CHAPTER –9

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9.1. Conclusion

Children constitute the nation’s valuable human resources. The future well being of the nation depends on how its children grow and develop. The great poet Milton said “Child Shows the man as morning shows the day”. So it is the duty of the society to look after every child with a view to assuring full development of its personality. Children are the future custodians and torch bearers of the Society: they are the messengers of our knowledge, cultural heritage, ideologies and philosophies. Children are really future components in the form of great teachers, scientists, judges, rulers, doctors, planners, engineers, politicians on whom the entire society founded (rests). Unfortunately millions of children are deprived of their childhood and right to education and thereby they are subjected to exploitation and abuse.

The age of the child has been differently defined in different laws. There is no definite criteria or scientific parameters in defining the age of the child. The Constitution of India under Art.24 defines ‘Child’ as any one below the age of 14 years and who shall not be employed to work in any factory or mine or engaged in any other hazardous employment. Under Child Labour (Prohibition and Regulation) Act, 1986 ‘Child’ means a person who has not completed his 14 years of age. Article 21-A of the Constitution states that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by law determine. Now, amended Article 45 of the Constitution states that, the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. But according to Art.1 of the United Nations Convention on the Rights of the Child 1989, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. Under Juvenile Justice (Care and Protection of Children) Act, 2000 the age is fixed at 18 years. Thus, there is no uniform fixation of the age of a child.

Unfortunately, the children in India are subjected to various forms of abuse. National Study on Child Abuse recorded its findings very exhaustively on various forms of abuse of children. They are child labour, physical abuse, emotional abuse, substantial abuse, Girl child neglect, sexual abuse etc.
Socio-economic conditions prevailing in the society are strongly responsible for the abuse of child in different forms. Poverty, illiteracy, not aware of the child rights and low literacy rate, equally contribute to the problem of child labour. Among the various forms of abuse of children it would be more pertinent and relevant to focus on child labour. Child labour is a abuse and exploitation of children and children prematurely leading a life like an adult. They receive low wages and work for long hours under conditions that are likely to damage their health as well as physical and mental development. According to a National Study on Abuse of Children, out of 12,447 children, 19.70% are found to be at work. Only 17% of working children are paid for their work. Thus, child labour is being largely underpaid, overworked and exploited.

“Child Labour” is not a phenomenon or feature peculiar to India. This has been there all over the world. The concept of child labour is complex in its nature. It is very difficult to define and give a valid definition of child labour.

This implies that work which does not detract from other essential activities for children such as leisure, play and education are not child labour. ‘Child labour’, therefore, is the work which involves some degree of exploitation, namely, physical, mental, economic and social and therefore implies the health and development of children. Thus, child labour is a subset of child work which implies that “all child labour can be termed as child work but all child work cannot be child labour”. Thus, there is a gap between two concepts, although, both appears to be one and the same, when it is investigated forensically difference can be made out. Children work in difficult forms/sectors, namely in the agrarian sector, industrial sector and service sector.

There are various factors responsible for leading to child labour. Child labour is a socio-economic problem. In a country where millions of children go to bed hungry, without having a single full meal of the day, total elimination of child labour by mere Legal recourse can never be said to be a practical proposal. It may suppress the malaise but cannot cure it. Samuel Johnson opined that, “Poverty is a great enemy to human happiness; it certainly destroys liberty, and it makes some virtues impracticable and others extremely difficult”. Children thus become instrument to augment family income and are seen as a means to alleviate poverty. Thus, there is vital link between poverty
and child labour. Weak and tardy enforcement of the child labour legislation and defective legislation and polices also contribute more for the incidence of child labour.

Thus, the phenomenon of child labour is multi-dimensional complex problem and deep-rooted in society. So it may not be wise to rely on one single approach to deal with it. So a comprehensive integrated approach is required to tackle and combat the problem of child labour.

