wage" (UNICEF Annual Report 1996: 18). If any factory is violating the rules of 'Rugmark' they have to pay a penalty of 1-2 percent of the carpet value (UNICEF Annual Report 1996: 18).

In India, UNICEF supports efforts of the government departments in providing services essential to the survival and development of children, such as clean water, safe sanitation, immunisation and other health measures. UNICEF India programme also collaborates with governments, international agencies, NGO's, trade unions and legal experts. Along with these partners, the UNICEF assisted to eliminate child labour through rescuing children from work force and enrolling them to school. It has been a major funding agency under the UN system and provided assistance with funding to some of the programmes in India for the welfare of the children in general and curbing the child labour in particular.

UNICEF India believes that the main strategy to eliminate child labour would include strong legislation and its enforcement, specific measures to release and rehabilitate children from labour, accompanying social policies, such as education and rural development, and activities to raise public awareness on the issue of child labour. UNICEF has been assisting Government of India for the implementation of action plans which may indirectly helpful to rescue and rehabilitate children from the work place. UNICEF established a Child Labour Cell at the National Labour Institute to monitor and research activities about the child labour. This programme has been funded by UNICEF.

UNICEF has been working for the welfare of the children in India, it has concentrated on six poorest states in India. With the view to promote children's rights, the UNICEF supported the projects which may build the capacity of Panchayats and Nagar Palikas. UNICEF's programme of action included supporting the Government's' National Programme for Elimination of Child Labour through its 10 Field Offices. UNICEF has also discussed with CII and FICCI on co-operation in the field of child labour. It is also partnered with Proctor & Gamble in the programme to raise funds to eradicate

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thousands of hand woven rugs were exported with Rugmark labels certifying that children were not involved in their production.

child labour in India. UNICEF also worked with NHRC with the view to policy implementation and advocacy (Mishra 2000: 184). It is also working together against the child trafficking and prostitution. It supports government agencies and voluntary agencies to implement the policies to eradicate child labour (UNICEF 1986: 3).

Moreover, in India, the NGO's played an important role in compelling UNICEF to pay more attention to the issue of the human rights dimension of child labour (Fype 1989:131). Children's work hampers their physical, cognitive, emotional, social and moral development. Their involvement in exploitative work will make them psychologically vulnerable (Fype 1989: 131). The UNICEF believes that providing education would protect children from the exploitation of child labour (Mishra and Mishra 2004: 73). It has been providing assistance to children who are involved in the exploitative child labour and providing with rehabilitation. UNICEF has been adopted two approaches to tackle the child labour, Firstly, using legal instruments to limit and define the conditions under which children work. The legal instrument is the Minimum Age Convention, equal pay for equal work, regulating the rest day etc. Secondly, transforming the nature of work itself i.e., improving the basic services at the work place, health care, nutrition and education being made available easily (Mishra and Mishra 2004: 73).

UNICEF India promotes compulsory education for children and employment for parents. This is a prominent strategy of UNICEF against the hazardous child labour. Its overall strategy is to adopt and pursue policies to regulate child labour and promote compulsory education through government departments. It also encourages NGO's, industries, academicians, advocates, media and other supporting agencies to make awareness to take away the children from the workplace and provide them with education. UNICEF also provides its support to governments agenda to the universalisation of primary education. It supports Child Labour Cell which is functioning at National Labour Institute by monitoring and pursuing research activities to strengthen regulation of child labour (Mishra and Mishra 2004: 75). From the above, it is clear that UNICEF contributes and has been taking a strong stand against the child labour and promotes child welfare. Through its India programme, UNICEF supports governments agenda for prohibition and regulation of child labour from the grass root level.

5.2.4. UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

The UNDP supports member states mainly in their overall development at the national level which includes child development as well. It has been assisting member states in its parameter. If any member states required any assistance from the UNDP, they need to approach its office with the project proposal. Though the UNDP has had many programmes on its agenda to assist India, these projects are indirectly supporting the elimination of child labour. Most of the projects are child friendly and included with development, cooperation and anti-poverty programmes. UNDP's South Asia Poverty Alleviation Programme is one of the major projects in this regard, which is implemented in six districts of Andhra Pradesh (Government of Andhra Pradesh 2003: 4 and World Bank Report 2012: 60). It focuses on institution building at the grass root level to poverty alleviation and includes child labour among several other issues.

UNDP is supporting the work of many NGOs in India to promote elimination of child labour and providing education for children. For example, UNDP's support for social mobilization for getting children out of work into schools. This includes support for community empowerment, encouraging volunteer teachers, bridge education camps for mainstreaming children into the regular schooling system, etc. Moreover, it has also supported research, with special emphasis on the girl child and a documentary film on the girl child's work in the cotton seed farms in Andhra Pradesh. Under the co-operation of 'Mandal Mahilla Samakhya'[143] a community based women's organization, the UNDP running two residential schools for girl children for mainstreaming the working girl children into regular formal schools.

UNDP has also supported a project titled "People's participation for getting children out of work and into school with NORAD assistance". [144] Similarly, in other States,

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[143] This Non-Governmental Organization is working from Mehboobnagar and Kurnool districts of Andhra Pradesh. This Organization is working particularly on promoting and facilitating the education to the young girls who are working and also trying to convince these young girl children's to attend regular schooling system.

[144] This project is an initiative with a Non-Governmental Organization CREDA having its office at Mirzapur district, Uttar Pradesh. The project is implemented in 106 villages of Mirzapur District. Under this Project 50 Community Schools have been established and 100 children enrolled in each

the UNDP supporting the social mobilisation and community participation programmes for elimination of poverty and empowerment of women.[145] In all these projects, initiatives for the elimination of child labour and education of children are being included. Moreover, the UNDP also supports Central and State Ministries for Social Justice and Empowerment, Education, NGOs and Children with Disabilities. It is true that UNDP is not having much say in eliminating child labour in India directly, but it recognised and encouraged the education programmes and has been assisting NGO's and government programmes with the view to eliminating child labour in India.

5.2.5. WORLD FOOD PROGRAMME (WFP)

Healthy food is important for each and every human being including children to maintain their health. It is evident that at the global level the scarcity of the food reached at its peak, however, the poorest of the poorare unable to get the healthy food. The primary objective of the UNWFP is to provide and improve the food security of the poorest, especially women and children in the developing countries with the spirit of "food for thought".

Under this programme, the WFP extends food aid to the people who are really in need and caught in hunger and unable to access the food for a living. WFP believes that "every child has the right to grow up healthy, to go to school and to receive the best possible education".[146] To maintain the health of the children WFP seeks to use food aid to help children so that they can learn in the school without hunger. Following its above belief, WFP supports school feeding programmes to attract children to the

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school. Before this project CREDA's work has been supported by ILO-IPEC and Ministry of Labour, Government of India.

[145] For instance in Rajasthan, UNDP supports a NGO called Tarun Bharat Sangh to promote women's empowerment for sustainable natural resources management. It also targets children working in the mines and carpet weaving in Alwar, Jaipur and Sawaimadhopur in Karauli districts. In Gujarat, in Kutch district, UNDP is supporting a project for harnessing women's collective strength for poverty alleviation under which education of girl children is being promoted. Similar focus on the education of the girl children is also being done in Maharashtra, through SwayamShikshanPrayog, SPARC under the UNDP supported project on the capacity building of women for effective governance and participation in local development.

[146] Ms. Catherine Bertini, was former Executive Director, UNWFP. She said "for a child suffering from hunger, going to school is no longer important; having enough food to eat is very important so that children can concentrate on their study. Hunger prevents children from learning, believes WFP". For more information's see URL:https://www.wfp.org/former-executive-director-bertini%20. Accessed 11 November 2017.

classrooms from the work. Through this programme, the WFP indirectly supports the elimination of child labour.

In India, WFP is supported through Integrated Child Development Services (ICDS) programme[147] which mainly supported through government authorities. The prime objective of this programme is to facilitate the nutritious food for the children. To achieve this the WFP coordinate with Government of India and initiated with awareness programmes. The above programme mainly focussed its work in Madhya Pradesh, Uttar Pradesh, Rajasthan, Orissa, Bihar and Gujarat. Moreover, it is also providing direct support to a project on the 'street children' having the objective to improve nutritional status, literacy and teaching of vocational skills.[148] All these projects are generally signed through a Memorandum of Understanding (MOU) with its contractors under Article 23 of the WFP.[149] Thus, it is clear from the above data that, the UNWFP has played an important role in providing food for the children and women which indirectly helps to curb the child labour including India.

5.2.6. WORLD BANK

The World bank is one of the International institutions which provides financial assistance to member states. It is also helping the member states in their sustainable development including supporting the child welfare policies. Child welfare policies mainly focusing on the rights of the child which includes education, food, shelter, clothing and protection from the exploitation. Thus, the World Bank indirectly helping to curb the child labour (Fallon and Tzannatos1998: 1-19).

In general, the World Bank is not directly regulating the child labour but indirectly it is trying to pressurise the Government of India for eradicating child labour. The

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[147] The ICDS programme is implemented by Department of Women and Child Development with the help of World Food Programme. It focuses on early child development and converges interventions for health, nutrition, psycho-social and cognitive development – linked to other sectoral interventions for safe drinking water, environmental sanitation and women's' development.

[148] The WFP has initiated this project in Calcutta, which is implemented by a NGO called Vikramshila, with the support of GTZ, CRS and Calcutta Police.

[149] Article 23 of the WFP reads as follows: "The Contractor represents and warrants that it is not engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be harmful to the child's health and physical, mental, spiritual, moral or social development. Any breach of this representation and warranty shall entitle WFP to terminate the contract immediately upon notice to the contractor at no cost to WFP".

World Bank assisted with multi-million dollars to Uttar Pradesh Government under the District Primary Education Project (DPEP). Under this project, it has identified 24 child labour prone districts in Uttar Pradesh.

The world Bank also supporting the agricultural sector which mainly includes irrigation and water-shed management programmes. The basic idea of this project was to help the farmers to improve their productivity in the agricultural product so that they could be self-sufficient to lead their family life and provide education to their children. This will lead the farmer to send their children to schools which indirectly prevent an increase in child labour. Similarly, the World Bank also assisting with financial support for starting of self-employment under the small-scale industry and micro-credit schemes. This self-employment assistance scheme making people financially strong which encouraging them to help their children with education. World Bank believes that financial assistance to needy people will make their family financially strong, and also believe that promoting education will make children strong. These beliefs of World Bank indirectly supporting the elimination of child labour.[150]

Apart from the above, the UN and India jointly took some of the initiatives which are very relevant in the context of child labour. The UN-India joint programme in the primary education is one of the important initiatives which is named under "Joint UN System Support for Community-Based Primary Education".[151] This joint programme for the promotion of primary education scheme indirectly encouraging the children to join schools so as to put a break on child labour. The other joint UN initiatives for eradicating child labour includes "UNICEF-ILO protocol regarding regular consultations and coordination on various aspects of child labour, the ILO and UNESCO Joint Convention on the Status of Teachers, collaboration between

[150] The World Banks experience of funding micro-credit schemes for self-employment of women in sericulture industry in Karnataka, India, ensured that the micro-credit schemes for self-employment (of women) do not lead to more children working at home along with the women. For more information's see URL: http://www.worldbank.org/en/country/india. Accessed 20 September 2017.

[151] This is a collaborative effort including UNICEF, UNDP, ILO, UNESCO, and UNFPA which aims at supporting government efforts on universal elementary education and making primary education more accessible and effective for primary school-age children, with special focus on disadvantaged and marginalized children, including girl child workers.

UNICEF and UNAIDS on the prevention of child trafficking, and collaboration among UNAIDS, UNICEF, UNESCO, and WHO on HIV/AIDS prevention".

From the above, it is evident that the UN and other specialised agencies continuously put their effort in eradicating child labour in India. Although the prominent one is ILO, which directly involved and has been taking good initiatives to eliminate child labour form India, however, the other international organisations also contributed substantially for the betterment of the children which indirectly helped India to prohibit and regulate child labour at domestic level.

5.3. ROLE OF THE INDIAN JUDICIARY

Judiciary is one of the important institution established under the Indian Constitution. It has been delivering judgments to protect children from the exploitation of child labour. The Courts in India has been delivered several judgments with regard to law and practice of law relating to children (Deshta and Deshta 2000: 110). The Hon'ble Courts in India not only created a unique history in the field of implementation of child labour laws but also proved as the protector of the interest of the children (Bajpai 2006: 180). For this, the statutory laws of India and International Conventions have been relied upon (Sanghi 2001: 81).

One of the most important case in particularly highlighted the Indian Legislation is *Asiad Case*.[152] By considering the Public Interest Litigation the Court highlighted the true scope of the legislation prohibiting "traffic in human beings and forced labour" as laid down in Article 24 of the Constitution. This case came up before the Court as a result of the refusal of minimum wages to workmen engaged in construction work for the ASIAD 1981.[153]

In *People's Union for Democratic Rights and Others vs. Union of India*,[154] the Supreme Court accepted the petition sent by the petitioner attaching the report from a

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[152] AIR 1982 SC 1473, 1983 SCR (1) 456. Similarly, see Bandhua Mukti Morcha vs Union of India AIR 1984 SC 802.

[153] The Court invoked Minimum Wages Act, 1948 for non-enforcement of minimum wages, Equal Remuneration Act, 1976, Employment of Children's Act, 1938 and the Article 24 of the Constitution.

[154] Civil Appeal No. 8143 of 1981, dated 18th September, 1982; AIR 1982 SC 1473, 1983 SCR (1) 456.

social activist with regard to conditions of workers who engaged themselves in the Asiad projects. The complaint alleged that the employer exploited children under 14 years old for the construction work. The respondent argued that they did not receive any complaint with regard to the violation of law of the land and said that the Act was not applicable for the construction work.

The Supreme Court interpreted the act in such a manner that it started speaking for protecting the children from the exploitation of child labour. By focusing on the importance of Indian Constitution Justice P.N Bhagwati and Bahrul Islam said that:

> "…construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. That would be in consonance with Convention no. 59 adopted by the ILO and ratified by India. But apart altogether from the requirement of ILO Convention No. 59, we have Article 24 of the Constitution, which provides that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation must operate *propriovigore* and construction work being plainly and indisputably a hazardous employment, it is clear that by reasons of Constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work, there can therefore, be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Employment of Children Act, 1938, no child below the age of 14 years can be employed in construction work and the Union of India and also every State government must ensure that this constitutional mandate is not violated in part of the country".[155]

Before delivering the judgment, the Supreme Court observed that:[156]

> "A large number of men, women and children who constitute the bulk of our population are today living sub-human existence in conditions of abject poverty. Utter grinding poverty has broken their and sapped the moral fibre. They have no faith in the existing social and economic system".

By interlinking the Convention no. 59 of the ILO and Employment Registration Act, the Court further remarked that;

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[155] PUDR v. Union of India, AIR 1982 SC 1473.

[156] AIR 1982, SC 1473, Also see Bandhua Mukti Morcha Case AIR 1984, SC 804.

> "…This is a sad and deplorable omission which, we think, must be immediately set right by every state government by amending the schedule so as to include construction industry in it in the exercise of the power conferred under Section 3(A) of the Employment of Children's Act, 1938. We hope and trust that every state government will take necessary steps in this behalf without any undue delay, because…"

The Court has suggested that the government has to fulfill its duty by providing education to children as their parents are working in the construction sites.

In *Salal Hydro Projects vs. Jammu and Kashmir,*[157] the Supreme Court once again confirmed its stand on the application of Article 24 of the Constitution. The Court said that "child labour is an economic problem and the poor parents seek to enhance their meager income through the employment of their children". The Court also observed that "in the prevailing socio-economic environment a total prohibition of child labour in any form may not be socially feasible, and Article 24 of the Constitution puts only a practical restriction on child labour". Stressing the need to educate children of the parents who are working in *Salal Hydro Project*, the Supreme Court has recommended that "whenever the government or contractor undertakes a construction project which is likely to last for some time, the appropriate authority must arrange schooling facilities for the children of construction worker who are residing at the project site or nearby children of construction workers who are living at or near the project site facilities".[158]

In *M.C. Mehta vs. State of Tamilnadu and Others*, challenged the employment of children in match factories in Tamilnadu which violated Article 32 of the Constitution.[159] In this case, the Supreme Court observed that:

> "The manufacturing process of matches and fireworks is a hazardous one. Judicial notice can be taken of the fact that almost every year, notwithstanding improved techniques and special care is taken, accidents including fatal cases occur. Working conditions in the match factories are such that they involve health hazards in the normal course and apart from the special risk involved in the process of manufacturing, the adverse

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[157] Writ petition (Criminal) No. 1179 of 1982, decided on 02nd March 1983. Also see AIR 1987 SC 177; *Laxmi Kant Pandey vs. Union of India*, AIR 1992 SC 118, 1991 SCR (3) 568.

[158] Labourers Working on *Salal Hydro Project vs. State of Jammu & Kashmir and Others*, 1983 Lab.I.C 542.

[159] M.C. Mehta vs. State of Tamilnadu and Others, Writ petition (Civil) No. 465 of 1986, decided on 31st October 1990 reported in AIR 1991 SC 283.

effect on health is a serious problem. Exposure of tender aged to these hazards requires special attention. We are of the view that employment of children within the match factories directly connected with the manufacturing process up to final production of match sticks or fireworks should not at all be permitted. Art 39(f) of the Constitution provides that the State should direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and in dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years".

Keeping the view on the welfare of child workers, the Court ordered to introduce a compulsory insurance scheme for the child employment. The Court also emphasized that the "State of Tamil Nadu shall ensure that every employee working in those match factories is insured for a sum of Rs. 50,000". By taking one more step, the Court instructed the insurance company to respond properly to the State Government for providing the insurance scheme. The Court also ordered to initiate a committee to oversee its directions.[160]

Though the Supreme Court has ordered to protect and promote the welfare of the children in the above case, once it was forced to take *suo motu* cognizance when news about an accident and death of children at the Match factory.[161] Subsequently, the Court asked the authority to file a report on the incident. On that basis, the Court made a direction for the compensation to the victims and their families and appointed a Committee.[162] The Court emphasised Constitutional provisions[163] and international

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[160] The Committee was included with District Judge of the area, the District Magistrate of Kamaraj district, a public activist operating in the area, a representative of the employees and local labour officer.

[161] M.C. Mehta vs. State of Tamil Nadu and Others, AIR 1997 SC 699.

[162] The committee was included senior advocates of Supreme Court Mr. R.K. Jain, Ms. Indira Jaisingh, and Mr. K.C. Dua. The report was submitted on 11th November 1991. This Committee was asked to visit the place and prepare a report on specific issues.

[163] Article 24. Provided Prohibition of employment of children in factories, etc. - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 39 (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; 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 exploitation and against moral and material abandonment. Article 41. Right to work, to education and to public assistance in certain cases. - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to

commitments[164] with regard to the protection of children at work while dealing with this case.

