4.1 Introduction

Children are the most tender, gentle and fragile one and needs to be handled and protected with immense care and delicacy. The welfare of the entire community, its growth and development depends on the health, strength and well being of its children. The prosperity and development of any country would certainly depend upon 'human development' or the well being of its people in general and children in particular, than the development of their military or economic strength or the splendour of their capital cities and public buildings. In order to protect and secure human Rights of the children, Universal Declaration of Human Rights, adopted way back in 1948, had proclaimed that childhood was entitled to special care and protection. The UN Convention on the Rights of the child, adopted in 1989, proclaims in Article 6, that every child has the inherent right to life and that the state parties shall ensure to the maximum extent possible the survival and development of the child.

Article 32 of the Convention on the Rights of the Child mandates that the State parties to recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual,
moral or social development. The Government of India has ratified United Nations Convention on the Rights of the Child in December 1992 and undertakes to initiate measures to progressively implement the provisions of Article 32. Various Constitutional provisions, hundreds of legislations, policies and programmes have been brought into protect the “best interest” of children.

Since centuries child labour is prevailing across the World and it is a Universal problem, its practice in any society is violation of human rights as it is barbarous, illogical, inhuman and degrading the ethos of the children. Thus the child labour is not only a social evil but it is a stigma on the childhood and exploitation of the children.

4.2 Meaning of the Child Labour

Sri.V.V.Giri former President of India characterises that, child labour is a “economic practice” and “social evil”. Firstly, ‘economic practice’ signifies employment of Children in gainful occupations with a view to adding to the total income of the family. Secondly, ‘social evil’ refers to, character of the jobs in which children are engaged, the danger to which they are exposed and the opportunities of development of which they have been denied. In the present situation children are denied even their basic and fundamental needs. Children are innocent, vulnerable and dependent, and they are unable to understand their rights as such, during their formative age they are prone to exploitation. Thus, child labour has become a hard reality and global phenomena. The two main approaches which define child labour

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are (1) Any labour force activity by children below a stipulated minimum age and (2) Any work, economic or not, that is injurious to health, safety and development of children.

Kulashresta says that the ‘Child Labour’ is at times used as a synonym for ‘employed child’ or ‘working child’ whereas Gray Rodgers and Gay standing have classified child labour into four categories which include (1) Domestic work; (2) Non-domestic work and non-monetary work; (3) Bonded Labour; 4) Wage Labour. Child Labour is done by any working child who is under age specified by the law. The word, ‘work’ means full time commercial work to sustain self or add to the family income. Child labour is a hazard to a child’s mental, physical, social, educational, emotional and spiritual development. Broadly any child who is employed in activities to feed self and family is being subjected to “child labour”.

Technically the term ‘child labour’ is used for children occupied in profitable activities, whether industrial or non-industrial. It is especially applicable for activities which are detrimental to their physical, psychological, emotional, social and moral developmental needs. It has been researched and proved that the brain of a child develops till the age of ten, muscles till the age of seventeen and his lungs till the age of fourteen. To be more specific, any activity which acts as a hazard for the natural

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growth and enhancement of these vital organs, can be considered harmful for natural human growth and developments and termed - ‘child labour’.  

According to Committee on Child Labour, “Child labour” broadly defined as that segment of child population in work either paid or unpaid. The term child labour is defined as the work which deprives children of their childhood, their potential and their dignity, and that which is harmful to their physical and mental development.  

Homer Folks, the Chairman of the United Nations Child Labour Committee, defined child labour as “any work by children that interferes with full physical development and their opportunities for a desirable minimum level of education of their needed recreation”.  

According to ILO’s comprehensive definition of child labour, “Child Labour includes children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful education and training opportunities that could open up for them a better future”.  

In Encyclopaedia of Social Sciences (1959) Child labour has been defined “When the business of wage earning or of participation in itself or family support conflicts directly or indirectly with the business of growth and education, the result is
child labour. The function of work in childhood is primarily developmental and not economic.\textsuperscript{10} Children’s work, then, as a social good, is the direct, antithesis of child labour as a social evil.\textsuperscript{11}

The ‘Operation Research Group’ based in Baroda-India defines a child labour that “A Working Child is one who was enumerated during the survey as a child falling within the five to fifteen age bracket and who is at remunerative work, may be paid or unpaid, and busy in any hours of a day within or outside family”.\textsuperscript{12}

Article.24 of the Constitution accepting the fact of prevalent child labour in India provides that “no child below the age of fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment”.

