CHAPTER I

INTRODUCTION:

Today’s child bears the torch of future. He is also destined to be the future leader of the country. They are the future custodian of the aspirations of the Constitution of our country. They shall in this regard protect the sovereignty of the country. They shall be the true custodians of the rule of law, justice, liberty and fraternity. They shall be responsible in future to maintain peace and provide security. They shall form the part of development of the country in the form administrators, scientist, rulers, judges, teachers, legislators, politicians, engineers, workers and all those that would contribute in the development of the country. They will be the real cause for the prosperity of the country. Thus the future of any country depends on how its children grow and develop.

The prevalence of child labour and girl child labour as domestic help is an omen in the society. The cry to protect the unborn girl looks like a foul play when we have failed to protect the girl child who already exists in the society. We have failed to give her protection in spite of guarantee given by the Constitution of India to all the citizens. The childhood is considered to be the most important and significant part of any one’s life. If the growth of the child is not proper, the future of the country would be in dark. An incompetent and oppressed child will be an obligation on the society. It is duty of each member of the society to take care of the girl child, protect her from damaging exposures, social oppressions and injustices.

The energy, genius and mental faculty of a child should be properly channelized, trained and educated for the social, economic, political, cultural and spiritual growth of the nation. That is also the birth right of every girl child, who cries for justice from every nook and corner of the globe.¹ The economic evils not only deprive children of work from education but also lead to high infant mortality, morbidity, and malnutrition in the weaker sections of the society. The difference can be observed differently in the rural and urban areas.


The indifferen ce of the law makers to provide sufficient legislations to regulate the employment of children has failed to curb and minimise the growth of child labour. Further
the lack of special legislations for the girl child labour has drifted the girl child in to worst conditions of life.

The practice of child labour is very old in India and there are evidences that child labour has been in existence since the ancient times. The existence of girl child labour as domestic help also prevailed since times immemorial in one form or the other. In ancient times the girl child was required to do some work either at home or in the fields along with their parents. However, we find in Manuismriti and Arthasastra that the king made education of every child, boy or girl, compulsory and Kautilya prohibited the trade of children, who were purchased and converted to slaves by some people. The problem of child labour was identified as major problem in the 19th century when the first factory was started in mid-19th century and legislative measures were first adopted as early as 1881.²

Child labour is a feature that cannot be distinguished from reality. It existed in some form or other in the past, it is there in the present, and it will continue to be there in future as well, given the ground realities of our country and the legal system that we have in place. The origin of child work can be traced back to the early stages of evolution of societies, in which the process of learning by working was considered as a part and parcel of the social and economic up-liftment.

It was also probably a part of the survival process. There are references to slavery, domestic services, and master servant relationship in literature, particularly Buddhist literature, which unmistakably point towards the presence of children toiling as slaves and servants at the mercy of their masters. In the medieval period also both Hindu and Muslims affluence was characterized by the use of children as personal servants, often working as helpers and apprentices to the adults.

² Deshta Sunil, 2000, Law and Menace of Child Labour, pg. 5

During pre-revolutionary era, children had to work along their parents in agriculture. The advent of industrial revolution impacted the occupational structure and had induced migration to urban areas. Agricultural population was attracted to towns where factories came
up. Uncertainty of livelihood haunted these displaced families. Children took up wage earning in upcoming factories along with their parents. Neither the parents nor the society as a whole thought about the harmful effect of work on children. The thought of struggle and survival was uppermost in all minds; children, welfare were not any concern. Idle children were considered unformed and a potential threat to the society.

However child labour is considered as hazardous, harmful and injurious to the physical, mental development. There are certain factors that are considered to be present to recognize that employment of child could be termed as child labour.

1. The child must have been engaged in some gainful activity.
2. The type of work performed by the child must be detrimental to his natural growth.
3. The work must be so that it deprives the child opportunity for development.
4. The child must be under compulsion to take up the job due to economic necessity.
5. The work must deprive him of social and cultural development.

There are yet certain questions that are to be answered which involve employment of girl child. The socio-legal necessities compel us to find solutions to these issues:

1. Whether child labour should be abolished or whether it would be possible to abolish child labour?
2. Whether child labour be banned in hazardous employment?
3. In case the girl child labour is allowed then is it not necessary to decide on the amount of work given to the child and other terms of employment?
4. What should be the minimum age for different employments?
5. How much time period should be allowed for the girl child to work and how many intervals should she be given?
6. What steps will the employer or the job provider take to help the girl child labour grow as good citizens?
7. Should special laws be made for the girl child labour working in different sectors of employment?
8. How far the legislators have taken their responsibility to provide opportunities to the girl child labour to grow in accordance with the constitution of India?
9. What role the judiciary must play in controlling the menace of girl child labour as domestic help?
To answer all these questions we have to first study the various dimensions of the girl child labour as domestic help. We must study the reasons as to why she has been forced to do the work as domestic help. We have to identify the root cause of the problem of girl child labour and if we are unable to find any solution then, we accept the reality, recognize the fact that the girl child works and it is inevitable for her to work either for own survival or for the survival of the family.

It is thus accepted that the girl child in the family is drifted into the work force as a helper or assistant in family trade, occupation, family agricultural activity and domestic service. The girl child is forced to join jobs unsuited to her health and physical capacity. Even though she joins school she still has to work, before or after school hours, and becomes vulnerable and is paid low wages.

1.1. DIMENSIONS OF GIRL CHILD LABOUR:

“People crushed by law have no hopes but from power. If laws are their enemies, they will be enemies to laws; and those, who have much to hope and nothing to lose, will always be dangerous, more or less.”

- Edmund Burke (1729-1797)

Letter to Hon. C.J. Fox, 8 Oct 1777) The Constitutional mandate is very clear from its various Articles. Article 14 and 16 enshrines the basic principle of equality and inhibition against discrimination. Article 39(e) requires the State to secure health and inherent capacity of workers, including women and children of feeble age. None of them should be abused and forced by economic constraint to take up such work inappropriate to their age and capacity. Article 41 obligates that the State within its economic capacity and advancement, make effective enactments for securing the right to work, education and to give assistance in cases of unemployment, old age, disablement or sickness. Article 43(3) states that the state shall endeavor to secure amongst other things full enjoyment of leisure and social and cultural opportunities.3

The Convention on the Rights of Child 1989 of the UN, The Universal Declaration of Human Rights 1948, The International Covenant on Civil and Political Rights 1966 is all instruments that convey rights for children. Accordingly the Parliament is empowered to make
legislations in accordance with these international charters by Article 253 of the Constitution of India.

Having discussed the Constitutional mandate and all international instruments the reality remains that after 60 years of independence child labour still exist with its various dimensions. All the instruments aim to bring these unfortunate children in the main stream by giving them same opportunities as had by other children are yet to become reality and meaningful. Even after various welfare schemes and legislative enactments, prohibiting employment of children, the problem still remains and without any effective solutions.

This is the situation of the child labour in the organized sector where the child is allowed to work by law in certain working conditions, restricted working hours, a minimum wage and bonus. But what is the future of the girl child labour in the unorganized sector that is of the age between 10-18 years and working as domestic help? All laws, legislations and schemes are illusions and have no meaning if they do not reach to all those children who are working as child labourers.

No doubt, child labour should be banished as it is a part of our commitment to the world community, but can we do by depriving these unfortunate girls of their honest means of livelihood without having made any alternative arrangements for their and their family’s survival, rehabilitation and measures to improve their lives. Abrupt banning of girl child labour as domestic help will do no good to the image of the country. Complete eradication would call for more nuanced view of the contribution of the girl child to both family livelihood and income.4

There are various dimensions that can be attributed to the girl child labour as domestic help. They are poverty stricken large families, low wages of the adults, underemployment, unemployment, migration, illiteracy and ignorance of parent’s education, traditional attitudes, physical security, and cheap availability as domestic help, helping hand for the mother, secure employment and definite income.

Apart from these dimensions we have also other variables behind the girl child labour as domestic help which are responsible for the existence of this abominable practice-Misplaced
priority, casual attitude towards education of girls, absence of social norms against girl child labour. Some other dimensions can specifically be attributed to the girl child labour as domestic help such as participation intensity and type of activities, relationship between child labour education and future earnings and the risk of a girl child’s health and well-being.

The problem is complex and closely twined with poverty, illiteracy, traditional attitudes as education and culture that tolerates the girl child labour as domestic help. It is a result of a vicious circle which is related primarily to poverty and lack of literacy and awareness of their parents. Non availability and access to essential services like hospitals and education also turn prevents the apprehension of their undeveloped power and make them to grow up illiterate, untrained and nonproductive.

Child labour harms not only the development of the present but also the prosperity of the generations to follow. If one conceives the idea of girl child labour it brings before us the picture of exploitation of little, physically tender, illiterate, undernourished working behind closed doors.

