

**CHILD LABOUR IN INDIA: A SOCIO-LEGAL STUDY WITH
SPECIAL REFERENCE TO LUCKNOW DISTRICT**

THESIS

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LAW**

**SUPERVISOR TO
Dr. Pradeep Kumar
(Assistant Professor)**

**SUBMITTED BY
Rajvardhan
Enrollment No. : 889/14**

**DEPARTMENT OF LAW
SCHOOL FOR LEGAL STUDIES
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
(A CENTRAL UNIVERSITY)
VIDYA VIHAR, RAEBARELI ROAD
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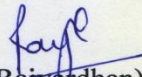
DECLARATION

I, Rajvardhan, hereby declare that research work embodied in this Ph.D. thesis titled **“Child Labour in India: A Socio-Legal Study with Special Reference to Lucknow District”** has been carried out by me under the supervision of **Dr. PRADEEP KUMAR**, Assistant Professor, Department of Law, School for Legal Studies, Babasaheb Bhimrao Ambedkar University (A Central University), Lucknow. This research work is an original work and it has not been previously submitted in part or full for any other degree or diploma in this University or any other University.

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Date: 27/08/2019

Place: Lucknow


(Rajvardhan)

Enrollment No. 889/014
Department of Law,
School for Legal Studies,
Babasaheb Bhimrao Ambedkar University,
Lucknow-226025

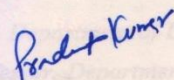
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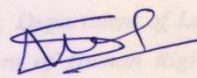
This is to certify that the thesis titled “**Child Labour in India: A Socio-Legal Study with Special Reference to Lucknow District**” submitted by **Mr. Rajvardhan** is an original research work and has not been previously submitted in part or full for the award of any other degree or diploma to this or any other university.

The thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the *Doctor of Philosophy (Ph.D.) regulation-1999 as amended in 2008/2010/2013* and it is fit for submission and evaluation for the award of the Degree of Doctor of Philosophy of the University.

Date: 27/08/2019

Place: Lucknow


Supervisor


Head of the Department

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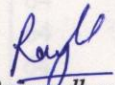
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ABBREVIATIONS

A.D.	:	Anno Domini (in the year of our Lord)
ACHDR	:	African Charter on Human and People's Right
ACHR	:	American Convention of Human Rights
ACRWC	:	African Charter on the Right and Welfare of the Child
AE	:	Actual Expenditure
AIR	:	All India Reporters
AP	:	Andhra Pradesh
ASEAN	:	Association of South East Nations
B.C.	:	Before Christ
C.J	:	Chief Justice
CL	:	Child Labour
CLE	:	Child Labour Exploitation
CLR	:	Criminal Law journal
CMRA	:	Child Marriage Restraint Act.
Cr.L.J	:	Criminal Law Journal
CRC	:	Convention on the Rights of the Child
CSWB	:	Central Social Welfare Board
CWCs	:	Child Welfare Committees
DCCP	:	Drug Control and Crime Prevention
DPEP	:	District Primary Education Projects
DPSP	:	Directive Principle of State Policy
DRC	:	Declaration of the Rights of the Child.
E.g	:	Exempli gratia.
ECECR	:	European Convention on the Exercise of Children's Rights.
ECHR	:	European Convention on the Human Rights.
ESCAP	:	Economic and Social Commission for Asia and the Pacific
FR	:	Fundamental Rights
GOI	:	Government of India

HC	:	High Court.
HOL	:	House of Lords
IAC	:	International American Convention.
Ibid	:	Ibidem (in the same place)
ICCPR	:	International Convention on Civil and Political Rights.
ICESCR	:	International Covenant on Economic , Social and Cultural Rights
Id	:	Idem(inthesame)
ILO	:	International Labour Organisation
Infra	:	Cited below
IPC	:	Indian Penal Code.
IPECL	:	International Programme for the Elimination of Child labour
ITPA	:	Immoral Trafficking Prevention Act
J & K	:	Jammu and Kashmir
J&K	:	Jammu and Kashmir.
JJ	:	Juvenile Justice.
NCPCR	:	National commission for Protection of Child Rights.
NCRB	:	National Crime Beaureo Report
NGO	:	Non-Governmental Organization.
NHRC	:	National Human Rights Commissions
P.	:	Page
Para	:	Paragraph
PIL	:	Public Interest Litigation
POCSO	:	Protection of Children from Sexual Offences.
PP.	:	Pages.
QB	:	Queens Bench
Rrt.	:	Article.
S.C.	:	Supreme Court
SAARC	:	South Asian Association for the Regional Cooperation
SC	:	Schedule Caste

SCC	:	Supreme Court Cases.
SCPCR	:	State Commission for Protection of Child Rights
Sec.	:	Section
Sess	:	Session
STP	:	Sex Trafficking Protocol
Supra	:	Cited above
U.N.	:	United Nation
U.P.	:	Uttar Pradesh
UDHR	:	Universal Declaration on Human Rights
UNICEF	:	United Nations International Children`s Emergency Fund
V	:	Verses
Viz.	:	Namely
Vol.	:	Volume
WECLC	:	Worst Form of Child Labour Convention
SCIU	:	Save the Children International Union

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- *Sanjit Ray v. State of Rajasthan*. AIR 1983 SC 328.
- *Santhal Pargana Antyodaya Ashram v. State of Bihar*, 1987, Supp - SCC 141.
- *Sheela Barse Nurse v. Secretary Children Aid Society others*, AIR, 1987 SCC. 50.
- *Sunil Batra v. State of Delhi Administration*, AIR1978, 4 SCC. 494
- *The Public at large v. State of Maharashtra & Ors*, 1997 (4) Bom. C.R. 171
- *TMA Pai Foundation v. Union of India*, AIR 1996, SC 2652.
- *Vikram Deo Singh Tomar v. State of Bihar*, AIR, 1988 Sc 1782.
- *Visahakha v. State of Rajasthan*, AIR 1997, SC 241
- *Vishal Jeet v. Union of India*, AIR 1990 SC 1412.
- *Walkar T. Ltd; v. Martindale*, (1976) 85 KL KB, 1543

PREFACE

In all ages of life, childhood has been maintained with love, care and protection, besides training for physical and mental development. Basically, the child is the property of the nation, which is very important for the nation's creation. Ironically, in almost all countries of the world, most children cannot have beautiful dreams in childhood. Because in the present times the problem of child labour remains a burning problem. According to a report by the International Labor Organization, 150 million children are child labourers and the number of child labourers in India is much higher than in other countries.

Countering child labour has been a serious concern for academics, administrators, reformers, legislators and the judiciary. Child labour is a global phenomenon. It exists in one form or another in the history of man. In Kautilya's Arthashastra of the third century BCE, the employment of children in India was described as slavery. In the medieval period, children were hired as apprentices under artisans and artisans, especially in the carpet weaving cotton and silk weaving industries, which provide a large number of jobs. This nature of children's work was essentially non-threatening and aimed at passing on the craft to the next generation. But, in modern times, with the advent of industrialization, children started working in factories and workshops. Among them we find particularly those who were forced to migrate from rural areas to urban areas with their parents due to poverty, this aspect of human suffering was exploited by employers and they were prolonged by them. Employment of children continued with the feeling of working. They also agreed to give employment to children suffering from poverty.

The number of child labour in developing countries has increased in a very high proportion. International bodies, including the International Labor Organization, intervened. The ILO initially recognized child labour as a social reality, a phenomenon of poverty and underdevelopment and, therefore, made efforts to reduce the status of child labour. So that the conditions of children are improved, the law promotes the elimination of child labour and the identification of industries hazardous to children.

What I have discussed on the international perspective of child labour. The United Nations and other international organizations attempted to do well and good for child

labour. Convention to improve the condition of children involved in child labour, such as Geneva Conventions in 1924, United Nations Declaration of Human Rights 1948, Declaration on Rights of Child 1959, World Conference on Human Rights Vienna Declaration and Program of Action 1993, etc. Were done. Also studied the role of the International Labour Organization in research work.

India has also promoted international laws to curb child labour. Some articles of the constitution also ban child labour. Article 15 (3), 21A, 23, 24, 39, and Article 45 etc. The legislature has also enacted several laws to prevent child labour, some of which are mainly, the Children (Pleadings of Labor) Act 1933, Factory Act 1948, Child Labor (Protection and Regulation) Act 1986 etc. These laws have also been studied. The judiciary has also played an important role in curbing child labour. The judiciary enunciated a very judicial doctrine for child labour and protected the rights of children with judicial activism.

The question arises as to what are the factors that hinder the abolition of child labour in India. This basic question is the focus of research. In fact, the field of child labour is wide. It is associated with the identity and prestige of the individual and society; it also has its moral and human side. The whole world is worried about the expansion of the problem of child labour. The serious and concrete study was needed on such an important subject. Therefore, the researcher made the topic of his research "Child Labor in India: A Socio-Legal Study with Special Reference to Lucknow District". In the research work presented by the researcher, the social and legal studies of Lucknow district studied the status of children working in tea shops and dhabas. In which factual and social analysis of working children has been done. Necessary references and appropriate tables are also given to verify the facts and something useful to abolish child labour. And meaningful suggestions have also been made. The research work is divided into seven chapters.

INTRODUCTION

1.0 INTRODUCTION

Children are valuable gift of God. They are blooming garden flowers. Therefore, every member of society has an obligation to protect those flowers, which will eliminate all kind of harmful effects of children. The energy, talent and mental faculties of every child must be properly channelised, trained and educated for the socio-economic and political-cultural development of all countries of the world. It is also a proven right to birth every child.¹

It is said that the importance of children lies in the fact that the child is a valuable asset of the universe. If there were no children, there would be no humanity and there could not be a universe without humanity. Children are the greatest gift to humanity and they represent the beautiful creation of God. They should be nurtured with care and affection within the family and society. They constitute the human resources of the country. Children are like a seed, just as a grand tree is hidden in the seed, similarly a powerful nation is hidden in the children.² A child of today will not grow to become a responsible and productive member of the society of tomorrow until he finds an environment conducive to social and physical health. Justice K.M. Ramaswamy said, “The children of the world are innocent, weak and dependent. They should be full of happiness and peace. So they should help shape their future in support of play, learning, growing and harmony.” Their childhood matures. Broaden the vision of children and give them a chance to gain new experiences. Abandoning the children, excluding a good foundation of life for them, is a crime against humanity.³

Child labour is a universal phenomenon. From time immemorial child labour has always existed under different names. Poverty, unemployment, under-employment, lack

¹ Rajeev K Sinha, “Movement against Child Labour: Policy Action and Challenge- An Appraisal.” Quoted in *Kanpur Law Journal*, Vol. II 62 (1996).

² Lingaraj and M. Koninkar, *Child Labour in India: Legal Regulation* 9 (Regal Publications, New Delhi, 2014).

³ *Gaurav Jain v. Union of India* (1997) 8 SCC 114.

of social protection, large family, illiteracy, ignorance and bad habits of a family bread earners, child as cheap labour, absence of compulsions of child labour in India and in many other countries of the world.

The term ‘child labour’ is at times, used as a synonym for employing child or working child. The children, who are engaged in the employment at age of 14th years or below the age of 14th, deprived them the opportunities of development, are called child labour traditionally to assist in work done by their parents and works done by their parents and works done by the children outside the family for kind or cash remuneration to raise the income of the family. According to V.V. Giri, (Former President of India) “the term child labour is commonly interpreted in two different ways, first, as an economic practice and secondly, as a social evil.”⁴

The committee on child labour constituted under the chairmanship of Shri Gurupadaswamy observed that, “labour becomes an absolute evil in the case of the child. When he is required to work beyond his physical capacity, when hours of employment interfere with his education, recreation and rest, when his wages are not commensurate with the quantum of work done and when the occupation in which he is engaged endangers his health and safety.”⁵

Still today we do not have any single definition of child labour acceptable to all section of the society. Often ‘child work’ and ‘child labour’ are used interchangeably. This creates confusion in the analysis of the problem pertaining to ‘child labour.’ All work is not bad for children. “The work, which does not detract for other essential activities of children such as leisure, play and education is not child labour. ‘Child Labour’, therefore, is the work which involves some degree of exploitation, i.e. physical, mental, economic and social and therefore, impairs the health and development of children.”⁶ According to, Encyclopedia of social science “when the business of wage

⁴ V. V. Giri, *Labour Problems in Indian Industry* 35 (Asia Publishing House, Bombay, 1958).

⁵ Mohd. Mustafa and Onkar Sharma, *Child Labour in India: A Bitter Truth* 76 (Deep Publication, New Delhi, 2008).

⁶ Dr. Mahaveer Jain, “Perspectives on Child Labour in India”, Vol. no. 7 *Award Digest* XX 34-35. (1994).

earning or of participation in self or family supports conflicts directly or indirectly with the business of growth and education, the result is child labour.”

According to International Labour Organization, “Child labour includes children prematurely leading to adulteries, working long hours for low wages under condition damaging to their health and to their physical and mental development, sometimes separated from their families frequently deprived of meaningful education and training opportunities that would open up for them a better future.”⁷ Hence, child labour is any work within or outside the purview of the family that threatens the health and mental development of the child by denying him or her fundamental as well as non fundamental rights.

In analyzing child labour it is essential to know who is a child. In the Universal Declaration of Human Rights, the Magna Carta of mankind, confer rights without discriminating on the basis of age, races, sex, religion, birth or other factors. It rightly stresses that childhood is entitled to special care and assistance. Indian Constitution in Art., 24 voicing the similar concern hold, “no child below the age of 14th years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

1.1 WHO IS A CHILD?

It is difficult to ascertain the meaning of the term ‘child’ precisely because the available literature on this subject indicates that the term ‘child’ is used variously for various purposes. In its general connotation, this term stands to mean the offspring of a male and female.⁸

According to the Webster’s New World Dictionary “child means an infant baby, an urban offspring, a boy a girl in the period before puberty, a son or a daughter, a descendant, one regarded as immature to childish, or a product.”

⁷ Bilal Ahmad Bhatt, “Gender Education and Child Labour: A Sociological Perspective”, *Educational Research and Review* Vol. V 324 (2010)

⁸ Dr. Swami N. Maheshwara, “The Menace of Child Labour-Some Reasons and Reformations”, *Andhra Law Times*, LXXXIV, 1 (1997)

In various enactments, the term ‘Child’ is defined and referred to differently for different purposes so as to include there in a minor, adolescent, a young person below the given age not exceeding 18th years, person of (legal) disability, not adult, a still born child, legitimate or adopted Child Labour (Prohibition and Regulation) Act, 1986, a child means a person who has not completed his 14th years of age. Similar definition is given to the same term under the Dangerous Machinery (Regulation) Act, 1983, Minimum Wages Act, 1948, Motor Transport Act, 1961, Plantations Labour Act, 1951. A distinct definition is given in the Factories Act, according to which a child means a person who has not completed his 15th year of age. Some other labour enactments though provide certain benefits and protection to the children are silent with regard to providing any definition to this term, thus, leaving the issue for the inferences of the readers.⁹

Before making a discussion on the subject of child labour and having studied about who is a child, it is important to know as to what is “Labour.” The term ‘Labour’ is not given any precise definition. It has various facts. In economic, it is one of the four factors of production. In its general sense, Labour means worker or work, carried on by a person and characterized largely by physical exertion whether or not for any award. This term also refers to the group of children under the supervision and control of some body, most often than not other than the parents, whether or not for any reward.

The significance and the importance of child lie in the fact that the child is the universe. If there was no child, there would be no humanity and there can’t be universe without humanity. Therefore, mankind owes to the child the best that it has to be given.¹⁰ If there is no proper growth of child today, the future of the country will be in dark. It is thus, an obligation of any generation to bring up children who will be citizen of tomorrow in a proper way. Today’s children will be the leaders who will hold country’s banner and maintain prestige of the nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of government of the day. Every society must, therefore, devote full attention to ensure that children are

⁹ Dr. Ashhad Ahmad, *Child Labour in India: A Politico-Legal Study 20* (Kalpaz Publication, Delhi, Reprint 2013).

¹⁰ Priya Y. Vishnu, “International Concern for the Protection of Rights of the Child”, *Supreme Court Journal*, 16. (1992).

properly cared for and brought up in a proper atmosphere where they would receive adequate training, education and guidance in order that they may be able to have their rightful place in society when they grew up.¹¹

Both at the national level and the international level great interest is being shown in the matter of welfare of children. Children need special protection because of their tender age, physique and mental facilities. They are important national assets, “and the future well being of the nation depends as to how children grow and develop. They need special law to protect them from exploitation and fraud, to save them from certain liabilities and to develop their personality in view of their weak position.”¹² A study team of social welfare has rightly stated. The importance of child welfare services lies in the consideration that the personality of man is built up in the formative years, and the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages.¹³

It is not an exaggeration to say that the children are the blooming flowers of the garden of society and so, it is our duty to protect these flowers from damaging effects of excessive exposure to heat, cold and rain.¹⁴ It is quite imperative to give vent to the thought of Hon’ble Justice Suba Rao who has rightly observed; “Social justice must begin with children. Unless tender plant is properly tended and nourished, it has little chance to grow into strong and useful tree. So, first priority in the scale of social justice shall be given to the welfare of children.” Similarly, Gabriel, Mistral of Chile, Nobel Prize winning poet, has rightly highlighted;

“We are guilty of many errors and many faults but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need can wait, the child cannot. Right now is the time his bones are being formed, his blood is being made and his sense developed. To him, we can’t answer, tomorrow, His name is today.”

¹¹ *Sheela Barse v. The Secretary of Children Aid Society*, S.C.J. (1987). I.P. 585. Para 11.

¹² S.N. Jain, “*Child and the Law* 3 (N.M. Tripathi Pvt., Bombay, 1979).

¹³ Samir Das Gupta, “Child Labour: A National Problem”, Vol. No. 20, *Yojna XXIII* 25 (1979)

¹⁴ *Id.* at p. 20

Today there are two opinions that the children are the hope of parents and future of the nation and thus be given adequate opportunities and facilities developing themselves.

The growth of the child into a mature and happy person with fully developed personality largely depends upon the support and attention he receives from the society. If a child neither does nor gets proper education, diet and other facilities, his very development into a self-sustaining human being is dwarfed. The child because of his physical and mental immaturity needs special safeguards, it becomes, therefore, the duty of state to protect children's right by legislative and other means. The needs and requirements of the child, the primordial ground norm of this universe, the most innocent and helpless human being are capable of enforcing his legal rights, but to speak of demanding new rights obligate the state to secure him distributive justice. As distinguished from adults, children are peculiarly susceptible to certain harms. They can't raise their voice against those who injure them or deprive them of their rights. The peculiar position of the child arising from his physical and mental disability and position of dependence recognizes the need for the special provisions in many matters and the law should take care of all this in the interest and general welfare, to be long and strong enough if distributive justice to the adults of tomorrow is to be secured.¹⁵

However, the reality lies in the fact that child still has not been given proper attention and is being exploited by the people who achieve their selfish ends. This is quite evident from Report of Director General of International Labour Organization published in 1960, though the acute estimate of child labour, either from a qualitative point of view is not possible, yet the report discloses that, "Children and youth make up a fifth to fourth or even a third of the total labour forces in many of the industrializing countries. Young people (between) 15-19 make up 20 percent of the labour force of the Egyptian Region of the United Arab Republic, and higher percentage in many of less developed Asian and

¹⁵ Sudesh Kumar Sharma, "Child and The Constitution: An Appraisal in Distributive Justice Perspective" Vol 2, *Supreme Court Journal*, 9-10 (1989).

African countries. And it should be noted that in most of the less to enter the labour force by the time they are 12, 13 or 14, if they have not begun to work at a much earlier age.”¹⁶

It is estimated that by 2000 A.D. 25 percent of the world’s population will be children and 40 percent of the entire global labour force will be below the age of 15th years. In developing countries 40 percent of the total population less than 15th years and 75 percent are employed as child Labour. International labour Organization in a study concluded that in Asian countries 70-80 percent of children are either working or “simply wasting their lives away.” Employment of children has continued there to be a problem.¹⁷

1.2. MEANING AND CONCEPT OF CHILD LABOUR

According to Haks, the chairman of the United State National Child Labour Committee, the term ‘child labour’ is generally used to refer, “any work by children that interfere with their full physical and mental development, the opportunities for a desirable minimum of education and of their needed recreation.” It also is seen as, children prone to accidents, often fatal, at work sites and children chained to looms in dark mills. Currently the term is used in pejorative sense, suggesting hateful and exploitative.¹⁸

In reality, children do a variety of work in widely divergent conditions. At one end of the continuum, the work is beneficial, providing or enhancing a child’s physical, mental, spiritual, moral or social development without interfering with schooling, vacation and rest. At the other end, it is palpably, destructive or exploitative. There are vast areas of activity between these two poles, including work that need not impact negatively on the child’s development.¹⁹ Fyfe attempts to provide a distinction by differentiating between “child work” and “child labour.” The former is seen as permissible and the later as exploitative.

¹⁶ Report of the Director General, International Labour Organization, *Youth and Work I* (1960), p. 311.

¹⁷ Supra note 16 at p. 25

¹⁸ Lustsh Bhupendra, Mondira, Dutta, Nangia Sudesh, et. al., *In the Name of Child Labour: Eradication and Evaluation Programme* 23 (Shipra Publication Sakarpur, Delhi, 2002).

¹⁹ Ibid. p. 23.

“Clearly, not all work is bad for children there is little doubt that many children welcome the opportunity to work, seeing in it the site of passage to adulthood Work, which does not detract from other essential activities for children, namely leisure, play and education, is not child labour. Child labour is work which immunizes the health and development of children.”²⁰

According to the convention of the ‘Rights of the Child’ (Article 32), the state parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or harmful to the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral and social development.”

Child labour therefore is the work, which involves some degree of exploitation i.e. physical, mental and economic. It denies the joy to children and access to social opportunities (like education), which eventually impairs the personality and creativity, the evolution and growth of full being and the health, and mental development of a child. The problem of child labour therefore, does not constitute the age of child, but its exploitation and abuse. The perception of what constitute exploitation, abuse can be very subjective as it is not easy to differentiate between the socialization aspects of a child’s activity and its exploitative aspects.²¹

The problem of defining exploitation would depend on every researcher or informer’s approach. Exploitation will always be in eyes of the beholder.²² Child work in some form has existed form historical times. Children were employed to supplement the family income and to help family in their traditional crafts by acquiring necessary skills at a very early stage. The situation turned bad, with the advent of industrialization, when factory owner found it more profitable to employ children.

²⁰ Fyfe, Allec, *Child Labour* 20 (Cambridge Polity Press, Cambridge, 1989).

²¹ Supra note 16 at p. 24

²² Supra note 20 at p. 4

At the most destructive end the clear cases of child labour is super-exploitation. i.e., children used as prostitutes,²³ bonded child labour, (the term widely used for the virtual enslavement of children to repay debts incurred by their parents or family members) and children working in the industries or activities notorious for the dire health and safety hazards.²⁴ But to treat all work by children as equally unacceptable is to confuse and trivialize the issue and to make it more difficult to end the abuses. It is therefore, important to distinguish between beneficial and intolerable work. Much child labour falls into a grey area between these two extremes.

1.3 DEFINING CHILD LABOUR

The historical perspective thus gives us an idea about the nature, character and extent of exploitation of child and also clarifies many points with regard to the status of child worker. Children of every family, social community and economic class do perform some work. However, mere work does not make a child worker. Conceptually, the working child is one, who before attaining certain specific age and physical and intellectual maturity, forced by vulnerable economic circumstances, engages him or her in work which jeopardizes his, her mental and physical growth and development. This concept is, however, not very old, In the past, the concept of childhood was not given any importance because preparation of an individual child belonging to disadvantaged groups, for responsibilities, in terms of education was not as complex as it is today. Nor the exploitation process received any critical threat because the sharp socio-economic divisions among peoples had virtually compartmentalized and sanctified it.²⁵

There is no universally accepted definition of working children. Various agencies have defined child labour in terms of work-types and get criterion. In fact, age is a universally accepted criterion. Various act pasts by governments have defined child

²³ Rodgers, G & G. Standing, (ed.), *Child Work, Poverty and Employment* 5 (International Labour Office, Geneva, 1981).

²⁴ The Child Labour Act, 1986.

²⁵ Mr. Rahman M.M., Rahman Kanta, Begum S. Mehar Taj, *Child Labour and Child Rights, A Compendium* 9 (Manak publication, New Delhi, 1999).

labour keeping minimum age criterion in consideration. But the minimum age criterion differed from Act to Act and from work to work.²⁶

A generally valid definition of child labour is presently not available either in the national or international context. Any definition turns upon the precise meaning we attach to two components of the term “Child Labour” i.e. “Child” in terms of his chronological age, and “labour” in terms of its nature, quantum and income generating capacity. However, child labour, can broadly be defined as that segment of the child population which participates in work either paid or unpaid.²⁷ A more comprehensive definition, taking into account the consequences of labour on children has been provided by the International Labour Organization, according to which;

“Child labour includes children prematurely leading adult lives working long hours for low wages under condition damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful educational and training opportunities that could open up for them a better future.”²⁸ Age is also regarded as important criteria for distinguishing child labour from adult labour. The “Operation Research Group” based in Baroda, India defines Child Labour in the following way;

“A working child is one who was enumerated during the survey as a child falling within the 5-15 age bracket and who, is at remunerative work, may be paid or unpaid and busy in any hour of the day within or outside the family.”²⁹

It follows from the above definition those two major indicators; namely (a) exploitation and (b) age have been used to define child labour. In the context of exploitation ‘United Nations International Children's Emergency Fund’ has given a comprehensive formulation in its attempt at defining child labour.

²⁶. Marjari Ding Waney, *Children of Darkness: A Manual on Child Labour in India* 12 (Rural Labour Cell, New Delhi, 1988).

²⁷. Encyclopaedia of Social Work in India, Vol. 1 (1987) p. 78

²⁸. Report of the Director General of ILO (1983).

²⁹. Dr. Jain Mahaveer, *Child Labour in India- A Select Bibliography* 12 (V.V. Giri, National Labour Institute, NOIDA, 1995)

1. Starting full-time work at too early an age.
2. Working too long within or outside of the family so those children are unable to attend school, where it is available or to make the most of school due to fatigue or lack of time. In some cases children still work 12-16 hours a day.
3. Work resulting in excessive physical, social and psychological stains upon the child as in the case of sexual exploitation and pornography work in sweet shops, as well as such dangerous work as military service and mining.
4. Work and life on the street in unhealthy and dangerous conditions.
5. Inadequate remuneration for working outside of the family as in the case of the child workers in carpet weaving who are paid three dollars (US) for sixty hours of works.
6. Too much responsibility at too early an age as in the domestic situation where children under ten may have to look after young brothers and sisters for a whole day thereby preventing school attendance.
7. Work that does not facilitate the psychological and social developments of the child as in dull and repetitive tasks associated with industries like handcraft.
8. Work that inhibits the child's self-esteem as in bonded labour and prostitution, and in a less extreme case the negative perception of street children.³⁰

At this moment, it is necessary to understand the two different concepts such as child work and child labour, these concepts are being used synonymously. This creates confusions in the analysis of the problem of child labour and therefore affects the process of formulation and implementation of protective, legislative and action-oriented rehabilitation policies. But still all work is not bad for children because some light works properly structured and phased are not child labour. This implies that the work, which neither does not, detracts from other essential activities for children such as leisure play and education is not child labour. 'Child Labour' therefore, is the work which involves some degree of exploitation namely, physical, mental, economic and social and therefore, impairs the health and development of children.³¹

³⁰ P. P. Jayanthi . *Child Labour: A Socio Legal Study* 144 (Kashmir University Law Journals, 1998).