The Court observed that:

> "…strictly speaking a strong case exists to invoke the aid of an Article 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Article 47 relating to raising of the standard of living of the population, and Article 39(e) and (f) as to non-abuse of tender age of children and giving opportunities and facilities to them to develop in healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere, in lieu of the child. This would also see the fulfillment of the wish contained in Article 41 after about half a century of its being in the paramount parchment, like primary education desired by Article 45, having been given the status of a fundamental right by the decision in Unni Krishnan case... The very large number of child labour in the aforesaid occupations would require giving of job to very large number of adults, if we were to ask the Appropriate Government to assure alternative employment in every case, which would strain the resources of the State, in case it would not have been able to secure job for an adult in a private sector establishment or, for that matter, in a public sector organisation. We are not issuing any direction to do so presently. Instead, we leave the matter to be sorted out by the Appropriate Government. In those cases where it would not be possible to provide a job as above-mentioned, the Appropriate Government would, as its contribution/grant, deposit in the aforesaid Fund a sum of Rs. 5,000 for each child employed in a factory or mine or in any other hazardous employment."

The Court also observed that:

> "The aforesaid would either see an adult (whose name would be suggested by the parent/guardian of the concerned child) getting a job in

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education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. Article 45, provision for free and compulsory education for children. - The State shall endeavour to provide, within a period often years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health.

[164]. India has accepted the Convention on the Rights of the Child, which was concluded by the UN General Assembly on 20th November, 1989. This Convention affirms that children's right require special protection and it aims, not only to provide such protection, but also to ensure the continuous improvement in the situation of children all over the world, as well as their development and education in conditions of peace and security. Thus, the Convention not only protects the child's civil and political right, but also extends protection to child's economic, social, cultural and humanitarian rights. The Government of India deposited its instrument of accession to the above-mentioned conventions on 11th December, 1992.

> lieu of the child, or deposit of a sum of Rs. 25,000 in the Child Labour Rehabilitation-cum-Welfare Fund. In case of getting employment for an adult, the parent/guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent/guardian shall have to see that his child is spared from the requirement to do the job, as an alternative source of income would have become available to him".

The Supreme Court has also issued an instruction to the concerned State Government to fulfill the above requirements for the benefit of child workers who are working in the specific industry.

In *M.S. Krishna Reddy Vs. The state of Karnataka*[165] the appellant was convicted by the High Court of Karnataka and directed that the sentences of imprisonment would run consecutively.[166] This decision was challenged as for whether the imprisonment which was ordered by the High-Court should run consecutively or concurrently. By citing *Mohd. Akhtar Hussain v. Collector of Customs*[167] the Supreme Court said that if a single transaction gives rise to more than one offence under different enactments it would not be correct to award consecutive sentences. The Supreme Court held that award of consecutive sentences was not correct. The Court said that the accused appellant shall suffer imprisonment for the period for which he had been sentenced for the different offences concurrently and not consecutively.

The case *Society for Un-Aided Private Schools of Rajasthan Vs. Union of India (UOI) and Another*[168]was challenged under the provisions of Article 21A & 30(1) of the Indian Constitution.[169]In this case, Court observed that "Article 21A of the Constitution casted an obligation on State to provide free and compulsory education to children of the age of 6 to 14 years and not on unaided non-minority and minority educational institutions. Rights of children to free and compulsory education guaranteed under Article 21A of Constitution and RTE Act could be enforced against schools defined under Section 2(n) of Act, except unaided minority and non-minority

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165 2016 (1) RCR (Criminal) 373.

166 The Court ordered the conviction under section 3 and 14 of the Child Labour (Prohibition & Regulation) Act 1986 and section 344 of the Indian Penal Code.

167 SIR 1988 4 SCC 183.

168 Writ Petition (C) No of 2010.

169 The Court also referred the Sections 2(n), and 38 of Right of Children to Free and Compulsory Education Act, 2009. This case was decided on 12th April 2012.

schools not receiving any kind of aid or grants to meet their expenses from appropriate governments or local authorities".

The Court held that "Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and it applies to a school established, owned or controlled by the appropriate Government or a local authority; an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; a school belonging to specific category; and an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority".

The case *R.D. Upadhyay Vs. State of A.P. and Others*[170] was heard at the Supreme Court and decided on 13th April 2006.[171] The issue raised in the writ petition was "development of children being in jail with their mothers, mother in jail either as under-trial prisoners or convicts". The issue came before the Court was whether the children of women prisoners has any right under the Constitution?

After observing the various report from the Union government, state governments and other concerned parties the Court held that "a child shall not be treated as an under-trial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right". Therefore, the concerned authority needs to make an arrangement to facilitate the children with basic services as per the guidelines of the Court.

By invoking international conventions and domestic laws in *Sheela Barse vs. Secretary, Children's Aid Society and others*[172] the Court held that "children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends on the future of the country. In recent years, this position has been well realised. In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in

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[170] Civil Writ Petition No. 559 of 1994.

[171] The Court made the reference of Articles 14, 15, 21, 21A, 23, 39 (e), 39 (f), 42, 45, 46 and 48 of the Constitution of India.

[172] Criminal Appeal No. 300 of 1985, decided on 20th December 1986, reported on 1987 AIR 656, 1987 SCR (1) 870.

Article 24 of the International Covenant on Civil and Political Rights, 1966. The importance of the child has been appropriately recognised. India as a party to these International Charters having ratified the Declaration, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The Children's Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased".

The public interest litigation was filed by the petitioner in *People's Union for Civil Liberties Vs. State of Tamil Nadu and Others.*[173]The case was mainly focussed on strict implementation of the Bonded Labour System (Abolition) Act, 1976. The petition challenged the exploitation bonded labourer and requested for the rehabilitation. The Court held that it is necessary to protect the rights of the bonded labourer from the exploitation and directed the government to take necessary steps to strict implementation of the Act. The Court directed the NHRC to take suitable steps and oversee the directions of the Court. And also, asked the NHRC to file a complaint at the Court for further orders if at all government is failed in its duty. By giving the above order the Court once again reiterated that "it is the responsibility of the government to strict implementation of the Act to protect bonded labour".

In *People's Union for Civil Liberties (PUCL) Vs. the Union of India (UOI) and Others*[174] "the Supreme Court held that it is the duty of the government to compensate the victim's family". This case was observed under Article 32 and 226 of the Constitution of India. This case came before the Supreme Court under Article 32 to protect the children from the bonded labour system and also requested the Court to make an order to compensate the children's family by the government for taking responsibility to failed to protect the children. As per the report submitted at the Court one Rajput obtaining children from the poor parents from Madurai for worthless money and using those children as a forced bonded labour. While doing so one of the

[173] Writ Petition (Civil) No. 3922 of 1985. This case was decided on 15th October 2012.
[174] Writ Petition (C) No. 560 of 1994.

victims Shiva Murugan died and the other four children Raja Murugan (orphan), Rajesh, Muniyandi and Mukesh were reported as missing.

The petitioner argued for the compensation for the parents of the children stated and cited a similar case *Nilabati Behera vs. the State of Orissa*.[175] The counsel for the petitioner mentioned the Bonded Labour System (Abolition) Act, 1976. The Court observed that:

> "a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defense of sovereign immunity is inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defense being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *RudulSah v. the State of Bihar*,[176] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights".

By hearing the case the Court directed the government of Maharashtra to compensate the parents of the victims at the earliest. By considering one of the victim Raja Murugan as an orphan, the Court directed the District Magistrate to make the arrangement to return the compensation to the victim when he attains the majority.

In *Bachpan Bachao Andolan vs. Union of India and Others* the petitioner, an NGO challenged the Union of India[177] not protecting fundamental rights of children who are suffering from abuse of drugs and alcohol. The Petitioner also seeks the intervention of the Court and issue an order to the government of India to protect the

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[175] 1993CriLJ2899, AIR 1993 SC 1960.

[176] 1983CriLJ1644.

[177] *The Bachpan Bachao Andolan vs. Union of India and Others*, Writ Petition (Civil) No. 906 of 2014. The case was decided on 14th December 2016

children from the abuse. While assessing the case the Court recalled India's international obligation to curb drug abuse.[178]

The Court held that, "there have been numerous statements of Policies and Acts from the government to prevent the above social evils but required a comprehensive formulation of a National Plan which will form the basis of co-ordinated intervention by the Union and State governments together with their agencies in collaboration with expert institutions at the national and international levels having a bearing on the issue".

The Court directed to "Union government to complete a national survey within six months; adoption of the national plan within four months, and adopt specific content in the school curriculum under the aegis of National Education Programme". The Court disposed of writ petition with the above directions.

In another case *Bandhua Mukti Morcha v. Union of India and others*[179] the Supreme Court entertained a case against respondent. The question raised in this case was about the engagement of children under the age of 14 violates Article 24 of the Constitution. In this case, the Court held that:

> "…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 the person".

The Court also observed that:

> "… a direction needs to be given that the Government of India should convene a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries holding concerned Departments, to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all

[178] While assessing the case the Court considered Report of Planning Commission's Working Group on Adolescent and Youth Development for formulation of 12th Five Year Plan (2012-17); Research Study by National Commission on Protection of Child Rights (August 2013); Annual Report of the Ministry of Social Justice and Empowerment (2013-2014); National Policy on Narcotic Drugs and Psychotropic Substances (NDPS) drafted by the Ministry of Finance, Department of Revenue. The Court also pointed the India's status on UN treaties namely Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

[179] AIR 1997 SC 2218, 1997 (10) SCC 549.

> employments governed by the respective enactments mentioned in M.C. Mehta's case;[180] to evolve such steps consistent with the scheme laid down in M.C. Mehta's case, to provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for the implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court. The Central Government is directed to convene the meeting within two months from the date of receipt of the order. After evolving the principles, a copy thereof is directed to be forwarded to the Registry of this Court".

The reflection of the Supreme Court's concern of child labour can also be seen in the judgment *Rajangam, Secretary, District Beedi Workers Union vs. State of Tamil Nadu and Others*[181] with *Chandra Segaram vs. State of Tamil Nadu and Others*[182] where the court has opined that:

> "Tobacco manufacturing has indeed health hazards. Child labour in this trade should, therefore, be prohibited. As far as possible and the employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Governments but even a period not exceeding 3 years should strictly be implemented".

In *Bachpan Bachao Andolan vs Union of India*, the Supreme Court of India passed a landmark judgment in the issue of missing children.[183]The Court directed that,

> "compulsory registration of cases by police of missing children with the assumption that they are victims of kidnapping & trafficking, compulsory registration of cases by police of all those children who are still untraced (in 2011 34,406 children are still untraced), police should prepare standard operating procedures in all the states to deal with the cases of missing children, appointment and training of Special Child Welfare officers in every police station to deal with the cases of missing children, police should maintain records of recovered children along with photographs, and the Ministry of Home Affairs should maintain a record of missing children".

[180] AIR 1997 SC 699.

[181] 1992 SCC (1) 221.

[182] 1991 SCR Supl. (2) 357.

[183] Contempt Petition (C) No.186/2013 in Writ Petition (C) No.75/2012. The Court decided the case on 10th May 2013.

Commenting on the suggestions of NHRC and National Legal Service Authority (NALSA), the bench also remarked: "a specific investigation should be conducted if a missing child is recovered to ascertain the involvement of organised gang in trafficking and child labour."

In *Bachpan Bachao Andolan Vs Union of India & Others*,[184] the petitioner filed a public interest litigation case against the respondent for the serious violations and abuse of children who are forcefully detained in circuses. The complainant alleged that the children were trafficked from Nepal and India and forced to stay and perform in circuses. They were abused and exploited and kept in inhuman conditions. The hearing was focussed on different issues such as "child trafficking, child labour, forceful detention, and other serious violations and abuse of children in circuses".

The Court observed that "children are entitled to special protection under the Constitution, as well as protection under the Juvenile Justice (Care and Protection of Children) Act and international treaties and conventions related to human rights and child rights, including the Convention on the Rights of the Child, to which India is a signatory. However, there are perpetual violations of the law with respect to children who are trafficked into circuses".

Based on the above observation the Court directed that, "in order to implement the fundamental right of the children under Article 21A it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today. The respondents are directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children are kept in the Care and Protective Homes until they attain the age of 18 years. The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification. The respondents are directed to frame proper scheme of rehabilitation of rescued children from circuses. It has also directed the Secretary of Ministry of Human

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[184] *Bachpan Bachao Andolan vs. Union of India & Others*, 2011 INSC 403, 2011 (5) SCC 1, Decided on 18th April 2011.

Resources Development, Department of Women and Child Development to file a comprehensive affidavit of compliance within ten weeks".

In *Child Welfare Committee Vs. GNCTD,*[185] the High Court of Delhi entertained public interest litigation case against the GNCTD. The case was concerning the illegal adoption of a male infant born to a girl who was a minor and rape victim and was working as a domestic worker with a placement agency.

The Court emphasised the loopholes in the system and said that "this case brings to light the poignant plight of several child domestic workers who are taken in by placement agencies, and in turn are placed in many households in this city. These young children come from faraway places in the country and, as in this case, belong largely to the disadvantaged sections of the society. The employment of such children for work is driven essentially by poverty which compels poor parents to part with their children for money. Despite the notification under the Child Labour (Prohibition & Regulation) Act, 1986 issued by the Central Government prohibiting employment of children in domestic households it is not uncommon to find in our immediate environs little girls employed as a career of babies and toddlers. They work for long hours on arduous tasks unsuited to their tender age. All this is, no doubt, illegal but it would be too simplistic to consider this to be a merely legal issue. It needs no reiteration that the JJ Act has itself been made in terms of Article 15 (3), Article 39(e) and (f), Articles 45 and 47 as well as the International Convention on the Rights of the Child (CRC) which has been ratified by India. The preamble to the JJ Act makes express reference to these provisions as well as to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juvenile Deprived of their Liberty (1990). The need to strictly enforce all these provisions is even more urgent and it would hardly suffice to be sanguine that the mere enactment of the Act would itself bring about the transformation in the lives of destitute children. Apart from awareness of legal provisions, the State would have to be constantly reminded of its obligations under the Constitution to create circumstances conducive to the healthy development

[185] W.P. (C) No. 6830 of 2007 & CM 14015/2007 decided on 3rd September, 2008.

and care of children in their homes. The GNCTD and the Delhi Police should pay attention to the need for sensitizing concerned Station WP(C) No. 6830/2007 Page 16 of 19 Housing Officers (SHOs) in cases arising under the JJ Act so that the applications made by the prosecution before the JJB or MM, are not mechanically drawn up as was perhaps done in this matter."

Based on the above observations the Court directed that the GNCTD should carry out awareness programme to benefit the provisions of the JJ Act and CLPRA to the Children and their parents; and strict monitoring the functions of the placement agencies to regulate children from the household work. The Court also emphasized the importance of Rule 77(3) of the JJ Act.

The above clarifies that the Indian judiciary has been playing a vital role in regulating and prohibiting the exploitation of child labour and promoting child welfare by applying and interpreting international norms through domestic legislations. The observations made by the Courts in India while deciding the child labour cases shows its commitment to promote and protect the welfare of the children from the exploitation and abuse.

5.4. ROLE OF THE GOVERNMENT AGENCIES

5.4.1. POLICY FRAMEWORK OF THE GOVERNMENT OF INDIA

The magnitude and extent of the child labour considered as a socio-economic problem linked to poverty and illiteracy. The Government of India has been taking the initiative to eliminate the child labour problem from the grass root level however, it made several interventions from time to time.[186] By policy framework, it is more or less intended to create a conducive social and economic context for discouraging the entry of children into labour field and facilitate public interventions. The Directive Principles of State Policy provides that "the State shall direct its policy towards

[186] The Government of India's initiatives are: Enactment of Child Labour (Prohibition and regulation) Act, 1986; Formulation of a national policy on elimination of child labour in August, 1987; Launching programmes of action like NCLP in May, 1988; Introduction of ILO-IPEC in May, 1992; Operationalization of INDUS Child Labour Project in 2004 after signing of an agreement between Government of India and Government of USA and the recent Child Labour (Prohibition and Regulation) Amendment Act, 2016, etc.

securing that health and strength of workers, men and women, and the tender age of children are not to be abused and citizens are not forced by economic necessity to enter vocations unsuited to their age and strength".

5.4.1.1. National Policy for the Children, 1974

With the intention of implementing the ideas and concerns to protect the children from the exploitation set out in the Constitution, the resolution on National Policy for Children was adopted in 1974.[187]The prime objective of this policy is to provide equal opportunities for the development of all children without discrimination. The Policy also envisaged balanced growth of children and reflected concerns like compulsory education, health and nutrition, engagement of children below 14 years in non-hazardous employment (National Policy for Children 1974).

The policy also includes "protection of children against neglect, cruelty, and exploitation". The policy recommended amending the relevant laws to give importance "to protect children's interest in the nation development". The policy also recommended for constitution National Children's Board to look after the implementation of the plans under the policy, to review and co-ordinate all essential services to reach the children effectively. Added to this policy also recommended constituting the board at the state level. In this policy, the Government of India reiterated that "children are a supremely important asset of the nation". By considering the protection of the children, India has ratified related international conventions and treaties.[188] Under this policy, the government of India also introduced the Integrated Child Development Services on 02nd October 1975.

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[187] Government of India, the Ministry of Social Welfare wide notification No.1-14/74-CDD dated 22nd August 1974. Serious efforts to study and find out solutions for the issue of child labour were started with the adoption of the National Policy for Children Resolution in August 1974.

[188]The related conventions and treaties for protecting children's rights are Declaration of the Rights of the Child, Universal Declaration of Human Rights and its Covenants, the Convention on the Rights of the Child and its two Optional Protocols, the United Nations Convention on the Rights of Persons with Disabilities, the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, the Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption, and the Convention on the Elimination of All Forms of Discrimination Against Women.

5.4.1.2. The Gurupadaswamy Committee on Child Labour, 1979

Although the government's efforts and commitment to protecting rights of the children by passing a resolution on National Policy for Children, the government has set up a Committee to assess the policy in line with the provisions of the Indian Constitution and International Conventions. The Government was set up 16 Member Committee on Child Labour in December 1979, was headed by M.S. Gurupadaswamy.[189] The prime objective of this Committee to inquire into the problems in the employment of children and suggestion to protect the children.

The Committee assessed the problems of child labour in detail on the basis of the existing legal framework, and recognised the difference between "child labour and exploitation of child labour". The committee finds that both the problems are of different orders (Ministry of Labour Report 1979: 1-106 and Agarwal 1994: 72). The Committee further viewed that child labour is a social evil when the children have the compulsion to engage in employment beyond their capacity.

The Committee submitted following reports and the recommendations to Government of India:

- The existing laws related to prohibition and regulation of employment of children should be consolidated into a single comprehensive code in order to prevent any ambiguity in respect of the basic objectives.
- In the case of child workers, the periodical medical checkups should be linked up with the National Health Scheme.
- In the areas where there may be a concentration of working children, arrangements should be made for non-formal education.
- In the areas, where there are large numbers of working children, recreational and cultural activities should be provided.

The report of the Committee was considered by Government of India and felt that there is a need to ensure the health and safety of children at the workplace particularly

[189] The Committee was headed by M.S.Gurupadaswamy. The other members of the Committee are, S.W.Dhabe; Margaret Alwa, Kamala Bahuguna M. Khandekar; Musafir Singh; Ram K Vepa; M.M.Rajendran; G.L. Bailur; Bhashyam; R. Tamarajakshi; K. Srinivasan; P.A. Bhatt; Saran Prasad; Madhav Sinha and the Member Secretary V.P.Sawhney

from long working hours and night work. To this end in 1981, the Government of India established a Child Labour Advisory Board to review the existing laws. Eventually, in 1986, the Government of India came up with Child labour (Prohibition and Regulation) Act. Both in enacting the legislation and laying down the policy to implement it, the Government considered the economic and social aspects of child labour in the country.