1.1.1. GIRL CHILD AND POVERTY STRICKEN LARGE FAMILIES:

Poverty stricken large families have low income which cannot afford two meals a day leave aside nourished food having nutritive value. According to them more the children will fetch them extra income. Poverty stricken family is faced with bewildering questions as to whether they should send their children to school or work for increased income is essential for the survival of their family. Here the girl child goes very early for the domestic help while the boy child may be preferred to work in a factory.

The inadequate income of parents is an interrelated dimension with unemployment, underemployment and low wages. The parents of the child desire a suitable life for their children but the harsh reality is they fail to arrange even the bare necessities for their children. These circumstances force the child to search jobs elsewhere which would be easily available and parents would not object to perform such a job. In this way the girl child of the family easily drifts into the household work, either alone or with her mother as domestic help. These girls do not need any specific qualification to start as domestic help. They learn while they work according to the requirement of the job provider.
1.1.2. PARENTAL ATTITUDES, TRADITIONAL PERCEPTION AND CUSTOMS:

Being illiterate the parents are drawn by certain traditional perceptions and customs. They think work is a valuable art of growing and not allowing their girl child to work will drive her and family to worst condition and more dangerous work. The mother’s traditional attitude about the girl child that while helping economically her family she has the opportunity of acquiring skills in various type of work. This also paves way to self-reliance and self-sufficiency in this contemporary society. She also prepares herself as responsible to shoulder her future responsibilities after marriage. Similarly working with educated and cultured families she could learn about ethical principles such as adaptability, accepting responsibility, how to live and good housekeeping.⁶

The perception that the employer is simply an extended “family” and his house a protected environment for the girl child, the increasing need for the women of the household to have a “replacement” at home and the illusion that domestic service gives the girl child an opportunity for practical education are the pull factors. The work of domestic help is usually considered as a part of girl’s apprenticeship to adulthood.

⁵. www.lawyersclubindia.org


When a boy is born, friends and relatives exclaim congratulations. A son means insurance. When a daughter is born the reaction is different. Some women weep because a girl to them is just another expense. Her identity is forged as soon as her family and society limits her opportunities declare her to be second rate.

The traditional view of gender discrimination starts at home. Poverty stricken families see their daughters as an economic predicament. The dearth of dowry also tightens the traditional view of girl child labour to be as a working hand.⁷She is also viewed as a passive object of adult concern with no human rights of her own. She is never considered within the framework of “universal child”. The girl child’s right to be protected against unethical use for advantage and profit, right to be protected against hazardous work which would otherwise interfere with her growth and the minimum age criteria has also been neglected. The thought of her powerlessness compared to adults and the inability to protect her own interest does not exist in the minds of the parents.
She also works in a household along with her mother as a future job security after her mother is unable to work permanently or when she temporarily discontinues work due to her illness or any other reason. The girl child is compromised to even the loss of income due to death of an adult. The mother feels that the daughter should work to secure her inheritance. Parent’s choice to send their girl for household work rather than go to school, assume that adult decide according to rational economic criteria, for selfish reasons or out of ignorance.

Parental attitudes, reflecting cultural norms play a major role in sending the girl child to work or to school. The parent’s expectations are that the girl still be an additional income source where household income is lower. They believe that they are doing their best by allowing or encouraging the girl to work as domestic help not realizing the hazards that the work might entail by working at such tender age. The girl’s income though not of permanent for the parents but is considered as a stopgap measure between survival and starvation.

7. www.childreninneed.com/magazine/gender.html

1.1.3. GIRL CHILD LABOUR AS DOMESTIC HELP AND MIGRATION:

Migration as a dimension easily encourages the girl child in domestic help as work. Natural disaster, armed conflict or simple economic opportunities in rural areas may push families to migrate to seek their livelihood elsewhere, either in their own country or across borders. Migration increases child’s vulnerability. Migration separates children from their families as usual support, they may not speak the local language, they may be from different ethnic group or nationality, exposing them to discriminate, denying them their identity which shall decrease their access to service.

It is thus the proof of a fight against satisfaction of material needs that pushes the girl child as an easy victim to work in houses as domestic helps with no better option, either to work on her own or help her mother at home as well as at the work place. They may be also called upon to fill gaps left in the labour market or to undertake household tasks that were previously the responsibility of the mother.

1.1.4. GIRL CHILD LABOUR AND SUSTAINABLE DEVELOPMENT:
Sustainable development depends on educated, healthy and empowered children, since they are the only hope for the future. Lack of sensitization and creating public opinion regarding the families of girl child labour is a hindrance for sustainable development. Lack of special attention to vulnerability of girl child, exploitation of girl child will not help attain sustainable development. The practice of girl child labour is a critical chain in the chain that spreads illiteracy, suppression, spurs over population, intensifies discrimination and perpetuates poverty. The problem must be comprehensively addressed as an essential step towards equitable and sustainable development.\(^9\)

Child labour depicts greatest tragedy which shows economic backwardness. The problem of child labour threatens our sustainable human resource. Sustainable development of any economy could be achieved through eradication of child labour by reducing poverty and to educate the people so that holistic development of the state can be achieved.

\(^9/www.globalmarch.org/events/sustainable\)

Increase in girl child labour as domestic help is linked to evidence that traditional thinking of families give way for only to boys when making decisions on education. Lack of enforcement of labour restrictions and consistence in the anti-child labour legislations are reasons for upsurge and pervasiveness of the girl child labour and a step backward for sustainable development. Decay of public infrastructure and an increase in unemployment both in rural and urban areas are responsible factors for low sustainable development.\(^10\)

1.1.5. GIRL CHILD LABOUR AS DOMESTIC HELP AND SOCIAL SECURITY:

According to ILO, social protection covers not only security but also non-statutory schemes. It extends to income security, healthy, safety at work and environment, conditions of work and family issues, pension and retirement. Social protection thus implies that people who work should be considered by their physical capacities, vulnerability, possible health hazards and they being under privileged while promising their desired protection. Social protection aims to address current deprivation and vulnerability of poor people as well as the need of the currently non-poor for security in the face of shocks and events beyond their control. Public actions may be taken by institutions in government or by civil society, or by a combination of the two.\(^11\) The girl child labour as domestic help is an inseparable part of our national economy where neither any rules are fixed for her nor any social security legislations are made available to her. Being the part of informal sector employment and large unorganized
sector it becomes difficult for them to unite because of their scattered nature of work place. It is a practical difficulty and also the distrust in the job provider which leads to their unwillingness or inability to pay any contribution which would benefit for their health care or other financial needs. The migrant nature of their families is also a hindrance to reach any social protection system and welfare because of loss of official identities.  

1.2. CONCEPTUALIZING CHILD LABOUR:  

The complex nature of the ‘child labour’ as it involves differing interpretations of ‘child’ and ‘labour’ and further ‘work’ and ‘labour’, makes it difficult to have a consensually validated definition of ‘child labour’. The Indian Constitution also has set the age limit for children.  

However, childhood does not end when a child attains a certain age, but entrance into adulthood is a gradual process, or is based on criteria other than age. Thus the two main approaches to defining child labour are: (1) any labour force activity by children below stipulated minimum age; and (2) any work economic or not- that is injurious to the health, safety and development of children. Based on the above we can define child labour focusing on different patterns of children’s activities and some others on the negative effects of work on children.  

When the child indulges in earning activity by contributing his/her labour and participating in labour practices the ultimate result is child labour and the most easily available work is the domestic work for which the girl child is the preferred choice since it needs less skill and the mother feels working of her girl child as safe in domestic work. This also results directly in conflict with the growth and development process of the child. The child is drifted away from the education and joins the work force for survival. Thus the work performed by the child is considered as a social evil. The vast unorganized, informal and unregulated sector of the economy is the girl child labour as domestic help which operates without being adequately represented in the official labour statistics, including the census.
The concept of child labour is meaningless without considering the girl child labour as domestic help. The factors that affect the girl child are her age, her physical capacity, the customs and traditions, her low self-esteem and her susceptibility towards circumstances all make her the most vulnerable segment of the society. The notion of girl child labour should be well understood by the policy makers.


1.3. DEFINITION OF CHILD LABOUR:

Who are these whom we call ‘child labour?’ Attempts have been made to define child labour wherein under the constitution of India Article 24 says it is anyone below the age of 14. Under the United Nations Conventions on the Rights of Child it is anyone below the age of 18 years. The various labour legislations in India the child is defined differently. The Children (Pledging of Labour) Act, 1933 defines a child who is under the age of 15 years. The Factories Act, 1948 defines child as a person who is the under the age of 15 years and a person as adolescent who has not completed 18 years of age. The Plantation Labour Act,1951, The Merchant Shipping Act,1958, The Mines Act, 1952, The Apprentices act,1962, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, are all prohibitory act in which no child under the age of 14 years be employed but does that mean that children above the age of 14 years be employed? This question remains unanswered even though it falls under the organized sector but the very important question remains unanswered and un-noticed of the girl child as domestic help from the age of 10-18 years even today.

