

A Critical Analysis of Child Labour in India- Issues & Challenges

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ABSTRACT: - Child labour is the misuse, maltreatment and exploitation of children through any form of work that intervenes with their ability to attend regular school, or is mentally, physically, socially and morally harmful. Child labour drives small hands into unhealthy and unsafe working environment, which not only hinders their social and emotional growth, but also exploits the future of a Nation. This persecution and oppression exhibit multiple forms stretching burden on their minds, spirits, body and their souls. These kinds of activities not only cause immediate risk not only to the health and safety of children, but also interferes and pokes with their oversell development including education. As a result, consequently children are forced and coerced into hazardous and unhealthy environment such as mines, factories etc. where they face vulnerability and risk to toxic substances. Thus, they are coerced to operate heavy and risky machines which is beyond their capabilities.

Key Words: - Exploitation, Child Labour, vulnerability, oppression & persecution

A Child's childhood is meant for learning, not for earning; child labor is the exploitation, misuse of children for their labor.

Small hands can handle a pen and pencil better than tools & weapons;

Childhood requires education, love and care, not child labour as it is not fair;

There is no reason no excuse, child labour is abuse and exploitation of childhood;

Each and every child deserves childhood free from abuse and exploitation;

Every Child Deserves a Chance to Learn, Not to Earn

Child labor causes poverty, unemployment, illiteracy, population growth and other social problems.

Break the chains, end child labor pains, child labor has no gains;

& Break the silence, end child exploitation's violence;

Fuel their minds, not factories: Stop child labor's tragedies.

Be a voice, not a bystander, end child labor, a universal slander.

There's nothing more satisfying than seeing a happy and smiling child;

A child's smile is worth more than all the money and treasures in the universe

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I. INTRODUCTION:

It is fact that development of a Nation is dependent on the condition of children in which they grow. Children are like seeds and the Nation is the tree same as a large tree grows from a small seed, similarly, a great and developed nations are born out of children, who later become its citizens. According the **Hon 'ble Mr. Justice P.N. Bhagawati**¹, the child is the soul with being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breath, depth and height of its emotional intellectual and spiritual being, otherwise, there cannot be a healthy growth of nation. Children need special protection and care because of their tender age, maturity and development. The environment in which the children are brought up will have a serious and tremendous impact on the future of the child and the future of the nation as well

Kids and youngsters are future citizens of the Nation and their adequate expansion, appraisal and development is utmost priority of the Nation. woefully, child labor encompasses and wash outs children across the universe. However, despite its threats and pitfalls in various forms, the data shows variation in prevalence of child labor across the globe and the statistical figures about child labor are very alarming. There are an estimated 186 million child labourers worldwide. As per census of 2001 nation of India estimated total number of child labor aged between 5–14. engaged in hazardous occupations.

¹ Babu Tamchi v. The State of Uttar Pradesh, AIR 1984 SC 46

Several children are “hidden workers” working in homes or in the underground economy. In spite of the fact that Indian Constitution assures free and compulsory education for all children between the age of 6 to 14 and also forbids and outlaws’ employment of children younger than 14 in perilous and unsafe employment and professions. But it is sad to say even now most instances of child labour are frequently seen in the informal sectors of the Indian economy. Child servitude and employment of small hands not only infringes human rights, but also is in contravention of the International Labor Organization (Article 32, Convention of the Rights of the Child). About more than 18 million of Indian population include working children in different industries, and fortuitously mostly are working in agricultural sector, leather industry, mining and match-making industries, etc.²

1. **WHAT IS CHILD LABOUR:** - The term “child labor” is generally referred as an activity depriving youths & children of their childhood, their potential and their autonomy and dignity, and that is hazardous to their physical and mental well-being and development. It refers to act which is physically, mentally, socially or morally treacherous, menacing and threatening to children, and impedes with their schooling by divesting and abating them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work. The statistical figures about child workers in the world varies because of the differences in defining categories of age group and engagement of children in formal and informal sector³.

Child labor remains to be a biggest issue in most parts of this universe. as per census of 2008 major child labour engagement was in agriculture sector, followed by fisheries, aquaculture, livestock and forestry. Incidentally, about 96% of the child workers are in the developing countries of Africa, Asia and South America. With respect to the child workers between the ages of 5 and 14, Asia makes up 61% of child workers in developing countries, while Africa has 32% and Latin America 7%. Further, while Asia has the highest number of child workers, Africa has the highest instances of prevalence of child labor (40%).

a. **The Reasons for Child Labour in India:** - Child labour is not the problem of a single Nation, but it is a global and worldwide issue. Every human being is born free by nature and given certain human rights since birth without any discrimination. This form of child labour is clearly their exploitation and denial and abuse to Human Rights. labour? In India everything is regulated by population thus even in the case of child labour the most important cause to this problem is population. Many reasons can be attributed to the growing menace of child labour in India. Amongst others, the main reasons are poverty, Low income of the bread earner of the family, illiteracy, unemployment, population and large family, in-equitable distribution of land assets, absence of scheme for family allowance and also absence of scheme for social security, failure of government to control the child labour, in sufficient protective legislation. and ignorance, certain reasons for child labour are as follows: -

A. **Poverty:** - In India, major contributing factor responsible for child labour is poverty. About 40% population of children lead a life of poverty and because of poverty they are underfed and undernourished. For them It is very hard to arrange the meal for two times in a day and because of this it is but obvious that even small children has been compelled by the condition and need of the life to earn and therefore they without caring about their life jumps into hazardous industries for employment in order to fulfil their basic needs of life without which they have to suffer a lot. Mostly industries employ these children at very low wages in order to earn surplus profit. Thus, these children Are compelled to work in unhealthy, unsafe and risky environment.

B. **Low Income of The Bread Earner and Need of the Income to the Family:** Due to low wages of the adult earning members of the family, these children are compelled to work in unsafe and unhealthy environment. Another reason would be need of income to the family as sometimes children have to support their family members so they generally run towards the industries.

