Chapter - II

CHILD LABOUR IN INDIA: STATE, SOCIETY AND CONSTITUTION
Many theorists working on the issues of the child labour have explored the socio-economic dimension of inequality. The educational inequality has often been discussed by many sociologists as it is considered to be an outward manifestation of underlying economic inequality in society. The goal of educational equality is usually understood mainly in the observable aspects of education, mainly access to schools and their facilities, attendance and results. However, in education, quality aspects must receive primacy over the quantitative aspects. No attempt has been made so far to understand the qualitative aspects of education and how they result in the elimination of the child labour. The existence and perpetuation of child labour phenomenon can be attributed to the constant interplay of demand and supply factors. It is important to examine the factors responsible for children remaining out of school in their school-going age and the role that the elected representatives play in encouraging and the NGOs in preventing the influx of children into the labour market. In this chapter, however, the argument on the child labour would focus on the role of various actors - the State, Society, NGOs and Constitution - in dealing with various issues associated with child labour such as social and educational inequality. It would also study in detail the role of education in social mobility.
(2.1) Social Inequality and Child Labour:

The Conflict theorists strongly disagree with the functionalist outlook in delineating social inequality. They, in fact, argue that inequality is dysfunctional for a society because of the blocked opportunities, resentment and class conflict it creates. It is born out of a fundamental criticism of the functionalist perspective that unequal abilities do not account for who gets ahead. While the functionalists emphasize the positive functions of inequality, the conflict theorists view its negative consequences - the unequal distribution and use of talent, the limitation of human productive activity and the unequal distribution of positive self-images. While functionalist theorists claim that stratification is functional for society, the conflict theorists differ. The origins of conflict theory are in the work of Karl Marx who saw inequality under capitalism as the result of the ownership of private property. From Marx’s perspective and that of contemporary conflict theorists, coercion and conflict are at the heart of the social order. Control and the exercise of power by very wealthy ensures continuing inequality since inequality is created, perpetuated, and maintained by these powerful groups.

The discourse on child labour often revolves around the argument that social and economic inequality causes the child labour in India. It is often argued that social inequality, by preventing the access to opportunities, results in economic inequality. This is particularly true in the case of the arguments on the child labour in a stratified society such as India. In a stratified society, the mobility across the strata has been controlled by the vested interests, which prevent access to the factors of mobility such as education and employment. In this Chapter, an
attempt is made to study the issues of child labour within the framework of four main parameters. They are (i) the State, (ii) the Society, (iii) Education and (iv) Constitution.

It is indeed important to study what accounts for the massive prevalence of child labour in India. There have been two views both opposed to each other. While the modernisation paradigm traces the origin of child labour problems to the family, the Marxist theory traces the origin of the child labour to the capitalists’ tendency to replace the mature labour by the children. The conventional modernisation paradigm holds that child labour is the result of widespread poverty, which forces families to send their children into work force. According to this theory, the employment of children is parent driven and a matter of economic necessity. It argues that the family being an origin and the cause of the child labour, the solution could be found only at the family level. It also suggests economic incentives for the poor parents and their families as it is more likely to increase the wages of poor parents, who with enhanced economic conditions, would no longer be in need of their children’s labour and wages. In this scenario the parents will come to realise the advantage of sending their children to schools. However the Marxist theory argues that child labour is the product of capitalism and the technologies it creates. Marx argues that the new technologies increase the demand for cheap, unskilled labour and the decrease in the profit margin lead capitalists to increase their exploitation of labour. As profits decline, Marx argues, the capitalist buys with the same capital a greater mass of labour power, as he progressively replaces skilled workers by less skilled, mature by immature, male by female. In
the same process they replace the adults by young persons or children. The children, according to Marx, are part of the industrial reserve army.

(2.2) Child Labour, State and Education:

Three features of child labour in India are especially striking. (1) Firstly child labour in India is not the product of large-scale capitalist industrialization. In 19th century England and the United States the children were employed to work in large factories. However in India the children are predominantly in the small-scale sectors and agriculture. The child labour in India is considered to assume the dualistic role. While they take up the traditional role of the child as a worker for a family as a source of family income, they are also promoted by the State as a means of strengthening the small-scale sector. (2) Secondly, most child workers in India are illiterate. In 19th century England and the United States, child workers were able to read and write since they were generally in school for six to nine years, the years of compulsory schooling. But in India, most child workers never attend school. Even if they attend they drop out before completing four years of schooling, the minimum needed to acquire literacy. (3) Thirdly, children in India work at all ages. One can see a very small children like three year old child assist her older sister who would be again a child of some eight or nine years of age to stack match boxes in a cottage industry workshop in South Indian town of Sivakasi, where an estimated 50,000 children, mostly girls, are employed. And many children are bonded labourers who tend cattle for the owner of local dairy. Young children work alongside their parents in tea plantations, picking the leaves
to add to their mother’s basket. Since school is not compulsory for any age group in India there are no restrictions as to when children can enter the labour force.

In India the Marxist view on the child labour is reinforced by many who are sceptical of the government educational policies, as they prefer childhood employment to formal education. Some of them opine that compulsory education is undesirable since the elementary schools do not prepare village children and the urban poor for work. They argue that the elementary education inculcates in children a preference for white-collar jobs, leading to an increase in educational unemployment and social disorder. According to them high dropout rate in schools demonstrates that many parents and children do not regard schools as useful. In contrast with school education, for the sceptics, childhood employment helps the poor children to acquire right attitudes and work habits at an early age. The children’s work, according to them, should be regarded as apprenticeship that enables the children to acquire the skills and attitudes necessary for a life of working such as the commitment to manual work, diligence, acquiescence to managerial authority and pliability. Moreover, the employment of the children is productive for the economy. Nimble little fingers enable the children to do work that adults cannot readily do or do as well. The children can produce a greater number of knots in the weaving of carpets than the adults. They can roll hand made cigarettes, pick leaves in the tea gardens, pack matches into boxes, carry molten glass, tasks that need diligence, dexterity and speed rather than physical strength. Without the children in the labour force, these tasks would not be performed as well. Since the children are paid less than adults they are able to produce goods at lower costs. These low costs in some industries, such as carpet making, brassware
and gems make them competitive in world markets. Without the child labour, carpets and hand-loomed textiles might be replaced by machine-made products, bidis would give way to factory made cigarettes and matches and firecrackers would be made by multinational corporations. Many are driven by mere economic and cost consideration while debating the issues on child labour.

Many Indians have a conception of children's work - more precisely the poor children's work - as both a phase in the education of a child and as a distinctive niche in the economy. Many members of the Indian middle class conceptualise a distinction between the children of the poor and their own children between children as hands who must be taught to work and children as minds who must be taught to learn the acquisition of manual skills as distinct from cognitive skills. The people did not speak of the problems of their children but speak of the children of the poor in the third person plural. Thus the traditional Hindu notions of social rank and hierarchy are subtly incorporated into the ways educated Indians distinguish between education for the children of those who do manual work and those who are in the services of middle class employment.

The notion of social hierarchy is obviously perceived in the policy formulation and implementation. The members of the educational establishment - officials in education departments, ministries, teacher's unions and local school boards - have not pressed for making education compulsory. Trade unionists have not demanded the extension and enforcement of child labour laws. The Hindu religious organisations have not been a force for promoting mass education. And even many of the social activists engaged in working among the poor, though
opposed to child labour, believe that its abolition can only take place after there are fundamental structural changes that radically improve the well being of the poor.

A dichotomy has been witnessed in the government policies in theory and in practice. Though Indian government prohibits the employment of children in working places, the government policies inadvertently promote the employment of children. The small-scale industries, the backbone of Indian economy, are legally permitted to use child labour either directly or indirectly by subcontracting with so-called family owned workshops. Though child labour is prohibited there is no statutory protection for the children in factories that employ less than ten people. The government policy of supporting cottage industries and the small-scale sector promotes the employment of children in unregulated hazardous work. It is unfortunate that through its centres for training children as weavers for the carpet industry, the government competes with the schools to attract children. The government officials are frank in accepting that child labour helps to sustain otherwise uneconomic small-scale industries by keeping costs down so that the carpet industry, gems and brassware can retain their competitive edge over in the export markets.

(2.3) Child Labour and Compulsory Education:

Among the greatest ideas that have transformed the world, none is as revolutionary as the idea that children have rights and interests independent of those of their parents. The writings of early Protestant theologians such as Luther, Knox and Calvin, insisted that children be taught to read the Bible and thereby have direct access to word of God without priests as intermediaries, so they could
escape from the sin of birth. Though it was an absurd idea for agnostics, nevertheless it was the beginning of the notion that children had rights and parents had obligations.

Adam Smith argued for compulsory education, not for religious salvation, and for creating a civil society in which men and women were sufficiently well educated to behave rationally and morally so as not to succumb to demagogues. John Stuart Mill argued that education was necessary for the members of the community, who are liable to suffer seriously from the consequences of ignorance. For Mill, education for the poor was essential for self-improvement, social mobility and citizenship, reflecting his equalitarian and democratic political philosophy. The idea that education as an instrument of social mobility in India was accepted by several Indian and British officials serving in India. They argued for introducing compulsory education but the proposal was never seriously considered. Though the role of education in individual emancipation was highly appreciated, nothing had been done to make education compulsory.

The international experience with policies to end child labour suggests the making of education compulsory. There is one important generalisation that can be drawn from the experiences of both developed and developing countries. Everywhere, the establishment of compulsory education was a necessary condition for the reduction and abolition of child labour. Without compulsory education governments are unable to enforce child labour laws. In one country after another, the phased extension of the age of compulsory education went hand in hand with a phased extension of restrictions on the employment of children. If the school leaving age is lower than the age of admission to employment, children are likely
to illegally seek employment and the enforcement of child labour laws is more difficult. It is administratively easier to monitor school attendance than to monitor children in the work place and easier to force parents to send their children to school than to force employers not to hire children. No country has successfully ended child labour without first making education compulsory. So long as children are free not to attend school, they will enter the labour force.

Today most governments agree that children should be removed from the labour force and required to attend school. They believe that employers should not be permitted to employ child labour and that parents, no matter how poor, should not be allowed to keep their children out of school. Modern states regard education as a legal duty, not merely as a right. The parents are required to send their children to school; children are required to attend school while the State is obliged to enforce compulsory education. It is a view held not only by all developed countries but by the governments of many developing countries as well.

India is an exception as it has not made education compulsory and banned the child labour. Indian policy makers have argued that the Indian government lacks the financial resources for universal compulsory primary school education and that it lacks the administrative resources to enforce child labour laws. For many in the administrative machinery, the economic concern of the family takes precedent over the ethical and moral issues involved in employing the children.\(^1\) They argue that poor families need income of their children and therefore should

\(^1\) Indian government officials believe that the poor people gain when their children are employed, but in other countries it is argued that the poor are made worse off because the employment of children drives down the wages and employment of adults. For example, the cottage industry workshops in India prefer to hire an eight or ten year old rather than employ an adult.
not be coerced into sending their children to school. Moreover, they say, children and their parents find the schools irrelevant to meet their needs and expectations. Finally, it is argued that small-scale industries need low wage child labour to survive and that export-oriented industries need child labour to be competitive in world markets. However none of these arguments is persuasive. The arguments against compulsory education and against the elimination of child labour do not stand up either against the experience of other developing countries.

Indian government has opposed compulsory schooling on two additional grounds. The first is that the schools are unable to meet the needs of the community so that the parents should not be forced to keep their children in school. The poor quality of primary schools is thus used to justify the removal of children from schools by their parents. Neither the central government’s ministry of education nor the State governments’ departments of education have taken on task of improving the quality of primary schools. They have, instead, created an alternative system of non-formal education for working children. Non-formal education, with its emphasis on literacy training, health promotion and presumably more useful is a part-time educational system intended to enable children to remain in the workplace. It is not a system of alternative compulsory schooling for the children of the poor, or for children in remote area. Nor does non-formal education address the most serious problems in Indian primary education-the frequent absence of teachers, their low morale, lack of adequate training and unsatisfactory motivation. With the passage of the new Panchayat Raj amendment to the constitution it is possible that teachers in primary schools can be held accountable to the community rather than, as at present, exclusively to the state departments of
education. As primary school is made universal and compulsory a variety of measures will need to be taken to improve their quality; but to wait until the central and state governments tackle the issue of quality education before making primary education universal and compulsory is a formula for doing nothing.