³¹ Dr. Mahaveer Jain, "Perspectives on Child Labour in India", Vol. No. 3 *Award Digest* XX 34-35 (1994).

However, the use of ‘exploitation’ for identifying child labour creates practical problem because, ‘exploitation as a concept can’t be given a precise objective meaning. This lies in the eyes of the investigator. The investigator can only identify the extreme limits of work done by children. Thus, child labour is a subset of child work, which implies that all child labour can be termed as child work but not the other way round. Another concept, which needs to be clarified here, is ‘Super-Exploitation’ of children in wage and quasi-wage employment. This concept refers to exploitation over and above economic exploitation, physical and mental exploitation, which ultimately threatens the health, and over all development of children.

The definition of child labour varies from one act to another depending upon the seriousness of the problems of children working in a particular employment.³² The precise age of what constitute child labour has not been laid down anywhere because of variations in the age of child as given under different legislative enactment’s. Sec 82 of the Indian Penal code reads, “Nothing is an offence which is done by a child under seven years of age.”³³ Sec 83 of the Indian Penal Code, 1860, provides, “Nothing is an offence which is done by a child above seven years and fewer than twelve who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on the occasion.”³⁴ Sec 105 of Indian Evidence Act, 1872, lays down, “When a person is accused any offence, the burden of proving the existence of circumstances bringing the case with in any of the general or special bringing the case with in any of the general or special exception including that of childhood of the Indian Panel code or any concerning law is upon him.”³⁵ The Indian Majority Act, 1875, “Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.”³⁶ The age of majority has been fixed at 18th years.”³⁷ Under the Vaccination Act, 1880, children have been defined as person, “Who have not attained the age of fourteen years in case of boys and 18th years in

³² P. L. Govil, “*Review of Legal Provision Relating to Age of Employment of Children-Feasibility of fixing the Minimum Age*”, National Seminar on Employment of Children in India, p.73-78 (1975).

³³ Indian Penal Code, 1860, Sec 82

³⁴ Indian Penal Code, 1860, Sec 83

³⁵ Indian Evidence Act, (1872), Sec 105.

³⁶ The Majority Act, 1875 Sec 3(1)

³⁷ Indian Majority Act, 1874

case of girls.”³⁸ Under the Reformatory School Act, 1887, “Youth offenders” means boy who have been convicted of any offence punishable with imprisonment for life or death and who at the time of such condition was under the age of 15th years.³⁹ The Child Marriage Restraint Act, 1929, (Sharda Act) defines child as “a male below 21st years and a female below 18th years of age.”⁴⁰ According to Employment of Children Act, 1938, “No child who has not completed his 15th years shall be employed or permitted to work in any occupation. No child who has completed his 15th years but has not completed his 17th year shall be employed or permitted to work in any occupation unless the period of work of each child for may day are so fixed as to allow an interval of rest for at least 7 consecutive hours between 10 p.m., and 7 a.m., as may be prescribed. No Child who has not completed his 14th years shall be employed or permitted to work in any work shop within any of the process set forth in the schedule is carried on.”⁴¹ Under the Motor Vehicles Act, 1939, child has been defined as a person under age of 18th years.”⁴² According to the UP Children Act, 1951, “Child” means a person under the age of 16th years.⁴³ As per the Plantation of Labour Act, 1951, “Child” means a person who has not completed his 15th years.” Section 24 of that Act lay down, “No Child who has not completed his 12th years shall be required or allowed to work in any plantation,⁴⁴ the young person as or a person under the age of 20th years.”⁴⁵ Under the Suppression of Immoral traffic in Women and Girls Act, 1956, “Girls” means of female who has not completed the age of 21st years.⁴⁶ According to the Orphanages and Charitable Homes (Suppression and Control) Act, 1960, “Child” means a boy or girl who has not completed the age of 18th years.⁴⁷ As per the provisions of the Children Act, 1960, “Child” means a boy provision of the Children Act, 1960, “Child” means a boy who has attained the age of 16th years or a girl who has not attained the age of 18th years.”⁴⁸ According to the

³⁸ Vaccination Act, 1880

³⁹ Under the Reformatory School Act, 1887

⁴⁰ The Child Marriage Restraint Act, 1929

⁴¹ Employment of Children, Act, 1938, Sec 3.

⁴² Motor Vehicles Act, 1939.

⁴³ U.P Children Act, 1951, Sec 2 (d)

⁴⁴ Plantation of Labour Act, 1951

⁴⁵ Young Persons, Harmful Publication Act, 1956.

⁴⁶ Suppression of Immoral Traffic in Women a Plantation of Labour Act, 1951nd Girls Act, 1956

⁴⁷ Orphanage and Charitable Hornes (Suppression and Control), Act, 1960.

⁴⁸ Children Act, 1960, Sec 2(e).

Motor Transport Workers Act, 1961, “Child” means a person who has not completed his 15th years.”⁴⁹ Sec. 21 of the Act provides, “No child shall be required or allowed to work in any capacity in any motor transport undertaking.” Sec. 22 lays down, “No adolescent shall be required or allowed to work as motor transport workers in any motor transport undertaking unless (a) Certificate of fitness granted with reference to him is in the custody of the employer, and (b) such adolescent carries with him which is at work, a token giving a reference to such certificates, “Adolescent”, according to sec. 2 (a) of the Act, “means a person who has completed his 15th years but has not completed his 18th year. Under the Radiation Protection Rules, 1971, framed under the Atomic Energy Act, 1962, “A child has been defined as a person below 18th years of age.”⁵⁰ “According to section 2(2) of the UP Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, “Child” means a person who has not completed his 14th year. Sec. one of the Acts clearly say, “No child shall be required or allowed to work in any shop or commercial establishment except as an apprentice in such employment as may be notified by the State Government, in the gazette.”⁵¹ In shops and commercial establishment as Acts passed by other states and union territories, child has been defined as a person between 12th and 14th years. It is because of this variation in age of child in different laws but the child labour will have defined in context of a vacation in which a child is employed.”⁵² The Bidi and Cigar workers (Conditions of Employment) Act, 1966, “Child means a person who has not completed 14th year of age.” Sec. 24 of the Act provides, “No child shall be required as allowed to work in any industrial premises.”⁵³

The word “Child Labour” has been differently defined in various studies. According to the committee on child labour,⁵⁴ “Child labour, however, can broadly be defined as that segment of the child population which participates in work either paid or unpaid. “In the study of working children in Bombay, Singh, and other have held a view, “child labour means a working child who is in between 6th and 15th years of age”, is not

⁴⁹ Motor Transport Workers Act, 1961, Sec (2) (c).

⁵⁰ Atomic Energy Act, 1962

⁵¹ U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962

⁵² G. S. Madam, Review of Legal Provisions Relating to Facilities for and Working Conditions of Employment of Children-The Impact on their Health, Education and Development”, National Seminar on (1977).

⁵³ Bidi and Cigar Workers (Conditions of Employment), Act, 1966.

⁵⁴ Committee on Child Labour p. 8 (1979).

attending school during the day, is working under an employer or is learning some trade as an apprentice.” In the “Working Children in Urban Delhi” conducted by the Indian Council of Child Welfare,⁵⁵ “Every child below 14th years, who contributed to the family income or was gainfully employed including those marginally working, was treated as worker.” V.V. Giri has expressed the view.⁵⁶ The term “child labour” is commonly interpreted in two different ways, first, as an economic practice and second, as social evils. In the first context it signifies employment of children in painful occupations with a view to adding to the total income of the family. It is now more generally used. In accessing the nature and the extent of social evil, it is necessary to take into account the character of the jobs on which children are engaged, the danger to which they are exposed and the opportunities of development of which they have been denied.⁵⁷ Hommer Folks, chairman of the United National Child Labour Committee, have defined child labour as “any work by children that interfere with their full physical development, their needed recreation. Kulshrestha is of the view that “child labour in a restricted sense means the employment of child in gainful occupations which are dangerous to their health and deny them the opportunities of development, The term child labour not only applies to the children working in the industries but also the children in the industries but also to the children in all forms of non-industrial occupations which are injurious to their physical, mental, moral and social development.”⁵⁸ According to Alakh Narain Sharma, “child labour means the employment of a child. Thus, the term includes wage labour as well as self employed children working independently as well as in family enterprises.” Child labour therefore, cannot be defined here as any work undertaken by children below 18th years in agriculture and allied works injurious to their health and harmful to their proper development.” Sec. 27 of the Criminal Procedure Code, 1973 reads; “any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court of a Chief Judicial Magistrate, or by any court especially empowered under the Children Act, 1960 or any other law for the

⁵⁵ Singh Musafir, Kaura Y.D. and Khan S.A., *Working Children in Bombay- A Study* 23 (NIPCCD New Delhi, 1980)

⁵⁶ Indian Council for Child Welfare, “Working Children in Urban Delhi”, A Report Submitted to the Department of Social Welfare, Govt. of India, New Delhi p. 125 (1977),

⁵⁷ Giri V.V., *Labour Problems in Indian Industry* 360 Asia Publishing House, Delhi, 1959)

⁵⁸ J. C. Kulshrestha, *Child Labour in India* 2 (Ashish Publishing House New Delhi, 1978)

time being enforced providing for the treatment, training and rehabilitation of youthful offenders.⁵⁹ In this regards an observation made by Mendelievich seems to be pertinent. “Agriculture is one of the most hazardous sector the physical safety and health of workers for several reasons. The prevalence of dangerous modern machinery, prolonged exposure to heat, sunlight’s, dust, wind, and insects, the almost constant physical efforts that agricultural work demands, contact with various chemical products such as fertilizers and pesticides whose long term effects on man may be completely unknown and for the majority of which, in cases of poisoning, no specific antidotes exist. Children are particularly at risk from endemic and parasitic diseases, diseases of the respiratory tract, dermatosis and fatal accidents.”⁶⁰

Hence, the definition of child labour takes into account the age factor to decide what constitute child labour but it has been universally accepted that those working under the age of 14th in hazardous employment constitute the child labour. It entails the working of children which does not tell upon their health and development.

1.4. NATURE OF THE PROBLEM OF CHILD LABOUR

In the pre-industrial agricultural society of India, children worked as helpers and learners in hereditarily determined family occupation under the benign supervision of adult family members. Child labour is not a new phenomenon to our age. What is new, however, is its perception as a social problem the world over. There has been a distinct change in recent past in the values and attitudes of the legitimizing groups of society vis-à-vis child labour because of some new developments. The work place was an extension of the home and work was characterized by personal informal relationship. The tasks and technology that work involved were simple and non-hazardous which the child could learn smoothly, almost unconsciously, over the years through association and limitation.⁶¹ One of the major problem that needs to be addressed is the distinction between child work and child labour. It has been suggested that the concept of work be used as a generic term and should refer to any kind of work in any type of employment relationship and that it could

⁵⁹ Criminal Procedure Code, 1973, Sec. 27.

⁶⁰ Elias Mandelievich “*Children at Work*”, International Labour Organization, Geneva, p. 4, (1979)

⁶¹ Encyclopedia of Social Work in India, Vol. I, pp. 78-79, (1987)

be an activity that may be beneficial to a child while the concept of labour should be restricted to production and services which interfere with the normative development of children as defined in the Convention on Child Rights and that the nature of the labour relation is immaterial to the definition.⁶² However not only is there a need to make a distinction between child work and child labour but the necessity of identifying the nature of this labour relation is also crucial if one has to work out feasible strategies of eliminating exploitative child labour.

The social scenario however, changed radically with the advent of industrialization and urbanization under the impact of the nearly generated centrifugal and centripetal forces; there was an unbroken stream of the rural poor migrating to urban centers in search of livelihood. The child had work as an individual person either under an employer or independently. His work environment endangered his physical health and mental growth and led to his exploitation. The protection and welfare of these children, therefore, become an issue of paramount social significance.

Another sociological factor bearing on the problem of child labour was the emergence of welfare consciousness on a world scale. The industrial revolution in the west generated such vast demands for manpower that even children had to be pressed into service. Contemporary writings reveal under what atrocious conditions these children had work in coal mines and textiles mills. However, once the west had built up its affluence and the baneful effects of child labour become outrageously manifest, the state took appropriate measures to meet evil. The welfare measures enunciated had a universal appeal to human conscience.⁶³ In the more recent past they have being thoughtfully embodied in various resolution of the 'International Labour Organization' and other organs of the United Nations. Countries of the less developed world, after their emancipation from colonial domination, also accept a number of these resolutions even though their social and economic infrastructure was still inadequate for fulfilling all the commitments. Free India has similarly embodied in its constitution many provisions

⁶² G. Leiten, "Children Work and Education", Vol. No. 24, *Economic and Political Weekly* XXXV, 10-16 (2000)

⁶³ Supra note 9 at p. 32

establishing thereby the normative superiority of welfare considerations over the economic one and has endeavored to weed out the antagonism between child labour and child development.⁶⁴

Diffusion on this knowledge has created a new awareness in the major institution of society as to the relationship the child should have with his milieu, his need, objects and his work, etc. Yet another factor highlighting the evil aspect of child labour is the recent advances in various sciences having a bearing on the child. Today, scientific knowledge has revolutionized our outlook on the care of child and his developmental imperatives.⁶⁵

It can now be asserted on scientific grounds that work, as a direct fulfillment of the child's natural abilities and creative potentialities is always conducive to his healthy growth. But work when taken up, as a means for the fulfillment of some other needs becomes enslaving in character and deleterious in its impact. Labour is work of the latter type irrespective of the degree of strain or exploitation involved in it. Labour in the case of child is especially harmful because the energy that should have been expended on the nutrition of his talent, power is consumed for purposes of base survival. Child labour, of late, has evoked deep concern. However we must make a distinction between child labour and exploitation of child labour. Both are problem though of different orders. Child labour as distinguished from work experience has mostly negative attributes.⁶⁶

Many NGO's in India have articulated a view point which undercuts the approach that shocking poverty arising out of unequal access to productive resources and assets; structurally in-built inequities and a pattern of development that intensifies and exacerbates these factors, is the root cause for the prevalence of child labour amongst the poor. The formulation that has emerged from this school of thinking poverty is not the cause of child labour, child labour is the accuse of poverty, compulsory education is therefore, the only weapon to tackle the problem of child labour. The fallacy in this

⁶⁴ Raman Vasanthi, "Politics of Childhood: Perspectives form the South", Vol. No. 35 *Economic and Political Weekly* 4078 (2000).

⁶⁵ P. L. Mehta and S. S. Jaswal, *Child Labour and the Law: Myth and Realities of Welfare Measures* 6 (Deep and Deep Publications, New Delhi, 1966)

⁶⁶ *Ibid*

formulation is that it focuses only on one dimension of the phenomenon of child labour, i.e. the act that children in families where adults have worked as child labourers also tend to work, but it glosses over the inextricable link (particularly in the Indian context) between poverty and unequal and discriminatory access to the basic resources and assets. From this it would seem that it is possible to tackle the problem of child labour without addressing the basic structural questions. Such a view point is gaining currency despite the fact that most studies on child labour in different industries (matches and fireworks, locks, the carpet, etc; have emphasized the need for a strategy which addresses the survival question of the family along with a package of education and health measures. Besides, it is generally overlooked that the overwhelming majority of child labourers come from communities and groups which belong to the lower rungs of the traditional, caste-based social hierarchy, i.e. scheduled caste, scheduled tribes and other backward classes and minorities, particularly Muslims. These groups also constitute the bulk of the small and marginal peasantry, landless and agricultural labourers and artisans groups. In these groups, questions of livelihood, access to productive assets and resources and services like health and education are part of an integral whole with the family providing the axis around which these questions revolve. The Supreme Court's landmark decision of June 1997 at least acknowledged the structural roots of the phenomenon of child labour and suggested solution which involved the family of the child labourers.⁶⁷

Child labour is as much the cause as consequence of adult unemployment and under-employment. It at once supplements and depresses the family income. Child labour is not only a subsidy to industry but a direct inducement to the payment of low wages to adult workers. The entrance of the children into the labour market reduces the volume of employment for the adult and lowers the bargaining power of adult workers. Childhood employment results in a permanently weakened and damaged labour force. Child labour involves the use of labour at its point of lowest productivity. Hence, it is an inefficient utilization of labour power. The argument that employment of children increases the earning of the family and keeps children away from mischief is misleading. It glosses over the fact that child labour deprives children of

⁶⁷ Supra note 64 at p. 4058.

educational opportunities minimizes their chances for vocational training, stunts their physical growth, hampers their intellectual development and, by forcing them into the army of unskilled labourers or blind alley jobs, condemns them to low wages all their lives.⁶⁸ The strategy of compulsory education as the core of policy initiatives to end child labour is embedded, reproduced and sustained. This matrix characterized by stagnation in agriculture and handicraft, fast-eroding control over the means of livelihood of the mass of peasantry, artisans, entire economy, which wipes out the basic producers.

Compelled by the exigencies of situations children accept role which run them into both victims and involuntary accomplices of unjust situations. In many situations which are characterized by the fact that if one does not work, one has the option of either starving or adopting socially disapproved means for one's survival, children have no choice but to decide to take up jobs at an age at which they should have gone to school. Though at the fact of it, it appears that it is the children who take the decision to work but the fact remains that it is not the children but the society to which they belong which through its inability to provide adequate means of subsistence for their families decides at the time of their conception itself that they are destined to be forced to take up employment at an early age.⁶⁹ Mendelievich has rightly maintained. "It is not the family that should carry the blame for the fact that the child has to work, since the causes of action open to the family are few in number. It is society as a whole i.e. at fault."⁷⁰ It is not only the children who are harmed due to their involvement in various kinds of work at tender age but the society also which has to suffer a great loss because of children being employed by employer who always make their best efforts to export minimum benefits with minimum investment. The employment of children adversely affects not only the employment opportunities of others forcing May to remain jobless in the present age but also considerably lowers the rate of their wages. "Mendelievich has correctly depicted the picture to vicious circle that exists between child labour and poverty in the society." There is in fact a vicious circle have on the one hand, child labour increases

⁶⁸ Supra note 65, at pp. 7-8.

⁶⁹ Surendra Singh and R.B.S. Verma, *Problems and Social Service Needs of Child Labour in Agriculture*, Department of Social Work, University of Lucknow, U.P., 1987

⁷⁰ Supra note 60 at p. 6.

unemployment among adults and reduces their income, on the other, the employment and low wages of adults force them to put their children to work in order to boost the family income. Thus, child labour simultaneously increases and reduces the family income: but as is clear, it reduces rather than increases that income.

1.5. MAGNITUDE OF THE PROBLEM OF CHILD LABOUR

The problem of child labour in India is of immense magnitude when one considers the number of children involved. According to the 1971 census, there were 10.74 million children working, representing 4.66 percent of total population and 5.95 percent of the total labour force. According to the 1981 census, workers in the age group below 14 years of age (excluding Assam) were 13.59 million. On the basis of the National Sample Survey (32 Round) the number of child workers as on 1 march, 1983 was 17.36 million. The working children mainly belong to the age group 5-14 years. Nearly 93 percent of the total child labour force works in the rural areas and the rest in urban areas. A great majority of these children work in agriculture and the unorganized sector like small commercial establishment and shops are quasi-family undertakings. 79 percent are employed as cultivators or agricultural labourers, 8 percent in live stock, forestry, plantation, etc, 6 percent in household and other services, the rest in trade, commerce and transport.⁷¹

Child Labour issues have generated considerable attention during last one decade from government, non-governmental agencies and social workers. Each of them has educated their own views and subsequently formulated action programmes. However, the main actions; parents and working children have been excluded from the whole debate. Unless the parents and working children are involved, the success of the programmes for elimination of child labour may not yield the desired results.⁷² Various surveys conducted by the labour bureau reveal that children are employed to do light job, such as helping in the field, in factories for packing, pasting of labels, etc, and in match factories, tea factories, tea estates, bidi manufacturing, printing, publishing, etc.

⁷¹ Census of India, 1971 & 1981, Registrar General and Census Commissioner, India New Delhi.

⁷² Supra note 18 at p. 30.

Unorganized sector employs a large number of children as domestic servants, works in hotels, restaurant, canteens, wayside shops, newspaper selling, coolies, shoe-shines boys, vendors, etc.⁷³ Though Indian law does not prohibit the employment of children in cottage industries, family households, restaurants, or in agriculture yet it is quite evident that the working conditions of the children in these small organizations is far inferior to those of large factories.⁷⁴

In essence, the government's approach continues to be oriented focusing on ameliorating the working conditions, of the employed. At the best government's approach appears to eliminate child labour is the hazardous industries, which incidentally do not include family or household enterprises. The enactment of the Child Labour (Prohibition and Regulation) Act, 1986, has at best emphasized on regulation rather than prohibition of child labour. Similarly the National Policy on Education, 1986 announced non-formal education for working boys and girls as a major thrust area. This constituted an expression of helplessness in the matter of confronting the issue of child labours and additionally gave legitimacy to the employment of children. It also force closed any further discussion on the issue of abolition of child labour and the provisions of compulsory education for some time to come. The only apology offered with respect to child labour was accepting its existence as a "harsh reality". The exploitation of child labour was thus not addressed instead more ambiguous policies of Non-Formal Education (NFE) were designed to reach working children.

Officials and employers argue that children serve as apprentices, acquiring needed skills for adult employment. They contribute to the income of their families. They agree the small contribution of child's income or assistance at home allows the parents to work and this makes the difference between hunger and a bare sufficiency. Children's work is considered essential to maintain economic levels of the household. They further argue that the employment of children sustains India's traditional craft industries and makes exports competitive.⁷⁵

⁷³ Supra note 13 at p. 20.

⁷⁴ Myron Weiner, *The Child and the State in India* 3-4 (Princeton University press, New Jersey 1992).

⁷⁵ Supra note 18 at pp. 30-31.

According to the report prepared by the Indian Social Institute on child Labour, 80 percent of all child labourers belong to the scheduled castes and tribes that have been exploited and marginalised in India for centuries. A major consequence of this is the deprivation of the possibility of education and the consequent upward mobility. Thus, child labour has become a mode of perpetuating an unjust social system and of ensuring the continued availability of subservient, unskilled, illiterate labourers who do not have the bargaining power to question the system that marginalised them and deprives them of their right to be human.⁷⁶

The manufacturers consider enactment of Child Labour Act, 1986 as “Conspiracy against poor” and further elaborate “Government enacted the child labour, which does not want the children of poor and down trodden to come up and whole heartedly devote themselves to the learning of technical and vocational crafts for bright future.”⁷⁷ In the long list of dubious distinctions India is famous for child labour. The wholesale and unchecked exploitation of children of less than 14th years is a punishable crime under Indian law. But a selfish and immoral political leadership, corrupt bureaucracy, rampant poverty, growing unemployment and a society bereft of values have all conspired to turn India into the “largest concentration of child labour in the world.” In India every third child is working child and every fourth child in age group five to fifteen is employed. An estimate by the ‘International Labour Organization’ puts the number child workers in India at 4-4 million. But an unofficial survey estimates the number of working children at around 100 million. While 21 percent of the child workers are urban based, the rest rural based.

There is hardly any product in India that has no child labour behind it. Lock, carpet, bangle, brick, match box, cracker, wood cart or any other product has the invisible stamp of the toil put in by children caught in the web of poverty and an exploitative social system. Indeed child labour in India comes cheap and easy.

⁷⁶ Gupta Manju, *Child Labour in India* 13 (Atma Ram & Sons, Delhi, 1987).

⁷⁷ Carpet-e-World, Annual, 1991

The government official and manufacturers argue that expansion in export especially gems, brassware and carpets is made possible through the employment of children. Competition from neighboring countries in these exports is used as a major nationalist's argument. Exports become a matter of patriotism the human and social costs do not matter. The 'Myth of nimble fingers' is also put forward for the continuation of children in handicraft activities. Captains of industry argue that children can produce a greater number of knots in the weaving of carpets. They can carry molten near furnaces, under condition that adult would find intolerable. They can work better in polishing gems, tasks that need diligence, dexterity and speed. Without child labour it is agreed, carpets and handloom textiles might be replaced by machine made products.⁷⁸ This would lead to more poverty. With these arguments government have accepted the continuation of child labour on economic compulsions and accepted it as a "harsh reality."

This tendency to regard the issue as a matter of social justice i.e., the children of the poor be allowed to work or declaiming the problem as a harsh reality and a necessary evil in any underdeveloped economy are points to the lack of concerted efforts to eradicate the menace of child labour. As a result the issue of child labour got clouded in an omnibus category of labour laws. It is essential to have comprehensive change in mind-set, when viewing the problem associated with child labour. This basic approach of the government does not deal with the root of the problem i.e. compulsory primary education and exploitation of poverty. Hopefully the 83rd amendment of the 'Constitution' declaring education as a fundamental right will be adopted soon to approach the problem of child labour effectively. As long as child is seen as an economic problem there will be arguments supporting it and as a result, a lack of conviction on the part of policy makers and society eradicate it, Child labour must be seen as less phenomenon of poverty and more of Social attitudes exploitation, compulsions and sensibilities. This is evident from the experiences of developed countries as well as some developing countries that tackled this problem much before the economic advancement.⁷⁹

⁷⁸ Supra note 9 at p. 39.

⁷⁹ Weiner Myron, *The Child and the State in India Child Labour and the Education Policy in Comparative Prospective* 109 (Princeton University Press, New Jersey, 1991).

Research Conducted by social scientists did not support the argument put forward by officials and manufacturers.

If employers were not prepared to exploit children, there would be no child labour. The parents of child labourers are often underemployed or underemployed, desperate to secure employment and income. Yet it is not they but their children who are offered the job? Why because children can be paid less and they are more malleable? They will do what they are told without questioning, its authority. They are less likely to organize against oppression and can be physically abused without striking backs.⁸⁰

In fact entrance into the labour force has often shortened the working lives of young people. Who now adults are too ill to remain in the labour market? In many cases the hazardous condition results in accidents (some fatal) or health problem that make them unfit to continue working. As a result, they cam much less than what they could have earned had they not been forced into working during their childhood.