C. **Illiteracy:** - India’s rank is the lowest in the world as far as literacy is concerned. The average rate of literacy as per census of 1991 was 52.11 percent. Various states like Andhra Pradesh, Bihar, Madhya Pradesh, etc. registered less than forty percent literate population. Most of the children belonging to poor communities show little interest towards school education. The illiterate parents do not think of the future as they are more worried about their family ‘s present needs. For these poor families fulfilling their basic needs id the priority and thus for their survival and survival of their family, they need to send their children to work.

D. **Unemployment:** - Due to unemployment of adult members of the family children seek which is sometimes due to under-employment of the adults. However, government of India has made many efforts of reducing the unemployment in the country by introducing various schemes and Legislations. The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) is one such Act.

E. **Population and large family:** - Due to lack of family planning in India, people believe in having more and more children without realizing the fact that whether they would be able to give them basic amenities of life or not. As a result, it leads to poverty and because of poverty parents are not able to fulfil their basic needs and aspiration.

² <https://www.unicef.org/india/what-we-do/child-labour-exploitation>

³ <https://www.unicef.org/india/what-we-do/child-labour-exploitation>

F. **In-Equitable Distribution of Land Assets:** - In India, merely 10 percent of the privileged class holds 90 percent of the agricultural land. The rest of the landless farmers are actually farm labourers who work for wages. Even after 77 years of independence there has been practically no reform at this front. Even today, most of the tenant farmers are mortgaged to big landlords and rich farmers. Thus, the slogan —land to the tiller! has borne little fruit. The poor families, due to insufficient earnings, compel their children to take up jobs in order to supplement their

low family income.

G. **Failure of Government to Control The Child Labour:** - Failure on the part of Government to control child labour is also one of the major reason for child labour. In India there are, at present, many Acts to control child labour but most important aspect is its implementation because the effect of the child labour is very harmful, not only for children but also for whole Nation, because the today's children is the future of tomorrow, the success and development of a Nation is dependent upon them and therefore it must be protected.

H. **Insufficient Protective Legislations:** - The practice of engaging child labour is a symbol of the backwardness and inadequacies of rules and regulative measures in India. In India there is Industrial Law including provisions for almost all the industries which engage children as labour, specifying their working hours, terms and conditions of work, education, wages, etc. But very few years have so far strictly adhered to these rules and the administrative machinery has a callous attitude to enforce the same on the employers. Thus, there is hardly any organizational or institutional set up which can protect the children from their miseries of work.

I. **Lack of Strong Child Labour Unions:** - In several industries such as beedi, glass, matchbox, carpet, etc. child workers are preferred as workers. The most plausible reason for their preferential employment in such industries is lack of organizational support to child labour. The working children are usually not linked with any trade union. As such, they have no voice and strength to fight their duties, rights and privileges. There is no institutional set up which can appraise them of their rights and mandatory provisions. In the absence of proper guidance and patronage, the child labour yields to deprivation and heartlessness.

2. **DEFINITION OF CHILD:** - Before understanding the concept of child labour it becomes essential to understand the meaning of child and child labour. In general parlance, a child is A person under the age of majority. A minor is an individual who is not yet an adult or who has not reached the age of majority. Several legislations have defined the term child in terms of a specified age of majority. But where a statute is silent on the point, the common law applies. An attempt has been made by the Indian Legislature to define child for the purpose of application of Law. These follows as under:

➤ **According to the Minimum wages Act, 1948**, that person who has not completed fourteen years of age is a child.⁴

➤ **According to the Factories Act, 1948**, a child is who has not completed his fifteen year of age.⁵

➤ **According to the Motor Transport Workers Act, 1961**, a person below the age of fourteen years is a child⁶.

➤ **According to the Plantation Labour Act, 1951**, a person who has not completed fourteen years of his age is a child⁷.

➤ **According to the Child Labour (Prohibition and Regulation) Act, 1986**, a child 'is a person who has not completed his fourteen years of age.'⁸

➤ **According to the Children (Pledging of Labour) Act, 1933**, child is a person who is under the age of fifteen years.

3. **Child Labour - Nature and Magnitude :** - In India there are several legislations relating to the age of child which describe various age of the child, but its maximum age limit is 18 years. The important provisions include:

✓ **As laid down in the Constitution of India**, no child below the age of 14 is allowed to work in any factory or mine or engaged in any other hazardous employment⁹.

✓ **In the Plantation Labour Act, 1951**, prohibits child and adolescent to work in plantations, subjected to a few restrictions¹⁰.

⁴ Section 2(b) of the Minimum Wages Act, 1948

⁵ Section 2(c) of the Factories Act, 1948

⁶ Section 2(c) of the Motor Transport Workers Act, 1961

⁷ Section 2 (c) of the Plantation Labour Act, 1951

⁸ Section 2(ii) of the Child Labour (Prohibition and Regulation) Act, 1986

⁹ Article 24 of the Indian Constitution.

¹⁰ Section 26 of the Plantation Labour Act, 1951

- ✓ **The Factories Act, 1948** prohibits the employment of children below the age of fourteen years of age in factories¹¹.
- ✓ **The Motor Transport Workers Act, 1961**, prohibits any employment of a child i.e. below the age of 14 years as defined under the Act¹².
- ✓ **According to the Merchant Shipping Act, 1958**, employing a person below the age of fourteen years of age with certain exceptions is an offence¹³.
- ✓ **The Apprentice Act, 1961** prescribes the age requirement to work as an apprentice as fourteen years of age.¹⁴
- ✓ **According to the Beedi and Cigar Workers (Conditions of Employment) Act, 1966**, employment of a person who has not completed fourteen years of age in the industrial premises is prohibited¹⁵.
- ✓ **The Indian Mines Act, 1952**, prohibits employment of a person below the age of eighteen years.¹⁶
- ✓ **The Child Labour (Prohibition and Regulation) Act, 1986**, prohibits the employment of children in certain occupations and processes below the age of fourteen¹⁷.

The term child labour as is used by policy makers and researchers, who stress restoration of pleasures and opportunities of childhood to children, connotes deprivation and exploitation.