The Committee on Child Labour provides “child labour involves the use of labour at its points of lowest productivity; hence it is an inefficient utilisation of labour power. Child labour represents pre-mature expenditure rather than saving”. It concludes that “the argument that employment of children increases the earning of the family and keeps children away from children is misleading. It glosses over the fact that child labour stunts their physical growth, hampers their intellectual development and by forcing them into the army of unskilled labourers or blind alley job condemns

\textsuperscript{10} Archana Mehendale, “Elimination of Child Labour- A Study of the Role of Law and Non-Governmental Organizations from a Perspective of the Rights of the Child”, Bangalore: National Law School of India University, 1997, p.2.; also see Encyclopaedia of Social-Sciences (1959) p.413.


them to low wages of their lives...Child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful”.13

“Child Labour” according to an elected representative of the people, is no longer a medium of economic exploitation; it is necessitated by economic compulsions of the parents and in many cases that of the child himself. They work because they must, for their own survival and that of their families. Therefore, any attempt through legislation will not be successful.14

4.3 The Concept of Child Labour

The concept of child labour is complex in its nature. The word ‘child labour’ is a combination of two components, i.e. ‘child’ in terms of his chronological age, and ‘labour’ in terms of its nature, quantum and income generating capacity.15

The word ‘labour’ is a controversial concept to define, especially in the context of child labour, child work and child labour often used synonymously. However all work is not bad for children because some light work, properly structured and regulated, is not child labour. This implies that work which does not detract from other essential activities for children such as leisure, play and education are not child labour. ‘Child labour’, therefore, is the work which involves some degree of exploitation namely, physical, mental, economic and social and therefore, impairs the

13 Supra note 11, pp 146-147.
14 Ibid, p.159, also see, Lok Sabha debates, Seventh Session ( 8th lok Sabha), Vol. XXIII, No.22, Col. 329, 331, ( Dec, 3, 1986).
It is pointless to try and distinguish between child labour and child work or between hazardous and non-hazardous employment. Work that is seemingly non-hazardous for adults becomes hazardous for children because they have no negotiating power. With regard to the conceptual and definitional problems concerning child labour there are two schools of thought. According to the first school known as abolitionist school, education should be made a fundamental human right of every child in 5-14 age group, and any child who is out of school should be treated as a potential working child. They feel that elimination of child labour and attainment of compulsory primary education are two sides of the same coin and one cannot be achieved without achieving the other. According to them, the distinction between hazardous and non-hazardous work is immaterial.

According to the second school known as reformist school, child labour is a ‘harsh reality’, which means, given the socio-economic conditions of India (like poverty, unemployment and illiteracy) it is impossible to root out the problem of child labour altogether. They feel that elimination of child labour should be viewed as a long-term goal to be achieved progressively. Hence, they advocate a dual approach of prohibition of child labour in hazardous work and regulation of it in non-hazardous work.

16 Ibid, p.145.
4.4 Forms of Child Labour

Children work in three sectors of the economy\textsuperscript{20}

(a) The Agrarian sector: The agrarian sector in India is characterised by poverty, illiteracy, unemployment, highly skewed distribution of land-ownership, traditional modes of production, prevalence of old customs and traditions, system of usury, etc. Several forms of child labour such as invisible, migrant, bonded etc. emerge from this sector, which encompasses such time-consuming activities for boys as looking after animals, gathering wood and fodder, sowing and reaping, protecting fields from pests, weeding, etc. For girls, the activities are milking animals, cooking, and looking after younger children. The rural child is working child and work is a fundamental part of his or her existence, irrespective of whether it is non-monetary. It also, therefore, means that education is a casualty for such a child.

(b) Industrial sector: Industrial sector is a growing level of urbanisation as a result of migration from rural to urban areas and from smaller towns to bigger cities, where industries are being set up. Another feature is the dispersal of industries into family-based units. This again causes the emergence of various forms of child labour, such as invisible, wage-based child labour working under conditions of acute exploitation in the industries, children of marginalised families working as self-employed children or under-wage employment in the services sector.

(c) Service sector: The services sector actually has a certain overlap with the industrial sector. A majority of children in this sector are self-employed because its

very nature provides relief from direct supervision. It also provides autonomy and freedom of control over resources. Such children are found to be working both in the urban as well as rural areas. In this sector, child labour can take such forms as invisible, self-employed or under wage-based employment, with children changing jobs at regular intervals. This is particularly true in urban areas.

The UNICEF has classified child work into three different categories.21

(i) With in family in which children are engaged without pay in domestic/household tasks, agricultural/pastoral work, handicrafts/cottage industries etc.

(ii) With the family, but outside the home in which children do agricultural/pastoral work which consists of (seasonal/full time) migrant labour, local agricultural work, domestic service, construction work and informal occupations - e.g., laundry/ recycling of waste - employed by others and self-employed.

(iii) Outside the family in which children are employed by others in bonded work, apprenticeship, skilled trades (carpet, embroidery, brass/copper work), industrial/unskilled occupations/mines, domestic work, commercial work in shops and restaurants, begging, prostitution and pornography.

Each Form of child labour has its own peculiar features, which are in the forms of domestic labour, agriculture labour, migrant labour, bonded labour, wage based labour, self employed labour and invisible labour.