International Labour Organization is committed to the abolition of the worst forms of child labour and gradually other forms also. This is the first child labour convention, which prohibited, the work of children under the age of fourteen in industrial establishments. The protection of child against exploitation in employment is one of the major concerns of this Convention. It has moved totally 19 Conventions. International Labour Organisation’s Worst Forms of Child Labour Convention, 1999 (No.182), Minimum Age Convention,1973 (No.138), Minimum Age Recommendation,1973 (No.146) and International Programme for the Elimination of the Child Labour (IPEC).

Thus, in the Specialized Agencies of the United Nations, International Labour Organization plays a vital role and directly committed for elimination of child labour. Apart from ILO, there are other specialized agencies like United Nations Educational, Scientific and Cultural Organization, United Nations Children’s Emergency Fund (UNICEF), South Asian Association of Regional Countries (SAARC) and World Health Organization (WHO) etc.

Thus, International Instruments provides codification of children rights into one international document and recognizing aspirations which mankind has for its children. It can be said that, Conventions and Declarations make provisions and set high aspirations. But the State parties face practical difficulties in implementation due to socio-economic and cultural and political systems.

There are no implementing provisions either in the conventions or in declarations. There is no responsibility and accountability upon the state parties for their acts and omissions.

It is found that, the practice of child labour in India or in any country of the world is an age old phenomenon. Since ancient time child labour existed in the Indian society in one form or the other. During ancient time the child labourer were regarded as
‘child slaves’. Tender aged children who were under eighteen by the custom treated them as chattels. The practice of child labour was existing in ancient India in the form of slavery. Thus children were engaged in different occupations and even in agricultural sector and exploited by landlords.

During the medieval period child labour was prevailing in India and working as slaves. Landless labourers used their children to help in their economic activities and children were required to help them in rendering their traditional crafts or family occupations at the young age. Children were frequently mortgaged and sold like movable properties. The rulers made no effort to abolish this practice.

In the modern era, during British rule significant changes were brought by the then Government. The first protective Child Labour Act was enacted in 1881; this was known as Indian Factories Act, 1881. During the Modern era, before independence efforts had been made by bringing various legislations for elimination of child labour.

At present there are 14 legislations to control and regulate child labour in India. Children (Pledging of Labour) Act, 1933 was the first statutory enactment dealing with child labour. Then, the Employment of Children Act, 1938 was enacted which had been in force till repealed and replaced by Child Labour (Prohibition and Regulation) Act, 1986. The main object of the Act was to prevent the employment of children under the age of 14 years to work in occupations and curbed the exploitation of the Child Labour. One of the drawbacks of the Act was it had not provided any provision with regard to the health, safety, medical examination and welfare of children. This Act was amended as many as five times during the year 1939, 1948, 1949, 1951 and 1978 only to ameliorate working conditions of children.

The Factories Act, 1948 raised minimum age of employment of children in factories to fourteen years and section 67 of the Act enacts an absolute prohibition of employment of child in any factory. The Minimum Wages Act, 1948 defines a child as a person below 15 years and it provides for minimum wages for children and apprentices. The Plantation of Labour Act, 1951 prohibited the employment of children under 12 years in plantations and now by amendments under the provisions of Child Labour (Prohibition and Regulation ) Act 1986, age of the child has been increased to 14 years. The Merchant Shipping Act 1958 prohibits children under 15 to be engaged to
work in any capacity in any ship, except in certain specified cases. Again the Motor Transport Workers Act, 1961 prohibits the employment of children who are less than 15 years in any motor transport undertaking. In the same year the Apprentices Act 1961 was enacted which prohibits the apprenticeship / training of a person of less than 14 years. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 prohibits (a) the employment of children under fourteen year in any industrial premises manufacturing beedies or cigars and (b) persons between fourteen and eighteen years from working at night between 7 pm and 6 am.

Further Article 24 of Constitution prohibits employment of children below 14 years in factories, mines and in any other hazardous employment. In order to fulfill the constitutional mandate after 66 years of independence and to respond to the National Policy for Children 1974. Government has enacted Child Labour (Prohibition and Regulation) Act, 1986 which prohibits the employment of children below 14 years and imposes stringent punishment in cases of violation of the Act.