The Report of Child Labour (1979) states that labour becomes an absolute evil in the case of the child when the child is required to work beyond physical capacity, when hours to work interfere with child education, recreation and rest; when the wages are not commensurate with the quantum of work done and when the occupation the child is engaged child's health and safety¹⁸.

4. **CHILDREN & HAZARDOUS EMPLOYMENT:** - A number of studies conducted showed that children engaged in carpet weaving have lost or completely damaged their eye sight. Weaving is rarely done by children in a factory. Other processes like separating coloured strands ruffled and entangled during the treatment with chemicals is handled by the children. Consequences of that, there is very possibility of getting dye and acid strained wool fibers into eyes, lungs and skin too. Children working in Handloom and Sari industries work in dust and dingy rooms for long hours in crouched position thus affecting adversely their physical growth and development and consequently a worthless and precious asset of the country. Girls working in glass industries have to perform various processes like joining of ends, engraving of different patterns, heating, counting, packing and decoration. These factories work only at night. Children working in these factories are found to be suffering commonly from asthma, bronchitis, eye diseases, tuberculosis, etc. Children in Beedi industry are generally found to be suffering from bronchitis, asthma, tuberculosis etc. Children in diamond cutting industries are found to develop eye defects very soon; many of them become jobless in their teens due to early signs of eye fatigue. Those working as scrap collectors are prone to various kinds of skin disease area, and accidents due to broken glasses, tin and explosives.

Similarly, children working in dhabas, restaurants etc. are made to climb up and down staircases carrying hot tea. They face problem in case they happen to drop the tray. It is found that such children face various issues due to. Lack of sleep, caused by long hours of work increases accident rates. Sometimes girls and boys are used for immoral purpose and criminal activities by the employer. In Sivakashi and Mirzapur children were sold to the employer by a middleman. They were banged with iron rods, hung upside down, starved and made to work for long hours in all ventilated rooms without wages¹⁹.

Large number of children are working in the unorganized and self-employed sectors in towns as domestic servants, in general repair shops, construction workers, vendors, hawkers' newspaper sellers, shoe shiners, coolies, rickshaw pullers, casual labourers etc. A child construction worker digs the earth, carries loads of mud and mortar, breaks stones, and solders heavy iron rods on their heads. All such types of work require hardest of physical labour

¹¹ Section 67 of the Factories Act, 1948

¹² Section 21 of the Motor Transport Workers Act, 1961

¹³ Section 109 of the Merchant Shipping Act, 1958

¹⁴Section 3 of the Apprentice Act, 1961

¹⁵Section 24 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966

¹⁶ Section 40 of the Indian Mines Act, 1952

¹⁷ Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986

¹⁸ S. Mahendra Deve, Female Work Participation and Child Labour Occupational Data from NFHS, Economics and Political & Weekly, Nov. 2009

¹⁹ Economics of Child Labour in Hazardous Industries of India, Edited by R Anker, S Barge, S.Rajagopal, M P Joseph, CORT, Baroda, 1998

which stunts the growth of the child without any future prospects. Whatever kind of occupation it may be, hazardous or non-hazardous, to compel the child to work is not good for the proper development of the child. Considering the tenderness and significance of growth and development during this stage, our Constitution speaks of the welfare of the child. During the period of growth, a child should be provided with proper educational, nutritional facilities besides emotional support and care. If such a child instead of being provided all these facilities, gets employed and work like adult, that will definitely retard his normal growth and development.

5. **EFFECT OF CHILD LABOUR ON THE CHILD AND SOCIETY:-**Children are required special attention, care and safeguards for the well-being of the society. But by engaging the children as labourers we deprive them of certain basic physiological, psychological, biological and social needs, which is a disgrace to mankind. Child labourers are deprived of: -

- Full and harmonious development
- . An atmosphere of affection and love
- . Moral and material security
- Education
- Cultural
- Opportunity to develop to their abilities
- Opportunity to develop a sense of moral and social responsibility
- Legitimate right to childhood
- The assurance to develop into productive adults and to take their legitimate place in the society
- A normal childhood, putting and children to work may be temporarily beneficial to family but costs heavily to the child as an individual, its family and the society at large. Unhappy and disturbed childhood do not offer sound foundation for their future growth and development.

Poor children are generally malnourished if their work increases, their energy requirement and leads to calories deficit. If they suffer from anaemia, fatigue and inadequate rest and sleep, they become more susceptible to infectious diseases. Generally, children at work suffer from physical health hazards, body injury and postural deformities.

1.7 Constitutional Framework: -Article 23 and Article 24 of the Indian Constitution provides for protection of children from exploitation and the Child labour prohibition act was based on the provisions of **Constitutional Articles 23 and 24** for the protection of rights of children.

Article 23 specifies that in our Constitution, provisions have been made by our constitution makers to abolish the bonded labour, and child labour . **Article 23 forbids** trafficking in human beings, beggars, and other similar forms of forced labour.

Article 24 states that 'no person under the age of 14 shall be employed in any factory or mine or engage in any hazardous work.

Also provisions of **Article 39(e) and (f)** mandate the State to ensure that the child's tendering age is not harassed and to ensure that he / she does not have to undertake a job which, by economic necessity, is not good for his / her intensity or age. In a secure atmosphere and terms of freedom and integrity, these students have the tools and services to learn and protect children and young people from abuse and moral and material abandonment.

Article 45 provides for free and compulsory schooling education for all children under 14 years of age .

In **Article 51A(k)**, a parent or guardian has a legal responsibility to provide a child between the ages of six and 14 with educational facilities.

Article 21-A recognises that the right to education is a civil right and permits the State to extend the right to education to all children. 6 to 14 years of age for free and compulsory schooling.

There have been laws in India for many decades to control and regulate child labour. Legislations sought two concerns;

- (1) minimum age limits prescribing for child employment and regulating children's work time;
 - (2) ensuring child labourers' health and safety by prohibiting children from entering into dangerous employment.
- Several legislative provisions banning child labour, protecting the rights of tender children working as slaves, were passed before and after their freedom in order to satisfy the international community's commitment and to oblige the constitutional mandate to eliminate child labour.

