“I am the child. All the world waits for my coming. All the earth watches with interest to see what I shall become. Civilization hangs in the balance. For what I am, the world of tomorrow will be. I am the child. You hold in your hand my destiny. You determine, largely, whether I shall succeed or fail. Give me, I beg you, that I may be a blessing to the world”.

- Mamie Gene Cole

11.1 Conclusion

Children constitute the nation’s valuable human resources. The future well being of the nation depends on how its children grow and develop. The great poet Milton said “Child Shows the man as morning shows the day”. So it is the duty of the society to look after every child with a view to assuring full development of its personality. Children are the future custodians and torch bearers of the Society: they are the messengers of our knowledge, cultural heritage, ideologies and philosophies. Children are really future components in the form of great teachers, scientists, judges, rulers, doctors, planners, engineers, politicians on whom the entire society founded (rests). Unfortunately millions of children are deprived of their childhood and right to education and there by they are subjected to exploitation and abuse.¹

The age of the child has been differently defined in different laws. There is no definite criteria or scientific parameters in defining the age of the child. The Constitution of India under Art.24 defines ‘Child’ as any one below the age of 14

¹ Supra, chapter -2
years and who shall not be employed to work in any factory or mine or engaged in any other hazardous employment. Under Child Labour (Prohibition and Regulation) Act, 1986 ‘Child’ means a person who has not completed his 14 years of age. Article 21-A of the Constitution states that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by law determine. Now, amended Article 45 of the Constitution states that, the state shall endeavor to provide early childhood care and education for all children until they complete the age of six years. But according to Art.1 of the United Nations Convention on the Rights of the Child 1989, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.\textsuperscript{2} Under Juvenile Justice (Care and Protection of Children) Act, 2000 the age is fixed at 18 years. Thus, there is no uniform fixation of the age of a child.

Unfortunately, the children in India are subjected to various forms of abuse. National Study on Child Abuse recorded its findings very exhaustively on various forms of abuse of children. They are child labour, physical abuse, emotional abuse, substantial abuse, Girl child neglect, sexual abuse etc.\textsuperscript{3}

Socio-economic conditions prevailing in the society are strongly responsible for the abuse of child in different forms. High literacy and low literacy rate, equally contribute to the problem of child abuse. Among the various forms of abuse of children it would be more pertinent and relevant to focus on child labour. Child labour

\textsuperscript{2} \textit{Ibid.}
\textsuperscript{3} \textit{Supra}, chapter - 3
is a abuse and exploitation of children and children pre-maturely leading an adult like life. They receive low wages and work for long hours under conditions that are likely to damage their health as well as physical and mental development. According to a National Study on Abuse of Children, out of 12,447 children, 19.70% are found to be at work. Only 17% of working children are paid for their work. Thus, child labour is being largely underpaid, overworked and exploited.

“Child Labour” is not a phenomenon or feature peculiar to India. This has been there all over the world. The pathetic conditions of a child forced to labour for his employer described by Charles Dickens in his well known novel ‘Nicholas Nickleby’. The concept of child labour is complex in its nature. It is very difficult to define and give a valid definition of child labour. But International bodies, like UNICEF, ILO, Research Groups, had made their best endeavour to define the concept of child labour in a more logical manner based on time and space factor.

Taking in to consideration of consequences of child labour, the ILO has provided a comprehensive definition. “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, some times separate from their families, frequently deprived of meaningful educational and training opportunities that could open up for them a better future”.

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4 Ibid.
6 Supra, chapter 4.
In this context, child work and child labour often used synonymously, but have different connotations and understanding. All work is not bad for children because, some light work properly structured and phased is not child labour.\(^7\) This implies that work which does not detract from other essential activities for children such as leisure, play and education are not child labour. ‘Child labour’, therefore, is the work which involves some degree of exploitation, namely, physical, mental, economic and social and therefore implies the health and development of children. Thus, child labour is a subset of child work which implies that “all child labour can be termed as child work but all child work cannot be child labour”. Thus, there is a gap between two concepts, although, both appears to be one and the same, when it is investigated forensically difference can be made out.

Children work in difficult forms/sectors, namely in the agrarian sector, industrial sector and service sector. There are various factors responsible for leading to child labour.

Child labour is a complex economic problem. In a country where millions of children go to bed hungry, without having a single full meal of the day, total elimination of child labour by mere legal recourse can never be said to be a practical proposal. It may suppress the malaise but cannot cure it. Samuel Johnson opined that, “Poverty is a great enemy to human happiness; it certainly destroys liberty, and it makes some virtues impracticable and others extremely difficult”. Children thus become instrument to augment family income and are seen as a means to alleviate

\(^7\) Ibid.
poverty. Thus, there is vital link between poverty and child labour. Weak and tardy enforcement of the child labour legislation and defective legislation and polices also contribute more for the incidence of child labour.