21 Ibid, p.15.
4.4.1 Elements of child labour

Child labour involves one or more of the following elements\(^2\): (1) Work by very young children, (2) Long hours of work on a regular full-time basis, (3) Hazardous working conditions (Physically and mentally), (4) No or insufficient access, attendance or progress in school, (5) Abusive treatment by the employer, (6) Work in slave like arrangements (bonded labour)

4.5 Factors leading to child labour

The Indian problem of child labour is not a result of any single isolated factor. It is a multi-dimensional problem that involves various reasons contributing to it in a variety of ways. Some of the factors contributing and responsible for prevalence and perpetuation of child labour are: continued poverty, illiteracy and ignorance of poor parents, population explosion-large family size, low family income, the tradition of making children learn the family skill, lack of political will and weak/tardy enforcement of laws, un-employment/under-employment, migration, absence of provision for universal compulsory primary education etc.\(^2\) Thus, the problem of child labour is acute and multi-dimensional. The Government of India has conceded the existence of child labour as “harsh reality”.\(^2\) The debate about whether child labour should be banned or regulated is not new. It surfaced in 1985, when the Government of India claimed that ‘child labour was a harsh reality’ and found it more prudent to

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\(^2\) Supra note 11, see also Anker and Melkas, “Economic Incentives for Children and Families to Eliminate Child Labour” 32 (ILO, 1996)


\(^2\) Ibid, see also Gurupada Swamy Committee Report on Child Labour (1979), Ministry of Labour, Government of India.
regulate rather than ban it; the Child Labour (Prohibition and Regulation) Act, 1986 - an Act without teeth and innumerable loopholes - was passed.25

Child labour has been in existence since time immemorial in one form or the other. In pre-industrial era children used to help their parents in family work, farm operations or family occupations. Even in the post industrial era, it was existing on account of its cheapness and profitability of its employment.26 P.A. Sangma former Lok Sabha Speaker, says 'child labour practice was only a symptom of a more deep-seated disease of a complex nature'. Across the globe, to a less or greater degree, visible or invisible, admittedly or otherwise child labour exists.27

Child labour is a complex socio-economic and universal phenomenon. It is the need of the hour to find out the causative factors leading to child labour in a scientific, rationalist, and pragmatic approach. It has been accepted that the intrinsic nature of the worst form of child labour is bearing on socio-economic and other multiple causes. It is a mixture, of both illiteracy and poverty. The problem of child labour is the symptom of the disease which is wide spread due to exploitative structure, lopsided development, iniquitous resource ownership with its co-relates of large scale of unemployment and abject poverty among the countries. The existing international economic order perpetuates this 'harsh reality' because powerful multi-national corporations operate and use child labour directly or indirectly, to maximise profits.

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25 Supra note 17.
26 Supra note 23.
27 Sheela Srivastava, “Child Labour as a Socio Economic Problem in India” cited in Mahaveer Jain, Sangeeta Saraswal “Elimination or Empowerment-Child Labour from Different Perspectives” New Delhi, p.4.
and minimise costs. The poor third world countries faced with acute foreign exchange crisis permit and encourage export of goods using cheap and vulnerable child labour in the hope of improving their foreign exchange reserves and balance of payments crisis. Indian carpet industry, lock industry, gem and precious metals, etc. are examples. It is true that extreme poverty and employment force the poor to send their children to work as a part of their survival strategy. Greed for profit and desperate competition for markets in the developed world encourage employers to use child labour for economic advantage. Lack of firm commitment to the goal of eradication of child labour results in a haphazard and ineffective intervention from the government which is quite conducive to the interest of M.N.G. and other vested interests.\textsuperscript{28}

There are various socio-economic and cultural factors which force children into work and these factors can be broadly classified into supply side factors, refer to the conditions under which families are engaging children in work. i.e. families force them to send their children for work. Demand side factors refer to the preference of employers for employing children.

\textbf{4.5.1 Poverty}

Poverty is the womb of all illness. In addition, poverty is a double edged weapon in that the poor victim of illness loses his daily winning capacity as well making him/her poorer at the end of the day.\textsuperscript{29}

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Poverty as an extreme human condition has always evoked immense social interest. Poverty is a single major cause of child labour; this is a major contributing factor and has many dimensions. The Institution of Public opinion conducted a survey in 1969, which showed that 41.2 percent of Indian population was under poverty line. Half of these belonged to the Scheduled Caste and Tribes. In village a vast majority of agriculture labour belongs to these communities.

A Seminar on the subject organised by National Institute of Public Co-operation and Child Development, New Delhi on November 25 to 28, 1975 also came to the conclusion that, millions of families were below poverty line and they had to deploy their children in the labour market in order to eke out a bare subsistence.

The phenomenon of child labour clearly demonstrates vicious cycle of poverty and unemployment. Poverty is the main reason for which the children are forced to work. Their income is necessary for the survival of their family members and also of themselves. Poverty is most often supplemented by other socio-economic factors to expose the child to manual jobs.