A second objection to compulsory education is that compulsion has failed in other areas of social policy (such as in legitimising the age limits for marriage, restrictions on dowries) and the compulsion or the threat of compulsion is used by officials to intimidate the poor. If it is often argued in this way, why should a compulsory education law be different when there are so many laws that are not being enforced. However it needs to be explained that there is a significant difference between the application of law to primary school education and its application to other social policies. The restrictions on the age of marriage and on dowries run counter to deeply and widely held beliefs on the part of many Indians, while education is far more readily acceptable.

Since there is no compulsory education in India, there is no forcing that is binding on the parents to send their children to schools. As a result there has been a low school participation rate in many schools. There are two major social consequences of low school participation rate. One is that India has a high and increasing number of illiterates. While the literacy rate has improved, the absolute number of illiterates has increased. India remains the largest single producer of the world's illiterates. Female literacy is particularly low, reflecting the low female attendance in primary schools. The second major consequence of the low school participation rate is the large number of children who work. It is difficult to
precisely estimate the number of children at work as most of the children not in school, work at home in the fields as agricultural labourers and in the informal sector of the economy where accurate statistics is not possible.

The four major policy instruments - budget, language policies, examination system, and the law - have only resulted in preserving the social divisions within the society. The budget encouraged in creating a ranked educational system, starting at the primary school level up to the universities. The language policies further encouraged the distinctions among these institutions. The examination system meant for preserving high academic standards resulted in a minimum of crossovers from one class to another. The legal pattern only encouraged the poor to enjoy the freedom to keep their children out of the educational system and place them in the labour force.

The arguments against the abolition of child labour are given by those who purport to see its economic benefits ignoring the social consequences of employing the children. It is often said that the poor benefit from child labour, the child labourers acquire skills and can produce better products than do adults and that the child labour is needed in export industries to remain cost competitive. There have been a number of studies that convincingly repudiate most of the widespread beliefs in India about the merits of child labour.²

India must not argue that lifting the poor and downtrodden from the poverty trap would encourage them to send and keep their children in schools. The

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argument that the economically self-sufficient families would not withdraw their children from schools should be avoided. India need not wait for the reduced gap in inequality between the rich and the poor to follow up the social issues. In this regard, they need not wait for the incomes of the poor to rise to make primary education universal and compulsory. The countries as poor or poorer than India have been far more successful in keeping their children in school. The sooner India acts to establish universal compulsory primary school education, the quicker will be the fall in the illiteracy rate. It is also more likely to result in the reduction of the child labour and greater prospects for a reduction in fertility rate as children are no longer seen as financial assets to the family. But many Indian policy makers continue to be mired in a set of views that preclude their taking the necessary steps to get children into school and out of the labour force. Instead, they have adopted a set of industrial policies that promote the employment of children in the small-scale sector. Moreover, these views are so widely shared in India that no political parties of the left or right, none of the trade unions, no religious organisations, and even the educational establishment is pressing for policy changes.

A major call for action to eliminate the child labour in India comes from four main institutions today. They are: (i) the print media; (ii) NGOs; (iii) proactive judiciary; and (iv) international organisations. The print media has been educating the public by publishing numerous articles on the conditions of children in the workplaces. The NGOs have begun to lobby both State and Central governments to take concrete actions in eliminating the causes of the child labour.

\[^{3}\text{Indonesia, for example, had a per capita income of } S70 \text{ in 1960, half that of India, but today } 93 \text{ per cent of children are in primary schools, and } 76 \text{ per cent complete six years of school.}\]

68
The courts and the public interest litigants have taken up particularly egregious cases of violation of the rights of children. Finally the international organisations use the international experience to campaign for reform and their resources to promote new programmes for children. Despite concerted efforts by many there is little indication of fundamental rethinking within most State and Central governments. Even officials who recognise that regular school attendance is a solution to the problem of child labour continue to believe that the responsibility of sending children to school lie with parents not with the State. This is nothing but the State denouncing its responsibility. The policy makers continue to argue that the parents should be permitted to send their children into the labour force and insist that the child labour cannot be eliminated while there is poverty in families. Neither the Central nor the State governments have been willing to do what has been achieved by every developed and developing country. The Indian government needs to learn lessons from the experiences of their counterparts in other parts of the world. They are (i) to declare that all children aged six to twelve or fourteen must attend school; (ii) to declare that the parents, no matter how needy, will not be permitted to remove their children from school; (iii) to enforce the school attendance by local authorities; and (iv) to locate primary schools within reasonable distance of all school age children. Only through such a policy will it be possible to end child labour in India. Without a conceptual change in the thinking of those who make and implement policy and without a new direction in policy by the Indian government, the number of children in the labour force is unlikely to decline, conditions for working children will not significantly improve and school retention rates will not significantly increase. In this scenario, the literacy rates
continue to grow at a slow pace and leave a large part of the Indian population illiterate. With the increase in literacy rates and decline in child labour worldwide at a faster rate than in India, India’s global share of illiterates and child labourers will continue to increase.

(2.4) Child Labour and Economic Inequality:

The communities, which supply the bulk of India’s child labourers, are the victims of a social system that is characterised by unequal access to the principal productive resources and assets. The agrarian society is still characterized by extreme inequities, with a small handful of landowners owning and controlling most of the land, and the vast majority of small and marginal peasantry operating small and uneconomic land-holdings, forced to turn to agricultural labour for a period ranging from 3 to 7 months of the years. In 1992, 72 percent of the rural households owned less than 2.5 acres of land. Those who are land less have of course to rely only on agricultural and other labour to earn their livelihood. The inequalities of the traditional social order have been further aggravated by the development model that has been pursued in post-independent India.

There is no other sector in India, other than the agricultural sector, in which the changes are more acute in reflecting the events of the child labour. It could be argued as follows. The agricultural labourers do, on an average, find work for about 100 days in a year. Over the last three decades, development policies have aggravated the condition of the peasantry with increasing numbers of the small and marginal peasantry slipping into the ranks of agricultural labourers. Between 1961 and 1991, the proportion of cultivators has declined while that of agricultural
labourers has increased. The same trend can be observed with regard to child workers. The shifts in the sectoral incidence of the child labour over the last three decades reflect the larger processes at work. Between 1961 and 1991, the proportion of child workers as cultivators has gone down sharply while those who were agricultural labourers have gone up.\(^4\) This means that a vast section of our population dependent on land and agriculture for their livelihood are getting pauperised and getting alienated from land.

The general trend whereby the producers losing control over the means of livelihood has been exacerbated over the recent years. There has been a consistent decline in the share of the self-employed in the work force from 61.4 per cent in 1970-73 to 54.8 per cent in 1993-94, while the share of the self employed in agriculture in the total rural work-force declined from 49.77 per cent in 1987-88 to 44.4 per cent in 1993-94.\(^5\) An important pointer to the distressing conditions prevalent with regard to employment opportunities (as well as underemployment) is the share of casual labour in the work force. The unemployment and underemployment are too poor to remain unemployed for any significant length of time. They have little choice except to end up taking any casual work on a day-to-day basis irrespective of quantum of return. These hordes of casual workers suffer from frequent unemployment and mostly remain in abysmal poverty. The extreme insecurity faced by the bulk of rural households is evidenced by the fact that 37 per cent of rural Indians are landless and they get employment only for 137 days in a


year, and non-agricultural labour gets work for only 152 days in a year. There is a great underestimation of those living on daily wages since both the NSS and Census categories as workers only those who work for 180 days in a year. The National Council for Applied Economic Research’s (NCAER) human development profile of rural India based on a survey of 33,000 households points to lack of employment stability as a major reason for the high percentage of rural poverty. A study on the Social Cost of Economic Reforms conducted by Gupta and Pal for the Indian Council for Research on International Economic Relations (ICRIER) reveals that the poverty ratio shot up from 35.5 per cent in 1990-91 to 39 per cent in 1993-94 and that the number of poor increased by 48 million in three year period.

With the crisis in the agricultural sector looming large, the artisan groups are also facing an uncertain and bleak future. The handloom sector is the major employer, next to agriculture, with about 25 lakh weavers. The Government of India’s textile policy to open up the export market to domestic cotton producers have resulted in an increase of cotton yarn prices there by resulting in a severe crisis, leading to suicides and starvation deaths amongst the weavers. Thus the plight of other artisan groups is no better. The agricultural labourers, cultivators and the artisans constitute the bulk of rural poor. These are also the very people who migrate in droves to the cities with every periodic drought or famine or due to development projects, and who constitute the urban poor. It is these groups that provide the bulk of the labour to the burgeoning informal sector. The recurring disasters seriously hamper the capacity of these families to physically survive.

6 Hindustani Times, 5 December 1996.
After every such disaster, their options for survival are further constricted leading these families, men, women and children to sell their labour power far below subsistence levels. At times of drought, famine and other such natural and social disasters, when distress is acute, millions of families of landless and agricultural, poor and marginal peasants and artisans face a tremendous survival crisis. The child labour in such a situation is a survival strategy. When the process of marginalisation goes below a certain threshold, i.e., when families slip below the poverty line, the phenomenon of the child labour appears.

It is important to note that it is not individuals but families and households that face survival crisis. Hence the strategies that purport to cope with the problem have to deal with the families. According to the available data, 39 per cent of India's population live below the poverty line, the bulk of which live in the rural areas. The number below the poverty line in 1993-94 was 244.87 million in the rural areas and 79.4 million in urban areas. It is within the context of abysmal poverty levels one has to view the situation of the families and consequent real life-choices (or lack of them) that are thrust on them. The high maternal and infant mortality rates, the shocking extent of malnutrition of both adults and children (65 per cent of Indian children are under-nourished the extreme vulnerability to disease, appalling literacy levels, and the almost endemic poverty are part of an integral whole, and the phenomenon of the child labour cannot be torn out of this context. In short, child welfare cannot be divorced from human welfare.
Stratification of Child Labour in India:

The ethnic and religious composition of child labour in India is reflective of the very social system in which they are present. The overwhelming majority of the child labourers in India come from communities and groups, which are at the lower rungs of India's traditional, caste-based social hierarchy, i.e., the Scheduled Caste (SC), Scheduled Tribe (ST), Other Backward Castes (OBC's) and religious minorities, particularly the Muslims. An analysis of child workers in some of the child labour dominated industries in India reveals that they belong to the backward classes - Schedule Caste, Schedule Tribes and religious minorities (Table 2.1). They also represent bulk of small and marginal peasantry, land-less and agricultural labourers and artisan groups. They are the single largest group in Indian population. They, in short, are the poor of India and it is from the families and communities of the poor that the child labourers come from. The child labourers, thus, are in essence being referred to the children of the poor.

The studies of many of the industries, where there is a substantial presence of the child labour like the carpet industry the match box, brassware, glass and bangle, lock- making, slate, gem-polishing industries and the tea plantations, confirm that overwhelming majority of the children working in these industries come from Scheduled Castes, Scheduled Tribes, other backward classes and Muslim communities. The fact is that the bulk of India’s child labour hails from communities that derive their sustenance from occupations that principally require manual labour reveals the wider, complex and variegated social matrix in which the phenomenon of the child labour is embedded.
### Table 2.1 Occupation and Ethnic Composition of Working Children

<table>
<thead>
<tr>
<th>Industry</th>
<th>Religion (in %)</th>
<th>Caste (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brassware</td>
<td>M - 83.44</td>
<td>SC - 3.68</td>
</tr>
<tr>
<td>Lock Making</td>
<td>M - 62.1</td>
<td>BC - 63.1</td>
</tr>
<tr>
<td>Carpet</td>
<td>M - 13.8</td>
<td>SC - 38.01</td>
</tr>
<tr>
<td>Glass</td>
<td>-</td>
<td>SC - 45.17</td>
</tr>
<tr>
<td>Match &amp; Firework</td>
<td>H - 98</td>
<td>SC - 40.8; ST - 0.6</td>
</tr>
<tr>
<td>Tea Plantation</td>
<td>-</td>
<td>SC/OBC - 50.9</td>
</tr>
<tr>
<td>Slate</td>
<td>-</td>
<td>SC - 37.0</td>
</tr>
<tr>
<td>Gem Polishing</td>
<td>M - 97.5</td>
<td>No SC/ST children engaged in this industry</td>
</tr>
<tr>
<td>Slate Pencil</td>
<td>M - 66.6</td>
<td>SC - 35.4</td>
</tr>
</tbody>
</table>

**Note:**  

**Source:** Rita Panicker, Reckoning with The child labour, Present Day Strategies and Future Direction, Child Workers in Asia, Vol. 11, No. 2&3, April-September 1995.

