CHAPTER III

CONSTITUTIONAL FRAMEWORK:

With the increase in industrialization, modernization, increase in lust for materialistic needs of man, the incidences of child labour is growing alarmingly. This is a socio-economic problem, very significant in India. The Constitution makers during the process of giving shape to the Constitution of our country had many priorities, yet some provisions have been made to ensure the welfare of the child granting them special protection over the others.

The Fundamental Rights and the Directive Principles of State Policy have assured and ensured justice and dignity of all the individuals. But looking at the problem of child labour it is felt that the framers of the constitution should have given special attention to this problem of child labour. The employment of children in organized sector is been regulated to some extent but, the evil thrives in the rural areas and predominantly in the domestic sector in the urban area which is the unorganized sector where the girl child labour is used extensively, needs to be regulated and protected by providing social security.

The framers of the Constitution have taken a very casual and general approach towards this group of population and the child finds its place incidentally or consequentially in the Constitution. The Constitution vows through conscious makers elaborate provisions towards giving protection to the children, their welfare and developmental rights. But it is observed that the constitution has failed to recognize the rights of the child. The provisions seem to be more welfare oriented than toward protection of rights of the children.

It is our duty that we pledge to recognize the rights of the child and pay special attention to the girl child and give them their due share in the society. Giving those opportunities, expression and dignity of life will ensure the preambles commitment to secure justice, liberty, equality and fraternity even to the girl child. It is unfortunate that sufficient attention was not given over the future citizens of the country in the constituent assembly deliberations. Also the general reference as “citizens” does not attract the attention towards the weakest section of the society. The children as a class constitute the weakest section of the society and unfortunately not sufficient attention was given to these future citizens of the country.

Neither the special care and protection nor security and attention were given to the girl child by treating them as a special class which needed special treatment even during the pre-
independence period. Also special attention and care is required today to secure the future of this section of the society. The nation is under obligation to promise not only the children in general but the girl child to extend the facilities for living a healthy life and overall development. The nation should bind itself to protect the girl child from all types of exploitation. It must be the foremost duty of the nation to protect the neglected and deserted children.

The States should become fully conscience of their responsibility towards the children in general and the girl child in specific. This consciousness is reflected to some extent in some of the Articles of the Constitution which provide for protection of rights and well-being of children. India’s commitment of welfare of the children is reflected and enshrined in the Preamble and various other Articles of the Constitution.

The Preambles commitment declares:

“WE, THE PEOPLE OF INDIA, HAVING SOLEMNLY RESOLVED TO CONSTITUTE INDIA INTO A SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC AND TO SECURE TO ALL ITS CITIZENS;

JUSTICE, SOCIAL, ECONOMIC AND POLITICAL;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity;

And to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the nation;

In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution.

The preamble of any constitution sets the ideals and goals which the makers of the constitution had intended to achieve through the constitution. The preamble therefore is the key to show the purpose for which the constitution has been written.
The preamble is also helpful in interpreting the aim and objects of the constitution. The preamble can throw light to explain and elucidate as to what the constitution intends to say. The preamble is clear and unambiguous. The used in the preamble are significant and relevant to the situations that would arise in the country during its governance. Hence the word ‘socialist’ indicates the incorporation of the philosophy of ‘socialism’ in the constitution which aims at eliminating inequality of income and status. It also aims at providing a decent living with dignity of life. It also has the object that to achieve economic equality by providing State ownership of industry.

The aims and objects of our Constitution are to secure justice, liberty, equality and fraternity to all its citizens which include children. But somewhere it is felt that the framers of the Constitution have overlooked a few important words which are felt necessary in today’s modern society. There should have been mention of social security to the weaker sections of the society and special provisions relating to girl child and girl child labour should have been the priority of law makers either in the Fundamental Rights chapter or in the Directive Principles of State Policies.

The child under the Constitution has not been defined. The age of employment is also only for the hazardous employment. The areas that are covered by the Constitution are mainly for industrial work. The Constitution has covered the immoral traffic of child, slavery, forced labour and bonded labour through its articles 23 and 24. The Directive Principles of State Policy directs through its articles to provide sufficient means of livelihood, similar pay for similar work, just and humane conditions of work etc. But they are not sufficient to either curb or abolish the girl child labour. They are also not adequate to regulate and prohibit the girl child labour.

The Articles of the Constitution are incorporated for the purpose of the safety of the life of children, since it is thought that they are the assets of the country. But the insufficient provisions in the constitution will be of very less help to achieve this goal. The Directives are insufficient in protecting the girl child to whom utmost priority must be given. The object of the Constitution is to ensure that childhood and child labour is not abused. It also should also be strived to ensure that the immature age of children should not be abused and forced by economic necessity to enter in avocations that would lead to their exploitation and abuse. Hence it is observed that mere formulation of laws without specific aim will not help solve the problem of the girl child labour.
It shall be the duty of the States to fulfill the aim of the Constitution by creating opportunities and providing facilities to children. These provisions shall help develop them in a healthy manner. It shall be the duty of the States to strictly abide by the articles of the Constitutions. It should be mandatory to formulate such policies and laws for providing their due share of social security.

The Hon’ble Supreme Court in SheelaBarse and another v. Union of India, AIR 1986 SC 1873, has declared that a child is a national asset. In Indian scenario a child requires proper care, love, affection and nourishment but experience shows that the children are subjected to maltreatment in some situations. A child is treated with cruelty when rejected rather abandoned child by the parents takes a job in a factory, hotel, small scale industry and other roadside commercial establishment only for his own maintenance.