Millions of people in this country live in a state of abject poverty, without food, shelter, employment, health care and education. According to a UN Report, “1/5th of the population in a developing country, like ours, are hungry every night,

33 Supra note 29, p.63 and also see Jain and Chand (1979).
1/4th do not have access to basic amenities like drinking water; and 1/3rd live in a acute poverty".34 According to the Human Development Report 2005, every hour 1200 children die, one Crore children every year do not live to see their 5th birthday.35

Another important factor for the perpetuation of child labour is the rising rate of dropouts from school of children of the poor families. The high rate of dropouts is invariably a consequence of poverty. In most places, schools are situated in very remote areas and are not accessible to a sizable population. There was lack of infrastructure facilities like building, equipments, furnitures, teachers, staff, drinking water, toilets etc. Pathetic conditions in school education system hold little attraction for children. In rural areas schools and classes do not run regularly due to the absence of teachers frequently. Schooling of children becomes burdensome for the poor families and economically expensive and more so schooling the children deprives them of the income that accrues from child labour. The poverty alleviation programmes launched by Government through NGO’s are not properly implemented and its benefits do not reach the real, needy and deserving sections of the society, consequently children are economically exploited.

Most traditional families believe that a child is born to them to earn more for family. The child is considered as just another source of income and traditional business families in fact put the child into the business rather than send them to

35 Ibid.
school. Under the pretext of training them, they make them work long hours, sometimes resorting to physical torture in case the child makes mistakes.

Rampant unemployment and under employment of parents who force their wards to some odd jobs to supplement the meagre income. Thus, whenever the family is in need to fulfill its basic needs like food, clothing and shelter, it is inevitable for the members and compelled to support the family income, by pressing the children to work and earn wages. The rural landless poor and urban destitutes send their boys and girls for wage earning.

There is another argument which advocates that, poverty is a cause but often "perceived poverty" is a cause for child labour. If the poverty was the only cause of child labour all children from poor families would have been working as child labour. Incidence of child labour is rare than the incidence of poverty. Poverty and child labour thus always begets each other and tend to reinforce. Thus child labour is not only an economic compulsion of poor families, it is also the consequences of extreme social and economic exploitation.\textsuperscript{36} Poverty of the households may be due to several factors:

(a) Inadequate income of the family;

(b) Unemployed adults;

(c) Absence of scheme for family allowances; and

(d) Large family etc.

Poverty and lack of education are the two primary reasons for the ever growing social malice of child labour. Parents in the poverty zone give birth to money-making machines, and not children. They earn more on the streets from begging. Then as they grow they make beggars and eventually send them to employers. Thus children living in poverty are deprived of many of their rights: survival, health and nutrition, education participation and protection from harm, exploitation and discrimination. Hence poverty deprives children of their rights.37

Those who are at the bottom of poverty line are supposed be in abject poverty and the economists and planners often plead for a determined attack to reduce their misery. Often in their enthusiasm to make Five Year Plans attractive, the planners fail to distinguish between schemes realistic radicalism and political opportunism.38

4.5.2 Illiteracy and Ignorance

Illiteracy and ignorance is the bane for the society. Even after 60 years of Independence, Indian people are continued to lead a dark life. As far as literacy is concerned, India is lowest ranked in the world. As per 1991 Census literacy rate is 52% and as per 2001 Census it is 64.8% - Male Population is 336,533,716 - 75.3%, Female Population is 224,154,081 - 53.7% and Rural literacy is 58.7% and Urban literacy it is 79.9%. Kerala State records highest literacy rate of 90.9% and Bihar records lowest literacy - 47%.

38 Supra note 29, p.31.
The higher rate of illiteracy shows the ignorance of parents, so they push their children to work force which is a supply factor and contributory cause for child labour. Parents do not think better future of their wards. Especially rural/migrated parents, tribal and people staying in slum areas do not understand their responsibilities and hence children are deprived of their right to education and development.

There is a very close nexus between child labour and illiteracy and they go hand in hand and each one supports the other. Same studies have revealed that most of the child labourers are either total illiterate or partial illiterate and their parents are illiterate. No study has ever found a child labour coming from an educated family. Greed for money, and gross ignorance on the part of the parents in not sending their children to school is a sad commentary and condemnable. Adam predicted that, 'Child labourers today will be the paupers tomorrow, they are the boys and girls who will grow up without either formal schooling or knowledge of trade, sooner or later their youthful energies exhausted they will become dull stiffless and driftless.\(^{39}\) Thus, illiteracy and ignorance of the parents and their attitudes towards educating the child is an important factor contributing to child labour.

Due to ignorance, parents of working children often have little faith in the quality of education available to them and may perceive little use in schooling where prospects of better paid employment after several year of education remains uncertain.\(^{40}\)

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\(^{39}\) *Supra* note 31.