(2.6) Social Matrix of Child Labour in India:

The phenomenon of the child labour is better understood within the wider context of Indian social matrix and its inter-relatedness to wider social processes. The phenomenon of the child labour cannot be understood and analysed outside the context of the family. The family continues to be the most important social buffer for the individual, be it an adult or child. The family is the place where production and reproduction of life takes place. There are many who talk of the family as a unit where the human capital is generated. It is also a unit for production, distribution and consumption. Apart from the above dimensions, there
are the cultural, social, psychological and emotional functions that the family performs, which by no means can be under-emphasized. Here the concentration is largely focussed on the family as a unit of production and reproduction of life and livelihood. The goal of every family household is to achieve certain equilibrium between the production/reproduction of life and the production/distribution of the means of livelihood. The strategies for achieving this equilibrium vary, depending on the type of household and the position that the household occupies in the social economy in particular and society in general. The typical peasant household in India tries to achieve certain balance between labour and consumption depending upon the size of the family, number of working members and the size and quality of land they possess. This equilibrium helps the family to exit as a unit in the most trying situations. The child labour cannot be torn out of this very real social context and, in fact, is an integral part of the survival strategy of many households.

It is also important to highlight the inter-connectedness of the family/household to the wider structures of the society, be it community, caste, tribe and class and its susceptibility to the wider social, economic and political processes. The microstructure of the family/kin-group and its relationship to the macro-structure of the State and the international system is quite complex, particularly in a society like India, which is characterized by a diversity of structures.

The phenomenon of child labour could be perceived in terms of concentric circles with the family household constituting the smallest and most immediate circle with the community/ caste/class forming the next one, the nation-State
constituting the next one and finally with the international system the largest one. The extent to which each of these concentric circles impinges on others depends on the historical context, the evolution of social structures and their inter-linkages. With the increasing integration of the world system over the last few decades, the inter-linkages between these different structures have only become stronger, leaving the smallest unit—the family extremely vulnerable, depriving it of any autonomous sphere of action and choices.

The latest round of integration through the Structural Adjustment Policies (SAP) has only further intensified the process. The atmosphere of overall insecurity, which has been endemic in the Indian social scene, has only further intensified with the introduction of reforms under the structural adjustment policies. Studies have shown that the burnt of the present crisis and shocks of globalisation are being born by the families, principally of the poor, and within the families, it is the women in the families. The pressure on women to increase the family income in the face of inflation, decreasing social sector budgets has resulted in more children being put to work either to substitute the mother in the domestic chores in the case of girls, or to add to the family kitty.

(2.7) Sectoral Composition of Child labour in India:

There has been inaccurate information on the number of children employed in India. This is mainly because of the size of the informal sector, which accounts for a considerable proportion of the employed children. The informal sector

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7 The per capita availability of food grains has gone down in the post-reform period. In 1991, it was 510.1 grams per day, while it declined 468.8, 468.8, 462.7, 469.5 and 501.9 grams per day for the years 1992, 93, 94 and 95 respectively. For more details see S.M.Dev, Social security for Indian Workers: Performance and Issues, *Indian Journal of Labour Economics*, vol. 39, no. 4, 1996, p.890.
continues to expand faster. The expansion of the informal sector operates both indirectly and directly to increase the child labour. The expansion of the informal sector (where labour-intensive processes requiring lower level skills are out processed) has led to an increase in women working under onerous conditions to eke out a livelihood. This has invariably meant that children also start working with their mothers and do various domestic chores to relieve their mothers for work outside the home.

Nevertheless the census information on child labour cannot be dismissed as unreliable. According to the 1991 census, India has a child population (in the age group of 0 - 14 years old) of 197 million. Both the 1981 and 1991 censuses classify the workers into main and marginal workers. According to that classification, a child worker is one, who is either a main or marginal worker. According to the estimates based on the 1991 census, there are 12.7 million main child workers and about 10.6 million marginal child workers.

It is important to look at the sectoral composition of the child labour in India. The agricultural sector, in India, accounts for a sizeable share of the child labour employed. The children in peasant families grow up as assisting the family in various tasks. They assist in secondary agricultural activities - the boys graze cattle, assist in agricultural work, while the girls assist in household chores and looking after younger siblings, thus releasing the mother for work outside the home. In all peasant homes, work is an integral part of socialization of the child. In situations of extreme distress, where families have been pauperised and made
destitute, children are also sold off into bondage to pay off family debts or just to stave off starvation.\(^8\)

In artisan households, the child workers start working as apprentices fairly young so as to learn the occupations that will be of assistance in later life. Amongst the communities of potters, blacksmiths, rope-makers, basket-weavers, handloom-workers, the children start learning their skills at quite a young age as preparation for their vocations in adult life.

In urban areas the child labourers are concentrated in the informal sector and in the small-scale cottage industries, where they are generally working for paltry wages and in establishments, where conditions of work are far more oppressive and exploitative than the less oppressive and hostile precincts of a home. They are found in tea stalls, restaurants, workshops, factories and working as domestic servants, apart from the street-children who survive on rag picking, carrying loads and being shoeshine boys.

In industry, the children work as full-time workers in the carpet industry located in the Mirzapur-Bhadohi belt in Uttar Pradesh (U.P) and in Jammu Kashmir (J&K), the match works and fire works industry in Tamil Nadu (T.N), the diamond-cutting units in Surat, the glass industry in Ferozabad, the brassware industry in Moradabad, silk-weaving at Varanasi, the pottery units at Khurja and tea plantations of Assam and Bengal. If one were to look at the spatial concentration of the child labour, the states of U.P, Bihar, Madya Pradesh (M.P),

\(^{8}\) It is estimated that there were 2.6 million bonded labourers of which at least 8 per cent were children.
Andhra Pradesh (A.P), Orissa, Karnataka and T.N account for most of the child labour in India.

(2.8) Estimates of Child Labour in India:

The agricultural sector employed 76 per cent of the child labour in 1991. Out of the 12.7 millions full-time child labourers, 35.2 per cent worked as cultivators and 42.5 per cent as agricultural labourers. The percentage of child in manufacturing rose from 3.01 per cent in 1971 to 5.7 per cent in 1991. However the incidence of the child labour has declined from 7.6 per cent to 5.4 percent in 1991. The Work Participation Rates (WPR) of children, as per the census and the NSS (50th round), are declining though it declines faster in the rural areas that in the urban areas. According to 1991 census, only 50 per cent of 0.2 per cent is a worker and 45 per cent are neither in school nor reported to be working. This raises an important issue of under-reporting of the child labour in the census, which is partly due to the fact that a lot of children’s productive work in household industry and in family farms is not recognised.

The main problem that is facing the social scientists working on the issues of child labour is the quantification on the number of the children working in India. It is often difficult to cite a current figure for the number of children engaged in the child labour. The difficulty is attributed to the fact that the Indian government has been negligent in its refusal to collect and analyse current and relevant data regarding the incidence of child labour. As of 1996, official figures continued to

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9 D.P. Chaudhri, *op.cit.*, no.4.
11 *ibid.*, p.811.
base on 1981 census figures. The 1981 Indian census reports that there were 13.6 million child labourers in India. The Indian government extrapolations based on 1981 data place the current number of the child labourers between seventeen and twenty million. This extrapolation is questioned for its veracity by other government, non-government and inter-government sources, which put the number of child labour at much higher levels. While the Indian Official National Sample Survey of 1983 reports 17.4 million child labourers, a study sponsored by the Indian Labour Ministry concluded that the child-labour force was 44 million. The UNICEF's figures range from 75 to 90 million child labourers under the age of fourteen. A universal difficulty in obtaining accurate data is mainly due to the individuals, who fail to report the child labour participation for fear of persecution. Although the figures for the number of the child labourers vary, they are all significantly high when considering that the child economic activity rate for 1980-1991 was 13.5 per cent for males and 10.3 per cent for females. In comparison, other developing countries such as Sri Lanka and Malaysia (where data is available) have lower activity rates of 5.3 per cent for males and 4.6 per cent for females in Sri Lanka and 8.8 per cent for males and 6.5 per cent for females in Malaysia. Historical census data shows an overall child work participation rate of 12.69 per cent in 1961 and 7.13 per cent in 1971. This data is misleading because the definitions of the child labour are different in the two censuses (unpaid workers are not included in the 1971 census) thus a comparison cannot be completely

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15 ibid.
17 ibid.
valid. The data shows that in a span of twenty years (1961-1981), the proportion of children who are working has not changed significantly. Since comparisons with this data are not valid, the conclusion is questionable.

Table 2.2. Spread of Child Labour (aged 10-14) in India

<table>
<thead>
<tr>
<th>State</th>
<th>Number (in 1000's)</th>
<th>Working Children (in %)</th>
<th>Rural</th>
<th>Urban</th>
<th>Rural</th>
<th>Urban</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Combined</td>
</tr>
<tr>
<td>A.P</td>
<td>1396</td>
<td>126</td>
<td>24.97</td>
<td>5.91</td>
<td>19.71</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assam</td>
<td>290</td>
<td>15</td>
<td>11.93</td>
<td>5.21</td>
<td>11.23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>799</td>
<td>41</td>
<td>8.79</td>
<td>2.79</td>
<td>7.94</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gujarat</td>
<td>436</td>
<td>50</td>
<td>13.54</td>
<td>3.11</td>
<td>10.05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Haryana</td>
<td>87</td>
<td>9</td>
<td>5.40</td>
<td>1.99</td>
<td>4.63</td>
<td></td>
<td></td>
</tr>
<tr>
<td>H.P</td>
<td>49</td>
<td>1</td>
<td>8.36</td>
<td>2.22</td>
<td>7.89</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Karnataka</td>
<td>799</td>
<td>106</td>
<td>21.20</td>
<td>6.56</td>
<td>16.79</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kerala</td>
<td>26</td>
<td>7</td>
<td>1.13</td>
<td>0.91</td>
<td>1.07</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M.P</td>
<td>1160</td>
<td>59</td>
<td>19.81</td>
<td>3.24</td>
<td>15.89</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maharashtra</td>
<td>882</td>
<td>96</td>
<td>15.72</td>
<td>2.90</td>
<td>1095</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Orissa</td>
<td>401</td>
<td>17</td>
<td>13.01</td>
<td>3.56</td>
<td>11.71</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Punjab</td>
<td>112</td>
<td>20</td>
<td>6.72</td>
<td>2.95</td>
<td>5.64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>662</td>
<td>39</td>
<td>15.25</td>
<td>3.71</td>
<td>12.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>444</td>
<td>96</td>
<td>11.06</td>
<td>4.79</td>
<td>8.98</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>1107</td>
<td>148</td>
<td>8.23</td>
<td>4.25</td>
<td>7.41</td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Bengal</td>
<td>589</td>
<td>68</td>
<td>9.80</td>
<td>3.33</td>
<td>8.15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delhi</td>
<td>2</td>
<td>23</td>
<td>1.92</td>
<td>2.55</td>
<td>2.48</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All India*</td>
<td>9348</td>
<td>938</td>
<td>12.65</td>
<td>3.78</td>
<td>10.2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: *excluding Jammu and Kashmir.