The Act suffers from some serious short comings. They are, the Act is contradicting in its goals, as it provides for both prohibition and regulation of Child Labour. There is controversy relating to the age of the child, misuse of proviso annexed to section 3 of the Act, absence of any measures for rehabilitation of the child, absence of addressing children who are working in large scale in agricultural sector (farm-lands), and policy perspectives relating to children and childhood are confused. Therefore, there is an immediate need for amendment of the Act, so as to bring it on par with the international standards laid down in the U.N. Convention on the Rights of the Child.

The debate about whether child labour should be banned or regulated is not new. It surfaced in 1985 when the Government of India claimed that “Child labour was a harsh reality” and found it more prudent to regulate rather than ban it. The Child Labour Act 1986 is an Act without teeth and innumerable loop holes. It does not cover children working in agriculture.

Constitution contains several provisions under Article 15(3), Article 21, Article 24, Article 39(e) and (f) and Article 45 for preventing exploitation and protecting children. In all the Five Years Plans progressive steps were taken by the Government of India for the elimination of child labour. National Policy of Children,
1974 was introduced and it recognized that, “The Nation’s children are supremely important asset” and declared that “the nation is responsible for their nurture and solicitude”. In February 1979 Government constituted 16 member committee on child labour under the Chairmanship of Shri M.S. Gurupadaswamy to look into the cause leading to and the problems arising out of the employment of children in organized and unorganized sectors. After a detailed study, Committee found that “Child Labour involves the use of labour at its point of lowest productivity, hence it’s an inefficient utilization of labour power. Child labour represents pre-mature expenditure rather than saving”. Committee remarked that, child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful”.

National Child Labour Policy 1987 was introduced and implemented National Child Labour Projects in 1988 for the rehabilitation of child labour. In the dawn of the new millennium, Government of India brought various legislations and made amendments to the existing laws. The Second National Commission on Labour, 2002 which has recommended the repealing of the existing Child Labour (Prohibition and Regulation) Act, 1986 and suggested a new model Act as Child Labour (Prohibition and Rehabilitation) Act, “To prohibit Employment of children in all employments and to regulate employment of children where permitted”.

Perhaps other Central Legislations like Indian Factories Act, 1948, Children Pledging Labour Act, 1933, The Beedi And Cigar Workers (Conditions Of Employment) Act, Motor Transport Workers, Act1966 and other similar acts have biggest lacuna of age, hence it is submitted by the researcher that it is necessary that the age restriction should be enhanced from 14 yr to 18yrs which will be beneficial and it will decrease the scope of Child Labour in heavy Industries and hazardous factories.

There are various other legislation like, Karnataka Shops Establishments Act. 1961 and The Beedi and Cigar Workers (Conditions of Employment) Act,1966 these acts also sufferers and have biggest lacuna of age of 14 years these laws itself are giving enough scope for the increment of Child labour . Hence it is not alone an easy task for the authorities to implement the Acts effectively hence it is submitted that Govt need to amend the laws and the age of working should be increased to 18 years.

It is further submitted that a recently enacted legislation have made The Organised Workers Social Security Act ,2008 have failed to cover the scope of prohibition of child labour and it is very much clear the statistics that child labour is
highly flourishing in un-organised sectors, Hence it is submitted by the researcher that Govt should amend these laws and should give certain scope for prohibition of Child Labour.

The major enactment Child Labour (Prohibition & Regulation) Act, 1976 is seems to be a failure for its objective it is suggested by the researcher that there are many sectors which are not covered in the schedule of Act, For Example Agriculture Sector is not covered under the Act hence it is submitted that It is required that Govt should properly identify these sectors which are not covered under the Act and should notify in the schedule. It is also submitted that this Act more deals with the regulation of child labour, hence the views of researcher is that Regulatory laws gives big scope for the development of child labour hence it is suggested that there should be complete prohibition in child labour activities.

Further Juvenile Justice Act (Care & Protection) 2000. Which was basically amended to provide complete care and protection to a child who need it under the definition, but it is suggested by the researcher that Child Welfare Committee need to work and Co-ordinate with the other child rights protection organisations and also need to find the Child Labours hidden in the silent path of Bangalore.