\(^{40}\) *Draft Declaration and Agenda for Action of the National Consultation and Child Labour, Delhi, 4-5 August, 1997.*
Impoverished and illiterate parents are of the view that more children means more hands to work to bring extra money. Due to illiteracy of the parents/guardians the importance education has not yet been realised and appreciated by them. Parents are also ignorant about the facilities and assistance providing to children by the Government for helping them to acquire free education in child labour school funded under National Child Labour Project and UNICEF. Illiterate and ignorant parents do not understand the need for wholesome proper physical, cognitive and emotional development of their child. They are themselves uneducated and unexposed, so they don’t realize the importance of education for their children.

Due to high degree of illiteracy and ignorance of the parents, the children are deprived of getting proper counselling for building up their future career and at the same time of economic necessity, the children move into the job market to eke out their subsistence.\(^{41}\)

4.5.3 Population Explosion and Large Family Size

In a developing country like ours, every thing is regulated by population. Population explosion is an important and major factor for the problem of child labour. Parents due to their ignorance believed that children are God Gifted, great human resource and continued to go on increasing the family size is a misconception and they understand that more children means more income, they generate. Consequently large family size is burdensome and liability for them especially for poor, to tribal backward families. These people are ignorant to provide basic resource like better

\(^{41}\) Supra note 28, p.14.
quality of life, education, health care facilities etc. and progressive development of their children has been a myth for them.

There is no effective family planning programme in India and no check on birth control which leads to poverty and parents due to poverty are forced to send their children to work and there by parents cannot fulfill needs and aspiration of children and some children run away from house, some will become delinquent and develop bad habits.

Thus, parents are forced to send little children to hazardous job for reasons of survival, even when they know it is wrong. Monetary constraints and the need for food, shelter and clothing drives their children in to the trap of premature labour. Over population in some regions creates paucity of resources. When there are limited means and more mouths to feed, children are driven to commercial activities not provided by their development needs.\(^\text{42}\)

**Population Statistics:**

According to 1971 Census, population of India was 548 million and in 2001 it was 1028.70 million. By the turn of 2016 the population is expected to reach 1264 million. Such a massive increase in numbers will affect economic development and require massive inputs for social services, civic amenities and infrastructure development.

Child population records 398,306,000 and interpretation of 2001 Census figures of the National Labour Institute indicate that, out of 203 million children

\(^{42}\) http://www.childlabour.in/causes of child labour .htm.
between the ages of 5 and 14, 116 million are in schools, 12.6 million are in fulltime
employment and the status of 74 million is unknown. Most, if not all, of the 87
million, not in school, do house work on family farms, work along side their parents
as paid agriculture labourers, work as domestic servants, or are otherwise employed.43

4.5.4 The tradition of making children learn family skills

Most traditional families believe that a child is born to them to earn more for
the family. The child is just another source of income and traditional business
families in fact put the child into business rather than send them to school. Under the
pretext of training them, they make them work for hours, sometimes resorting to
physical torture in case child makes mistakes.

There is a myth that child labour is necessary to preserve traditional arts and
crafts. Children bonded to families or who are hired labour are never taught the actual
craft. Learning of a particular art or craft by children within their families, as part of
their socialization, should be integrated with their education. Children should not be
sacrificed at the altar of preserving traditional art.44 There is another argument which
advocates that work equips the children with skills for the future is a contributory
factor to child labour.

The tasks allotted to child labour are simple and repetitive such as labelling,
 filament, rolling, fetching and carrying. “Skill” is misnomer when applied to the back
breaking toil and drudgery children engage in. The hard, physical labour, exposure to

43 H.Kamalakar Halambi, Sanjiv Kumar, “Hand Book for the Orientation of Employer’s Organization
Members and Office Bearers and Elimination of Child Labour” International Labour Organization,
ILO-IPEC-Karnataka Child Labour Project (Funded by Government of Italy) New Delhi, 2008, p.56.
44 Ibid, p.80.
the elements like dust, toxic, fumes and chemical solutions damage children’s health irrevocably, shortening their life span and impairing their development. Research shows that 95% of the children do not continue in the same jobs when they are either adolescent or adult. Worse many of the sectors employing child labour forcefully eject such individuals who have crossed their age of childhood.45

The proviso annexed to sec.3 of Child Labour (Prohibition and Regulation) Act, 1986 is often and invariably misused, which keep the occupation, work or process that is carried on by the occupier with the aid of the family out of the preview of the Act. The intention of the Act is to exempt a family enterprise in which all or several of the members of the family are involved. Thus proviso is abused by employing children in respect of families and work experience acquired by children.46

4.5.5 Unemployment and Under Employment

Child labour is as much the cause as consequence of adult unemployment and under employment. It supplements and buttresses the family income. Child labour is not only a subsidy to industries but a direct inducement for payment of low wages to adult workers. The entrance of the children into the labour market reduces the opportunities of employment for the adult and lowers the bargaining power of adult workers. Child labour involves the use of labour as its point of lowest productivity. Hence it is an insufficient utilisation of labour force. The argument that employment

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45 Proviso to S.3: Provided that nothing in the section shall apply to any workshop wherein process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from Government.
of children increases the earnings of the family and keeps children away from mischief is misleading. Indeed, the practice of child labour deprives children of educational opportunities, minimises their chances for vocational training, affects their physical growth, hampers their intellectual development.\footnote{Supra note 23, pp.7-8.}