\[\text{ibid.}, \text{p.37.}\]
Table 2.3. Participation Rates (in per cent) of Male and Female Children in Labour Force Across the States (1961-91)

<table>
<thead>
<tr>
<th>States</th>
<th>Labour Force</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male children (in %)</td>
</tr>
<tr>
<td>A.P</td>
<td>24</td>
</tr>
<tr>
<td>Bihar</td>
<td>14.9</td>
</tr>
<tr>
<td>Gujarat</td>
<td>11.4</td>
</tr>
<tr>
<td>Haryana</td>
<td>12.3</td>
</tr>
<tr>
<td>H.P</td>
<td>9.3</td>
</tr>
<tr>
<td>Karnataka</td>
<td>18.3</td>
</tr>
<tr>
<td>Kerala</td>
<td>3.4</td>
</tr>
<tr>
<td>M.P</td>
<td>19.3</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>13.6</td>
</tr>
<tr>
<td>Orissa</td>
<td>18.9</td>
</tr>
<tr>
<td>Punjab</td>
<td>14.6</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>21.4</td>
</tr>
<tr>
<td>T.N</td>
<td>14.5</td>
</tr>
<tr>
<td>U.P</td>
<td>13.3</td>
</tr>
<tr>
<td>W.B</td>
<td>7.8</td>
</tr>
<tr>
<td>All India</td>
<td>14.6</td>
</tr>
</tbody>
</table>

Source: Computed from Census of India (from 1961-1991); Registrar General of India; All India Education Survey: Third (73), Fourth (78), Sixth (93), NCERT, New Delhi; Report of the Education Commission 1964-66, Supplementary Volume II Ministry of Education and Youth Service; Ministry of Human Resources Development, Annual Reports (various years).
Participation Rates of Male Children in Labour Force Across the States (1961-91)
Paticipation Rates of Female Children in Labour Force across the States (1961-91)

States

- A.P
- Bihar
- Gujarat
- Haryana
- H.P
- Karnataka
- Kerala
- M.P
- Maharashtra
- Orissa
- Punjab
- Rajasthan
- T.N.
- U.P
- W.B
- All India

Female children (in %) 1961
Female children (in %) 1971
Female children (in %) 1981
Female children (in %) 1991
(2.9) Categorising Child Labour:

The 1981 Census of India divided child labour into nine industrial divisions. They are (1) Cultivation; (2) Agricultural Labour; (3) Livestock, Forestry, Fishing and Plantation; (4) Mining and Quarrying; (5) Manufacturing, Processing, Servicing and Repairs; (6) Construction; (7) Trade and Commerce; (8) Transport, Storage and Communication; and (9) Other Services.\textsuperscript{30} Table 2.4 shows the percentage distribution of child workers by these industrial divisions in 1981. From this table it is observed that the majority of rural child workers, an estimated 84.29 per cent, are employed in cultivation and agricultural labour (divisions I and II). Urban the child labourers are distributed differently. The Table 2.4 also shows that 39.16 per cent of them are involved in manufacturing, processing, servicing and repairs. Although more children are involved in agriculture and agriculture-related jobs (a total of 78.67 per cent for divisions I and II), human rights organisations tend to focus on the manufacturing types of the child labour because most children in these situations are bonded labourers. The bonded labour refers to the phenomenon of children working in conditions of servitude in order to pay off a debt. It is estimated that there were 2.6 million bonded labourers, of which at least 8 per cent were children.

| Table 2.4. Occupational Distribution of Child Workers by Industrial Divisions in 1981 |
|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| Urban | 5.32 | 14.73 | 3.07 | 0.20 | 39.16 | 3.27 | 15.03 | 2.45 | 16.77 |
| Rural | 38.87 | 45.42 | 6.61 | 0.25 | 5.72 | 0.47 | 0.96 | 0.10 | 1.60 |
| Total | 35.93 | 42.74 | 6.30 | 0.24 | 8.65 | 0.72 | 2.19 | 0.30 | 2.93 |


(2.10) Causes of Child labour and the Government Policy in India:

The causes of child labour are numerous and varied. No single factor alone is responsible for the social problem. The various causes of the child labour are all intrinsically interrelated. Some of the causes of the child labour are: (i) Poverty; (ii) Increased profits; (iii) Easily amenable; (iv) Lack of educational facilities; (v) Illiteracy and ignorance of parents; (vi) Laxity in enforcement of protection labour legislation; (vii) Un-organised nature of job.

(2.10.1) Poverty and Child Labour:

The most important factor forcing children to taken up employment is poverty. In India, where 60 per cent of the population live below the poverty line, parents are compelled to send their children to seek employment children are forced to work with a view to supplementing the family income. The child labour is a source of income for poor families. A study conducted by the ILO Bureau of Statistics found that

...children’s work was considered essential to maintaining the economic level of households, either in the form of work for wages, of help in household enterprises or of household chores in order to free adult household members for economic activity elsewhere...”

In some cases, the study found that a child’s income accounted for between 34 and 37 percent of the total household income. This study concludes that the child labourer’s income is important to the livelihood of a poor family. There is a questionable aspect of this study. It was conducted in the form of a survey, and the

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responses were given by the parents of the child labourers. Parents would be biased into being compelled to support their decision to send their children to work, by saying that it is essential. They are probably right as for most poor families in India, alternative sources of income are close to non-existent. There are no social welfare systems, such as those in the western welfare states, nor is there easy access to loans. What is apparent is the fact that the child labourers are being exploited that is confirmed by what they earn. For the same type of work, studies show that children are paid less than their adult counterparts. Table 2.5 shows a comparison of child wages to adult wages obtained by a study of child workers in the Delhi region of India. Although 39.5 per cent of employers said that child workers earn wages equal to adults, a figure of 35.9 per cent is found to be significant when taking the bias of employers into account. Employers are more likely to defend their wages for child workers saying that children earn the same wages as adults. The fact that no employers stated children earned more than adults should also be noted. Other studies have also concluded that children’s earnings are consistently lower than those of adults even where the two groups are engaged in the same tasks.22

Table 2.5. Comparison of Child Wages and Adult Wages for Similar Job

<table>
<thead>
<tr>
<th>Percent according to employers' response</th>
<th>Equal</th>
<th>Equal to Half</th>
<th>Half to One-third</th>
<th>One-third to One-quarter</th>
<th>Less than One-quarter</th>
<th>Uncertain</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>39.5</td>
<td>19.1</td>
<td>7.0</td>
<td>3.7</td>
<td>6.1</td>
<td>24.7</td>
</tr>
</tbody>
</table>


The percentage of the population living in poverty is high in India. In 1990, 37 per cent of the urban population and 39 per cent of the rural population was living in poverty.\textsuperscript{23} Poverty has an obvious relationship with the child labour and studies have revealed a positive correlation between the child labour and poverty.\textsuperscript{24} Families need money to survive and children, in this regard, are a source of additional income. Poverty has underlying determinants, one such determinant being caste. When analysing the caste composition of the child labourers it is observed that.

"...if these figures are compared with the caste structure of the country, it would be realised that a comparatively higher proportion of scheduled caste children work at a younger age for their own and their families’ economic support..."\textsuperscript{25}

The scheduled caste children tend to be pushed into child labour because of their family’s poverty. Many children feel that poverty is the main reason they have undertaken a job.\textsuperscript{26} The combination of poverty and the lack of a social security network form the basis of the child labour. For the poor, there are few sources of bank loans, governmental loans, other credit sources and even if there are sources available, few Indians living in poverty qualify to get loans. It is at this stage the moneylenders enter into to pull the poor families into the debt trap. For an average of two thousand rupees, parents exchange their child’s labour to local

\textsuperscript{24} K. Mehra-Kerpelman, \textit{op. cit.}, no. 21.
\textsuperscript{25} P.Nangia, \textit{op.cit.}, no.20, p.116.
\textsuperscript{26} In his study, Nangia states that 63.74 per cent of the child labourers said that poverty was the reason they worked. For more details see P.Nangia, \textit{Child Labour: Cause-effect Syndrome} (Janak Publishers: New Delhi), 1987, p.174.
moneylenders. Since the earnings of bonded child labourers are less than the interest on the loans, the bonded children are forced to work, while the interest on their loans gets accumulated. A bonded child would only be released, by the moneylenders, only after his/her parents clear the debts, which is very difficult for the poor families. Even if bonded child labourers are released, the same conditions of poverty that caused the initial debt can cause people to slip back into bondage. Even though poverty is cited as the major cause of the child labour, it is not the only determinant. Inadequate schools, lack of schools and the expense of schooling leaves some children with little option to undertake a work. The attitudes of parents also contribute to the child labour as some parents feel that children should work in order to develop skills useful in the job market, instead of taking up formal education.

(2.10.2) Increased Profits:

The child labour is seen by prospective employers as a much cheaper commodity. Employers feel that since children provide the same productivity as adults, and in several cases even more at a far lower costs, so it recognised as a means of a lower overheads and increased profits. The child labour exists not because children are more able workers but because they can be hired for less money.

28 ibid.
(2.10.3) Easily Amenable:

The employers, for a number of tasks, prefer children to adults as children have less developed ego and status consciousness. Furthermore, they are less organised unlike their grown-up counterparts. Because of this, they can be put to difficult work as children are more active and quick. The employers also find them to be more amenable to discipline and control.

(2.10.4) Lack of Educational Facilities:

Inadequate and poor educational facilities as well as the neglect of the enforcement of free and compulsory education for all children below the age 14 years lead to child labour. Because of poverty, their families are not able to afford the expenditure on education, however, less it may be.

(2.10.5) Illiteracy and Ignorance of Parents:

In India, the lower groups are illiterate. They think only of present and not of the future. The child labour is prevalent extensively in lower series economic groups because of lack of opportunities on their part of the role that education plays in improving life and living conditions of the people.

(2.10.6) Laxity in Enforcement of Protection Labour Legislation:

Over years, various laws have been programmed with regard to child labour. The one was the Child Labour (Prevention & Protection) Act of 1986. This act prohibits the employment of children below the age of 14 years in certain
industries while specifying their working conditions in other industries where their employment is not banned.

The underlying causes of the child labour cannot be contributed simply to one factor or the other but to combination of factors discussed above. The child labour is in fact a product of any society’s economic and social conditions. There have also been other reasons for the children to take up an employment. They are as follows: (a) the tradition of tolerating children working in the pretext of learning the family skill; (b) non-availability of schools in the vicinity; (c) non-accessibility to schools; (d) discrimination against children belonging to different economic and social background; (e) absence of universalisation of compulsory primary education; (f) unattractive method of imparting education; (g) lack of social responsibility towards schooling of children; (h) non-implementation of minimum wages; (i) illiteracy of parents; (j) ignorance of the parents about the adverse consequences of the child labour; (k) ignorance of the society about the adverse consequences of the child labour; (l) parents disenchantment towards education; (m) unemployment of the adults in the family; (n) infirmity of parents; (o) physical or mental disability of parents; (p) death of parents; (q) ineffective enforcement of the child labour laws; (r) lack of political will; (s) unequal distribution of resources; (t) social inequality; (u) economic inequality; (v) social discrimination lack of social concern; (w) lack of determination among elected representatives of the country to end this practice.
(2.11) Myths Surrounding Child Labour:

There have been many myths surrounding the arguments on child labour. These myths have been planted to derive sympathies by various vested interests to support their arguments defending the use of children in work places. Some of these myths are that (a) the employers are obligating children by employing them; (b) poverty is the single major cause of child labour; (c) if children do not work, they and their families will starve; (d) the child labour is the result of the poor having more children than they can provide for; (e) the parents would rather send their children to work than to school; (f) the children themselves want to work; (g) if children work, they become equipped with skills for the future; (h) the child labour is necessary to preserve traditional arts and crafts; (i) the children work faster and have nimble fingers needed in certain types of work, especially knotting carpets; (j) the industry will collapse if child labour is not available; and (k) the legislation prohibiting the child labour are sufficient to resolve the problem.

