CHAPTER-5

EVOLUTION OF PRACTICE OF CHILD LABOUR

5.1 Introduction

The child labour is a complex and a controversial issue. The existence and perpetuation of child labour is a challenge to the human society. It is really a curse and stigma upon the society; disgrace for the world of mankind, a malady which may destroy the economic backbone of a country. The practice of child labour would be an impediment in the way of human development in almost all the third world countries including India. The issue of child labour is one of major human rights issues and a highly emotive one. The problem of child labour in underdeveloped and developing countries is quite acute and abnormal and it is a global phenomenon which exists in almost all the countries of the world, but there is difference only in degree.\(^1\)

In the past, child labour has been a part of the social organization in which all members contributed their labour to produce for the subsistence and survival.\(^2\) In rural subsistence farming, the work of the child was formal part of labour, which was considered necessary for the reproduction of the system and value of labour taken as part of child’s socialisation for reproduction of the labour power.\(^3\)

The phenomenon of child labour is a symptom of the disease and a consequence of exploitative system, operating at the national and international levels,

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\(^3\) Ibid.
lopsided development, uneven resource of ownership, correlating of large scale unemployment and abject poverty among the nations.  

The practice of child labour in India or in any country of the world is an age old phenomenon. In pre-industrial, agricultural society of India, children worked as helpers and earners in hereditarily determined family occupations under the benign supervision of adult family members. The work place was an extension of the home and work was characterised by personal informal relationships. The task and technology of that work involved was simple and non-hazardous.\(^4\)

Prevalence of child labour in the different periods has marked the history and presents a vivid account of child’s sad plight. It is imperative to trace the evolution of the problem of child labour in different periods and steps taken by the then society, and government which could be pertinent for the elimination of child labour.

5.2 Child Labour in Ancient India

Since ancient time, child labour existed in the Indian society in one form or the other. But the pattern of existence was to some extent different in ancient India. Then, the child labourers were regarded as ‘child slaves’\(^\). Slaves of tender ages, may be less than eight years of age were purchased by the masters for rendering the low and dishonourable work. Slavery (Dasya) was one of the most pernicious practices that had been in existence since ancient times which was an affront to humanity and human dignity. By this custom some class of human beings were to be the owners and masters of some less fortunate human beings, and treated them as chattels. The

children were treated similarly. During this period children of slaves were born as slaves, lived as slaves and died also as slaves, unless their master was pleased to release them from the clutches of slavery. Then the law-givers except Kautilya, were silent on this point and did little to abolish this inhuman practice of keeping child slaves.\(^5\) *Mlechhas* were not only backward, but also uncivilized.\(^6\) During that period child slaves could be purchased or sold like commodities. *Mlechhas* may sell or mortgage their own offspring, but an *Arya* shall never be subjected to slavery. Selling or mortgaging an *Arya*, who is not born a slave, by a kinsman is punishable by fine.\(^7\)

Further, if an *Arya* child was sold or pledged with some one, then all the parties to the contract, including witnesses were liable to be punished and the degree of punishment was to depend upon the status of the parties.\(^8\) Kautilya considered child slavery as degrading to make children work on such jobs and hence, prohibited the purchase and sale of slave children.

However, a humanist approach towards children was also recognised in Indian culture. Thus, ancient Indian Jurisprudence emphasised that there could be no real gift or sale of one’s child and unjustified parting with the child was unlawful. Kautilya prescribed that it is the duty of the village elders to ensure proper development of the infants. The collectivism of joint family life provided shade of protection to them and

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\(^5\) J.C. Kulshresta, “*Child Labour in India*” 1978, p.48.
\(^6\) Koutily Artha Shastra, Part –III Chapter -13, Prakaran 65,
\(^8\) Supra note 6.
the ultimate protection of the child and its personality came from king because of the precept that king is fountain of strength to the weak.\textsuperscript{9}

Kautilya realised that children were not physically fit to do ignoble work and rendering such work by them was considered in-human and degrading. So he strictly prohibited the purchase or sale of slave children of less than 8 years of age.\textsuperscript{10} Although Kautilya was not in favour of employment of children, still they were employed in large scale in agriculture and domestic services. During Ancient India, children were exploited by their employers and the wages were paid to them was very low. There was no definite form of payment of wages. It was paid either in cash or kind, as such then barter system was practiced.