3.1. FUNDAMENTAL RIGHTS, CHILD LABOUR AND GIRL CHILD LABOUR:

The nation has promised a special treatment to the children as a special class for which the state can make any law relating to the benefit of the children. Accordingly Article 15(3) authorizes the state to evolve new avenues by making new laws for women and children, which includes the girl child also, but we have not come across any laws detrimental which could acknowledge the rights of the girl child and the welfare of the girl child labour. The nation’s promise to the children can be divided into the following grounds: (a) extending the facilities for life, living healthy and natural development of the children in general. (b) Protecting children against all types of exploitation, (c) protecting all neglected and deserted children.¹

¹Regulation on child labour in the establishment-laws & flaws a wild chase, Baidyanath Chaudhary, Child labour-Retrospect & Prospect, 2001, pg. 72.

The object of Article 15 is to strengthen the State towards making laws for the welfare of children by giving them priority over other members of the society. This point was confirmed by judicial pronouncement in the case of Dattatraya MotiRam V. State of Bombay (55.Bombay, LR 323). In this case Chagle, CJ had held that the State could discriminate in favour of women & children. It was also held that the State could not discriminate in favour of men against women & children.
Article 15(3)- the state is under obligation to make special laws for children by considering the inherent low capacity of children. Article 15(3) has been incorporated with the purpose to avoid any controversy and demonstrate the aspirations of the framers of the Constitution. It shall be the duty of the State to promote not only the welfare but also to recognize the rights of children. The word welfare seems to be very insufficient to protect the interest of the child and specifically the girl child in the present scenario when the very existence of the girl child is in danger. The word welfare does not satisfy the urge of the government to protect the girl child socially, economically, politically, mentally or physically. The word welfare does not satisfy need of the girl child of her overall development so that she proves to be an asset to the society.

Article 15(4) clearly mentions that nothing in this article shall precede the State from composing any unique provision for the improvement of any socially, economically and educationally backward sections of society as mentioned in the Schedule of the Constitution. It is clear within the purview of the Article that the States can make special provisions and laws in favour of and for the benefit of the girl child labour as domestic help. The girl child falls in the category of backward class, socially and educationally and economically and needs special protection and social security.

Article 21 provides that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. The Supreme Court in VidyaVerma V. shiv Narain, AIR 1956 SC 108, has made it clear that Article 21 only applies to the deprivation of life and personal liberty by the State, and thus, a person whose right to life or personal liberty is infringed by a private individual is required to seek his remedy under ordinary law. In this view the Article has protected the rights of the individual to a great extent.

In Francis V. Union Territory, AIR, 1981 SC 746, the Supreme Court held that “Right to Life” should be taken to mean right to live with human dignity. The Apex Court in Maneka Gandhi V. Union of India, AIR 1978 SC 597 held that the right to life includes all those aspects of life which go to make a man’s life meaningful, worth living and complete. the ambit of the expression “right to life” has been further extended in BandhuaMuktiMorcha V. Union of India, AIR 1984 SC 802, where the Supreme Court held that right to life should be taken to mean right to live with human dignity free from exploitation. The State is under an
obligation to assure observance of the labour legislations for securing the workmen a life of human dignity by implementation of laws as enshrined in Article 21.

In People’s Union for Democratic Rights V. Union of India, AIR 1982 SC 1473, the Supreme Court held that non-enforcement by the State-authorities of the provisions of Labour Laws, e.g., the Minimum Wages Act, the Employment of Children Act, etc. is violative of the worker’s right to live with human dignity enshrined in article 21.

In Olga Tellis V. Bombay Municipal Corporation, AIR 1986 SC 180, the Supreme Court has made it clear that the expression “right to life” in Article 21 includes the right of livelihood also. In D.K. Yadav V. J.M.A. Industries, (1993) 3 SCC 259, the Supreme Court has held that the right to life guaranteed by Article 21 includes right to means of livelihood and therefore, rule of procedure for deprivation of the right must be just, fair and reasonable.

The Supreme Court has observed a different view regarding Article 21. In Delhi Development Horticulture Employees Union V. Delhi Administration, AIR 1992, SC 789, the Supreme Court has held that our country has, up to now not been able to it practicable to incorporate the right to a subsistent living as a Fundamental right because the country has no capacity to guarantee it. In Secretary, State of Karnataka V. Umadevi, AIR, 2006 SC 1806, the Supreme Court has held that the right to life under Article 21 does not include right to employment. The law is dynamic and the Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. Only then the concept of social security will be given in the true sense.

The Supreme Court through its judicial activism has widened the scope of Article 21. In Calcutta Electricity Supply Corporation V. Subash Chandra Bose, AIR 1992 SC 573, Regional Directors ESI Corporation V. Francis De Costa, (1993) Supp 4 SCC 100, L.I.C. of India V. Consumer Education and Research Centre, AIR 1995 SC 1811, it was established by the Supreme Court that the right to life comprises of the right to social security. The Supreme Court has also made it clear through these decisions that “right to life” under Article 21 should be read in a broader sense so as to include right to livelihood, subsistent living, healthy sanitary conditions at the work place and recreation.

The court also held that right to health is a fundamental right under Article 21 read with Articles 39, 41, 43, 48A and all related articles and fundamental human rights which would
make life of a workman a dignified life. Economic necessity should not compel any person to work. He should not be exposed to health hazards for want of wage earning for him and his family. No compulsion of work should be made at the cost of health and vigor of the workman. However the courts have also from time to time made it clear that the fundamental rights should to be enforced to achieve dignity of human beings.

The various cases cited above can be drawn to the conclusion that the Supreme Court has through its activism tried to widen the scope of Article 21 to the maximum benefit of the society. It is the legislation that has failed to make enactments to that effect. The parliament and the legislators have to some extent made laws to meet the needs and regulate the organized sector workers but, the large unorganized sector has been left out.