The total elimination of the girl child as domestic help cannot be thought at all since it is deep routed in our society and it is indispensible. A total ban on girl child labour would even worsen the conditions for the girl and her family. The need of the hour is to think about providing a helping hand to her by providing her social security for the present and for her future. It’s time we think in a positive manner that the children and parents who depend on the earnings of the girl child should be assured of some minimum source of livelihood, so that the law aimed at protecting children, does not bring turmoil in their lives.
Child labour means denial of child rights. Denial of child rights amounts to suppression of growth and development of the child. If we acknowledge that children are the future of our country then it is time we not only make laws for their benefit and growth but also ensure the implementation of the laws.


The denial to education, awareness and the low accessibility and opportunities to grow and develop leads to economic abuse and results in child labour. To understand the concept of child labour it is important that we first recognize the child as the future of the country. It is important that we promise ourselves to help the childhood to grow in an environment that makes the child morally, spiritually and socially strong.

When we speak of child labour it includes the girl child but today it has become inevitable to distinguish between the girl and the boy child. It has become necessary to make distinct and special laws for the girl child for her protection-physically as well as economically. The girl child labour has to be given a special status and recognition because she is the most neglected segment of the society. The girl child labour is also the most affected and deserted member of the society. These reasons and reluctance of the government to make effective laws with regard to the girl child has aggravated the problem of girl child labour. We thus can define the girl child labour by understanding her tender physical structure, her capacity, her social attributes. The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.

It is correctly said by J. V. R Krishnakalyer, “The hallmark of culture and advancement of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and raise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child. It cries for justice as a whole.”

It is very heartbreaking to digest that the country which has been preaching the message of love, equality and compassion, ironically has the highest incidences of child abuse. The story of child labour as domestic help in India is no less horrifying than Dickens’ descriptions. Every
morningoneisalarmedwhenthethetriclineshitthenewspapersaboutthebrutalrealitiesofgirlchildas
domestic help. Childlabouristhemostunethical,illegal, immoralandinhumanpractice.
Intoday’sscenariothe problemof girlchildlabour asdomestic helpis
inevitableandunavoidabletoparentsofthechildandtofamilywhoemploysuchhelp. The reasons
behind suchsituation arethesenseofunsecuredfeeling to themotherofthe girl
child athome,supplementtotheirownearningsandsalopoverry. Theyareunorganized,remain
unregulated and unprotected to bythelabourlaws.
Lookingattheindigestiverealities,theresearcherfeltitnecessarytostudy
thesocialsecuritylegislations provided to girl child as domestic help in the
IndianConstitution, LabourLegislation andHumanRights Declarations as acritical study.


The facts and figures as published by international Labour Organisation in 2007 are as
follows:
Population aged 5-17 years
  ❖ The total population of persons aged 5-17 years is 3213.62 lakhs. Out of this 1642.00
    lakhs (52.57%) are males and 1481.62 (47.43%) are females.
  ❖ Out of the total population, 2325.31 lakhs (74.44%) belonged to rural areas and
    798.31 (25.56%) to urban areas.
  ❖ Of the total population, 151.21 lakhs (4.84%) are main workers, 132.27 lakhs (4.24%)
    are marginal workers and the remaining 2840.18 lakhs (90.92%) are non-workers.
  ❖ The share of workers aged 5-17 years in the total workforce of the country works out
to be 7.05%.
  ❖ Amongst the main workers, 102.92 lakhs (68.07%) are workers and 48.28 lakhs
    (31.93%) are females.
  ❖ Of the total main workers, 13.11 lakhs (8.67%) were attending educational
    institutions and 138.10 lakhs (91.33%) were not attending any educational institution.

The figures for ‘child labour’ are derived from using age wise distribution of workers.
Workers are defined as “those who engage in economic activities”; and ‘economic activity’ is
defined as “any activity resulting in production of goods and services that add value to
national product.” The major exclusions are ‘own account’ processing of primary products.
Similarly, activities relating to the production of primary goods for ‘own consumption’ are restricted to only the agriculture sector and do not include mining and quarrying activities. Further, activities like prostitution, begging, smuggling etc., which though fetched earning, are, by convention, not considered as economic activities.

Work has been defined in the Census 2001 as ‘participation in any economically productive activity with or without compensation, wages or profit.’ Such participation could be physical and/or mental in nature. This work includes supervisory work as well as direct participation in work. All persons engaged in ‘work’ as defined in the Census are considered workers. Main workers are defined as those who have worked for the major part of the reference period, which is 6 months or more. And marginal workers are those who have not worked for the major part of the reference period. All those workers who are not cultivators or agricultural labourers or engaged in household industry are categorized as ‘Other Workers’.

Thus, working children are counted as workers only if they contribute towards the national product based on economic accounting model. This definition of labour is narrow, as it is modeled in respect to monetary contribution to national product, so far as analysis of child labour is concerned. This may not include all work related activities performed by children that hinder their protection and development as defined in CRC. This approach of the official sources view child labour only as an economic entity and what is a right based approach. Child labour is not just an economic issue but an issue of human rights.15

**Work participation(Main and Marginal) rate of children in different age group**

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15. [www.ilo.org](http://www.ilo.org)

**1.5. CONSTITUTIONAL FRAMEWORK:**
This chapter contains the study of constitutional provisions. The researcher has through the study made efforts to find out whether the Articles of the Constitution contain any special provisions with regard to social security provisions to the girl child labour. It is observed that a prohibitory provision has been laid with reference to the child labour which is discussed in the subsequent coming chapter. But it is vital at this stage of specialization and special laws because until there are special provisions for the girl child labour, which is a reality today, she cannot be protected in any sense.

Even before the enforcement of the Constitution, the Employment of Children Act, 1938 had ensured protection to children from being exploited in certain circumstances. This Act prohibited the employment of children below twelve years in any workshop where the processes of bidi-manufacturing, explosives, fire-works, mica cutting, and splitting, soap manufacturing and wood cleaning were carried on. The Act also prohibited children below fifteen years employment of—(a) in any occupation connected with the transportation of passengers, goods, or mails by railways or, (b) in any occupation involving the handling of goods within the limit of any port.16

The Child Labour (Protection and Regulation) Act, 1986 replaced the aforesaid former Act. Under this Act, ‘Child’ has been defined as a person who has not completed the age of fourteen years, enhancing the age from the previous Act. But workshops where any process was carried on by the occupier with the aid of his family and such schools which were established by or receiving assistance or recognition from the Government are exempted from the application of the Act.

The Constitution of India, it may be said, is solicitous of the children’s well-being, development and their rights. In that, when it speaks about children it speaks about all children of the country, irrespective of birth, faith, caste, creed or sex. However a distinction exits from the very birth between the girl child and boy child and it is


necessary that we have separate laws for the girl child as domestic worker or domestic help. There are constitutional provisions that speak about children and their welfare.
The constitution of India pledges to be the custodian of justice, liberty, equality and dignity for all the citizens. It also empowers the states to make special legislations for children by which the children could be provided with opportunities and facilitate them develop in a healthy environment. The state shall create such opportunities that the child and youth will be able to avoid circumstances that are exploitative.

The provisions of the Indian Constitution with special reference to the children are enshrined in Part III and IV. Primarily, Article 15(3) enables the state to make special provisions for women and children. Second more specific provision is in Article 24, which states 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.” Further Article 39(e) and (f) provides that the state shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused.

The citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and 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 45 emphasizes that “the State shall provide special provisions for free and compulsory education for all children until they complete the age 14 years.

But the question of social security for those girl child workers is unanswered. No provisions in the constitution clearly mentions about providing social security to the child labour who works in the organized sector. The unorganized sector has been left far behind from the thought of providing social security to the girl child labour as domestic help who works from the age of 10 years. Her work is recognized by the society and the job provider also feels that some security of the future must be given to the girl child labour who works as domestic help.

The fact that it is inevitable for the girl child to work for her survival and for the survival of her family has been confirmed and the type of work she performs and number of hours worked by the girl child labour as domestic help has been recognized by the job providers and the experts during the sample survey conducted by the researcher. It has also been
answered in affirmative and positive that social security should be provided to the girl child labour as domestic help as any other worker of the organized sector.

Article 24 of the Constitution embodies a fundamental right – the right of child against exploitation, which is plainly and undoubtedly enforced against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment. But what about that unorganized sector of the domestic workers specially the girl child as the domestic help who goes un-noticed and has no voice of herself but only to work for her survival or for the survival of the family ? The Constitution provides that whenever any fundamental right which is enforceable against private individuals such as the rights enacted in Article 17, 23 or 24 is being violated, it the constitutional obligation of the state to take up necessary steps for purpose of interdicting such violation and ensuring observance of the Fundamental Rights by the private individual who is transgressing the same.

The framers of the constitution were, however, aware that having regard to the prevailing socio-economic conditions, it was not possible to prohibit child labour altogether and that any such move may not be socially or economically acceptable to masses of people.

The Directive Principles constitute the conscience of our Constitution. The provisions enshrined in Articles 39, 41, 45, and 46 reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. These articles reflect the hopes and aspirations of the people. Principles laid down therein are fundamental in the governance of the country and the State is under obligation to apply them in making laws.