The employment of children adversely affects not only the employment of opportunities of others, forcing many to remain jobless in the present age but also considerably lowers the rates of their wages. The Report of Committee on Child Labour accepted the above caption. It at once supplements and buttresses the family income\footnote{Supra note 11, p.152, see also Report of the Committee on Child Labour, (1979), p.9.} child labour increases the unemployment among the adults and reduces their income and on the other hand the unemployment and low wages of adults force them to put their children to work in order to boost the family income. Thus, child labour simultaneously increases and reduces the family income, but in reality it reduces rather increases that income. Thus, child labour is both a cause and consequence of both adult unemployment and under employment. Some studies and experts observed that, if children are eliminated from the labour market in India, employment opportunities for at least 20 million adult unemployed workers would be increased.\footnote{Supra note 28, p.67.}

**4.5.6 Weak and Tardy enforcement of the child related (child labour) legislation**

Although plethora of legislations have been enacted for prohibition of child labour, but due to certain lacunae, shortcomings and week and defective enforcement mechanisms, the practice of child labour is on increasing trend. The Child Labour
(Prohibition and Regulation) Act is intended to regulate child labour rather abolish. Proviso of Sec.3 is abused by the employers/vested interests. Various studies show that enforcement of child labour legislation faces a number of critical problems.

The Child Labour (Prohibition and Regulation) Act is a social legislation, benefiting and protecting the core rights of children and for obvious reasons, social legislations are difficult to enforce and implications of enforcement are deep rooted and complex. The enforcement agencies do not understand the spirit of the law for which it is enacted. Neither the employers of child labour nor the enforcers, nor the parents understand child labour as an undesirable thing. Since the practice of child labour is interlinked with unorganized sector, its enforcement is difficult one, as the units do not possess licence and registrations, employers will not maintain records of child workers and consequently enforcers cannot prosecute the employers. Inspectors\textsuperscript{50} are not trained, conversant with child psychology and problems. So their insensitive approach leads to increase of child labour cases.

Prosecution of cases as against the employers are very less. Even if they are prosecuted Inspectors are unable to produce evidence and courts rely on production of evidence. Thus, employers taking the benefit of doubt in majority of cases go scot free. There is no co-ordination between Labour Department and prosecution and Judiciary. Due to the human weakness, Inspectors could be properly managed by the employers. Many employers, especially from small units, are often let off because;

\textsuperscript{50} Under Section 17 of CLPRA Act, Inspectors are appointed and they are deemed to be public servants.
they claim that the children were their family members. The proviso to Sec. 3 of Child Labour (Prohibition and Regulation) Act helps them in this claim. In larger units, the employers generally claim that the children had come to meet their parents or to provide lunch to their parents and were not working there.\textsuperscript{51} Thus, there is no evidence that the child was working in the premises and courts let off the employers. Violation of this legislation is not a cognizable offence and burden of proof rests on the prosecution, hence it is difficult to prove.

There is a strong reason for failure of prosecution due to lack of evidence relating to the age of the child. The child’s age has to be proved in the courts. Usually, in rural places the children do not have a birth certificates\textsuperscript{52} and some schools/institutions will issue a fake/bogus certificates showing upper age of the child in order to escape from prosecution. Therefore there is no reliable evidence to prove the age of the child. In such cases Inspectors are required to get the child medically examined at the cost of the employer. Due to strict compliance of this procedure, there is a delay in filing of cases.

In very few cases, courts convict the employer just by imposing a fine, but in very rare case convict the employer by imprisonment. Thus, courts tend to pass lighter sentences in child labour matters. This is also due to the insensitivity of the Judiciary. The implementation of child labour legislation is entrusted to Inspectors of Factories/Labour Department. These Inspectors are over burden and enforcement of

\textsuperscript{51} Supra note 46, p.179 and also see Meera Gupta “Special Problems of Enforcement of Child Labour Laws and Regulations”, Vol.XX, No.7-12, Awards Digest; Journal of Labour Legislation,

\textsuperscript{52} Ibid, p.181
the Child Labour (Prohibition and Regulation) Act is not their priority/agenda. The reasons best known commonly, there is rampant corruption in the enforcement machinery. Caste factor and class bias are also negative indicators for non prosecution of employer. No accountability upon the enforcers nor they have punished under law. Due to absence of checks and balances, there is every reason for encouragement and sustenance of child labour.

Another reason for non-availability of evidence and failure of prosecution is that Inspectors are required to draw panchanama (mahazar) for prosecution of employer and instructed to get two witnesses preferably adjoining owners of shops who may not be willing to stand as witness and they do not want to spoil their cordial relation with the neighbouring employers and even when Inspectors force them to sign as witness, they simply sign and subsequently become hostile and in some cases stranger witnesses will not respond for the prosecution of employers.