There are a variety of child labour laws banning the employment in such specified jobs of children under 14 years and 15 years of age. Yet child labour in spite of all the legislative interventions is a harsh fact contrary to foreign obligation and all the proclamations of nation's Constitution. In the absence of any concrete action to fix the issue, the percentage of child labour in the country's entire workforce continued to increase over the years, due to lack of political will. Currently, not only menaces of child labour exist, it is deeply ingrained and overgrown, With the increase in industrialization, modernization, increase in lust for materialistic needs of man, the incidences of child labour is growing alarmingly.

Fundamental Rights:- Constitution of India has promised a special treatment to the children as a special class to accomplish this purpose state have power to make remarkable provisions for the welfare of children. So the state can make legislation for well - being of the children.

Accordingly —**Article 15(3)** authorizes the state to evolve new avenue by making new laws for women and children, to protect the interest of weaker state could provide some special facilities like reservation of women in politics, maternity relief, establishment of child court for the speedy disposal of children's litigation. Special labour court has been established by the government for the safeguard of interest of working class.

The pledge of the nation to the children to include the following facilities in general can be divided into 3 groups / categories: -

(a) expanding the safe life facilities and the children's natural growth in general.

(b) Shielding children from all forms of abuse;

(c) Shielding all children who are deprived and destitute. The goals of the provisions of Article 15 is to strengthen the State towards making laws for the welfare of children by giving them priority over other members of the society.

In later case it was confirmed by the judiciary in **Dattatraya Moti Ram v State of Bombay**²⁰. In this case Chagla, CJ claimed that special arrangements could be made for children and women in the state. But the State could not discriminate against women and children in favour of men. —

Article 15(3) The State is obliged to lay down special laws for infants, taking into account the inherent low ability of children. Article 15(3) has been adopted with the intention of preventing any conflict and represents the ideology of the drafter of the Constitution. It is the responsibility of the State not only to ensure the safety of children, but also to respect the rights of children. The word welfare seems to be quite inadequate to protect the interests of the child, particularly the girl child, in the present scenario, when the actual life of the girl child is at risk. The word welfare does not fulfil the government's need to protect the child socially, economically, politically, psychologically or physically. The word welfare does not satisfy need of the girl child of her overall development so that she proves to be an asset to the society.

Article 15(4) specifically states that any special social, economic, and educational welfare rules / regulations, as set out on the constitutional agenda, may be implemented by the State. The Article states specifically provide that the special requirements and regulations which be introduced by States for and for the benefit of children as domestic assistants. The girl child falls in the category of backward class, socially and educationally and economically and needs special protection and social security. Article 21 states that, except pursuant to legal requirements, every individual have right to enjoy the life.

The Supreme Court in Vidya Verma v Shiv Narain²¹, has explained that Article 21 applies only if the deprivation of the life and personal rights is done by the state, and that a person whose right is violated by a private citizen is entitled under ordinary law to strain his remedy. Through this context, the Article has effectively secured people's rights.

The **Hon'ble Apex Court** —ruled in **Francis' v Union territory** that the Right to Life requires the right to live with human dignity. The **Maneka Gandhi v Union of India** Apex Court held that the right to life extends to all aspects of life which make a man's life meaningful valuable and complete.

In **Bandhua Mukti Morcha v Union of India**, the scope of the term "right to life" was further expanded where the Supreme Court found that the right to life must require the right to live free of repression with human dignity. The State shall, with the enforcement of the laws set out in Article 21, ensure compliance with the labour laws to ensure that workers live decently.

In **People's Union for Democratic Rights v Union of India**²², the Supreme Court holds that it is mandatory for the State authorities to follow the provisions of minimum wages act to deprive the labour from minimum wages is a violation of labour law and constitutional right enshrined under art 21.

In **Olga Tellis v Bombay Municipal Corporation**²³, the Supreme Court has made it clear that the expression —right to life in Article 21 includes the right of livelihood also.

²⁰ 55.Bombay, LR 323

²¹ AIR 1956 SC 108

²² AIR 1982 SC 1473

²³ AIR 1986 SC 180

In D.K. Yadav v J.M.A. Industries²⁴ the Supreme Court has held that right to life include in its ambit right to livelihood and if anyone deprive the individual to enjoyment of right to earn livelihood then it must be just and fair. The Supreme Court has observed a different view regarding Article 21. In **Delhi Development Horticulture Employees Union v Delhi Administration**²⁵, the Supreme Court has held that right to subsistence cannot be guaranteed as a fundamental right of human being in our country as the country has no capacity to assure it.

In Secretary, State of Karnataka v Umadevi²⁶, the Supreme Court has held that **Article 21** of constitution does not include in its ambit right to employment. Law is complex and a living text is a constitution. It will take a while before free work is enshrined in or could be viewed as a fundamental right in the principle of the right to live with esteem. Only then can the definition of social protection be offered in the true meaning of the term. The Supreme Court, by its judicial intervention, has expanded the reach of **Article 21**.

In Calcutta Electricity Supply Corporation v Subash Chandra Bose, Regional Directors²⁷**ESI Corporation v Francis De Costa**²⁸, & **L.I.C. of India v Consumer Education and Research Centre**²⁹:- The Supreme Court, by its judicial intervention, has expanded the reach of Article 21.

Directive Principles Of State Policy (DPSP):- Part IV of the Constitution includes several other clauses. They are the State Government Guidelines, which are considered essential for the country's governance. Directive principles of the state policies are taken as the basic cornerstone of government policy. They are directives and guidance for future lawmakers and administrators to obey as they draft legislation for the benefit of society. Yet in a significant respect they vary in the sense that the concepts of the Directive do not fall under the jurisdiction of the court and constitutional rights may be put before the courts. They were held out of the courts' control. If the State is not taking any substantive steps to uphold the principles of the Regulation, we cannot file any suit against it in the Court of Justice. It is the values that must be practiced by States in the form of moral concepts These principles are in the nature of moral concepts to be followed by the States.