Employers are only concerned about their profit. For them the child labour can be exploited at any cost. Certain sectors such as agricultural tend to rely heavily on child labour because of the pliability of children on low wage. The children enter the labour market at a very early age, even before they are six years old, working alongside their parents either for no wage or for a negligible income. The household sector (the middle class particular) employs a substantially large number of child labour. There is a selfish interest involved in the recruitment of children for daily household chores. Industries like bidi making, glass making,
carpets, gem and stone polishing, matches and fireworks have thrived purely on the strength.

Employers openly admit that young children suit their needs better with the low wages being the primary reason. The children are not the ones who would grumble against the bad working conditions or organise a protest rally. The child labourers work long hours for low wages and complain little. Some of the industries such as gem and jewellery, carpets, brass artwork, handlooms, agarbatti and tea are India’s major export earners and child labourers provide the much needed cost-competitiveness for these industries. There is, thus, a vested interest in the employment of children because of the sheer economics that supports it.

Another popular argument used in support of the working children is the poverty argument. There have been many dimensions to it. The poverty is the manifestation of socio-cultural marginalisation as indicated by studies on the industries, where there is a substantial presence of child labour such as the carpet industry, the match industry, brassware, glass, bangle and lock making, slate, gem polishing industries and the tea plantations. These studies confirm that the overwhelming majority of children working in these industries come from SC’s, ST’s, OBC’s and Muslims. These communities also constitute the bulk of small and marginal peasantry, landless and agricultural labourers and artisan groups. The fact that the bulk of India’s child labourers hail from communities that derive their sustenance from occupations that principally require manual labour reveals the wider, complex and variegated social matrix in which the phenomenon of child labour is embedded. These communities are the victims of a social system, which
is characterised by unequal access to the principle productive resources and assets. It is these very communities, which migrate to the cities to join the burgeoning informal sector.

While it is true that the child labourers come from impoverished families, it should be noted that the child labour also perpetuates poverty. The child labourer, who survives the harsh conditions, becomes an unskilled and debilitated adult, who is not fit enough to be employed even in the industry that exploited him/her earlier. Furthermore, the child labourers receive a low, negligible income and often no wages at all. The child labour also depresses adult wages and keeps adults unemployed.

It is often argued that if the children do not work, they and their families will starve. It should be reminded that starvation persists even when families and the children are working. The starvation is the result of a combination of factors including price policy, low income, low purchasing power, income disparity, unequal food distribution, poor availability of food, lack of access to food production and unequal land ownership patterns. The inequitable land distribution pattern is evident in the fact that between 1961-1991 the proportion of cultivators declined while that of agricultural labourers increased, indicating that a vast section of the population, including the tribals, are getting alienated from land. The child labour trends reflect this change as there has been a shift in number from children working on their own farm to children employed on the farm of others. Alienated from their land and means of livelihood, the rural poor migrate to urban centres. Food subsidy through the Public Distribution System (PDS) becomes
inaccessible to them because proofs of residence are required for obtaining such allowances allowed through ration cards. The SAP and the New Economic Policies have worsened the situation. For instance, under SAP, the PDS outlets have been scaled down. Another example is the emphasis on exports. A hike in cotton yarn prices and steady export of cotton yarn resulted in abnormal prices that had to be borne by the weavers and their co-operatives. Starvation deaths were reported from Andhra Pradesh and Tamil Nadu as small industrial units employing the child labour were shut down.

It is said that the child labour is the result of poor having more children than they can provide for. The wealth of a nation is its people. The tendency, however, is to view them not in terms of their potential, but their sheer numbers. A dubious reasoning therefore holds sway that high population growth is the cause of child labour. The focus remains on the numerical strength of families ignoring their basic rights. For instance, the poverty index measures calorific consumption and not what people are denied in education, health and other issues. The child labour therefore cannot be attributed solely to population growth. This is confirmed by the fact that while the growth of the child population is declining since 1971 and a continuation of this trend will result in a decrease of the child population for 2001 for India as a whole, the interstate variation is expected to continue to be enormous. The State of Kerala, for instance, has the lowest incidence of child labour and it is attributable to the fact that it has invested in human capital, in political commitment, in radical change in the countryside, in land reform and in a strong working panchayat.
While referring to the poverty argument, it is argued that the parents would rather send their children to work than to school. A National Consultation on the Rights of the Child concluded that the withdrawal of children from the labour market through mass enrolment by NGOs effectively disproves the poverty argument very often used to justify continuance of the child labour. The idea that some children have no alternative, other than to work, is so universally entrenched that even social workers attached to agencies implementing direct support programs were initially reluctant to persuade parents of working children to enrol them in formal schools. They feared that families of child labourers will not accept the idea of full-time formal schools nor will they absorb or accept the fall in family income caused thereby. Individual and community acceptance of education as an alternative to work did not turn out to be as difficult as it was generally feared to be. There has been a notion that families of child labourers, who are motivated to stop working, must be compensated through stipends. More difficult than parental resistance to mainstreaming their wards in formal schools is the difficulty in satisfying the administrative requirements for admission. Documentary evidence of date of birth, transfer from a previous school (in the case of children who are being re-integrated into schools) are greater barriers in enrolling children into schools.

It is often argued that the children themselves want to work. When the children express their preference for work it is because of their inability to conceive the work as an alternative. The children are compelled to work by the non-availability or lack of access to school, an irrelevant school curriculum and physical abuse from teachers. For the children, earning enhances their feeling of self-worth and hence their demands centre on the improvement of working
conditions and dignity of labour. However, the issue of enabling work environment should be dealt with separately without obscuring the realisation of children’s rights. The expression of the desire to work by children reflects their lack of trust in adults to change their situation. The child labour is ultimately an indictment of societal apathy and indifference to their plight.

It is also wrongly argued that there is nothing wrong in allowing children to work in non-hazardous occupations. The word hazardous is a debatable point because while referring to hazardous industries here one is not referring to the inherent hazardous nature of any industry. The reference is to what is hazardous to the child. In this respect even jobs, which are not inherently hazardous, become hazardous for children if they are made to do the job for long periods and if they are being denied their rights to development, education, medical care, recreation, leisure and play. The differentiation between hazardous and non-hazardous derives from the lexicon of industrial occupations and has reference to adult employment. To apply it to child labour is to ignore the de facto violation of children’s basic rights and restrict action to child labour in the formal and organised sector. Furthermore, while an occupation can be described along a continuum regardless of its nature, it entails exploitation where children are involved. Hence, every child labourer is a priority and the nature of employment cannot be applied as a criterion. The child labourers in so-called non-hazardous employment like the service sectors, tea-stalls, restaurants and domestic sector like household work are vulnerable to physical, mental and sexual abuse. The poor working environments like closed, dark and ill-ventilated rooms damage the development of the child. The continuous hours of work result in exhaustion and even death.
There is another ill-conceived argument that if the children work, they become equipped with skills for the future. However this argument cannot be substantiated, as the tasks allotted to the children in work places are simple and repetitive such as labelling, filling, rolling, fetching and carrying. Acquiring skills is a misnomer when applied to the backbreaking toil and drudgery children are engaged in. The hard, physical labour, exposure to the elements, dust, toxic fumes and chemical solutions damage children’s health irrevocably, shortening their life span and impairing their development. For instance in the match factory, the association of passivity with females leads to girls being expected to sit continually in the same posture. It causes menstrual disorders and uterine problems, which girls are conditioned to suppress. In the gem polishing industry, vision declines before the age of thirty. Taking into account all the consequences of working in the industry for long hours, it could be argued that the skills training could always come at a later stage without being at the expense of the well being and development of the child. It is a well-known fact that serious vocational training can be assimilated only by older children.

While arguing about the transferring the traditional knowledge it is often argued that the child labour is necessary to preserve traditional arts and crafts. In reality, the argument of preserving traditional knowledge does not arise in the case of child labour, as in reality, the children bonded to families or the hired child labour are never taught the actual craft. Learning of a particular art or craft by children within their families, as a part of their socialisation, should be integrated

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with their education. Moreover, skills previously the preserve of a few families are now widely available in the labour market because of state-sponsored training programs that cover industries like pottery, carpet, gem-polishing and lock industry. Moreover, new technology has rendered many of these skills irrelevant. The artisan has been transformed into a factory worker by the large-scale nature of production.

Another myth that is often propagated is that the children work faster and have ‘nimble fingers’ needed in certain types of work, especially knotting carpets. However a carpet manufacturer admitted in an interview that it is a myth that child labour is essential and the children are capable of weaving better carpets than adults. A study conducted by the Madras Institute of Development Studies (MIDS) for the Government of India found that there was no trust in the ‘nimble fingers’ argument. The examination of seventeen processes in match manufacturing showed that children were employed in simple tasks requiring a special aptitude, which children might possibly have. In fact, not only were adults employed in all these operations, they out-numbered children in the surveyed units and most crucially, their model rate of physical production was more than that of children. There is no reason therefore to accept the ‘nimble fingers’ argument either on the grounds of adults’ inability to work or due to their allegedly lower pace of work.

An important argument purported by the industry lobby is that the industries employing the child labour will collapse if child labour is not available

31 Indian Express, 16 June 1987.
to them. The International Labour Organisation (ILO) held a workshop to present the findings of studies that have been conducted on the profitability to an industry if the child labour was replaced with adult labour. The industries examined included carpet, brassware, gem polishing, and match industries. It was found that looking only at the economic implications, the increase in the cost of a product, caused by replacing children with adults, is only marginal which can be largely absorbed by the industry if it is passed on to the consumer as the increase in the sale of the final product would also be marginal.

In India many child labour activists argue that the legislation prohibiting the child labour are sufficient to resolve the problem. Though there have been legislation prohibiting child labour, in many cases, they end up compounding the problem by legitimising the use of child labour. For instance, Child Labour (Prohibition and Regulation) Act of 1986 is in violation of Article 14, 21, 23 and 24 of the Indian Constitution. This legislation removes the protection given by these Articles to children against employment in all hazardous work and against exploitation and injustice by not prescribing a minimum age and prohibiting employment of children only in certified occupations and processes. Furthermore, having enacted so many acts, little attention has been given towards enforcement. In the absence of enforcement, the legislative measures are easily flouted. Between 1990-1993, at the central level only 537 inspections were undertaken under the Child Labour (Prohibition and Regulation) Act of 1986. Though a total of 1203

\[\text{Op. cit, no.30.}\]
\[\text{ibid.}\]
\[\text{ibid.}\]
irregularities were detected only 7 prosecutions were launched.\textsuperscript{35} At the state levels, while 60,717 inspections were launched, only 5,060 violations were observed, out of which 772 were convicted.\textsuperscript{36} The plethora of laws cover only about 8 per cent of the total as these laws are not applicable in the case of agriculture and also tertiary activities such as retail and wholesale trade and restaurants. There is total lack of political will to resolve the problem of the child labour. Finally, there is total failure of the Government in the area of compulsory education of children up to the age of 14 (Article 45 of Indian Constitution). Several states have been made commendable effort in the direction of providing education facilities, but none has been able to do anything to check the phenomenon of high dropouts.\textsuperscript{37}

(2.12) Role of the State:

It is not poverty that prevents India from investing more in its children but the prejudices and values of those who create and implement policy in India. When it comes to child labour, the government has an impressive number of protective laws, government decrees and orders, national polices and projects, standing and special committees and commissions, and reports and recommendations. Unfortunately, the laws are rarely enforced and the recommendations are rarely carried out. Based on the facts - what is done rather than what is said - one must conclude that the government is either unwilling to or uninterested in seriously tackling child labour.

\textsuperscript{35} ibid.
\textsuperscript{36} ibid.
\textsuperscript{37} ibid.
Now the arguments would be made to look at how and why the government says so much about child labour while doing so little to combat it. It includes an overview of government programs and initiatives, efforts and omissions in implementing those initiatives and the blatant failure of the government to protect its children by enforcing the law.