The need of the hour is to formulate special laws which would represent every section of the society, so that they would find a proper place in the society and their demands and requirements would be fulfilled. The weaker and vulnerable sections of the society should be taken care of which would be possible only through special legislations so that Article 21 would be given a better meaning.

It has also been observed that violation of the right of personal liberty by a private individual is not within the purview of Article 21. Hence, a person whose right to personal liberty is infringed by a private individual can seek remedy only under the ordinary law and not under Article 21. But in recent times, through various judgments it has been observed that there is change in the expression of Article 21 and it now been invoked against private persons. The previous notion that this Article is available only against the State has been widened by various recent judicial activisms. The language of the Article is widened and not restricted to State action.

Article 23 of the Constitution prevents illegal trade in human beings, beggar and other forms of forced labour. This Article specifically does not speak of children being included under the provision, though it is the known fact they are the most vulnerable section of the society. The Article protects the citizens not only against the state but also against the private citizens. It
has cast a duty upon the State to take adequate steps to abolish traffic in human beings, forced labour and bonded labour.

The Article is not specific about children to be covered, but the Article is important from the children’s point of view because traffic in human beings is a crime that endangers the children the most, the word beggar also connotes a wide meaning which includes the children as vulnerable to be paid inadequate payment for the work rendered by them. The most heinous crime against children is that they are captured and forced to indulge in begging. Thus the inclusion of the child under Article 23 shall help the tender age from exploitation of all forms.

Though Article 23 has played an important role in creating history in the field of child labour yet, we have not achieved the goal to its maximum satisfaction. The true scope of the legislations prohibiting ‘traffic’ in human beings and forced labour’ as laid down in Article 23 of the constitution has made an effort to widen the view of the Supreme Court. The case came up as a result of refusal of minimum wages to workmen engaged in construction work for Asaid 1981 and non-enforcement of the minimum Wages Act, 1948; equal Remuneration Act, 1976; Employment of Children Act, 1938; The Contract Labour(Regulation and Abolition)Act, 1970. The Supreme Court in Peoples Union for Democratic Rights V. Union of India, AIR 1982 SC 1473, in which Bhagwati, J. observed, “Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.”

The apex court in Laxmi Kant Pandy V. Union of India, AIR 1984 SC 469, took active steps to abolish bonded domestic service and slavery of poor which had been in practice under the guise of foreign parents. In Vishaljeet V. Union of India, AIR 1990 SC 1412, the Supreme Court while referring to Article 23 of the Constitution which prohibits traffic in human beings and clause (e) of Article 39, which considers that frail age of the children is not to be abused and they should not be denied their share of social and economic justice. The Article also states that it is the concern of the State to see that these provisions should be strictly adhered to be ensured to safeguard the interest of the child worker and save them against all forms of exploitation.

Article 23 finds a special attention in one of the writ petition where Bhagawati, J. observed that “Article 23 afflicts at forced labour in which ever form it may be apparent, because it is against human dignity and opposed to basic human morals and values. The Apex Court in
BandhuaMuktiMorcha V. Union of India, AIR 1984, SC 802, has reminded us the promise made by our fathers of the Constitution under Article 23 and observed that, “the Constitution makers had viewed the socio-economic structure of the country and it was necessary to regenerate the social and economic justice to the common man. Political freedom had no meaning, unless it was accompanied by social and economic freedom. The evil of bonded or forced labour was exploitative and not compatible with the new socio-economic order, which ‘we the people of India’ were determined to build and constitute a gross and most revolting, denial of basic human dignity. Obviously, it would not have been enough merely to include abolition of forced labour in the Directive Principles of State Policy because then the outlawing of this practice would not have continued to plague our national life in violation of the basic constitutional norms and value until appropriate legislations could be brought by the legislative forbidding such practice. The inclusion of Article 23 as Fundamental Right is intended to abolish such practice. Thus prohibition against traffic in human beings and begar and other similar forms of forced labour is clearly intended to be general prohibition total in its effect and all pervasive in its range and it is enforceable not only against state but also against any other person including in any such practice.” Similarly another landmark case of Lakshmi Kant Pandey V. Union of India, AIR 1985 SC 469, the Supreme Court took active steps to abolish bonded domestic service and slavery of poor children had been in practice under the guise of foreign parents. The Court has shown vigorous courage to point out that both State and Central Governments have badly failed to execute the spirit of labour welfare legislations. This has resulted in large scale breach of legal provisions and whereby the employers have miserably exploited the innocent child workers.

Article 24 of the Constitution has out rightly forbidden the children from being employed before they complete the age of 14 years in factories or mines or in any other hazardous employment. Thus an inference can be drawn that Article 24 does not absolutely ban employment of children below the age of 14 years. It has not imposed any restrictions on their employment completely which can be read as that the child could seek any other employment which is non-hazardous in nature. Besides Constitutional provisions there are many legislative provisions which tend to provide legal safeguard to children in many occupations. Article 24 however emphasizes legal control on the employment of child in the industry on the basis of age factor and nature of employment.

The Supreme Court in People’s Union for Democratic Rights V. Union of India, AIR 1982, SC 1473, observed that Article 24 embodies a Fundamental Right Which is enforceable
against everyone. The Court took a serious note of the Construction industry to be kept out of the ambit of Employment of Children Act, 1938. Similarly the Salal Hydro Project V. State of Jammu & Kashmir, AIR 1984, SC 177, the Court had held that construction work being hazardous employment, children below the age of 14 years cannot be employed. The court also emphasized on child welfare in the Country. Also in Rajangam, Secretary D.B.W.U V. State of Tamil Nadu, JT 1991 (S) SC 299, the Supreme Court pointed that beedi manufacturing is also hazardous and hence child labour should be prohibited and employment of children should be stopped in these occupations.