It is very true that Directive Principles of State Policy and Fundamental Rights are the basic Human Rights every person is entitled to these rights by birth, no one can deprive the person from the enjoyment fundamental rights. Directive principles of state policies are not enforceable by law However, in translating them into socio-economic reality they play an important role. In case of conflict between fundamental right and directive principle supreme court held that directive principle are not inferior to the Fundamental Rights both are supplementary and complementary of each other In fact, the Directive Principles impose an obligation on the States to take positive and affirmative active for maintaining social and economic justice in the society. The States have a duty imposed on them through the Directive Principles to create a socio-economic order to cherish the value and dignity of every member of the society. Among the various economic rights and social security principles provided by the State to guarantee its citizens are:

- ❖ Appropriate means of livelihood;
- ❖ Equal pay for all workers;
- ❖ Distribution of material resources of country must be fair
- ❖ To protect the interest of child labour and adult labour;
- ❖ Minimum wages of workers must be fixed to protect them from exploitation
- ❖ Freedom to work;
- ❖ Minimum salaries of employees to defend against exploitation They must be set;
- ❖ Job freedom;
- ❖ Free and obligatory education for children up to the age of 14;
- ❖ Terms of employment should be certain, decent living standards and maximum enjoyment of leisure time must be maintained;
- ❖ Cultural and social chances;
- ❖ Public aid in houseless, elderly, sickness, disability situations;
- ❖ Equal and fair standards of work;
- ❖ Promoting the educational and fiscal rights of the Scheduled Classes and Tribes;
- ❖ The defence of the economic and social rights of the most vulnerable groups;
- ❖ Increasing dietary standards and improving public health.

²⁴ AIR 1993 SCC 259

²⁵ AIR 1992, SC 789

²⁶ AIR, 2006 SC 1806

²⁷ AIR 573 1991 SCR

²⁸ AIR 1997(1) SCT 41

²⁹ 10 MAY 1995 SCC 482

Some of these directive principles such as free and compulsory education, equal pay for equal work for both men and women have been achieved but, it is observed that majority of the principles are not seen to be incorporated in the organized sector and the unorganized sector remains totally neglected by the law makers. The social security principles shall have a meaning only when they will be extended to all the citizens of the country.

In Bandhua Mukti v Union of India³⁰, it was stated by the Court that directive principle can not be enforced like the fundamental rights of the individual these are only for the directions that how a government and state should work for the welfare of the citizen if the provisions of directive principles are contravened by the state government, aggrieved party can not claim the compensation from the accused, but if the directive principles are about the welfare of the children then in that case court can enforce the directive principles for the welfare of the children. The guidelines set down procedures and regulations for the advancement of child welfare. States shall formulate laws to promote the public and stable development of the nation's anaesthetic interests. In place of their contribution to the society and economic development of the entire world, our legislation should be built on the principle of advantageous legislative construction and not robbed by their fundamental rights to live with dignity. Now it is time to make legislation to safeguard not only child labour but the girl child labour in general. The girls' welfare should be promoted by statute. It should protect and safeguard the girl by fulfilling the constitutional requirements. The States shall enact special legislation not only in order to protect the rights of child labour, but also in order to control working and employment conditions. Article 38 orders the State, through its laws, to maintain a social order through the provision of people's welfare.

According to Article 38(1), the State shall make efforts to ensure the good of the people by fostering and fostering an efficient and morally constructed social structure under which all members of society are accounted for with justice, social, economic and political.. Article 38(2) provides that the State shall distinctly make efforts to disparage the unfairness in income, and also make earnest attempt to get rid of unevenness in status, treatment and opportunities. This aim should be achieved among individuals and amongst groups of people residing in different localities or working in different avocations.

Further **Article 39** provides that the State shall universally; secure its policies towards extending the health and vigor of workers, men & women, and the children by assuming them as underprivileged. No citizens should be forced by economic constraints to enter additional unsuitable work by their age or physical power. It also directs that the State should create opportunities and facilitate the child to grow in healthy way. Such circumstances and conditions should be created so that the child leads a life of freedom and dignity. It is also the primary duty of the State to ensure that childhood and youth are defended against exploitation of moral and worldly essentials. The Article particularly emphasis that the State shall ensure to its people sufficient means of living, fair distribution of wealth and protection of childhood and child labour. It is observed that the Article fails to ensure protection for the girl child labour regarding her social security. Article 21 derives its strength from Article 39 in the sense that Right to live with human dignity free from exploitation is enshrined in it.

In B.M.M. v Union of India³¹, the Supreme Court stated that it may not be possible to make compulsion on the State by court pronouncements to make statutory enactments for guaranteeing primary needs to survive with human dignity but where such laws already exist the State can be endeavor to make obey of such laws. But it can be seen that the States have a very casual approach towards Article 39 for the fulfillment of the Constitutional obligation for the welfare of children. No state has yet made efforts to implement and execute beneficial laws without delay. In *MC Mehta v of Tamil Nadu*, it was reported that the article was violated as the manufacture process of matches and fireworks is dangerous provided that **Article 39** employ children in match factories. However, children should be used during the packaging process outside the factory to prevent exposure injuries. In order to create the Child Labor Rehabilitation Welfare Fund, the apex court has given directions. The employer has been kept responsible for ensuring the employment of an adult in the family of the child worker. In order to create the Children's Job Recovery Fund the Apex Court has set out guidelines. The employer was responsible for seeking employment in the child worker's family for an adult. The Supreme Court also stated that hercules should eradicate the danger of child labour in a hazardous industry, treat the child with an iron manual and protect it in accordance with the Constitution.