It is also submitted that there is a need of Strong Vigilance Committee, here researcher suggest that Central Govt in Co-ordination with State Govt should establish and appoint a Vigilance Committee which will work as an ombudsman as well as recommending authority for the prohibition of child Labour and this committee will be responsible for the changes which is required in child labour prohibition laws.

Thus, right from the ancient period to present day, the problem of child labour has been in existence and perpetuated in one or the other form, due to several socio-economic and political factors. In the post Independence era, due to the human rights orientation, the child labour was considered dreadful and various legal provisions have been made to abolish / regulate child labour. New polices and new laws have been adopted to deal with child labour.

The judiciary has played an important role in the protection of fundamental rights of citizens in general and children in particular. Judicial interpretation and activism had created new hope and aspiration among the citizens because of tremendous growth of statutory intervention in the present era due to emergence of liberalization,
privatization and globalization and movement of protection of human rights of children. Time and again Judiciary has pronounced judgments for eliminating the problems of child labour in India. With regard to this, Justice K. Subba Rao, a former Chief Justice of India observed: “Social Justice must begin with children. Unless a tender plant is properly tended and nourished, it has little chance of growing into a strong and useful tree. So, the first priority in the scale of social justice shall be given to the welfare of children”.

In Rajangam v. State of Tamil Nadu1 employment of children in beedi manufacture was considered as violating the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the Child Labour (Prohibition and Regulation) Act, 1986. The Court observed, “Tobacco manufacturing has indeed health hazards. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner”.

The Supreme Court has directed the State Government in M.C. Mehta v. State of Tamil Nadu2 to enforce the statutory requirements of the Factories Act for providing recreational facilities and Medical aid to the workers of Match Factory at Sivakasi3. It is also been suggested that every employee working in this factory should be brought under a group of insurance scheme4.

There is plethora of cases5, where in judiciary has made significant contribution to the cause of child workers. The Court has given new dimension to several areas, such as locus standi, minimum wages, and employment of children and gave decisions which deal with the payment of minimum wages to the children and protection of their fundamental rights and sexual exploitation of children in hazardous occupations which reflect the judicial creativity in the field of the welfare of the children including the

1 (1992) 1 SCC 221; 1992 SCC (L & S) 105
2 AIR 1991,SC 417
3 See M.C. Mehta v. State of Tamil Nadu, AIR 1996(II) SC 685)
4 A sum of Rs. 50,000/- per children
child workers. The Judicial mandates clearly demonstrate that Right to Education is necessary for the proper flowering of the children and their personality. In *J.P. Unnikrishnan v. State of Andhra Pradesh*\(^6\) declared that, upto secondary education every child has fundamental right to education. Similarly in a number of cases the Supreme Court emphasized the importance of education for the children.

The verdict of the Supreme Court and pressure built by child rights organization culminated in the amendment of the Constitution in 2003. In pursuance of this the Right to Education Act was passed in 2009. The Right to Education Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion, on the Government. The Government of India is committed to ensuring that all children irrespective of gender and social category have access to education. The 86th Amendment to the Constitution and the Right to Education Act, act as a tool to provide quality education to all our children. This Act serves as building block to ensure that every child has his or her right (as an entitlement) to get a quality elementary education, and that the State, with the help of families and communities, fulfils this obligation.

Non Governmental Organizations play a very vital and significant role in the task of elimination of child labour. NGOs work at grass root level, they will have an intense knowledge and experience about day to day problem. It is the NGOs which can identify child labourers working in their area and understand the causes and factors pushing to the problem of child labour by their survey work. The working children are successfully rehabilitated in NGOs run child labour schools and mainstreamed. Today, several NGOs, across the nation and within Karnataka, are working relentlessly for the prevention and elimination of child labour. Global March Against Child Labour at Delhi, Butterflies at Delhi, Child Right Trust (CRY), Concerned for Working Children (CWC) in Karnataka, Child India Foundation (CIF), Child line are working as NGOs for the cause of elimination of child labour and rendering valuable services to the community. From the analysis and interpretation of data all the hypotheses of the study have been proved and confirmed.