(2.12.1) Government Policies, Programs and Initiatives:

In the early part of the twentieth century, a voluntary effort took on an organised character. In the mid-twenties, voluntary organisations such as Indian Red Cross Society, All India Women’s Conference, Kasturba Gandhi National Memorial Trust and Children’s Aid Society organised programmes in areas of welfare, health, nutrition and education for children. In 1920, first organisation with the membership of children ‘Balkanji Bari’ for children was set up in India. Around this time several other organisations at local and regional levels were also set up. Among these, All India Shia Orphanage, the Bai Dosabai Kotwali Parsi Orphanage were running on the basis of religion. But these organisations remained confined mainly to urban areas.\(^3^8\) The post independence period witnessed some marked changes in the approach and strategy of child development exhibiting deep concern for reaching rural poor and other depressed groups. Over the years, there has been a radical change during various plan periods in the child development approach. The main focus was on provision on health and nutrition services. The child development was left to voluntary agencies with grants-in-aid being sanctioned by the government. Investment in children really started in the third

\(^{3^8}\) P.Nangia, *op.cit.* no.20.
five-year plan with the setting up of demonstration Projects in each State to integrate all services of education, health and nutrition. A new cadre of workers 'Balsevikas was created during this plan. For evaluating the basic needs of children and giving necessary support to the demonstration project the Child Care Committee was also set up.

(2.12.2) Child Development Approach During 1950’s:

(2.12.1.1) First Five Year Plan:

The first five-year plan acknowledged that the need of children should receive much greater consideration than is commonly given to them. According to the first five-year plan the total responsibility of welfare had to be borne cumulatively by the family, community and the State. The voluntary agencies could organise child welfare activities as they had engaged in this task even earlier without adequate State aid with their own resources. The voluntary organisations were sanctioned grants-in-aid by the States for strengthening, improving and extending the existing activities in the child and social welfare. To mobilise voluntary activities in all aspects of child development, the first national level organisation the Indian Council for Child Welfare (ICCW) was established. In a significant development in 1953, Central Social Welfare Board (CSWB) was set up to assist voluntary organisations and mobilise their support. In 1954 the CSWB launched the WEP (Welfare Extension Project) to cater the rural population.
(2.12.1.2) Second Five Year Plan:

During the second five-year plan (1955-60), the CSWB programmes were reviewed and it was decided to locate welfare extension projects in community development blocks and convert it into the Co-ordinated pattern projects. Demonstration projects were set up in rural areas whose component consisted of education, health, nutrition and welfare. But these projects could not do well due to many unavoidable reasons. By 1959, the Indian government adopted the United Nations Declaration of Rights of Children adopted by the UN General Assembly.

(2.12.3) Child Development Approach During Sixties:

During the sixties, the emphasis on child welfare continued and the Children Act of 1960 came into effect, which provided penalisation of offenders for cruel treatment of children and the employment of children in begging. This act, however, was amended later in 1978. On the basis of recommendations of WEP and evaluation committee, a new scheme of family and child welfare was launched in 1967 that would provide integrated basic social service to children and promote cultural, educational and recreational activities for women and children. In 1963 National Council for Educational Research and Training (NCERT) was established with the objective of conducting child studies and evolving methods of childhood education. In 1966 Kothari Commission was set up, which recommended expansion of pre-school facilities to children from disadvantaged areas in particular. In 1967 Ganga Saran Sinha Committee was set up to identify the problems and needs of the children and to suggest action programmes. In 1968
the National Policy of Education was announced, which reiterated the recommendations of Education Commission (1964-66).

(2.12.4) Child Development Approach During Seventies:

During the seventies ‘National Policy for Children’ was adopted on the basis of recommendations of ‘Ganga Saran Sinha Committee’ which stated that States shall provide adequate services to children before and after birth during the period of growth to ensure their full physical, mental and social development. The policy provided for a National Children’s Board, set up in 1974 and later reconstituted in 1978, to provide a forum to plan, review and co-ordinate the various services directed towards children. Under this policy, ‘Bureau for Nutrition and Child Development’ in Ministry of Social Welfare was set up which was made responsible for the implementation of various programmes under this policy. The National children’s fund was set up by the government during this period. This was aimed at providing financial assistance to children and high priority during fourth five-year plan. During this plan a Special Nutrition Programme (SNP) was also launched to provide nutritional status of pre-school children’s pregnant mothers. The Balwadi Nutrition Programme (BNP) started with central government funding and prophylaxis programme was launched to prevent nutritional anemia in children, expectant and nursing mothers. But this programme had marginal impact. Consequent upon this, the Integrated Child Development Services (ICDS) programme was initiated and National Institute of Public Co-operation and Child Development (NPCCD) was set up in 1975 as an autonomous body. In 1979 the child labour prohibition and regulation was passed and Gurupad Swamy
Committee was set up. A child labour Cell was also constituted in 1979, which is now under the Ministry of Labour. The child labour cell has been made responsible for the formulation, co-ordination and implementation of programmes and policies for protecting the child labour from exploitation. It also provides grants to the voluntary organisations.

(2.12.5) Child Development Approach During Eighties:

The programmes of services for children in health, nutrition, education and social services were expanded during the eighties. In 1983, the National Health Policy was adopted. Legislations pertaining to the minimum age for employment of children and hours of work were consolidated into a comprehensive law.

The Child Labour (Prohibition & Regulation) Act of 1986 came into effect to prohibit child labour in selected work-areas and processes. This act prohibits the employment of children in jobs that are hazardous to their lives. The new policy was adopted in 1987 comprising three trust areas: (i) legal action; (ii) development programmes; and (iii) the child labour and project based plan of action. A comprehensive National Education Policy (NEP) on education was adopted in 1986 under the leadership of late Prime Minister Rajiv Gandhi, which intensified efforts in human resource development. The policy gave universalisation of elementary education, universal enrolment and recreation of children up to 14 years in the school system and improvement in the quality of education. In 1987-88, Operation Black Board was launched and Navodaya Vidyalayas were set up to cater to the rural children. A scheme was initiated whereby voluntary organisations were provided central assistance for operating early childhood education centres in
rural and backward areas. The educational policy emphasised Early Childhood Care and Education (ECCE) and day care centres be made available as a support service for working woman and girls engaged in taking care of siblings. The policy suggested integration of ECCE with ICDS where possible. In 1987-88, the ECCE was transferred from Department of Education to Department of Women and Child Development of Ministry of Human Resource Development. The Juvenile Justice Act of 1986 replaced Children’s Act of 1960 and for the first time separated delinquent from neglected children. In order to upgrade and strengthen the available infrastructure for effective implementation of the Juvenile Justice Act, the scheme for Prevention and Control of Juvenile Social Maladjustment was initiated in 1986-87. During this decade efforts for safeguarding the rights of children were also under way at the regional level.

The seventh five-year plan continued the strategy of promoting early childhood survival and development through programmes in different sectors, important among these being the ICDS. In 1988-89, about 27 million children were enrolled in class I to V and 31 million in class VII to VIII. The enrolment ratio in 1988-98 was 99.6 per cent in class I to V (age group 6-11 years) and 56.9 per cent in class VI to VIII (age group 11-14). The provision was made to augment training of ICDS functionaries and a system for decentralised monitoring and qualitative feedback has been developed.

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Child Development Approach During Nineties:

During 1990's a large number of constructive efforts for the welfare and development of children and child labour had been initiated by the Government. The child development programmes had been given high priority during the eighth five-year plan. National Child Labour Programme had been taken up to make effective intervention for preventing exploitation of the child labour in organised sector. During this plan nine child labour projects had been launched. According to the proposals of the eighth five-year plan, in regard to literacy, the emphasis would be on sustainability of literacy skills, on the achievement of goals of remediation, continuation and application of skills to actual living and working conditions. Early childhood education programmes were to be strengthened. It was felt during this plan that the problem of the child labour was an unfortunate manifestation of economic compulsions as well as socio-cultural perceptions.

During this decade literacy had been a priority on national agenda as a tool of information and knowledge and as an instrument of social change. The Total Literacy Campaign (TLC) had to become the principal strategy of the National Literacy Mission (NLM) for eradication of illiteracy throughout the country. The total literacy was to be achieved by 2005 A.D.

According to Economic Survey of 1997-98\(^{40}\) concerted efforts have been made to achieve the goal of universalisation of elementary education. As a result, India has become the second largest country in the world with 151.5 million

children in the age group of 16-14 years enrolled in 1996-97 covering about 81 per cent of children in this age group. The number of primary schools has increased from 0.14 lakh to 1.71 lakh. While universalisation of elementary education is the ultimate goal, it has been laid emphasis on enrolment and retention of the girl child schooling and recruitment of rural women as teachers. Special provisions have been incorporated in various schemes e.g. the revamped blackboard scheme provides that at least 50 per cent of teachers recruited should be women.

A new scheme Balika Samriddhi Yojana was launched on 2 October 1997. Under this scheme, the mother of girl child born on or after 15 August 1997 in a family below poverty line in rural and urban areas will be given a grant of Rs.500. Further, a scholarship will be given for education of the girl child when she attends school.

There have also been other benefits. For holistic child development, ICDS - widely acclaimed and unique programmes - provides an integrated package of services comprising supplementary nutrition, immunisation, health check-up and referral services. Apart from ICDS, other programmes for child development include Early Childhood Education, Balwadi Nutrition Programme, day care centres for children below 5 years and belonging to weaker sections of society. In view of the importance of the national programme of nutritional support to primary education mid-day-meal programme was launched on 15 August 1995 by then Prime Minister P.V.Narashimha Rao for boosting universalisation of education and improving the nutritional level of students in primary class. According to the approach paper of ninth plan, there has been a significant shift in approach towards
the well being of women and the children from welfare during fifties, development during seventies and empowerment during nineties. During the ninth plan, investment of child development will be viewed not only as a desirable social investment for the nation’s future but also as fulfilment of rights of every child for survival, protection and development so as to achieve their full potential.

(2.13) Indian Government Policy on Child Labour:

From the time of its independence, India has committed itself to be against the child labour. Articles 24 and 39 (e) of the Indian constitution clearly state that

"...no child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment...”

"...that the health and strength of workers ... 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...”

These two articles show that India has always had the goal of taking care of its children and ensuring the safety of its workers. The Bonded Labour System Act of 1976 fulfils the Indian Constitution’s directive of ending forced labour. The act frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements and orders the economic rehabilitation of freed bonded labourers by the state. In regard to the child labour, the Indian


\[\text{ibid.}\]

\[\text{Human Rights Watch, \textit{op. cit.}, no. 12.}\]
government implemented the Child Labour Act in 1986. The purpose of this act is to prohibit the employment of children who have not completed the fourteen years in specified hazardous occupations and processes. The ILO convention 138 suggests that the minimum age for employment should not be less than fifteen years and thus the Child Labour Act of 1986 does not meet this target. A recent advance in government policy occurred in August 1994, when the then Prime Minister Narasimha Rao announced his proposal of an Elimination of child labour Programme. This program pledges to end child labour for two million children in hazardous industries as defined in the Child Labour Act of 1986 by the year 2000. The programme revolves around an incentive, one hundred rupee payment as well as one meal a day for attending school, for children to quit their work and enter non-formal schooling. It is unknown where the funds for this programme will come from. The government needs eight and a half billion dollars for the programme over five years and yet about four percent of the five-year estimated cost was allocated for the child labour elimination programs in 1995-96. It is, however, important to highlight that all the policies that the Indian government has in place are in accordance with the Constitution of India.

India has completed fifty years of its independence. India today has an estimated 70-80 million child labourers. In other words, there are 70-80 million children prematurely leading adult lives. Despite the Constitution’s Articles 24, 39

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45 *ibid.*
46 Human Rights Watch, *op.cit.*, no.12, pp. 119-120.
47 *ibid.*
and 45 - which prohibit labour by children under fourteen years of age and call for the protection of children below the age of fourteen against hazardous equipment, exploitation and moral and material abandonment and guarantees them free and compulsory education - 70-80 million children are taken their freedom to be children as they work with and without wages, in the organised and informal, unorganised sectors, within and outside the family. These children are working under conditions damaging to their development - physical, social, emotional and spiritual. These children are, very unfortunately, subsidizing India's economy even as their basic rights to education, health care, leisure are violated.