The Supreme Court in Sheela Barse v Union of India³² held that Article 39 (f) of the Constitution requires the State to aim to uphold the constitutional obligation to provide children with opportunities to grow in a sound and freedom-and-worthy manner. The Supreme Court also noted that while numerous have adopted the Children's Act in order to satisfy the constitutional responsibility for child care in compliance with Article 39(f), it also requires the entry into force and execution of these beneficial laws immediately. Similarly the provisions of Article 41 requires that, It is the duty of the State government to provide within the limits of its economic ability and advancement, make operative provisions for securing, the right to education and public aid in cases of

³⁰ AIR 1984 SC 802, 1984 SCC 161

³¹ 10 MAY 1995 SCC 482

³² AIR 1986 SC 1773; JT 1986 136 1986 SCALE (2) 230

underemployment, unemployment and in times of undeserved deficit state cannot take a plea he have lack of resources or it is beyond the financial capacity of the state. The effective implementation of existing provision and some new laws are requisite to promote the welfare of the children proportionately and to ensure corrective justice to them it is the responsibility of state to ensure to the citizens employment, education and public assistance with in it economic capacity. The Article aims at providing such assistance to the feeble sections of the society. The Constitutions by this article refers to directives as measures of social security. Similarly the directive to the State to make successful provisions for securing the right to work according to the economic capacity of the state .it is the duty of the States to make efforts in this direction. Article 43 lays down it is the duty of the State to secure the interest of all labourers by suitable legislation in agricultural and industrial occupation. In **Bijay Cotton Mills Ltd. v State of Ajmer**³³, it is a remarkable decision, court held that working labour class have right to fixation of minimum wages, minimum wages act ensured the interest of workers by protecting them from the economic exploitation and it does not contravene the provisions of **art.19 (1) (g)**.

6. THE COMMISSIONS FOR PROTECTION OF CHILD RIGHTS ACT, 2005: - The Commission was set up, with the purpose of research and track all matters relevant to the Constitutional and Legal Rights of Children, with the purpose of protection of rights of children at national level. The committee will review and review the current law protections and ensure their efficient operation in accordance with the provisions of the Act. In the current rules, the Commission will recommend amendments. The Committee shall investigate grievances, child care and child development. The Commission shall review annually the current child rights scheme and policies. It should also examine and study the international laws and programs so that they can be incorporated in our laws for the benefit of children and successful execution of these laws in the best interest of children. The Commission has also to promote and encourage research programs with regard to national and international laws.

The Act obligates the commission to conduct child rights educational programs amid different segments of the society. It shall strive to publicize awareness regarding the safety measure available for the defense of their rights through use of periodicals, media, and seminars. The commission have power to take suo moto cognizance of defective execution of laws for the safeguard and progress of children, commission can issue guidelines or instructions for the protection and welfare of children. Commissions have no specific mention of children working in different types of work. Children are not categorized for the purpose of safeguard. It is ambiguous on the issue of types of laws to be amended or implemented. It is only a bill of suggestions out of which no specific inference can be drawn regarding the girl child rights or the girl child labour. The commission is just a suggestive Bill generally formulated to protect the constitutional rights of a child on the whole.

The Act also does not contain the definition of child for whose benefit the Act has been enacted. The Act has also not defined child labour which the most important definition is left out. The child labour and the girl child labour is the most neglected even in the special Act to protect their right. The 2nd National Commission on labour suggests for changes in existing laws relating to labour in the structured sector. It suggested legislations for unorganized sector as it is most neglected area and most of child labourers are involved in unorganized sector due to the absence of strict laws regarding the child labour. But the need of the hour is to make special mention and give special attention towards the girl child labour. She must be given special reference and included in every study conducted by government agencies, Law Commissions and the law makers on child labour. The issue of female child labour as domestic help should be highlighted so that the services given by them could be recognized and their rights could be secured and she could be provided social security through special laws. It has been observed that National Commissions are also working on the general rights of child labour. We must be more thoughtful about the girl child in common and the lass child labour and the girl child as domestic help specifically.

The National Commission should hold special commission for problems related to the girl child labour as domestic help. The nature of their work, their conditions of work, their place of work, their terms and conditions of work, their relations with their job provider etc. should be studied and proper and effective legislations should be for them. Their needs must be taken into consideration so that laws are formulated for their benefits. The state has now to take initiative to give true meaning to the Directive Principles along with the fundamental Rights. The law makers have to take up the challenge of reading between the lines of those relevant Articles and make laws which will be beneficial for the weaker sections of the society. It is the duty of the Parliament to define the words 'feeble section of the people' and make appropriate laws.

The Articles in chapter III & IV can be given a new meaning and interpretation. In fact they must be interpreted with the changing needs of the society and accordingly laws should be made so that they can be beneficial for maximum number of people. Child labour is a spiteful activity, a refusal of childhood joy, and exposure to social opportunities such as schooling, play that eventually undermines childhood 's autonomy and

³³ AIR 1955, SC 33

imagination, development and full growth of a person in a wide variety of child labour, and children's suffering and difficulties (whether they work at home or outside) are worsen(government is worse. The children are the weakest portion of the population who, at a tendernage, enter the labour force to earn a little bit or contribute to family jobs, sacrificing personal growth. The severe incidence of child jobs in developing countries' villages and cities is due to poverty combined with the increasingly rising population, indifference and increasing dependency. The useful framework, slow growth, unequal ownership of capital, and its association with high unemployment and stern poverty have forced the countries to increase

child labour. The essential freedoms that must be achieved:-

- ✓ No discrimination should be made on the basis of gender, race, ethnicity, national origin or religion.
- ✓ Every one should have freedom to live life with dignity
- ✓ Freedom to develop and realize one's human potential
- ✓ No one should be arrested arbitrarily.
- ✓ Everyone has right to fair trail according to procedure establish by la
- ✓ Everyone has right to express his /her opinion subjected to limitation imposed by law.
- ✓ Everyone has right to work in living work conditions without any kind of exploitation.60

The expression 'Human Rights' covers every aspect of human life and its dignity. To achieve this legislature of all the nations are consistent with the International covenants. "Human right as the rights of individuals in terms of life, liberty, equality and dignity that are enshrined in the Constitution of India or expressed in an International Covenant that is enforceable by court" is specified in India in the Protection of Human Rights Act 1993 under (d). To cover the basic rights in the Constitution, the constitutional definition of human rights is expanding. Human rights include relations between individuals, between individuals and the state or particular groups and between the state or various people 's groups. Since Human Development is the new measure of Human Rights, it is said that the nation should possess the ability to apply knowledge profitably to transform its wealth, other resources and social values through the methods for innovation which would decide the future of the nation. The aim of every nation should be to achieve Human development linked with Human Rights for which education is the most effective tool which would lead any nation towards empowerment and Human Development. Human rights are birth right and these are inalienable rights. These rights are possessed by them because every human being has an existence and an entity of its own. These basic rights are operative as soon as we are born. Human Rights cannot be divided on the basis of racism, creed, religion, sex and nationality. These rights are vital as they help achieve them freedom and dignity which are necessary for their mental, physical, moral, social and spiritual welfare. Without the human right no one get fully developed these are nessary for the existence of human being. Human Rights are significant because they are those fundamental rights which a human being possesses the moment he comes into existence in the womb of the mother. Thus it can be said that the rights which a person has due to his existence in the society are human rights. They are based on basic human needs. They are characteristically important for human physical existence and health.