Besides, the so called skills learnt do not in any way augment their learning capacities, as most of the jobs done by them are highly monotonous, low skilled, tedious jobs , that condemns them forever in low paying jobs. Clearly the earnings forgone in the adult life, due to disability, lack of training and education that could have been attained in childhood are for greater than what is earned as a child. Hence, a closer and sterner look the so called economies are not justified. Weiner⁸¹ observed that it remains unclear how much verse off the family would be, if the children were in school. Financial contribution by children to household's income is often small.⁸² In majority of the cases the money earned by children are used for conspicuous consumption (Alcohol, family prestige like giving gifts. marriage ceremonies etc.), child labour also kept girls out of school, as they are paid less than boys and are employed at younger ages. In the Siva Kasi Match Industry most of child workers are girls and their wages are well below the agricultural wages in the region.

⁸⁰ Supra note 18 at p. 31.

⁸¹ Supra note 79 at p. 50.

⁸² Ibid

Moreover, the so-called advantages to the employers in wage front in the long run would caste them heavily in terms of efficiency and quality. True competitiveness can only be achieved through improvements in efficiency. Quality could be improved through modern technology and not by using child labour. Neera Burra⁸³ has indicated low wage child labour as the major cause for less production in Firozabad Glass factory, compared to Thailand glass factory. With increasing globalization and integration with the world economy, India can't afford to persist with low-grade technologies more so, with a predominantly illiterate, low skill labour force.

The social worker like Swami Agnivesh⁸⁴ and Kailash Satyarthi⁸⁵ have in fact argued that child labour perpetuates poverty rather than reduces it. They argued that child servitude is equally, if not solely, responsible for causing and perpetuating adult unemployment, poverty, population growth and mass illiteracy. They argue those socio-cultural factors, including abominable caste system, ethnic and gender discrimination, nexus between politicians and manufacturers, absence of compulsory primary education and profit motivating concerns are responsible for the perpetuating of the scourge of child labour.

Experience from several countries show that merely belonging to a low income country is not reason enough to be condoned for the use of child labour. Historical comparisons with Sri Lanka, Vietnam, Tanzania, Uganda, Zaire, Burma, Kenya and China shows that even in developed and developing countries, the principles of compulsory education (whether sponsored by state or a religious or a social group) can be successfully adopted, with corresponding decrease in child labour. Thus, the notion of economic well being acting as pre-cursor to the abolition of child labour may not be necessary. Instead the political will and strong commitment of the society to abolish the child labour can initiate the process of eradicating child labour. International Labour Organisation has observed that there are absolute rights arising from the inherent dignity of the human persons and recognized in international covenants, which nations irrespective of

⁸³ Neera, Burra “*Glass Factories in Firozabad*”, Economic and Political Weekly, number 2033- 2036, (1986).

⁸⁴ Swami Agnivesh “*Child Slavery in India*”, Child and the Law, UNICEF, p. 40, (1994).

⁸⁵ Kailash Satyarthi, “*Breaks the Chains save the Childhood*”, SACCS. (1996).

their level of development, have accepted and therefore, should adhere to invoke the pretext of poverty and underdevelopment for the transgression of universally accepted values is to accept the perpetuation of universally condemned abuses.

1.6. REVIEW OF THE LITERATURES

Looking at child labour as a multidimensional social incident as no single approach can catch hold the difficulty, different scholars, planners, researchers and technocrats have analysed it from different angle. (Dutta, 1985) and Park and Park (1985) study the biological, social and cultural factors for child's pre and post birth medical problems; and its impact on health status due to malnutrition (Antony, 1984 and UNICEF, 19 as the base to being a social animal and the impact of joint family on him (Soman, 1986) have been well analyzed Besides this the prevalence of orthodox belief in the form of discrimination to female child (Poffenberger, 1978, Visaria and Visaria, 1981) which described as the culture of poverty (Lewis, 1970), child marriage by UNICEF, (1981), destitution of children (Goriawala, 1984), child beggars (Chaudhry, 1983), child as an exploitative commodity by (Saha, 1986), child labour in agriculture (Kumar, 1983) and child labour as the product of circumstances (Pernandes, 1989) have been widely discussed. Various reformative approaches also have raised by certain scholars like (Joshi, 1986) on education for child through TV and west sponsored child welfare Programme by (Antony, 1984). Above discussion tend to conclude that child below 15th years of age who gives Labour either interpreted as 'economic practice' in gainful occupation for adding labour income of the family or a social evil bringing occupational hazards to physical, mental, moral and social developments for them can only be considered as child labour in analytical sense. With this the present chapter tries to highlight child labour as the most obnoxious problem, which has brought them to the street by not only treating them as a commodity but also depriving the child from the age old security and comfort of the family.

Child labourers in the rural areas of the less developed countries and its relationship with persisting higher fertility observed there has dominated research and debate among demographers during the last three decades. The theoretical formulations

of (Leibenstein, 1954), (Beecker, 1960) and other economists and the empirical investigations conducted in the villages of the less developed countries viz. the study conducted in rural Punjab in India by (Mamadani, 1972), the research by Nag Peet and White, 1978 in Nepal and Java, and Cane's, 1977 work in Bangladesh were few that received wide attention. These studies improve our understanding of the roles played by children and led to a review of the once widely held view that having the large number of children that parents in the third world country had, and for whom could not adequately provide for, is economically and irrational behavior and a consideration of the vies that having a large number of children, particularly sons is economically a relational behavior. But several questions still remind unanswered. The study (Kan Bargi and Kulkarni, 1986) carried out in Karnataka has tried to answer some of these particularly the inter relations between child labour and child schooling and statistically establishing the fact of child labour on fertility at the macro and micro level. For this, it was necessary to collect who were going to school and those who are not.

Michael Vlassoff has also looked at whether child labour motivates higher fertility in the less development countries and whether the poor peasants need child labour for their survival. Against a background of theoretical consideration, he has critically reviewed several empirical studies conducted in India, Bangladesh, Nepal, Indonesia, Tanzania, Mexic and Philipppines. He concludes that the available evidence that emerges from these empirical investigations is inadequate to prove that children are not positive assets in the rural areas of less developed countries and, therefore, child labour has a positive effect of fertility. Before drawing any firm conclusions on the relations between child labour and fertility he argues that there is an urgent need to know more about the castes involved in raising children, the economic context (Whether child labour results in adults becoming more productive), the role of education, the need to bring fertility in to the research design and solving the problem of the direction of the causality whether labour effect fertility or fertility effects child labour.

Kanbargi and Kulkarni have examined the interrelation between child work, schooling and fertility in rural Karnataka. Their analysis is based on the data collected from any year round survey of 45 villages drawn from ten of the 19 district in the state.

The problem of schooling is more serious for girls where even in youngest school going ages of 5-7 years, very few girls attend school.⁸⁶ The census analysis presented in this volume has suggested that improving female education is very important. It not only helped to reduce the incidence of child labour but also has several far-reaching consequences on various variables (such as, infant and child morality); under the circumstances, it is distressing to note that in India, primary schooling is not getting priority it deserves it in terms of budgetary allocation and other policy interventions. Most of the funds allocated for education are utilized to pay the salaries of the teachers, which make it increasingly difficult to bring about any improvements in the schooling environment. It is, therefore suggested that the community is involved in this gigantic task of improving and rebuilding the primary education system in order to reduce child labour effectively in the years to come.

It is also necessary to identify of child labour-intensive industries and crops in various parts of the country and study them in depth, taking in to consideration the social, economic and political system operating in the area. Such an exercise should aim at providing valuable insights for developing effective policy interventions. The NGO's can provide a valuable organizational structure, which is absolutely necessary to carry out certain action programme.

Several less developed have expressed their commitment to eradicate child totally. It is now apparent that this objective cannot be achieved only by resorting to more and more legislation. Intensive research should be encouraged can play a very important role in developing strategies for effective policies intervention in this direction. It is to be noted that child labour attracted that attention of researchers only recently and it would take a long time to understand fully the determinates and consequences of child labour in these countries.

The hand knotted carpet industry is one of India's leading export industries. Floor coverings are the country's third largest earner of foreign exchange and hand knotted carpets make up a large share of the market (International Labour Rights Funds 1996:3)

⁸⁶ Supra note 9 at pp. 44-45.

carpets are produced on a large scale in three regions in the country: Rajasthan, Jammu & Kashmir, and in Bhadohi in Uttar Pradesh. The Mirzapur Bhadohi region accounts for about 85 percent of Indian carpets exports (Child Labour in the Carpet Industry of India, *The Hindu*, July 16, 1996, P. 9). This region is often known as the 'carpet belt' since the carpet industry is the main industry and employs over 6 lacks persons.

Children are employed extensively in the production of hand knotted carpets, despite the fact that the Child Labour (Prohibition and Regulation) Act, 1986 forbids children (except those working as part of family labour) from being employed in any of the carpet production processes (GOI 1998:46). The reason often given by employers for hiring children is that their 'nimble fingers' enable them to weave better carpets than adults. However, there is strong evidence to suggest that this is merely an excuse for using child labour as studies have found that some of the best carpet those with the highest density of knots- have been woven by adults (Leyla Tegmo Reddy, 1997:165). According to Neera Burra, 1995, the author of *Born to Work: Child Labour in India*, children constitute 75 percent of the labour force in carpet making, While the Carpet Export Promotion Council (CEPC) and the Indian government considers these to be grossly exaggerated estimate, other studies have revealed large numbers as well. A detailed sample survey of the Indian carpet industry in 1993 estimated child labourers to constitute 22 percent of a work force of 6 lacks weavers amounting to about 1,30,000 children (Harvey, and Ripgin 1994).

Child labourer in the industry fall into four categories migrant bonded child labourers, local bonded child labourer, wage earners and children who work as part of family labour. Migrant bonded child labourers are estimated to comprise about 10-20 per cent of the child labour force in the industry (Human Right Watch 1994:105). They are the most exploited all child labourers are usually trafficked into the carpet belt from regions in the neighboring state of Bihar or from the foothills of Nepal. Local bonded child labourers comprise another large category. They are usually children of landless agricultural labourers and small marginal farmers who sell their children to bondage after taking loans from loom owners. Illiterate parents are often cheated into having their children to work for several years for no wages in order to repay a very small loan.

Conversation with farmers child labourers in a school in Sukara, U.P. revealed that more than half of the children in a school for former child labourers run by the Mirzapur-based Center for Rural Education Development Action (CREDA) had toiled at the looms for over three years and repayment for loans of less than rupees 500.

A much smaller number of children are also hired and paid wages. However their plight is often not much better than that of local bonded child labourers as they are paid per carpet rather than a daily wage. Young and recently bonded children sometimes earn no wages for months during what the employer claims to be a training period. Lastly, there are some children who work as part of family labour as when to supplement their major incomes. The Child Labour (Prohibition and Regulation) Act allows children to work as part child labour is not illegal. However this law is often of advantage since employers can easily claim any child working at their looms to belong to their family.

1.7. STATEMENT OF THE PROBLEM

The researcher identifies the problem of child labour in India for the research work. According to the constitution of India child labour is prohibited but hitherto child labour is continuing in the society. In this research work an attempt will be made to analyse the problem of child labour in view of the fact that in most of the Tea Stall and Dabha, in Lucknow district. The children are employed in large number. The exploitation by extracting more work and payment of meager wages is the order of the day. In this context the study focuses on the existing legal framework, the efforts made at the International Level and how far the child labour laws have been implemented by the executives and the measures employed in order to curtail the growing tendency of the abuse of the rights of child. The child labour is a serious and multi-dimensional problem across the world. Multiple causes are responsible for perpetuating problem of child labour. There are various practical difficulties involved in the design and implementation of laws. There is also a problem of differences in perception about what constitutes a child or child work or child labour. There is also a problem with regard to prohibition and regulation of child labour. There is a difficulty in understanding, the term of child labour in hazardous and non-hazardous sectors. The Government policy has been framed to

abolish child labour by immediately prohibiting it in hazardous sector of work and gradually eliminating from the non hazardous sectors of work. This is reflected in Child Labour (Prohibition and Regulation) Act, 1986 and the National Policy on Child Labour, 1987. There has been little attempt to establish criteria for measuring the success of the progressive elimination of child labour. Although the Government of India, in its National Policy on Child Labour 1987, attempts to lay down some components of the gradual method of eradicating child labour, there is no certainty that child labour would eventually be abolished, given their remedial nature and the absence of new concrete strategies to attack the roots of the problem. The concept of child labour is classified in two types, legal and illegal child labour. Legal child labour is child labour that is above the minimum age but is not an adult, i.e. 14th years. On the other hand illegal child labour is one who is below the specified age limit and working in the organised sector themselves. For example hotels, garage, tea shops, house hold, industries, earlier not covered under the child labour legislation but now by amendment to the Child Labour Legislation 2016, same have been covered and recognized as illegal child labour. Child labour in hazardous industries is another serious problem. Children's occupation is categorized as hazardous and non-hazardous on the basis of level of the risks involved in the occupations. Children working in agriculture throughout the world often face hazards through exposure to biological and chemical agents. Children can be found mixing, loading, and applying pesticides, fertilizers or herbicides, some of which are highly toxic and potentially carcinogenic which cause cancer. Early involvement of children in continuing family tradition work also causes child labour problem. Many Anthropological factors too contribute to this problem. The educational system adds yet another dimension to the prevalence of this problem. Defective education system, drawbacks in laws, low economic growth, breaking of joint families, urbanization, migration, corporal punishments at the schools etc., are some of other factors responsible in perpetuating the child labour problem. Poor implementation of child labour provisions is another problem and consequently children receive low priority in implementation system. The enforcement machinery very often does not have proper inclination to deal with the problem of child labour. The enforcement of the child labour law is vested in

machinery controlled by both the Central and State Government is another problem perpetuating child labour

1.8 OBJECTIVES OF THE STUDY

The primary objective of the study is to examine the problem of child labour and evaluate the measures adopted by the State with a view to determine their implementation and effectiveness. The other related objectives are:

1. To identify the problems pertaining to child labour,
2. To study the concept of child and child labor and factors leading to child labour;
3. To study the various International instruments dealing with child labour;
4. To study the Existing Legal Regulations of Child Labour in India, and
5. To assess the role of the Judiciary in abolition of child labour.
6. To know the status of children working on tea stalls and dhaba in Lucknow district.

1.9. HYPOTHESES

1. Poverty encourages child labour as unskilled labour.
2. Child labour is never treated humanely as they are expected to be.
3. Education of parent matters in encouragement and eradication of Child labour.
4. Child labour is encouraged because the children are supposed to stay outside off their home in connection with employment.

1.10. RESEARCH METHODOLOGY

The methodology adopted in the study is both doctrinal and empirical. Doctrinal study includes analysis of research articles, books, reports treaties, conventions, Statutes, mass media like news papers, Journals, Periodicals, Bulletins, Websites and cases decided by courts. The study also includes empirical study for which data will be collected from

various sources including survey; interviews etc from the children working in hotels dhabas and tea stalls where child labour is found.

1.11 FRAMEWORK OF CHAPTERIZATION

The study has been divided into seven chapters. The first chapter introduces the subject matter and defines the scope of the work.

Chapter second deals with historical background of child labour. This chapter researcher studied the situation of child labours in ancient India, various sources in ancient India medieval India and Modern India that suggest there were child labour was exist. This chapter also deals the concept of child labour. What is the reason for child labour being in India and why child labour is increasing in India and describe the types of child labour? With this, what is the condition of child labour in India? And what steps have been taken to prevent the child labour. Also discussed the role of the NGO's to combat the child labour. The researcher also prescribes the statistics and data of state wise child labour according to census of 2011.

Chapter third devoted to the International efforts to protect the child labour In this chapter discussed the concept of child labour on United Nation Organization, Human Right Declaration, 1948 and International Labour Organization contribution to the prevention of child labour with particular reference to India and the concerted international action for eradication of child were analysed. The various United Nation agencies and India commitment to child labour had also been discussed.

Chapter fourth the aspects covered in this chapter include the history of child labour legislation before adoption of Indian Constitution and after adoption of Indian Constitution dealing with eleven statutes and also The Child Labour (Prohibition and Regulation) Act, 1947 as amended 2008 and 2016.

Chapter fifth analyses the judicial policy in operationalization of the core elements of child labour. The researcher studies how the judiciary tried to stop child labour through judicial decision. This chapter researcher also saw what the judiciary gave

to legal principles to stop child labour. The researcher studies the labour jurisprudence in the judicial decisions, in order to complete his research work and try to find out how to use Public Interest Litigation to prevent child labour.

Chapter sixth devoted to analysis the case study of Lucknow district. The researcher conducted historical, geographical, economic and social studies of the Lucknow districts. After this the researcher surveyed the reasons for having more number of child labour in Lucknow district. The researcher work on tea stalls and dhabas. The researcher has learned the reason for child labour from all these child labourers.

The last chapter presents the Conclusion, Findings and Suggestions.

CONCEPT AND HISTORY OF CHILD LABOUR

2.0. INTRODUCTION

Children are universally recognized as the most important assets of any country. They occupy a prominent role in human resources development. In a welfare state, it is the obligation of the state to promote child welfare through different schemes and policies by which they will not be exposed to any sort of hazards which may damage their growth and ultimately affects the political, social as well as economic development of the society. Children who are deprived of physical, mental and emotional care fail to thrive, just like flowers that are neglected; they wither away or result in stunted and warped fruit. Children of nation are the hopes of tomorrow. They provide the foundation of the future edifice of the country. Ensuing physical, mental, ethical and social progress of children is, therefore, the responsibility of the state make the country strong.¹

When a sizeable percentage of child population gets diverted to manual labour, it becomes naturally a cause of concern to legislators, social thinkers, economists etc. child labour is one of the most baffling conundrums facing us today. Ironically the daily news papers which are most vocal about denouncing child labour are largely dependent upon young children for their distribution.

A child is the most vulnerable one and because his needs are immediate, he is the urgent call of the future to the often uselessly preoccupied present. Destitute children, street children and child labour are three of the most depressing problems facing in India today.

A glance beyond statistics reveals a horrifying tale of poverty, deprecation, helplessness and exploitation. So much has been said about the plight of unwanted children in our country and so little is being done to alleviate their misery.

¹ National Policy for children: *Department of Social Welfare* p.1. (22 August, 1974)

The term 'Child labour' is commonly understood in the context of exploitation when a child is gainfully employed and works in pathetic conditions which deny him the opportunities of development. The prevalence in child labour is not a recent phenomenon. Even in ancient times, agricultural and industrial workers of servile status formed the bulk of the population everywhere and their children were put to arduous work in the house and in the fields at an early stage. The evil effects of children's work were brought into prominence during industrial revolution in England. In other countries like France, Germany, Belgium, and Indonesia and in USA, the social evils of child labour became evident during the early days of industrialization and were combated by progressive labour legislation. In the early days of industrial development in our India and other countries of the west, child labour have been employed with the motive of earning large profits as child labour was cheaper than that of adults. Medelivich has rightly said that to some degree that all children of human society have always participated in every economic activity, which is necessary that they are the group they are able to survive in the group.² The problem of child labour was multidimensional and it is not the result of any single isolated factor. Child labour is usually defined as participation in gainful activity by children between the ages 4th and 14th years. The primary definition of 'child' is the immediate progeny of human parents.³ It is a commonly understood meaning, 'child' or 'children' refers to parentage and embraces only the first generation of offspring.⁴ It is a commonly understood meaning, child or children refers to parentage and embraces only the first generation of offspring. It has also been said that primary definition of the word child is an infant, and that the next allowable use in meaning is one tender years, young person a youth.

2.1. CHILD LABOUR IN ANCIENT INDIA

In the Ancient Indian Period there is no direct evidence of the child labour. But due to the system of slavery which was in existence at that time, it cannot be denied that the child

² *Keeney v. M C Voy*, 103 S.W. 946, 954; 206 Mo 42 (1907).

³ *In re Bryant's will*, 110 N.Y.S.2d 485, 487, (1952) see 'child/children', west words and phrases, Vol.7 at 4 (1952).

⁴ *New York Life Insurance Co. v. Beebe, D.C. Md.*, 57F Supp. 754 (1994). The word 'children' is commonly used to denote issue of the first generation only. Restatement, property, SS 26 7C, 292 a. Primary Legal meaning of word 'child' or 'children' is immediate offspring, descendants of first degree, and son of daughter of a named ancestor.

labour in the form of child slavery could be in prevalence. Since the children were conceived as slaves of slaves, so the children live as slaves and die in the same way as a slave, unless the master was pleased to monument them.⁵

The institution of slavery existed in Ancient India. It operated in much milder form than in the ancient civilizations of West. In Ancient period a free man (i.e. Arya) could become a temporary slave if he failed to pay a fine or the costs of a law suit or if he was carried off in a raid. An Aryan became a permanent slave only when he himself sold in person. In fact; there was no caste of slaves as such because servitude was not in the nature of Aryans. The persons belonging to all castes could become slaves. Similarly if a man left his caste to enter monastic order and then left the order or never entered it, he became a slave of the king. The slaves were bought and sold like ordinary commodities. They could also be loaned or give away. However, the masters possessed no right over their lives. The masters had duty to look after the slaves when they were old and could not abandon them. The masters were encouraged to release the slaves and manumission of slaves was considered to be pious act. Ancient Indian System forbade the sale of the children as slaves, except in dire emergency. The slave girls were assured decent treatment. A master raping slave girl was expected to free her and pay her necessary compensation. If a slave girl got a child by her master both the mother and the child were set free.⁶

The Indus Civilization there is no proof of any division of society into castes like the four Varna of the Vedic period or any kind of slavery. However, what has been excavated from the Mohenjo-Daro shows the existence of different sections of people who may be grouped in many classes. The first class probably consisted of priests, astrologer, physicians, etc. The second class consisted of warriors, the third of traders, artisans and artists and the fourth of manual workers like peasants, fishermen, weavers, domestic servants, etc. The basis of division was mainly economic profession.⁷ Thus, in Indus culture there was only proof of the domestic servants.

⁵ Ram Ahuja, *Social Problems in India* 209 (Rawat Publication, Jaipur, 2008).

⁶ U.S. Singh, *Indian History* 209-210 (Allahabad Law Agency, 2005).

⁷ V.D. Mahajan, *Ancient India* 72(S. Chand Publication, New Delhi, 1990).

Slavery was a recognized institution of Indian society and date back to the oldest Vedic times. The slave is denoted by the term 'Dasu' which originally meant the people vanquished by the Aryans. This, the institution of slavery originated in India when the Aryans captured a number of *Dasas* in the battle. It is later connotation no doubt developed from the reduction to bondage of many *Dasas* captured in battle and here we find the probable origin of Indian slavery.⁸ The custom of taking female slaves must have also presented which adversely affected the standing of women in general. War against the non-Aryan, the Aryans must have taken many female slaves and the '*Dasis*' who become the chattel of Aryans.⁹

During the later Vedic period the caste system developed further. However, the system was not as rigid as it became the later period. Shudra were considered to the lowest of all and had to serve other three higher classes i.e. Brahmins, Kshatriyas and Vaishyas. They were the lowest strata of society. The Sudras reserved for menial service was gradually recruited from the conquered dasyus. They could be expelled or killed at will.¹⁰

"In the Epic Age i.e. age of Ramayana and Mahabharata, it had the law of war the vanished should be the Victor's slave". The captive served the master until the ransom was paid. The 'Dharmasastras' speak of different classes of slaves and have laid down rules concerning their status. Manu and Narada says that, slaves could be acquired by birth in the master's house, by purchase, by gift, by inheritance, by maintenance during famine, by pledge by release from a heavy debt, by capture in war, by gain in wager, by voluntary surrender of freedom, by apostasy from a socialism by connection with a female slave and by several other processes. The slavery was also the judicial punishment for crimes. The slave might be brought, given was or mortgaged.

In the Epic period slaves generally acted as domestic servants and personal attendants although sometimes they were required to assist the master in agriculture or mining. The

⁸. A.L. Basham, *The Wonder that was India* 152 (Rupa & Co., New Delhi, 1987).

⁹. Dr. B.G. Gokhale, *Ancient India - History and Culture* 122 (Asia Publishing House, New Delhi, 1954)

¹⁰. Kauleshwar Rai, *Ancient India* 42 (Kitab Mahal, New Delhi, 1992).

King also owned lands which were cultivated by the serf and the labourers under this direction or supervision in return for the fixed payment.¹¹

Slaves suffered from certain disabilities. According to Manu a slave could not be a judicial witness except in the last resort. Narada adds a legal act done by slave is void except when it done with the permission of his master. Manu lays it down that the master must bear the offence of his slave who was his 'shadow' without resentment and that he should not quarrel with slaves. According to Narada debt contracted by a slave for the benefit of a householder was binding on the master. Slaves also enjoyed certain benefits. He was to be treated as a subordinate member of the household of his master. In the case slave died sonless the funeral and commemoratives rites for the welfare of his should had to be performed by the master. The master expressly forbidden from abandoning the slaves old age and giving him corporal punishment. According the Manu, A wife, a son, a slave, a servant or a younger brother may, when they do wrong, be beaten with a rope or cane, but only on the back and not on the head." If a man beats them otherwise he should be punished as a thief. The Smrities in India have acknowledged different kinds of slaves. Narada Smiriti which was written by Narada after that of Manu, he refers to the fifteen kinds of slaves, although Manu mentioned only seven. The conditions in India were easier for the slaves than elsewhere because they could purchase their freedom for a fixed price. Narada mentions the ceremonial by which a slave was manumitted. The master removed a pot from the slaves shoulder and smashed it on the ground, then water containing gram and flower was sprinkled over his head, and the slave was declared to be a free man, three times. In the age of Dharmashastras there were references of Sudra slaves and in addition to them there were also some kinds of slaves. A hereditary slave could not change his status. A slave was not allowed to possess property.¹² The custom of keeping slaves existed in Northern India (From 6th to 4th Century B.C) & their condition was same as above. It is true that the slaves could be treated harshly but generally they were treated with kindness. They did not possess any right at all.¹³ Slavery was as an established institution, is recognized not only by the law books and the literature on polity, but it expressly referred to in inscriptions.

¹¹ S.R. Myneni, 'Indian History' 47-48 (Allahabad Law Agency, Allahabad Reprint 2005).

¹² S.R. Sharma, *Ancient Indian History* 105-106 (Oxford University Press, New Delhi, edition 2006)

¹³ Ibid, p. 238-239.