Thus in the light of the provisions of Article 24 and the decisions given by the Supreme Court in the landmark cases, researcher is of the opinion that child labour cannot be permitted in hazardous employments but could be permitted in other employments with certain exceptions, prohibitions and regulations. It is also observed that the cases filed appear only for the organized sector and none of the cases are filed with regard to the unorganized sector or the domestic workers sector. The girl child who represents the age group of 14-18 years is also not been represented by any of the laws. Her nature of work that is the domestic work, which she usually performs, is also not recognized by any of the laws in the way that they could be provided by social security.

There are various laws in existence and which could be also be extended to the unorganized sector and to the domestic help but the State seems to be reluctant to do so. The state has never given even a thought to that effect. It is also surprising that the society for whom the girl child works has also not given a thought about her future security. The political will and the awareness amongst the employers will certainly help the girl child labour secure her future.

The provisions of the fundamental rights are to secure the rights of the citizens with respect to social, economic and cultural security. But it is observed that in view of our socio-economic realities the Constitution makers could do very little to prevent the children from being employed. The labour laws in general and the Child Labour (Prohibition and Regulation) Act, 1986 which have specifically prohibits the employment of children in certain industries and leaves the scope for such prohibition in others, the legislatures have, however, enacted many more legislations before and after the commencement of the Constitution prohibiting child labour.
3.2. DIRECTIVE PRINCIPLES OF STATE POLICY –CHILD LABOUR V. GIRL

CHILD LABOUR:

There are some other provisions in Part-IV of the Constitution. They are the Directive Principles of State Policy. These are declared as important in the governance of the country. They are the imperative basis of State policy. They are guidelines and instructions to future legislatures and executives to be followed while they formulate laws for the welfare of the society. But they differ in one important respect from the fundamental rights in the way that the Directive principles are not subject to court jurisdiction and the Fundamental Rights can be put to the jurisdiction of the courts.

They have been kept away from the jurisdiction of the courts. If the State is unable to take any positive action in furtherance of the directive principles, no action can be brought against it in the court of law. These principles are in the nature of moral concepts to be followed by the States. It is very true that Directive Principles of State Policy and Fundamental Rights together constitute the conscience of the Constitution and represent the basic inherent human right. However, in translating them into socio-economic reality they play an important role.

Merely because the Directive Principles are non-justiciable, it does not mean that they are in any way inferior to the Fundamental Rights. In fact, the Directive Principles impose an obligation on the States to take positive and affirmative active for maintaining social and economic justice in the society. The States have a duty imposed on them through the Directive Principles to create a socio-economic order to cherish the value and dignity of every member of the society. Among the various economic rights and the principles of social security which the state is required to ensure to its citizens are-

- Adequate means of livelihood;
- Equal pay for equal work for both men and women;
- Fair distribution of material resources for the country;
- Protection of child labour and adult labour;
- Living wage for workers;
- Right to work;
- Free and compulsory education for children upto the age of 14 years;
- Conditions of work ensuring decent standard of living and full enjoyment of leisure;
- Social and cultural opportunities;
- Public assistance in cases of unemployment, old age, sickness, disablement;
- Just and humane conditions of work;
- Promotion of educational and economic interests of the Scheduled Castes and Tribes;
- Promotion of social and economic interests of other weaker sections of the society and
- Rising of the level of nutrition and improvement of public health.

Some of these directive principles such as free and compulsory education, equal pay for equal work for both men and women have been achieved but, it is observed that majority of the principles are not seen to be incorporated in the organized sector and the unorganized sector remains totally neglected by the law makers. The social security principles shall have a meaning only when they will be extended to all the citizens of the country.

In BandhuaMukti V. Union of India (1984) 3 SCC 161: AIR 1984 SC 802, 812 it was held by the Court that though the directive principles are unenforceable by the courts and the courts cannot direct the legislature or executive to enforce them, once a legislation in pursuance of them has been passed, the courts can order the State to enforce the law, particularly when non-enforcement of law leads to denial of a fundamental right.

These Articles do not lay stress on the issue of child’s welfare, but if the children are to be the beneficiaries then it is compulsory to implement these provisions. These Directive Principles provides for policies and laws to be formulated for the advancement of welfare of the children. The states shall formulate laws that should contribute to the anesthetic interest of the public and healthy growth of the nation. The laws shall lay the foundation for appropriate social structure in which the labour will find a place of dignity, in lieu of its contribution to the society and economic progress of the country as a whole.

Accordingly the States shall, to achieve their goals by formulating laws relating to child labour. But it’s time to make laws to protect the interest of not just the child labour in general but save the girl child labour. Law should be made to promote the welfare of the girl child. It should secure and protect the girl child by living up to the aspirations of the Constitution. The States shall not only make special laws to protect the interest of the girl child labour but to regulate the conditions of work and employment.

Article 38 directs the State to secure a social order by establishing welfare of the people through its policies. Accordingly Article 38(1) states that the State shall make efforts to
establish the welfare of the people by pledging and advancing an effective and morally built social system in which justice, social, economic and political, shall be attributed all the members of the society. Article 38(2) provides that the State shall distinctly make efforts to disparage the unfairness in income, and also make earnest attempt to get rid of unevenness in status, treatment and opportunities. This aim should be achieved among individuals and amongst groups of people residing in different localities or working in different avocations.

Further Article 39 provides that the State shall universally; secure its policies towards extending the health and vigor of workers, men & women, and the children by assuming them as underprivileged. No citizens should be forced by economic constraints to enter additional unsuitable work by their age or physical power. It also directs that the State should create opportunities and facilitate the child to grow in healthy way. Such circumstances and conditions should be created so that the child leads a life of freedom and dignity. It is also the primary duty of the State to ensure that childhood and youth are defended against exploitation of moral and worldly essentials. The Article particularly emphasis that the State shall ensure to its people sufficient means of living, fair distribution of wealth and protection of childhood and child labour. It is observed that the Article fails to ensure protection for the girl child labour regarding her social security.