Though said to be directive principles, these articles read with the Preamble, Articles 21, 23, and 24 obligates the State to render socio-economic justice to the child and direct the state policy towards their empowerment and full growth of their personality- socially, educationally, and culturally with a right to leisure and opportunity for development of the spirit of reform, inquiry, humanismand scientific temper to improve excellence- individually and collectively.

The Supreme court in State of Kerala V. V.M. Thomas, AIR 1976 SC 490: (1976) 2 SCC 310, the Directive Principles contained in Part IV of the Constitution form the fundamental feature and the social conscience of the Constitution which enjoins upon the State to
implement these Directive Principles. The directive Principles constitutes the stairs to climb the edifice of a socialistic State and Fundamental Rights are the means through which one can reach the top of the edifice.

1.6. LEGAL MACHINER AVAILABLE FOR THE GIRL CHILD LABOUR AS DOMESTIC HELPS:

This chapter contains the legislative enactments present today for the child labour and the researcher has attempted to study all the relevant Acts for the purpose to find out whether any of the Acts contain special provision relating to the girl child labour. All the Acts have been discussed in detail to analyse the existing provisions and the need for providing special provisions with regard to the girl child labour. It has also been observed that all the Acts pertain only to the organized sector and there too the child labour is not represented in the manner it must have been represented. Hence it is found that the girl child labour does not find any place in any of the existing Acts.

Children are the highest potential of the country and they have entered almost all fields of employment of the country. They have entered the employments even if they had skills or not required for that employment. The problem of child labour is not a problem of child labour alone but it is much related to child welfare. The government has since Independence made effort to make provisions relating to child welfare. It has also taken up the responsibility towards children and made attempts to codify the law in their favour but, yet the laws are behind to cope up with the problem child labour and problems incidental to child labour.

The law makers have tried to fulfill the aspirations of the Human Rights Conventions, ILO covenants and the directive principles enshrined in the Constitution of India. The recommendations were adopted and accordingly various measures have been taken to follow the recommendations for the welfare of the children.

Till 1881there was no law for regulating the employment of children and it was in this year that the first Indian law was passed. After that many legislations and laws were passed to give effect to the constitutional mandates and the other International Covenants. The latest of the labour legislations that was formulated to regulate child labour was the Child Labour
(Prohibition & Regulation) Act, 1986. These acts have been amended, repealed and revised from time to time so that they would be useful and could minimise the exploitation of the child labour which is the most vulnerable group of the society.

The framers of the Constitution though were desirous of creating circumstances which would extend care and special protection and also provide to promote their welfare was not ignored yet, the most sensitive and vulnerable section of the society, the girl child has not been represented in any of the Acts in existence. The welfare provisions are not sufficient to help the girl child, it is only by providing social security measures the situation can be controlled. There are various laws both at the Centre and state pertaining to child labour passed from 1938 to 2008, but none of them contain provisions specially for the girl child labour and no special provision also exist in the latest enactments. Her special physical capacity and status should be kept at the center of the objects and aims while formulating laws for child labour. Nowhere the term girl child labour has been defined.

Though the word child labour includes both the girl child and boy child yet, it always observed that the girl child is always neglected when it comes to giving benefits or any other welfare condition. She is never taken in to consideration even though she works equally along with the boy child. The same principle of equality shown through various labour laws for the adult women and men could be considered for the girl child labour as domestic help with equal status to both the girl child and the boy child. While analyzing the various relevant legislative provisions relating to Child Labour, it has been observed that the statutes vary in various issues such as the definition of child and the age limit of a child to be employed in various establishments. There is also no fixed minimum standard of employment and conditions of employment. A few laws or provisions in some of the Acts also fail to regulate the conditions of employment. The welfare provisions and the health provisions are also neglected with regard to the child labour. Thus, the Indian laws relating to child labour are insufficient, deficient and less in accordance with the international standards as laid by various ILO Conventions. They are also not satisfactory to the prevalent economic conditions of the society.

None of the enactments are totally abolishing child labour. On the other hand some of the Acts are suggestive that children could be employed in certain employments. The existing Acts do not either aim at abolishing child labour or regulate the whole force of the child
working sector. The aim of the Acts should be to provide regulatory measures of conditions of employment, working hours, minimum wages, leave provisions as are regulated in the organized sector. It is thus the duty of the government to make sincere efforts through strict administrative system, legislative provisions, by recognizing social responsibility, and encouraging and creating educational opportunities with the view to eradicate the problem of child labour.

But it has been observed by the researcher the inspite of the legislations, enactments and Acts of labour laws the question of girl child labour as domestic help has remained unsolved. There exists no law for the unorganized sector workers which would regulate their employment and their conditions of employment. There are girls working in homes as domestic help and there exist no law to regulate their working hours where they are seen working for long hours. There is no uniformity under these laws in fixing the minimum working hours and the minimum wages of the girl child labour as domestic help.

Hence it found that there is discriminatory legislative treatment with regard to the definition of child under the various labour enactments, regarding the working hours of the child labour and also regarding the minimum wages paid to them. A discrimination is found with regard to the minimum age of the child labour because it seen that the girl child labour as domestic help works from the age of 10 years.

Although the Child Labour (Prohibition and Regulation) Act, 1986 has made efforts to bring about uniformity to a large extent, but due to lack of strong political will and social support the girl child is been forced to work at such a young age. It is only due to lack of uniformity in different labour legislations and existing socio-economic conditions of the society that prohibit the implementation of these laws in their full spirit and meaning, aims and objects. Many of these laws are less honoured and breached more than observed.


From time to time amendments have been made to these laws for improving the conditions of the child labour according to the changing times. But it is never thought to provide social security to the child labour. Though we have achieved the target of providing compulsory education to all the children up to the age of 14 years by the Right to Education yet, a thought remains to be given to those child workers between the ages of 14-18 years. The question is whether we have achieved 100% success.

1.7. THE HUMAN RIGHTS - INTERNATIONAL PERSPECTIVE:

This chapter includes the study of international efforts made in the direction of girl child labour as domestic help. It contains the study of various relevant conventions and covenants with regard to the girl child labour as domestic help. The researcher has also made an attempt to define the term ‘Human rights’ and its inclusions in the Indian Constitution.

Before we understand the meaning of the expression ‘Human Rights’ it will be more appropriate to understand the meaning of the word “Right” in its correct sense. According to Allen ‘Right’ is “the legally guaranteed power to realize interest.” Helland has defined ‘Right’ as “the capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others.” Holmes has defined ‘Right’ as “nothing but permission to exercise certain natural powers and upon certain conditions to obtain protection, restitution, or compensation by the aid of public force.” Salmond defined ‘Right’ as an interest which the law will recognize and protect, respect for which is a legal duty, disregard of which is a legal wrong.”

However, there prevails another view, according to which ‘Human Right’ are not dependent on the State. Jackson J., in West Virginia State Board V. Barnette, 1943, 319 U.S. 624 (638), has observed, “the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and to establish them as legal principles to be applied by the Courts. One’s right to life, liberty and prosperity, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.’”
The Universal Declaration of human rights have played a vital role through its two covenants, International covenant on civil and Political rights and International Covenant on Economic, Social and Cultural Rights. These two covenants gave rise to the concept of “THE COMMON LAW OF MANKIND.” The Human rights were to thus evolve the laws of each individual country and their domestic laws. They were to be in the form of natural laws. Some of the important documents which formed the nucleus of the Declaration were –Magna Carta in England, Bill of Rights in United States of America, Declaration of Rights of Man in France.

The American Revolution between the period from 1763-1788 was a very important age of constructive ideas and progressive expectations.

The notion of independence of the people of the American States and their determination to overthrow the authority of the Imperial tyrannical Government resulted in their Declaration of Independence in 1776. This unique document was in line with the human rights, was drafted by Thomas Jefferson which attacked not only against conception of the Divine Right of the King to rule but also against a Government which had no reflection of the will of the people. This document declared:

“We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain inalienable rights that among these are life, liberty and pursuit of happiness. That to secure these rights Governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and institute new Government.”

The concept of Human Rights was first affirmed in the Universal Declarations of Human rights. The Preamble confirmed faith in the fundamental Human rights, dignity and worth of human beings and the equal rights of men and women. Article 1(3) confirmed the purpose of
the United Nations to achieve international cooperation and promote respect for Human Rights and the fundamental freedoms with distinction as to race, religion, sex or language.

Similarly Article 55 asserts to establish respect for human rights to create conditions of security and stability which are necessary for friendly and peaceful relations among nations. It is hence observed that the issue of the child labour has not been discussed anywhere in the declaration. In fact the girl child does not find any place in any of the covenants specifically which has led to the present situation.