(2.14) Normative Framework:

The State's actions directed towards children are guided by certain fundamental legal norms. In the Indian context, these norms are rooted in two important documents.

(2.14.1) The Constitution of India:

The Constitution of India is the basic document of the country that makes special provisions for certain selected classes of people like women, children and disadvantaged. One of the important features of the Constitution of India is that while it recognizes the principle of equality before law, it provides for protective discrimination. For example, under Article 15(3) of the Constitution, it is provided that

"...Nothing in this article shall prevent the State from making any special provision for women and children..."
The Constitution of India safeguards the safety of the children. The Constitution of India lays down that

(i) The child labour in factories, mines and any other hazardous occupations should be prohibited (Article 24);

(ii) The children below the age of 14 years should get free and compulsory primary education (Article 45);

(iii) The children, because of their tender age, should not be abused and they are not forced to enter a vocation unsuited to their age and strength (Article 39-c);

(iv) The children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood is protected against moral and material abandonment (Article 39-f).

The Constitution of India, thus, seems to be of a clear view that childhood is meant to be spent in schools and not in hazardous work environs. Although Article 24 comes under the Part-III (the Fundamental Rights) of the Constitution and others come under Part-IV (the Directive Principles of State Policy) of the Constitution, the Supreme Court has creatively read the two parts together on a number of occasions.

Though the concept 'hazardous' used in the Constitution has liberally been interpreted in the policy as well as the statue on the child labour, it lacks any legal definition. Only the Factories Act defines what constitutes hazardous and that too
from the point of view of the adult workers. The fact that it is so nebulous leaves scope for wide interpretation, especially when it is read along with the provisions of Directive Principles of State Policy i.e. Articles 45, 39(e) and 39(f). The Article 24 of the Constitution is also written in an absolute manner and does not leave room for any regulation or exemption of certain sectors. Thus, if the constitutional provisions related to the child are read together, they have a potential for laying down very comprehensive guidelines for a total elimination of the child labour and for the protection of children from any form of exploitation.

(2.14.2) National Educational Policies and Programmes:

After independence India inherited the problem of low educational spread - which saw the total exclusion of various groups like women and marginalized sections from the educational process. In the process of addressing the problem, a number of educational programmes and policies were instituted over the years. The present section attempts to brief overview of these different programmes.

In the post-independence India, the problems of the educational reconstruction were reviewed by a number of commissions and committees like the University Education Commission (1948-49) and the Secondary Education Commission (1952-53). An important process in educational reconstruction was set in motion with the setting up of the education commission (1964-66), which was set up to advise the government on the national pattern of education and on the
general principles and policies for the development of education at all stages and in all aspects. 48

The right to education was placed under Part IV of the Indian Constitution, under the ‘Directive Principles of State Policy’. The Article 45 of the Constitution envisaged the States endeavour to provide, within ten years of the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. If this provision had been brought into effect, the magnitude of the educational problem and the low levels of literacy and schooling as is being witnessed today would not be present.

Education is a concurrent subject under India’s Constitution with both the Central and State governments being involved in developing educational programmes and financing them. There have been some attempts at the State governmental levels to translate compulsory education provision of Article 45 into practice. There are Compulsory Acts in place in a number of States and Union Territories (UTs). There are about 19 states and UTs where the Compulsory Education Acts are in force. 49 Some of these include - Assam, Bihar, Goa, Gujarat, Haryana and Delhi.

The compulsory education laws require surveys to identify children who should be in school, for notices to be sent to parents informing them that a seat has been allotted to their children in a school, followed by enquiries whether the child

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is going to school and if not, the reason for such non-compliance.\textsuperscript{50} If such a concern had been actualised along with sufficient financial allocations, the problem of the universalisation of education would be non-existent today.

With the submission of the report of the education commission, the National Policy of Education (NPE) of 1968 came about. The NPE of 1968 laid emphasis on the importance of education for national development. It stressed upon the fulfilment of the Directive Principle under Article 45 and the need to improve the status, emoluments and education of teachers recognising the importance of teachers in determining the quality of education. It emphasised on the equalisation of educational opportunity and stressed the importance of the education of girls.\textsuperscript{51}

Following the NPE, 1968, a common educational structure came to be accepted in all parts of the country. This was the 10+2+3 model, which involved 10 years of elementary schooling (5-years of primary education, 3-years of upper primary and 2 years of high school). Two years of secondary schooling was to be a stress on technical and vocational education. This was the structure of a formal educational system in India. However, this formal educational structure failed to include in its fold a number of disadvantaged children (in rural and urban areas). An attempt to involve these children in the educational programme was seen in the institution of a Non-Formal Education (NFE). The NFE programme of 1986 is meant for school dropouts, for children from areas without schools, working

\textsuperscript{50} ibid.

\textsuperscript{51} ibid., pp.39-41.
children and girls who cannot attend whole day schools. The NFE programme attempts at the involvement of the local community in the process of teaching such children. The NPE of 1986 also accords priority to the Universalisation of Elementary Education (UEE). Under this, a number of programmes like *Operation Blackboard* (following the NPE of 1986’s recognition of unattractive and unsatisfactory school environment), a programme for the substantial improvement in the quality of primary schools was launched in 1987-88. The programme prescribes a minimum standard of physical facilities in school including at least two reasonably large all-weather rooms, at least two teachers (as far as possible one of them to be a woman) and the provision of essential teaching materials like blackboards, maps, toys, a small library and some equipment for work experience. The District Primary Education Programme (DPEP) was also launched during this period. The DPEP is a centrally sponsored programme for the universalisation of primary education. Under this programme, the district is the unit of programme implementation and the programme contents include construction of new class-rooms and new schools, opening of non-formal schooling centres, teacher training, developing of teaching-learning material, special intervention for the education of girls, scheduled castes/tribes). The basic educational structure—of formal and non-formal systems along with adult educational programmes and programmes for other marginalized sections of the society attempts at including all sections of the society in a continuous educational

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programme throughout the country. The national support to primary education through programmes like mid-day meals at school is also offered. Along with a stress on elementary education, various programmes for securing adult education had been envisaged. Under this, programmes like the National Literacy Mission (NLM) had been started. The NLM, which aims at the eradication of literacy from India, adopts strategies like the Total Literacy Campaign (TLC). The TLC is delivered through voluntary effort and is implemented by the district committees.

Despite the existence of such a broad range of programmes, many sections of the society still continue to be out of reach of the benefits of education. Critics often argue that the state of elementary education is primarily due to the lack of a sustained political will or concern. Different schemes like the TLC and various State education projects are seen to be unsuccessful because they are treated mainly as supplementary projects to formal schooling and are often ad hoc in nature. Of late, the Central government's decision to secure external funding for programmes like DPEP has also come under criticism as it is seen as a failure of the Centre in fulfilling its Constitutional obligation of providing elementary education for all.

(2.15) History of Legislation's Relating to Child Labour:

Legislative history with respect to the child labour has traversed a long path since 1881 progressively extending protection of the law to working children. Over this long period, the statutory provisions on the child labour have concentrated mainly on a few aspects like reducing the working hours, raising the minimum age in defining a child and different activities which a child can undertake. This,
probably, could have happened due to the presumption that the child labour is an inevitable reality. The Employment of Children Act of 1938 was first comprehensive act in this regard, which was replaced by the child labour (prohibition and Regulation) Act of 1986.

An attempt is made to trace the evolution of the present law through the years under different enactment. Legislative response in this regard like the other areas in labour laws is being criticised in many circles as ad hoc and very often half-hearted. The process of industrialisation brought with it several woes for the working class especially long working hours from dawn to dusk, which got extended with the invention of electric bulbs. The fate of the children was also not different where they used to accompany the parents to the work place. The child labour (Prohibition and Regulation) Act of 1986 was the culmination point of the following legislative landmarks.

(2.15.1) Factories Act of 1881:

The factories employing 100 or more than 100 persons were covered by this act. According to the factories act of 1881 the minimum age of a child for employment was fixed to be seven years. It also prohibited the successive employment for the same employee, i.e. employment in two factories on the same day was prohibited. This act also stipulated the working hours. The working hours were not to exceed nine hours a day and at least four holidays to be given in a month.
(2.15.2) Factories Act of 1891 (Revised):

The Factories Act of 1881 was revised in 1991 to be made the Factories Act of 1891. The original act was revised with respect to the following matters. The minimum age for the working children was increased nine years. The working hours were limited to a maximum seven per day, with prohibition of work at night between 8 p.m. and 5 a.m.

(2.15.3) Mines Act of 1901:

The salient feature of this act was that it prohibited the employment of children under 12 years of age.

(2.15.4) Factories Act of 1911:

This act prohibited the work of children between 7 p.m. and 5.30 a.m. It also prohibited the work in certain dangerous processes. This act also made the certificate of age and fitness mandatory for the employers.

(2.15.5) Factories (Amendment) Act of 1922:

To implement the ILO Convention (No. 5) of 1919, the Factories Act was amended in 1922 to make the following changes. The minimum age-limit was increased from 12 to 15 years. It also reduced the working hours to a maximum of six hours and called for an interval of half an hour if children who are employed for more than five and a half hours. Though the salient features of this act were to be appreciated, the scope of the act, however, was limited to establishments employing 20 or more persons with mechanical processes, with power given to the
local governments to exclude the provisions to premises employing 10 or more persons. It also prohibited the employment of children below 18 and women, in certain processes, which were considered hazardous for them. The provision for medical certificate and the certificate of re-examination for continuing work was required according to this act.

(2.15.6) Children (Pledging of Labour) Act of 1933:

This act prohibited pledging of children, i.e. taking of advances by parents and guardians in return for bonds, pledging the labour of their children - a system akin to that of the present day bonded labour system. This practice of pledging of labour of children was found to be prevalent in areas such as Amritsar, Ahmadabad and Madras in carpet and bidi factories by the Royal Commission. The children, in these situations, were found to be working under extremely unsatisfactory working conditions. Hence, the Royal Commission recommended the expediency of penalising the giving of advances to secure the child labour and that the bond for pledging the labour of a person under 15 years executed on account of any consideration should be void. The Royal Commission thus observed that

"...the system is indefensible, it is worse than the system of indentured labour for the indentured labour is, when he enters on the contract, a free agent while the child is not..."

The Royal Commission recommendations were effected by 1932 Children (Pledging of Labour) bill introduced in the legislative assembly, which was converted into an act a year later.
(2.15.7) Factories (Amendment) Act of 1934:

The factories (amendment) act of 1934 was most elaborate in that it provided for the provisions to regulate the employment of children of various age groups. According to this act the children were categorised into three groups and the restrictions were imposed on the children according to their categorisation. The categories were decided were as follows:

(a) Under 12 years: children in this category were generally prohibited from taking up an employment;

(b) Between 12 and 15 years: children in this category were restricted to work only five hours a day; and

(c) Between 15 and 17 years: children in this category were allowed to work under certain restrictions;

(2.15.8) Mines (Amendment) Act of 1935:

This amendment was similar to factories (amendment act) in categorising the children working in the mines according to their age. In this amendment restrictions were placed on different categories of children to work in the mines:

(a) Employment of children under 15 years was prohibited;

(b) Underground employment of persons between 15 and 17 years was permitted only on production of certificate of physical fitness granted by a qualified medical practitioner; and
(c) Working time restricted to maximum 10 hours a day and 54 hours a week for work above the ground and 9 hours a day for work underground.

(2.15.9) Employment of Children Act of 1938:

This act was passed to implement the ILO Convention adopted by the 23rd session of ILO (1937) that inserted a special article for India. It said that

"...the children under the age of 13 years shall not be employed or work in the transport of passengers, or goods, or mails, by rail, or in the handling of goods at docks, quays of wharves, but excluding transport by land. Children under the age of 15 years shall not be employed or work...in occupations to which this Article applies which are scheduled as dangerous or unhealthy by the competent authority..."