Failure to provide required infrastructure to the enforcement people also promotes for continuation of child labour. Insufficient strength of Inspectors and not providing training/orientation for Inspectors in order to sensitise them to the complex problem of child labour leads to increase of child labour. Even concern department fail to provide stationeries, hand books, course materials and support and security etc. to the enforcers.

4.5.7 Migration and Child Labour

There is a close nexus between migration and child labour and migration is one of the major contributory factors to child labour. Migration refers to the
movement of workers from one place to another. There are various factors responsible for migration of parents and children. Again poverty, large family size, with low family income and non availability of work in the village compels the parents to migrate to urban areas. The adverse financial position of parents compels them to borrow from the village money lender who charges high rate of interest on the loans advanced to the villagers and a pressure from the side of money lender to repay the debts is likely to compells the parents to send their children to earn, since no work is available in the villages.

Due to liberalisation, privatisation and globalisation and scientific, technological advancement and development in industries, Village handicrafts no longer continued and attraction of city life and comparatively higher income opportunities are reasons for migration of parents to cities. Consequently parents due to the economic compulsion induce their children to work at the nearest area of the city or send them to sub-urban places. Debts and financial liabilities, economic compulsion and to seek better employment, to learn technical work and no work at the place of origin were the factors leading to migration and migrant children work and earn concentrating mainly on constructions and in service sectors, domestic works etc. and some child labourers work as, hawkers, shoeshine boys, balloon sellers, flower vendors and some migrant children are beggars, ragpickers etc. When the family head or others move to urban cities, such parents make with their children and they face the problem of lack of shelter, hunger, unemployment etc. which forces the children to join the labour force. So migration is both push as well as pull factor for child labour
4.5.8 Employers Preference for Child Labour

It is one of the demand factors for causation and perpetuation of child labour. The most important objective of the employer is to earn more profit on limited expenditure. Employer perfectly knows that child labour is cheap and adult labour is expensive. Hence he prefers to employ child labour rather than adults by payment of low/minimum wages and displacing the adults from labour market. He prefers to employ child labour as children are innocent, docile, disciplined and sincere and don’t have any union and cannot question the authority of employer.

Employer knows that economic compulsion of the families of having extreme poverty. They watch out for exploiting the parental economic compulsion and knows that children of backward families are more tolerant can be put on difficult jobs for long hours, even on low wages. Secondly, they have understood the productive quality of children who do not raise grievances pertaining to their working conditions.53

It is a employers’ greed/avarice to exploit un-unionised disciplined child workers who work for long hours and for lower wages to make more profit at the cost of health and strength of children. There is also another reason that children work faster and have ‘nimble fingers’ needed in certain types of work especially for making knots in carpets than the adults.

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Anker and Melkas have given following reasons for employers preference for child labour,\(^{54}\)

**(A) Awareness and Innocence**

(i) More docile and less troublesome. (ii) Greater willingness to do repetitive, monotonous work. (iii) More trustworthy and innocent, so less likely to steal. (iv) Less absenteeism (none if bonded). (v) Do not form trade union.

**(B) Tradition**

(i) Tradition of hiring child labour by employers. (ii) Traditional occupations have children working alongside parents. (iii) Social role of employer to provide jobs to families in the community. (iv) Employers need labourers. Children are available and ask for jobs so why not higher child labour

**(C) Physical Characteristic**

(i) Better health as young, health is not spoiled by work.

(ii) Irreplaceable skills (though this notion is not true in fact).

### 4.5.9 Defective Legislation, law, policy, Plans and programmes

Equally this factor leads to perpetuation of child labour because of lacunae in laws, policy and plans do not address the burning problem of child labour. Art. 24 of

the Constitution\textsuperscript{55} intended for abolition of child labour where as Sec.3 of Child Labour (Prohibition and Regulation) Act 1986\textsuperscript{56} is designed to the regulation of child labour rather than prohibition. Thus there is a contradiction between each other and leads to confusion and ambiguity. Further Sec. 3 of the Act prohibits and Sec.6 of the Act regulates the conditions of work of children, again there is ample scope for child labour. Further the proviso annexed to Sec. 3 of the Act is often and invariably misused which keep the occupation, work or process that is carried on by the occupier with the aid of the family, out of the purview of the Act. This proviso is abused by employing children.

The Second National Commission on Labour has also not recommended complete ban on the employment of children altogether. It has only stressed on providing universal education as means to tackle the problem of child labour. The Commission has therefore recommended the repealing of the existing Child Labour (Prohibition and Regulation) Act 1986 with a new model Act, “To prohibit the employment of children in all employment and regulate employment of children where permitted”.\textsuperscript{57} This recommendation is clearly contradictory as once the

\textsuperscript{55} Article 24 of the Indian Constitutions states that “No child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment”.