7. LEGISLATIVE ENACTMENTS: -

The Factories Act, 1948:- The law prohibits children under fourteen years of age from employing in a factory. The Act requires people aged 14 to 18 years of age to receive a health certificate from an approvedbmedical officer and a journal report. The Law bans the working of children aged 14 to 17 at night. The law prohibits the employing children in certain production operations. You cannot operate on computers deemed to be unsafe. The Government of the State may make rules recommending maximum weights for children working in manufacturing, lifting, carrying orbtransportation. Owner of industry shall maintain registers with all records on child labour and weekly holiday and paid leave.

The Minimum Wages Act, 1948:- Provisions for the setting of minimum levels of pay in certain occupations have been made inthe act,which have been set out in the schedule of the Act by the relevant government. The Act does not made any clear rules and that it stipulates that separate minimum wage thresholds will be defined for young adults and adolescents (Section 3). Definitions of adult, adolescent and infanthas been taken from the Factories Act , 1948. It can also be argued that the Minimum Wages Act calls for a regular working day of four hours and preferential salaries for child labour (Government of India, 1948a).Rule 24 of the Minimum Wages (Central) Regulations of 1950 state that working hours of child is fixed .No child shall ben exploited beyond these working hours.

The Plantation Labour Act, 1951:- Key points of this act is listed below-

- 1) The hiring of children under 12 years of age is forbidden under this Act
- 2) No child between 12-15 years of age shall be permitted to work in any plantation (**Section 26**)

The Mines Act, 1952:- "A child under 15 years is defined by the Act. Employment of children in mines has been prohibited by the act,presence of children anywhere below ground or above ground in a mining operation is also banned by the act If a youth is approved by a qualified surgeon for health, he can operate in any section below the floor (between 16 and 18 years).

The Merchant Shipping Act, 1958:- An act except for an educational vessel, a houseboat, or a boat of less than a hundred tonnes shall prevent children from working in any ship. He may enter in a vessel on which his family members operate. Key point of this act listed below:

- 1) No person under 18 years of age will trim or store on a ship and a medical certificate is issued by the medical officer is required from the children under the age of 18 years.
- 2) At intervals of one year, these medical certificates are required.
- 3) The Act provides a fine of Rs. 50 in case of contravention of the provisions of shipping Act.

The Motor Transport Workers Act, 1961:- The Motor Transport Workers Act of 1961 includes any motor transport company with five or more workers. It prohibits work for persons less than 14 years of age in the case of motor transport companies (Section 21) (India, 1961). 3.9.7 The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 The Beedi & Cigar Workers Act of 1966 covers all industrial premises where all manufacturing activities connected to or usually carried out by means of with or without beedi and cigar related raw material, for example if the bidi making activities is carried on at workers home provision of this act will be applicable. This Act extends to all industrial premises. Under these grounds the Law forbids the use of children under the age of 14 (Section 24). The employment of young people aged 14 and 18 years children were restricted to work in night shift. (Indian Government, 1966).

Bonded Labour System (Abolition) Act, 1976:- Employment of children is restricted by the bonded labour abolition act. On the reception of complaint or on suo moto cognizance commission have power to investigate the matter. The defaulter party have to pay the fine of rupees 2000 (26.4 USD) and punishment of 3 years would be imposed.

Employment of Children (Amendment) Act, 1978:- Under 15 years, the government of India forbids the employment of a child in railway premises such as the catering and all other work that is performed nearness of the railway track, for instance, to cleaning or clearing ash pit or building operations (1978).

The Child Labour (Prohibition and Regulation) Act, 1986:- In 13 occupations and 57 procedures measured dangerous by different notifications from the central government, the act forbids the employment of children under the age of 14. It is specified in part A & B of the program of action. All other activities may include children of any age, given that the legal limits extend to employees, including a maximum of six hours of working time, with 1 hour rest period, and a minimum period of one day off per week. The Act punishments vary from three months to one year sentence and a fine of 10,000 to 20,000 rupees (USD 224 and 448). The following is a list of forbidden professions and processes: -

Occupations:- Transportation by rail of passengers, goods or mails, catering, clearing of an ash pit or a structure in a railway grounds, catering services in a railway station requiring the transfer of a customer or of some other part of the line, or in or out of a moveable railway station;

Processes: -

- Bidi manufacture;
- Weaving of carpets;
- Cement manufacturing including concrete bagging;
- Printing of fabric, dyeing and tissues
- Manufacture of weapons, explosions and fireworks;
- Chopping, scratching and scraping; • manufacture of soap;
- Tanning;
- Washing of wool;
- Production operation, such as main and secondary plumbing, welding of metal coated with piping, producing, welding of silicates, polyvinyl chloride, blending (by hand) of glass, sanding or sweeping of piping paints in plumbing workshops, burning lead in plumbing workshops, plumbing, cabling manufacturing and patenting of wire, plumbing of the plumber, type of base in plumbing workshops Stock, install vehicles, fire and plumbing; Stock typing;
- Fabrication, manufacturing, handling and possession of explosive material, metal washing and photographic and soldering methods in the electronics sector, Produce or burning of carbon briquettes and briquettes; produce of construction, construction goods and related products; Manufacture of glass, glassware and tubes; manufacture of dyeing and dyeing products;

We can also see that the majority of the professions and processes that can pose risks to a child's safety have been prohibited in the light of this Act.