The term ‘Human Rights’ is relatively new and was introduced in the international law as a result of Second World War. The Universal Declaration of Human Rights identifies the need to protect a child and emphasizes that, unlike motherhood the childhood is also be entitled to extraordinary care and aid. The Declaration also acknowledges that the child should be provided a safe and secured environment. Human rights have sought to protect children from social and economic exploitation and have bans on the employment of children below a certain age. It also recognizes the right of every person to be free from inhuman and degrading treatment, slavery, slave trade etc. Unfortunately here too the girl child labour is neglected.

It was at the end of the First World War of 1919, some attempts were made on liberal level favouring the common man. The Proclamation of the Rights of Man as issued in 1929 by the Institute of International law contained the following principles for acceptance as Rules of Law by the States:

1. To recognize the equal rights of every individual to life, liberty and property and to accord to all within its territory the full and entire protection of this right without distinction as to nationality, sex, race, language or religion.
2. To recognize the right of every individual to free practice, both public and private, of every faith, religion or belief: provided that the said practice shall not be incompatible with public order and good morals.
3. To recognize the right of every individual both to the free use of the language of his choice and to the teaching of such language.
4. To recognize that no motive based directly or indirectly on distinction of sex, race, language or religion, empowers State to refuse to any of their nationals, private or public rights, especially admission to establishments of public instruction, and the exercise of the different economic activities and of professions and industries.
5. To recognize that the equality as contemplated herein is not to be nominal but effective. It excludes all discrimination direct and indirect.

6. To recognize that except for motives based upon its general legislations, no State shall have right to withdraw its nationality from those whom for reasons of sex, race, language or religion, it should not deprive of the guarantees contemplated in this proclamation.

It is thus clear that some constructive changes were made only after the First World War in the acceptance of the human rights. Nations began to take keen interest for the protection of human rights. Yet no clear picture could be drawn in the field of the working class who were the basic and large contributors of the economy of any country. It was only after the establishment of International Labour Organization in 1919 efforts was made to grant status for the workmen. The provisions contain no mention about child labour. The principles and rules laid down by Proclamation of Rights of Man have made no mention of the child labour.

The most important function of the Organization is to accept conventions and recommendations and hence it has contributed a lot to the concept of human rights. The main conventions which it adopted are the Convention of 1930, relating to forced labour, the Convention of 1057 was relating to freedom of forming trade unions, and the Convention of 1958, relate to discrimination in employment and sub-employment, the Convention of 1962, was relating to social policy, its aim and standards, the Convention 1914 related to employment policy. All these conventions are related to social rights. But none of the Covenants have taken into consideration the issue of providing social security to the child labour and the girl child labour as domestic help.

Since both the World Wars of 1919 and 1939 inspired the awakening of the values of human rights much recognition was not given to the issue of child. It is observed that child labour had taken a large shape only after the industrial revolution which was during the same period. Thus it was only after 1948 a little thought was given to the working class of the world and certain rights were recognized as human rights for the labour class of the society.

Thus, the civil, political, social, economic and cultural rights under the human rights concept were recognized. The Conventions used the word ‘everyone’ which included the children also. But it has been observed that though the States had ratified the covenants yet it has failed to make laws accordingly which has resulted in child labour and the girl child labour has been the most affected.
Human Rights recognize the need for special care and assistance in childhood and social rights by means of national efforts and international cooperation. Despite the recognition of human rights, a child labourer is deprived of all such rights, leave aside the special category we talk of, the girl child labour as domestic help. The preamble to the Universal Declaration of Human rights was adopted by the United Nations which recognizes the dignity, equal and inalienable rights of all members of the human family. The member nations have affirmed their faith in the fundamental human rights, dignity and worth of human person and also in the equal rights of men and women and have determined to promote better standards of life. The Universal Declaration of Human Rights under its Articles has insisted on procuring the right to education. It obligates the state parties to provide elementary education not only compulsory but also free. It was decided that higher education should be made easily approachable on the basis of capacity of the States which will help to solve the issue of child labour. The Human Rights also, only speaks about the child in general and in regard to hazardous and harmful employment and makes no mention about the class of girl child labour as domestic help or the unorganized sector of domestic workers.

Inspite of the provisions adopted by the Indian government from the various Human Rights Conventions, and through various constitutional safeguards regarding children’s working age, nature of work, working hours, security, wages, welfare and holidays, we find that child labour is increasing more and more because of failure of executive to implement the existing laws and because of the legislature to make new and special laws for the different segments of the labour class in the unorganized sector, specially the girl child which forms a considerably large part of the child labour in the unorganized sector. No laws till date have taken care of the girl child as domestic help with regard to providing social security.

Human Rights have acquired a vital importance in the society that believes in democratic governance, the constitutional philosophy requires the governments to frame policies for socio economic operations. In this respect, functioning of government through the legal framework of coordination amongst the various agencies becomes inevitable. As far as protection and promotion of Human rights is concerned, the Supreme Court of India has observed that the doctrine of State actions may be blended harmoniously with the constitutional provisions of India. The judicial decisions of the Courts in India have provided a wide scope to the expression ‘other authority’ in Article 12 of the Constitution of India.
Under this Article the Supreme Court has observed that The Children Aid Society should be treated as a State within the meaning of Article 12 as it is undoubtedly an instrumentality of the State.


The Constitution of India has incorporated social justice as its prime aim. This concept of social justice is dynamic and relative and changes from time to time and place to place. It is a very generous concept and if any member who suffers injustice and inadequacy of human rights the concept of social justice can be invoked. Hence social justice is the basis of progress of the society to be stable and article 21 of our constitution is a part of this social justice. Social justice provides for human dignity through social, economic and cultural rights. The political freedom shall have no significance if the members of the society suffer from social, economic and cultural rights.

The concept of Human rights revolves around the social, economic and cultural rights. They provide sustenance to the rule of law and true meaning to welfare state. It is through the Directive Principles that the Fundamental Rights should be protected and will become meaningful. If these civil, political, social, economic and cultural rights are put together they will be able to create a free society and welfare of the society will be established. It shall avoid conflicts which may become threat to Human Rights. When all these are put together they will invariably promote Human Rights.

Thus, it can be said that Human rights have been made the central focus because without them good governance would remain only a dream come true.

1.8. RESEARCH METHODOLOGY:

The objective of the research should be the net result of controlled inquiry resulting in a proposition or a conclusion which tells us to expect something in a class of things under a class of conditions and finally arrive at statements of generality. The collection of data through scientific methods and reliable sources should be capable to throw light on the problem, its dimensions, the solutions and their effectiveness. The collected data will help reach the research outcome and test the hypothesis.
The Webster’s Dictionary proposes an inclusive definition of research as “a careful critical inquiry or examination in seeking facts or principles, diligent investigation in order to ascertain something.” D. Slesinger and M. Stephenson in The Encyclopedia of Social Sciences defines research as “the manipulation of things, concepts or symbols for the purpose of generalizing to extend, correct or verify knowledge, whether aids in the construction of theory or in the practice of an art.

Research methodology is a science or study of a particular subject followed by the researcher in pursuing a research. Dickinson M. C. Grow & George Watson defines methodology as “the procedure by which researcher go about their work of describing, explaining and predicting phenomena.”

Research methodology is a systematized investigation to gain new knowledge about the phenomena or problem. In a wider sense, it includes the philosophy and practice of the whole research process. It provides standards which the researchers use for integrating data and reaching conclusions. Kaplan defines methodology as “a study, description and explanation and the justification of methods and the methods themselves.

The researcher intends to carry on the research with the help of empirical research. Though this kind of research is not so popularly followed but here the researcher thinks it fit to go by non-doctrinal or empirical research because it would more precise for the research in labour laws. This type of research relies on experience or observation without due regard to any theory or system and hence it is also called as experimental type of research. In this type of research, the researcher attempts to investigate effect or impact by actual examination or observation of the functioning of law and legal institutions in the society. It also concerns with the identification and creating awareness of the problem which needs to be tackled through law, conducting empirical research.

Under the empirical research, the researcher first accepts a working hypothesis or guess as to the probable results and then proceeds to collect sufficient facts to prove or disprove his hypothesis. The researcher then sets up experimental designs which according to him might manipulate the persons or the material concerned so as to bring in the desired information. In this process the researcher has to keep control over the variables which affect the conclusion by one way or the other. The research will seek to answer such questions which concern the society at large.
Every research has a specific purpose which can be classified so that the researcher is in a position to take appropriate decisions in the field of his research with the help of the data collected and interpreted. The purpose of this research is to familiarize and acquire new insights in the existing legislations and laws, to determine the frequency of occurrence of certain circumstances and their association with other factors, to show the accurate picture and characteristics of a particular group or situation, to test the hypothesis and to separate facts from speculations.

Research methodology includes the techniques for collecting data of logical application of scientific perspective to study the events. The research methodology is closely related to theory, approach, perspective or paradigm. Good research is crucial if we are to get sound and useful results. But it is only a means to an end rather than an end itself. Legal research in particular is systemic investigation of problems and of matters concerned with law such as codes, acts, legislations, the Constitution etc.