\textsuperscript{56} Sec.3 of the Child Labour (Prohibition and Regulation) Act 1986, (61 of 1986) “No child shall be employed or permitted to work in any of the occupation set forth in Part A of the Schedule or in any workshop wherein any of the process set forth in Part B of the Schedule is carried on, provided that nothing in the section shall applied to any workshop wherein any process is carried on by occupier whether with the aid of his family or to any school established by or receiving assistance or recognition from Government”

employment of children is prohibited in all employments the question of regulation does not arise.

There is no provision for rehabilitation of rescued child in Child Labour (Prohibition and Regulation) Act. It does not say what should happen to the child labourer once the employer is prosecuted. Due to defective and unsuitable plans and programs of development particularly on educational policies, objectives are not met successfully. Most of the schemes whether poverty elimination or literacy campaign do not fulfill the local needs of the people and schemes meant for them being not fit for their socio-economic and cultural environment are not fruit bearing.\textsuperscript{58}

Under National Child Labour Project, child labour enforcement drive-raids are not periodically conducted and lack of convergence among the various departments which have to play their vital role leads to prevalence of child labour. Neither elected representative nor higher officials of the department take part in the enforcement drive. The object of the National Child Labour Project is rehabilitation of rescued child labourers at child labour school. Any legislation for totally prohibiting child labour amount to hardships to the poor parents and their children’s unless they are rehabilitated or their families are provided alternative source of income. Most of rehabilitation programme today aim at improving the working environment of the child and are hence helping to perpetuate this evil. The ultimate aim ought to be the abolition of child labour and all governmental programmes must work towards fulfilling this objective, child labour should not be under the jurisdiction of the

\textsuperscript{58} Supra note 28, p.66
Ministry of Labour. As the rehabilitation programme comes under Education Department, Health Department and Rural Development etc. Co-ordination among these Departments is often a major hurdle. Therefore a child labour should be under the Ministry of Welfare because it should be better suited to deal with the problem in its various dimensions. Land reforms programmes should be strictly implemented. Land to the landless must be provided, as most of the families of child labour are landless. Government of India continued to add few more occupations and processes in the list of existing prohibited ones and increasing the number of child labour projects under the National Child Labour Project is nothing but a mockery. It is an indicator of increase and aggravating the problem of child labour just like increase in establishment of police stations, which shows the increase in the commission of crimes and increase of hospitals signifies increase of diseases respectively. It seems, at present Government has no intention to ban the practice of child labour atleast in the near future.

4.5.10 Low Educational Attainment

"Child labour is the enemy of child education". Proclaims Krishna Iyer. J, "The right to life, which includes the right to education and development, interdicts child labour which not only risks life opportunity for growth but also denies those

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59 The Ministry of Labour and Employment, Government of India, on the advice of the Technical Advisory Committee issued a notification, prohibiting the employment of children below 14 years in service sector including domestic labour w.e.f October 10, 2006.

60 Under this policy the Government has now 250 projects in 21 States.
freedoms and facilities sans which a child is condemned to midgetry, moronism and penury of creativity.\textsuperscript{61}

Our education system perpetuates the domination of the privileged few over the entire society, while the children of poor people forced to remain uneducated. A child which is supposed to be at school but, due to poverty poor children are forced to work. Therefore it is rightly said that "all children who are out of school are child labourers". After a ceremonial ruling laid down by the Constitution Bench of Supreme Court in the case of \textit{Unnikrishnan v. State of Andhra Pradesh}\textsuperscript{62} that the right to education is a fundamental right that flows from the right to life in Art. 21 of the Constitution, every child/citizen has right to free education up to the age of 14 years. This Judgment was upheld and confirmed by the 11 Judge Constitution Bench of Supreme Court in \textit{TMA Pai Foundation v. Union of India}.\textsuperscript{63} Government of India in 2002 amended the Constitution by 86\textsuperscript{th} amendment.\textsuperscript{64} In pursuance of this in August 2009, Parliament has enacted Children Right to Free and Compulsory Education Act, 2009 which also suffers with certain infirmities and there by depriving children from the benefit of education which leads to child labour.

Jomtein marked the emergence of an International consensus that, education is the single most vital element in combating poverty, empowering, protecting children from hazardous and exploitative labour and sexual exploitation, promotion of

\textsuperscript{61} \textit{Supra} note 11, p.171.
\textsuperscript{62} (1993) ISCC 645.
\textsuperscript{63} AIR 1996 SC 2652.
\textsuperscript{64} Article 21A of The Indian Constitution, “The State shall provide free and compulsory education to all children of the age 6 to 14 years in such a way as the State may, by law, determine”.
human rights and democracy, protecting the environment and influencing population growth.\textsuperscript{65}

4.6 Conclusion

The phenomenon of child labour is multi-dimensional complex problem and deep rooted in the socio-economic fabric of the society. So it may not be wise to rely on one single approach to deal with it. There are many factors responsible to this complex problem, so a comprehensive integrated approach is required to tackle and combat child labour. This can be done only by bringing attitudinal change, and social awareness and rigorous campaign against the problem of child labour. Thus, it requires honest effort and strong commitment and support from all concerned.