Ashoka (273-236 B.C.) draws a distinction between the slave and hired labourer and inculcates kind treatment for all.¹⁴ During the Mauryan period (324-187 B.C.) slavery never became as terrible as Asian countries like Egypt, Greece. Technically, there was no large scale slavery for production. Greece society made a sharp distinction between the freeman and the slave, which distinction was not apparent in Indian society. A slave in India could buy back his freedom or be voluntarily released by his master, he could return to his status, a system which would not prevail in Greece.¹⁵ Megasthenes, the Greek ambassador in the Court of Chandragupta Maurya state that; “All Indians do not even use aliens as slaves and much less a countryman of their own”. But he was certainly wrong because references to the existence of this unhappy institution occur in “Dharmashastras” and other literary works. Probably Megasthenes was misled by the Indian slavery which was milder than the form which he had been used and slaves were much less numerous than in the civilization of the West. While describing the customs of the Court of Pataliputra Magasthenes observes that the care of the King’s person is entrusted to women who are bought from their parents. Buying and selling of women are thus admitted. This has been attested to by Rhys Davids, who remarks: “We hear nothing of such later (Western) developments of slavery as rendered the Greek mines, the Roman latifundia or the plantations of Christian slave-owners, scenes of misery and oppression. For the most part the slaves (in India) were house hold servants, and not badly treated and their numbers seem to have been insignificant.”¹⁶

Arthasastra¹⁷ of Kautilya contains detailed laws about slavery and manumission. Slaves were mostly Sudras and they supplied the bulk of labour power. Kautilya calls the Sudra an Arya by birth (Ary aprana) in special circumstances. The members of higher Varnas could also be mortgaged. Kautilya refers to them as hitakas. Kautilya, who marks himself as a great revolutionary has laid down rules to regulate the system of treatment of slaves. They were not outcastes and were employed in households; Forcible production from slaves was non-existent. Kautilya took keen interest to regulate the institution of slavery. He forbade the

¹⁴ R.C. Majumdar, H.C. Raychaudhuri, Kalikinkar Datta, et. al., *An Advanced History of India* 126 (Laxmi Publication, New Delhi, 1978).

¹⁵ Prof. V.D. Rao and Prof B.K. Gokhale, *Ancient Indian History and Culture* 159 (A. R. Sheth & Co., Bombay, 1963.).

¹⁶ T.W. Rhys Davids, *The Buddhist India* 55 (G. P. Putnam’s Sons , New York, 2006).

¹⁷ The Arthasastra, a treatise on Government and economics ascribed to Kautilya. The chief advisor of Chandragupta.

sale of children into slavery except in dire emergency. Slaves were permitted to win and inherit property and earn money freely in their spare time. They could not be forced to do any defiling work. The masters were advised to protect the chastity of slave girls. The State was advised to interfere in cases where slaves were treated badly.¹⁸

There were two types of slaves: life-long slaves and slaves for a specified period. Life-long slaves were either slaves born in the house or prisoners of war. Life-long slaves could never abandon their status of bondage which was extended to their children also. There were slaves born in the house, purchased slaves and slaves brought from a foreign country. A special chapter in the Arthashastra is concerned with slaves and karmakars. It contains a list of categories of slaves. The offspring of a temporary slave was considered free and could even receive the inheritance left by his father. The power of the master over his pledged slaves was to some extent limited.

Slaves were employed in agriculture for cleaning goods, tilling fields sowing, harvesting, tending cattle, etc. and handicrafts. They worked on royal estates as well as private farms. They were also employed on monastery lands. The wide use of slave labour for house-keeping was a typical feature of ancient Indian slave ownership. They had to do things like grinding grain, sorting out cotton and husking rice, spinning, weaving and repairs and building work. Sometimes slaves were sent to work for money but they had to bring their earning to the master.¹⁹ As per Dr. G.M. Bongard Levin during the Mauryan period, slavery was already wide spread and had a major role to play, especially in the developed regions of the Mauryan empire.²⁰

During the Maurya period, many industries in the state had monopoly and most of them were nationalized industries. Although the state was a major partner in the economic and industrial sector, for which Kautilya set standard wages for all types of workers in which there was equal wages, weaving of cotton cloth and equal amount of cotton. Wage rate was different for weaving silk or woolen fabrics. With the value of silk and wool, related wages

¹⁸ Radha Kumud Mookerji, *Chandragupta Maurya and His Times* 195 (JKamal Publication, New Delhi, 3rd edn., 1960).

¹⁹ Supra note 7 at pp. 331-332

²⁰ G.M. Bongard Levin, *Mauryan India* 172 (Sterling Publishers, New Delhi, 1985).

were payable according to time and work. According to contract labor, work should have been completed before the commencement of work, if the workers failed to do allocated work at the desired time and place by the employer no wage was not payable for them. To increase the speed of the workers' work, wages were paid during the holidays. Fixed wages were given to shepherds and agricultural laborers. Kautilya never took any side to work with children. Although the children used to work in agricultural work and domestic service,²¹ without getting proper food and minimum wages Workers did not always get food.²²

During the Gupta period (300-600 A.D.), there was an increase in the number of Sudra castes and untouchables (Slaves). The Smriti law of the Gupta Age developed rules in respect of slavery. Katyanand, while repeating the law of Yajnavalkya and Narada, forbids enslavement of slaves in ascending order of castes. He categorically declares that a Brahman can never be a slave and sale and purchase of Brahmana women are to be annulled. While a Kshatriya or a Vaisya apostate from asceticism is to be made a slave. Katyanand introduced a new clause according to which free women marrying a slave herself became a slave.

2.2. CHILD LABOUR IN MEDIEVAL INDIA

In the Medieval history of India the society was demoralized by the existence of evil of child labour as slave, prostitutes of devadasis and forced labour. Slavery was a common feature of the every society and keeping of slaves was not only a fashion but also a symbol of position and status, slavery found into Hindu society was a result of the impact of Islam. The Hindu feudal lords and rich people also started observing the practice of slavery. Women-slaves were offered in dowry by the Rajput royal families.²³ Broadly speaking, slaves could be divided into two parts, domestic slaves and serfs tied to the land. The second category of the slaves was transferred with the sale of the land to the buyer. In some cases, due to economic stress, natural calamity parents used to sell their children. The Rajputs, the Kshatriyas and

²¹ Radhakrishna Chaudhary, *Economic History of Ancient India* 131(Janaki Parkashan, New Delhi, 1st edn., 1982).

²² Arthasastra III, IB.

²³ Supra note 11 at p. 197.

Kayastas usually kept slave women for domestic work. They were usually treated as hereditary servants of the family and were allowed to marry among themselves.²⁴

In the Medieval History there is the evidence of slaves who became the King. For example Alaptgin and Subuktgin (997 A.D.), was the King of Ghazni. These Turk Kings invaded India. After the invasion of Arabs who were the first Muslim conquerors to invade India. The dynasty founded by Qutb-ud-din-Aibak (1206- 1210), Iltutmish (1211-1236) and Balban (Ghiyas-ud-Din-Balban (1236-1286) were slaves and even they were manumitted by their master. Aibak received a letter of manumission from Sultan Ghiyas-ud-din-Mahmud, the nephew and successor of Muhammad Ghori before his elevation the throne of Delhi. Iltutmish was also freed by his master. Balban who belonged to the forty Turkish slaves of Iltutmish, was given freedom by his master.²⁵

In the Delhi Sultante era of The Tughlugs or Quranah Turks (1320-1414 A.D.), evidences tells us that, the Sultan was diligent in procuring slaves and he carried his case so far as to command his fief-holders and officers to capture slaves whenever they were at war and to pick out and send the best for the service of the Court. Those chiefs who brought many slaves received the highest favour. About 12,000 slaves became artisans of various kinds. Forty thousands were in readiness to attend as guards in the Sultan's equipage or at the palace. "Altogether in the city and the various fiefs, there were 1, 80,000 slaves." They were given training in difference vocations.

Some of them became artisans and craftsman, some joined the army and became warriors, some were employed in royal Kankhanas and a few of them mounted guard at royal palace. There were some who occupied such odd jobs as ewer bearers, curtain bearers, weapon bearers, keepers of medicines and libraries some held the charge of elephants, precious birds and hunting panthers. Some of them were appointed Amirs and Maliks. Some of the slaves had fixed salaries from 10 to 100 tanks per head. There were others who were remunerated through assignment and grants of village. The slaves can amass wealth for themselves and their kinsfolk. These saves carried the germs of corruption into the higher

²⁴ Supra note 7 at p. 80.

²⁵ Id. at p. 82.

classes of society. The slaves were neither attached to the person of the Sultan nor to his dynasty.²⁶

Slavery was fairly common. Slaves were bought and sold. They were also distributed as ordinary gifts or presents among friends. Muslims took pleasure in enslaving Hindu women in masse from the highest to lowest rank. Many of them were forced to entertain the Muslim Court and the nobility with dance and music. There was a reference that Hindu women who were converted to Islam were sent to the Emperor of China. Slavery was a recognized institution in the Vijaynagar Empire.²⁷ Thus in early Medieval India domestic servants and slaves were employed in the royal house hold and in every rich and respectable Muslim family. They were employed not only in domestic and medial work but also in war. In private households, there was practically no distinction between the domestic servants slaves. War was probably the most important source of the supply of slaves. Prisoners of war, who were mostly Hindus, were reduced to slavery. Hasan Nizami tells that after the victory of Qutb-ud-din-Aibak at Kalinjar, 50,000 men were made Slaves were also imported from Africa and West and Central Asian countries. They were also procured from certain parts in India. There was the reference of such market to Delhi.

The regulations of Ala-ud-din Khalji fixed the prices of slaves. The prices of male, female and handsome men and women slaves varied. A slave could be set free only when he and his master came to an arrangement that the former would pay the latter an appropriate part of his earnings and the Qazi on firmed the agreement. Thus, the Indian slaves were engaged in domestic and menial work and contributed merely to the luxurious style of living of their master.

Under the Mughals (Akbar was no exception) a worker had no independent desire of his own. His items produced by the worker could not be sent anywhere, when the order to transfer was not given by the king; any worker had to obey the orders of the court. Whatever the nature of the work to which the worker was called was to be done, he had to do it. Remuneration was based on the old principle of giving the laborer as much as it would be capable of doing the work that got the same price. It can be thought that the condition of

²⁶ Supra note 7 at p. 85.

²⁷ Id. at 88

labor was not better than slavery. There was a separate and different category of slaves, in which we are often mentioned in *Ana-e-Akbari* and *Berniere Travels*. The difference between the two was that the workers could not be sold, while the slaves could be sold by pledging, as if they were part of the movable property, otherwise the status of the work and existence was the same.²⁸

Various forms of slavery existed in all parts of the country during the 16th century as it had done before Contemporary Persian Chronicles give an account. The Sultans of Delhi maintained large contingents of slaves, the Mughals, who were familiar with the evil in the Central Asia, followed their example and there were large number of slaves, called ‘chealas or khidmayatiyas’ in the house hold of Akbar. Slave male and female were given in dowry in the marriage of royal princess.²⁹

During the reign of Akbar (1556-1605 A.D.) slavery was the order of the day. Akbar’s promulgation of order on this subject (i.e. he prohibited the slavery) Akbar abolished slavery and issued instructions to Kotwals in the cities and Faujdars of the district to see that the rules were observed.³⁰ Akbar issued an ordinance for the benefit of children i.e. “no child was to be circumcised before the age of twelve, and if one did not like to do circumcised, he was not to be compelled to do so.”³¹

In 1592, Akbar issued an order strictly to stop the war prisoners and their families forcibly converted to Islamism. After this Akbar also liberated the slaves. In 1594, Akbar issued an order in which it was determined that, A father and a mother can be, they are very compelled by hunger and their misery, then they can sell their child, and later when their If you have money to make a payment, then you can buy it again, “servitude.”³²

There was no significant improvement in the condition of the workers during the rule of Jahangir (1605-1627 A.D.). The supply demand for workers was very high during this period and the demand was mainly around the capital. The laborers were taken by force and

²⁸ Dr. Pant, *Economic History of India Under the Mughals*, Introduction by Dr. V.K. Sexena, 1990, part II p. 64.

²⁹ Abdul Qadir Badayuni, *Muntakabir-Tawarikh*, Vol II, p. 341.

³⁰ A.L. Srivastava, *Akbar The Great*, Vol. III, First edition (1973), p. 58

³¹ Al-Badayuni, *Muntakabir-Tawarikh*, Vol. II, p, 376, 404.

³² A.L. Srivastava, *The Mughul Empire (1526-1803 A.D.)*, 1952, Revised edition, p. 145.

the workers who had been paid by the owners had to keep them. When the worker had no objection to the objection that he would not do this, he would have been killed for a lesson (a whip of a rope drilling in one hand). Even after the orders of Akbar and Jahangir, human empowerment was also done under the king's nose for the state's officials and for certain people in the empire.³³

It is true that the king and his Omran extended forward the slavery of the people for two reasons for their benefit. Firstly, the demand for slaves, including slave girls, hijras and concubines, was done extensively and on the other hand the king had full control over the monopoly of slaves. In which he had earned a lot of money through the trade of slaves and himself promoted it for himself. Pelestate openly supports Jahangir's labor work policies in India. They say that at the time of Jahangir, "the children of a laborer could not do any other work except him."³⁴

In the rule of Shah Jahan (1627-1658 A.D.), there was a general procedure like thinking of labor as a normal point.³⁵ In Sylhet province, which was totally dependent on Bengal at the time, there was a tradition for people in the world that they worked with their son and deposited their money in revenue. This custom by degrees had been adopted in the provinces, and every year some children were thus ruined and cut off from procreation. This practice had become common. At that time Jahangir issued an order that hereafter no one should follow this abominable custom and the traffic in young eunuch should be completely down away with.³⁶

In the status hierarchy of the Medieval Period, the slaves occupied the lowest position, the royals, nobles and merchants employed them as attendant and servants.³⁷ The local Qazi, for example, in Bengal officially appointed for the sale of slaves in local market.³⁸

³³ Supra note 32 at pp. 130-132

³⁴ Ibid.

³⁵ W.H. Moreland and P. Geyl, *Jahangirs India 1569-1627* Translation of Remonstranties by Francisco Pelsaerl (W. Heffer & Sons, Cambridge, 1952).

³⁶ Rogers and Beveridge, *Tuzuki-i-Jahangiri*, Vol. I, p. 150-151.

³⁷ W. Irvine, translated *Storiea do Mogor* by Niccolao Maucci (1695-1709), Vol. II, p. 336-337, 4 Vols. London 1907-1908

³⁸ W.H. Moreland, translated Peter Floris His Voyage to the East Indies in the 'Globe'. (1611-1625). Haklyut Society, 1934, p. 84, see also A. Chatterjee, *Benal in the Reign of Aurangzeb*. Calcutta, 1967, p. 201.

During the later parts of Akbar's rule, the servants were employed by the nobles either free or slaves. Distinction existed between urban serf and rural servitude. Moreland pointed out that in Mughal India two distinct system grew up side by side- the village labour was equal to the serf, and in the towns and cities slaves were employed for many domestic purposes, and the incidents of their position were governed at least some extent, by the principles of law. Unskilled labour was employed for personal services some were free and some slaves, but in both of the cases the functions or duties were the same and could be interchanged.³⁹

The fact of slavery has clearly been recorded in the Ain-Akbari. Abul Fazl noted in the Ain-I-Akbari that more than 5000 ladies were in Akbar's palace, all had their respective apartments and were attended to by adequate number of servants female guards and eunuchs. The imperial camp employed between 2000 to 3000 servants and for each type of work more than the required number of servants were employed. Moreland gives a detailed discussion on servants at the time of Akbar.⁴⁰

Beside country slaves, they were also imported from Africa and Western Asia. Foreign slaves being costly, the Indian slaves were preferred by the nobles, for not only that was cheap but their status was hereditary also. Various method like capture and voluntary/ surrender were used to accumulate more slaves. Both Hindu and Muslim law recognized this social institution but however, the order issued by Akbar prohibited the soldiers to take part in the Act of gathering slaves by capture.⁴¹ The insolvent debtors along with their families were handed over to the rich creditors as a form of involuntary surrender. In case of involuntary surrender, the poor parents sold their children for life time slavery. Persian envoys imported such cases to their country.⁴²

There are evidences that the children, especially in Bengal, were kidnapped to be sold to become slaves. There was "black people" trade in Bidar and it existed in Vijaynagar and

³⁹ Neelam Chaudhari, *Socio- Economic History of Mughal India* 16-17 (South Asia Books Pulication, New Delhi, 1st edn., 1987).

⁴⁰ W. H. Moreland, *India at the Death of Akbar: an Economic Study* 82-83 (Macmillan Company, NewYork, 1st edn., 1920).

⁴¹ H. Beveridge, *The Akbar Nama ABU-L-FALL* 246 (Asiatic Society, Calcutta, 1st edn., 1907).

⁴² Supra note 44 at p. 86.

Deccan. The Portuguese never worked, rather purchased slaves from market and employed them. In Goa for example, slaves were constituted in the majority.⁴³

Forced labour was distinguishing proactive during the Aurangzeb's era (1658-1707 A.D.) He made the situation worse by giving this unnatural policy by his religious tinge. But in the eighteenth year of Aurangzeb's reign orders were issued against the forced labour (begari). At a later date when Hindus complaint against Amils and Ausdars, the Governor of Ahmadabad addressed their grievance and forbade the use of forced labour.

In the Medieval period the 'Devadasis' system was also in prevalence in principal temples. A large number of beautiful maidens were maintained for music and song in important temples in most parts of the country. Al-Biruni writes that while the priests were opposed to the institution of Devadasis, the King maintained them for the sake of the revenue.⁴⁴ Apart from these child labour forms there was another evil which Akbar wanted to put an end to this institution i.e. prostitution. But he soon realized that it was being patronized by his own officials and nobles. He decided to regulate it.⁴⁵

No doubt the slavery or the other forms of child labour exploitation such as forced of labour, prostitution and devadasi system was known to the Indians even before the advent of Muslims, but some evidences shows that the Muslim rulers. Specially patronized it with an intention to make only traffic in child slaves and use and split them for their selfish ends.

2.3. CHILD LABOUR IN MODERN INDIA

Slavery was an ancient institution and a lot of abuses had crept into this institution in *Modern period* and to exploit children. Slave in North India were mostly domestic servants while in South India they were agricultural labourers. There was no demand from the public for the abolition of slavery. In the *Eighteenth century* the practice of slavery increased with the coming of the Europeans in India particularly the Portuguese, the Dutch and English the

⁴³ Pyrand, The Voyage by Rancois Pyrard of Loyal to the East Indies, for the Haklyut Society (1887-89), Vol, II, p. 39, see also Linschoten, The Voyage of John Huyqhen Van Linschoten to the East Indies, for the Haklyut Scociety (1884), p. 29

⁴⁴ V.D. Mahajan, *History of Medieval India* 360 (S. Chand Publication, New Delhi 11th end., 1991).

⁴⁵ Supra note 23 at p. 249

European Companies purchases slaves in open market. There were reports of Europeans at Surat, Madras and Calcutta purchasing slaves and employing them for domestic work.⁴⁶

The *East India Company* was mainly a trading company. It came in India with the object of trading. The Industrial Revolution in England gives birth to a new class of manufacturer. They protested against the company's monopoly in India. By the charter of 1818, the trade monopoly of the Company came to an end. Trade with India was thrown open to all British subjects. India became an economic colony of England. Needs of the British economy decide the British economic policy towards India. India's raw materials were taken to England and the finished goods were imported into India.⁴⁷ As a result Indian industry was hit hard. Indian handicrafts and other village industries were ruined. With the decline of the traditional production of handicrafts, the artisans could not afford for modernization and these industries could not withstand and shock of foreign competition. As a cumulative result the Indian handicraft industry was ruined very soon and the country's craftsman and artisans became jobless. It set off a process of de-industrialization and the British entrepreneurial class took its advantage.⁴⁸ This was the condition of the children that they had to work with their bread as well as for their family's bread. British gave the encouragement to the child labour as it was very cheaper.

The rapidly growing mechanization and uneven development of industrialization made major changes in the socio-economic system. Because of which capitalism caused great harm to the family-based structure of society. With the help of machines making any work very easy, there was a change in the life of the workers and the poverty created by creating such condition due to which children were also being consumed. Due to the lack of legislative provisions, workers were exploited by employers for their selfish means.

In the nineteenth century many children were employed in various industrial sectors such as cotton and jute mills, coal mines and various factories, etc. thus the condition of child worker became critical and worse in Modern period. Apart for all the above situation British

⁴⁶ V.D. Mahajan, *Modern Indian History-From 1707 to the Present Day* 80 (S. Chand Publication, New Delhi, 2005).

⁴⁷ S.R. Myneni, *Indian History*, First edition (2004), Reprint 2005, p. 324-325, see also Manju Gupta, *Child Labour: A Harsh Reality*, Child Labour in India, 1987.

⁴⁸ Ibid

parliament abolished sale trade in 1807, Lord Cornwallis had already forbidden the sale and purchase of children in 1789. In 1811, imports slaves were declared illegal.⁴⁹ The Government itself took initiative and passed India Act 5 of 1843, which permitted the slaves to claim their freedom, But the Act did not make immediate emancipation compulsory nor did it make any provision for payment of compensation from the owners.⁵⁰ The IPC enacted in 1860 prohibited all trade in or keeping slaves.

“This is an eloquent testimony to the moral sense evoke by legislation of India.” The measures adopted in Modern period to deal with the child labour may be categorized under the two main heads;

2.3.1. Before Independence

Before Independence there were some measures adopted to protect the child labour form the abuse and exploitation by the employer. In spite of the activity opposition of the employers there were some statutory laws enacted to check the evil of child labour.

To prevent child labour in India, the first statutory law was made in 1881 in British period. This first child rights protection Act was known as “Indian Factories Act 1881.” Indian Factories Act 1881 banned the work of children under the age of seven years in factories, and working hours for children between 7th years and 12th years were limited to nine hours and four vacations in the month made compulsory, time was also given for sufficient rest. However, for the sake of their safety, special provisions were given in the act like fencing of dangerous machines. This Act deals with only those factories which employ 100 persons or more than 100 people.⁵¹ This Act was enacted on the recommendations of the “Factory Commission”, in the name of Indian Factory Act, 1891. This Act decides 9 hours per day for working for children. The children were prohibited to work at night between 8 p.m. to 5 a.m.⁵²

⁴⁹ https://www.Tandfonline.com_ (Visted on 14 April, 2019).

⁵⁰ Slavery Abolition Act, 1843

⁵¹ Indian Factories Act, 1891.

⁵² Ibid

Children position in mines was also very bad and their exploitation increased due to the lack of attention. For improving their conditions, in 1901, Mines Act was passed. This Act prohibits employment of children under the age of 12th years. The Chief Inspector of Mines has been empowered to prohibit the employment of children in a certain place by this Act, unless it is satisfied that this employment is dangerous for the health and safety of the children. In 1909, a new factory bill was introduced in the name of the Factories Act 1911. This Act has changed the working hours of the working of the factories to 6 hours per day. In particular, a provision was added that all children working in the factory must have a certificate of age and fitness for employment as a condition. The child labour was not permissible to employment at night in between 7 p.m. to 5.30 a.m. They were also not allowed to work in certain hazardous processes.⁵³

In the period between 1920 and 1930 some progressive actions were made for protecting the children. Some important aggressive steps were the formation of International Labour Organisation in 1919 and the establishment of All India Trade Union Congress in 1920, which are responsible to reform the various law relating the conditions of labour in general and child labour. Then the next important step was the Indian Factories (Amendment) Act of 1922, which extended the scope of factory and tried to cover all the loopholes of Act, 1911. The five influences of the International Labor Organization were implemented by the Indian Factories Act, 1922, which defined the conditions for the employment of children, their work and hours of work, women and adolescents for night work. The scope of the factory was extended to cover any premises where 20 or more persons were employed, where the factories used mechanical strength. It was also given to the local governments that they can do the implementation of the laws for their expansion, where 10 or more people have been appointed. It defines the term 'child.' According to this Act, the child refers to the person who has not yet completed his 15 years of age. This Act prohibits children in factories whose tax age Less than 12th years. The working hours reduced by this Act to six hours a day with necessitated the granting an interval of half an hour to the children who employed for more than five hours of work. By this act, children were required to have a certificate of re-examination for a medical certificate or continuous work as

⁵³ Indian Factories Act, 1891.

physical proof along with physical proof. Factory inspectors were given the right to interrogate children so that they could continue their work. The Indian Factories (Amendment) Act of 1922 also banned the employment of youth and women in some processes. In this Act, in 1923, some modifications were made by an amendment.⁵⁴

Due to the inadequate provisions in the existing Mine Law, 1901 a new Mines Act was enacted in 1923. Act of 1923 rose the minimum age for employment from 12th to 13th years of age in mines. This act came into effect with the objective of giving an effect to the International Labor Organization's Convention for working hours. It set the time of work hours or above for underground hours in 60 hours or one week in a week.⁵⁵

Three years later (i.e. after the amendment of Indian Factories (Amendment) Act, 1923) in 1926, the Indian Factories Act was amended for various administrative function. The Indian Factories Act, 1926, punishes parents and guardians on the same day to send their children to work in two separate factories. For the purpose of this Act provincial Government empowered to make certain regulations for taking precautions against fire.⁵⁶

Then for the protection of child labour the Indian Ports (Amendment) Act, 1931 was enacted which is mainly related to child labour handling goods at ports. This Act has set the age of 12th years for the children to handle the goods on ports.⁵⁷

In the year 1931, one report was published by the Royal Commission on Labor. This commission was formed in British India for the improvement of the health status of the workers and the quality of life and for the improvement of labor conditions, investigations and reporting, due to the movement of the workers. This commission found in its investigation that the child who was five years old, i.e., was appointed to work 10 to 12 hours in one day and his wages were very low. They were not given sufficient weekly rest or meal intervals. The report submitted by this committee is very important because the commission had recommended that children who are under the age of 15th years should not be allowed to work as adult laborers without any certificates per day. The Commission recommended the

⁵⁴ Indian Factories (Amendment) Act of 1922.

⁵⁵ The Mines Act, 1923.

⁵⁶ Indian Factories Act, 1926.

⁵⁷ Indian Factories Act, 1926.

work to be restricted to children for 7 ½ hours as well as at night 7 p.m. 5.30 a.m. from Till the children's work was banned.⁵⁸

In 1933, the area of plantation was also covered by the Indian government by implementing the Tea District Immigrant Labor Act. This tea farming district was passed to investigate the migration of labor. The only protection provided by this act to the children was that no child under the age of 16th years would be employed in tea plantation or farming. It is also important that no child should live with that of his/ her parents or adult relative in that district unless the child is dependent on him.⁵⁹

During the British period, one of the most important steps to prevent abuse of child abuse was adopted, the Children (Argument of Labor) Act, 1933 was enacted. This act was prominently implemented on the recommendation of the Royal Commission on Labor, which was appointed in 1931 by the Government of India. The main objective behind this act was that the argument of labour of very young children for loans or advances should not be given by their parents, parents or close relatives to end the evils arising. It also banned a child's argument for the purpose of getting some work done. The provision has been made against any parent or employer involved in supporting or executing child labour in the Act.⁶⁰

On the recommendation of Royal Commission on Labour (1933), the Factories Act was completely overhauled. A new consolidated and mended Act was enacted in 1934, which was enforced from January 1, 1935. The Factories Act 1934 evolved elaborate provisions regularizing employment in respect of various age groups working in the factories. This Act defined 'adolescent' as the children between the 15th and 17th years old. It also prohibited the employment of children than 12th years of age. The Act fixes the maximum working hours for children in between 12th and 15th years were five hours in a day.⁶¹

In 1935, the Indian Mines Act, 1923 was amended. Indian Mines (Amendment) Act, 1935, determines the working hours in children's age and mines. This act was defined as a

⁵⁸ Subrata Sarkar, "Progressive Against Child Labour in India" *Orissa Review* 68 (2007)

⁵⁹ Tea District Emigrant Labour Act, 1932.