Since law is human behavior and it can also be said that law is behavioral science which regulates human conduct and behavior. Changes in the society demand changes in the legal system and existing laws. Law should be alive, active and useful for the society. The object of this legal research is to find out the lacunae in the existing laws and suggest suitable measures to remedy them so that they would be suitable and useful for those who are in need of these laws.

It is also necessary to investigate those areas for which no laws exist at all or if a large section of the society is left out of the purview of laws, so existing laws could be amended, new sections could be added or suitable legislations could be formulated for those who have been deprived of the benefits they deserve. The research also must aim at reforming the existing laws for the maximum benefit of the maximum number of people.

The researcher in this legal research intends to discover new facts by testing and verifying the old facts. The facts will be analysed in a new theoretical framework. It is also necessary to analyse the law and other related legislations to find out the lacunae. The view of the historical aspect will also play an important role in ascertaining the facts of the present social
system. It will be necessary to ascertain the merits, demerits and usefulness of the old laws with the existing laws to the society and accordingly suggest reforms. It will also necessary to ascertain the relationship between the legislature and judiciary and the independent role played by the judiciary while interpreting the laws. The researcher also intends to suggest developing the principles of interpretation for critical examination of statutes.

Researchinlawisrelatedtopure laworlawinrelationtosociety.Legalresearchers make a systematic research into social, political and other facts and conditions which give rise to individual rules, acts or codes. A legal research may be pursued to obtain better knowledge and understanding of any problem of legal philosophy, legal history, comparative study of law etc. Since law relates to human behavior, the legal research studies behavior of human beings as members of society and their feelings, responses, attitudes under different circumstances. Legal research is carried on both for discovering new legal facts and verification of old ones.

The type of research which shall be conducted for the research topic will be “Applied Research”. This type of research is oriented towards solving problems and is called action research and is concerned with practice. The research aims at studying problems for the evolution of possible solution. This type of research also aims at finding solution to an immediate problem faced by the society. It is a research which is directly problem and action oriented.

Applied research always puts the theory to test. It clarifies the research conceptually. The research intends to integrate certain theories which already exist. Applied research makes a positive approach in bringing together the existing facts and schools of thoughts to tested and applied to the problem which is faced by the society. It is a research which is fact-finding investigation. It systematically describes a problem, its situation, the phenomenon behind the problem and its behavior. The aim is also to describe the state of affairs as they prevail in the society.

The research has a critical approach and shall evaluate the existing facts and state of affairs after analyzing. The researcher has tried to study whether the laws for child are sufficient, whether they bring under their ambit all the working children, girls and boys, whether they represent all the important definitions including every section of the working member of the
society, if there is need to amend or develop the law in such a manner that it would include all the possible beneficiaries.

After the formulation of the problem the researcher made a survey of available literature on the subject connected to the problem. The literature has been reviewed through journals, conference proceedings, and government reports, reference books and text books depending upon the problem, published/unpublished research articles and research papers. Such a review has been of great help to know whether any such type of problem has ever been taken up for the purpose of research.

The historical aspect of the research has been drawn from reference books, encyclopedias from library, websites and internet access.

The class of girl child labour was located as samples from areas within Nasik city. They were classified according to the age group of 10-12, 13-15 and 16-18 years. The method of data collection involved interview as well as questionnaire. The samples of the girl child taken were from the slum areas they resided and they could not fill in the questionnaire and were helped by the researcher by reading the question and then explaining the question to them, to which the answers were given orally.

The opinion of the experts such as legal, academicians, NGO's and social workers were sought to help suggest the solutions of the problem faced by the girl child domestic help. The experts were of great help to the research. They also understood the problem and were also aware of the problem. The method for collecting such expert data was through questionnaire, opinion through emails and direct interviews.

The third type of samples was the job providers who employed these domestic help in their houses. The data collected of this category of samples was through questionnaire. Few samples were interviewed on the basis of the questionnaire. The samples were mostly housewives. But they also included working women and self-employed women. They also were aware of the girl child labour as a problem faced by the society and insisted for the government to make certain laws and rules to be followed by the society.
The NGO’s were also included for seeking suggestions regarding the problems as well as suggest measures for social security to the girl child as domestic help through questioner method. The research is conducted by Empirical method particularly by sampling, personal survey, mails, interviews and questionnaire. The research is also carried by the Doctrinal method by use of law library, e-library and internet access. The data collected through these various methods has been comprehensively analysed through interaction process, by classifying and conceptualizing the content of the data collected, statistical analysis of the data and interpretation.

After analyzing the data it was evaluated into findings, in the form of generalization in statements or in the form of concepts. For a generalization the research has been based on observation, i.e. empirical experience. After generalization the researcher has completed the fieldwork and all stages of study and prepared the research report to complete the project work.

OBJECTIVES:

The researcher has the following objectives to be achieved:

1. To study various dimensions of this neglected segment of girl child labour a domestic help within the phenomena.
2. To study the constitutional provisions - Fundamental Rights, Directive Principles of State Policy and other provisions under the Indian Constitutions related to girl child labour.
3. To analyse the definition of child labour in various statutes.
4. To survey and study various labour legislations dealing with child labour.
5. To study and critically analyse the Domestic Workers Act, 2008.
7. To analyse the reports of Labour Law Commission and Human Rights Commission.
8. To critically examine the various social security schemes executed by the government from time to time for the benefit of the girl child labour as domestic help.
9. TomakesurveyofSupremeCourtdirectivesandguidelinesintheviewofspecial facilities extended to the girl child as domestichelp.

10. Tostudytheneedtoestablishemployer-employeerelationshipanddefine the girl child rights and responsibilities.

11. Tobuildupasystemofsocialsecurityonacontributorybasisandforproposal of formulating suitable legislations and bring this unorganized sector under the purview of the present legal system and laws.

12. Tomakeeffortstocreateawarenessamong those who employ domesticalabour so that the child is given opportunities to go to school and develop their capabilities and eventually contribute as citizens of the country.

13. Tofindmeasures to create public opinion on behalf of domestic workers to grant them the status of workers and dignified workers.

14. Tomakesurveyofvarious NGO’s working in this field and suggest ways to strengthen them.

1.9. HYPOTHESIS:

The persistence of child labour is due to the inefficiency of the laws, and an administrative system conducive to take care of. The constitution is also silent; so far the answer to the question of the girl child labour is concerned. No directives also appear to be given to the states insofar as the social security, wages, hours of work, bonus and related matters to their concern. It is also very satirical that an Act has been enacted for the domestic workers only after 62 years of independence and less, or no mention has been made about the girl child labour as domestic help. One more important cause of rampant girl child labour is because it benefits the employers who can reduce general wage levels.

Various growing concerns have pushed children out of school and into employment such as forced displacement of parents due to development projects, special economic zones, loss of jobs of parents in the slowdown, farmer’s suicide. The impact of these is on the family as a whole and it is the girl child who goes out of the house along with her mother for household work because it is themost easily available employment in a new place.
The Constitution of India in its Preamble speaks of equality of status and opportunities which also includes a girl child labour as she is to be an individual. The words Fraternity and Dignity appear less meaningful as no legislation has ensured fraternity because it is beyond legal concentration but in ethos it should be read empathetically, if not eliminate but curtail every kind of child labour to the maximum extent. Also the question arises that what is the purpose of Article 24 if the child is included in the “Citizens and non-Citizens’ to whom Fundamental Rights are available? Similarly, Article 23 also seems to be meaningless in this context of girl child labour as domestic help (human trafficking, beggar, and forced labour).

When they work with no fixed hours, we forget that they are also human beings and they have a right to their basic needs of food, clothing and shelter and along with it have a right to equal protection by the law of our land. These rights are given in our Constitution but to implement it and make sure that the disadvantaged girls get their due benefits, we need to put in place legislations which is not just a letter but actually fulfills the Constitutional mandate.

The age-old patriarchal and societal systems in India regards domestic work as menial and downgrade. As a result, it draws the poorest of remuneration. These workers have no benefits of work contracts, social security of employment, wagers, paid leave, medical facilities, or any maternity benefit. It is thus important to have an overview of the existence regulations, legal provisions for domestic workers especially for girl child labour so as to consider the drawbacks and ways to move forward. There is no provision in law regarding protection to the girl child labour as domestic help in the central laws.

There are few states who have paved the way towards the direction of including the domestic workers under some acts but they do not have mentioned about the girl child labour as domestic help. The Unorganised Sector Workers’ Social Security Act 2008 includes domestic workers but it stipulates that only a person above the age of 14 years can register themselves under the Act again leaving behind unsolved the purpose of social security and equality.
The Central government always considers extending the benefits of the centrally sponsored health insurance schemes but all the recommendations take a lot of time and are always under consideration. These are recommendation to define the domestic workers as employees who work in the household for remuneration and work permanent or temporary, part-time or full-time basis. However, such domestic help are unaware of any such legislations, schemes or recommendations in their favor or the progress that organized unions can make forthem.