5.4.1.3. National Policy on Education, 1986

The National Policy on Education, 1986, was introduced to provide free education to children in line with the provisions of the Constitution (Ministry of Human Resources Development: 1986: 1-29). The prime objective of the policy to set a target to provide free education to children whereby "all children who attained the age of 11 years should receive five years of schooling or its equivalent in the non-formal system of education". It ensures universal education so as to confirming the holistic development of children. To implement this objective the government of India established 4,90,000 non-formal education centers nationally to supplement the formal education system (Narayan 1988: 147).

This policy directly helped to prevent child labour by providing free education to children and engaged them in school activities. Since non-formal education had planned and organised at the local level, the 'Center for Child Labour' had set up in both urban and rural areas (Rai 2002: 356). Through this policy, the Parliament approved the programme of action and launched National Elementary Education Mission, Education for All in 1993 and the District Primary Education Programme Started in 1994 (Khan 2012: 160). Further in 2002, the 86th Amendment of the Constitution held and "made education is a fundamental right for every child between the age of six and fourteen".

5.4.1.4. National Policy on Child Labour, 1987

The National Policy on Child Labour was introduced by the Government of India to supplement the Child Labour Act, 1986 and enforce the Constitutional directives. The prime objective of this policy is "suitably rehabilitating the children withdrawn from the employment and to reduce the incidence of child labour in areas, where there is known concentration of child labour" (Ministry of Labour & Employment

(1987)).This Policy contemplates the background it has to be viewed in the socio-economic conditions put pressures on children to work (Ministry of Labour & Employment (1987)).[190] Children often work in the agriculture sector, rural industries, workshops as part of assisting parents. Through these activities, children will get the knowledge to develop their skills and enable themselves as future entrepreneurs (Ministry of Labour & Employment (1987)). It is true that such activities of children have its own problems, but the policy emphasised that children may exploit more on outside the family business (Ministry of Labour & Employment (1987)).

The policy focused on the elimination of child labour through actions and started strict "implementation of child labour laws, facilitated with non-formal education, adult education, income and employment generation, the establishment of special schools, raising public awareness and survey and evaluation" (Shandilya and Khan 2003: 37). The government has taken measures and national level policies to eradicate poverty, to increase the rating of the population above the poverty line, to tackle the problems of malnutrition, ill health and to improve all-round developments which will help to curb the child labour indirectly (Shandilya and Khan 2003: 37).

For eliminating the child labour, the National Policy on Child Labour set up the "Action Plan" which consist of three main elements. They are:

Legal Action Plan: The objective of the legislative action plan is to strict implementation of Child Labour (Prohibition and Regulation) Act and related laws to prohibit the children to join hazardous work. It also has the aim to improve the conditions of the children working in non-hazardous areas. Under this plan, the Child Labour Technical Advisory Committee has been set up to advise the Central Government on identifying additional occupations and processes, which are harmful to children at work place (Mustafa and Sharma 2008: 78).

The government has implemented this action plan through preventive measures and rescue & repatriation. Preventive measures include "prohibition of employment of

[190] Para 5 and 6, part I of the National Policy on Child Labour, 1987. For more information see http://labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/PolicyofGovernmenontheissueofChildLabour.pdf. Accessed on 14 March 2017.

children below the age of 14 years in 18 occupations and 65 processes; enforcement of the provisions of the Act through State Government machineries as envisaged in Section 2 of the Act; and monitoring the enforcement of the Act from time to time" (Mustafa and Sharma 2008: 78).

Under this action plan, the government also provided facilities forbridging the gap between education and children, aiming to divert children from work force to education. The pre-vocational training programme is another facility provided to rescued children. Moreover, under this action plan, the government also planned an equal payment to children and adults without discrimination on age (Mustafa and Sharma 2008: 79).

Focusing on General Development Programmes: The general development programme mainly included poverty, education, nutrition, health and integrated child development sectors. The government did plan for focus and convergence of general development programmes for the benefit of the children wherever possible. For implementing this, the government constituted a group to merge various welfare schemes of the government under the Ministry of Labour & Employment. The objective of this group is to ensure the families of child labour could get priority for their up liftment. To achieve this the government has been taking various pro-active measures and co-ordinating with different schemes at different Ministries Ministry of Labour & Employment (1987)).

Project based plan of action: Welfare of the children is one of the main objectives of the 'plan of action'. For the successful welfare of the children, the government was initiated to launch various projects. Under this plan of action, the focus has been given to reduction of child labour in the particular project area (Ministry of Labour & Employment (1987)). This plan was first implemented through the NCLP scheme in 1988, and identified nine districts of high density child labour area and launched the project. It also planned to open the special schools to re-habilitate the child labour who are rescued from the work. The special schools arranging formal and non-formal education to rescued children. These schools are running through the help of the NGO's in the particular district (Ministry of Labour & Employment (1987)). The government sources reveal that it has implemented NCLP in 266 districts in 20 States

(Ministry of Labour & Employment (1987)). The source also revealed that 7311 special schools are established and in total 3.2 lakh children were enrolled in these schools. In total 8.95 lakh children who rescued from the work has been mainstreamed into a formal system of education since its inception.

Under the above-mentioned action plans, many initiatives including specific programmes, such as NCLP have been set up and operationalised in many States (Sachdeva *et al* 2001: 16). In 1987 the Government of India implemented NCLP in the twelve Indian states where child labour was endemic. Nine NCLPs were initially sanctioned under this policy for implementation of areas and industries with a high concentration of child labour. Further, the number of projects has been expanded to a hundred and carried its work in thirteen states.[191]

Between 1997 and 2002, the government was allocated fifty million dollars for these projects. The goal has been to progressively reduce the incidence of child labour in these areas through improved enforcement, rehabilitation and more integrated provision of services. They are implemented and managed by NGOs and funded by the government of India through special grants to cover up to 75% of project costs. Although the activities originally intended under this Programme were wide-ranging, the focus has become increasingly concentrated on special schools to provide non-formal education, health care services and stipends to children withdrawn from hazardous employments through these centers.

The entry of the Government of India into ILO's IPEC program in 1992 indicated the Government's growing concern about child labour and the need to act against it. The advent of IPEC in India coincided with government initiatives to tackle the problem systematically. These included the historic declaration made by the government on 15th August 1994 (Mustafa and Sharma 2008: 80). This was the first major political announcement on the release of children from hazardous work and rehabilitation of such children. The government also announced Rs.850 crores for the period of 1995-

[191] These information's are revealed in a document "Intervention by P.D Shenoy", Union Labour Secretary, Government of India, to Chairman of the International Labour Organisation on the Global Report (June 2002) available at www.labour.nic.in /ilas/secyinter.htm.

2000. This initiative of the government demonstrated a commitmentfor the eradication of child labour (Mustafa and Sharma 2008: 80).

A Conference of 62 District Collectors was held in September 1995, to give a final shape to the Action Plan. Finally, 76 projects were sanctioned in 76 districts to translate the plan into action known as National Child Labour Projects (NCLP). The period 1992-95 marked a turning point in the country's perspective on child labour (Mustafa and Sharma 2008: 81). The impetus for the change came from the increasing media attention on the issue, spurred by the work done by NGO's. But the most important was the clear direction the government took, focusing on a phased elimination of child labour.

Though the Government of India with the help of United Nations and other partners took the initiatives to curb the child labour through different kinds of the project, but the assessment revealed that the success was not up to the mark. A study conducted into the working of the Sivakasi National Child Labour Project concluded that the project had not achieved much success in eliminating child labour from the industry (Saksena 2011: 119), the number of working children has not perceptibly decreased. Inspections by factory inspectors have made an impact in reducing child labour from the bigger factories. However, a large number of children continued to be employed in the smaller units to which the Factories Act does not apply. Despite the shortage of inspectors, however, the number of inspections and prosecutions has increased.

Another research about the Mirzapur-Bhadoi National Child Labour Project reveals that the special schools, a key component of the NCLP, have not made an impact on the overall numbers of the working children in this industry. Others, particularly migrant child labourers, have replaced the children withdrawn from the industry and placed in special schools. In terms of the composition of the beneficiaries of the Programme, a majority of the children enrolled in the special schools had been working in a family setting and not as hired labour (Juyal 1993: 9-10).

The NCLP of Markapur, Andhra Pradesh also does not appear to have achieved much success in attaining its objective of elimination of child labour from the slate industry (Saksena 2011: 120). A major shortcoming is the lack of a project document meant

exclusively for Markapur. Enforcement of relevant acts prohibiting employment is extremely poor. No information is available on inspections and prosecutions for employment of children under the Mines Act, or Factories Act. As regards the employment and income support activities are concerned, it was reported in a study done by the University of Hyderabad that 150 child labour families had been identified for grant of bank loans for self-employment scheme. It appears, however, that none of these persons received the loans. No concerted efforts appear to have been done by the project management to ensure that child labour families are covered under income generation schemes (Gupta 1994: 4-6).

5.4.1.5. National Charter for Children, 2003

By recalling the best interest of the children under Part III and Part IV of the Constitution under Article 15(3),[192] 21A,[193] 24,[194] 39(e),[195] 39(f),[196] 45,[197] and 51(A),[198] the Government of India passed a resolution and adopted National Charter for Children on 9th February 2004. The Charter "reiterates its commitment to the cause of the children in order to see no child remains hungry, illiterate or sick" (National Charter for Children 2003).

The National Charter for Children, 2003 mentioned in its preamble that:

> "Underlying this Charter is our intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation".

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[192] The State can make special provisions for children.

[193] The State shall provide free and compulsory education to all children of the age of six to fourteen years.

[194] No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment.

[195] The tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

[196] Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment.

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

[198] It is a Fundamental Duty of a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen year.

The Government of India also took the following measures to ensure child protection under the National Charter for Children:

> Promoting high standards of health and nutrition; Assuring basic minimum needs and security; Play and leisure; Early childhood care for survival, Growth and development; Free and compulsory primary education; Protection from economic exploitation and all forms of abuse; Protection of the girl child; Empowering adolescents; Equality and Freedom of Expression, Freedom to seek and receive information, Freedom of association and peaceful assembly; Strengthening responsibilities of both parents; Protection of children with disabilities; Care, protection, welfare of children of marginalized and disadvantaged communities; and Ensuring child friendly procedures.[199]

The policy was successfully served its objective as it is proved that States are committed to providing sufficient services to children throughout the period of growth and ensure overall development. The objective also includes providing security, healthy growth and their development (Khan 2012: 100).

5.4.1.6. The National Plan of Action for Children, 2005

This plan of action reiterates the Constitutional provisions to the children, however, ensures children's rights to "survival, development, protection and participation" (National Plan of Action for Children 2005). Through this plan of action, the government of India to take care of the children's overall welfare so that each child can realise their potential and grow as a productive citizen. This plan of action is in line with the principles of UNCRC which ensures "protection of children rights up to the age of 18 years" (Khan 2012: 173). To ensure the successful implementation of the objectives of the Plan of Action, the government has identified some of the areas to implement its welfare schemes. They are "child health, nutrition, water and sanitation, child development, early childhood care and education, protection of rights of the girl child, awareness for adolescents, children with disability, child & environment, education, children in conflict with law, sexual exploitation and child pornography, child trafficking, combating child labour, and children affected with HIV/AIDS" (National Plan of Action for Children 2005).

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[199] The National Charter for Children, 2003. Accessed on 3 January 2018 available at URN: http://wcd.nic.in/nationalcharter2003.htm.

The responsibility of implementation of the objectives of the action plan is rest with the Central, State and local governments. The government authorities could also take the help from the NGO's or interest groups to the canvas, or to make publicity to reach the goal of action plan (National Plan of Action for Children 2005). The action plan is monitored by the National Co-ordination Group (Khan 2012: 214). This group is co-ordinated through the Ministry of Department of Women and Child Development.

5.4.1.7. The National Policy for Children, 2013

This policy is based on the fundamental rights enshrined under the Constitution of India. The Constitution protects children's rights and authorises the government to make special provisions for the children. By reiterating "constitutional commitment to safeguard, inform, include, support and empower all children within its territory and jurisdiction, both in their individual situation and as a national asset, the Government of India adopted the Resolution on National Policy for Children, 2013 on 18th April 2013" (National Policy for Children 2013). The policy gives utmost "priority to right to life, health and nutrition and also gives importance to development, education, protection and participation". The Policy has clearly mentioned that:

> "the State is committed to taking affirmative measures – legislative, policy or otherwise – to promote and safeguard the right of all children to live and grow with equity, dignity, security and freedom, especially those marginalised or disadvantaged; to ensure that all children have equal opportunities; and that no custom, tradition, cultural or religious practice is allowed to violate or restrict or prevent children from enjoying their rights" (National Policy for Children 2013).

The Policy includes information about the child welfare policies, laws, plans and programmes for the development of the children. The principles of the policy should be respected and strictly implemented by the national, state and local government. This policy identified "survival, health, nutrition, education and development, protection and participation are the undeniable rights of every child and are the key priorities of this Policy" (National Policy for Children 2013). Under this policy, the government assures the children "equitable access to comprehensive, essential,

preventive, promotive, curative and rehabilitative health care of the highest standard". The children should avail the above rights "before, during and after the birth, and throughout the period of their growth and development" (National Policy for Children 2013). Children need to be provided with proper nutritious food and protected from hunger and malnutrition. Therefore, the State has the duty to fulfill this at different stages of the growth of the children (National Policy for Children 2013).

The children have an equal right to study and develop their knowledge and complete their education without any obstruction. The "Constitution of India provides right to free and compulsory education to children". Thus, it is the duty of the State to implement the same and provide proper education to children. The state recognises its responsibility "to secure this right for every child and facilitate with special needs to achieve this and provide the decent environment, information, infrastructure, services and supports towards the development of the children" (National Policy for Children 2013).

This policy reiterates the constitutional provision that the "children have the right to be protected" wherever they are. It is the duty of the State "to give protection to the children until they develop and do their work independently". The State "shall create a caring, protective and safe environment for all children, to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces". The policy mentioned that the State "shall protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation or any other activity that takes undue advantage of them, harms their personhood or affects their development" (National Policy for Children 2013). The State entrusted with "promotion of child friendly jurisprudence, enact progressive legislation, build a preventive and responsive child protection system and promote effective enforcement of punitive legislative and administrative measures against all forms of child abuse and neglect" (National Policy for Children 2013).

This policy focussing and encouraging children's participation at large. The State should make provisions for the children to learn and develop their skills in participation. It has the "primary responsibility to ensure that children are made aware

of their rights" (National Policy for Children, 2013). This policy confirms that the State should encourage children to give their views with regards to different aspects of the development, especially engaging the girls, disabled, and marginalised children (National Policy for Children 2013).

5.4.1.8. National Action Plan for Children, 2016

By keeping the spirit of previous policy for Children, the Ministry of Women and Child Development has drafted the National Plan of Action for Children, 2016 (National Action Plan for Children 2016). The draft provided with a road-map that linking the objectives of the national policy and gives a strategy to implement the policy through various programmes. The plan of action has the aim to coordinate and converge with all stake holders of the society to promote and facilitate the policy, which includes concerned ministries and other government departments. The plan of action continuing the objectives of the previous policy of 2013 (National Action Plan for Children 2016).[200]

The plan of action, 2016 was launched on 24th January 2017 at a special function held to celebrate the National Girl Child Day in New Delhi. The Action plan clearly defines its objectives, strategies, action points and indicators for measuring the progress and implementation of the priority areas (National Action Plan for Children 2016). These days it is evident that children have been abused even in online and social media. Therefore, the action plan also focuses on "online child abuse, children affected by natural and man-made disasters and climate change". The plan of action also provides that the concerned department also formulate the new programmes and strategies in the changing circumstances as and when required (National Action Plan for Children 2016).

[200]The National Plan of Action for Children, 2013 specifically focussed on rights of the children which divided into four key priority areas i.e., Survival, Health and Nutrition; Education and Development (including Skill Development); and Protection and Participation. These priority areas continued in the National Plan of Action for Children, 2016.

5.4.2. ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

Since its inception, the NHRC has been playing an important role in the elimination of child labour in India. Despite various constitutional provisions and other relevant legislations and government policies, the goal of eradicating child labour remains elusive (NHRC 2011: 121). The NHRC always focused and targeted the formal and informal sectors of the economy. The NHRC identified some of the hazardous industries where the high density of child exploitation is taking place.[201]

The NHRC built its own system to tackle the child labour issue. The NHRC appointed Special Rapporteurs which are the pillars of the Commission. Their duty is to monitor the child labour situation in India by visiting respective states assigned by the Commission. The other methods followed by the NHRC for monitoring and regulating child labour is members visits to the states.[202]

Additionally, the NHRC also focusing on curbing the domestic child labour. The Commission identified some of the children working as a domestic servant at Government employees house in Delhi. By knowing this incident, it has taken the initiative and took up the matter with the concerned department of the Central and State Governments to amend the *Civil Services (Conduct) Rules* prohibiting such employment. Further, on the recommendation of the NHRC the Central and State governments amended the *Civil Services (Conduct) Rules.* The new rule has been implemented by Central[203] and State governments to the effect that the government employees will be facing misconduct and invite penalty if they found appointment or engagement of children under the age of 14 years as a domestic servant.

Engaging children for the work at the slaughterhouse is also prohibited under the Child Labour (Prohibition and Regulation) Act, 1986. In one of the case, the NHRC

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[201] The identified hazardous industries are Bangle/Glass, Silk, Lock, Stone Quarries, Brick Kiln, Diamond Cutting, Ship-breaking, Construction work and Carpet-weaving industries.

[202] To monitor and regulate the child labour the NHRC conducting regular awareness and sensitisation programmes and workshops, launching projects, developing the interaction with the employers and employees' association and other concerned agencies, co-ordination with the State Governments and NGOs.

[203] Central Civil Service (Conduct) Rules, 1964 [as amended up to 31-12-2014], p.17. Rule 22-A of the Central Civil Service (Conduct) Rules, 1964 prohibiting employment of children below 14 years of age. It says "No Government servant shall employ to work any child below the age of 14 years". Full text of the Rules available at https://www.iitk.ac.in/wc/data/CCS_CONDUCT_RULES.pdf.

got the information through complaints from different authorities that there is a violation of the Act and engaging the children at slaughter houses all over the country. The NHRC understood the severity of the violation of the Act and requested the State Governments and Union Territories to comply with the same. Moreover, the NHRC also requested the concerned department to immediately withdraw the children from the slaughter house and made arrangement for the schooling as per the rehabilitation programme (NHRC 2002: 85).[204]

NHRC also made visits to States and monitoring the implementation of Acts and Government policies. It also made some of the recommendations in its previous state visits. This study focussed on the latest two available State visits of NHRC rapporteur. The special rapporteur to the NHRC made recent visits to the State of Kerala and assessed the situation of child labour in Kerala. Further to that, he made a report to NHRC with few recommendations.[205] The report says the state government has taken following steps to tackle the child labour i.e., enforcement mechanism consists of 101 Assistant Labour Commissioners operating as a floor level inspectors, 14 district labour officers operating as District level inspectors, 3 joint labour commissioners operating as regional level inspectors, Labour Commissioner/Additional Labour Commissioner operating as state level. The report also mentioned that in the year 2015, in total 3,394 inspections have been carried out resulting in 2 prosecutions and 1 conviction. On the other hand, in 2016 the inspections carried out was 1,446 resulting in 1 prosecution and no convictions and in 2017 (up to July) 875 inspections resulting with 2 prosecutions and 1 convictions.