The Central Government and the State Government has formulated rupees 850 crore scheme to eliminate child labour in the manufacturing and service sectors over

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\(^6\) AIR 1993, SC 2178
period of five years. This plan aims at eliminating child labour by the end of the century. Although our country has an estimated child labour population of 18 million, this scheme will concentrate on just about 15 percent thereof. For the rest 85 per cent the government says that they are engaged in the agriculture and that they are not exploited there. The scheme has left out a large chunk of child labour working in hotels, tea stalls and dhabhas. These children are no less harassed than their friends working in manufacturing sector.

Then the Labour Minister is reported to have himself pointed out that the earlier schemes failed because of resource constraints. For this scheme, the allotted rupees 850 crore, shall be spent in five years. About rupees 4,300 will be spent per child per year which comes to rupees 358 per month. This is again an inadequate amount even for a child to live frugally. Whether a working child who is getting rupees 800 to 1,000 per month will leave the job just for rupees 358 is always doubtful. Besides, the scheme is also not sure to be backed by the political will as regards its implementation. Then comes inspectors whose number remains always too low to identify the existence of child workers and that sometimes the employees collude with them and went on employing child labours.

The following Schemes have been framed by the government to provide Free and Compulsory Primary Education for school going children in the age group of 6 to 14 like Special Enrolment Drive, Free Education for Girls, Provision of Free School Bags And Note Books to SC/ST Girls, Free Text Books, Free Uniforms, Mid Day Meals Programme (Akshara Dasoha) Sarva Shikshana Abhiyan and mainstreaming of NCLP children into the formal education system.

Besides the above Schemes and policies Government has been taking various pro-active measures to tackle this problem of child labour. However, considering the magnitude and extent of the problem and that it is essentially a socio-economic problem inextricably linked to poverty and illiteracy, it requires concerted efforts from all sections of the society to make a dent in the problem.

Regarding the implementation of these laws are on the shoulders of the executive. After a detailed survey conducted by the researcher is of the opinion that, if
we see the statistics of the children benefitted under various scheme, is very much low and it shows that still implementation of these policies is not proper and it needs a lot of changes.

This dependence on government support brings out the unequal quality of the entire programme. Often not only for the NGOs but for the government too, eradication of child labour becomes a one-off programme. This means that while the problem of child labour is deep-rooted, the efforts of the government are short term and episodic. Even in the short-term programmes, however ambitious and progressive, the attitude of the government towards the programme is a patronising one.

Apart of this, black money generated by employing child labour is used to bribe Law Enforcement agencies and Politicians. This is chronic corruption. This in turn leads to bad implementation of laws, i.e., poor or no inspection of the work premises, letting the employers go scot-free with little or no penalties at all, fueling child labour even further. This creates a vicious circle of child labour, black money and corruption.

Further the government has not yet ratified the Convention No 182 and Recommendation No 190 which deal with the “Prohibition and Immediate Action for the Elimination of the Worst Form of child labour”.

The Government of India and the State Governments should pass suitable legislations concerning the interest of child labourers working in unorganised sector. At the same time, these legislative provisions should be effectively implemented, so that violators could not dare to violate them again. Besides, a wider publicity to the legislative measures adopted by the government on child labour and the problem, would also help in changing the attitude of those who tend to exploit children.

Lastly, it may be concluded that, in India large number of children are working as child labourers due to various socio-economic factors. Poverty, illiteracy, ignorance of people are the root cause for the prevalence of child labour. Though there is a plethora of laws dealing with problem of child labour due to their faulty implementation by the law enforcement agencies child labour practice is far from eradication.
9.2. Findings and suggestions.

1. Though there are a number of legislations dealing with the menace of child labour, there is no explicit provision under the constitution fixing the age within which a person is deemed to be child labour. Article 24 of the Constitution should be as “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other employment”.

2. The object of law in this field is merely the prohibition and regulation of child labour. The present title of Child Labour (Prohibition and Regulation) Act, 1986 should be amended as Child Labour (Prohibition and Rehabilitation) Act, so that more focus should be given to rehabilitation rather than regulation.