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

The international community has shown its concerns about the problem of human rights in general and child labour in particular by adopting a number of instruments. There were two Pre-United Nations Instruments, namely the Geneva Declaration of 1924 which provides that, the child must be protected against every form of exploitation and the U.N. Charter 1945 and Human Rights focussed on the dignity and worth of the human being which includes children. In the United Nations Instruments, the United Declaration of Human Rights, 1948 under its Article 25(2) says that “Motherhood and Childhood” are entitled to special care and assistance. All children whether born in, or out of wedlock shall enjoy the same social protection. The United Nations Declaration of the Rights of the Child, 1959 was indeed a very important event as regards the international recognition of right of the child. International Covenant on Economic, Social and Cultural Rights, 1966 provides that children and young persons should be protected from economic and
social exploitation. The International Covenants on Civil and Political Rights, 1966 under its Article 24 stated that, every possible social and economic measures should be undertaken to prevent forced labour and prostitution.

The United Nations Convention on the Rights of the Child, 1989 is a most important human rights document focusing and concentrating on children. The Convention contains 54 Articles and it provides Civil, Political, Social, Economic and Cultural Rights to every child, and out of 54 Articles 41 related to the rights of children. These rights are the Right to Protection, the Right to Development, the Right to Participation and the Right to Survival. Article 32 prohibits practice of child labour and recognizes the rights of the child to (i) be protected from economic exploitation and performing any work i.e. likely to be hazardous; or (ii) interfere with his education; or (iii) be harmful to the child’s health or physical, mental, spiritual, moral or social development.

World Conference on Human Rights: The Vienna Declaration and Programme of Action, 1993 reiterates the principle of “First Call for Children” and addressed to combat exploitation and abuse of children and their root causes.

There are specialized agencies of United Nations for the protection of the child. It is the policy and objective of International Labour Organisation to abolish child labour. It’s objective based on the Convention “Childhood should be consecrated not to work but to education and development, that child labour often

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8 Supra, chapter -6
9 Ibid.
Jeopardizes children’s possibilities of becoming productive adults and that child labour is not inevitable its elimination is possible when the political will exists”.

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

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

Thus, International Instruments provides codification of children rights into one international document and recognizing aspirations which mankind has for its children. It can be said that, Conventions and Declarations make provisions and set high aspirations. But the state parties face practical difficulties in implementation due to socio-economic and cultural and political systems. There are no implementing
provisions either in the conventions or in declarations. There is no responsibility and accountability upon the state parties for their acts and omissions\textsuperscript{10}

A comparative analysis of the problem of child labour which exists in different countries has been made. In United States of America there are various Acts, like Fair Labour on Standard Act, 1938 (FLASA) and which was amended in 1966, still the children work in dangerous industries in United States.

The problem of child labour also exists in Russia. The state has shown its concern by curbing female child labour working for more than 8-10 hours. Soviet State had taken various steps to protect its women and children by legislations. The problem of child labour exists in China in different forms and age groups. The history of child labour in this country parallels the development of public education system. China has evolved the education policy in order to combat child labour. It had made sincere efforts to reduce the incidence of child labour and formulated elimination strategies. In South Africa child labour was prevailing in the form of socialization, acculturation. In this country child labour distinguished between economic and non-economic activities. In South Africa Schools were not fully supported by Government funds. Families must pay a fee for their children to attend school and Government of this country has recognized a need for comprehensive approach to combat child labour.\textsuperscript{11} By and large child labour problem was prevailing in various countries of South Asia namely, Bangladesh, Thailand, Philippines, Nepal, Pakistan, Sri Lanka and

\begin{footnotesize}
\begin{enumerate}
\item\textit{Ibid.}
\item\textit{Supra,} chapter -7
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Afghanistan. Thus, it is observed that the problem of child labour is a global phenomenon which is found in both developed and developing nations.

The practice of child labour in India or in any country of the world is an age old phenomenon. Since ancient time child labour existed in the Indian society in one form or the other. During ancient time the child labourer were regarded as ‘child slaves’. Tender aged children who were under eighteen by the custom treated them as chattels. Kautilya was not in favour of employment of children. The practice of child labour was existing in ancient India in the form of slavery. Thus children were engaged in different occupations and even in agricultural sector and exploited by landlords.

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

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

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12 Supra, chapter -5
13 Ibid.
The history of child labour law found little improvement under the Indian Factories (Amendment) Act, 1922. According to the mandate of ILO Convention on the minimum age, for admission for children into employment, hours of work and night work of young persons and women.

At present there are 14 legislations to control and regulate child labour in India. Children (Pledging of Labour) Act, 1933 was the first statutory enactment dealing with child labour.