The special rapporteur also found that the government has established with monitoring committees specially to tackle child labour issues. They are state level

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[204] The NHRC held a meeting on 16th March 2001and decided to send notices to all concerned departments of the State Governments and Union Territories. The letter was sent on 09th April 2001. In that letter the NHRC made a direction to concerned departments to inspect slaughter houses under their jurisdiction and report it to the Commission. The letter also mentioned that children found to be working in such establishments should be withdrawn, provision made for their education and rehabilitation as directed by the Supreme Court and legal action initiated against offenders.

[205] Ashok Sahu, Thematic special rapporteur (Child/Bonded/Migrant) visited State of Kerala between 11th and 16th September 2017. He made a visit to the district of Trivandrum, Ernakulum and Thrissur. The report is available at URN: http://nhrc.nic.in/Documents/Reports. Accessed 22 March 2018.

monitoring committee and district level monitoring committee. These committees are functioning with the direction of the labour department of state government.

As per the direction of National Commission for Protection of Child Rights, the district level task force has been constituted, convened by concerned district level officers. Child labor rehabilitation cum welfare society has been functioning in all districts chaired by the district collectors. So far as the awareness programme is concerned the state government conducting various seminars and workshops in co-operation with NGO's and other government departments. Five districts have been declared as child labour free districts.

In its report, the NHRC team recommended that the government of Kerala should conduct baseline surveys relating to child labour and bonded labour as and when considered appropriate. It also recommended that there is an urgent need for having a reasonably accurate data base of Domestic Migrant Labour and the welfare measures should be framed to help the children and their families.

The special rapporteur to the NHRC made recent visits to the State of Uttar Pradesh and assessed the situation of child labour in the state. Further to that, he made a report to NHRC with few recommendations.[206] The report mentioned that Uttar Pradesh has been facing the child, bonded and migrant labour. The child labour normally found in shops, embroidery industry and domestic help but it also identified employment of child labour in hazardous industries especially brick kilns, carpet weaving, glassware, brassware and hotels. The report shows that the State government has taken the initiatives to tackle the child labour, however, rehabilitation of 3,859 bonded labour in the state is pending. The report highlighted that between 2013-14 and 2017 – 18 (up to May 2018) in total 5,389 inspections took place in Uttar Pradesh in which 6,633 child workers were identified. The authorities educationally rehabilitated 2,313 children and economically rehabilitated 287 children. Moreover, 1096 cases have filed and 159.99 lakh rupees recovered from the employer.

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[206] Ashok Sahu Thematic special rapporteur (Child/Bonded/Migrant) of NHRC visited State of Uttar Pradesh between 18th and 24th June 2017. Thrissur. The report is available at URN: http://nhrc.nic.in/Documents/Reports. Accessed 22 March 2018.

The state government's initiatives to tackle the child labour includes a tri-monthly special campaign to identify and rehabilitate child labour; introduction of a conditional cash transfer scheme which encourages education to children in households. The record shows that it has been implemented in 34 districts of 8 divisions in the State. The scheme introduced scholarship to children 3,000 in admission and 5,000 while passing out the class and 100 rupees every month. The State also carried out the NCLP project operating 47 districts. Presently, it is continuing in 18 to 19 districts of the State. The NHRC proposed 40 more districts to include in the NCLP and forwarded the recommendation to the Ministry of Labour & Employment. The State government also conducted a training programme for capacity enhancement of all stakeholders. Moreover, the government also collaborated with UNICEF "Naya Savera Scheme" which specifically identifying child workers and promote their educational and intellectual development so that make the villages child labour free. The State government also conducting the core committee meetings and Monitoring Committee meetings regularly.

The NHRC summoned notices to the State Government on the basis of the complaints and inquired about the child labour. In 2013-14 NHRC served 60 notices, and 44 notices in 2015-16, 38 in 2016-17, all cases have been dealt with. During 2017-18 (up to 15th June 2017) the NHRC served 43 summons in that only 10 are pending to solve.

The NHRC made few recommendations with regard to eradicating child labour, they are early decision should be taken by the Ministry of Labour and Employment regarding the proposals referred to them for Constituting NCLP's; introducing new innovative schemes to combat child labour; Framing of Code of Conduct for owners of Brick Kilns and adhering to provisions of the is on priority basis so that child labour could be regulated effectively.

The NHRC has also taken initiative to investigate the exploitation of child labour on the basis of news reports. On 23rd January 2014, the NHRC has taken *suo-motu* cognizance of media reports. The news highlighted that in Gulbarga district, Karnataka State that a brick kiln owner assaulted a child labourer with an iron rod. The child got severely injured on his left hand and admitted to Hospital. The child is of twelve-year-old from Odisha. Upon the investigation, it is found that the child

labourer has been exploited by the brick kiln owners due to lack of enforcement of the rules by the State authorities. Therefore, the Commission issued notices to the Chief Secretaries of Government of Karnataka and Odisha calling for reports within two weeks.

The NHRC has taken *suo-motu* cognizance of a press report captioned, "ChhaiMaha Mein Gayab Huyai 90 Bachhe" that appeared in "National Duniya", New Delhi dated 10.7.2012.[207] The press report claimed that 90 children have gone missing in Ghaziabad, from 1.1.2012 to 1.7.2012. The Commission vide proceedings dated 10.7.2012 issued a notice to the Chief Secretary, Government of Uttar Pradesh and the District Magistrate, Ghaziabad to submit a report in the matter within four weeks. They were also directed to inform the Commission that whether the "guidelines on missing children" have been circulated as per the Commission's letter dated 6.8.2007.

From the above, it is clear that the NHRC has been actively involving itself in monitoring and implementing the relevant Acts and Policies to protect children from the exploitation of child labour.

5.5. ROLE OF THE NON-GOVERNMENTAL ORGANIZATIONS (NGO's)

The Constitution of India enshrined in its provisions that children need to protect against the exploitation and take care of them with facilities in a healthy manner. However, a large number of children denied for the same. Apart from the government initiatives, the Non-Governmental Agencies (NGO's) also come forward and taking initiatives to tackle the social evil child labour. The NGO's are independent of statutory authority and their policies are framed and controlled by their own members. NGO's are neither government contractors, nor substitutes for the government, but their thoughts and actions aim at the creation of good and friendly society and make awareness to the people about the evils in the society (Sachidananda 1981: 149-150).

The effectiveness of the NGOs is attributed to two major factors: firstly, they are relatively more acceptable to the people, and secondly, they operate grassroots level and constitute the strongest source of motivating the people by their personal

[207] Case No. 22368/24/31/2012.

interaction and involvement with the problems that the children face in their day-to-day routine activities (Shandilya and Khan 2003: 14). The NGO's have been playing an important role in the eradication of child labour in the global settings as well as in India. The problem of child labour in India is so complex that the State alone cannot tackle it, however, it has established and continued working relationship with the NGOs to achieve its goal to the eradication of child labour.

The majority of NGO's use a combination of strategies in their efforts to eliminate child labour or ameliorate its effects, and many have a distinct philosophy, and consequently a clear entry point and areas of emphasis (Wazir 2002). These days they have grown in size and developed its own research and training for effective and innovative programmes to shift children from work to school. They also made significant improvements in their performance in promoting sustainable development and livelihood for the poor (Nanjunda 2008: 82). The common features in their programmes are health and nutrition, non-formal education, vocational training, mobilising and creating awareness, facilitating child participation, assuring work and income security for parents, Social labeling, and Advocacy. Since the International Year of the Child in 1979, NGO's have become an increasingly powerful force, lobbying the UN system to adhere to the principles enshrined in the various UN pronouncements, and to take more effective action against child labour (Mishra and Mishra 2004: 94).

Number of NGOs have taken up the issue of child labour and bonded labour and carried out programmes to throw light on this issue. This study focuses on two prominent NGOs working on child labour issues i.e., Bachpan Bachao Andolan and Prays. The interventions of NGOs are in the areas of counseling, awareness raising, social mobilisation, encouraging community participation, releasing children from work, providing vocational training, enrolling children in schools and ensuring their retentions, monitoring the functioning of schools, bringing children into the formal mainstream schooling system, preparing educational kits, and facilitating interaction between the various stakeholders like government official, researchers, employers, etc. Some of the above said interventions from the NGOs are mentioned below:

Bachpan Bachao Andolan (BBA) is one of the leading NGO, particularly working in the field of child labour. This NGO is established in 1980. The NGO claims that it has physically liberated over 80,000 bonded child labourers from the work place and rehabilitated them to formal education. This NGO has also credited with largest ever Global March Against Child Labour (GMACL). BBA and GMACL have launched a month-long campaign against child labour and trafficking in Assam.[208]

BBA has had several successful experiences of securing landmark judgments from the local judiciary to the apex court. The Supreme Court has delivered historic orders, directions and judgments to combat bonded and child labour; ensuring rehabilitation; curbing trafficking of children and protecting child rights defenders upon the petition from the BBA.

The Global March against Child Labour took an initiative along with the other NGOs and ILO in the name of "Not Made by Children" opposing the Garment Manufacturing Sector. This movement was included ILO as in the capacity of an advisory body. This programme aimed to sensitise the issue of child labour and trafficking of children. The focus also is given to rescue of the children from hazardous work and conducted rallies against child labour and trafficking". The programme was mainly focussed in the North-Eastern region highlighting the issue of child labour and trafficking.[209]

The Prayas is another NGO working on the issue of child labour and child welfare aspects. It has been addressing the core issue of the marginalised children and developed its programmes through theme based approach. The main areas of work included child labour, child protection, juvenile justice, trafficking of women and children, education for the marginalised, homeless and working children in an alternative mode, etc. The Prayas Juvenile Aid Centre works for voices of millions of children in need of care and protection. It is also promoted Sarv Shiksha Abhiyaan campaign which helping children to get into the schools in more numbers. It is also

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[208] A step forward towards curbing child labour and human trafficking, published in The Sentinel, Guwahati available at http://www.sentinelassam.com/mainnews/story.php?sec=1&subsec=0&id=141443&dtP=2012-12-06&ppr=1#141443. Accessed 01 June 2017.

[209] Strategic Interventions under the ambit of the initiative "Not Made by Children" Global March against child labour, available at http://www.globalmarch.org/campaign/page/strategic-interventions. Accessed 12 June 2017.

carried out anti-trafficking initiatives along with government agencies. It provided shelter and rehabilitation to 180 girl children who having been trafficked at some point in time. Overall, the Prayas worked for the welfare of the children and always taking the initiative to protect the children.

5.6. SUMMING UP

Although India has a history of providing legal protection to working children, which can be traced from a century back, still the child labour is prevalence across the country. Efforts from the international institutions, Indian judiciary, relevant government departments and NGO's are commendable in this regard.

The international organisations continuously put their efforts on awareness programme along with NGO's and government departments. The ILO provided with technical and financial assistance to India to make awareness of the severity of the problem and curb the child labour through IPEC. Simultaneously, the Indian judiciaries also assessed the child labour cases which brought before the Court by the NGO's and private petitioners and delivered effective judgments. These judgements helped to cut down the child labourer in the formal sectors and also gave the directions to help the government to come out with strict implementation of child labour policies. The Supreme Court of India also directed the NHRC to monitor the situations at the state level and help the strict implementation of the international Conventions, Recommendations, Declarations and national legislations to protect the children from the exploitation of child labour. The Court also directed the Central and State governments to carry out the guidelines of National Policy to ensure the improvement of the working conditions of the child workers.

Thus, the efforts of international organizations, NGOs and government agencies are in the right direction and indeed commendable. However, the goal of complete abolition of child labour is still a distant one. In order to be effective, it is essential that international organisations arrive at programmes and campaigns suited to national conditions. Moreover, there is a need for greater coordination of efforts of international organisations in the struggle against child labour. International organisations also need to develop their campaigns within the framework of a

partnership with concerned governments and NGO's if their efforts are to have a lasting impact on the status of the working children.

CHAPTER – 6

GAPS IN INTERNATIONAL AND DOMESTIC NORMS AND ITS IMPLEMENTATION

6.1. INTRODUCTION

Although child labour is widespread in developing nations, it is also prevalent in developed nations (Weissbrodt *et al* 2009: 944).[210] Though children do work in some capacity in most such countries, if not all countries, the determining factor is that whether the work is harmful to children or not. The plain fact remains that they are working, irrespective of whether they are in a developing or developed economy. Moreover, Peter Dorman, a scholar in international labour issues, contends that "child labour problems faced in developing and developed nations are qualitatively similar and require comparable policy responses" (Dorman 2001: 49).[211] Although all areas of government policy affect children in our society, many nations traditionally have been failing in sufficiently taking children's issues into account (Weissbrodt *et al* 2009: 909). In fact, governments' inaction and short-sighted approaches to policy making have a negative impact on the future of all members of society (Weissbrodt *et al* 2009: 910).[212]

Despite having been consistently at the forefront in responding to child labour, India lags well behind them in terms of addressing the issue (Brasted 1997: 13-41). India, in fact, was among the first few countries to devise a policy on child labour (Brasted 1997: 19). India conducted the earliest in-depth investigation into child labour in the late 1920s (Brasted 1997: 19) and enacted landmark legislations in 1933 and 1938 to control the engaging of children in work (Brasted 1997: 10). After independence, India enacted a number of legislations and initiated many other administrative programmes aimed at the protection of children and elimination of child labour. However, it is in terms of ratifying and implementing relevant ILO Conventions that India has been less

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[210] Although child labour has been primarily seen as a developing country problem, it also exists in many industrialized countries. In order for any action remedying child labour to be effective, nations have to acknowledge that treating child labour as a problem of the poor world is erroneous and counter-productive. In fact, child labour, in both developed and developing nations, has been assessed by the 'nature of the work children do', not by the harm it causes them.

[211] The author notes that this similarity also serves as a reminder to us that general economic development does not reach all social groups evenly and so, even in the best of cases, cannot be regarded as magic cure.

[212] Any national policy aimed at abolishing child labour should prioritize measures to help 'the most vulnerable children' by focusing on the 'most intolerable forms of child labour'.

willing and prompt (Brasted 1997: 10). After prolonged waiting, recently, in March 2017 the Government of India ratified both the ILO Minimum Age Convention (C138) and the Worst Forms of Child Labour Convention (C182), which are the two important ILO Conventions against the child labour.

This chapter focuses on where the problem lies and what are the factors that hinder the fullest commitment towards eliminating 'child labour'. It also discusses the gaps in international and domestic instruments pertaining to child labour and its implementation and administrative actions. Further, it deeply dwells upon the reasons, which can be assumed as impediments in implementing international and domestic legal norms in their absolute spirit. The chapter submits a few suggestions to fill the gaps in the national efforts to save children from exploitation and enable them to enjoy their human rights in their totality.

6.2. GAPS IN INTERNATIONAL INSTRUMENTS

As mentioned in the previous chapters, there are strong legal norms developed nationally and internationally against the exploitation of child labour, but they are supported by rather weak enforcement mechanisms (Silk and Makonnen 2003: 359-370). Member states are skeptical about ratifying and enforcing the international Conventions, as the ratification may weaken "state sovereignty" (Selby 2008: 165-180). In most of the cases, views of the Member states are not considered before the process of drafting international Conventions. It indirectly hints at the weak drafting process. This is not an exception even in the case of international Conventions on child labour. This factor may delay the ratification of the Conventions by the member states. While analysing the international instruments and domestic legislations one can find some of the major gaps between the international Conventions and their domestic implementation. The analysis below briefly examines those gaps on matters pertaining to child labour.

6.2.1. The Universal Declaration of Human Rights (UDHR)

In the previous chapters, it was emphasised that providing education would regulate and prohibit child labour. It is true that each and every international Convention and

Declaration which are focused on “children” has the “right to education” as it indirectly promotes the welfare of children.

The UDHR is one of the prominent of the Declarations that speaks itself for the human rights.[213] This Declaration also states that “everyone has the right to education” and that the elementary education should be free and compulsory (Art. 26 (1)). In this Declaration, the word “everyone” includes “children”, specifically emphasising that children should be treated equally to adults. Although this concept was introduced way back in 1948, the world at large till this date has neither every child getting a free education nor are they being equal to adults. The idea of including the “right to education” in the Declaration is meant to protect the welfare of children so that children would be engaged in schooling and develop themselves in an environment which is congenial for their overall growth. This, in turn, would help to curb child labour form the grass root level.

Apparently, simultaneously to the adoption of the UDHR, the Constitution of India was also adopted by the Constituent Assembly and included a provision on “right against exploitation” (Part III of the Constitution). Although the “Right to Freedom” was included in Part III of the Indian Constitution from the beginning, the “Right to Education” was inserted later on in 2002.[214]In line with the UDHR and the Constitution of India, the Government of India enacted the Right of Children for Free and Compulsory Education Act in 2009. It took for the Government of India nearly almost 61 years to enact a legislation with regard to the Right to Education.

Although India ratified the UDHR and further enacted the “right to education” Act, the implementation part is very weak. In a sense, Indian society is still making way for the exploitation of children through child labour. For instance, if a child is spending nine hours a day in harvesting sugarcane, how can he/she make the best use

[213] The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages.
[214] The Constitution of India (Eighty-sixth Amendment) Act, 2002 inserted Art. 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

of the concept of "right to education"? Even though the member states are trying their best to enlighten the parents and community, where children are employed, factors like poverty and attitude of employers render it hard for the strict implementation of these principles. Therefore, obviously, the UDHR lacks enforcement mechanisms and didn't succeed in its noble campaign to provide education to children. Thus, it is necessary to address the poverty of the "family" and "attitude of the employer" first. Moreover, the government needs to aggressively approach the policy for the implementation of the Act, upholding the spirit of the Constitution and the UDHR.

6.2.2. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The UN General Assembly adopted ICESCR was on 16th December 1966 and entered into force on 03rd January 1976 (Craven 1995: 22). It recognises the compulsory right to education at the primary level.[215] The Art. 10 (3) of the ICESCR states that:

> Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, or dangerous to life, or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

The employment of children has been emphasized under Art. 10 (3). It is evident that this Article only considers children who are "employed" and not in other contexts. It has also given the "discretion to Member states to set age limits for paid employment", which is even narrower than the rights recognised.[216] From the above, it is evident that ICESCR neither methodically prohibit child labour nor it has the mechanism to compel the states to implement the Covenant domestically.

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[215] International Covenant on Economic, Social and Cultural Rights, G.A.Res.2200A (XXI) (1966). Article13(1) reads: "The States Parties to the present Covenant recognize the right of everyone to education." Article 13(2) (a) reads: "The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right…primary education shall be compulsory and available free to all".

[216] It is recognised that the right should be protected from all employment 'paid or unpaid' in work that is harmful.

The ICESCR has given much importance to the education of children. Most of the nations, by and large, accept that children need to be provided with free and compulsory education. In a General Comment by the ICESCR, it is discussed that "the Covenant in its nature as being capable of immediate application by judicial and other organs in many national legal systems" (Craven 1995: 374).[217] The above comments emphasize that the member states, who have strong legislative and judicial framework, should implement Art. 10 (3) and 13 (2)(a) immediately, even if they have concerns as to the means of implementing it. Notwithstanding the suggestions put forward by the Committee, in effect, this article still is not fully implemented. Therefore, it is evident that the mechanism at the ICESCR is weak to implement its provisions at the national level.