Labour legislation of the Dharmashastra shows that public conscience was alive to the fundamental inequality in distribution of wealth because these protective laws were themselves derived from ancient tradition. The economic status of the slaves, hired labourers and unskilled was worse.\textsuperscript{11}

There was a harsh social reality of child’s condemned life. Prior to the nineteenth century, there was a considered notion to treat child as human chattel. The child was human property of the parents and owed them total subservience. The parents enjoyed an absolute right to the child’s services and earnings and full control over the child’s person and property.\textsuperscript{12}

\textsuperscript{9} Supra note 4, pp 606 -607.
\textsuperscript{10} Supra note 6.
\textsuperscript{11} Radhakrishna Chaudhary, Economic History of Ancient India, 1982, p.146.
\textsuperscript{12} S.J.Stoljar, Children, Parents and Guardians, 4, INT‘L., Ency, of Company Law, pp.16-35.
Further, child labour was existing in ancient India in the form of slavery. Slavery was common in the past. The adult male and female slaves who worked in their masters houses and children born to them were owned by the masters. The children of such slaves and bonded families were also owned by the masters. The masters obviously did not rear them just for the sake of rearing. As soon as they grew up either they were sold to other slave owners or made to work in their masters houses and fields as menials and cowheards. In the primitive slave-holding stage of history the slaves were the chief source of labour and income. The process, however, continued till the advent of the industrial era, which freed from personal slavery to the feudal lords, but, enslaved them to capitalist means of production.\(^{13}\)

Aryans arrived to India as invaders who introduced the disastrous ‘varna’ system which provided the wherewithals. In the ‘varna’ system the ‘shudraas’ were given the lowest of the low status in social hierarchy. It is the men, women and their children who basically provided the ‘upper’ social exploiter strata with surplus product. So, one can infer from such past operation of social system that, the children of the ‘shudraas’, slaves and other conquered groups were obviously made to work for their victorious masters and exploiters.\(^{14}\)

*Henry Maine*, ancient scholar and jurist stated that, in the earliest period of history, the patriarchal system was in existence in all societies belonging to Indo-European stock, Romans and the Hindus. As such, the eldest male parent - the eldest

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\(^{14}\) *Ibid*-pp 4 -5.
ascendant was absolutely supreme in his household. He had complete sway over all the persons; male, female, children, their property, cattle, slaves etc.. The flocks, slaves and herds of the children were that of the father and law to them was parents word.  

To some extent, the obligations of these parents, in many cases, involved in working for the land lords on very low wages, which forced their children to work with the same land lords at their home as bonded labourers, because to repay or minimise debts borrowed by their parents. Children, however, helped their parents in household activities and family crafts. They learnt the skills by observing and participating in such activities.

Thus, it was usual in the olden days to own children as slaves and bonded workers. The children born to slaves were treated by their owners as potential workers, and the children thus owned either worked and served their masters or were sold to others. Besides, children were most docile section of the workforce. The economic vulnerability of their parents and exploitative motive and profiteering greed of their masters who owned the means of production, together provided the most fertile ground for exploitation of children of deprived and dis-inherited workers.

Thus, it is evident that, children were engaged in agricultural sector and exploited by land lords and child labour in ancient India was very common and could

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15 Dr.S.N. Dhyani, Jurisprudence: A study of Indian Legal Theory, 1985, p.70.
18 Supra note 13,p.6
be witnessed in different occupations where they were engaged by the rich landlords to carry out activities directly or indirectly related to their agricultural sector.

5.3 Child labour in medieval period

During the medieval period child labour was prevailing in India. Increasing pressure on land led to fragmentation of holdings and growing families had to look beyond personal cultivation for subsistence. A class of landless labourers became widespread in society. They had to work as bonded labourers for owners having large holdings. These labourers used their children to help in their economic activities and children were required to help them in rendering their traditional crafts or family occupations at the young age. Later on in Moghal period, child had no freedom of his own, his condition was quite miserable, and his condition was no better than a slave. Ain-I-Akbari, Bernier’s Travels reveal that, children were frequently mortgaged and sold like movable properties and this was a regular practice in that period. They were victims of haves and were always exploited to their selfish cause.