Article 21 derives its strength from Article 39 in the sense that Right to live with human dignity free from exploitation is enshrined in it. In B.M.M. V. Union of India, AIR, 1984 SC 82, the Supreme Court held that it may not be possible to make compulsion on the State by court pronouncements to make statutory enactments for guaranteeing primary needs to survive with human dignity but where such laws already exist the State can be endeavor to make obey of such laws. But it can be seen that the States have a very casual approach towards Article 39 for the fulfillment of the Constitutional obligation for the welfare of children. No State have yet made efforts towards enacting beneficial statutes to be brought into force and administered without delay.

In M.C. Mehta V. State of Tamil Nadu, AIR 1997 SC 699, it was held that in view of Article 39 employing children inside the match factories was violative of the article as the manufacturing process of matches and fireworks is hazardous. Children can however, be employed in the process of packing away from the vicinity of the factory so that accidents by way of exposure can be avoided. The apex court has issued directions for setting up of Child Labour Rehabilitation Welfare Fund. Liability on the employer was cast upon to ensure job to
an adult member in the child worker’s family. The apex court also observed that it is herculean task to eradicate the menace of the child labour in hazardous industry, it is required to be dealt with by an iron hand and children are to be protected under the constitutional provisions.

The Supreme court in SheelaBarse V. Union of India, AIR 1986 SC 1773, held that Article 39 (f) of the Constitution provides that the state shall make efforts towards ensuring the Constitutional commitment of giving opportunities to the children to develop in a sound manner and in situations of freedom and dignity. The Supreme Court further stated that though various have enacted Children Act for the fulfillment of constitutional obligation for welfare of children under Article 39 (f), yet it is directed that such beneficial statutes should be brought into force and administered without delay.

Similarly the provisions of Article 41 requires, that the State to provide within the limits of its economic ability and advancement, make operative provisions for securing, the right to education and public aid in cases of underemployment, unemployment and in times of undeserved deficit. The effective implementation of this provision is also expected to promote the welfare of the children proportionately and to ensure distributive justice to them.

The State is directed by this Article to ensure to the citizens employment, education and public assistance with in it economic capacity. The Article aims at providing such assistance to the weaker sections of the society. The Constitutions by this article refers to directives as measures of social security. Similarly the directive to the State to make effective provisions for securing the ‘right to work’ is also though qualified by its economic capacity and development it is the duty of the States to make efforts in this direction.

Article 43 lays down it is the duty of the State to secure by suitable legislation for all workers, including agricultural and industrial. In Bijay Cotton Mills Ltd. V. State of Ajmer, AIR 1955, SC 33 which was a landmark case, it was held that the fixation of minimum wages of labourers by the legislature is in the interest of the general public and is, therefore, not violative of the freedom of trade secured to the citizens under Article 19(1) (g).

It was further emphasized that if labourers are to be secured of minimum wages and they are to be protected against exploitation by their employers, it is necessary that constrains should be imposed upon their freedom of contract. These restraints cannot in any sense be unreasonable. On the other hand, employers should be compelled to pay minimum wages to
their labourers. It is seen that the labourers work at less wages due to poverty, illiteracy and unawareness towards law.

In Standard Vacuum Refining Co. of India V. Workmen, AIR 1961, SC 895, 901, Gajendragadkar, J. said, “The concept of living wage is not a static concept; it is expanding, and the number of its constituents and their respective contents are bound to expand and widen with the development and growth of the national economy. Indeed, it may be true to say that in an underdeveloped country, it would be idle to described any wage structure as containing the ideal of living wage, though in some cases, wages paid by certain employers may appear to be higher than those paid by others.”

The Directive Principles of State Policy are conducive to the common interest of the people. They are concerned about the robust progression of the nation. Hence they lay down the foundation for appropriate social structure in which the labour class finds its dignity and legitimacy. It is important that the labour class also feels itself contributing to the progress of national economic prosperity. This view was expressed in Y.A. Mamarde V. Authority under the Minimum Wages Act, (1972) 2 SCC 108, 116: AIR 1972 SC 1721.

In Polychem Ltd. V. R.D. Tulpule, (1972) 1 SCC 885: AIR 1972 SC 1967, it was observed that considering the question of wages in the background of the Directive Principles, a wage structure should serve to promote a fair remuneration to labour ensuring due social dignity, personality and security, a fair return to capital, and strengthen incentives to efficiency, without being unmindful of the legitimate interest and expectation of the consumer in the matters of prices.

It is thus observed that the Constitution of India has under Article 43 directs the States through the Directive Principles of State Policy to formulate laws keeping in view the whole work force under the organized and unorganized sector. It shall direct its policies to secure a decent standard of living. The words “to all workers” also include the girl child labour as domestic help. The State hence, can formulate special legislation for this category of the society taking in to consideration the special status of the girl child in the society. The Directive Principles of State Policy being conducive to the general interest of the society and to the progress of the nation lays the foundation of the social structure in which the labour shall find its dignity, in lieu of its contribution to economy of the nation as well as development.
Under Article 45 a duty is imposed upon the States to provide free and compulsory education until the child complete the age of 14 years. The Supreme Court in the case of M.C Mehta V. State of Tamil Nadu has allowed children to work in a prohibited occupation where it observed: “The provisions of Article 45 in the Directive Principles of State Policy has still remained a far cry and though according to this provision all children upto the age of 14 years are supposed to be in school, economic necessity forces grown up children to seek employment.” The Court emphasized that special laws be made for providing quality of life to children. The court also stressed on job oriented education during the school time to adjusted so that employment is not affected.