Additionally, the Covenant speaks about the rights but the Art. 10(3) it did not mention anywhere about the "rights". Instead, it states that "children should be protected from economic and social exploitation and that certain employment should be punishable by law" (Art. 10(3)). It is therefore pertinent to ascertain whether obligations of states are diminished, in the absence of any reference to specific rights. However, from the above it is obvious that the ICESCR has legal terms—there does not seem to be any diminution of a legal obligation. It is clear in the above Article that there is no need of immediate action from the member states. However, it is also doubtful whether there would be legal implications for the member states if they failed to implement Article 10 (3). The lack of legal action for not implementing the Covenant, coupled with failure to cover all forms of child labour, carries the implication that it may not be geared towards eliminating child labour altogether. Apparently, it is evident that weak legal mechanism at the ICESCR would not be helpful to completely eliminate child labour.

Moreover, The ICESCR is known for the "softness" of its implementation mechanisms. "Softness weakens legal obligations of member states. Art. 2(1) reads as follows:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available

[217] ICESCR, General comment No. 3 (1990): The Nature of States Parties Obligations.

> resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

When we closely read the above provision, it could be interpreted that States need not rush to implement the Convention; rather it can be implemented only when the member states are ready to implement the same. This soft nature of the Covenant gives the member states a chance to delay in fulfilling their obligation leading to economic exploitation of children. Comparatively, ICCPR is stronger and stricter in its procedure than the ICESCR and has quicker implementation mechanisms.[218]

6.2.3. The Convention on the Rights of the Child (CRC)

The UN General Assembly adopted the CRC on 20th November 1989 and it entered into force on 2nd September 1990.[219] The CRC recognises that the right of the child including the right of education for children is one of the rights enshrined under the Convention. It also emphasises on the need for compulsory education for children (Article 28(1) (a)). In the same vein as ICESCR, the CRC also recognises the child's right to be protected from economic exploitation (Art. 32), hazardous work which would likely to interfere with children's education or harmful to their personal development (Art. 32). It also recommends for legislative, administrative, social, and educational measures to protect children from the exploitation and for implementing the rights of the child at the national level including the setting of the minimum age for admission to employment (Art. 32).

Generally, economic exploitation means the "labour" which employer gets forcefully or without the consent of the employee at the cost of the latter's health or personal development Van Bueren 1998: 28). From the language of Art. 32 of the Convention, it is hard to figure out what type of work constitutes economic exploitation (Mason 2006: 267-275). For instance, it is hard to say that if a child is working in a particular occupation, it is not clear whether causing any harm to a child's development is a damage or not.

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[218] Article 2 of the ICCPR requires States to "undertake to respect and to ensure" all rights in the present covenant, to "take the necessary steps" to give effect to rights and ensure "effective" remedies. ICCPR, G.A.O.R., 21st Sess., No. 16, UN Doc.A/6316 (1966).

[219] Convention on the Rights of the Child, U.N.GAOR, UN Doc. A/RES/44/25 (1989).

This Article does not shed light on what category of work could damage the child's health or personal development. The Article gives an option to children to give away their job if they think that it is harmful to their health as the CRC has mentioned the word 'or' in the Article 32 (Mason 2006: 268). The Convention is also blank on the nature of the harm before children could give up their work (Mason 2006: 268). Thus, it could be said that the CRC is ambiguous on the said point as it has not clarified "damage". Instead, it simply expands children's right through Art. 32 of the Convention. Therefore, due to the above drawbacks, the UNCRC is unable to systematically prohibit child labour.

In general, the UNCRC is considered to be a 'soft' law as it does not have a strong mechanism to implement its provisions at the national level. The Art. 4 of the CRC reads as follows:

> States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

It is evident from the above that, the Convention gives member states the leeway to implement child labour laws in a manner that only suits their respective economic conditions. The member states misuse this article, causing a delay in implementing the Convention.

UNCRC claim that it protects children's rights and from the economic exploitation. Child labour is one form of economic exploitation. The UNCRC did not fix a minimum age for the employment at the international level (LeBlanc 1995: 134). It has given the option to member states to fix a minimum age at the national level. It did not even provide any guidelines or advises. Only the basic working text of the Working Group mentions the minimum age of fifteen years but gives a reference of

the ILO Minimum Age Convention.[220] But the succeeding Working Groups have failed to fix an age. Being a highly ratified Convention, it would have fixed a minimum age for the employment at the international level.

The Convention also lacks an enforcement mechanism to ensure state parties' implementation (Hall 2001: 923-925). The UNCRC has a monitoring Committee called Committee on the Rights of the Child. This Committee evaluates the member states' implementation of the Convention and provides guidance for improvements (Cohen 1999: 95). The evaluation of the implementation is based on Member states' periodic reports (Art. 44). The UNCRC also gave powers to the Monitoring Committee to follow other methods under Art. 45.[221] Nevertheless, Art. 45 is not precisely an implementation mechanism, as the member states have the right to select how the provisions of the Conventions could be implemented at the national level (Glut 1995: 1203-25). This power undermines the UNCRC, rendering it devoid of a strong enforcement mechanism.

There is a procedure under UNCRC that the member states must submit a compulsory report to the Committee. This procedure is an obligation under Art. 44. The report should include the steps which the member states have taken to implement the provisions of the Convention (Silk and Makonnen 2003: 359).

Ideally, the reporting system inspires teamwork within the member states and NGOs. It is also helpful to generate awareness especially relating to the issues of child labour and economic exploitation, national cooperation, sharing information with the UN and other member states and giving consent to UN for further enhancements (Doek 2003a: 235). But the UN reporting mechanism seldom fulfils the purposes mentioned above. The UN reporting mechanism is so weak that it does not provide for any

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[220] The relevant Article of the basic working text, as adopted by the 1980 Working Group reads as follows: 1. The child shall be protected against all forms of discrimination, social exploitation and degradation of his dignity. He shall not be the subject of traffic and exploitation in any form. 2. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to his health or his moral development, or in work dangerous to his life or which would interfere with his normal growth, and undertake to subject to legal punishment persons violating this law. 3. The States Parties to the present Convention shall comply with the law prohibiting the employment of children before the age of fifteen years.

[221] The Committee on the Rights of the Child may also invite other specialised organisations within the UN, such as the UN Children's Fund to submit reports on particular issues.

punishment or penalty for not submitting the report to the Committee. It is evident that most of the reports submitted before the Committee were incomplete or have inadequate information (Selby 2008: 168). Thus, the UNCRC has gaps in its implementation mechanism and it needs to overcome it.

6.2.4. ILO Convention on Worst Forms of Child Labour (C 182)

The Convention 182 is one of the important ILO Convention that prohibits worst forms of child labour. Art. 3 of the Convention includes "all forms of slavery or practices similar to slavery, procuring or offering a child for prostitution, procuring or offering the child for illicit activities, and work which by its nature or the circumstances carried out is likely to harm the health, safety or morals of children".[222] Art. 4 of the Convention 182 provides that member states shall determine what kinds of work shall constitute 'hazardous work' for children in national laws and regulations (Art. 4). The ILO also adopted recommendation 190 as a non-binding document which provides guidance to states in determining what constitutes 'hazardous' work for children. Here enforcement deficiency at the domestic level is obvious. In Convention 182, the ILO delegated the enforcement of hazardous child labour prohibition to states. Most states have attached sanctions to their prohibitions against child labour, though these sanctions have not been consistently enforced. For instance, although India recently amended the "Child Labour (Prohibition and Regulation) Act 1986", and mentioned 14 years as the minimum age for joining employment. It is also mentioned that children can do hazardous work only at the age of 18. Moreover, this amended Act identifies with "hazardous occupation and processes and a list of the same is included in the Part A and B of the Act". Unfortunately, the list does not have all types of "hazardous occupations and processes", yet it is inconclusive, leading to the exploitation of child labour.[223]

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[222] Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 38 ILM. 1207.

[223] The hazardous work schedule is not comprehensive as children under 18 are not prohibited from working in spinning mills, garment production, carpet making, and domestic work, which are the areas of work where there is evidence that children work in unsafe and unhealthy environments for long period of time.

The ILO did not define the term 'hazardous' as applied to child labour instead it delegated to countries the task of drawing up lists of occupations or conditions that are considered hazardous. In Recommendation 190, the ILO provided guidance as to what might constitute a 'hazard'. Although the ILO has helped to create very strong norms, it has left an enforcement vacuum because Convention 182 did not create an institution to measure compliance. Most human rights treaties rely on treaty monitoring bodies,[224] but Convention 182 lacks even self-reporting or international examination requirements (Silk and Makonnen 2003: 362). Instead, it leaves enforcement entirely within the domain of the member states (Art. 5).

6.3. GAPS IN DOMESTIC IMPLEMENTATION OF THE CHILD LABOUR ACTS & POLICIES

Child labour is by no means a new problem in India. Although, the Government of British India ratified an ILO convention in 1919 (Burra 1998: 3-5), it wasn't until more than half a century later, in 1985, that the issue of child labour was put back into public discussion as a result of a Bangalore-based NGO igniting debates around a bill related to child labour (Burra 1998: 1). This event and the continuous efforts of other NGOs with a media partnership have subsequently kept the issue alive.

6.3.1. Gaps in Child Labour (Prohibition and Regulation) Act, 1986

The 1985 debate around the Child Labour (Prohibition and Regulation) Bill highlighted two important views. On one hand, the government argued for simple regulation of child labour. On the other hand, the NGOs argued for a complete prohibition on child labour.

On 23rd December 1986, the Indian Parliament enacted Child Labour (Prohibition and Regulation) Act. This is the first ever Act that aims to combat child labour exclusively. During its enactment, it stirred a national debate around child labour, but its substance contains several legal and procedural loopholes.

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[224] The Human Rights Committee is the treaty body to the International Covenant on Civil and Political Rights (ICCPR). The Committee accepts communications and complaints from state parties and individuals for allegations of violations of the ICCPR.

The "prohibition and regulation" phrase in the title of the Act might suggest a successful compromise between the above two thoughts, however, such assumptions would be misleading. The Act does not speak of 'abolition of child labour,' instead, it refers to "prohibition and regulation of child labour". Huge discussions and debates were held between the government and NGOs around the above phrase. The government defended and justified for "prohibition and regulation" instead of "complete ban of child labour" because of "economic necessity of the family". This inconclusive decision of the government is against the objective of the international Conventions and Declarations as it deviates its agenda of the welfare of the children which include "right to education" and "freedom from the exploitation". The Act also failed to address the problem at the unorganised sector. The reason given for this is that it is hard to identify the child labour in this sector. This gives a chance to the employer to easily exploit children for labour. Although, the Act mentioned that it regulates "hazardous occupations and processes" but many of the worst forms of child labour are were not included in the list. For example, working at "glass industry" is a hazardous job but it did not find a place in the list. Also, "workshops" either as a family occupation or as a facility in a government-aided or recognised school are left out from the list even though it is a hazardous work in nature potentially causing harm to children's health. It is not true that if any hazardous work is carried out at the school that would not make any harm to the children (Lata and Kant 2007: 117).

The 1986 Act erroneously relied upon a worldview of child labour that did not reflect the reality at the time of its enactment. It has repeated Section 3 of the Employment of Children Act, 1938 which provides exceptions in the case of "family labour". Family members can take work from the children (Burra 1998: 2).[225] Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 states that the prohibition of employment of children will not apply to places where work "is carried on by the occupier with the aid of his family". In spirit, the 1986 Act amount to giving a new name to an earlier ineffective legislation. Giving new names to old problems, however, does not provide solutions.

[225] Interestingly, the 1938 Act is repealed in Section 22 of the 1986 Act only to incorporate its substance in newer words.

Moreover, the 1986 Act provides an exception to family-based enterprises, especially in agriculture,[226] cotton seed plantation etc., which employ child labourers. Section 3 of the Act says "no child shall be employed …: 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 the Government". Obviously, if any child is working in a workshop which is considered as a family business is allowed under Section 3. One side the Section 3 of the Act says "no child below the age of 14 years shall be employed or permitted to work in any of the occupation mentioned in Part 'A' of the schedule or in any 'workshops' mentioned in the Part 'B' of the schedule". The distinction clearly makes that children should not be permitted to take any kind of job mentioned in Part 'A' of the schedule but only 'workshops' in Part 'B' of the schedule. The Act does not allow the work carried in a 'workshop'. It is not prohibited in the same work in a place where this kind of work is not carried out in a 'workshop'. This erroneously accepts that "as long as a child is not forced to work in an exploitative environment, no legal action needs to be taken". Such relaxed standards in the same kind of work will not protect the child labour.

In *Hemendra Bhai vs. the State of Chattisgarh*, the High Court held that "even if the occupier of the house, which if treated as a workshop, is found to have engaged any child in Bidi making, the same cannot be considered as violative of Section 3 of the Act".[227]Section 3 of the Act indirectly protects children who are working in Bidi manufacturing units, carpet weaving, glass and match industry by using the exemption clause as 'aid of family'. In the above case, there is a legal loophole. It should be considered that the occupier is an employer, however, should be liable to prosecution. If not the occupier has to prove that the child belongs to his own family (Sekar 2007: 17). Therefore, both "Part A and B of the schedule of the Act" is equally dangerous to the health of the children, however, law needs more preventative approach and should be banned in both circumstances.[228]

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[226] Prakash Rao C. and Other vs. Government of Andhra Pradesh 2003 (1) ALT (Crl.) 235 (D.B) (A.P.).
[227] 2003 (97) FLR 402 (2003) IILLJ 645 CG.
[228] A. Srirama Babu vs. The Chief Secretary to the Government of Karnataka, ILR 1997 KAR 2269; 1998 (1) KarLJ.

In *New India Assurance Co., Ltd vs. Rachalah Basaiah Ganachari* the Court held that although the boy was 13 years old and was prohibited to be employed under Section of 3 of the Act, because of the exemption the Act allowed him to work as the occupation is not covered under Parts 'A' and 'B' of the Schedule.[229]

Providing proof for the 'age' of the child is another issue under this Act. Section 10 of the Act reads as follows:

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

The Act makes it obvious that the prosecution has to arrange the medial certificate as proof of 'age' of the child to produce before the court of law if any dispute arises between the Inspector and the occupier. By affirming this in one of the cases in 2002, the Allahabad High Court decided that it is the duty of the Inspector to obtain a certificate of the prescribed medical authority regarding the age of the child. Therefore, if the inspector has failed to obtain the medical certificate as an evidence for the age of the child, the accused should not be convicted (Sekar 2015: 18).

The penalty for violation of this Act is explained under section 14 of the Act. This Act says "whoever employs any child or permits any child to work … shall be punishable with imprisonment for a term shall not be less than three months extend to one year and fine not less than ten thousand extend up to twenty thousand rupees". The Act also applies to the case where somebody is sought to be prosecuted before the competent court. Only the court can impose the penalty against such a violation of the Act. It has neither authorized the Labour Commissioner or Inspectors to hold a person guilty of the offences nor impose penalty or punishment to the alleged wrongdoer,[230] thus lacks the immediate punishment to the offender.

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[229] 2001 ACJ 2113; ILR 2000 KAR 4743, 2001 (3) KarLJ 135, p.135.

[230] Haria Ginning and Pressing vs. Mamlatdar (2007) 2 GLR 2095, (2008) ILLJ 432.

The Act is also subject to criticism for implementation and enforcement of the law, especially with regard to the rehabilitation of children who were rescued from the workplace. The Act is much focussed on 'cleansing the establishments' of child labour, howsoever noble, leaving the rescued children with no real options or restitution (Ministry of Labour 2002: 1017). Also, the Act leaves the actual implementation and enforcement of laws to state bureaucracies. They are competing with each other—thus there is no motivation to ease this social evil (Ministry of Labour 2002: 1017). A particular instance with regard to the 1986 Act and in-effectiveness in the Indian system is below: For example, the prosecutor may try to prove the age of the child in labour (Ministry of Labour 2002: 1028) whereas in the corrupt system the government officials are taking money and produce the forged certificates of age. The Act also has loopholes under the punishment section. If an employer engaging a child against Section 3 of the Act, the employer can be defended under Section 14 for the minimum punishment.[231] As per the Act, the Court is the superior authority to impose the penalty and punishment to the offender based on the certificates provided by the prescribed medical authority and it is the conclusive proof of the age of the child. However, the provisions have not given any powers to Inspectors or Labour Officers to impose the punishment.

An ill-conceived assumption of the 1986 Act is that the abolition of child labour is impossible as long as poverty exists (Ministry of Labour 2002: 1027). By implication, efforts to eliminate child labour become secondary to the elimination of poverty. Despite giving importance to removing poverty and acceptable affirmations that child labour is caused by poverty glances "attention from the quiescence and inactivity of the state", which benefits from the *status quo*, and covers the "systematic exploitation of children" (Burra 1998: 242). It is argued that, to the contrary, that child labour 'reinforces, if not creates, poverty' (Burra 1998: 243) when "a working child grows into an adult trapped in unskilled and badly paid jobs" (Weissbrodt 2009: 916). The weak labour laws allow the cheap child labour market to exist in the first place and create poverty in the labourer's families. Additionally, if the poverty is considered as one of the reasons for child labour, such consideration ignores that "child labour is not

[231] The punishment is likely to include imprisonment of three months to one year or fine of between Rupees 10,000 to 20,000. However, these amounts and this law provide no deterrence and no restitution for the children. Before the penalty proceedings are imposed *mensrea* has to be established.

an economic compulsion of all poor families" (Ministry of Labour 2002: 1017). All these different opinions stem from the same data and each focus on a causal relationship as the source of the problem. Consequently, the collective result is that both poverty and child labour are avoided systematically in the society. Thus, the Act failed to focus on the strict implementation of its provisions and reasoned that the poverty of the family overruled the enforcement of legislation to curb the child labour. Therefore, it is suggested that national policy should address both poverty and child labour simultaneously.

Despite the above gaps in the 1986 Act, the Supreme Court of India passed an encouraging decision in *M.C. Mehta v. State of Tamil Nadu*, stating:

> In order to fulfill the legislative intent behind the Child Labour (Prohibition and Regulation) Act 1986, the offending employer would be required to pay compensation for every child employed in contravention of the provisions of the Act in the amount of Rupees 20,000 which would be deposited in a child labour rehabilitation-cum-welfare fund, and compliance with the court's direction would be monitored by inspectors appointed under the Act.[232]

By using its directive powers, the Supreme Court recognized the need to penalize the violators through fines and directed to use the collected amount for the rehabilitation of rescued children. The Court also called for a joint effort of the central and the state governments to implement the above for the success of the noble cause (Ministry of Labour 2002: 1030). Certainly, this directive revived and made aware of the right of the child and helps the children to join the mainstream education which may lead to India's child labour jurisprudence in the right direction.

6.3.2. Gaps in Child Labour (Prohibition & Regulation) Amendment Act, 2016

Although the government has made good efforts to regulate child labour by enacting Child Labour (Prohibition & Regulation) Amendment Act, 2016, it remains with some of the loopholes in the new Act as it has taken away basic protections for some of the most vulnerable workers by giving exemptions in the provisions of the new

[232] M.C. Mehta vs. State of Tamil Nadu AIR 1997 SC 699, 1996 (6) SCC 756.

Act. The loopholes may complicate the ongoing efforts to eradicate child labour as the principle of 'total ban' on child labour has been completely neglected. It has failed to incorporate the severe hazardous occupations into the list of "Part A and Part B of the schedule of the Act".