The labour market was composed of labourers and of slaves. Then slavery was rampant and had become the order of the day. The Decree of Akbar of 1594 A.D. ordains that, ‘A father or a mother might, if, forced by hunger and extreme misery, sell their child and afterwards when they had the means to pay, might buy it back again from servitude.\(^{21}\)

\(^{19}\) Supra note 17, p.2  
\(^{20}\) Dr. Panth, Economic History of India under the Moghals, 1990, p.64  
The Moghal Emperor, Akbar the Great, during his reign when canabilism was practiced near to his capital, suggested and granted permission to hypothecation of children, in the situation of famines and unavoidable crisis.\textsuperscript{22}

In the province of sylhat (Bengal), it was the custom and practice for people of those parts to make eunuch of some of their sons and give them to the Governor in lieu of payment of revenue (mal-wajibi). This custom had been adopted in the provinces and every year some children were ruined and cut-off from procreation. King Jahangir strictly prohibited and ordered for abolition of this abominable custom and traffic in young eunuch.\textsuperscript{23}

The position of child labour during the period of Jahangir did not improve, as the supply of child labour was more than demand and the demand was restricted mainly to the capital. Even the workmen (labourers) and children were not allowed to follow any occupation other than their fathers. They were whipped if they raised their voice. The slavery was encouraged by the king and his Omrahs mainly for two reasons. First, slave met a real demand which was then existed and second the king enjoyed the monopoly of slaves. He made some money by trafficking in slaves and was himself royally served.\textsuperscript{24}

From the above, it is clear that, child labour in Medieval India was quite rampant and rulers encouraged it with an intention to make only traffic in child slaves. The child labour was found in the form of child slavery and rulers did not make

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\textsuperscript{22} Supra note 11, p.66
\textsuperscript{24} Supra note 11, p.131.
any sincere efforts to abolish this practice due to their selfish ends and there by exploited the children.

5.4 Child labour in modern era

Child labour became an important issue during British India. In Pre-capitalist societies and even in India, children were employing guild and trade occupations. In these societies their workplace was an extension of the home and work relationship was informal in nature. Children were allowed to work in family environment in a non-hazardous and easy work. Work was a central aspect of their socialization and training.\(^{25}\) This conception, however underwent a dynamic change on the advent of capitalism in the industrialization during the 18\(^{th}\) century and child labour began to be designated as a social problem.\(^{26}\) The new economic forces unleashed by capitalism destroyed the family based economy, a large number of labour is displaced due to mechanisation of agriculture - the farmers were alienated from their home based work place. They became wage-earning labourers. Extreme poverty created a situation and forced the child, who had to be introduced in the labour market.\(^{27}\) Moreover, the uneven development of industrialization gave new turn to the history of mankind and brought a change in the overall socio-economic order. As a result of uneven development of industrialization, the family based economy was destroyed and large number of people were converted into wage-earning labourers, consequently children were forced to earn wages not only for

\(^{25}\) Supra, note 23.p.27  
\(^{27}\) Supra note 17.
themselves but for their families as well. The work-place was separated from the family environment and industrialization exposed children to unhealthy environment. The working hours were quite long, i.e. from morning to night, but earnings were very low. This resulted ultimately to restrict the children’s ability to grow and develop into a mentally and physically sound adult.\textsuperscript{28} There was no sponsored scheme available to provide family allowances to enable poor parents to give adequate diet to their children which forced them to join industrial establishment. Giving education was not compulsory and it was ignored up to certain age limit of child which also makes children to accept occupations even at a tender age.\textsuperscript{29}

Near the middle of 19\textsuperscript{th} century, the mechanised large scale production came into existence. During that time State regulations were lacking over the conditions of employees in any industry. The employers were free to bargain with labour. Therefore, the labour in this country was exploited by the employers for their benefit. Many children were employed in cotton and jute mills and coal mines, they were even employed for underground work.\textsuperscript{30} With the advent of factory organisation, some public attention was drawn towards the existing evils of child labour in spite of active opposition for the employers.

Then, first protective legislation for child labour was enacted in 1881. This was known as the Indian Factories Act, 1881. The Act provided some protection to the children preventing employment of children under 7 years of age in factories and

\textsuperscript{28} \textit{Supra} note 11.
\textsuperscript{29} \textit{Ibid.}
\textsuperscript{30} \textit{Supra} note 5 ,p.1
also in two separate factories on same day, secondly, by limiting their working hours to 9 hours a day and thirdly, by making it compulsory to provide 4 holidays in a month and rest intervals to the children. Lastly, the Act made provisions for safety, such as fencing of dangerous machines. However, this Act, covered only factory employing 100 or more persons. The evils continued due to lack of enforcement machinery. There was no adequate coverage and no attention was given to the agriculture and unorganised sectors of industries consequently child labour continued as a means of cheap labour.