9. NATIONAL CHILD LABOUR POLICY, 1987: - During the seventh plan era, the National Child Labour Policy was adopted. It is a situation in which children work or are forced to work frequently or constantly in order to make a living for themselves and/or their families and where their working conditions contribute to their weaknesses and abuse. The main components of this policy are:

- (i) In order to advise on the introduction of occupation and procedures in the Child Labour Act 1986 (Prohibition and Regulation) the central government has set-up a Children's Technical Consultative Committee.
- (ii) Strictly followed are the provisions of the Child Labour Act, 1986 and other related child laws. They are to be included.
- (iii) The aim was to focus on places with a high prevalence of children working and to pursue a project-based approach to identifying, eliminating and rehabilitating children's labour.
- (iv) Intensification of poverty initiatives, such as the Essential Plan for Rural Growth, the National Plan for Rural Jobs, etc. was carried out.
- (v) It aims at supplying food through schemes such as "Integrated Programs of Child Development."
- (vi) It aims, through formal or non-formal education systems, to provide better and easily accessible education (Government of India, 1987).

10. THE NATIONAL CHILD LABOUR PROJECTS: - The National Child Labour Projects (NCLP) is India's biggest and most organized intervention in child labour. The NCLP schema targets at children under the age of 14 employed in different areas of dangerous employment, defined as 15 workers and 57 processes Prohibition and Regulation Act of 1986, which offers an overview of child labour, after which children are reiterated from employment in special schools and permitted into unsafe work / processes. Their temporary position and their value for children to go to school as their ultimate goal is also referred to as "bridge centers" (Government of India, 1998).

CRITICAL APPRAISAL: - A number of Acts have taken into account after the independence in India. Indian Constitutional framework, however, is stern enough to meet out the grim situation on child Labour in India but the executive approach is a soft corner in this regard. Various Acts have been amended or enacted after the Indian independence. Still there is a need to make strict provisions so as to commensurate with the contemporary society.

11. CONCLUSION AND SUGGESTION: - Hence, enforcement alone cannot help in solving this issue. The Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families. Various NGOs like CARE India, Child Rights and You, Global March Against Child Labor, etc., have been working to annihilate and exterminate child labor in India. The child labor can be suppressed by passing stringent legislation and action, moving Bonafidely and by protecting the health of the children. Due to higher endurance of young children, they are unable to protest against discrimination. Focusing on grassroots strategies to mobilize communities against child labor and reintegration of child workers into their homes and schools has proven crucial to breaking the cycle of child labor. A multidisciplinary approach involving specialists with medical, psychological and socio-anthropological level is needed to curb this evil.

The landmark passing of the Right of Children to Free and Compulsory Education (RTE) Act 2009, which marks a historic moment for the children of India. For the first time in India's history, children will be guaranteed their right to quality elementary education by the state with the help of families and communities. Although there has been significant increase in the proportion of children from socially disadvantaged groups in school, gaps still remain. Girls are still less likely to enroll in school in comparison to than boys; in 2005, for upper primary school (Grades 6–8) girls' enrolment was still 8.8 points lower than boys, for Scheduled Tribes (ST) the gender gap was 12.6 points and it was 16 points for Scheduled Castes (SC). RTE provides a ripe platform to reach the unreached, with specific provisions for disadvantaged groups such as child labourers, migrant children, children with special needs, or those who have a "disadvantage owing to social, cultural economical, geographical, linguistic, gender or such other factors." Bringing 8 million out-of-school children into classes at the age-appropriate level with the support to stay in school and succeed poses a major challenge. Substantial efforts are essential to eliminate disparities and ensure quality with equity. Successful implementation of the Act would certainly go a long way in eradicating child labor in India.

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LIST OF ABBREVIATIONS

AIDS: Acquired immune deficiency syndrome
CEDAW: Convention on the Elimination of all forms of Discrimination against Women
CJ: Chief Justice
CRC: Convention on the Rights of the Child
CRY: Child Rights and You
CWIN: Child Workers in Nepal
DMPA: Depo Medroxy Progesterone Acetate
DWCRA: Development of women and children in rural areas
FAO: Food and Agriculture Organization
G.N.P: Gross National Product
ICCPR: The International Covenant on Civil and Political Rights
ICDS: Integrated Child Development Services
ICESCR: The International Covenant on Economic, Social and Cultural Rights
ICFTU: International Confederation of free trade unions
IFAP: International Federation of Agricultural Producers
IFPRI: International Food Policy Research Institute
ILO: International Labour Organization
IPEC: International Programme on the Elimination of Child Labour
IMF: International Monetary Fund
MOU: Memorandum of Understanding
MVF: Mamidipudi Venkatarangaish Foundation
NCLP: National Child Labour Project
NGO: Non Governmental Organization
NLC: National Labour Commission
OSHA: Occupational Safety & Health Administration
PDM: Pro-democracy movement
SACCS: South Asian Coalition on Child Servitude
SNA: System of National Accounts
SSNCC: Service National Co-ordination Council
SWC: Social Welfare Council
UNCRC: The UN Convention on the Rights of the Child
UNIEF: United Nations International Children's Emergency Fund
WCAR: World Conference against Racism
WHD: Wage and Hour Division
CLPRA: Child Labour (Prohibition and Regulation) Act
Cri. LJ: Criminal Law Journal
Cl: Clause
Cir: Circuit
Dr: Doctor
DB: Division Bench
DEL: Delhi
DLT: Delhi Law Times
Govt: Government
IPC: Indian Penal Code, 1860
ILO: International Labour Organisation
ICPS: Integrated Child Protection Scheme

IPC: Indian Penal Code
ILO: International Labour Organisation
JJ Act: Juvenile Justice Act
NCLP: National Child Labour Project
NGO: Non-Government Organisation
NRHM: National Rural Health Mission
Ors: Others
Para: Paragraph
POCSO: The Protection of Children from Sexual Offences Act, 2012
Prof.: Professor
SA: South Africa
Sect: Sector
SCC: Supreme Court Cases
SCR: Supreme Court Reporter
RTE: Right to Education
SC: Scheduled Caste
ST: Scheduled Tribe
WFCL: Worst Forms of Child Labour