The new amended Act of 2016 has its own loopholes. Although the new Act mentioned hazardous occupations in the "Part A and B of the schedule of the new Act", but Section 4 of the new Act says "even the listed occupation as hazardous work can be removed not by parliament but by government authorities at their own discretion" (Section 3(A) of the Act). Thus, Section 4 of the amended Act has given full authority to the government to make changes to the list of the hazardous work by passing the parliament. This discretion power of the government could favour any industry by making the changes to the list and make way to exploit child labour. It may adversely affect the Act and makes the Act less effective.

Similarly, Section 3(2)(a)&(b) of the Act "allows child labour in family or family enterprises or allows the child to be an artist in an audio-visual entertainment industry". It is evident that in India the caste system was widely prevalent and most of the families which were involved in child labour are from the poor background trapped in intergenerational debt bondage. They completely relied on their family occupation for their earnings which is mainly based on their caste. Thus, the Section 3(2)(a)&(b) encourages child labour by allowing children to work in their family enterprises. However, this exception is a clear blow to the new Act because the main objective of the new act is "complete ban on child labour". It is very difficult to differentiate whether the child is 'helping' the family or child is under 'bondage' with other family members. However, it is hard to rescue children who are working for their family or family enterprises. The regulation may encounter a big challenge to determine whether the business is a "family enterprise", or unknown employers running the industry by employing a single family to mislead the Inspectors who are appointed under this law. Moreover, the new Act failed to define the hours of the work "after the school hours or during vacations". Section 3(2)(a) simply states that children may help his "family or family enterprise, and work after his school hours or during vacations". There is no clarity on the hours of work the child can do after school hours or during vacations.

Moreover, the new Act also disregards the Convention on the Rights of the Child and ILO Minimum Age Convention. Interestingly, India is a signatory to both the Conventions, therefore, it is obliged to implement the provisions of the Conventions at the national level. According to UNICEF:

> "A child is involved in child labour activities if between 5 and 11 years of age, he or she did at least one hour of economic activity or at least 28 hours of domestic work in a week, and in the case of children aged between 12 and 14 years of age, he or she did at least 14 hours of economic activity or at least 42 hours of economic activity or domestic work per week is considered as child labour".

The Amendment Act is silent on a number of hours a child can work.

Similarly, the ILO Minimum Age Convention allows an exception to children between 12-14 years of age in developing countries "to do light work as long as it does not threaten their safety, health or education". The new Act, by not prohibiting employment of children in chemical mixing units, has overlooked the ill-effects of exposure of these chemicals on the health of the children. This dilution of the law leads to violation of ILO convention.

It is proven from the previous statistics of the Labour Ministry that the child labour is more often identified as working for family business. It is hard to rescue the children who are working in their family businesses. However, the new amended Act would be a big challenge. There are no measuring points explained for identifying the family run business which allows children to work under the new Act. The new Act also failed to explain about the single family who is employed by the occupier out of the way to avoid the law. The result would be a higher dropout rate. Children's schooling may be badly affected. The family prefers that their children work for the family business, thus children end up with full-time adolescent workers and unable to complete even primary education.

According to UNCRC, "every child has a right to be heard". The International Working Group on Child Labour, which came up with Kundapur declaration,[233] stated that "children should be consulted, their products recognized, work be regulated and made safe, and education, health and security be provided". The above Convention and Declaration emphasized the importance of "child welfare". But the new Act neglects the welfare of the children and allows them to work in the hazardous occupations through an exception to the Act. Further, the new amendment contradicts its own codified law, the Juvenile Justice (Care and Protection) of Children Act of 2000 which says "if any child is employed or engaged in hazardous occupation is punishable".

6.3.3. Gaps in the Government's Policy Decisions

Universalisation of "primary education" and "community involvement" are two important factors which could influence the "child welfare" in the society. The 73rd and 74th of the amendments of the constitution have provided significant opportunities for local community involvement in the elimination of child labour and the universalisation of primary education (Ministry of Labour 2002: 1029). But the national policies failed to use this concept in its policy decision to curb child labour. Furthermore, Child Labour (Prohibition & Regulation) Act, 1986 failed to provide free education as an alternative for children who are unable to afford to school and consider work as the only other option.

Art. 24 of the Indian Constitution states that "no children below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment" (Burra 1998: 9). A complementary provision to Art. 24 is Art. 45 that requires that the states "provide free and compulsory education for all children until they complete the age of fourteen years". "Free and compulsory primary education" is necessary so that children can join the education in large numbers and help to prohibit child labour Burra 1998: 244). Additionally, constitutional provisions under Art. 39, subsections (e) and (f), endow protection to

[233] Certain principles were agreed by representatives of working children organisations from Africa, Asia, and Latin America at the first international meeting of working children in Kundapur, Karnataka in 1996.

child labourers who suffer abuse at work which is unsuitable for their age and strength (Burra 1998: 10).[234] These provisions of the Indian Constitution offer a framework for child labour law cases.

Apparently, the UNCRC was ratified by India on 11th December 1992 and thus implicitly more than a decade ago India "accepted the legal obligations of bringing its existing laws, policies and programmes in line with the international standards laid down by the CRC", and recognised the indivisible and inalienable rights of children (Ministry of Labour 2002: 1022). India's ratification comes with a reservation through a legal declaration, which some argue leaves its commitment almost worthless (Weissbrodt 2009: 919). The Declaration states in full:

> "While fully subscribing to the objectives and purposes of the Convention, realizing that certain rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India -- the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), (Weissbrodt 2001: 96-97)[235] in accordance with its national legislation and relevant international instruments to which it is a State Party (Weissbrodt 2009: 919-920)".

The declaration avoids immediate implementation of children's economic, social and cultural rights, failing in effect to protect children from economic exploitation which includes child labour. In the above declaration Government of India emphasised the reality of the developing countries where children of different ages inevitably do

[234] In particular, the language of Article 39(f) states "the children should receive opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that children should be protected against moral and material abandonment."
[235] Article 32(2) states: "States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment".

work. The rationale behind this argument is clear that India supports the progressive nature rather than the immediate implementation of the CRC. In the form of flexibility, by choosing the progressive method in its declaration, which would actually hinder India from completely realising the substance of the CRC. Thus, India indirectly accepted that unless and until it progresses, the complete ban on exploitation of children is not possible which influences the increase of child labour.

In its declaration, India hesitant to fully adopt Article 32 (2) (a) of the ILO Minimum Age Convention, and declare its intention to progressively implement a plan. This Convention calls for "setting up a minimum age for admission to employment". Interestingly, Art. 1 of Convention 138, states that members should commit to "pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment". Recently, India ratified this convention, which contains provisions that mirror India's progressive implementation rationale.[236] On par with the ILO Convention,India mentioned the minimum age in its newly amended Act but failed to put "complete ban on child labour". It indirectly shows India's stand as hypocritical and unfaithful to its commitment to the elimination of child labour.[237]

The national and international communities have been pressing for a complete ban on child labour but India's approach towards child labour is mainly regulatory and with its laws clearly indicating this approach. The Government of India's view is that the problem of child labour cannot be abolished immediately given the present socio-economic realities which force children to work. Thus, the Government's policy focus on abolishing the child labour from the grass root level by the immediate prohibition

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[236] ILOLEX Database of International Labour Standards, Convention Concerning Minimum Age for Admission to Employment (adopted June 26, 1973), Accessed 12 October 2017, URL: http://www.ilo.org/ilolex/english/convdisp1.htm.

[237] It is worth to mention that while Convention 138 and Convention 182 are complementary, one does not replace or revise the other. For instance, article 3(d) of Convention 182 covers "work which, by its nature or the circumstance in which it is carried out, is likely to harm the health, safety or morals of children," which differs from article 3(1) of Convention 138 dealing with employment or work which "is likely to jeopardize the health, safety or morals of young persons." The Convention 138 still remains the "bedrock of national and international action for the total abolition of child labour." The International Programme on the Elimination of Child Labour, Frequently Asked Questions about Convention No. 182 and Recommendation No. 190 on the Worst Forms of Child Labour (11 September 2002), Accessed 15 November 2017, URL: http://www.ilo.org/public/english/standards/ipec/about/factsheet/faq.htm. The adoption of one of the instruments "does not give an excuse to postpone or put aside any on-going consideration" of the other.

of hazardous occupation. The policy opted for the gradual elimination of child labour from non-hazardous occupation (Mehendale 2001: 5). This is emphasised in "Child Labour (Prohibition and Regulation) Act, 1986" and amended Act of 2016; and also in the National Policy on Child Labour, which was adopted in 1987. But the concern is about "gradual method" of abolishing child labour which presently exists in the 'regulated' sphere (Mehendale 2001: 5). The Act or policies do not clearly define the content of the "gradual" method, so it could be delayed however increase the child labour.

As explained in the previous chapter, India's child labour policy initiatives comprise of three stages i.e., a much needed "legislative action plan, focus on building development programmes that benefit children, and project-based action plan" in places of high concentration of child labourers.[238] To strengthen the national commitment and amplify the voice of the international community, India can facilitate compliance of its national initiatives with the international instruments for the sake of improving children's rights and to eradicate child labour. Though it is clearly mentioned in the Constitutional amendments, the government has largely failed to formulate suitable policies to fill the gaps in the domestic legislations and policies; and failed to fulfill international legal obligations at the domestic level.

6. 4. PROBLEMS IN IMPLEMENTATION

Despite having extensive international and national legal instruments, the complete prohibition of child labour has not been achieved. The weak mechanism at the national level is not the main obstacle to removing child labour from the grassroots level. As discussed above, international instruments, whether formulated through the ILO or the UN conventions, have clearly enunciated principles on child labour. The safeguarding of "state sovereignty" is the main concern for the member states when it comes to the ratification. Therefore, the drafting committee cannot move forward without the consent of the member states which put their objections if the subject is adversely affecting their sovereignty (Silk and Makonnen 2003: 363). Although the Conventions put all its effort into draw the attention to child labour, the question of

[238] National Policy on Child Labour 1987, Accessed 20 November 2017, URL: http://www.indiangos.com/issue/child/labour/govt/policies.html.

“state sovereignty” normally undermine the obligations, therefore, weakening the instrument.

The states and employers have been taking advantage of this weak enforcement mechanism and continuing with economic exploitation of children by making the Conventions weak. Insufficiency of funding for investigating Committees obstructs their independent investigations even while restricting action to drafting responses on submitted reports. Additionally, if member states failed to oblige to any instrument, the Committee cannot send strong messages to member states as they can only use the symbolic terms such as “deeply concerned” and “the Committee urges”.

Even though the internal institutions condemn the economic exploitation of child labour and initiated several awareness programmes throughout the globe, but it has failed to take uniform approach to raise the issue under international law as the issue of the child labor is different from to nation to nation in its socio-cultural and political situation (Doek 2003a: 248). Apparently, UNCRC and ILO provided with strong instruments with standard settings and technical assistance to control child labour, but the key provision of implementation is left with the member states on an individual basis. The “state sovereignty” issue is the problem for the implementation of the strong instruments.

Although the UNCRC speaks itself for the legal empowerment of the children as it claims rights of the child through the Convention. When it comes for the practicality, such as the children who are really in to trouble and victim of economic exploitation of child labour, there is no provision under the UNCRC that can take action against the state for the exploitation of the children (Van Deven 2003: 233). Therefore, the UNCRC lacks with practicality in providing justice to the victim on economic exploitation and taking action against the state.

6. 5. SUMMING UP

On balance, India should fix the loopholes in the domestic legislations and policies to regulate child labour. Once the domestic laws and relevant international instruments are ratified—showing the full commitment of nations towards eradicating child

labour—a campaign "to create full, freely chosen and productive employment is considered as each nation's ethical, social, political and economic objective" (Weissbrodt 2009: 960). Constant monitoring and assessment will prove vital in the application of the laws. The Indian government should address the needs of child labourers with determination.

In 1999, ILO adopted Convention 182 as complementary to Convention 138 calling for "immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency".[239] Convention 182 takes a narrower and focused approach than Convention 138. In 2002, the Ministry of Labour urged the Government to ratify Convention 182 to avoid the charge of being incongruous in its policy to eliminate child labour by hesitating to eliminate its worst forms (Ministry of Labour 2002: 1025). Further to that, the Ministry of Labour asserted that "the government has not ratified Convention 182 because it feels that more tripartite consultations are necessary to identify occupations or processes that can be characterised as among the worst forms of child labour". The Ministry statement also emphasised that "India lacks the necessary machinery to enforce the legislation" (Ministry of Labour 2002: 1023). Recently, the Government of India ratified both Conventions 182 and 138 and supplement Recommendations. By ratifying Convention 182 and 138 and adopting Recommendation 190, India dismissed some of the skepticism surrounding its commitment to progressively eliminate at least some, if not all, child labour related issues. So far, 132countries have ratified the Convention and recognised the urgency of eliminating the most intolerable form of child labour (Ministry of Labour 2002: 1023).

The Indian delegation at several ILO sessions has called for "a cautious and realistic and reasonable approach" to deal with child labour.[240] Ratification of Convention 182 has given India an opportunity to embark on a targeted mission to combat child labour by eliminating its worst forms. This has reaffirmed India's seriousness and commitment to eradicate all child labour eventually.

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[239] International Labour Office, Proposed Recommendation Concerning the Prohibition and Immediate Action for Elimination of the Worst Forms of Child Labour, International. Labour Conference, Rep. IV (1) (17 June 1999), pp. 11-14.

[240] Indian Proposal for the Progressive Elimination of Child Labour Meets Resistance (2 May 2002), Accessed 17 June 2017, URL: http://www.ngosatunicef.org/OTR/v3/09.html#report.

Although India recently ratified the important international Conventions on child labour, the governmental approaches to eradicating child labour through domestic legislation, however, have not been successful. Labour Inspectors are often understaffed, underpaid, or corrupt. When inspectors try to enforce child laws, these efforts are often halted by hostility from powerful economic interest groups or hindered by the fact that employers often receive advance warning of inspections. Thus, despite the wide adoption of international Conventions and domestic legislation prohibiting hazardous child labour, these harmful practices continue to flourish all over India.

CHAPTER – 7

CONCLUSIONS AND RECOMMENDATIONS

The exploitation of children through labour has been a universally acknowledged problem. It is one of the worst forms of violation of human rights by which children are exploited physically, morally, and economically. Child labour denies children their right to enjoy childhood and deny them access to education. The practice of child labour, which is rampant globally, is a social evil that needs to be eliminated from the grassroots levels. In this regard, the United Nations and its specialised agencies adopted various Declarations, Conventions and Recommendations to eliminate child labour. These Declarations and Conventions have been instrumental in creating international obligations for the Member States. Among such enactments are Recommendations by International Organization that do not create obligations but provide guidelines for government action and are not open for ratification. Despite taking many proactive measures to curb child labour, the Government of India, for its part, has been cautious in ratifying Conventions as the ratification imposes binding legal obligations to implement Declarations and Conventions domestically.

Nonetheless, the Government of India has enacted various legislations and policies as part of its efforts to implement the international Conventions and Declarations to address child labour in India. The important legislations include the Child Labour (Prohibition and Regulation) Act 1986 and the Child Labour (Prohibition and Regulation) Amendment Act 2016. Recently, after the amendment of Child Labour (Prohibition and Regulation) Act 2016, the Indian government ratified two important ILO Conventions which specifically deals with the child labour, namely, the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). This is more or less a good reflection of Government of India's position on child labour. Moreover, the government has also come out with new and customised welfare policies to implement the above Act effectively.

This study has examined the problem of child labour and has attempted to explore the causals and factors driving this phenomenon. The study finds that poverty is one of the important reasons for child labour, alongside other factors such as contribution to

the family business, low family incomes, a corrupt enforcement system, low literacy rate, and lack of strict implementation of laws and policies relating to child labour, among others. In India, the study emphasizes that most of the children rescued from child labour exploitation belong to the poorer economic classes. Their families face challenges to survival and are eager to generate income to maintain the family. Economic compulsions, thus, force them to send their children to work so that they can increase or supplement their limited family income.

The study also concluded that family business also, latently and patently, promotes child labour. It has found that most of the families which run family businesses have sufficient means to send their children to school and can afford education easily, but prefer their children to be involved with their family business instead, so that they learn and continue the family business tradition. Some communities in India have developed their own family professions based on their caste identity and tradition. They believe that it is their duty to take up the same profession as a service for the society and as the dependable means of livelihood. Such traditional bonds drive such families to force their children to continue the same profession instead of pursuing school and devise their own vocational and professional choices.

The study has also found that in some cultures family members deny education to the girl child. They believe that only boys can be the head of the family and therefore they have the exclusive right to work and earn for the family. Girls learn household work instead of studying so that they can look after their family members. In the male dominated society, education of the girl child is given comparatively lesser importance than the education of the boy child. It leads to child labour among girls, as they are engaged at a very young age to do all types of work or labour including hazardous ones.

Strict implementation of legislations and policies are very important to curb child labour. The study has found that although the Government of India enacted several legislations and policies since independence, they are stymied by various loopholes. Legislations and policies can only be implemented in the formal employment sectors and are largely effete when it comes to the informal employment sectors. At the same

time, strict implementation of laws has not produced desirable results. The process is also slow and lacks effectiveness.

In general, it has been noticed that the union of workers have been playing an important role in child welfare programmes. It is evident that workers' unions have consistently raised their voice against the exploitation at the workplace and in demanding their right to improvement in working conditions, adult wages and other facilities. This study has pointed out the fact that workers' unions are not very strong in India, therefore are unable to create substantial influence in the efforts to eliminate child labour altogether.

The study has, in Chapter II, explored the concepts of "child", "work" and "child labour", and has examined the definitional issues persisting in international and domestic laws. The chapter highlights the fact that defining "child labour" is a difficult task, largely owing to the variances in the understanding of concepts like "child", and "work". Both these terms have different meaning and connotation in international and national legislations. Generally, the "child" is an "infant", or "tender year person", or "young person". While attempting to define the child, the study also explored the concept of "childhood". It has emphasized that "childhood" has more to do with physical development rather than the age.

The variety of the definitions, as illustrated in this study, indicate that no universal definition of a "child" exists at the international or national level. The study has revealed that the legal conception of a "child" is not uniform and varies depending on the law which defines it. At the international level, the upper age limit to be a "child" is fourteen, fifteen and eighteen years of age. At the national level, the upper age limit is based on policy and administrative considerations and has been fixed as fourteen, fifteen, sixteen, and eighteen years. It is clear from the foregoing that at the international and national level the age of the child is not clearly fixed either for the "work" or for other circumstances. But in India, the recent Child Labour (Prohibition and Regulation) Amendment Act 2016, fixed the children's age for the "work" as fourteen years and the "adolescents" between 14 and 18 years of age. Indeed, there is a disparitybetween these age limits. The Indian laws do not recognise a uniform age for the children, which often lead to complexities. However, the age of a child for

determining child labour has been unified—the most suitable and common definition conceives of "child labour" as children under the age of 14 years in work or employment with the aim of earning a livelihood for themselves or for their families. It is better to have a single definition for the term "child" at an international and national level which may help in effectively streamlining national and international efforts in combating child labour. Moreover, it may be helpful to safeguard the welfare of children and provide them free education and make them a worthy citizen.