According to the recommendations of the Factory Commission, which was appointed by the Government of India in 1890, in the year 1891, the Indian Factories Act, was enacted with a view to increase the age of the working children. The lower age was extended from 7 to 9 years. The upper age also exceeded from 12 to 14 working hours were reduced from 9 to 7 hours per day. The children were not allowed to work at night. Inspite of the little reformations made for the protection of children, exploitation of the children increased because attention was not paid due to the deficient provisions of the Act, and also due to inadequate enforcing machinery.

The history of Modern era reveals that, condition of working children in mines was very bad. In 1901, about 5,000 children who were working were below 12 years, this perhaps made the government to bring Mines Act. In 1901 Mines Act was passed which prohibited the employment of child below 12 years of age in mines. The Chief Inspector of Mines was empowered by the Act, to prohibit the employment of children to certain place, if he was satisfied that the employment conditions were
dangerous to children’s health and safety. This defective position was continued because no improvement was made to the provisions of this Act till the next Mines Act.

Children were forced to work day and night in factories because the employers started to use electric power in their factories which had adversely affected the children due to the selfish attitude of the employers, as there was no improvement reported inside the factories. So, to overcome these situations and not to leave the matter in the hands of the employers, the Government appointed Freer Smith Committee in 1906 and a Factory Labour Commission in 1907 to make enquiries on labour conditions in factories. Therefore, a new Factory Bill was introduced in 1909 which was enacted into law in 1911.

The significance of the Factory Act, 1911 lies in the fact that it reduced the working hours of the children in factories to 6 hours a day. It also prescribed that child workers should have in possession a certificate of age and fitness for employment. The children were not allowed to work at night i.e. between 7 pm and 5.30 am and they were also prohibited in certain dangerous processes.

The history of child labour law found little improvement under the Indian Factories (Amendment) Act 1922, which was enacted to give effect to the International Labour Organisation Convention on the minimum age for admission for children into employment, hours of work and night work of young persons and women. The scope of factory was extended to cover any premises where 20 or more persons were employed and mechanical power was used. The local governments
were empowered to extend the provisions to any premises where 10 or more persons
were employed. Under this Act, child was defined as a person who had not
completed his 15 years of age. The children under 12 years were prohibited to enter
into labour market. The children were required by this Act to have a medical
certificate as to their age and physical fitness for the employment. Their working
hours were fixed by this Act to 6 hours a day with an interval of half an hour to the
children employed for more than five and half hours. The inspectors were empowered
to enquire from children a certificate of re-examination for continuing work. This
Act, also prohibited the employment of women and young person under 18 in certain
processes. Some minor changes in this Act, were introduced by an amendment in
1923.

Even the then existing Mines Act was found inadequate in providing protection
to child labourers. So a new Mines Act, 1923 was enacted which prescribed the hours
of work according to International Labours Organisation Convention. This Act, fixed
the working hours for the above ground work at 60 hours in a week, and for
underground at 54 hours a week. It raised the minimum employment age from 12 to
13 years. Three years later, the Indian Factories Act, 1911 was further amended in
1926 for some administrative purpose. After 2 years the Mines Act, 1923 was
amended for regulating the hours and working conditions in mines. Again in 1931,
the Indian Factories Act, of 1911 was further amended to bring certain minor changes
for administrative purpose. This Act, imposed certain penalties on the parents and
guardians for allowing their children to work in two separate factories on the same
Provincial Governments were empowered under this Act, to make certain Regulations for taking precautions against fire. In the same-year Indian Ports (Amendment) Act, 1931 prescribed minimum age of 12 years for the employment of children in the handling of goods in ports. The year 1931, was also important in the Indian legal history because, in this year the Report of Royal Commission on Labour was published. This Commission was appointed under the compulsion of intensive agitation to improve the condition of labour, to investigate and report on the existing conditions of labour in industrial undertaking and plantations; and on the health and standard of living of the workers in British India. This Commission found that the children as young as five years were employed to work for 10 to 12 hours daily for very low wages. They were not provided with adequate meals, interval or weekly rest. Therefore, the Commission recommended that children under 15 should not be allowed to work as adult without a certificate of physical fitness. It also recommended the fixation of maximum working hours for children at 5 hours a day. It further recommended to limit the spread over for children at 7 $\frac{1}{2}$ hours, and to prohibit work by children between 7pm and 5.30 am.