3. Children are used under the defence of family occupations. For example Match box and Crackers manufacturing industries. Proviso annexed to section 3 of Child Labour (Prohibition and Regulation) Act, 1986 should be amended to prevent the misuse of this provision by employers under the heading of family occupations and no exceptions should be provided. Section 3 of the Act, should be amended as, “it shall be presumed that occupier is also the employer for the purpose of the Act and the onus to prove that the child is a member of his or her family would rest on the occupier”.

4. Most of the cases of hazards exist even in processing industries. For example: match stick and crackers manufacturing industries. Distinction made between Part-A and B Schedules annexed to section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 should be removed, as both Schedules namely, occupations and processes, are equally hazardous to the health of children. Therefore prohibition to employ a child should exist in both.

5. Accountability regarding non-employment of child labour is not insisted at the licensing level itself. Under section 9 of the Child Labour (Prohibition and Regulation) Act, 1986, it should be made mandatory that every occupier after establishment should send a notice to the Inspector containing the information regarding the employment of a child, either in the affirmative or in the negative, annually.
6. There is no provision for welfare of the employed children in the age group of 14-18 under the existing law. The age of the child provided under Child Labour (Prohibition and Regulation) Act, 1986 i.e., 14 years should be enhanced to 18 years so as to bring it on par with United Nations Convention on the Rights of the Child, 1989.

7. Power to add occupations and processes is time consuming and bureaucratic. The Advisory Function of the Technical Advisory Committee under section 5(1) of the Child Labour (Prohibition and Regulation) Act, 1986 should be expanded so that it shall receive petitions from individuals etc, for addition of occupations and processes to the Schedule.

8. Punishment for violation of law is meagre. The punishment for violation under section 14(3) of Child Labour (Prohibition and Regulation) Act, 1986 shall be enhanced to three months, simple imprisonment or fine which may extend to fifty thousand rupees or with both along with the licence of that industry must be cancelled.

9. Disposal time is short under Section 16 of Child Labour (Prohibition and Regulation) Act, In Section 16 of Child Labour (Prohibition and Regulation) Act, 1986 a time limit from Six months to One year should be fixed for the disposal of the case so that, the aggrieved party may get relief on time.

10. The Indian government is slow in ratifying and adopting international treaties in this regard. Government of India should ratify the Convention No.182 and Recommendation No.190 which deal with the “Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour”. The Convention was adopted in 1999 but the Government has not yet ratified it.

11. Specialised mechanism to deal with rehabilitation is not found. A separate and independent body should be constituted under Labour Ministry at Centre, State and District level for monitoring the affairs of child labourers after 14 years who were rehabilitated and mainstreamed.

12. Most of the state governments are yet to frame rules under RTI Act for proper implementation of the Act. Every State Government shall frame Rules under the Right to Education Act, 2009 immediately for the proper implementation of the provisions of the Act.
13. No complimentarily between child labour prevention and education laws. Laws on child labour and Education should be implemented in a mutually supportive way.

14. General principles of adjudication are not always feasible in child labour cases. The Judiciary in M C Mehta case has ordered to give 50,000 for entire family as compensation. But that has not been given and this is a drawback of the implementing authority.

15. Comprehensive legal machinery is not found to monitor NGOs working in this area. Government should encourage the NGOs for elimination of child labour by granting proper budget periodically and accountability should be fixed on NGOs to ensure that the funds are utilized for the purpose for which it is given.

16. Apathy and indifference on the part of law enforcing authorities. To deal with apathy and indifference on the part of the law enforcing agencies in the discharge of their duties, there is need to conduct periodical orientation and training programmes to sensitize them adequately.

17. Enforcement of laws by enforcing machinery is relatively ineffective. It is suggested to give more focus on implementation and enforcement of child labour laws and other laws meant for the protection of the children.

Child labour menace is a very complex problem which requires multi-disciplinary approach and further research in various other discipline can assist policy makers in overcoming this problem. People participation, awareness is a must for complete eradication of child labour. Those who get service from child labour should also be punished because it is their duty to refuse the service by child labour