Article 46 lays down that the State shall promote with special care the educational and economic interest of Scheduled Casts & Scheduled Tribes. It should be remembered that the girl child belongs to such weaker category. She is also the worst affected and needs to be constitutionally protected. In M.R. Balaji V. State of Mysore, AIR 1963 SC 649,664, the Supreme Court emphasized the need for balancing the interests of the sections of the people covered by this Article.

The Constitution does not define ‘the weaker sections of the people’. In the context of section 21 of the Urban Land (Ceiling and Regulation) Act, 1976 which uses the expression ‘the weaker sections of the society’ the Supreme Court, without being exhaustive, held that a ‘means test’ could be adopted for the purpose of identifying such sections and in the contemporary economic condition persons drawing uptoRs 18000 per annum could be considered weaker sections of the society for the purpose of housing schemes in urban Maharashtra.

In IndraSawhney V. Union of India 1992 supp (3) SCC 271: AIR 1993 SC 477 (the Mandal Commission Case), the court has observed that the expression, ‘weaker sections of the people’ is wider than the expression ‘backward class of citizens’ or SEBCs or SCs and STs. It connotes all sections of the sections of the society who are rendered weak due to various causes including poverty and natural physical handicaps.

Similarly Article 47 confers a duty upon the State to enhance the level of nutrition and the standard of living of its people and excel the quality of health by making suitable legislations. Thus it is the responsibility of the State to live up to aims of the Constitution so that the possible dangers could be avoided which would otherwise hamper the personality of the young children.
Directive Principles of State Policy which, although do not lay emphasis on the child welfare directly, but the children are bound to be beneficial if the States formulate laws by implementing the Articles 38, 39 (e),(f), 41, 43, 45, 46, &47 which contains such provisions providing guidelines for the States in promoting the welfare of the children. These are articles are conducive of general interest of the public, lays down the foundation for appropriate social structure in which labour will find its place of dignity, legitimate due to it in lieu of its contribution to the progress of national economic prosperity.²

Though these directions are not enforceable by the court yet these have been declared to be fundamental in the governance of the country (Article 37 of the Constitution of India). It is the obligation of the State to comply with the demands of these principles while making laws with reference to girl child labour. The States under the same Directive principles can make special laws in favour of the girl child labour as domestic help with the intention to give social security to this section of the society because survival is the first requisite and then comes prosperity.

Let’s think of laws which may not be hindrance in their way of becoming self-reliant. A thoughtful regulation of laws is necessary to regulate this unorganized sector. K.S.Hegde has described Directive Principles of State Policy for child welfare – “To fix certain social & economic goal for immediate attainment by bringing about a non-

violent social revolution.” Thus it is the obligation of the States to comply with the demands of these principles while making laws.

The welfare of the children should thus be the foremost concern of any country and so is ours. No State which looks forward to a future can afford to neglect its children and specially girl child who is the most important element of the universe. In India as in other industrialized countries, efforts are made by the constitution to develop labour legislations to protect and regulate the child labour, which constitute the large section of wage earning class, unable to defend themselves. Accordingly the Indian constitution has made efforts by providing protection to the child workers, yet remains silent on the issue of girl child labour, under Article 24. This Article regulates the child labour in the organized industrial sector but the Article remains silent on the issue of regulating the unorganized sector.

The Directive Principles of State Policy reaffirm the policy of protection of children against exploitation in the following terms. “The State shall, in particular, direct policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; that childhood and youth are protected against exploitation and against moral and material abandonment”. In India there are many enactments for the protection and regulation of child labour but it is very important that we think for enactments especially for the girl child labour.

The child under the Constitution has not been defined as to the age of employment. The provisions of the constitution are also very limited. The areas that are covered under the constitution are mainly for industrial work, hotels, and shops and for hazardous work. The constitution has also covered the immoral traffic of a child, slavery, forced labour and bonded labour. But these articles are not sufficient to either curb/abolish or to regulate and prohibit child labour. Moreover none of the Articles of the constitutions have no mention of the category of domestic help which are one of the biggest unorganized sectors in our country. The Parliamentarians and law makers have neglected this section of the society and it must be represented in the constitution as a special category.

The Articles of the constitution are incorporated for the purpose of the safety of the life of children, since it is thought that they are the assets of the country, but these insufficient provisions in the constitution will be of no help towards the fulfillment of the goal. The directions given to the State are insufficient in protecting the tender age of the child; leave aside the girl child to whom foremost priority must be given. The intention of the constitution is to strengthen the States to make laws regarding young children. The State should take all possible care so that childhood is not abused and forced by economic compulsion to enter into jobs unsuited to their age and capacity. It is also observed that this intention cannot be met with insufficient laws and improper directions.

The Constitution has aimed at providing opportunities to children and necessary stimulus to develop in a healthy manner. The State shall be directed to formulate such policies and make laws in the direction also seems to be failure because the articles have no deterrence and force upon the state to compulsorily make such laws and implement them strictly. The goal set by article 39 of giving children opportunities and facilities to secure their freedom and dignity feels like a dream because the girl child who silently works as a domestic help in which way
get the opportunity and facility to develop her and secure to her freedom and dignity is a million dollar question. The work which she performs if done by the house lady is a work of dignity and the moment the same work is performed by the girl child, becomes a low dignity work and she is looked upon as a servant instead of an helper.

The social activists also work and concentrate on the industrial workers, may be children or adults to secure their rights but the social works or even the NGO’s also neglect this class of workers called as domestic helpers. Article 15(3) specially provides to make laws to curb practices derogatory to the dignity of women, but it is observed that no such provisions exist for the dignity of the girl child which is the pre-stage of her womanhood. Saving the girl child is the cry of the hour and yet the law makers and the legislators are closing their eyes towards making special provisions in the constitution as well as the legislative laws in respect of the girl child.