To regulate the employment of plantation workers, the Government of India, enacted the Tea District Emigrant Labour Act, in 1933. There was a provision relating to children under the Act, which required that, no child under 16 shall be employed and immigrated to the district unless accompanied by his parent or adult relative on whom the child is dependent. In 1933, one more step was taken by the
Government to prevent the exploitation of child when Children (Pledging of Labour) Act, 1933 was enacted on the recommendation of the Royal Commission on Labour. The main aim of this Act, was to eliminate the evils arising from the pledging of the labour of young children by their parents for a loan or an advance amount.

The Factory Act was completely modified by incorporating significant recommendations of Royal Commission on Labour. A new consolidated and amended Act was enacted in 1934, which came in to effect from 1st January, 1935. This Act was meant to prohibit the employment of children under 12 years. The children between 15 and 17 were defined as adolescent. The maximum working hours for children between 12 and 15 years were 5 hours a day.

The Indian Mines (Amendment) Act, 1935 regulated the working conditions and hours of work in mines. This Amendment prohibited the employment of children under 15 years of age in mines. Further it laid down that, the adolescent i.e. the young persons between 15 and 17 years could be employed in underground work as adult, on the production of a certificate of physical fitness issued by recognised medical authorities. The working hours for such workers, according to this amendment, were 10 hours a day and 54 hours a week for above ground work and 9 hours a day and 54 hours a week were fixed for underground work.

The Factories Act, was subsequently amended by Factories Amendment Act, 1935 and Repealing and Amending Act, 1937 which did not alter the general provisions of the Act. Way back in the year 1938, an important legislation concerning children, i.e. the employment of children Act, 1938 was enacted in order to prevent
the evils of employment of children in workshops which were not covered under Factories Act. The provisions of this Act, continues even now. This Act also prohibits the employment of children under 15 in Railway and port.\textsuperscript{31} Subsequently by the amendment of above Act in 1939, the children under 12 are prohibited to work in workshops connected with beedi making, carpet weaving, cement manufacturing, cloth printing, dyeing and weaving, manufacture of matches, explosives, and fireworks, mica cutting and splitting shallac manufacture, soap manufacture, training and wood cleaning.\textsuperscript{32}

During the modern era, i.e. before independence, much efforts had been made by bringing various legislations, along with their suitable amendments relating to the employment of children in various sections, but the same failed to achieve its goal for the elimination of the evils of child labour. The labour investigation committee, in its report in 1946 pointed out that, the main cause of this was the inadequacy of the inspecting staff to enforce the provisions of law.

Further, it was realised that, before independence, though discussion had taken place and opinions were sought about various aspects of child labour, nothing significant was done to abolish the system. It was on the contrary, argued that, banning of child labour could be detrimental to the interest of working children. For employers, the pet argument had been that, they were providing employment to the children, otherwise they could have starved and with them their families too.\textsuperscript{33}

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\textsuperscript{31} Section 3(i) The Employment of Children Act, 1938.
\textsuperscript{32} \textit{Ibid}, Section 3 (iii)
\textsuperscript{33} Supra note -13,p.5
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5.5 Child Labour after Independence

Child labour is a common occurrence in India. Today their numbers exceed those of any other country. Independence ushered in a new era for children, the survival, development and protection of children has become a major goal of the Government and it fall either in the concurrent or in the state list. After Independence of India the first drastic step took by the Government was to bring an amendment to the Factories Act in 1948, which raised the minimum age for entering into employment in factories to 14 years. A new section was added which specifies that, the provisions of chapter, dealing with employment of young persons, are in addition to and in-derogation of the employment of Children Act, 1938.\(^\text{34}\) The minimum age of admission to the employment in workshops was also raised from 12 to 14 by an amendment to the Employment of Children Act, 1938. Regarding the verification of child’s age, in case of dispute between employer and inspector, provisions were introduced in 1949 under the Employment of Children Act.\(^\text{35}\)

On 26th January, 1950, the people of India having constituted India, into a Sovereign, Democratic, Republic, adopted the Constitution on the same day, promised a new era based on freedom, equality, fraternity and justice for all citizens of the country. It recognised that political freedom by itself was not enough and therefore, gave priority to the achievement of “social and economic” justice. Children were given low priority during the pre-independence period in India. It was only after

\(^{34}\) Section 68 of the Indian Factories Act, 1948.
\(^{35}\) Ibid., Section 70(2).
Independence that, the founding fathers of the nation became aware that employment of children is one of the manifestations of the pervading poverty in the country and realised the nation’s responsibility towards children, their education, protection and development.  