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

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

Article 24 of Constitution prohibits employment of children below 14 years in factories, mines and in any other hazardous employment. In order to fulfill the constitutional mandate after 36 years of independence and to respond to the National Policy for Children 1974, Government has enacted Child Labour (Prohibition and Regulation) Act, 1986 which prohibits the employment of children below 14 years and imposes stringent punishment in cases of violation of the Act. The Act suffers from some serious short comings. They are, the Act is contradicting in its goals, as it provides for both prohibition and regulation of Child Labour. There is controversy relating to the age of the child, misuse of proviso annexed to section 3 of the Act, absence of any measures for rehabilitation of the child, absence of addressing children who are working in large scale in agricultural sector (farm-lands), and policy perspectives relating to children and childhood are confused. Therefore, there
is an immediate need for amendment of the Act, so as to bring it on par with the international standards laid down in the U.N. Convention on the Rights of the Child.

The debate about whether child labour should be banned or regulated is not new. It surfaced in 1985 when the Govt. of India claimed that “Child labour was a harsh reality”\textsuperscript{14} and found it more prudent to regulate rather than ban it. The Child Labour Act 1986 is an Act without teeth and innumerable loop holes. It does not cover children working in agriculture. Today the largest employers of children are farmers growing B.T. Cotton in State like Andhra Pradesh, Gujarat and Karnataka where according to D.Venkateshwaralu’s recent study more than 2 lakhs children below 14 work from day break to dusk in cross-pollination work. The Child Labour Act, cannot effectively control child labour because (i) The Act is silent about welfare of child labour (ii) and does not abolish child labour in all employments below certain age.

Constitution contains several provisions under Article 15(3), Article 21, Article 24, Article 39(e) and (f) and Article 45 for preventing exploitation and protecting children. In all the Five Years Plans progressive steps were taken by the Government of India for the elimination of child labour. National Policy of Children, 1974 was introduced and it recognized that, “The Nation’s children are supremely important asset” and declared that “the nation is responsible for their nurture and solicitude”. In February 1979 Government constituted 16 member committee on child labour under the chairmanship of Shri M.S. Gurupadaswamy to look into the cause leading to and

\textsuperscript{14} Supra, chapter -8
the problems arising out of the employment of children in organized and unorganized sectors. After a detailed study, Committee found that “Child Labour involves the use of labour at its point of lowest productivity, hence it’s an inefficient utilization of labour power. Child labour represents pre-mature expenditure rather than saving”. Committee remarked that, child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful”. National Child Labour Policy 1987 was introduced and implemented National Child Labour Projects in 1988 for the rehabilitation of child labour. In the dawn of the new millennium, Government of India brought various legislations and made amendments to the existing laws. The Second National Commission on Labour, 2002 which has recommended the repealing of the existing child labour (Prohibition and Regulation) Act, 1986 and suggested a new model Act as child labour (Prohibition and Rehabilitation) Act, “To prohibit Employment of children in all employments and to regulate employment of children where permitted”.

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

\[15\] \textit{Ibid.}
The judiciary has played an important role in the protection of fundamental rights of citizens in general and children in particular. Judicial interpretation and activism had created new hope and aspiration among the citizens because of tremendous growth of statutory intervention in the present era due to emergence of liberalization, privatization and globalization and movement of protection of human rights of children. Time and again judiciary has pronounced judgments for eliminating the problems of child labour in India. With regard to this, Justice K. Subba Rao, a former Chief Justice of India observed: “Social Justice must begin with children. Unless a tender plant is properly tended and nourished, it has little chance of growing in to a strong and useful tree. So, the first priority in the scale of social justice shall be given to the welfare of children”.

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

The Supreme Court has directed the state government in M.C. Mehta v. State of Tamil Nadu to enforce the statutory requirements of the Factories Act for providing

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16 (1992) 1 SCC 221; 1992 SCC (L & S) 105
17 AIR 1991,SC 417
recreational facilities and Medical aid to the workers of Match Factory at Sivakasi.\textsuperscript{18} It is also been suggested that every employee working in this factory should be brought under a group of insurance scheme.\textsuperscript{19}

There is plethora of cases,\textsuperscript{20} where in judiciary has made significant contribution to the cause of child workers. The Court has given new dimension to several areas, such as \textit{locus standi}, minimum wages, and employment of children and gave decisions which deal with the payment of minimum wages to the children and protection of their fundamental rights and sexual exploitation of children in hazardous occupations which reflect the judicial creativity in the field of the welfare of the children including the child workers.