In Chapter III, the study has examined international norms which are aimed at the elimination of child labour at the global level. It has looked at relevant international Conventions, Recommendations and Declarations so as to understand the legal aspects of the child labour. It also sought to understand the concepts of child labour in international law through different Conventions and Declarations and the measures that were effective in eliminating child labour and implementation processes at the national level. This chapter analysed the "Geneva Declaration, 1924", which is the first comprehensive and significant international instrument for the promotion and protection of children's rights. This Declaration has identified the importance of a "child" in the strongest words that "mankind owes to the child the best it has to give". The study points out how the Declaration conveyed to the world community that the foremost duty of a human being is to "protect the welfare of the children".

Further the study examines the Slavery Convention, 1926, which specifically did not include child labour, but had identified the role of domestic enslavement. Article 2 of the Convention encourages the States parties to take measures to prevent and suppress slave trade and abolition of the slavery in all its forms. However, the Convention has its own drawbacks as it failed to identify which categories of practices become slavery and the reasons for the elimination. The report of the ECOSOC Ad-hoc Committee of Experts established under the UN in 1949 also said that other severe forms of slavery should be included in the definition and recommended for the adoption of another Convention to fill the gap. Further, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, has given utmost importance to child labour aspects of slavery under its Article 1(d). It has revealed that "sham adoption" is an ill practice in the society which exploits children in different manners. The study has

interpreted this Convention in accordance with the Vienna Convention and identified that the Convention is applicable for slavery-like practice which is one form of economic exploitation of children. Thus, child labour can be construed as a slavery-like practice and that needs to be eliminated at the grass root level.

The ILO has adopted two important Conventions and Recommendations specifically dealing with child labour, which are the Minimum Age Convention, 1973 (C 138) and Recommendation (R 146); and the Worst Forms of Child Labour Convention, 1999 (C 182) and Recommendation (R 190). The study has extensively highlighted the work of the ILO and identified its role in curbing the exploitative system against children. Although the ILO has been taking preventive measures to combat child labour it is not opposed to the work that may benefit a child's development or the work involving only a few hours per week. The study explored that the ILO opposes only the work which is harmful and destructive to a child's mental as well as physical well-being. This position taken by the ILO could be termed as a double standard as it is in contrast to its assertions in its awareness programmes that child labour should be eliminated from the grass root level. The ILO Minimum Age and Worst Forms of Child Labour Convention mainly focus on the age of children and hazardous occupations where children are prohibited to the work. Therefore, it is clear that the Convention is for prevention and regulation of child labour instead of imposing a complete ban on child labour. This is against the prime objective of ILO.

The Minimum Age Convention, 1973, has an obligation to Member States to implement the Convention through national policies. The Article 1 of the Convention aims at prodding states to pursue a national policy so as to ensure the effective abolition of child labour. Apparently, the term "national policy" was used for the first time in this Convention and the Member states were urged to implement the provisions of the Conventions through their national policies. The study has revealed that a policy on child labour becomes effective only when other policies like health, education, support for children's family, poverty alleviations etc., are complementing each other. The study has recognised that the Convention took a flexible approach towards the Member States as it left open a provision for fixing of age limits. However, Recommendation No.146 recommends raising the minimum age for joining

the employment to 16 and stressing to implement this in all sectors of the economic activities. Although the Convention fixed the minimum age for employment as 14 years for developed nations and 15 years for developing nations, it mentioned gradual raise in the minimum age level for the employment. This provision of the Convention mainly focuses on the work which is “likely to jeopardise the safety, health or morals of a young person”. Recommendation No. 146 suggests applying these criteria to determine hazardous occupations. The Convention also flexible on the developing countries as it could initially specify the activities which involved in the undertakings to which the Convention will apply. The study has also identified a discretionary clause in Article 9(2) of the Convention, with regard to the definition of persons responsible for compliance, which is allowing ratifying Member states to define such persons. It has revealed that these discretionary clauses require the prior consultation with the employers’ and workers’ organisations.

The penalty provision was introduced first time in the Minimum Age Convention. Again, flexibility was a key factor when it comes to deciding the penalties, which were to be defined in national legislations based on violations of national laws. Similarly, Article 6 of the ILO Convention No.138 has an exception clause which says the “work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings” will not come under child labour. This clause has been criticised for favouring the employer as they may manipulate the circumstances and get benefits by using loopholes in the provision stating that the working children are the members of the family. Therefore, it may create a negative environment for implementation and weaken the Convention. The study emphasized that the International Labour Conference, 1996, decided to focus on “‘intolerable’” child labour and resolved to prohibit the “most exploitative”, “most abusive” and “hazardous” forms of child labour.

The Worst Forms of Child Labour Convention, 1999 (C 182) and Recommendation (R 190) mainly applies to children who are in bonded labour or in dangerous and hazardous occupations, exploitation of young children and their commercial sexual exploitation. Recommendation 190 supplements this Convention by calling for the

immediate implementation of the programmes of action referred in Article 6 of the Worst Forms of the Child Labour Convention. Under this Convention, Member states determine the types of work which are likely to jeopardise the health, safety or morals of children and list them under the national legislation. The study has highlighted the fact that the obligation of determining the types of the work lies with Member states but with scope for discussions with the organisation of "employers and employees" prior to the decision. Additionally, Member states should also consider relevant international labour standards while determining the types of the work. It has emphasized that under this Convention the Member states are obliged to provide assistance to remove "children from the worst forms of child labour and for their rehabilitation and re-integration".

Keeping an eye on curbing the exploitation of children, the Convention also "ensure[s] access to free basic education, arranging vocational training for all children removed from the worst forms of child labour" through Member states. It has revealed that this Convention also gave importance to "international cooperation and assistance for social and economic development and poverty eradication" under Article 8. Again, a discretionary clause in terms of the determination of the types of employment or work by national laws or regulations or by the competent authority, similar to the one contained in the Convention No.138 is in Article 4(1) of the Worst Forms of Child Labour Convention, 1999 (No.182). It is found that section 3 of the Child Labour (Prohibition and Regulation) Act, 2016 is more or less in consonance with the Convention No.182 in terms of exercise of discretion by the Government, as the Act permits the occupations and processes to be added to the Schedule of the 1986 Act from time to time by the Government. Even though the minimum age for employment or work set under the Act is 14 years and other relevant legislations set different age for admission to employment, India has recently been able to ratify both the Conventions. Similarly, the study identified that Article 2(4) of the Convention No. 138 has exception clause which says the Member states "whose economies and educational facilities are insufficiently developed" may initially specify a minimum age of 14 years as against the general minimum age of 15, after consultation with occupational organisations. This exception clause has encouraged India to enact Child Labour (Prohibition and Regulation) Act, 1986 and the new Amended Act of 2016.

Further, the Government of India has fixed the minimum age of 14 years for admission to employment and implement the Convention at the national level.

The study has also emphasized on the protection of the children and young persons from hazardous work. The ILO Conventions formulated for this purpose could be divided into three categories: First, the Occupation which requires regular medical examination; second, prohibition of employment of children in night work; and third, work which is in dangerous in nature. The study has identified that the Medical Examination of Young Persons (Industry) Convention provides children and young persons employed in industries access to medical examinations to determine their fitness for employment. Any industry is prohibited from appointing under-18 young persons until they are properly examined by an approved medical doctor and fitness for such employment being certified. It also found that there is flexibility to Member states to list the employment where exactly the requirement of medical fitness certificate needed for the joining of the employment. Considering the health risks inherent in employment in underground mines, the ILO identified that industrial standards require “medical examination and periodic re-examination of fitness for employment in underground mines until the age of 21 years”. The study has found that thorough examination for fitness shall be carried out at least once a year until the age of 21 years.

The Forced Labour Convention, 1930 (No. 29), for its part, aims at suppressing the use of forced or compulsory labour defined as “work or service which is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily”. This Convention is applicable to most intolerable worst forms of child labour, such as children in bondage, exploitation in prostitution and pornography etc. It is emphasized in Article 2 (1) that the ‘coercion’ and ‘involuntariness’ are the two main elements to define the Convention. The other part of the Article also revealed that there should be a penalty for the violation. The Government of India has been implementing the Convention mainly through the Bonded Labour System (Abolition) Act, 1976. The Abolition of Forced Labor Convention, 1957 supplements the previous Forced Labour Convention, 1930. The study found that the Committee of Experts on the Application of Conventions and Recommendations avoided an effort to re-define it, and instead recommended that the

previous definition of Forced Labour Convention will be applicable to this new Convention in order to determine what establishes forced or compulsory labour. It has also identified that the use of labour from children for the economic development of the family is a kind of forced labour as the family tries to ease their poverty by imposing child labour.

The implementation mechanism of ILO is the backbone of the institution which protects human rights including child labour standards which relate to children at work place. The mechanism owes its efficiency to the State Reporting and Complaints System which involves independent experts who review periodic reports of the Member states. While analysing the procedures for monitoring implementation of its treaties, the study found out that the mechanism has the advantage of being able to make referrals to the International Court of Justice (ICJ) for seeking an advice even in individual matters. The "tripartite structure" could be seen as the important feature of the ILO, which refers to the special relationship of the social partners in ILO. Besides the supervisory bodies which regulate the ILO activities and monitoring the Member states obligation, the Committee of Experts executes the reporting system on the Application of ILO Conventions and Recommendations. On the other hand, the Conference Committee interprets the Application of Conventions and Recommendation. It has revealed that the Conference Committee has limited jurisdiction as it discusses the most important issues identified by the Committee of Experts in their assessment of the report submitted by the Member states. Apart from the above Committees, Further, the ILO has initiated two sets of contentious procedures which compel the Member states who have ratified the Conventions to fulfill their obligations as per the rules.

While focusing on UDHR, the study has identified that this was the first declaration defining the terms "human rights" and "fundamental freedoms". The UN Charter seeks "to promote social progress and better standards of life for the people and provide larger freedom". The study has revealed that although Article 4 of the UDHR defines slavery and servitude, the drafting process did not clarify whether the modern practices of slavery such as "economic exploitation" of child labour should come within the prohibition. Similarly, the UN Declaration of the Rights of the Child, 1959, affirms the rights of the child as "to enjoy special protection; to be given opportunities

to enable him to develop in a healthy and normal manner; to enjoy the benefits of social security, including adequate nutrition, housing, recreation and medical services; to receive education, and to be protected against all forms of neglect, cruelty and exploitation".

The ICCPR and ICESCR are the first legally binding international provisions protecting the rights of the child. The study finds that the Covenant gives importance to the term 'slavery' under Article 8 of the ICCPR, which has defined servitude as covering "child labour" by identifying it as a 'slavery like practice' under the Supplementary Convention. The provisions under Article 24 of the ICCPR exclusively safeguard children and guarantees protection through the state, society and from the child's family. The Human Rights Committee mentioned in its comments that even though the "Child Labour (Prohibition and Regulation) Act, 1986" was enacted by the Government of India to curb child labour, the progress in that direction is minimal.

The study highlights the fact that the ICESCR was the first treaty law prohibiting the economic exploitation of child labour and promoting compulsory free primary education. The core objective of the ICESCR is that "children should be protected from economic and social exploitation and from employment in work that is harmful to their morals or health, or is dangerous to life, or is likely to hamper their normal development". It has identified that "states should set age limits below which the paid employment of child labour should be prohibited and punishable by law".

Similarly, the study has examined the role of CRC as an international agreement establishing "a comprehensive set of goals for individual nations to achieve on behalf of their children". This Convention defines "children as the person under the age of 18 unless the age of majority is attained earlier". Although the CRC mainly focuses on child rights, it also has an exclusive provision for child labour in Article 32, which emphasizes that "the child's right to be free from exploitative and harmful labour", therefore "states [have] to take an active role in preventing child labour through national implementation". It seen as the term 'work' covers both 'employment and work' not within an employment relationship, however, Article 32 has a broader

scope of application comparing to 10 (3) of the ICESCR. The CRC focuses more on individual development of the child rather than collectively and mandates the prohibition of work of a child in a too young age which is interfering with his/her education and harmful to physical, moral and mental well-being. The study gives emphasis to the fact that the CRC also covers in its scope sexual exploitation and sexual abuse, and all other forms of exploitation prejudicial to any aspects of child's welfare.

The UNCRC established a Committee to monitor the initiatives taken by Member States to implement the Convention and review the periodic state reports, by placing the actions on Child labour as 'Special Protection Measures'. The comments of the Committee carry a certain amount of authority, like for example, the single method of a monitoring system that the Committee introduced for the protection of "civil and political rights, and economic, social and cultural rights". Even though the Committee under the CRC has been trying hard to monitoring the Member states reports, it has been criticised for not having a mechanism to redress individual complaints.

Chapter IV of the study dealt with the provisions ofthe Constitution of India and the laws enacted in India to protect the rights and welfare of the children against exploitation of child labour. The study underlines the fact that the Indian Constitution seeks to ensure socio-economic and political justice to each and every citizen of the nation through its preamble and provisions. The special provisions under the Constitution provided protection to children from the exploitation of child labour in line with the international Conventions and Declarations. The study has examined Article 15 (3), Article 24, Article 39 (e) and (f), and Article 45 of the Constitution with a view to the protection of the welfare of the children. Although Article 14, Article 23, Article 38, Article 41, Article 42, Article 46 and Article 47 do not directly have child welfare provisions, they implicitly support initiatives for the betterment of children. The study highlight the role of Fundamental Rights in preserving civil and individual rights, notwithstanding the representative character of political institutions and also limit the powers of the legislative, executive and government. The spirit behind the Directive Principles of State Policy are "to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution" to protect and promote the welfare of the children. The study has found that the

implementation of the above objectives of the Constitution indirectly focuses on the prohibition of child labour and is mindful of promoting the welfare of the child.

Although the Constitution of India provides protection to children from economic exploitation, the study has noticed the major contradiction in Article 24 and 45. Article 24 does not advance the argument that there should be a “complete ban on the employment of children under the age of 14”. It only prohibits employment in “factory or mine or in any hazardous occupation”. The study understands that the Constitution has neither defined nor explained the ‘hazardous’ nature of the work. The contradiction is that Article 45 entails free and compulsory, primary and elementary education should be provided to the children, but also allows children to work. The study has also revealed that the States have failed to substantially attract children to schools, despite numerous schemes, thus leaving them vulnerable to child labour.

Apart from the Constitutional provisions, the study has analysed two major Acts that exclusively deals with the child labour i.e., “Child Labour (Prohibition and Regulation) Act 1986 and Child Labour (Prohibition and Regulation) Amendment Act 2016”. The primary objective of this Act is to “prohibit the engagement of children below 14 years of age in certain employment and to regulate the conditions of work of children in certain other employment”. Although the first part of section 3 of the Act “prohibits the employment of children in certain occupations”, the second part allows the children to work in non-prohibited occupations and processes. Therefore, the Act fails in fulfilling the purpose of prohibiting employment of children.

The study has found that the Act covers only the children in the organised sector and not in the unorganised urban and rural sectors and family units. Children are prohibited from working in large factories, but otherwiseare free to work elsewhere without any age limit. Another drawback of this Act is that it creates no serious disincentive for employers who deceive inspectors to take bribes. The study also highlights the fact that many occupations which are hazardous are not included in the Schedule of the Act. This Act does not specify how the welfare, health and safety of working children are to be protected by the employer.

The Government of India amended the CLPRA,1986 Act in 2016. The new CLPRA Amendment Act (hereafter new Act) "prohibits employment of children in all occupations and processes under the age of 14" however makes a road to proper implementation of RTE Act 2009. The Act also prohibits the appointment of "adolescents in the hazardous occupations and processes", fulfilling the obligation of Member States to ILO Conventions 138 and 182. The new Act separates the categories of "child" and "adolescent", and has set a clear agenda to send all children between 5 and 14 years to the school.

The new Act has its own drawbacks. The study examined Section 3 (2)(a) & (b) of the new Act which allows children to help "family or family enterprises or allows the child to be an artist in an audio-visual entertainment industry". This exception is a clear blow to the new Act because the main objective of the new act is "complete ban on child labour". Moreover, the new Act also failed to define the hours of the work after the school. Section 3(2)(a) simply states that "children may help his family or family enterprise, and work after his school hours or during vacations" but failed to clarify the hours of the work "after his school hours or during vacations". It also failed to include chemical mixing units in the schedule treated as hazardous work, without either prohibiting or taking cognisance of the ill effects of exposure of these chemicals on the health of the children. The study has found that dilution of law leads to violation of provisions of the ILO Conventions. Another major drawback of the new Act is that the listed occupation even if seen as a hazardous work, could be removed not by the Parliament but by the government authorities at their own discretion. Such loopholes invariably could favour the employerand erode the protection and welfare of children engaged in such activity.

Although the Constitution of India provides the scope for legal frameworks and national policies to ensure the welfare of the children and protect them from the exploitation, the legal loopholes and failure of the implementation procedures impedes the fundamental purpose of most child welfare schemes. In order to rectify this, a comprehensive law on the child, by placing the 'child' in the "concurrent list", through an amendment to the Constitution would go a long way in ensuring the the most effective implementation of welfare programmes for children and facilitate co-operation between Centre and States for quick administrative actions.

The penal provisions of various labour legislations are inadequate in respect to violations of working hours by employers who employ children in their work forces. It is, therefore, desirable to prescribe certain punitive actions as a deterrent to ensure that offences, as prescribed under various laws, are not repeated. In spite the presence of clear provisions under the statutes to prohibit and regulate working children in India, the government should also come out with stringent punishment to the violators and facilitate alternatives of income generation to the downtrodden families in the society so as to uplift them socially and economically, and to discourage them from sending their children for work. Only then can the social evil of child labour be addressed most effectively.

The general rule of the international law is that the Member States have binding legal obligations to implement International Conventions, Recommendations and Declarations at the national level. However, there is wide-ranging criticism about the inability of international law to enforce international obligations of Member States. It is true that a number of hurdles exist in the effective implementation of international standards on child labour. This study has attempted to highlight the main hurdles is jurisdictional limitations on national laws, deficiencies in resources to trace the source and presence of child labour, provide for measures to rescue and rehabilitate children engaged in various occupations, and the absence of coordination between state and non-state agencies that engaged in the efforts to eliminate child labour.

The study has emphasized that the ILO has been playing an important role in providing technical assistance to Member States through its International Programme on the Elimination of Child Labour (IPEC). Chapter V explains the role of the international institutions especially ILO and other specialized agencies along with the role of the Indian Judiciary, policy frameworks, statutory bodies like the NHRC and the NGOs in regulating and prohibiting child labour in India. One of the primary objectives of the ILO is the elimination of child labour through education, social mobilisation, sensitisation, legal enforcement, and strengthening of institutional capacity. Through IPEC, the ILO implements awareness programmes and meetings and highlight the consequences of child labour. IPEC has provides member countries with technical assistance on a step by step basis and in order to eradicate child labour in its worst forms with the help of national governments. The study lists the key

objectives of IPEC in India included "strengthening the capacity of the government, industrial groups, trade organisations, workers' unions and NGOs to develop and implement measures geared towards the elimination of child labour; promote initiatives to withdraw children from hazardous work and provide them with alternatives; improve working conditions where immediate withdrawal from work was not possible". Its initiatives also included a considerable number of action programmes that were implemented through NGOs.