The Human Rights Declaration has through various Articles included the rights of child labour such as Art. 4 stating that “No one shall be held in slavery and servitude.” Art. 23 states that “Everyone without discrimination has the right to equal pay for equal work.” Art. 24 states that “Everyone has a right to rest and leisure, including reasonable limitations of working hours and periodic holidays and pay.” Hence, despite the Human Rights Declaration guarantees of opportunities and civil rights, millions of children face widespread deprivation and discrimination.

The child labour domestic help being a child, who has no right to form unions and associations or organizations, are far away from these laws and eventually their rights. But a strong effort has to be made at the national level by the government of India and state governments in organizing them to help child laborers through NGOs who in turn shall campaign for their benefits and rights. Henceforth, it can be inferred from the existing scenario that no social as well as legal protection has been given to the girl child domestic help. Therefore, we can say that:

“THE CONSTITUTION OF INDIA DOES NOT TAKE CARE OF, THE SOCIAL SECURITY LEGISLATIONS FAIL TO PROTECT AND THE HUMAN RIGHTS DECLARATIONS DOES NOT FOCUS ON THE PROBLEM OF GIRL CHILD LABOUR AS DOMESTIC HELP.”

1.10. SCOPE OF RESEARCH:

It is a socio-legal study. The research has been conducted by studying the relevant Articles of Constitution of India relating to child labour.
The acts relating to labour laws have been studied with regard to the definition of child which has various expressions. The other labour laws/legislations have been studied with a view as to any special provisions have been made to the girl child.

The Domestic Workers Act 2008 have been studied and analysed regarding the provisions and its implementation system.

The study of Commissions for protection of Child Rights Act 2005 has been visualized regarding provisions relating to girl child labour as domestic help.

An overview of the social security schemes for the benefit of the girl child as domestic help have been studied for the purpose of the research.

A study of case law has been made to analyze the guidelines and directions given through various judgments by the Supreme of India.

The Human Rights Declaration has been studied with a view to analyze the provisions regarding the girl child labour as domestic help. The various Conventions of the ILO have also been studied with regard to the girl child labour as domestic help.

An attempt has been made to suggest schemes and other means with the help of NGO’s so that they can play a crucial role in providing social security to the girl child as domestic help. Attempt has also been made to suggest to add to the existing laws for the domestic workers and to make special provisions regarding the girl child labour as domestic help.

1.11. LIMITATIONS:

The research has been carried out in Nasik city and nearby places.

The said research is basically regarding the child labour as an unorganized sector and the researcher has carried out the research relating to the girl child labour as domestic help.

All the present acts regarding child labour have been taken up for study but for the purpose of research analyses only the provisions regarding the girl child labour as domestic help have been viewed, studied and scrutinized.

1.12. UTILITY:
While studying various acts and books on the subject of Labour Law, it has been realized that these laws are not sufficient and do not encompass the solutions to labour class and provide any social security to them as a whole. Today the need is to make specific laws for specific classes of people, only then can law be implemented with full force. Hence, no law exists for the girl child labour as domestic help which forms a sufficiently large part of the society.

Even the recent laws for domestic workers make no mention of the word girl child. The Domestic Workers Act, 2008 also does not even define the word girl child. The Unorganised Sector Social Security Act, 2008 also does not mention the girl child specifically. Hence, the research shall make use of this opportunity to make some suggestions to appropriate government and take steps in this regard and to provide social security to the girl child as domestic help.

The utility of this research is that it will dispel the thrust of outworn assumptions, superstitions and stereotypes. It shall promote better understanding of legal provisions and social cohesion. This research shall be able to suggest law reforms in the present acts and also throw light on the various Constitutional provisions and other labour law provisions as regards the girl child labour as domestic help.

The researchers shall suggest schemes that can be easily implemented by the appropriate government. For e.g. schemes similar to the provident funds scheme where a contribution on the part of the master and servant can be made, so also a compulsory recurring deposits scheme account of the girl child which shall help in raising the cost of living index as well as fulfill the Constitutional mandate of giving a dignified life to all of its citizens. The suggestions made in the research shall be helpful in rising of standards of this unorganized sector of girl child as domestic help.

This research shall be a step forward in setting up an example for the implementation of other related laws to the girl child such as the Minimum Wages Act, The Payment of Wages Act etc.

A comparative study of the previous data with the present data collected shall help show the problem's intensity and the need to have a change in the attitude of the society towards the girl child.
hilddomestic help and also help in rolling the thought process of the lawmakers in this direction and develops specific acts for the girl child domestic help.

Theresearch shall be helpful in enhancing the working and implementation of the existing laws to themaximum benefit of those for whom they are reformulated.
The research can be utilized as a model of suggestions made for awareness working NGO’s.

1.13. LITERATURE REVIEW:

This chapter contains a review of research studies as well as relevant and general literature pertaining to the present research problem. The review of literature helps in understanding that what has already been done in the field of research area in which a researcher is going to work. It is one of the important steps of scientific method as considered by the researchers and educational philosophers since long. Though, the review of literature helps in many ways, but particularly helps in preventing the duplication of study, in getting the benefits of similar researches and the validation of results.

Research abstracts on girl child labour as domestic help has been extensively searched by the researcher but has found that a lot of research has been done in the field of child labour by various scholars. It is found that research conducted during the period from 1998 to 2009 has been summarized on various subject such as industries like brass, brick kiln, carpet, construction, diamond, hotel, hosiery, leather, glass, domestic workers and their abuse, rag pickers and the other unorganized sector of which a few reviews have been included to justify the researchers search.

“Impact, community response and acceptance of non-formal education under the National Child Labour Project – A case study of carpet-weaving belt of Mirzapur – Bhadhoi & Glass Bangle region of Ferozabad.” - The research observed the initiatives taken by the government towards eradicating child labour, rehabilitation and education of working children in India. The study was focused on carpet weaving and glass bangle in UP and also examined the impact and changes brought by the non-formal education programs in the region. The study mainly relates to hazardous occupation and child labour in general.19

“Children combining work and education in cotton seed production in Andhra Pradesh: Implications for discourse of children’s rights in India.” - The paper presents an analysis of children’s work in cotton seed production in Andhra Pradesh where work 2-3
months of the school year. Evidence showed was marked gender and age differentiation. Pre-pubescent girls were preferred for this kind of work as they were considered to be ‘pure’. However this has shifted somewhat, and the children appear to work for economic as well as due to their physical height and dexterity.\textsuperscript{20}


“Study on discrimination of the girl child in Uttar Pradesh by Social Action Forum for ManavAdhikar New Delhi.” – The study raises the issue of gender justice and the right to equality as enshrined in the constitution of India. It includes a thorough study of Universal Declaration of Human Rights and a comparative study of study the Constitution and finds that yet there is denial of basic human rights to the girl child. The study aims at elimination of all forms of discrimination, public awareness and improves welfare.\textsuperscript{21}

“Main streaming responses to the girl child in agricultural sector and the rural employment: A comparative study.” – The researcher is basically on gender dimension of agricultural and rural employment: differentiated pathways out of poverty. The researcher has come to the conclusion that though the number of child labourers is more in agricultural sector than in other sectors, yet less research has been done in combating child labour in agricultural sector. Also the girl child labour has been neglected in the agricultural sector. The researcher has contributed only towards the gender discrimination in the sector.\textsuperscript{22}

“Role of social movements in organizing the unorganized sector workers: A case study of LEARN, Dharavi– The research is based on the informal sector workers, particularly women and children who face difficulties in this sector, to explore the changes in their lives through trade unions, NGO and social movements. The research is based on activities of an NGO named LEARN.\textsuperscript{23}

“An overview of child domestic workers in Asia and the International Labour Organization.”– The research is an overview of child domestic labour in the context of child labour and International Labour Organisation policy. Children in domestic labour are defined and they enter it is also studied. The paper is only a snapshot of the practical, day to day reality of child domestic workers in Asia. The paper lacks detailed information on the section of employers and gender issue in child domestic workers.\textsuperscript{24}

21. www.ncw.nic.in/.../discrimination pg1-44.
This study uses ethnographic and qualitative interview data with Muslim child domestic workers, their families and employers to investigate the social ties between young workers and their employers. The analysis shows that working class families use children’s domestic work with middle-class families as part of a web resource to protect them from economic shocks and enable them to afford to meet the cost of social obligations.25

“The world on her shoulder: The rights of the girl child in the context of culture and identity. The paper aims at suggesting means to de-marginalize the girl child and empower her through fully acknowledging her intersecting identity. The research analysis however, empowers the girl child to stand tall, liberated by the acknowledgement of her intersecting identity, rather than stooped under the weight of inequality and disadvantages that result from a failure to consider her intersecting identity.26

“Child abuse – A study of working children of Guwahati.” The study was carried out to find out different psychological factors and physically hazardous working conditions of children and suggest measures to prevent child abuse. A sample of 300 child workers up to 14 years were taken and divided in 3 categories of occupations, namely(1) employed-like hotel workers, domestic servants, shop workers etc.,(2) self-employed-like rag pickers, vendors; and (3) helpers.27