The Judicial mandates clearly demonstrate that Right to Education is necessary for the proper flowering of the children and their personality. The Supreme Court of India in \textit{J.P.Unnikrishanan v. State of Andhra Pradesh}\textsuperscript{21} declared that, up to secondary education every child has fundamental right to education. Similarly in a number of cases the Supreme Court emphasized the importance of education for the children.\textsuperscript{22}

The verdict of the Supreme Court and pressure built by child rights organization culminated in the amendment of the Constitution in 2003. In pursuance of this the Right to Education Act was passed in 2009. The Right to Education Act is

\textsuperscript{19} A sum of Rs. 50,000/- per children
\textsuperscript{21} AIR 1993, SC 2178
\textsuperscript{22} \textit{Supra}, chapter 8
the first legislation in the world that puts the responsibility of ensuring enrollment, attendance and completion, on the Government. The Government of India is committed to ensuring that all children irrespective of gender and social category have access to education. The 86th Amendment to the Constitution and the Right to Education Act act as a tool to provide quality education to all our children. This Act serves as building block to ensure that every child has his or her right (as an entitlement) to get a quality elementary education, and that the state, with the help of families and communities, fulfils this obligation.

Non Governmental Organizations play a very vital and significant role in the task of elimination of child labour. NGOs work at grass root level, they will have an intense knowledge and experience about day to day problem. It is the NGOs which can identify child labourers working in their area and understand the causes and factors pushing to the problem of child labour by their survey work. Then working children are successfully rehabilitated in NGOs run child labour schools and mainstreamed. Today, several NGOs, across the nation and within Karnataka, are working relentlessly for the prevention and elimination of child labour. Global March Against Child Labour at Delhi, Butterflies at Delhi, M.V. Foundation at Andhra Pradesh, and Concerned for Working Children (CWC) in Karnataka, Child India Foundation (CIF) Childline are working as NGOs for the cause of elimination of child labour and rendering valuable services to the community.
From the analysis and interpretation of data all the hypotheses of the study have been proved and confirmed.\textsuperscript{23}

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

\textbf{11.2 Suggestions}

1. Constitutional Amendment: Art 24 of the Constitution should be amended as below:

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

2. The present title of Child Labour (Prohibition and Regulation) Act, 1986 should be amended as Child Labour (Prohibition and Rehabilitation) Act, so that more focus should be given to rehabilitation rather than regulation.

3. Proviso annexed to section 3 of Child Labour (Prohibition and Regulation) Act, 1986 should be amended to prevent the misuse of this provision by employers under the heading of family occupations and no exceptions should be provided. Section 3 of the Act, should be amended as, “it shall be presumed that occupier is

\textsuperscript{23} See for hypothesis chapter-1.
also the employer for the purpose of the Act and the onus to prove that the child is a member of his or her family would rest on the occupier”.

4. Distinction made between Part-A and B Schedules annexed to section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 shall be removed, as both Schedules namely, occupations and processes, are equally hazardous to the health of children. Therefore prohibition to employ a child should exist in both.

5. Under section 9 of the Child Labour (Prohibition and Regulation) Act, 1986, it should be made mandatory that every occupier after establishment should send a notice to the Inspector containing the information regarding the employment of a child, either in the affirmative or in the negative, annually.

6. The age of the child provided under Child Labour (Prohibition and Regulation) Act, 1986 i.e., 14 years should be enhanced to 18 years so as to bring it on par with United Nations Convention on the Rights of the Child, 1989.

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

8. The punishment for violation under section 14(3) of Child Labour (Prohibition and Regulation) Act, 1986 shall be enhanced to three months simple imprisonment or fine which may extend to fifty thousand rupees or with both.
9. In Section 16 of Child Labour (Prohibition and Regulation) Act, 1986 a time limit from Six months to One year should be fixed for the disposal of the case so that, the aggrieved party may get relief on time.

10. Government of India should ratify the Convention No.182 and Recommendation No.190 which deal with the “Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour”. The Convention was adopted in 1999 but the Government has not yet ratified it.

11. The Employment of children in any other employment including Agricultural /Farm Sector should be made a cognizable offence, non-bailable and non-compoundable.

12. A separate and independent body should be constituted under Labour Ministry at Centre, State and District level for monitoring the affairs of child labourers after 14 years who were rehabilitated and mainstreamed.


14. Laws on child labour and Education should be implemented in a mutually supportive way.

15. The Judiciary should be more sensitive in dealing with child labour cases. The general rule of ‘benefit of doubt’ cannot be given to the offending employers. When guilt is proved, offending employer should be punished with imprisonment and not with fine. In punishment policy, sentence of imprisonment should be made
a general rule and imposing fine should be an exception. This deters the
employers. Further there is a need to increase the conviction rate.

16. Government should encourage the NGOs for elimination of child labour by
granting proper budget periodically and accountability should be fixed on NGOs
to ensure that the funds are utilized for the purpose for which it is given.

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

18. It is suggested to give more focus on implementation and enforcement of child
labour laws and other laws meant for the protection of the children.

   It is humbly submitted that, if all the above suggestions are implemented, the
menace of child labour can be effectively tackled and eventually it can be eradicated.