Thus, the framers of the Constitution deemed it necessary to make special provisions for the protection of working children. They are embodied under Article 15(3), Article 21, Article 24, Article 39(e) & (f) and Article 45. These constitutional mandates clearly focus its vision on preventing exploitation and protection of the children. The Constitution laid down various special protective measures for protection of children to prevent exploitation.

The International Labour Organisation Convention relating to night work of young persons was responsible for an Amendment in 1951 in the Employment of Children Act, (1938) which prohibits the employment of children between 15 and 17 years at night in Railway and port. The employers were required to maintain register for children under 17 years.

The First Five Year Plan (1951-56) took a comprehensive review of resources and needs of children. Health, nutrition and education of children were identified as special areas of concern. In 1954, the Factories Act was further amended by the Factories (Amendment) Act, 1954 to prohibit the employment of adolescent under 17 at night. Night means, under this Act, a period of 12 consecutive hours which include hours between 10 pm to 7 am. Again, the children under 15 are prohibited to

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37 See chapter VIII infra.
38 Section 70 of Factories Act. 1948.
be engaged or carried to sea to work in any capacity in any ship, except in certain specific cases by an Act known as Merchant Shipping Act which was passed in 1958.

The Government of India passed the Protection of Civil Rights Act, 1955 and ratified the International Labour Organisation Convention No.5 of 1919 on minimum age of work in industry. In 1961, two important Acts were passed in order to provide a legal protection to children. One, the Motor Transport Workers Act, 1961, prohibits the employment of children under 15 in Motor Transport undertakings. Second, the Apprentice Act, 1961, provides for regulating and controlling of trainees.

The Second Five Year Plan (1956-1961) aimed at stabilizing the child welfare system and Third Five Year Plan (1961-66) increased emphasis on intersectoral coordination of services for children. The Third Plan also recognised that the child was a human being with special needs.

An important step was taken in 1966, to protect children working in beedi industries by enacting Cigar Workers (Conditions of Employment) Act, 1966, which prohibits the employment of children under 14 in any industrial premises. Young persons between 14 and 18 are also prohibited to work at night between 7 pm and 6 am.

The Fourth Five Year Plan (1969-74) focussed on development of a package of basic minimum services for children. In the history of labour movement, Government

39 Section 21, Motor Transport Worker’s Act, 1961.
40 Preamble to the Apprentices Act, 1961.
41 Section 2(b) The Beedi & Cigar Workers (Conditions of Employment) Act, 1966.
42 Ibid, Section .25.
of India had constituted First National Commission on Labour, in 1969, under the chairmanship P.B. Gajendragadkar, J. to study and review the conditions of labour since 1947. The Commission found that, child labour persisted in varying degrees in the unorganised sectors such as small plantations, restaurants and hotels, cotton ginning, carpet weaving, stone breaking, bricklin, handicrafts and Road building. To regulate the labour of unorganised sector as observed, the Government of India passed a legislation known as Contract Labour (Regulation and Abolition) Act, 1970. This Act having a comprehensive coverage of all the establishment and contractors employing 20 or more workers in the whole of India. There was no specific provision relating to child work, so, many children could be seen in building the houses, roads etc., under contractors.

In order to fulfill the mandate of the Indian constitution provided under article 39 (e) and (f), Government of India introduced and adopted the National Policy of a Children in 1974.\textsuperscript{43} It sets out a policy frame work and measures aimed at providing adequate service and protection for children. The policy has recognised that, “the nation’s children are supremely important asset and declared that the nation is responsible for their nurture and solicitude.” So it is the duty of the state to look after the child with a view to ensuring full development of its personality. The policy has spelled out several measures to be adopted and priorities to be assigned to children’s programmes with a focus on areas like child health, child nutrition. The policy has also provided for setting up of a National Children’s Board to focus attention on child

\textsuperscript{43} Resolution Number 1-14/74-CDD dated August 22, 1974.
welfare and child development. It also emphasises the importance of free and compulsory education for all children up to the age of 14 years and to take measures for protecting children against neglect, cruelty and exploitation with regard to employment of children. The policy has laid down that “no child under 14 years shall be permitted to engage in any hazardous occupations or be made to undertake heavy work”.