⁶⁰ Children (Pleading of Labour) Act, 1933.

⁶¹ The Factories Act, 1934.

teenager between the ages of 15th to 17th years. And 17th years could be, employed in underground work a say.⁶²

The International Labour Organisation in 1937 adopted a Convention on Minimum age of Employment in certain occupations. The Factories Act, 1935 was subsequently amended in 1937 i.e. Factories (repealing and Amending) Act, 1937. This Act did not alter the general provisions of the previous Act⁶³.

The Employment of Children Act, 1938 was enacted which aims to implement the ILO'S convention of minimum age for employment, 1937 and also to parent the employment of children in various workshops, which were not covered and specifically mentioned in the Factories Act. The provision of this Act till now continues. This Act of 1938 prohibited the employment of children under the 15th years of age in hazardous occupations such as railways and ports. It also dealt with the employment of industrial establishments not covered by the Factories Act. The Act of 1938 banned Child Labour in hazardous industries but it is made as an exception in favour of family labour.⁶⁴

By the amendment of 1939, the employment of children in the Act of 1938, children under the age of 12th years were barred from working in a workshop attached to beedi, carpet-weaving. Simultaneously, there was a ban on children's work on cement construction, textile printing and weaving, construction for machis, explosive and fireworks, mica cutting, soap construction, tanning and wool cleaning etc.⁶⁵ Thus, in the period between 1931 and 1938, more concrete efforts have been made to protect the children's labor. Although many laws were made for betterment of child labor before independence, due to the lack of effective enforcement machinery and defective legislation, laws related to child labor in different areas failed to achieve its desired goals and to eliminate the fixed standards. Also failed in the result of child labour is that child laborers are continuing as a means of labor for the employer and their exploitation is also in progress.

⁶² The Indian Mines (Amendment) Act, 1935.

⁶⁴ Supra note 62 at 68.

⁶⁵ The Employment of Children Act, 1938, Section 3

2.3.2. After Independence

The main purpose behind every act related to child labor is to protect the children from exploitation and exploitation. This objective of eliminating the evil of child labor could not be achieved in pre-independence era. The main reason for this failure was that in the report outlined by the Labor Investment Committee appointed in 1946, it was stated that there was insufficiency in the number of inspection staff to implement the provision of law.

In the post-independence period, the steps to prevent child labour was revised in 1948 in the Factories Act. It banned the employment of children below the age of 14 years and completed 14th years by raising the age limit according to the minimum age of working children. A new section was also added to this act for the factory. It has been specifically mentioned that the provision of this chapter will not affect the provisions of the Employment Act, 1938 relating to the employment of young people.⁶⁶

The minimum wages act was passed in 1948, which defined the 'child' as a person who has not finished his 15th years. However, this definition had no special significance as there was no significant regulation and prohibition for child labor in this Act. It only talks for fixing or modifying the minimum wages rates for adults, adolescents, children and trainees⁶⁷

Further amendment was made in the Employment Guarantee Act of 1949, by this amendment; the minimum age for employment in workshops was increased to 12th years from 12th years. In the case of dispute between the employer and the inspector, in relation to verification of the age of the child, under the Employment Act 1949, a provision was made to resolve the dispute.⁶⁸

In 1950, The Indian Constitution, which came into force on the 26th Day of January 1950, made various provisions which protect the children including child labourers form exploitation and abuses or trafficking.⁶⁹ In order to improve the status of adolescent status, it has been amended mainly by the International Labor Organization Convention; this Act

⁶⁶ Indian Factories Act, 1948. Section 68.

⁶⁷ The Minimum Wages Act, 1948.

⁶⁸ The Employment of Children Act, 1949, Section 70 (2).

⁶⁹ Constitution of India, Article 15(3), 23 and 24.

prohibits the employment of children between 15th and 17th years in railways and ports at night. It also provided a mandatory duty to the employer that they were required to maintain a register under the 17th years.⁷⁰ In 1951 the Plantation Labour Act was passed which prevent the employment of children under the 12th years in any plantation.⁷¹ The Shipping Act enacted in 1951, prohibited a person under the 15th years of age from working in any ship.⁷² One year after the above enactment the Mines Act, 1952 was enacted. It prohibited the employment of children under the 15th years of age in Mines. However by this Act, and adolescent person could be employed for an underground work as an adult person after satisfying the following two conditions –

- (i) He must have been completed his 16 years of age and,
- (ii) He must submit a certificate of physical fitness for doctor.⁷³

In 1954, the Factories Act was revised by the Act (Amendment) Act, 1954. It prohibits the employment of teenagers under the age of 17th at night. According to this act, ‘night’ means continuous 12 hours duration including hours between 10.p.m. from 7 a. m..⁷⁴

The children engaged in work on shipping were protected by the Merchant Shipping Act, 1958. By this enactment children under the 15 years of age were prohibited to be busy or carried to sea to work in any capacity in ship except in certain specific cases.⁷⁵ In 1961, two major Acts were passed with the intention to provide a large protection to working children. First Act is the Motor Transport Workers Act, 1961.⁷⁶ The Act was passed prohibit the employment of adolescents under the age of 15 years in motor transport. Second Major act which is passed in 1961 is Apprentice Act 1961, which provides for regulating apprenticeship and controlling of trainees.⁷⁷

An important step was taken in the beedi and cigar industries to save children from exploitation. Their health was protected by the implementation of the Beedi and Cigar

⁷⁰ Employment of Children Act, 1951.

⁷¹ The Plantation of Labour Act. 1951, Section 24.

⁷² The Shipping Act, 1951.

⁷³ The Mines Act, 1952, Section 2(i) and 40(I).

⁷⁴ Factories (Amendment) Act, 1954.

⁷⁵ The Merchant Shipping Act, 1958

⁷⁶ The Motor Transport Workers Act, 1961, Section 21.

⁷⁷ The Apprentices Act, 1961(Preamble of the Act).

Workers (Conditions of Employment) Act, 1966. Children under 14th years of age were denied employment. The young man between the ages of 14th and 18th years was prohibited from working in the night in any industrial premises after 7:00 pm, till 6 o'clock in the morning.⁷⁸

In addition to these central legislations, with the intention of protecting the children, in 1969 the Act was enacted by various states for the commercial premises of the states. These acts made the legal declaration of minimum age of employment in shops and commercial establishments, under the relevant state act, this age is 12th years in Assam, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Karnataka, Orissa, Rajasthan, West Bengal and Delhi and Andhra Pradesh 14 years have been kept in Kerala, Tamil Nadu, Punjab, Uttar Pradesh, Himachal Pradesh and Pondicherry.⁷⁹

In 1969, a report of the National Labor Commission was published. Child laborers working in different unorganized sectors were observed, such as tea shops, hotels, restaurants and cotton weaving, carpet weaving, stone-braiding, brick making, various handicrafts and road construction etc. With the intention of regulating labor. In the unorganized sector, an Act was passed in 1970 by the Government of India by the National Labor Commission. This contract is known as Labor (Regulation and Elimination) Act, 1970. In this Act, all the establishments and contractors employing more than 20 workers have been included, across the entire sector of various sectors.⁸⁰

In 1978, the Employment Act of Children was amended. It prohibits the employment of children under the age of 15th in the railway premises, in which catering-parking or clearing operations in catering installations at railway station or any other work done between them or between them and for railway lines. The near business was not covered before the Employment of Children Act, 1938.

In 1986, The Child Labor (Prohibition and Regulation) Bill was introduced in both the Houses of Parliament in August 1986 for the purpose of prohibiting the employment of

⁷⁸ The Beedi and Cigar workers (Conditions of Employment) Act, 1966, Section 2(b) and 25.

⁷⁹ Shops and Commercial Establishment Acts.

⁸⁰ Contract Labour (Regulation and Abolition) Act. 1970 and Report of National Commission on Labour Published in 1969, p. 386.

children in some areas. This Act bans that no child will be allowed to employ or work in any workshop described in Part A of the Schedule or in any workshop, in which any procedure mentioned in Part B of Schedule, Will go. There are specific provisions relating to the working hours and the working time period.⁸¹

Thus, the child workers have been in existence for the time immemorial. They were found in Ancient, Medieval, Colonial and Modern era in the form of child slavery. But due to the uneven development and growth in modern, industrialization, era the child labourers were used to helping the economic activities as they are very cheap. Before the independence various legislative provisions were made to improve their working conditions. But, after the independence lot of efforts were made to protect the children from exploitation. A great attention has been paid by the Central as well as State Governments to eradicate the evil of child labour, so as they grow in a healthy manner.

2.4. THE CONCEPT OF CHILD LABOUR

The concept of child labor is very complex. The word 'child labour' is a combination of two components, i.e. child and labour child in terms of his chronological age, and 'labour' in terms of its nature, quantum and income generating capacity.⁸²

There is a controversial concept to define the word 'labor', especially in terms of child labor. Child work and child labor are synonyms of each other. However, all work is not bad for the health of children, so some light work is properly structured and regulated, which do not count on child labor. This means that the work which does not remove children from other activities such as leisure, sports and education for children is not child labor. 'Child Labor', therefore, is the work by which children are kept away from education, mental development, economic development and sports, which inhibits the health and development of children.⁸³ There are two schools of thought in relation to conceptual and fixed problems regarding child labour.

⁸¹ Child Labour (Prohibition and Regulation) Act, 1986, Section 3 and 7.

⁸² P.P. Jayanti, "Child Labour: A Socio- Legal Study", Vol. no. 1 (*Kerala University Journal of Legal Studies* 143 1989).

⁸³ Ibid, p. 145

According to the first school known as abolitionist school, education should be made a fundamental human right of every child in 5-14 age groups, and any child who is out of school should be treated as potential working child. They feel that elimination of child labour and attainment of compulsory primary education are two sides of the same coin and one cannot be achieved without achieving the other. According to them, the distinction between hazardous and non-hazardous work is immaterial.⁸⁴ According to the second school known as reformist school, child labour is a 'harsh reality', which means, give the socio-economic conditions of India (like poverty, unemployment and illiteracy) it is impossible to root out the problem of child labour altogether. They feel that elimination of child labour should be viewed as a long-term goal to be achieved progressively. Hence, they advocate a dual approach of prohibition of child labour in hazardous work and regulation of it in non-hazardous work.⁸⁵

2.5. CULTURAL AND SOCIAL FACTORS

Cultural and social concept on child labour has become a more questionable issue of current time. Culture has its own definition on the term *child* and child labour and it differs greatly across the society. Culture has fixed some functions, which has to be performed by the children in their early ages for their effective socialization in the future. This process of socialization and the cultural objectives to which they are supposed to respond are clearly interdependent with the structural economic system within which the process of socialization occurs (Burra, 1999). In a culturally bounded society like India, tradition plays a vital role on both family structure and sex roles of the every child. However, poverty is not only to keep the children out of school. Various form of social discrimination also plays a vital role. For example, gender inequality which is more common in a society irrespective of caste, religion and class reflects the social norms against the education of children (Nieuwennuy, 2003). Due to the concentration of wealth, age-old power, high level of education and rational thinking among the upper caste people has made domination on low caste group. Hence, child labour can be seen more among low class people or weaker sections of the society. In a

⁸⁴ S. Pandiaraj, "Elimination of Child Labour in India: Towards a Glorious Illusion" Vol. no. 46 Indian Journal of International Law (2006), see also Laxmidhar Mishra, *Child in Indian* 18 (Oxford University Press, New Delhi: 2000).

⁸⁵ Ibid, p. 19.

society like ours sending children to school largely depend on cultural context of the family and basically that decisions will be taken at household level. However, such decisions are not separated from other crucial aspects of household decision making nor are they purely household based (Mendelievich and Elia, 1990). They reflect the norms and values of the wider community within which the household is located and the social and economic possibilities, which local contexts offer to different categories of households (Subramaniyan, 2000). Some explanation of poverty has focussed on the level of economic development within a given society as the prime cause of child labour. Others have focused on the presumed inferior personnel or cultural traits of the poor. Still others have interpreted poverty as the result of societal conditions that permit or encourage economic deprivation for some societal members.

2.6 FACTORS LEADING TO CHILD LABOUR IN INDIA

Child labor is a common problem in every society. The widespread expansion of child labour is in the entire universe, child labor is a violation of human rights of children. Crores of children are all over the universe, preventing them from exploitation is a major challenge. Many children are forced to work in hazardous industries and other businesses and have a bad effect on their health and well-being. Children who are supposed to be in schools, they are working in a large number of labours in different areas, who are compelled to work under unauthorized circumstances.

Child labour means labour done by the child. In India, children also have to work because their basic needs are not fulfilled. But the important question is why do they have to work, and what are the reasons for child labor? The biggest problem in India is population which is not controlled. Thus, in the case of child labor, this is also the most prominent place in the problem. In India many reasons for the increased risk of child labor can be attributed primarily. There is poverty, low income of the family bread makers, illiteracy and ignorance, child labor is available inexpensively, unemployment, population, family inequality, sky distribution of land property, lack of planning for family and absence of the family also. The scheme for social security, the failure of the government to control child labor, insufficient protection law etc, which is as follows.

2.6.1. Poverty

Poverty is a major cause of child labor in India, due to which the problem of child labour has expanded. Nearly 40% of poor children live in India and due to poverty; they do not live their life well. It is well known that India is a developing country, where a lot of people are poor and they are living their lives below the poverty line. It is very difficult for them to arrange all the food for a day and because of this, young children also have to work for food. So they take up any work regardless of their life. For which they have to take a lot of humiliation. However, in the industries, most of the work is done by the machine, but still the industrialists keep the young children for work to earn more profit, because they get to work on very low wages.

The rate of child labor due to children leaving school is high in our country. The higher rate of school dropouts is actually the result of poverty. The second reason is that more schools fees are very high. Children's school education becomes a burden for the poor families, because children do not have bread because of poverty due to food after going to school. Poverty is a curse for child labor, which takes the life of children into darkness. In the hands of those whose hands should have a book for reading, it will be easy to see the tools due to poverty.

2.6.2. Low Income of the Bread Earner and Need of the Income to the Family

The inadequacy of the wages of the members of the family's adult earners compels them to send their children to work and to supplement family income. Another reason the family needs income because sometimes children have to support their family members, so they generally run towards the industry.⁸⁶

⁸⁶ Edmonds, E. V. "Does Child Labor Decline with Improving Economic Status" *The Journal of Human Resources* 40 (2005).

2.6.3. Illiteracy

As far as literacy is concerned, India has very little space in the world. According to the 2011 census, the average literacy rate is 74.04%. Some states such as Andhra Pradesh, Bihar, Madhya Pradesh, etc. and also have less literate population recorded. Most of the children belong to communities living below the poverty line and the parents of these communities have been very backward in school education. Uneducated parents of child laborers never think about the future because they are more interested in the current needs of their families. For any family, living below the poverty line, food and shelter are their basic needs and they require more earning hands to fulfill these requirements. Thereby, he and his family continued to exist. For this, illiteracy is like one of the main reasons for child labor, because the wisdom of the uneducated people is not developed due to which they cannot think of the far-reaching consequences of child labor.

2.6.4. Unemployment

Unemployment has a great effect on the development of any society, which causes disorder in the society. The unemployment rate in our country is very high, so poverty is very much in people. Most people are not able to fulfill their needs, so they depend on the wages of children for their family's food, because they think that they can feed their families with the money they earn from children. The reason is that the children eat their unemployed parents and families with money from work. However, the Government of India has made many efforts to reduce unemployment in the country by implementing various schemes and rules but unemployment has not been reduced.

2.6.5. Population and Large Family

In India, very few are not controlled because of the population. Even in the case of child labour in India, more population is also one of the main reasons. There is no family planning in India but there is no special program. A person produces more children without paying

attention to the bright future of their children and they do not know to give them basic amenities of life. Because of which children have to work, which causes child labour.⁸⁷

2.6.6. Child Labour is Cheaply Available

Employers like to get more production with cheap labour costs which they easily gain more benefits by employing child labour rather than adults. That's why employers get a big margin sure. Poverty is a blessing for these employers because they get poor children working in the labour market more easily.⁸⁸ Due to cheap labour, adults become unemployed and children get employment easily. That's why cheap labour is a major reason for making child labour.

2.6.7. Un-Equitable Distribution of Land Assets

In India, only a few people have a lot of agricultural lands, the rest of the farmers are actually farm labourers who only do wages. Like our country's large population is rural. Because of which our country is agriculture-oriented. For a long time after independence, our country's economy was also dependent on agriculture. Therefore, the people of the country were dependent on the income from agriculture. Because of this, when the children saw their parents doing agricultural work, they began to help him and from here on, child labour was started in agriculture. To work at cheap prices today, child labour becomes easily available very quickly in a very large number.

2.6.8. Absence of Scheme for Family Allowance and Social Security

In India, there is no effective scheme of family allowance and social security for poor and weaker sections of the society, which fulfils the principle of social justice. Many children are forced to do child labour in the absence of social security. Many children are engaged in child labour, which do not have fathers or mothers or both. Due to poverty, these children work in the compulsion for food, at the age in which they should be in school or playground. So we see that this is also one of the reasons why Child Labour's.

⁸⁷ https://www.erdoclasses.com_ (Visted on 7 Jun, 2017)

⁸⁸ International Labour Organisation, 1994 Yearbook Of Labour Statistics 1995, p. 134

2.6.9. Failure of Government to Control the Child Labour

Another reason for child labour is the failure of the government to control child labour. It is dependent on the government to implement the laws strictly so that child labour can be controlled. In India, at present, there are many laws to control child labour but the most important aspect is its implementation because the effect of child labour is not only for children but also for the country because today's children are future tomorrow, the success and development of this country depends on them and therefore it should be protected.

To date, many laws have been made to prevent child labour in India, but no law has succeeded in preventing child labour completely.

2.6.10. Family Tradition

It is a bitter truth that the tradition or custom of child labour in many families in our country is coming from very ancient times. Culture, traditional and family values play a key role in increasing the problem of child labour at the voluntary level. People of poor families say that a bitter life is not their destiny, and the centuries-old tradition of labour is the only source of their earnings and livelihood. Small businessmen also work with their children in an effort to further their family business with lower production costs. Some families also believe that working from childhood will make their children more diligent and world-class in future life. He believes that early employment will give rise to the personal development of their children so that they will easily create the next plan in their life.

2.7. IMPACT OF LABOUR ON THE CHILD

Although it is said in general terms that physical labour has a tremendous impact on the growth of the child, the socio-psychological studies have portrayed the real magnitude of the problem. Labour has its impact on the physical development, general health condition and morality of a child. Physical labour and consequent work pressure make the child both weak and timid. These hinder the educational or intellectual development of a child constant

suppression and physical labour easily lead a child to become a delinquent in the course of time. Therefore, physical labour as a long-lasting veil impact on the overall development of the children.⁸⁹

Thus work, when taken-up as a means for the fulfillment of some other needs, become in slaving in character and deleterious in its impact. The latter type is harmful because the energy that should have been spent on nurturing talent, capacity and power, is used for the purpose of bare survival. It becomes a total evil when the energy generated by a child is appropriated by some others and the child is left with a fraction of it, which cannot meet even this basic survival needs. Child labour, therefore, assumes the character of a social problem in so far as it arrests or distorts the natural process of a child to full adulthood. The use of children as a source of the labour force, raise many other questions with demographic and economic implication. Demographically speaking, the economic contribution of children is an important contributing factor in the demand for more children and consequently leads to population growth. (Kasarda, 1971) Among other implications, child labour causes adult unemployment, low productivity and inefficient utilization of man-power with the economic loss to the society.

2.8. CATEGORIES OF CHILD LABOUR

There is a lot of child labour, which we see in the following forms.

2.8.1. Bonded Child Labour

Despite the prevalence of The Children (Pledging of Labour) Act, 1933 which declares an consent, oral or written, to pledge the labour of children, whereby the parent or the guardian of a child in come back of any payment or profit to be expect, undertakes to cause or allow the examine of a child to be utilized in any service to be void, the bonded child labour still exists. Bonded child labour, is an inter-generational fact. After slaving for many years, when the man becomes too old to work, his difficulty that the young son or sons be sent to replace the father and around the age often the young child is introduced into the system of

⁸⁹ Shakeel Ahmad Khan, *Child Labour: A Global Challenge 14-15* (Deep and Deep Publication, New Delhi 2006).

bondage.⁹⁰ Under bondage systems therefore the children have to contribute a specific work as part of a peasant feudal family. In the second category, the indebted parents pledge their children for the sake of their needs.

2.8.2. Daily Wage Child Labour

Child labour also work on piece rate or time rate both in organised and unorganised sectors including informal sector of the financial system for monetary gain. This type of child labour is absorbed in gainful employment. It is an individual occupation of work.

2.8.3. Home Based Child Labour

A number of working children are found in home-based work helping their parents. These children exercise meaningful economic practices and provide significant participation on different home based activities along with other members of family collectively. The child labour is usually engaged in farming, household and cottage industries and in any other occupations traditionally practiced and pursued.

2.8.4. Domestic Child Labour

Every family activity that include cooking, cleaning, washing clothes, child care of sibling, fetching water etc. are performed by children in almost all families. In rural society, these apart, the children have to look after livestock, protect and watch the crops, work in kitchen garden,⁹¹ weed and thrash com and engage in spinning and weaving, knitting and tailoring etc. (specially the girls). These activities interfere with the full growth of child worker apart from making them deprived of early schooling, happiness, leisure and recreation etc.⁹²

2.8.5. Self Employed Child Labour

The children below fourteen years very often engage themselves in income generating activities due to abject poverty of their parents or for other compelling circumstances. Such

⁹⁰ Burra Neera, *Born to work-child labour in India* 25 (Oxford University Press, New Delhi -1995).

⁹¹ Domestic Worker's Convention, 189 (2011).

⁹² www.ilo.org (Visited on 6 Jun, 2018)

kind of child labour usually not works under any supervision. Wages are also not paid by anybody, they earn through vending, shoe-polishing, rag-picking and serving as porter. This group of self-employed labourers works mainly in urban metropolitan centers and return to the womb of the family in the evenings.⁹³

2.8.6. Child Labour at Streets

Street children, not all of course, constitute another category of children who work for survival and are largely found in semi-urban and urban metropolitan centers. These children find themselves on the street because they have either run away from their families, or been abandoned or kidnapped, they usually live in public places such as railway station, bus stop, footpaths and are without the protection of their families (Burra Neera -1995).⁹⁴ They are employed as part timers by others temporarily on payment. These child labourers are seen working in construction site and shops as helpers. They also serve in Dhabas (small wayside eating place) restaurants and hotels etc. The children who indulge into begging and performing some criminal activities under the aegis of certain middlemen/touts and antisocial elements also fall in this category of child labour.⁹⁵

2.8.7. Migrant Children

While most of the adults remain unemployed, we run the economy with child labourers and mostly migrant child labourers even after five decades of independence observes Tripathy S.N. 1976.⁹⁶ Migrant child labour originates from the labour mobility towards districts or states or outside where industry and employment opportunities are expanding. The migrant streams vary in dimensions but the principal current of modern migration all over the world is towards urban areas. The poverty, economic/marginality, scanty flow of resources to rural area, crop failure, flood, drought, landlessness of parents, distressed living conditions, indebtedness and bondage etc. are some of the reasons for the emergence of migrant child

⁹³ K. Basu and P. H. Van, "The Economics of Child Labour" Vol 88 *American Economic Review* 412-27 (1998).

⁹⁴ Supra note 95 at p. 42

⁹⁵ Catherine Panter-Brick, "Street children, Human Rights and Public Discourse: A Critique and Future Directions", Vol no. 3 *Annual Review Anthropology* 157-158 (2002).

⁹⁶ S .N Tripathy, *Migrant child labour in India* 25 (Mohit publication, New Delhi, 1997).

labour. The family migrates with the children mainly under economic compulsion apart from the reasons stated above. Whereas the adult family members taking shelter in city slum, railway platform, bus stop, under fly-over etc. and work in building construction, road construction, the migrant children engage in rag picking, vending etc. In semi-urban areas these migrant families also work in brick kiln, stone crushing etc. where the children below 15 years of age being deprived of schooling and other pleasures, recreation etc help their parents. These activities of children also tell upon the physical growth and development.

2.9. ROLE OF NON-GOVERNMENTAL ORGANIZATION (NGO'S) TO COMBAT CHILD LABOUR

In the pre-independence days, voluntary actions related to social reforms or complementary creative activities of the freedom struggle, to compete with the role of NGO (NGO) in the pre-independence days. After independence, this region joined the work of nation-building by conducting programs and activities to fulfill official policies from voluntary groups of independent India and even the Church and religious background, and to the aspiring self-rule Entered important programs in search (self-reliance). With Seventh Five Year Plan, the voluntary sector gets new official status in the form of non-governmental organizations (the field of NGOs). Financial allocation and official status made by the Five Year Plan attracted many volunteers to the voluntary sector.⁹⁷ Thus, highly qualified professionals and qualified cadres entered the voluntary sector and turned the entire area into an independent force.

The official recognition of the NGO and the national position is the result of the prominence given to the NGO sector internationally. NGO sector has been prepared by international finance and social organizers. United Nations, World Bank, bilateral agencies of Western governments and other voluntary international funding agencies have highly supported the non-governmental organization of developing and undeveloped countries. They see the NGO sector as a substitute for highly inefficient and

⁹⁷ Dr. Ashhad Ahmad, *Child Labour in India: A politico-Legal Study 40* (Kalpaz Publication, C -30 Satyawati Nagar, Delhi, 2013).

corrupt government in less developed countries. Massive funding and inherent influence in this area have also contributed to the spread of such organization in India.

The voluntary sector / NGO is self-image of socially fundamentalist, politically intelligent, organizationally non-hierarchical, gender-sensitive, secular, sensitive to the dalit sections and programmatic open. Close to ground reality, strong and involved in the program In fact, open participation in democracy is often responsible for this area.⁹⁸ But the main drawback of this area is its non-identical character and is sensitive on many issues which are internally harmful to the national integration and the interests of the countries. The NGO sector has become a representative of the social sector solutions sponsored by the World Bank to a large extent. Although, contradictions many of them are at the forefront of the liberalization of the economy. The issue of poverty, unemployment, hunger and disease has remained largely absent from the national debate.⁹⁹

This NGO seems purely in the return period on investment theory. Social sector issues are also considered as interchangeable items and each donor / NGO is free to sell their package.

In general, the voluntary organization can be classified into three types.

- (a) The government implementing programs or copying similar / similar programs.
- (b) Somewhat assumptions, but through the assumptions the organization can be changed through important cooperation. These organizations maintain their independence while working with the government, criticize the system and engage in dissatisfied activities.
- (c) Organizations who believe that only structural changes can improve people's situations.