India is a welfare state and is accountable to its citizens for accord various benefits to their advantage that would contribute in acquiring Social Security and help to contribute in his own better way. Though the social security laws in India derive their origin in Directive Principles of State Policy, the Indian Parliament has yet to recognize social security as a fundamental right.

These obligations are cast upon the states by Articles 41, 42 and 47 which constitute social security. But it has been observed that the government could make laws only for the organized sector in which the child labour has still been left out of the purview of the labour laws. The girl child labour that constitutes as one of the largest section of the working class is yet earn recognition and waits for social security to be provided to her by the legislators.

The girl child labour is the most vulnerable group and needs social security and such special laws can be made under the Articles of the Constitution- 41, 42 and 47. Various program oriented measures has been taken but they also do not reach the needy and there too the girl child labour as domestic help is the neglected part. There is a need for social security system for the girl child labour in the domestic sector which would improve the conditions of employment. It would also help in contributing towards harmonious labour relations.

The Constitution of India through its various directive principles have directed the Legislatures to formulate laws with regard to children to protect their health, welfare, dignity of life and to provide social security as well. The various directives also indicate towards
formulation of special laws for special classes of the society and accordingly the girl child represents the special class of the society who needs special recognition and protection through laws.

The existing laws are themselves insufficient and no laws exist for the girl child labour between the age group of 10-18 years of age. This age group requires attention of the law makers because of its different physical capacity and vulnerability. The existing laws have been amended, revised and also repealed from time to time but yet they have not been able to fulfill the requirements of the dynamic society. They are insufficient to minimise or stop the exploitation of child labour. The laws themselves appear to be helpless to minimise the hardships of the girl child labour.

The Parliament and the States have not been able to live up to the aspirations of the Constitution. The Directive Principles of the State Policy possess two characteristics. First, they are non-enforceable and therefore, if they are disobeyed or not implemented by the states, their obedience and implementation cannot be made compulsory or secured by judicial proceedings. Secondly, they are fundamental in the governance of the country. It shall be the duty of the State to incorporate these principles as a standard and make suitable legislations.

But the States have not yet been able to do much for the infirm and feeble sections of the society in furtherance of lifting the standard of living and providing a decent and worthy living. Though in recent times the courts have tried to dilute the practice by judicial activism and directed the governments to enforce some of the directive principles in support of the fundamental rights. Yet many sectors of working class are still left untouched and unrepresented. Also the various laws which are in existence are not reached to the large neglected unorganised sector.

In Kesavananda Bharati V. State of Kerala, (1973) 4 SCC 225, 880-81, para1714 (Fundamental Rights Case) the importance of directive principles were explained by Mathew, J. as, “I think there are rights which are inherent in human beings because they are human beings-whether you call them natural rights or by some other appellation is immaterial. As the preamble indicates, it was to secure the basic human rights like liberty and equality that the people gave unto them the Constitution and these basic rights are an essential feature of the Constitution; the Constitution was also enacted by the people to secure justice, political, social and economic.”
The moral rights incarnated in Part IV are not explicitly enforceable as against the States by a citizen in a court of law in case the State fails to accomplish its duty but, nonetheless, they are fundamental in the orderly management of the country and all the organs of the State, including the judiciary, are bound to impose those directives.

The fundamental rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgment, curtailment, and even abrogation of these rights in circumstances not visualized by the Constitution makers might become necessary; their claim to supremacy or priority is liable to be overborn at particular stages in the history of the nation by the moral claims embodied in Part IV.

A similar expression was given by Beg, J. in the Kesavananda Bharti V. State of Kerala, SCC pg. 902, para 1802. He puts the matter thus: “Perhaps the best way of describing the relationship between the fundamental rights of individual citizens, which impose corresponding obligations upon the State and the directive principles, would be to look upon the directive principles as laying down the path of the country’s progress towards the allied objectives and aims stated in the Preamble, with fundamental rights as the limits of that path, like the banks of a flowing river, which could be mended or amended by displacements, replacements or curtailments or enlargements of any part according to the needs of those who had to use the path.”

Thus it is observed from the above two landmark pronouncements that the judiciary has always upheld the aims and objects of the Constitution. They have also reminded the law makers of their duty to abide by the directive principles which can be used for formulating laws by the States for upholding the economic democracy.

Here it would be precise to quote the extracts from the speech of Dr. Ambedkar, Chairman, Drafting Committee, explaining the underlying object in laying down the Directive Principles of State Policy as, “It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have a great value; for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal or as to what our social order ought to be, we
deliberately included the directive principles in our Constitution. I think if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this Constitution is really twofold: (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every government whoever it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are laboring will disappear.”


Thus it is now clear that by once again remembering the words of DrAmbedkar the lawmakers of our country must make efforts to formulate such laws which would give justice to all the citizens. Laws should be made deliberately keeping in mind those sections of the society who have been neglected since a very long time and yet, they have been contributing their share in the economy of the country. The law makers must revive the expressions of the constituent assembly so that the ideals behind the various Articles could be given true justice.

3.3. THE COMMISSIONS FOR PROTECTION OF CHILD RIGHTS ACT, 2005:

In view of the National and International Developments and concern for the children, the need for a National Commission for Protection of Child Rights has been articulated by the various elements of the society like the social activists and non-governmental organizations. Hence the Government decided to set up the National Commission for better protection of the rights of children and assigned certain functions. Accordingly the Commission was to study and monitor all matters relating to constitutional and legal rights of children.