The study has also analysed the work of UNESCO which strives to promote cooperation among nations through education, science and culture, and thereby contributing to peace and security and enhancing universal respect for justice, fundamental freedoms and human rights, including child labour. The study has throughout asserted that promotion of education is important for the eradication of child labour, while poverty forms the primary catalyst for child labour. Similarly, UNESCO has devised a programme titled "Basic Education for All", which seeks to use education as the vanguard in the campaign to eliminate child labour. UNICEF has launched several initiatives to protect children from exploitation by supporting the idea of primary education to children. The study also closely examined UNICEF's agenda of "elimination of hazardous and exploitative child labour and urgent support for education", and has highlighted its efficacy in not just encouraging free education for children, but also in strengthening related measures like child development, protection, and promotion of family income through skill development programmes. The study explored the initiatives of UNDP in regulating child labour. Although the UNDP does not directly involve in the programmes of Member States, it supports the overall development programmes including the welfare of children. The UNDP has many programmes in its agenda to assist India that indirectly supports the elimination of child labour.

Judicial decisions of the Supreme Court and other Courts helped to ban and regulate child labour in India. In most of the child labour and other child related cases, the Courts in India always took a stance in favour of children and to protect their welfare. The study has found that in *People's Union for Democratic Rights and Others vs. Union of India,* the Court had instructed the government to fulfill its duty by providing education to children whose parents were working at construction sites.

This decision was not just meant to promote the education of children but also to protect them from economic exploitation. Similarly, in *Salal Hydro Projects vs. Jammu and Kashmir,* the Supreme Court recommended access to education for those children whose parents are working for the government or the contractor in a construction project. The study has found that the Court encouraged education for children who are residing at the project site or nearby construction sites. In *M.C. Mehta vs. State of Tamil Nadu and Others,* the Court upheld child welfare and the ban on children engaging in hazardous occupations. The study has listed various initiatives of the Courts on important child labour cases and how such verdicts to the larger campaign against child labour.

The policy frameworks initiated by government are a key factor in the fight against child labour. The Indian government also has numerous such initiatives to showcase in this direction. This study has analysed many of the policy initiatives taken by the Indian government to protect children from economic exploitation and promotion of child welfare. It has found that the national policies introduced to protect children from the exploitation were based on the principles set out in the Indian Constitution. It has also highlighted the objectives of various policies and their implementation at the national level with the goal of addressing issues arising from lack of education, health and nutrition through the promotion of initiatives for compulsory education and other welfare measures.

The National Charter for Children is mandated to ensure that no child remains hungry, illiterate or sick. The study has found that although the States are trying to fulfill their commitment to protecting the welfare of children, as mandated by the Charter, the problem of hunger and illiteracy continue to be key drivers of child labour. Similarly, the National Plan of Action for Children, 2005 seeks to guarantee children the right to survival, development, protection and participation. Like in many other schemes, this plan also provides government implemented welfare projects like providing facilities to improve child health, nutrition, water and sanitation, child development, early childhood care and education etc., but still fell short in finding conclusively solutions to child labour issues.

Another policy instrument that the study analysed was the National Policy for Children, 2013. The policy was meant to give utmost priority to right to life, health and nutrition as well as to development, education, protection and participation for children. The study has emphasized that the children have an equal right to study and develop their knowledge and complete their education without any obstruction. The objective of this policy initiative was to ensure that children are encouraged to participate in education through the facilities of learning and skill development that the government has created. Similarly, the study pointed out that the National Plan of Action for Children, 2016 continued with the objectives of the 2013 policy by trying to expand its implementation at the grass root level.

The study has analysed the role of the NHRC in regulating child labour in India. Although the NHRC did not have the full-fledged role to eliminate child labour, its aim of protecting human rights includes child labour as well. The NHRC appointed Special Rapporteurs to visit different States in India to assess the progress in the implementation of provisions of the Constitution and other relevant Acts. While the Special Rapporteurs have prepared progress reports for each and every state they have visited, the study has focussed only on the latest two reports from the specific States and analysed it to understand the severity of the problem in the current period. A significant aspect, however, is the NHRC's role in rescuing domestic child labour by recommending for amendment in the civil services (Conduct) rules to prohibit domestic child labour at civil servants' residence.

The NGOs are independent of statutory authority and their policies are framed and controlled by their own members. Yet, their role in the elimination of child labour is commendable. The study has found that the NGOs are relatively more acceptable to the people because they operate from the grassroots level and constitute the strongest source of motivating people by their personal interaction and involvement with the problems that the children face in their day-to-day activities. It has also analysed the role of some prominent NGOs who have been working on issue of child and bonded labour. The study has highlighted the interventions by NGOs in the areas of counselling, awareness raising, social mobilisation, encouraging community participation, releasing children from work, providing vocational training, enrolling children in schools and ensuring their retentions, monitoring the functioning of

schools, bringing children into the formal mainstream schooling system, preparing educational kits, and facilitating interaction between the various stakeholders like government official, researchers, employers, etc.

Chapter VI of the study focused on the root of the problem and the factors that hinder the fullest commitment towards eliminating “child labour”. It also explores the gaps in international and domestic instruments pertaining to child labour, its implementation and administrative actions in this regard. The study has found that there are strong legal norms developed nationally and internationally against the exploitation of child labour, but are supported by rather weak enforcement mechanisms. Member states are disinclined to ratify and enforce the international Conventions due to apprehensions that ratification may weaken “state sovereignty”. This is also because inn most of the cases, the views of all Member States views are not given necessary weightage during the drafting process at the international Conventions, where power politics or a weak drafting process invariably influences the character of such instruments. India has ratified the UDHR and enacted the “right to education” Act, though, as the study points out, the implementation part has been very weak which has, in turn, affected its impact on the child labour campaign. The UDHR lacks an enforcement mechanism and did not succeed in its campaign to provide education to children. The study argues that it is necessary to fix the problem poverty of the “family” and “attitude of the employer” in order to holistically deal with this problem.

On the other hand, the provisions of the ICESCR only consider children who are “employed” and not in other contexts. It also gave the “discretion to Member States to set age limits for paid employment”, which is even narrower than the rights recognised. It is evident from the study that the ICESCR neither methodically prohibit child labour nor has the mechanism to compel the States to implement the Covenant domestically. Therefore, it will be accurate to assume that the provisions of the ICESCR mechanism are too weak to be considered for implementation at the national level. While the Covenant is assumed to be speaking for the rights of children, Article 10(3) fail to mention about the “rights”. Instead, it states that “children should be protected from economic and social exploitation and that certain employment should be punishable by law.” Similarly, the lack of legal action for not implementing the

Covenant, coupled with failure to cover all forms of child labour, carries the implication that it may not be geared towards eliminating child labour altogether. It is also evident that the weak legal mechanism at ICESCR would not be helpful to enforce a complete ban on child labour. Moreover, when we closely read provisions of the Covenant, it could be interpreted that Member States need not show a sense of urgency to implement the Convention, and can do so only when fully ready to implement the same. This soft nature of the Covenant gives them the opportunity to delay this obligation, and by consequence, weaken the fight against child labour.

It is worthwhile to mention that the UNCRC is one of the conventions that has been widely appreciated for its child welfare provisions. However, the Convention has notable shortcomings. The study highlights the difficulties in figuring out the type of work that constitutes economic exploitation under Article 32 of the Convention, which has failed to clarify the categories of work that could harm child's health or personal development. Instead, it has provided a vague option for children to give away their job if they think that it is harmful to their health. The Convention has also failed to mention the nature of the harm that could force children to give up their work. Thus, the study points out that the CRC is inherently vague and only contributes in expanding the rights of children through its Article 32. Like other similar instruments, this Convention also gives Member States the leeway to implement child labour laws in a manner that suits their economic conditions. They may take advantage of this article and take more time to implement the Convention which could only aggravate exploitation of child labour rather than address it. The Convention also lacks the clarity on an enforcement mechanism to ensure implementation by state parties. Nevertheless, Article 45 is not precisely an implementation mechanism, as the Member States have the right to select how the provisions of the Convention could be implemented at national level, which, in fact, undermines the UNCRC. Further, the UN reporting mechanism is seen to be weak as it does not have the provision to penalise states for failing to report to the Committee. It is common knowledge from existing evidence that most of the reports submitted at the Committee were incomplete or in adequate.

The study analysed Convention 182 of ILO which delegates the enforcement of hazardous child labour prohibition to Member States. The study has found that

although most Member States have attached sanctions to their prohibitions against child labour, these sanctions have not been consistently enforced. The ILO has not defined the term "hazardous" as applied to child labour and instead has delegated to countries the task of drawing up lists of occupations or conditions that are considered hazardous. This provision gives a free hand to Member States, thus weakening the basic concept of elimination of worst forms of child labour at the national level.

On a detailed examination of the Child Labour (Prohibition & Regulation) Act, 1986, the study found that the Act does not speak about "abolition of child labour", and instead refers to "prohibition and regulation of child labour". The government of India defended and justified the provision of prohibition and regulation instead of a complete ban on child labour because of "economic necessity of the family". This inconclusive decision of the government goes against the objective of the international Conventions and Declarations as it deviates from the agenda of welfare of children, which include "right to education" and "freedom from the exploitation". This study has asserted that the Act failed to address the problem in the unorganised sector and gives opportunities to the employer to exploit children for the labour. The Act is also criticised for repeating Section 3 of the Employment of Children Act, 1938 which mentioned exception in the case of "family labour", like in the case of the 1986 Act. Section 3 says that "no child below the age of 14 years shall be employed or permitted to work in any of the occupation mentioned in Part 'A' of the schedule or in any 'workshops' mentioned in the Part 'B' of the schedule". The distinction makes it clear that children should not be permitted to take any kind of job mentioned in Part 'A' of the schedule but only 'workshops' in Part 'B' of the schedule. The study considers both Part A and B of the schedule of the Act as equally dangerous to the health of the children, and argues that the law needs more preventative approach including the scope of banning both circumstances. The Act also applies to the case where an accused is sought to be prosecuted before the competent court, which is only authority to impose the penalty for such a violation of the Act. The study has found that the Act has not authorized the Labour Commissioner or Inspectors to hold a person guilty of the offences or to impose penalty on the alleged violator, thus reducing its enforcement teeth.

Finally, elimination of child labour is important as much as the rehabilitation of children rescued from workplaces. Based on the analysis of the Acts and policies of the Government of India, the study concludes that the implementation and enforcement of the law, especially with regard to rehabilitation of the children, is very weak. The Acts are much focussed on 'cleansing the establishments' of child labour, howsoever noble, leaving the rescued children with no real options or restitution.

With the hopes of correcting the mistakes of the previous 1986 Act, the Government of India enacted CLPR Amendment Act, 2016. Although the new Act tried to rectify the mistakes in the previous Act, numerous loopholes remain. The study highlights the fact that the goal of "total ban" on child labour remains a completely neglected agenda as the exception clause to the main Section allows children to engage themselves in the occupation. Further, the provisions of new Act have failed to incorporate the severe hazardous occupations into the list of Part A and Part B of its schedule. Moreover, Section 4 of the amended Act has given full authority to the government to make changes to the list of the hazardous work. This discretionary power of the government is likely to favour some industries and could pave the way for continual existence of child labour exploitation. The study has pointed out that the discretion may adversely affect the objective of the Act and make it less effective. Further, the study also underlines the difficulties in differentiating whether the child is "helping" the family or is under "bondage" with other family members. The exception to the provisions of the Act makes it tougher to rescue children working in their family enterprises owing to the difficulty in identifying the nature of the work. Thus, the study reveal that the new Act may encounter a bigger challenge in determining whether the business is a "family enterprise", or whether an unknown employer is running the industry by employing a single family to mislead the Inspectors who are appointed under this law. The new Act also failed to define the hours of the work "after the school hours or during vacations". Most importantly, the study identified that the new Act contradicts its own codified law - the Juvenile Justice (Care and Protection) of Children Act of 2000 - which says that employing or engaging a child in a hazardous occupation is punishable".

The study has examined provisions relating to child labour under different International Conventions and Recommendations, Declarations, Covenants and its

implementation at the domestic level, particularly in India. The study has also examined the relevant provisions of the Constitution of India, child welfare legislations that deals with the child labour, governmental policies and their implementation. Further, the study also emphasized the role of Indian Judiciary and NGOs in eliminating child labour from the grassroots level. With a view to examining how far the Conventions and Declarations have been beneficial to curb child labour at the national level, the study has explored different legislations, government policies and implementations at the domestic level.

It is found that although most of the international Conventions related to child labour have been ratified by India the implementation through national legislation has been very poor. In order to address child labour effectively, the government of India needs to take initiatives for the strict implementation of national legislations. It may be noted that the ratifications of the international Conventions and Declarations itself may not sufficiently solve the problem of child labour, rather Member States need to fulfil the obligation by incorporating the provisions of the Conventions and Declarations. For instance, the Government of India delayed ratification of ILO Conventions 138 and 182, which automatically delayed the effective implementation of international norms in India.

Although much work has been taking place at various level to eliminate child labour in India, the goal of complete abolition remains an unfulfilled agenda. Therefore, the decision for ending child labour should include ending of exploitation and abuse rather ending the work carried out by children and young people. Child labour is an abuse of human rights which cannot be eliminated without strong international initiatives along with legal measures. In order to be effective, it is essential that international organisations make programmes and campaigns suited to national conditions. Moreover, there is a need for greater coordination of efforts by international organisations along with the need to develop their campaigns within the framework of a partnership with concerned governments and NGOs if their efforts have to get a lasting impact on the status of the working children.

As far as the overall domestic implementation of the provisions of international Conventions is concerned, it may be stated that the Government of India tried its best to incorporate the provisions in the national legislation. On the whole, from the present study, it is certain that the integration and institutionalisation of international norms into the domestic level has influenced and helped the Government of India in create national policies to curb child labour, notwithstanding the fact that the problem continue to persist at the domestic level. Therefore, the study concludes by proposing the following recommendations to enhance the quality of child welfare programmes and elimination of child labour in India.

1. The study suggests a universal "fixed minimum age" for joining work. International institutions including ILO should persuade Member States on a consensus to fix a universal minimum age for joining the work. Upon the consensus, the ILO should amend the Minimum Age Convention and fix the universal minimum age for joining the work.

2. There is need for a single definition for the term "child" at the international and national level which would help in effectively streamlining national and international efforts to combat child labour.

3. ILO needs to consider the opinion of Member States and should work towards a consensus decision before adopting a child labour related Convention. Once a consensus is arrived upon, it could compel the Member States to ratify the Convention immediately and implement the same at the domestic level.

4. The ILO should focus on "complete ban on child labour" rather only regulating and prohibiting the worst forms of child labour. Therefore, the ILO needs to adopt separate Convention for "complete ban on child labour" without differentiation between hazardous and non-hazardous occupation.

5. The UNCRC neither fixed a minimum age for the employment nor enabled clarity on the enforcement mechanisms to ensure a State Party

implements the treaty. This undermines the UNCRC and exposes its weak enforcement mechanism. Therefore, the study suggests that the monitoring and enforcement mechanism should be strengthened by introducing the rigid provisions under the UNCRC.

6. The study recommends that the ILO should define the term ‘hazardous’ in its Convention on Worst Forms of Child Labour and draw the lists of occupations or conditions that are “hazardous to children”. Thus, the Member States could incorporate the same in their domestic legislations and policies to effectively eliminate child labour at the national level.

7. The ILO should develop consensus between the Member States to enforce the stricter monitoring mechanism to implement the provisions of child labour related Conventions at the national level.

8. Although India has ratified both C 138 and C 182 recently after many discussions and debates, India should consider incorporating all provisions of the Conventions into national legislations and strictly following the implementation which may help to eliminate child labour at the domestic level.

9. The weak legal mechanism at ICESCR would not helpful to complete ban on child labour. As discussed above, the soft nature of the Covenant gives Member States a chance to delay in meeting their obligation, which leads to economic exploitation of children. Therefore, the ICESCR should come out with strict implementation mechanism to avoid delay from the Member states.

10. The inter-state complaints mechanisms are very rarely used in international human rights law. The system of inter-state complaints mechanism should, hence, be developed more rigorously so that it may help in monitoring the implementation of international Conventions and Declarations at the national level.

11. India must re-examine the existing child welfare laws with a view to strict implementation of the international norms at the domestic level. It will helpful to streamline the national legislations in line with the international Conventions and Declarations.

12. The CLPR amendment Act, 2016, failed to focus on the strict implementation of its provisions and reasoned that poverty of the family overruled the enforcement of legislation to curb the child labour. Therefore, it is suggested that national policy should address both poverty and child labour simultaneously.

13. Although the CLPR Amendment Act 2016 considered the "age" as the criteria to decide child labour, it failed to draw a clear line because of the exception clause to this Act. Therefore, this study recommends the removal of the exception clause.

14. Section 3 (2)(a) & (b) of the CLPR Amendment Act, 2016 allows children to help "family or family enterprises or allows the child to be an artist in an audio-visual entertainment industry". This exception is against the "complete ban on child labour" which is the prime objective of the present Act. Therefore, Section 3 (2) (a) & (b) of the Act should be amended in accordance with the objective of the Act.

15. The CLPR Amendment Act, 2016 needs to define the hours of the work after school wherein the children can help their parents in their family business.

16. The listed hazardous occupation in the CLPR Amendment Act, 2016 could be removed by the government departments at their own discretion without the approval at the Parliament which may favour the employer against the welfare of the children. Therefore, it is suggested that the removal should be with the approval of the parliament rather the government departments concern.

17. The study recommends the introduction of a "comprehensive law on child" by placing the "child" in the "concurrent list" by amending the Constitution. This would go a long way in the proper implementation of welfare programmes for the children and facilitating co-operation between Centre and States so as to render quick administrative actions.

18. The penal provisions of various labour legislations are inadequate in respect of violation of working hours and in deterring potential violators. The study recommends prescribing suitable punitive actions as to deter repetition of the offence.

19. The government of India's justification for "prohibition and regulation" in the CLPR Amendment Act, 2016 is against the objectives of the international Conventions and Declarations as it deviates from the agenda of welfare of the children including the "right to education" and "freedom from the exploitation". Therefore, it is suggested that the CLPR Amendment Act, 2016 should be amended with "complete ban on child labour" in line with the international Conventions rather than "prohibition and regulation" so that "Part A and B of the schedule of the Act" could be removed.

20. In the CLPR Amendment Act, 2016, it is difficult to differentiate whether the child is helping "family" or whether he/she is under "bondage" with other family members. The exception clause to the provisions of the Act makes it hard to rescue the children who are working in their family or family enterprises as it is hard to identify the nature of the work. Therefore, it is suggested to amend the Act with "complete ban on child labour".

21. The CLPR Amendment Act, 2016 failed to define the hours of the work "after the school hours or during vacations". The inclusion of hours of the work "after the school hours or during the vacations" is the need of the hour.

22. The CLPR Amendment Act, 2016 contradicts its own codified law the Juvenile Justice (Care and Protection) of Children Act of 2000 which says employing or engaging a child in hazardous occupations is punishable". There is no complementarity between the above two legislations. The study recommends the amendment of both legislations in a mutually supportive way.

23. The weak enforcement mechanism at the national level makes it hard to reach its goal of elimination of child labour. The study suggests the need to provide facilities and modern technologies to the enforcement agencies for the strict implementation of the provisions of child labour laws to rescue children and ensure their rehabilitation.

24. The study informs that the child labour is still prevalent at the national and international level. Thus, strict rules and stronger mechanisms for the implementation coupled with rehabilitation policies are needed. Further research on strengthening the rules and implementation mechanism to eliminate child labour from the grass root level has immense scope.

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