However, logic behind voluntary action is a purposeful social action for a better society. The community should not bear responsibility. Voluntary organizations have to equip the community to oppose the mechanism of appropriation and exploitation. It

⁹⁸ Hommes Des Terra, (1996), Project Policy Meetings.

⁹⁹ Sansthan Gramodaya, Rehabilitation and Prevention of Child Labour Project, (1977).

should be in the form of a means for the participation of people and the involvement in decision making process.

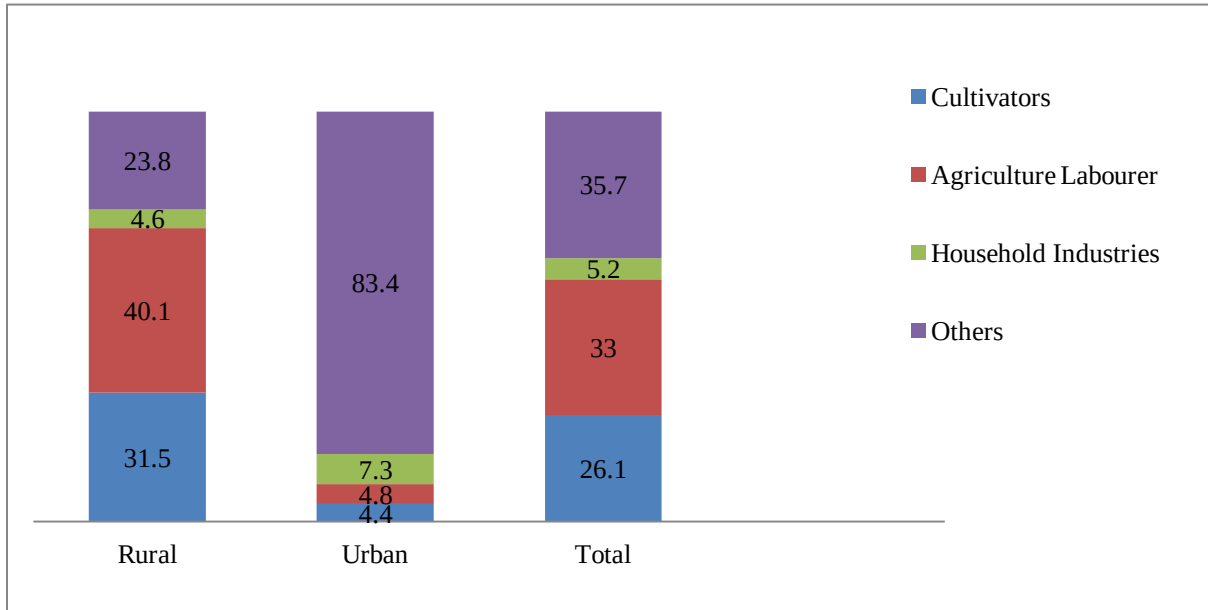
In order to supplement and pressurize government initiatives at the national level, many NGOs have shown great courage and enthusiasm to highlight the working conditions of working children. In 1989, the campaign on South Asian Coalition (Child Services) (SACCS) and the Against Child Labor (CACL), Tamil Nadu, the efforts to protect childhood under child labor and conditions of service and to restore the rights of primary education to all children.

Although there are many NGOs working for the removal of child labor, some of them work with the government and some work independently. Under the rehabilitation program, in both countries, NGOs are working specifically to remove children from work through non-formal education or vocational training.

The role of NGO in eliminating child labor and decreasing number of child labor is very important. For example, we can try the child labor effort of “Bachapan Bachao Aandolan” in India. To make this NGO's effort to prevent child labor, its founder, “Mr. Kailash Satyarthi”, received the Nobel Prize for 2014. There are many other NGOs in India which are continuously doing excellent work to prevent child labor.

2.10. CHILD WORKERS IN MAJOR SECTORS IN INDIA

This table describes the distribution of child labour in major regions of India, according to the 2011 census According to the 2011 Census; agriculture emerged as the largest category employing children. In rural areas, 40.1 per cent children were engaged as agricultural labourers, 31.5 per cent as cultivators, 4.6 per cent in the household industry, and 23.8 per cent in other areas of work. It is significant that a large section of child workers.

Figure 2.1 : Child Workers (Main+Marginal) in Major Sectors in India, 2011

Source: Census Micro Sample 2011

Classified as 'cultivators' in the Census would belong to the poor and marginal peasant families who cultivate either their own land or land leased from others (George and Panda 2015). In urban areas, children were mostly concentrated in occupations other than agriculture and household industry, with 83.4 percent child labourers employed in this category. The other activities in which children were engaged in urban areas were 73 per cent in household industry, 4.8 per cent as agricultural labourers and 4.4 per cent as cultivators. The nature of sectors in which children were engaged in rural and urban areas clearly identifies the need for a concerted policy approach to make children continue their education. At the same time, there is also a need to support agricultural households with merchandised tools so that there is less demand for child labour. Further, the demand for child labour needs to be addressed with appropriate policy interventions.

2.11. EDUCATIONAL LEVELS OF CHILD LABOUR IN INDIA

The introduction of proactive policies on education in India has had a significant impact on improving literacy rates and participation in diverse employment opportunities for the youth. The persistence of child labour, however, calls for an examination of the relationship between trends in education for children and their participation in the workforce analyses the literacy levels among child workers at the national and state levels to assess factors that lead to children engaging in paid employment. Out of a total of 4.4 million main child workers in the country in 2011, 2.8 million (65.3 per cent) between the age group of 5-14 years were literate. There was an increase from 47.6 per cent literate main child workers in 2001, 4 per cent of these child workers had studies till matriculation or above. This large increase in a decade implied that more and more children were beginning to attend at least some classes in schools. The increased literacy levels could be attributed to the enforcement of the Right to Education Act and Sarva Shiksha Abhiyan, but the question that arises is: How far have these flagship programs of the Government of India contributed towards retaining children in school for longer time periods? Despite the higher rates of literacy and school attendance, several children are still forced to work. Some micro-studies have reported a variety of reasons, such as,

1. Location of schools at long distances;
2. Dilapidated school building;
3. Dearth of drinking water and toilet facilities,
4. Absence of separate toilets for girls;
5. Insufficient number of teachers; and
6. Irregular attendance of teachers.

Such factors make education an ordeal for children. Timings of formal schools are rigid and are often in conflict with other activities, especially in rural areas. Even when children do go to school, they do not find any incentive to complete various school stages since the post-school employment scenario remains bleak and there are no additional returns to school education. The interplay of all these factors persuades children to leave school, and these decisions are taken mostly by their parents (Mukheerjee, 2011). This means that even as efforts to improve schooling and literacy levels have been rewarding, policy initiative also need to focus on compensating families for the loss of wages incurred on withdrawing the

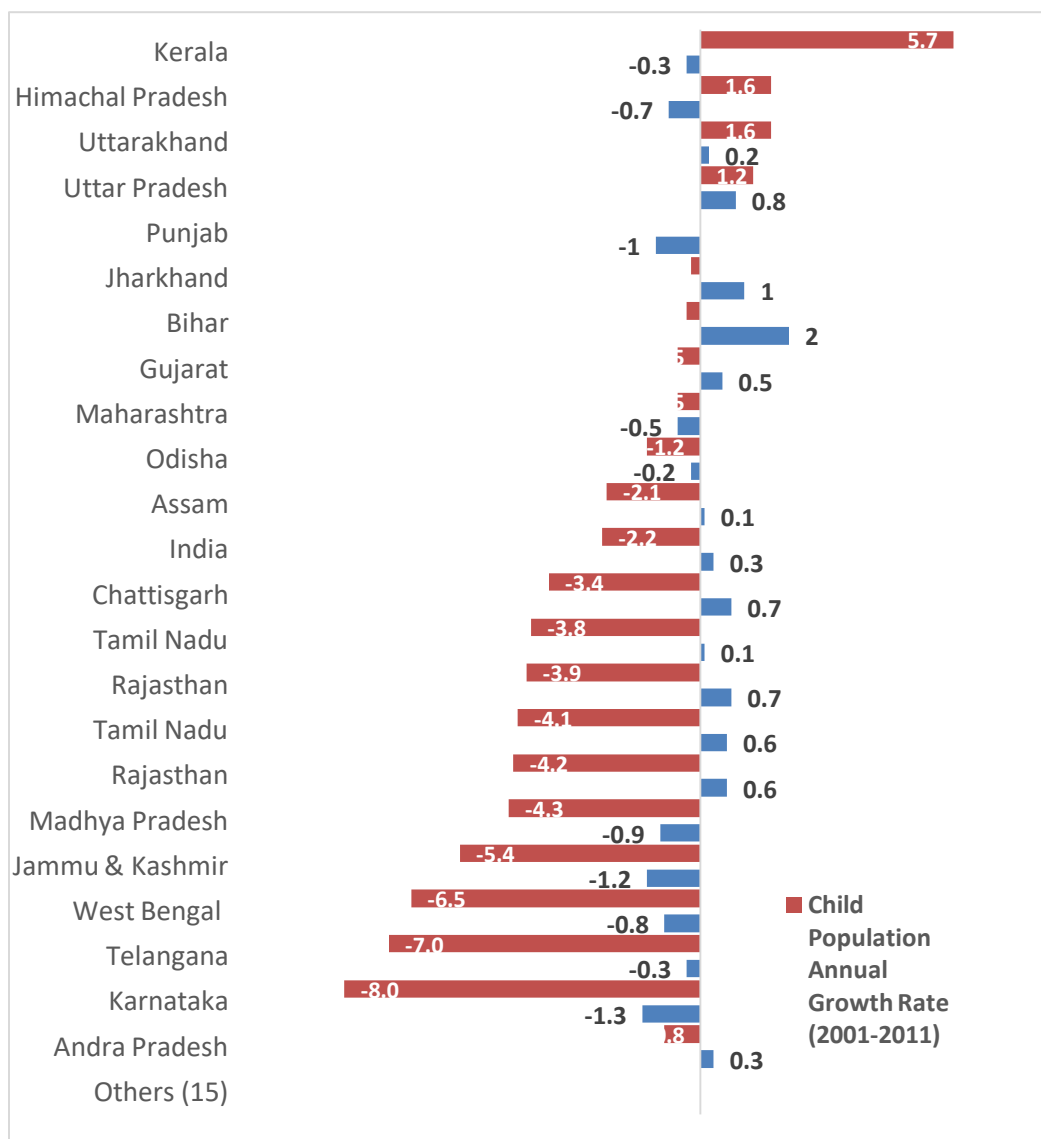
children from paid employment. Along with rehabilitation to the children in terms of providing them education, there is a need to facilitate the economic rehabilitation of families.¹⁰⁰

Table 2.1: Education Level of Main Workers, State-wise, 5-14 Year

Major	No. of Main Workers	Not Literate	Literate	Literate but Below Matric	Matric or Above
Uttar Pradesh	896,301	37.3%	62.7%	58.6%	4.0%
Maharashtra	496,916	26.2%	73.8%	69.7%	4.1%
Bihar	451,590	45.3%	54.7%	50.0%	4.7%
Madhya Pradesh	286,310	38.3%	61.7%	58.5%	3.2%
Rajasthan	252,338	40.8%	59.2%	55.3%	3.9%
Gujarat	250,318	23.9%	76.1%	71.3%	4.8%
Karnataka	249,432	30.0%	70.0%	66.0%	4.0%
West Bengal	234,275	29.3%	70.7%	67.8%	2.8%
Andhra Pradesh	225,521	36.0%	64.0%	58.8%	5.1%
Telangana	179,330	39.8%	60.2%	54.0%	6.2%
Tamil Nadu	151,437	18.7%	81.3%	77.6%	3.7%
Assam	99,512	39.7%	60.3%	57.0%	3.3%
Odisha	92,087	32.9%	67.1%	64.1%	3.0%
Jharkhand	90,996	40.6%	59.4%	56.4%	3.0%
Punjab	90,353	36.0%	64.0%	61.0%	3.0%
Chhattisgarh	63,884	35.0%	65.0%	62.8%	2.2%
Haryana	53,492	35.7%	64.3%	62.2%	2.1%

Source: Census 2011

¹⁰⁰ Elilina Samantroy, Helen R. Sekar, Sanjib Pradhan; *State of Child Workers In India* 35V. (V. Giri National Labour Institute, Noida and UNICEF, 2017).

Figure 2.2: Child Population and Child Workers, Annual Growth rates, 2001-2011

Source: Census 2011

This table shows the increase in the number of children in the states of India and the increase in the number of child workers between 2001 and 2011.

CHAPTER-III

INTERNATIONAL EFFORTS IN PROTECTION OF CHILD LABOUR

3.0 INTRODUCTION

The problem of child labour is basically the major problem of all the countries of the world. All the nations of the world regard the human rights of children that they also have some innate human rights that they should meet. At the beginning of the twentieth century, for the eradication of child labour and the protection of child rights and to solve their problems, they started going.

After the publication of an article on June 1852, the history of human rights of children was discovered in the middle of the nineteenth century, whose title was Slagock, “The Rights of the Children” After this, the rights of children were gradually brought together by Kate Clipping. For this reason, the legal status of children in England began to change with the introduction of factories, which focused mainly on the amendment of the working conditions of the children. Movements of international children's rights have born from the work of British-born Egglantin Jib, who founded Save the Children International Union (SCIU) in Geneva in 1919.¹

Child labour is one of the most complex issues related to children, but it is a major global challenge affecting millions of families and children. At the international level, countries have not shown any concern to protect children's rights, until the beginning of the 20th century. With the development of international law, all countries have shown great interest in the rights of children. The international community acknowledged that children and all people will be protected from international law when they also need protection. Children are part of the economic activity of each society. In ancient times, socialization was the main objective of child labour. The work entrusted to them was very helpful for the overall development of children. The children's

¹ The State of the World's Children, 14 (UNISEF, New York, 2000).

participation at a young age was for the purpose of preparing for their adulthood. Apart from this, these types of work were free from any loss of children. But after industrialization, child labour changed to mean children. After this, the children gradually started working as labourers for others.

Since 1919, 'International Labour Organisation' was very concerned about the general abolition of child labour and the promotion of children's goodness. Improving labour standards across the world is the basic objective of the ILO, providing various types of provisions for safeguarding working children through conferences and recommendations. Due to the trend of child labour, the ILO made child labour a world-class concern. ILO works on child labour and has been raising issues related to child labour for decades and prompts for the protection of children. The main work of the International Labour Organisation has always been to carry out the abolition of child labour and until today it continues to make labour standard, which gives the concept of minimum age to enter into employment. In addition, the main function of the ILO is to work with technical and financial assistance for effective implementation of anti-child labour program in countries related to different countries. To remove child labour from the world level.²

Due to child labour, the future of the children of the whole world is affected. Then there was a question before the UN how to stop child labour. In what way the future of children should be secured because this question stood as a problem for all countries. The resolution of which was the responsibility of the League of Nations and all the countries, for which many attempts have been made at the international level, which the research scholar has described in this chapter as the following form.

3.1 THE GENEVA DECLARATION OF 1924

The first conference was concluded in the Geneva Declaration of 1924 declaring the rights of the child adopted by the League of Nations. In which the main form was

² <http://www.ilo.org>_(Vistited on March 28, 2018).

considered on the rights of the child. It honours men and women of all nations with the following obligations.

1. Children should be given the necessary tools mainly for their general development.
2. The child who is hungry should food him, the child who is sick should get the medicine, the child who made the mistake should be brought back and the homeless child should be sheltered.
3. All children should be protected from all forms of exploitation.
4. This kind of atmosphere should be given to the child so that he can escape all obstacles to his development and contribute to human development.³

The 1924 announcement was to provide relief to the children. The purpose of this was that the child engaged in child labour should get help. Caring for an orphaned or homeless child should be done. For small things, the child should not be treated as a criminal, but he should be counseled. All the necessary items should be provided for the physical and spiritual development of the child so that he can grow up and understand the value of human life.⁴

3.2 UNITED NATION CHARTER, 1945 AND MEMBERS OF THE UNITED NATIONS HUMAN RIGHTS

Confirm Their Belief in the Value of Human Rights in the Various Provisions of Fundamental Human Rights and Charter. It was noted that it should be noted that human dignity and value include children too.⁵

3.3 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) 1948

³ Dr. Lingaraj M. Koninnkar, *Child Labour In India : Legal Regulation* 116 (Regal Publication New Delhi, 2014).

⁴ https://www.humanium.org_ (Visited on Feb 22, 2019).

⁵ Supra note 3 at p. 117.

Universal Declaration of Human Rights a landmark document in the history of human rights as it advocates human rights. These documents, prepared by representatives of various legal and cultural backgrounds from all countries of the world, were announced by the United Nations General Assembly in Paris on December 10, 1948,⁶ which is a common standard of achievement for all countries. This first attempt of the United Nations directs human rights to universal protection of Fundamental Rights. This declaration also contains certain provisions for the welfare of the children they are as follows;

The provisions of the announcement specifically tell about child labour that no one will be kept in slavery or enslavement; and slavery business will be prohibited in all their forms.⁷ No person will be subjected to torture or inhuman or abusive treatment or penalties.⁸ Everyone has the right to recognition everywhere as a person before the law. All humans have the right to equal protection against any discrimination, such discrimination and against any provocation.⁹ Every person has the right to go to the judiciary for violation of the fundamental rights provided by the constitution or law.¹⁰ Everybody has the right to liberty of faction and residence within the boundaries of their state.¹¹ Everybody has the right to work to free choice of employment to just and favorable conditions of work to protection against unemployment.¹² Everyone without any unfairness has the right to equal pay for equal work.¹³ Every person working has the right to receive appropriate and favorable remuneration for himself and his family, which is worthy of other social benefits and human dignity.¹⁴ All persons have the right to rest at work.¹⁵

⁶ Adopted and proclaimed by General Assembly Resolution 217A (III) of the 10th Dec. 1948.

⁷ Article 4 of the UDHR 1948

⁸ Article 5 of the UDHR 1948

⁹ Article 7 of the UDHR 1948

¹⁰ Article 8 of the UDHR 1948

¹¹ Article 13 of the UDHR 1948

¹² Article 23 of the UDHR 1948

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Article 24 of the UDHR 1948

All children are entitled to special care and support for motherhood and childhood. We will give all children an environment of their social protection.¹⁶ Everybody in the world has the right to education.¹⁷

3.4. DECLARATION ON THE RIGHTS OF THE CHILD 1959

In 1959, the declaration of the United Nations on the rights of children is based on the rights set out in the League of Nations Declaration of 1924. It contains the introduction and ten principles of human rights. It has been stated in the preamble that children need special safeguards and care, which includes appropriate legal protection as well as postnatal care. It repeats the promise of the 1924 declaration that seeks to improve the future of mankind's children.¹⁸

The main provisions of the Conference on Child Labour are as follows;

3.4.1. Principle 1

All children will enjoy all the rights mentioned in this declaration and without any exceptions. Every child, child, caste, colour, sex, language, religion, political or any other ground of exception will be entitled to equal rights without discrimination.

3.4.2. Principle 7

All children are entitled to an education which is at least free and compulsory in primary stages. They will be given an education which will promote their general culture and enable them to develop their personal decision potential on the basis of equal opportunity and it is a spirit of moral and social responsibility which is necessary to become a useful member of society. The best interests of children are dependent on the behaviour of people responsible for their education and guidance. When the child gets full opportunity

¹⁶ Article 25 of the UDHR 1948

¹⁷ Article 26 of the UDHR 1948

to play and entertain, his mind will be friendly for the purpose of education. State officials will try to promote this right.¹⁹

3.4.3. Principle 8

Every child will be entitled to all conditions to get protection and relief.

3.4.4. Principle 9

Every child in the world will be protected from all forms of neglect, cruelty and exploitation. The child will not be the subject of trafficking in any form. No child will be kept in any employment before the legal age; the child will not be allowed to join any work or to engage in any employment that would be harmful to his health. Also, business or employment that will affect its health or education should be prohibited. Also, those works which will interfere in its development and will not allow their physical mental or moral development will be based.

3.4.5. Principle 10

All children will be saved from behavior that can promote any form of racial and religious discrimination. It will be brought about with the understanding of peace and universal brotherhood of people and tolerance in full consciousness that its energy and talent is devoted to the service of our fellow men.

3.5. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966 (ICCPR)

International agreement on civil and political rights has been recognized on March 23, 1966. This law is divided into 6 parts and has 53 articles in it.

In 1976 an international treaty was imposed on civil and political rights, in which it was confirmed. Independent human behaviour, which enjoys freedom, fear and desire,

¹⁹https://www.childlineindia.org.in_(Visted on Dec 24, 2018).

can only be achieved when such situations are created, in which each person can enjoy his Civil and Political Rights. Its preamble says that;²⁰

“For the current state of the state party, given that according to the principles described in the United Nations Charter, the recognition of rights and necessary rights equal to all the members of the human family is on the foundation of freedom, justice and peace in the world. Recognizing that these rights are contained in the underlying dignity of the human person, assuming that, according to the universal declaration of human rights, the ideal of human life can be achieved only when they are free to enjoy freedom without fear, so that they can enjoy every citizen and political rights. Given the responsibilities of the states under the charter of the United Nations, this treaty was needed to promote universal respect for human rights and freedom.”

Agree with the following Articles:

“No person shall be subjected to torture or inhuman or abusive treatment or penalties.”²¹ “No person will be kept in slavery or enslavement and slave trade will be prohibited in all form.”²² Everybody has the right to freedom and security. No person will be held in arbitrary arrest or custody.²³ No one will be imprisoned on the ground of inability to fulfill a contract liability.²⁴

Every child will be born without any discrimination in the form of caste, color, gender, language, religion, national or social origin, or such measures will be born as a person from the society of his family as a minor According to the state is necessary.²⁵

3.6. INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS, 1966 (ICESCR)

²⁰ S. K. Kapoor, *International Law and Human Rights*, 782-786 (Central Law Agency, Allahabad 2000).

²¹ Article 7 of the ICCPR, 1966

²² Article 8 of the ICCPR, 1966

²³ Article 9 of the ICCPR, 1966

²⁴ Article 11 of the ICCPR, 1966

²⁵ Article 24 of the ICCPR, 1966

In 1966, adopted by the United Nations General Assembly and implemented in 1976, it confirms the principles of universal declaration of human rights in relation to economic, social and cultural rights. In Article 10, the state parties have been involved in protecting youth from economic exploitation and working in their moral, their health or life or the possibility of hindering their normal development. The state also imposes age limits on behalf of the youth, under which the employment of child labor should be prohibited and punishable by law.²⁶

Through the current covenant, the state side recognizes the right to work, in which everyone includes the right to have the opportunity to lead a life with their work. The person, who chooses or accepts independently, will take appropriate steps to safeguard this right.²⁷

The state side of the current covenant, especially to ensure that everyone accepts the right to enjoy the proper and favorable conditions of the person.²⁸ Pay with the salary, hours of work and periodic vacations, as well as remuneration for public holidays.²⁹

Special measures for protection and assistance should be made for all children and young people without any discrimination for parents or other conditions. Children and young people should be protected from economic and social exploitation. States should also set the age limit under which employment paid for child labour should be prohibited and punishable by law.³⁰

3.7. INTERNATIONAL YEAR OF THE CHILD, 1979

The United Nation, General Assembly decided on 21 December 1976 on observe the year 1979 as the international year of child with the following objectives:

To provide a framework for advocacy on behalf of children and for enhancing the awareness of the special need of children on the parts of decision makers and the public.

²⁶ Asha Bajpai, *Child Rights in India, Law Policy and Practice* 194 (Oxford University Press, Delhi, 2012)

²⁷ Article 6 of the ICESCR, 1966

²⁸ Article 7 of the ICESCR, 1966

²⁹ Ibid

³⁰ Article 10 of the ICESCR, 1966

To promote recognition on the face that program for children should be an integral part of economic and social development plans with a view to achieving in both the long term sustained activities for the benefit of children at the national and international level.

The international year of the child 1979 was observed as the 20th anniversary of the adoption of the 1959 declaration on the rights of the child. It was marked by activities at national regional and international level for the improvement of life of the children. UNICEF has provided with the essential leadership in India during the international year of child. Now 14th Nov. Jawaharlal Nehru's birthday was declared as universal children day. India is the only country in the world which celebrates birthday of its prime minister as children's day.

3.8. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, 1989 (UNCRC)

The United National Convention on the Rights of the Child (UNCRC), 1989 recalls the proclamation of the Universal Declaration of Human Rights 1948 (UDHR) that the childhood is entitled to special care and assistance and additionally that the child by virtue of their physical and mental immaturity requires special attention and the consideration that the child should be fully prepared to live an individual life in society. And brought up in the spirit of peace, dignity, tolerance, freedom, equality and solidarity India has been ratified the convention on 11 December 1992. All the rights mentioned in the convention are governed by following four principles.³¹

Non-discrimination, all children have the right to enjoy all the rights guaranteed for them. Best Interest- All the actions that involve or affect children, will keep their best interests in mind. Life existence and development - life and survival of children should be preserved and ensured. Participation- Children should be given opportunities to freely express their opinion and keep their thoughts in all respects in their respective matters. The Convention on the Rights of the Child specifically states under the status that of

³¹ https://www.unhcrch_(Visited on 8 Aug, 2017).

children or their parents or legal guardian, caste, color, sex, language, religion, political or any kind of discrimination without respect and authority will ensure. Other opinions National Ethnic or Social Origin Property Disability Birth or Other Position States should undertake to ensure that it is necessary for its protection and care, which is legally responsible for his or her keeping in mind the rights and duties of the legal guardians or other persons of his or her parents. And by this end all the appropriate legislatures will take administrative measures.³²

States shall ensure to the maximum extent possible the survival and development of the child.³³ States recognize the rights of the highest received standard of child health and the right to treat disease and rehabilitation of health. States Parties will try to ensure that no child is deprived of their right to health care services.³⁴

States Parties will recognize each child the right to gain social security, and according to their national law, they have to take necessary measures to achieve this right. Benefits should be appropriated so that the resources of the child and the maintenance of the children are the responsibility.³⁵

The state recognizes the rights of each child for the physical quality of the spiritual-moral and social development of the child and it helps the parents to implement this right as a primary aid and support programmer.³⁶ States recognize the right of the child to education.³⁷

States recognize the right of child to rest and leisure to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.³⁸ States have been able to protect the child from economic exploitation and to do any such work which is likely to be dangerous or interfere with the child's education or the health of the child or physical, mental, spiritual-ethical or social

³² Article 3 of the CRC, 1989.

³³ Article 6 of the CRC, 1989.

³⁴ Article 24 of the CRC, 1989.

³⁵ Article 26 of the CRC, 1989.

³⁶ Article 27 of the CRC, 1989.

³⁷ Article 28 of the CRC, 1989.