The commission shall according to the provisions of the Act examine and review the safeguards under existing laws and ensure their effective implementation. The Commission shall suggest amendments in the existing laws. The commission shall look into complaints, welfare and development of children. The commission shall periodically review the existing schemes and policies regarding child rights. It should also examine and study the international laws and programs so that they can be incorporated in our laws for the benefit of children through effective implementation in the best interest of children. The Commission
has also to promote and encourage research programs with regard to national and international laws.

The Act obligates the commission to conduct child rights literacy programs among various sections of the society. It shall strive to publicize awareness regarding the safeguards available for the protection of their rights through use of periodicals, media, and seminars. The commission shall submit notice of matters relating to deprivation of child rights, non-implementation of laws providing for protection and development of children, non-compliance of policy decision, guidelines or instructions aimed at mitigating difficulties and ensure welfare of the children and to provide relief to such children.

The Commission has no specific mention of children working in different types of work. It does not provide for the category of child labour to which the safeguards should be provided. It is ambiguous on the issue of types of laws to be amended or implemented. It is only a bill of suggestions out of which no specific inference can be drawn regarding the girl child rights or the girl child labour.

The commission is just a suggestive Bill generally formulated to protect the constitutional rights of a child on the whole. The Act also does not contain the definition of child for whose benefit the Act has been enacted. The Act has also not defined child labour which the most important definition is left out. The child labour and the girl child labour is the most neglected even in the special act to protect their right.

The 2nd National Commission on labour suggests for changes in existing laws relating to labour in the organized sector. It suggested legislations for ensuring a minimum level of protection to the workers in the unorganized sector. But the need of the hour is to make special mention and give special attention towards the girl child labour. She must be given special reference and included in every study conducted by government agencies, Law Commissions and the law makers on child labour. The issue of girl child labour as domestic help should be highlighted so that the services given by them could be recognized and their rights could be secured and she could be provided social security through special laws.

It has been observed that National Commissions are also working on the general rights of child labour. It is the need of the hour that we must be more thoughtful about the girl child in general and the girl child labour and the girl child as domestic help specifically. The National Commission should hold special commission for problems related to the girl child labour as
domestic help. The nature of their work, their conditions of work, their place of work, their terms and conditions of work, their relations with their job provider etc. should be studied and proper and effective legislations should be for them. Their needs must be taken into consideration so that laws are formulated for their benefits.

The state has now to take initiative to give true meaning to the Directive Principles along with the fundamental Rights. The law makers have to take up the challenge of reading between the lines of those relevant Articles and make laws which will be beneficial for the weaker sections of the society. It is the duty of the Parliament to define the words ‘weaker section of the people’ and make appropriate laws. The Articles in chapter III & IV can be given a new meaning and interpretation. In fact they must be interpreted with the changing needs of the society and accordingly laws should be made so that they can be beneficial for maximum number of people.

3.4. SUM UP:

Thus constitutionally with an era of economic reforms, India has witnessed the paradoxical situation. The Constitution continues to say about the socio-economic revolution to realize the goal of social as well as economic democracy. The case of Indian constitutional philosophy is yet to stand for liberation and empowerment of vulnerable, isolated sections to enrich India’s democratic governing process.

Constitutionally it is testing time for the people of India who long back had pledged to build India into a sovereign, socialist state. The State promised to its citizens of social and economic justice to all. But the study has revealed that the States have done very little for the achieving the constitutional goal to provide social and economic justice to all. Yet the girl child labour is not covered by this goal. In the constitution of the liberal democratic country one cannot expect any constitutional rule or direction on the economic policy, but the constitution of India through the preamble declarations, constitutional obligations on State by the directive Principles of State Policy, especially Article 38, 39 and entry number 20 in the concurrent list of the VII schedule provide for economic and social planning and also the Constitutional promise to all justice: social, economic and political should become the predominant factors in determination of any legislative as well as executive policy and State action even in the current era of globalization.
It is also the responsibility of the judiciary to guard the objectives of the Constitution with missionary zeal and play the role of an arm of social and economic revolution effectively.⁴

4. Mane Suresh, 2007, Indian Constitutional Law-Dynamics and Challenges, Chapter 24, pg 403

Hence it is also observed during the study that the entire Constitutional though aimed to provide benefits and facilities to all the citizens but, it is observed that they are directed only to the organized sector workers. Though the constitution has laid down that the no child below the age of 14 years shall be allowed to work in any hazardous employment, in that case the girls who are working in the domestic service are not considered as hazardous employment and hence could be covered under the directions of the constitutions. In this case the States are under obligation to make special laws for the girl child labour as domestic help and fulfill the aspirations of the constitutional.

Thus it is very true that children are crucial resources of the future. The development of any country depends up on the way and quality the children grow up. It is a fact that the children have entered in maximum number of employments, may be it the organized or unorganized sector. But the fact has to be accepted that the child labour is observed more in the unorganized sector. And the girl child labour is seen working in the domestic service to the maximum.

It is now observed from the study that girl child labour is not a problem by itself but the major problem is providing social security to these workers. Though many enactments have been codified in consonance with the Directive Principles of State Policy, the International labour Organisation conventions yet the girl child labour is increasing day by day. This shows lack of Constitutional efforts and ambiguities and deficiencies in the present legislative measures.

If we read the Preamble carefully we come to know that the opening words have solemnly committed that we would ourselves strive to rescue all the citizens which also includes the girl child. But we see that the girl child is always overlooked. The general terms like ‘citizens’ and ‘child’ are not capable of including the girl child because of the traditional and societal outlook towards the girl child. The various provisions in the constitution empower the State to make special enactments for women and children. It is thus observed that the States should make special provisions by way of laws for the girl child labour as domestic help. The judiciary has always safeguarded the children against exploitative conditions but has never
given any thought in any of the judgments for providing social security to the girl child as
domestic help.