The introduction of this act prohibited the employment of children under 15 years in occupations connected with transport of goods, passengers and mails on railways. It also introduced the minimum age for handling goods on docks was raised from 12 to 14 years. To make this legislation more effective the prospective child labour were required to show certificate of age to confirm their age at the time of employment.

(2.15.10) Factories Act of 1948:

This act took precedent over other acts regarding the child labour as it repealed all the previous enactment on factories and raised minimum age for employment in factories to 14 years.
(2.15.11) Employment of Children (Amendment) Act of 1949:

This amendment raised the minimum age to 14 years for employing the children in establishments governed by that act.

(2.15.12) Employment of Children (Amendment) Act of 1951:

This amendment was required as a result of the ILO convention relating to night work of young persons. This amendment prohibited the employment of children between 15 and 17 years in night in places such as railways and ports and also provided for requirement of register for children under 17 years.

(2.15.13) Plantations Labour Act of 1951:

This act prohibited employment of children under 12 years in plantations. However this act witnessed a set back as S.24 of Act 61 of 1986 omitted this provision from the Plantation Labour Act.

(2.15.14) Mines Act of 1952:

This act prohibited the employment of children under 15 years in mines. The act stipulates two conditions for underground work. It also required that a person employment in mines should have completed 16 years of age and he/she obtained a certificate of physical fitness from a surgeon.
(2.15.15) Factories (Amendment) Act 1954:

This amendment included a prohibition of employment of persons under 17 years in the night. This act also defined night work as a period of 12 consecutive hours that included hours between 10 p.m. and 7 a.m.

(2.15.16) Merchant Shipping Act of 1958:

This act prohibits children under 15 to be engaged to work in any capacity in any ship, except in certain specified cases.

(2.15.17) Motor Transport Workers Act of 1961:

This enactment prohibits the employment of children under 15 years in any motor transport undertaking.

(2.15.18) Apprentices Act of 1961:

This act is aimed at prohibiting the apprenticeship and training of a person under 14 years of age.

(2.15.19) Bidi & Cigar Workers (Conditions of Employment) Act of 1966:

This act aimed at improving the working conditions of the workers in the bidi and cigar industries prohibits the employment of children under 14 years in any industrial premises manufacturing bidis or cigars. It also prohibits the employment of persons between 14 to 18 years to work at night between 7 p.m and 6 a.m.
(2.15.20) **Employment of Children (Amendment) Act of 1978:**

This act prohibits employment of a child below 15 years in occupations in railway premises such as cinder-picking, clearing of ash pit, building operation, catering establishment and in any other work which is carried on in close proximity to or between the railway lines.

(2.15.21) **Child Labour (Prohibition and Regulation) Act of 1986:**

The Employment of Children (Amendment) Act of 1978 was to be modified by the Child Labour (Prohibition and Regulation) Act in 1986. This act was drafted to address the concerns of many working on the child labour. The salient features of this act were that it

(i) Bans the employment of children, i.e., those who have not completed their fourteenth year, in specified occupation and processes;

(ii) Lays down a procedure to decide modifications to the schedule of banned occupations or processes;

(iii) Regulates the conditions of work of children in employment, where they are not prohibited from working;

(iv) Lays down enhanced penalties for employment of children in violation of the provisions of this act and other acts that forbid the employment of children; and

(v) Intends to obtain uniformity in the definition of ‘child’ in the related laws;
However this act did not go without its weakness. While the act prohibited children from being employed in certain hazardous occupations and processes, it did not apply to so-called family run workshops. The children are prohibited from working in large factories where wages are high, but not in cottage industries, restaurants, and in households, where wages are low.

(2.15.22) National Child Labour Policy of 1987:

The Government of India announced the National Policy on Child Labour in August 1987. The idea of adopting a separate policy on child labour was not only to place the child labour issue on the national agenda but also to formulate a specific program of action to initiate the process of progressive elimination of child labour. The action plan under the national child labour policy comprises the following:

(a) Legislative action plan: This policy envisages strict enforcement of the provisions of the child labour (prohibition & regulation) Act, 1986 and other child related legislations. (b) Focussing on general development programmes benefitting children wherever possible: The policy envisages the development of an extensive system of non-formal education for working children withdrawn from work and increasing the provision for employment and income generation schemes meant for their parents. A special cell, child labour cell, was constituted to take up activities like non-formal education, vocational training, provisions of health care, nutrition and education for working children.
Project-based action plans: To focus on areas known to have high concentration of child labour and to adopt a project approach for identification, withdrawal and rehabilitation of working children. At present the National Child Labour Project Societies are operational in 96 child labour endemic districts of 13 states providing rehabilitation for 2,05,800 working children in 3552 schools.

(d) Grant-in-aid scheme: Under the grant-in-aid scheme of the Ministry of Labour, voluntary organisations are being financially assisted to the extent of 75 per cent of the project cost for taking up welfare projects for rehabilitation of working children. Financial assistance is also provided for conducting action-oriented research projects on child labour that enable preparation of strategic action plan aiming of discouraging further entry of children into employment.

(2.16) Implementation and Problems in Enforcing the Child Labour Act:

Enforcement of child labour act is a responsible task for the government and for the machinery set up under the act. Issues of child labour have, in recent times, assumed importance and many voluntary and non-government organisations have taken up the causes of the child labour. Their agenda consists of sensitising the people and also establishing the questions of child labour. Also the trade unions depreciate the idea of the child labour unless the union leaders and employers are hand-in-glove on employment of child labour. In certain industries the notions of child labour have yet to be seriously taken. This leads to a discussion on two
important aspects namely, the problems in enforcement of child labour act and their solutions

The history of the exploitation of child labour by the employers could be traced to the beginning of industrialisation. With the growth and proliferation of industry and urbanisation coupled with the population growth, the employers have not been able to overlook the child because of inherent advantages of employing child labour. In certain industries like manufacture of carpets, fire-works and crackers, packaging industry, glass industry and the unorganised sector (such as road-side dhabas, restaurants and domestic labourers) employment of children continues like spread widely.

There have been laws to prohibit and regulate child labour in India. The Indian government has been trying hard to implement provisions of the child labour act so that they could prosecute the offenders. Nevertheless, there have been problems in enforcing child labour. They could be described as follows:

(2.16.1) Ignorance about the child labour act:

The ignorance prevails amongst the people in general, amongst employers, industries, parents of children make the implementation of any child labour act difficult. This also makes enforcement and prosecution difficult by the authorities. No concerned effort has been made to dispel this ignorance by adopting effective measures.
(2.16.2) Non-sensitisation of the society:

The issue of child labour is yet to be a sensitive issue in Indian society. The employers, the NGOs and those who are active on child labour issues have yet to be active in sensitising the issues of exploiting the children in work places. Unlike the developed countries, no planned concerted actions to sensitise the issues relating to child labour have been initiated by the Indian government.

(2.16.3) Non-co-operation on the part of the employer:

It is well known that most employers engage the children because of the advantages that accrue to them by engaging children in work places where adults could be engaged. Non-payment of appropriate wages to children and subjecting them to work in exploitative conditions are easy options for the employers. This is particularly true in the case of industries like carpet manufacturing and fire works, where they prefer children because the work involves the nimble hands of the children. Given the advantages the children provide for the employers, it is natural for employers not to co-operate in the enforcement of law. For example, the employers would not maintain any record about employment of children. Even if he possesses the records, the employers would misrepresent children as adults before the inspector thereby frustrating the inspector and his staffs during raids and searches. In cases the employers, during the raids, let the children escape from back-doors. It shows that the employers are less likely to co-operate with the State in implementing the child labour acts as the engagement of children suits their interests.
(2.16.4) Non-co-operation of the parents:

The poverty has always been accepted by many as the primary cause for existence of the child labour. It is also well known that parents, because of poverty, turn their children into the child labour to supplement family income. The parents, therefore, have developed a hardened approach on the question of sending their children to schools instead of to their place of work. The parents also lie to the inspector about the correct or actual age of the child when they are confronted. The parents are more inclined to declare their children as adults so that they could continue their labour and bring home earnings.

(2.16.5) Administrative difficulties in enforcement:

Many inspectors responsible for monitoring the violation of the child labour act complain that they are too busy as they are under-staffed. They complain that they have no convenient facilities for carrying out raids such as government vehicle and they do not have ready facility to verify the facts of a case on which they are usually misled by the employers and their agents. They also complain that facilities for verification of age with the help of prescribed medical authorities are not always available at all places. These administrative problems greatly contribute to the problems of enforcement of the child labour act.

(2.16.6) Leniency shown in prosecution:

The leniency shown on erring employers is one of the reasons responsible for the failure of the enforcement of the child labour act. Very often prosecutions are successfully conducted against erring employers to be convicted. However the
employers are convicted on payment of small amounts of fine, which the
employers could pay easily and get away with it. If major penalties are provided in
the law and such penalties are imposed, it would act as deterrent to other wrong
doers and violators of the law.

(2.16.7) Political interference:

It is not unusual to see, in a politically unconscious society like India, that
employers against whom the actions are initiated, are able to manipulate the
situations by using their political influence from local legislators and party leaders.
Unless the access to political interference is checked by suitable measures, most
prosecutions against employers will continue get interfered. This is particularly
true at the Panchayat, city and municipal levels.

(2.16.8) Legal problems in enforcement:

Though there have been laws aimed at preventing the employment of
children at work places, the enforcement machinery often gets inter-locked with
erring employers on issues of legal interpretation of law. For example, there are
differences of opinion on the applicability of a section, rule and notification or
there may be a case where there are no rules made by the appropriate government.
There may also be cases where it becomes doubtful as to whether the law applies
to a particular employer or industry or not. This leads to a loss of time in
correspondence between various parties involved in the cases. Getting divergent
legal views on one legal issue ultimately delays the resolving and enforcing many
child labour cases.
(2.16.9) Court delays in prosecution:

It has been the experience of many inspectors, who have launched prosecutions for violation of law, that prosecutions remain pending for a long time due to cumbersome procedures. Unless the procedures are altered to quicken the process of prosecutions, there will be no deterrent effect of any punishments for disobeying the legal requirements.

(2.16.10) Media responses to child labour:

While there have been efforts to tackle the problem of the child labour, the approach adopted by the media in covering this issue has been rather less-comprehensive over the past years.

The above mentioned arguments confirm that the State actors in India have failed to deliver what is expected of them. Despite more than 50 years of independence the disparity between the rich and poor continues to widen with the poor and downtrodden pushed to the subsist marginally. The vested interests also scuttle any effort by the State actors to improve the well being of the poor for the fear being their social and economic domain being challenged. The poor are not allowed to have an access to even the State’s educational resources let alone the State’s economic resources. The Indian experience confirms that despite continued educational and other welfare policies aimed at the poor, these policies do not yield any considerable effect as they do not address basic problem of allowing the poor to have an access to education. Despite 50 years of independence in India, education has not been made compulsory as discussed above. As a result of
restricted access to the State’s educational institutions, the State’s policies do not achieve any desired effect for which they have been implemented. As a result, the State’s educational infrastructure has had limited success in reaching out to the children of the poor families. The State’s educational facilities neither provide an alternative strategy to the child labourers nor does it provide with an exit strategy through its educational institutions. Thus the State’s educational facilities have failed to prevent the children of the poor families from getting turned into child labourers.

A manner in which better educational participation of children belonging to the poor families could be secured is through the involvement of various non-State actors - grassroots and community participants - who could ensure the adoption of educational programmes as per the needs of the local community. The present study aims at studying the scope of NGOs involvement in redressing the issues revolving around the child labour such as poverty and education. It also tries to study in details their determination to implement the right to education for the poor children in India. It aims to establish whether these agencies can play an important role in securing education for all. This role however, still does not take away the very importance and the necessary involvement of the State in fulfilling its obligation of securing education for all its citizens.

The next chapter (Chapter III) details the role of the NGOs in addressing various issues of the child labour. It effectively argues for the participation of the NGOs in the process of social mobility along with their role in various developmental and non-developmental programmes.