³⁸ Article 28 of the CRC, 1989.

development. To avoid harming it is recognized.³⁹ States undertake to protect the child from all forms of sexual exploitation and sexual abuse.⁴⁰ States parties shall take all appropriate national bilateral and multilateral measures to prevent the abduction of the sale of or the traffic in children for any purpose or in any form.⁴¹ States Parties will protect against exploitation of all types of children, abusive atmosphere or punishment. No child will be deprived of their liberty in an illegal or arbitrary manner, but will remain in line with the law.⁴²

States Parties will take all reasonable measures to ignore any kind of neglect or exploitation or any other kind of cruel inhuman or abusive treatment or physical and psychological improvements and social reinforcement of the victim of armed conflict. Such reforms and rehabilitation will be in an environment that promotes the health and respect of the child.⁴³

3.9. DECLARATION ON SURVIVAL, PROTECTION AND DEVELOPMENT OF CHILDREN: WORLD SUMMIT FOR CHILDREN, 1990

The World Summit for Children was held on September 30, 1990 at the United Nations Headquarters-Quarter New York. This was organized on the initiative of Canada's Egyptian Mali Mexico, Pakistan and Sweden. More than 70 world leaders gathered in 1990 created a "Soldier's Commitment" to give a high priority to the rights of children for their survival and development and to adopt a plan of action for the development of children.⁴⁴

The 1990 World Declaration on the Survival Protection and the Development of Children provide that children are entitled to joy and peace, playing, learning and growing which are necessary for the harmonious development of children. The

³⁹ Article 32 of the CRC, 1989.

⁴⁰ Article 34 of the CRC, 1989.

⁴¹ Article 35 of the CRC, 1989.

⁴² Article 37 of the CRC , 1989

⁴³ Article 39 of the CRC , 1989.

⁴⁴ Supra note 3 at, p. 125.

Declaration lays down 10 points programme for the protection of the rights of the children and improvement in their lives. It aims to have programmed for reducing illiteracy and promoting educational opportunities for all children.

In 1990, the work plan was prepared for implementing the World Declaration on Survival Protection and Development, in which three names were kept.

(A) Introduction

(B) Specific work for child survival protection and development.

(C) Follow-up action and monitoring

Thus, the needs and problems of children vary from place to place with “common aspirations” from different communities in every place, while addressing the World Summit for Children in 1990, J. Perez de Quiler, former Secretary-General, The United Nations General Assembly said, “As we know the social and economic scenario of the world, we do wonders for exceptional progress. Not, which is made up of a whole civilization now, the children remain the most vulnerable sections of society. Two sets of concerns arise from global social crisis, which rob children of emotional shelter and livelihood. The second reason for the crisis is poverty, which affects a large part of the world and deprives children of the joy of their rights. For this, the effect of internal and external conflicts is added. Out of eight million refugees in the world, there is one child out of two.”⁴⁵

The World Declaration on the survival Protection and the development of children 1990 and the follow-up plan of action made a promise to end child labour practices and protect the child.⁴⁶

3.10 WORLD CONFERENCE ON HUMAN RIGHTS THE VIENNA DECLARATION AND PROGRAMME OF ACTION, 1993

⁴⁵ Supra note 20 at pp 407 – 408.

⁴⁶ Subsequently it has also been reaffirmed in the, (1) World Conference on Education for all, at Jomtien, in March 1990, (2) World Summit on the Children in the autumn of 1990, (3) SAARC countries conference on Children in 1991 – 92

This conference repeats the World Conference on Human Rights “the first attempt for children.” In this regard, it mainly underlines national and international importance, especially the importance of the United Nations Child Fund which promotes respect to the protection, development and participation rights of children.

It also takes steps to achieve universal ratification of the Convention on Child Rights by 1995 and the action plan adopted by the World Summit for universal signing on the World Declaration on the survival, protection and development of children. Their effective implementation World Conference on Human Rights urges States to withdraw the Convention on the Rights of the Child unlike the purpose of the Convention or be contrary to International Treaty Law.

World Conference on Human Rights urges all states with international co-operation to address the acute problem of children especially in difficult situations. The exploitation and misuse of children should be actively resolved, in which their basic reasons should also be included. Effective remedies against female foeticide, harmful child labour, sales of children and their organs, child prostitution, child pornography are needed, which is necessary against female foeticide, and other forms of sexual abuse as well.⁴⁷

3.11 THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, 2000

The United Nations General Assembly adopted this protocol in May 2000, when it came into effect from 18 January 2002. This sexual abuse prohibits the sale of children for the purposes of child labor or adoption and includes prohibition prevention and assistance to victims. This Labour Convention focuses primarily on the Prevention of Child Sexual Abuse, highlighting the criminalization of child prostitution and pornography in view of the extensive and continuous practice of tourism in the protocol. On August 16, 2005, India ratified the conference. The Convention defines that the sale of children means any

⁴⁷ Supra note 3 at p. 126.

kind of transaction, in which a child is transferred to any person or group of other people for any other consideration remuneration.

Child prostitution refers to the use of a child in sexual activities for remuneration or any other consideration.⁴⁸ Child pornography is of any representation, whatever it may be, represent the abuse of sexual organs of any child for sexually involved or for sexual purposes primarily engaged in genuine or fake sexual acts.⁴⁹

In the case of state children, it will ensure that the following activities have been completely covered under its criminal or penal law, in the form of minimum activities, whether the crimes were done domestic or internationally or on an organized basis individually.⁵⁰

(A) Regarding the sale of children defined in Art. 2⁵¹

(i) For any child, offer, acceptance or acceptance of any item:

(a) Child sexual abuse;

(b) Transfer of child organs to profit;

(c) Child engagement in forced labor;

(ii) Incorrectly misrepresenting consent as an intermediary to adopt a child in violation of the applicable international legal means for adoption;

(B) Offering, receiving, receiving or providing a child for child prostitution, as defined in paragraph;

(C) For the above purposes, the formulation, distribution, dissemination, import, export, offer, sale or keeping of child pornography is defined in paragraph;

⁴⁸ Article, 2 of the OHCHR 1993

⁴⁹ Ibid.

⁵⁰ Article, 3 of the OHCHR 1993.

⁵¹ Ibid.

- i. Subject to the provisions of the National Law of a State Party, the same shall apply to any attempt to involve complexity or participation in any of the above acts and any acts;⁵²
- ii. Each state party will make such crimes punishable by appropriate penalties, which in view of their grave nature;⁵³
- iii. Subject to the provisions of its national law, each state party will take action, where appropriate, to establish liability of legal persons for crimes established in paragraph 1 of the current article. Under the legal principles of the State Party, such liability of legal persons can be criminal, civil or administrative;⁵⁴
- iv. The State Parties will take all appropriate legal and administrative measures to ensure that all persons involved in adopting the child are in accordance with the applicable international legal resources.⁵⁵ Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined.⁵⁶

3.12. UNITED NATION OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, 2000

Demonstrating the wider commitment present in the present protocol, encouraged by the support of the States in the current protocol, for the promotion and protection of child rights,⁵⁷ by reaffirming that the Rights of children are required for special safety, and continuous improvement in the condition of children without discrimination, as well as peace. For their development and education in the situation of security and safety, troubled and long-term consequences with the harmful and widespread impact of armed struggle on children. In the circumstances of armed conflict under international law,

⁵² Article 3 of the OHCHR

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution A/RES/54/263 of 25 May 2000, entered into force on 12 February 2002.

targeting children and directly condemning the attack on the protocol of objects, which include such places, which usually have significant presence of children, such as school and hospital, international crime. Adopting the Rome Statute of the Court, in particular, has been included in the form of war crimes, under 15th years of age Noting that Art., 1 of the Convention on Rights, in order to protect children or to list them or participate actively in hostilities in both international and non-international armed conflict. The 'child' specified that, for the purposes of that convention, a child means that every person under the age of 18th years, unless the majority of the child gets first, under the applicable law, it is understood that an alternative protocol for the convention that raises the age of possible recruitment of persons in the armed forces and their participation in hostilities will effectively contribute to this principle Security implementation that child's best interests are the primary consideration in all actions concerning children. In the December 22, 1995, Red Cross and Red Crescent's Twenty-Sixth International Conference, it was recommended, among other things, that the parties of the struggle should take every possible step to ensure that children under the age of 18th do not participate in hostilities. Welcoming the unanimous adoption of the International Labor Organization Convention Number 182 on the prohibition and immediate action in June 1999, for the abolition of the worst forms of child labor, which prohibits forced or compulsory recruitment of children in armed struggle? Identify the responsibility of recruitment, training and use of children in this regard, with intense concern about the recruitment, training and use of children within the national boundaries of the enemy in the enemy by the armed groups, different from the armed forces of the state, remembering to comply with the provisions of international humanitarian law, the liability of each party for armed struggle, the current protocol is without the bias of the objectives and principles contained in the charter of the United Nations, in which Art., 51 and relevant norms of humanitarian law are included. Keeping in mind that the conditions of peace and security on the basis of full honors in the objectives and principles of Charter and inclusive Human Rights Instruments are indispensable for the complete protection of children, especially during armed conflict and foreign occupation, special Identity is the need of those children who are particularly vulnerable to recruitment or use of the enemy in the present protocol. Due to its economic or social

status or gender, conscious of the need to pay attention to the economic, social and political root causes of children's involvement in armed conflict. Emphasizing the need for strengthening international cooperation in the implementation of the present protocol, physical and psychological rehabilitation of children who were victims of armed conflict and the strengthening of social rehabilitation. Encourage community involvement and, in particular, about the implementation of the protocol, in the dissemination of information and education programs, children and child victims have talked about.

3.13. SECOND WORLD CHILDREN CONGRESS ON CHILD LABOUR DELHI, 2005

First children's World Congress on Child Labour was held in 1993. The Second World Children Congress on Child Labour and education was held in New Delhi from 4th to 8th September 2005,⁵⁸ which was organized by Global March against Child Labour and hoisted by its core partner in India, Bachpan Bachao Andolan. Children from 30 different countries with children from India attended the Congress, Objectives of the Congress was to provide Justice to the children, who were denied, the Visa and could not participate in the First children's World Congress 1993, giving them a platform to share opinions, experiences and ideas and to learn from one another and empowering them in the process to emerge as the leaders in the struggle against child labour. Another objective is to formulate a children's Plan of Action to implement the Declaration made by the children in the First Children's World Congress 1993 and to strengthen, broaden, and consolidate, a worldwide child and youth movement against child labour through the establishment of a strong network and to remind Govt. to fulfill their promises to ratify and implement ILO conventions 182 and 138. Lastly, to urge International organizations to increase their support to programmes aimed at eradicating child labour, poverty reduction, achieving universal, free and quality education for all children.

⁵⁸ Fact Finding Report of Second World Children Congress Delhi, 2005

Thus, the Vienna Declaration 1993 addressed the root cause of child labour and encouraged combating exploitation and abuse of children. It also stressed the need for necessary measures to eliminate child labour.⁵⁹

3.14 SPECIALIZED AGENCIES OF THE UNITED NATIONS

There are specialized agencies of United Nations whose functioning is of great relevance to the protection and rights of the child. They are International Labour Organization (ILO), United National Educational, Scientific & Cultural Organization (UNESCO), and United Nation's Children Emergency Fund (UNICEF) South Asian Association for Regional Co-operation (SAARC) and World Health Organization (WHO), etc.⁶⁰

3.15 INTERNATIONAL LABOUR ORGANIZATION (ILO)

International labour organization (ILO) was established 1919 as an autonomous Partner of the League of Nations. Its head office is in Geneva. ILO functions International Labour Organization (ILO) was established as an autonomous close collaboration with the UN through a special agreement which was approved by U.N. General Assembly on 14th December, 1946.

The ILO is the main body regulation international labour standards and aims to build an international consensus on labour standards (including child labour standards) through its conventions and recommendations. In May, 1944 ILO were defined its objectives in the Philadelphia declaration. Its measures include vocational training job counseling labour market opportunities and income generation close co-operation with other agencies and NGOs guarantees comprehensive support.⁶¹

International Labour organization is one of the most important United Nations agencies which fight against child labour. The ILO follows the problem of child labour very closely and has adopted an approach that deals simultaneously with the forced

⁵⁹ Dr. Ashraf U. Kazi and Francis Tasneem, "Existence of child labour in the Twenty First Century and Human Rights: International Perspective and Legal Implication", Vol. 2. 2007

⁶⁰ Supra note 3 at p. 127.

⁶¹ Bureau for workers activities international labour law found, *available at*: http://www.itcilo.org._ (Visited on 1Sep, 2018)

labour and worst forms of child labour. It co-operates with the Government in Order to conduct national survey on child labour and draft relevant reports.

In addition ILO evaluation methodology, specifically aims at collection information worst forms of child labour which has enables several countries identify the scope of the problem. The ILO also works in close contact with the employers and workers organization in order to determine the “hazardous forms” of child labour.⁶² In the interest of the working children all over the world, the International Labour Organization has adopted following Conventions:

3.16. LIST OF THE INTERNATIONAL LABOUR ORIGINATION

1. Minimum Age (Industry) Convention (No. 5), 1919.
2. Night Work of Young Persons (Industry) Convention (No. 6), 1919.
3. Minimum Age (Sea) Convention (No. 7), 1920.
4. Minimum Age (Agriculture) Convention (No. 10), 1921.
5. *Minimum Age (Agriculture) Convention (No. 10), 1921. (** Ratified By India*)
6. *Medical Examination of Young Persons (Sea) Convention (No. 16), 1921.
(** Ratified By India*)
7. * Forced Labour Convention (No. 29), 1930. (** Ratified By India*)
8. Minimum Age (Non-Industrial Employment) (No. 33), 1932.
9. Minimum Age (Sea) Convention (Revised) (No. 58), 1936.
10. Minimum Age (Industry) Convention (Revised) (No. 58), 1936.
11. Minimum Age (Non-Industrial Employment) Convention (Revised) (No. 60), 1937.
12. Medical Examination (Sea Farers) Convention (No. 73), 1946.
13. Medical Examination of Young Persons (Industry) Convention (No. 77), 1946.
14. Medical Examination of Young Persons (Non-Industry Occupations) Convention (No.78), 1946.
15. Night Work of Young Persons (Non-Industrial Occupations) Convention (No. 79), 1946.

⁶² Yao Agbets, A Hand Book on Trafficking, p. 30

16. Night Work of Young Persons (Industry) Convention (Revised) (No. 90), 1948.
17. *Abolition of Forced Labour Convention (No. 105), 1957. (* Ratified By India)
18. Minimum Age Fisher-man Convention (No. 112), 1959.
19. *Minimum Age (Underground Work) Convention (No. 123), 1973.(** Ratified By India*)
20. Medical Examination of Young Persons (Underground Work) Convention (No. 124), 1965.
21. Minimum Age Convention (No. 138), 1973.
22. Worst Forms of child Labour Convention (No. 182), 1999.

India has ratified total 39 ILO Conventions out of which 37 are in force. Out of the ILO's eight fundamental Conventions India has ratified the four Conventions. They are:

Forced Labour Conventions, 1930 (No. 29), Ratified on 30.11.1954. Abolition of forced Labour Conventions, 1957 (no. 105), Ratified on 18.05.2000. Equal Remuneration Convention, 1951 (No. 100), Ratified on 25.09.1958. Discrimination (Employment & Occupation) Conventions, 1958 (No. 111), Ratified on 03.06.1960. Some of the important Conventions preventing child labour are discussed a below.

The Ten Principles of "International Labor Organizations" have recognized the problems of child labor not only in India but also throughout the world, and accordingly, have tried to protect childhood by adopting various measures. In 1924, the League of Nations adopted the "Geneva Declaration" on the rights of the child, which stated that the social evil of slavery child labor and measures against the minors' traffic and prostitution were taken. On November 20, 1959. The United Nations unanimously adopted a resolution on the rights of the child and reaffirmed its belief in fundamental human rights and human dignity and value. It further states that due to its physical and mental immaturity the child needs special safeguards and care, including proper safety. Stay with you even after birth. Sankalp developed ten principles for parent's voluntary organizations to recognize the rights of the child for the local authorities and the

governments and to try for legislative and progressive development of their measures. These are;

1. Every child will receive all rights without exception.
2. Children will get special protection. They will be given opportunities and facilities through law and other means so that they can be physically and mentally developed physically and mentally in a healthy and normal way and physically mentally in the state of freedom and dignity.
3. The child will be entitled to a name and nationality from birth.
4. The child will get the benefit of social security Special protection and care will be provided to him and his mother, which includes pre-delivery and post-natal care. The child will have the right to adequate nutrition accommodation and medical services.
5. The child who is physically mentally or socially disabled will be given special care, education and necessary care for his special condition.
6. The child who needs love and understanding is needed. Wherever it is possible, in the care and in the responsibilities of your parents and in any case, bigger in terms of affection and moral and material security. A child of the age of tender will not be separated from his mother except in exceptional circumstances. Society and public authorities will have the duty to extend special care without adequate means of support.
7. The child has the right to receive free and compulsory elementary education. He will get a full opportunity to play and entertain.
8. The child will be the first of all circumstances to get safety.
9. The child will be protected from all kinds of neglect, cruelty and exploitation. It will not be the subject of traffic in any form. The child will not be admitted to employment before the appropriate minimum age. He will not allow any business or employment to be attached in any case, and no one will deprive him of education or health or interfere with his physical mental or ethical development.

3.17. MINIMUM AGE (INDUSTRY) CONVENTION (NO. 5), 1919

The International Labour Organization (ILO) adopted its first Convention on child labour in 1919 the year of its founding.⁶³ The Minimum Age (Industry) Convention, 1919 (No. 5) prohibits the work of children under the age of 14th in industrial establishments. Subsequently nine sectoral Conventions on the minimum age of admission to employment were adopted applying to industry agriculture trimmers and stoker's maritime work non-industrial employment fishing and underground work.⁶⁴

3.18. FORCED LABOUR CONVENTION (NO. 29), 1930

Another important 'International Labour Organization' ILO Convention Protecting child against the worst forms of exploitation is the forced Labour Convention (No. 29), 1930. The main object of the Convention is to prohibit the use of forced or compulsory labour convention defined the forced or compulsory labour as every work or job which is extracted defined the forced or compulsory labour as all work or service which is extracted from any person under the menace of any penalty and for which they said person has not offered himself voluntarily.

This convention is one of the most widely ratified of the ILO Convention with 149 signatories. Since it applies to everyone whatever their age, it protects children from forced or compulsory labour and is applicable to some of the most intolerable forms of the child labour such as children in bondage and children involuntarily being trafficked and their exploitation in prostitutions and pornography.⁶⁵

The Convention requires signatories to "Suppress the use of forced or compulsory labour in all its forms in the shortest period possible." In 1957, the ILO also passed the Abolition of Forced Labour Convention (No. 105). In the Convention the ILO explicitly incorporated debt bondage and serfdom within its definition of forced labour.⁶⁶

⁶³ <https://www.ilo.org> (Visted on 5 Oct, 2018)

⁶⁴ Joseph, Anthony Lim Regional Review : Child Labour Strengtening the Role of Labour Standards in Selected Developing Member Countries, ADB/ILO RETA Project No. 5857, Final Draft, September 2002, p. 5.

⁶⁵ Sanphasit et. al final Country Report on Child Labour in Thailand, (2002).

⁶⁶ Forced Labour Convention (No. 29), 1930 was adopted at Geneva, June 30, 1930 as modified by final Articles Revision Convention, adopted at Montreal Oct, 9, 1946

3.19. MINIMUM AGE CONVENTION (NO. 138), 1973

In 1973 the ILO consolidated the principles that had been established in earlier Conventions and integrated them in the Minimum Age Convention, 1973 (No. 138) and Recommendation 1973 (No. 146), which apply to all sectors of economic activity, whether or not the children are employed as wage workers or not.

The Convention (No. 138) is requiring that member States pursue national policy for the effective abolition of child labour and to raise the minimum age for the admission to employment or work so that young person fully grow physically and mentally. It is a dynamic instrument aimed at encouraging the progressive improvement of standards and promoting sustained action to attain its goals. It accompanied with Recommendation NO. 146, which provides guidance on necessary policy and enforcement measures. Convention No. 138 is currently ratified By 117 States globally of which 19 are in the Asian region.⁶⁷ Fixing the minimum age for admission to employment or work is the basic obligation to ratifying member States within the frame work of a national policy; the Convention stipulates that the minimum age should not be less than the age of completing compulsory school and in no events less than 15th years of age.

However, the Convention allows a developing country where the economy and educational faculties are not sufficiently developed to specify initially a general minimum age of 14th years of age, instead of 15th. A highest minimum age of at least 18th years set out for the hazardous work-i.e. the work that by its nature or circumstances in which it is carried out is likely hazardous to the health safety and morals of the young persons. The Convention also allows light work for the age of 13th, provided that the work is not hazardous to the child's health or development and it also does not hinder in its education.

3.20. WORST FORMS OF CHILD LABOUR CONVENTION, 1999 (NO. 182)

⁶⁷ Leonora Anyange Kivuva, *The Forgotten schooling in Kenya* (2006).

It is a matter of great concern that children continue to be enslaved in bonded labour, isolated in domestic service, abused in the commercial sex trade, endangered in mines and quarries and exposed to hazardous conditions such as toxic substances in agriculture sector.

In response to this grave situation in June 1999, the ILO adopted its most recent instrument on child labour the Worst Forms of Child Labour Convention 1999 (No. 182) and Recommendation, 1999 (No. 190) which target the worst forms of child labour as a matter of urgency to criminate it. Convention, (No. 182) is currently ratified by 129 member States out of which 28 are in the Asian region.

For the purposes Convention, the term of child shall apply to all persons under the age of 18th.⁶⁸ All type of slavery or practices similar to slaves such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour including forced or compulsory recruitment of children for use in armed conflict, and use of child's purchase or gift to produce prostitution or pornography prostitution. The child's purchase or offer is used for illegal activities, especially for drug products and smuggling. It is likely to harm the health of the children or harm to the moral by working through its nature or the circumstances under which it is executed. It also obliges ratifying member States to ensure the effective implementation and enforcement of the Convention including the provision and application of penal sanctions, Art., 7 paragraph 2, requires members to take into account the importance of education in eliminating child labour and to take effective measures.⁶⁹

3.21 INTERNATIONAL PROGRAMMED FOR THE ELIMINATION OF THE CHILD LOBOUR, (IPEC)

The International Programme for the Elimination of the Child Labour is global programme by the International Labor Organization in December 1991. India was a first

⁶⁸ Article 3 of the Worst Forms of Child Labour Convention, 1999 (No. 182)

⁶⁹ Joseph, Anthony Lim, Review: Child Labour, Strengthening the Role of Labour Standard in Selected Developing Member Countries, ADB/ILO RETA Project NO. 5887, Final Draft September 2002.

country to join it in 1992 when it signed a Memorandum of Understanding with the ILO. The long term objective of IPEC is to contribute to the effective objectives are:⁷⁰

Elimination of the capability of International Labor Organization constituents and Non-Govt. Organizations to design implement and evaluate programmes for Child Labour Elimination. To identify interventions at community and national levels which could serve as models for replication and Creating of awareness and social mobilization for securing elimination of child labour.

At the International level IPEC has a Programme steering Committee consisting of representatives of the ILO the donors and participating countries. At the National Level in India there is a National Steering Committee of which the Labour Secretary is the Chairman. This is a tripartite body in its composition with representation from the NGO's as well. There is National Programme co-ordinate based at new Delhi who co-ordinates IPEC work between the Ministry of Labour, the agencies receiving assistance and ILO Head Quarters.

Two pillars of International programme for the Elimination of the child Labour approach in its direct programme have been:

The economic empowerment of the household at risk and Making education accessible and meaningful to children concerned.

Apart from this, International Program for the Elimination of Child Labor is a technical cooperation program on child labor in the world. In more than 70 competitions, the ILO / IPEC has taken inspiration from guides and supported national efforts to end child labor.⁷¹ The aim of IPEC is to work towards progressive elimination of child labour by strengthening national capacities and policies to address the child labour problems and creating world-wide movement to combat it. The priority target groups for the IPEC are:

⁷⁰ Helen R. Sekhar, *Child Labour – Situation and Strategies for Elimination* 101 (V.V. Giri National Labour, Institute, Nodia, 2007).

⁷¹ H. Kamlakar Halimbi, Sanjeev Kumar, “Hand Book for the Orientation of Employer’s Organization Members and Office Bearers on the Elimination of Child Labour,” International Labour Organisation, New Delhi, ILO – IPEC Karnataka, Child Labour Project (Funded by Govt. Italy), p.6

- (A.) Bonded child labour;
- (B.) Children in hazardous working conditions and occupations; And
- (C.) Children who are particularly vulnerable?

Under this program, organizations are encouraged to develop and implement measures that are aimed at removing child labour from dangerous work and providing and improving working conditions and livelihood. The important activities of IPEC are:

- (A.) Motivating a broad spectrum of partners to acknowledge and act against child labour;
- (B.) Carrying out the situation analysis to find out quantitative and qualitative attributes of child labour to create awareness on the problem; and qualitative attributes of child labour to create awareness on the problems; and
- (C.) Promoting development and application of protective legislative and preventive and rehabilitative policies and programmes, etc.

3.22 UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, 1946 (UNESCO)

United Nations Educational, Scientific and Cultural Organization (UNESCO) is a component body of the United Nations. Its work is to promote international peace through education, nature and social science, culture and communication. This special institution of the United Nations was created on November 4, 1946. Its purpose is to establish peace and security with international cooperation of education and culture, so that the justice described in the charter of the United Nations, the rule of law becomes universal agreement for human rights and fundamental freedoms. Its headquarters is located in Paris, France.⁷²

United Nations Educational, Scientific and Cultural Organization and United Nation made a special agreement on 14th December, 1946 and began a series of initiative to eradicate poverty and spread literacy. It believes that although education for street and working children is not the only way to eliminate the child labour, it still a key strategy to

⁷² <https://en.wikipedia.org> (Visited on 12 June 2018).

bring street children and working children back into their family and society and help them to build a future for themselves.

United Nations Educational, Scientific and Cultural Organization have the official mandate for education. UNESCO's mission is to lay the foundations of lasting peace and equitable development by developing human resources, promoting the values of freedom, dignity and justice and fostering access to and sharing of knowledge. It co-ordinates policy planning at national, regional and international levels to ensure that all children with special emphasis on girls and children in difficult circumstances from ethnic minorities have access to and complete free and compulsory primary education of good quality by 2015.

Its programmes include support for developing capacity building of primary school teachers through training and development of appropriate curriculum and teaching-learning materials for good quality and relevant education. It supports educational strategy for children in difficult circumstances especially street and working children for their survival, growth and skill development.⁷³

UNESCO supported a research study and brought out a book on "Education for Street and Working Children in India" in collaboration with the Indian National Commission for Co-operation with UNESCO, Ministry of Human Resource Development, New Delhi, for assessing elementary educational requirements for street children and working children in India. UNESCO has a country wide network of school-ASP (Associated Schools Programme Network) in which more than 100 schools are involved. The UN's advocacy against child labour can benefit much from this network. In particular, the support elimination to domestic child labour and for education of all these children can be provided through this ASP Network. UNESCO also has projected with two NGO's in Calcutta (Child in Need Institute and Don Bosco Ashalayam) since 1997 to provide the education to street and working children.⁷⁴

⁷³ The U.N. System in India : Position Paper on Child Labour United Nations Inter – Agency Working Group on Child Labour (IAWG-CL), updated August 30, 2000

⁷⁴ Education Today : Higher Education for Sale, Newsletter of UNESCO's Education Sector No. 3, October 2002, P. 8-9

In a recent article on child labour which found in UNESCO's own news letter stated that, "If we want to achieve Education for All, the issue of child labour must be taken more squarely into account."