The Fifth Five Year Plan (1974-1979) saw a shift in focus from child welfare to child development where in emphasis was laid on further integration and coordination of services. In 1975, the Government ratified the International Labour Organisation Convention number 123 of 1965 relating to minimum age for underground work. In 1976, the Bonded Labour System (Abolition) Act was enacted. In response to the decision of the United Nation’s declaring 1979 as the International Year of Child, the Ministry of Labour, Government of India New Delhi had set up a 16 member committee on Child labour under the chairmanship of Shri. M.S. Gurupadaswamy in February, 1979 to look into the causes leading to and the problems arising out of the employment of children in organised and unorganised sectors and requested the committee to (a) Examine the existing laws, their adequacy and implementation, and suggest corrective action to be taken to improve implementation, and to remedy defects; (b) Examine the dimensions of child labour, the occupations in which children are employed etc., and suggest new area, where laws abolishing /regulating the employment of children can be introduced; and (c) suggest welfare measures, training and other facilities which would be introduced to benefit children in
employment. But it can be seen that there was no reference to suggest ways and means of abolition / prohibiting child labour in all employments.

The Committee on Child Labour, after an in depth study of the problem of child labour in the country came to the finding that “Child labour involves the use of labour at its point of lowest productivity, hence it is an inefficient utilization of labour power. Child labour represents pre-mature expenditure rather than saving”. It concluded: “the argument that employment of children increases the earnings of the family and keeps children away from mischief 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 jobs condemns them to low wages all their lives... Child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful. It was also observed by the Gurupadaswamy Committee that “Labour becomes an absolute evil in the case of child, when he is required to work beyond his physical capacity, when hours of employment interfere with his education, recreation and rest, when the wages are not commensurate with the quantum of work done and when the occupation he is engaged endangers his health and safety.

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44 See the Government of India, Report of the Committee on Child Labour 1979, p.55
During the Sixth Five Year Plan (1980-1985) the problem of working children and their welfare simultaneously received attention of the planners for the first time under the plan and appropriate programmes were undertaken to improve the health, nutrition and educational status of working children.

The Gurupadswamy Committee submitted its report to the Government of India putting greater emphasis on all round development of a child including his education, health and regulation of the employment of children in the Indian industries. In response to the report of Gurupadswamy Committee, in the year 1981, the Government has setup the Central Child Labour Advisory Board to review the implementation of existing laws concerning child labour.

The National Children’s Fund 1979 was created during the International Year of the Child under the Charitable Endowment Fund Act 1980, which provides financial assistance to voluntary agencies for implementing programmes for the welfare of children including rehabilitation of destitute children.

The Seventh Five Year Plan (1985-90) was a milestone in the history of child labour. In view of the various recommendations made by Committees47 and to prohibit the engagement of children in certain other employment and to achieve this goal and to achieve the mandate provided under Article 24, and Article 39(e) and (f), parliament enacted the Child Labour (Prohibition and Regulation) Act, 1986 which came into force on 23rd December, 1986.48 Legislative history in India had made a

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long journey since 1981 by progressively extending legal protection to the working children. Provisions related to child labour and various enactments have concentrated mainly on aspects such as minimizing working hours, increasing minimum age and prohibition of employment of children in occupation and processes detrimental to the health and welfare of children of tender age. The Employment of Children Act, 1938, which was the first enactment on child labour, was repealed by Child Labour (Prohibition and Regulation) Act, 1986.

The Government of India has formulated the National Policy on Child Labour in August 1987. The policy focuses mainly on three welfare aspects of the child, firstly, on the enforcement of child labour; secondly, on the families of child labourers to avail the benefits of welfare and development programmes made for this purpose; and thirdly, to take up projects in the areas of child labour concentration. The basic goals of the policy were to rehabilitate the children withdrawn from employment and reduce the incidence of child labour in the areas of high concentration of child labour. It focuses on improving health condition for child labour and introducing anti-poverty programmes like IRDP and NREP.

In pursuance of National Child Labour Policy 1987, Ministry of Labour, Government of India, implemented the National Child Labour Project in 1988 for the rehabilitation of child labour. The project was launched in areas of high concentration

49 Awards Digest, Vol.XX, No.7-12, Journal of Labour Legislation, see also Asha Bajpai, Child Rights in India, New Delhi: Oxford University, 2009, p.163.
of child labour. At present more than 250 National Child Labour Projects (NCLP) are undertaken working in different districts, spread over in 20 states of India.

In the wake of the 1990 World Summit for Children, the Government of India adopted a National Plan of Action for Children in 1992.\textsuperscript{51} Reports submitted by the Government on the issues, to some extent recorded some positive changes in the situation in India.