“A study on knowledge attitude, practice on child domestic work with NGO Right Track.” The combination of poverty and population were selected as the factors that contributed to the trend of child domestic worker. It was observed that girl child from impoverished families were sent to work only to arrange for their own dowry.28
“Drishti Stree Adhyayan Prodhan Kendra Pune, through its research made a report on migrant girls domestic workers from tribal areas of Jharkhand, Chhattisgarh and Orissa. The migrants were grouped in 3 types—child domestic workers, live-in workers and part time domestic workers. The women and girls fell in the category of live-in domestic workers which were full time workers.29

“Child domestic work: A study on knowledge, attitude and practice in child domestic work in Kolkata.” The objective of the study was to understand the existing knowledge level about child domestic worker, attitude towards it, to evaluate the practices related to child domestic worker. It was observed that community people and key opinion leaders gave importance to the issue as social problem, but they lacked about the health and coordination was lacking between service and development in the community.30

“Child domestic work: A violation of Human Rights issues, causes and consequences in West Bengal.” The study was done to understand the factors responsible for leading children into domestic work and the situation of children engaged in domestic work in Kolkata city.31

Law and the menace of child labour: The ILO, Indian legislations and the Constitution of India” The research catalog records the laws, the role of ILO and measure taken by them to deal with child labour problem, the role of implementing machinery, the causes of child labour and loopholes left by law. The research recommends elimination of child labour.32

“Child Labour in Bhutan: The challenges of implementing child rights in Bhutan.” The researcher reviews the UN Conventions on child rights, also reviews policies, Acts and strategies adopted by the Royal Government of Bhutan in reducing child labour. The researcher also analyses domestic child labour in the country.33

32. Deshta, 2000, Genesis of Child Labour in India.
33. www.academic.edu/.../child_labour_bhutan

“Child Labour: A statistical study using multistage probability proportional stratified systematic sampling.” The study is divided in 3 parts—developing reliable estimate to
calculate number of children doing work, identifying important factors of child labour and
developing a profile of today’s child labour aged 5-14 years.34

“Implementing child rights and protection laws in Ghana.”-A Case Study. The study
examined the implementation of Ghana’s child rights legislation. The results showed that the
established administrative and institutional structures did not provide the type of quality of
services for which they were established. Conflicts between requirements of legislation &
traditional value and practices, quality personal training, community knowledge of
legislations, stakeholder collaboration remain formidable challenges.35

“Children working as brick kiln workers, as child porters, in small restaurants and tea
stalls, young and poor females: A triple burden for working girls in the home and streets of
Dhaka.” The study of girls working in home based industry such as bead & Sequim works,
incense sticks, bidi, and leather gloves manufacture also includes household work, working
informally outside the home and working in formal industries.36

“Girl domestic labour in Dhaka: Exploitation andHumiliation.” The study attempts to
provide of a child an in-depth illustration domestic’s sufferings, which goes beyond
superficial statistics. It reveals a picture of work and social deprivations inflicted by
employers.37

“Child domestic workers in Ethiopia: an empirical investigation.” The research focuses
on work participation and child work in general. The objective of this study is to investigate
the determinants of child domestic work hours by children in the 4-14 age categories. Work
includes minding of young children, cooking, cleaning etc. Result- welfare, education and
awareness to reduce work load on female and child domestic workers.38

36. resourcecenter.savethechild.se/worst_form_childlabour.
38. etd.aau.edu.et/dspace/bitstream

“Moving towards decent work for domestic workers: An overview of the ILO’s work.”
The study is to recognize and regulate domestic work, to define domestic work and replace
the words with household work. The conclusion was that the domestic worker is a part of
informal economy, there is unequal balance of power, lack of precise job description and an
expectation of availability at all times.39
“An analysis of the situation of Filipino domestic workers, ILO’s special action programme to combat forced labour and mobilizing action for the protection of domestic workers from forced labour and trafficking in South East Asia during the period 1993-1995.” Through the study ILO firmly believes that regulations of working conditions combined with empowerment of organization of domestic workers can make an important contribution to gender equality and poverty alleviation.  

“Gender Dimensions of Child Labour and Street Children in Brazil.” The authors review child labour and the situation of street children in Brazil from gender perspective. Relying primarily on Brazil’s national household survey in 1996 the authors examine various dimensions of child labour by gender, including participation, intensity and type of activities, the relationship between child labour, education and future earnings and the risk of child labour to health and well-being. They also summarize approaches to prevent elimination of child labour of street children in Brazil.  

“Child and the law: The constitutional perspective.” The research has committed itself to a thorough study of the Constitution of India and attracts article 38 & 39, but has restricted itself to the study of implication of the Juvenile Justice Act, 1986 and Juvenile Justice (Karnataka) Rules, 1987.

40. www.ilo.org/wcmsp5/groups
41. Gustafsson Write & Others, 2002, World Bank E-library ISSN 1813-9450, pg. 29.

“Child labour dynamics and implications for sustainable development in Nigeria.” The researcher locates the dynamism of child labour activities covering domestic services, bus conducting, industrial work, street hawking and child trafficking with enormous adverse consequences both for children and nation. The paper studies this dynamism of child labour and the sustainable development of the nation. No specific mention of the girl child has been made and has a general approach of child labour.
“The magnitude of child labour in India: An analysis of official sources of data (Draft) 1991-2001.” The paper is a modest attempt in critically looking at the official sources of information on the magnitude of child labour in India. The analysis is presented in the background of the present socio-economic context in India which has direct impact on the lives of children, and in turn the magnitude of child labour.44

“An exploratory study of girl domestic workers in Giza, Egypt.” The study is concentrated on various types of exploitation of the girl domestic workers, that they are risk of child trafficking and sexual exploitation. It is also established by the research that it is main issue of risk situation of trafficking for forced labour. However there are no data available on this issue in Egypt.45

“Child Labour in Tourism Industry in Developing Countries”. The insatiable demand for cheap labour to service a developed world dominated by materialism and obsessed with convenience, multitudinous choices and luxury tastes, has led to poverty stricken, vulnerable children being forced to work, particularly in the lucrative tourism industry. Some are sold into lives of servitude. Others suffer sexual and physical exploitation, lured by the purpose of a better quality of life. Researcher’s observations over last 7 years to developing countries in Asia, South and Central America, North Africa and Middle East have highlighted the complex causes of this controversial global is no single solution, a range of approaches is needed to uncover, prevent, condemn, isolate and eradicate its practice.46

44. www.ucw-project.org/standard_database_indiafinal2011

1.13.1. CONCLUSION:

After the review the researcher has come to certain conclusions. The researcher has observed that the reviews analysed show that studies reveal government efforts towards eradicating child labour, rehabilitation and education of working children, issues of gender justice, right to equality, welfare, elimination of all forms of discrimination and creating public awareness.
Researches also explore changes in the lives of child labour through trade unions, NGO and social movements. A research on injustice and the discourses employed by the domestic workers movement to deal with such injustices also has been carried on.

A research on Muslim child domestic worker and their families has been made to investigate social ties with the employer. Many researches have shown concern about the child labour problem, the implementing machinery and loopholes left by the laws. A few researches have dealt with the problem of girl child domestic workers in the field of exploitation, trafficking and sexual exploitation.

The literature reviews from the international scenario have focused on work participation and child work in general, linkage between the social problem and the possible risks in underage working children. A few research papers have studied the intensity of girl child labour, of keeping them out of the scope of policies oriented towards reducing child labour and child labour & sustainable development of the nation.

A lot of study has been made on the issue of child labour and very little has been researched with regard to the girl child as domestic help and her social security. Studies on the ILO has been made extensively in field of domestic workers but only with the perspective of protection and nothing has been dealt with social security given to the girl child.

It has observed by the researcher that no study has been made with regard to the social security to be provided to the girl child labour as domestic help. It thus is apathy that there is no sensitization of the issue neither amongst the law makers nor there is any political will with regard to the issue of the girl child labour as domestic help. There is also no recognition to the work she has been doing. None of her rights are recognized. The question of social security is not on the agenda of the political will or any social organization. It’s very surprising that the society which is engaging these girls in their homes as workers also have very less concern for them and do a very small or meager help to her in the name of social security.

1.14. **SUM UP :**

After identifying and evaluating the various dimensions of the girl child labour as domestic help it is strongly felt that efforts should be made to develop coherent and compressive
approach to minimize girl child labour as domestic help. The girl child labour as domestic help mainstreaming should be a concern of national development and policy framework. Opportunities for the development of knowledge tools, education, strengthening the capacities and resource mobilization should be made available. The issue of girl child labour as domestic help should be tackled not only at the social level but it must be a political commitment. It shall be advisable to initiate the process of community sensitization of girl child labour as domestic help. There is a need to design and develop an intervention plan to address the issue based on the various research and study in this field. A country vowing for a girl child labour Free State and a decent work agenda shall achieve sustainable development.