During the Eighth Five Year Plan (1992-97), on 15th August 1994, Government has announced programme to eliminate child labour in hazardous employment by 2000. Subsequently the National Authority for Elimination of Child Labour constituted on 26th September 1999 to lay down policies and programmes for elimination of child labour. Further the enforcement of Child Labour (Prohibition and Regulation) Act, 1986 was strengthened. The eighth plan specifically recognised the girl child as an important target group. Another very important legislation, enacted by the Government of India in this plan period was the Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995 that came into force in February, 1996.

5.6 Child Labour on the Threshold of New Millennium

At the dawn of the new millennium, Government of India brought various legislations and made amendments to the existing laws.

Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted by repealing Juvenile Justice Act, 1986. The Census of India 2001 has recorded its major statistical data on children and child labour. During the Tenth Five Year Plan (2002-2007) emphasis was given on a Right based approach with regard to survival, development and protection of children. In the year 2002, the Indian Constitution through its (86th Amendment) Act, has made Right to Education a Fundamental Right to provide free and compulsory education to all children in the age group of 6-14 years. The important components of this Amendment are (1) Adding Article 21A in part-III [Fundamental Rights]; (2) Modifying Article 45 [Directive Principles of State Policy]; and (3) Adding a new clause (k) under Article 51A [Fundamental Duties) making the parent or Guardian responsible for providing opportunities for education to their children between 6 and 14 years.52

The Government of India has set up The Second National Commission on Labour in 2002, which has recommended the repealing of the existing Child Labour (Prohibition and Regulation) Act, 1986 suggested a new model Act as Child Labour

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(Prohibition and Rehabilitation) Act, “To Prohibit Employment of children in all employments and to regulate employment of children where permitted”.

The Government of India has adopted National Charter for Children 2003 on 9th February, 2004 to emphasise its commitment to children’s right to survival, development and protection, and in order to see that no child remain hungry, illiterate or sick. The Government has formulated the National Common Minimum Programme (NCMP) 2004 to protect the rights of the children, strive for the elimination of child labour and to ensure facilities for schooling and extend special care to the girl child. The National Plan of Action for Children 2005 was introduced in the parliament to provide a road map for steps be taken for improvement in the lives of Indian Children.\textsuperscript{53} The National Plan of Action stressed on child survival, development, protection and participation. The major initiatives undertaken by the Government of India was enactment of the Commission for Protection of Child Rights Act 2005\textsuperscript{54} which provides for the constitution of a National Commission and State Commission for Protection of Child Rights and Children’s Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental there to.

The Juvenile Justice Act, 2000 was modified by Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 to protect the best interest of children and deal them with child friendly approach.

\textsuperscript{54} Received the Assent of the President on 20\textsuperscript{th} January, 2006 and Published in Official Gazette of India, Extra Part-II, S.1. (Central Act, No.4 of 2006) came into force w.e.f.15.2.2007.
To address the situation of child labour, specially with regard to large scale exploitation and abuse of children employed in domestic work and hotels etc., The Ministry of Labour, Government of India on 1st August, 2006 added certain occupations to the list of hazardous occupations; like domestic servants, workers in dhabas, restaurants, hotels, tea shops, resorts, spas or other recreational centers. This notification came into effect on 10th October, 2006.

During 11th Plan Period (2007 to 2012) the Ministry of Women and Child Development, Government of India considered ‘Child Protection’ is an essential component of the countries strategy to place “Development of all the child at the centre of the eleventh plan”. So, Government proposed Integrated Child Protection Scheme - (ICPS) to address the issue of child protection and build a protective environment for children through Government - Civil Society partnership.

After a long debate and deliberation, very recently Government of India in order to respond to the directions issued by Supreme Court of India and to achieve the objectives of the constitution, Constitution (Eighty Sixth) Amendment Act, 2002, brought an enactment, ‘The Right of Children to Free and Compulsory Education Act, 2009’\(^55\) which provide for free and compulsory education to all the children for the age of six to fourteen years.

\(^{55}\) (Central Act N. 35 of 2000) received the Assent of the President on 26th August, 2009 came into force w.e.f. 01.04.2010.
5.7 Conclusion

Right from the ancient period to present day, the problem of child labour has been in existence and perpetuated in one or the other form, due to several socio-economic and political factors. Prior to independence of India the menace of child labour was not subject effective legal regulation. However in the post independence era, due to the human rights orientation the child labour was considered abominable and various legal provisions have been made to abolish/regulate child labour. New Policies and new laws have been adopted to deal with child labour.