3.23. UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND, 1946 (UNICEF)

United Nations Children's Fund (UNICEF), which is primarily known as United Nations International Children's Emergency Fund, was founded by the United Nations General Assembly on 11th December 1946, in which children and mothers in all countries have emergency food and Made to provide health care, after Second World War. Polish physician Ludwik Rajchman was the main role in the establishment of UNICEF and as its first president from 1946 to 1950. Rajchman is the only person to date who has served UNICEF as President for more than 2 years. UNICEF's mandate was expanded to meet the long-term needs of children and women in developing countries.⁷⁵ UNICEF acknowledges the need to tackle the problem of child labour in order to implement the Conventions on the Rights of the Child and achieve the goals for improving the conditions and well-being of children. UNICEF's objectives are:⁷⁶

- (A) To promote compulsory primary education as the fundamental strategy for the elimination and prevention of child labour.
- (B) To advocate revision and enforcement of child labour legislation and to strengthen monitoring systems.
- (C) To assets Central and State Governments to develop and withdrawal and rehabilitation of child labour, and
- (D) To promote convergence of all sectoral and developmental programmes on "at risk" families.

During the year 1965, UNICEF was awarded the Noble peace prize in recognition that the well-being of today's children is, inseparable from the peace of tomorrow's

⁷⁵ <https://en.wikipedia.org> (Visited on 5 Jun, 2019)

⁷⁶ Helen R. Sekhar, *Towards Combating Child Labour*, 19 (V.V. Giri National Labour Institute, Nodia 2005).

world. The UN General Assembly entrusted the UNICEF with the responsibility of coordinating all activities relating to the International year of the children in 1979. UNICEF has played a prominent role in emergencies. It has a four pronged emergency approaches.⁷⁷ They are:

Preventive actions through which the acute threat or risks to children are indentified, monitored and eliminated or reduced by addressing root causes; Readiness measures, which will ensure that emergency assistance will be effective, timely and appropriates; Emergency assistance, through the provision of a range of goods and services in the midst of a crisis necessary to assure the survival, protection and essential developmental needs; and Rehabilitation and recovery assistance to help victims towards physical, social and psychological recovery.

State of World Children's 'Report, 2006' from UNICEF points out that, half the world's under nourished children live in South Asia. According to the recent State of Worlds Children Report prepared by UNICEF, children of the poorest households in rural areas are the most likely to be likely to be engaged in labour as they are most vulnerable. It is also important to note that, child labour is made possible by the social and cultural sanctions that it continues to receive so that we can move towards not only eliminating poverty and ensuring access to education but also making child labour culturally and socially unacceptable.⁷⁸

3.24. UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

United Nations Development Programme mission is poverty eradication and intervention to promote basic services in the areas of health, education and prevention of HIV/AIDS. It aims to mobilize community for the eradication of child labour through the education. It views that all the children should be sent to formal schooling, whether they work in any sector viz. in agriculture, industry or at home. All the children who are out of school are considered as child labourers. UNDP has many programmes which help in the reduction

⁷⁷ D.Venkateshwar Rao, *Child Labour – A Perspective on International and National Law*, 8-9 (Manak Publications, 2004).

⁷⁸ UNICEF State of World's Children Report, also see Vinod Bhanu, "Centre for Legislation Research and Advocacy", New Delhi, 2009.

of child labour. It attempts to eliminate child labour into all its development co-operation and anti poverty programmes. A major project in this regard is UNDP's South Asia Poverty Alleviation Programme, which is being implemented in the three districts of Andhra Pradesh.⁷⁹ It supports the NGO's working in different parts of India for the removal of child labour and education of these children.

3. 25. World Bank

The World Bank has recently concentrated on the problem of child labour directly. Before that the issue of child labour operates as its one of the key issue. The World Bank (W. B.) has shown its interest on the problem of child labour in the 1995, World Development Report and a Bank position developed by 1998⁸⁰.

It views that the child labours issue from economic rather than a human rights perspective. It also feels that World Bank had indirectly contributed to the elimination of the most harmful forms of the child labour thorough is strategy to reduce poverty and their programmes for social protection including education and health.⁸¹

The policy document "Child Labour: Issues and Directions for the World Bank" outlines the need for the World Bank to take appropriate direction relating to the elimination of child labour. It suggested integration of child labour policies into Country Assistance Strategies (CAS), redesigned policies and to issue various programmes with the help of the countries who had bad track-records in to child labour. The World Bank feels that child labour is an outcome of deep poverty. They also believe that "not all child labour is harmful." It is instead stressed to "combating the harmful and exploitation forms." World Bank proposes such a policies which would make it "easier for children to attend work and school."

⁷⁹ The U.N. System in India: Position Paper on Child Labour, United Nations Inter – Agency Working Group on Child Labour (IAWG - CL), updated, (August 30, 2000).

⁸⁰ Fallon P. and Tzannatos Z., Child Labour: Issue and Directions for the World Bank, 1998, p. 5.

⁸¹ Bupinder Zutshi, United Nations System in India, Initiatives for Child Labour Prevention, Elimination and Rehabilitation 1998 – 2003, Sponsored by United Nations Inter – Agency Working Group on Child Labour, (June 2004).

India is one of the few countries where the World Bank supporting a project linking compulsory education and child labour DPEP (District Primary Education Projects), under which child labourers are the especially targeted. In the World Bank is financing U.P. State District Primary Education Programme. It informs they have identified 24 districts for the coverage under DPEP, in which the incidence of child labour is very high.

3.26. WORLD HEALTH ORGANIZATION, 1948 (WHO)

In 1945, The United Nations Conference on International Organization meeting was held in San Francisco. It unanimously approved a proposal by Brazil and China to set-up an autonomous International Health Organization within the United Nations System. The constitution of the World Health Organization (WHO) was adopted by the International Health Conference, convened by the United Nations Economic and Social Council (ECOSOC) in New York in 1946. In July 1948, this organization was brought into relationship with the UN and finally on 1st September 1948, it started functioning as a permanent organization.⁸²

One of the basic objectives of WHO as per Art., 1(1) is to promote maternal and child health welfare and to foster the ability to live harmoniously in a changing environment. WHO concerns with health- needs and health- care. It defined health “as a state of complete physical, mental and social well-being not merely the absence of disease and infirmity.” WHO as serious concern over the drug testing and its effect on infants and children. It focused on disadvantages and effects on bottle feeding and advantages of breast milk feeding to make polio-free nations, for the promotion and potential health of children. WHO reported on World Health Day (7th April, 1995) that, 146 countries have had no cases of Polio.

3.27. THE WORLD SUMMIT FOR CHILDREN

⁸² Supra note 78 at pp 54-55.

In 1990, a big meeting was held called “The World Summit for children in New York.” The main object of the meeting was to make efforts for improvement of the children. In this meeting the Governments decided to give first priority to children’s well being issue in good times or in bad times. Accordingly they made 27 goals for children and decided to achieve these goals by the year 2000. They mentioned their objective in a document called the “World Declaration on the Survival, Protection and Development of Children and Plan of Action.” Many countries development their “A National Programmes of Action,” for the achievement of their promises which they had made to children of their country. In February, 1996 countries were asked to submit their reports regarding the progress of their work in fulfilling the promises which they had made at the World Summit for Children. But the submitted reports show that a few things had improved but a lot of work still needed to be done. All the involved countries were asked to remember their promises and to increase the efforts accordingly. Every year the U.N. General Assembly meets on a regular working to discuss various questions. Sometimes it decides a “Special Session” to discuss a particular issue. The special Session on Children was held on 10th October, 2003 to discuss about the child progress since 1990 and to agree what is the next important step to do for children over the next 10th years.⁸³

There were two main documents, discussed at this Special Session. The first is ‘We the Children’ by U.N. Secretary General, Kofi Annan. He gives the reasons why the governments fail to fulfill their promises. He concludes that because they did not invest enough money in children and the rich countries did not give enough help to poor countries for achieving their goals. They also admires to the efforts made by the Governments. Second main document is called ‘A World Fit for Children.’ This document is also known as the Outcome Document, this document has been discussed by governments at the U.N. and contain all the promises that the Governments will made to children for the coming next 10th years.

The MDGs have the great bearing on the child labour internationally. The education and child labour connected at the 2002 UN General Assemblies Special Session on Children, (UNGASS), on 8th May 2002 as “equal opportunities and access to

⁸³ https://www.ohchr.org_ (Visited on 6 Nov, 2018).

equality in education that is free and compulsory.” This was followed by the General Assembly in its document, “A World Fit for Children”, with the goals and targets to be met. In the Plan of Action, the connection between child labour and education is made as: Education is a human right and a key factor to reducing poverty and child labour.

The MDGs 2005 report shows that, five years after the declaration of the goals, poor countries are excruciatingly struggling towards halving their hungry and their poor, and also making sure that all children attend an mandatory school. The report indicates that countries are battling with their meager resources to meet these goals by the “prescribed” time. According to World Bank there are near about 86 countries that are at risk of not reaching the 2015 goals.

3.28. REGIONAL INSTRUMENTS

An analysis of child labour reports may be a help to better understand how the phenomenon is wide spread in every region of the world and how it is harmful on the health and well-being of children. The United Nations Secretary General Kofi Anna recognized that:

“No region is immune to this evil trade. From Asia to Eastern Europe, from Latin America to Africa, traffickers recruit victims, who like commodities are smuggled across borders, sold and then exploited under the threat of violence.”⁸⁴

In world there are various regional instruments drafted to prevent the child labour. But related to India, in South Asia, there are two regional Conventions, signed by the South Asian Association for Regional Co-operation (SAARC), related to the commercial sexual exploitation of children and child rights issues.

In addition to these two Conventions the South Asia Countries Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, in advance of the Second World Congress Against Commercial Sexual Exploitation of Children in Yokohama, Japan in

⁸⁴ United Nations Press Release: Secretary- General Calls, Human Trafficking One of the Greatest Human Rights Violation of Today, Message to the International Summit on Human Trafficking, Child Abuse, Labour and Slavery Held at Abuja, Nigeria, 2- 4 August 2002, available at : <http://www.unhchr.ch>.

December, 2001 (Yokohama), developed South Asia Strategy Against Commercial Sexual Exploitation of Children and Child Abuse. Although this is not a binding legal instrument, but it suggests various standards for the protection of children in South Asia.

3.29. SOUTH ASIAN ASSOCIATION FOR REGIONAL CO-OPERATION CONVENTION, 2002

South Asian Association for Regional Co-operation (SAARC) was formed by a Charter, which was signed by the Seven South Asian Countries: Bangladesh, Bhutan India, Maldives, Nepal, Pakistan and Sri Lanka. To accomplish its objectives,⁸⁵ more recently, in January 2002, SAARC member nations drafted and signed two regional conventions.

The SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002. The SAARC Convention on Preventing and Combating in Women and Children for Prostitutions, 2002.⁸⁶

The main objective of this convention is to promote co-operation amongst member States to effectively deal with the various aspect of prevention, prohibition and suppression of trafficking of women and children, repatriation and rehabilitation of victims of trafficking and preventing and use of women and children in international prostitution, where the SAARC member countries are the countries of origin, transit and destination. This convention is legally binding on its signatory parties. It is the first regional anti trafficking treaty, which originated from the Asian Continent. Up to the March 2004, the convention has been ratified by all member States except Nepal and SriLanka, India signed it on 5th January, 2002,⁸⁷ at the Eleventh SAARC Summit in Kathmandu on 4th to 6th January, 2002.

⁸⁵ Article 1 of the SAARC, 1985

⁸⁶ This Convention was Prepared Kathmandu in Nepal, January 2002 by 7 of the SAARC Members.

⁸⁷ Conference on Regional Arrangement for promoting Child Welfare in South Asia, available at: https://www.jus.uio.no_(Visited on 14 oct, 2017).

The SAARC Convention defines ‘child’, ‘prostitution’, ‘trafficking’, ‘traffickers’ and persons subjected to trafficking.⁸⁸ There are provisions for ‘aggravating circumstances’, which are factual circumstances that enhance the gravity on the offence.⁸⁹ Provides for the protection of victims.⁹⁰ It also provides for mutual legal assistance. Offences under the convention are extraditable.⁹¹ Training and sensitization of enforcement officials.⁹²

Rehabilitation of victims. The convention requires the State Parties to establish a Regional Task Force consisting officials from the Member State to facilitate implementation of the provisions of the Convention and to undertake periodic reviews.

3.30. SOUTH ASIA STRATEGY AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND CHILD ABUSE, 2001

In November 2001, the Governments of Bangladesh, Bhutan, India Maldives, Nepal, Pakistan and Sri Lanka met in advance of the Yokohama Congress. The purpose of this meeting was to develop a regional plan to combat the commercial sexual exploitation of children to present to present at the Second World congress. South Asian Countries endorsed and committed their support for the enforcement of the following strategies relating to the legal reforms and law enforcement;

Reform legislations to ensure that children are defined as persons below the age of 18th years. Harmonies national laws with international standards to more comprehensively protect children substantive and procedural legal rights; and Urge nations to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children. Child Prostitution and Child Pornography and ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. In Addition, with respect to reforming

⁸⁸ SAARC Convention on Preventing and Combating in Women and Children for Prostitution - 2002, of the Article, 1

⁸⁹ Ibid, Article 4

⁹⁰ Ibid, Article 5

⁹¹ Ibid, Article 7

⁹² Ibid, Article 8

national laws in line with the international standards, the Convention specifically provides some guiding strategy.⁹³

3.31. GLOBAL CONFERENCE ON CHILD LABOUR IN BRASILIA, 2013

The conference concluded in Brasilia from 8th to 10th October 2013. The Brazilian government has sent an official invitation to the Ministry of Foreign Relations of 193 member states of the United Nations, which states that all countries send four-member delegation to the conference. Quadrilaterals of the conference: A government representative, a worker representative, will be formed by meeting an employer representative and a civil society representative. Issues of gender, race and ethnicity equality should also be taken into account in the structure of the delegations.⁹⁴

To encourage a broad and democratic partnership of all interested representatives, to promote an international mobilization network before the Brasilia Conference, and to give voice to children and adolescents around the world, a virtual platform “Child Labor Prohibition” was developed and opens to all institutions and individuals who are either interested in the issue or directly abolished child labour. This platform will be the main place for discussion about those challenges which are related to the fight against child labour. The forum is open to all and there were six dialogue chambers. The thematic rooms are available to government, workers and employers. Conducted by the representatives of organizations and civil organizations, which are recognized for their role in dealing with child labour.

Dialogue was organized in the thematic rooms after the four axes of the Hague Roadmap. Which includes education - training, national law and enforcement, labor market policies and social security. In addition to these four rooms, a room was dedicated

⁹³ Report on Laws and Legal Procedures Concerning, The Commercial Sexual Exploitation of Children in India, November 2004, p. 122.

⁹⁴ Global Conference on Child Labour in Brasilia, 2013, *available at* :(<https://www.ilo.org>_(Visited on 22 Feb, 2018).

to the discussion and collection of contributions in the Brasilia conference base document. The objective of the forum was to enable the involvement of children and adolescents. The main challenges and measures that were made to express their point of view. There was a need to accelerate the eradication of the worst forms of child labor that we ate. It was also encouraged to discuss their concerns about work and education of children and adolescents.

3.32. GLOBAL CONFERENCE ON SUSTAINED ERADICATION OF CHILD LABOUR, 2017

The international meeting was held in Buenos Argentina, on 14th to 16th November 2017 and was address the consolidation of the global commitment to the eradication of child labour. Government employers and labour representatives from 193 countries participated. The global estimates presented at the United Nation General Assembly in September 2017 show that 152 million children are currently victims of child labour and 25 million people are in forced labour including 5.7 million children.⁹⁵

The conference is held in line with target 8.7 of the united nation Sustainable Development goals of the 2030 agenda, which calls for the eradication of child labour by 2025. Under the target, leaders also committed to take immediate and effective measures to eradicate forced labour end modern slavery and human trafficking.

The minister of labour employment and social security of Argentina, Jorge triaca explained with this conference Argentina reaffirms its commitment to efforts here and in the rest of the world to eradicate child labour. Children have the right to attend school to play and to grow in a protected environment. It is for them that we have to keep working together in order to ensure their right to a happy childhood. “With this conference Argentina reaffirms its commitment to efforts here and in the rest of the world to eradicate child labour.” A high-level panel will discuss the changes that will define future

⁹⁵ Global Conference on sustained Eradication of Child Labour- 2017, *available at:*https://www.ilo.org_(Visited on 8 Dec, 2018).

working condition and proposals to develop policies and responsibilities to ensure education for all children and a seamless transition to the labour market.

ILO director general Guy Ryder stated, in 2015 we agreed to reach the sustainable development Goals for the eradication of child labour and modern slavery. Today we have to increase our efforts to fight these to accelerate the eradication of child labour worldwide. They will participate in technical discussions and exchange experience and good practices around nine central topics. The conference is intended to focus on child labour different perspectives, public policies, legal framework and tools available to disseminate and manage the information as well as the children's schooling, the school to work transition for youth and how to ensure healthy working conditions for them. Other topics include child labour in rural economies and in crisis situations such as natural disasters and conflicts and how to prevent child labour in the supply chains.

CHILD LABOUR LEGISLATION

4.0. INTRODUCTION

Childhood is a very beautiful journey of life. There is no worry in childhood, there is no concern, it is childhood to enjoy a joyful life. But in the childhood of some children, due to inadequacy and poverty, they have to face problems like child labour. At present, child labour is a serious concern. It is present in the form of a curse among children's innocence. Child labour is a risk in the terms of health, education and development of children. Child work includes all the tasks that are harmful to the physical, mental, intellectual, ethical and social development of children. Children are the flowers of the garden of our country. Therefore, it is our duty to protect all these flowers, which we should do first. Child labour is a social and economic problem. Child labour is not a new problem in a big country like India. From a very old time, children help in the work of their home, and sometimes they work in fields with their own households.

In a way, child labour is financially unhealthy, mentally destructive and morally completely wrong. Child labour should be strictly prohibited. If all people are financially and socially capable then child labour will end up automatically.

In Ancient Period it was mentioned that all the laws were contained in the Dharmashastras. The legal system was primarily based on the rules mentioned in the Dharmashastras. No uniform standards were applied in providing justice to people. There was no uniform legal norm at in Ancient India. This characteristic of legal system continued even in the medieval period.

It was only during the British period that radical transformation took place in the legal and judicial system of country. The British introduced numerous changes in our traditional Indian legal system.

The new legal system was based on the principal of universalism. After the independence of India the constitution makers consciously added the various provisions

which show the special care for the children or the welfare provision which deals especially with the protection of child labour.¹

4.1. CONSTITUTIONAL PROVISIONS AND PROTECTION OF CHILDREN

Since the establishment of the Indian Constitution, numerous rules and regulations have been confined for ensuring the children and the young of our nation. The part III and IV of Indian Constitution examines the laws and regulations confined by the administration, the amendments for work laws and regulations, the activity design of the Centre and State governments and other late improvements to handle the issue of child labour. The investigation makes an unassuming endeavour to feature a portion of the current improvements and exercises relating to child work to centre around the degree, appropriateness and restrictions of different rules and regulations.

One of the significant regions of insurance identifying with children is child laws. The fundamental destination of our Constitution is the insurance of children from antagonistic, impacts of their work on their physical and mental advancement.

Art. 15 of the Indian constitution has given tremendous power to State to make special laws for women and children. Women and children require special protection because of their peculiar condition in Indian society. Same article enables the state to make special provisions for them.²

4.1.1. Protection of Life and Personal Liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.³ The Constitution 2002, (w.e.f. 1.4.2010) proposed a new clause Art., 21 A⁴ after Art., 21 of the Constitution which impose duty on state and states that “State shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the State may, by law determine.”

¹ Article 14, 15(3), 39(C), (f) and 45 of The Indian Constitution

² Article 15 of The Indian Constitution

³ Article 21 of The Indian Constitution

⁴ Article 21A Inserted by the Constitution (eighty sixth amendment) Act, 2002, s. 2

4.1.2. Prohibition of Traffic in Human Beings and Forced Labour

Traffic in human beings and beggars and other comparable types of forced labour are forbidden, and any breach of this prohibition shall be punishable by law.⁵ Traffic in human beings methods offering and purchasing men and women like merchandise, and it additionally incorporates unethical traffic in women and children for debased or different purposes. This Article ensures the individual against the State as well as private residents. This article bounds the State to take necessary steps to abolish evils of traffic in human beings and constrained work in every one of its structures wherever they exist. It likewise restricts the arrangement of bonded labour since it is a type of constrained work inside the significance of this article.

4.1.3. Prohibition of Employment of Children in Factories

Any child if he is below the age of fourteen years shall not be employed to work in any factory or mine or engaged in any other hazardous employment. This provision is absolutely in the interest of public health and wellbeing of life of children. This article notwithstanding does not prohibit their employment in any safe activity or work.⁶

4.1.4. Certain Principles of Policy to Be Followed by the State

The State shall, in particular, direct its policy towards securing.

1. That every citizen has the right to an adequate means of livelihood and they should not be discriminated;
2. That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
3. That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
4. That state should adopt the principle of equal pay for equal work for both men and women.

⁵ Article 23 of the Indian Constitution

⁶ Article 39 of the Indian Constitution

5. That the health and endurance of employees, males and females, and the tender age of kids are not abused and that people are not compelled to enter unfit for their age or strength by financial necessity;
6. That children are provided possibilities and equipment for good development and circumstances of liberty and dignity, and that childhood and youth are shielded from exploitation and moral and material abandonment.

4.1.5. Equal Justice and Free Legal Aid

According to article 39A of the Constitution of India, “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”⁷

4.1.6. Right to Work, to Education and to Public Assistance in Certain Cases

The State shall make efficient provision, within the boundaries of its financial ability and growth, to ensure the right to work, education and government aid in instances of unemployment, ancient age, disease and disability, and in other instances of undeserved desire.⁸

4.1.7. Living wage, etc., for workers

The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in

⁷ Article 39 A of the Indian Constitution

⁸ Article 41 of the Indian Constitution

particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.⁹

Art., 43 ensures that the State shall endeavour to guarantee for all experts, horticultural, mechanical or otherwise, living compensation, working conditions guaranteeing a high standard of living and full enjoyment in recreation and social and social openings by means of suitable enactment or economic affiliation. It emphasis on living wage rather than a minimum wage. The idea of living compensation incorporates into expansion to the minimum essentials of life, for example, sustenance, haven and dress, provision for instruction of children and protection and so forth.

4.1.8. Provision for Early Childhood Care for and Education to Children Below the of Six Years

State shall endeavour to provide all children with early childhood care and education until they are six years of age.¹⁰

4.1.9. Fundamental Duties

Who are parents as guardian for provision the opportunity of education to their children, as the case, shall be guardian of the children of six years to fourteen years of age.¹¹

4.2. VARIOUS LEGISLATIONS

Child labour deserves a greater attention in safety and health aspects. As most of the occupational system disorders manifest their after prolonged exposure of the child by leaving child to be patient before entering into adolescent. The government of India takes all possible effective steps not only to prevent the exploitation of children but also to take necessary and adequate measures for their welfare and protection. A number of laws have been implemented for the upliftment and betterment of children. These Acts have bought about a perceptible improvement in their position in society.

⁹ Ibid

¹⁰ Article 45 of the Indian Constitution

¹¹ Article 51 (K) of the Indian Constitution

There are many laws have been enacted for the protection of child labour, which we will discuss here in this chapter. We have only selected a few important laws that protect children from dangerous, exploitative or immoral trade or activities. Which is as follows.

- *IPC (Indian Penal Code), 186,*
- *The Children (Pledging of Labour) Act, 199,*
- *The Employment of Children Act, 1938,*
- *The Factories Act, 1948,*
- *The Plantation of Labour Act, 1951,*
- *The Mines Act, 1952,*
- *The Immoral traffic (Prevention) Act, 1956,*
- *The Merchant Shipping Act, 1958,*
- *Motor Transport Workers act, 1961,*
- *The Apprentices Act, 1961,*
- *Shops and commercial Establishment Acts,*
- *Beedi and Cigar Workers (Conditions of Employment) Act, 1966,*
- *The Contract Labour (Regulation and Abolition) Act, 1970,*
- *Bonded Labour System (Abolition) Act, 1976,*
- *Dangerous Machines (Regulations) Act, 1983,*
- *The Child Labour (Prohibition and Regulation) Act, 198,*
- *The Juvenile Justice (Care and Protection of Children) Act, 2000,*
- *The Commission for the Protection Child Rights Act, 2005,*

A part from all these legal enactments from time to time, the amendments have been made in most of the above statues, for the effective implementation and result of these Acts. Government always adopted progressive outlook for the betterment of child labour.

4.3. INDIAN PENAL CODE 1860

This Code aims to provide a general Penal Code for India. Relevant provisions under IPC relating to child labour are as follows;

Indian Penal Code extends to the whole of India except State of Jammu and Kashmir.¹² Buying or disposing of any person as a slave¹³ whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave be punished with imprisonment of either description for a term which may extend to seven years, and shall also liable to fine. Habitual dealing in slave.¹⁴ Whoever habitually imports, exports, removes, buys sells, traffics or deals in slaves, shall be punish with imprisonment for life, or with imprisonment of either description for term not exceeding ten years and shall also be liable to fine unlawful compulsory labour.¹⁵ Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

4.4. THE CHILDREN (PLEDGING OF LABOUR) ACT, 1933

This Act predates Independence but it still remains in force. It is rarely used and rarely mentioned in discussions of child labour, probably because the more recent laws carries penalties that, while lenient themselves, are nonetheless stiffer than those of the Children (Pleading of Labour) Act, 1933. The object of Act is to abolish the ill effects arising from the pledging of labour of young children by their parents, guardians or employer's lieu of loans or advances. The Act calls for penalties to be levied against any parent, middleman, or employer involved in making of executing a pledge of a child labour. This Act extended to whole of India including the state of Jammu and Kashmir after the Act of 1970.¹⁶

¹² Section 1 Indian Penal Code 1860

¹³ Section 370 Indian Penal Code 1860

¹⁴ Section 371 Indian Penal Code 1860

¹⁵ Section 374 Indian Penal Code 1860

¹⁶ Section 1 The Children (Pleading of Labour) Act 1933.

In the Act 'Pledge' is defined as an "agreement written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him undertakes to cause or allow the service of the child to be utilized in any employment." However, an agreement without detriment to a child and not made in consideration of any benefit other than reasonable wages to be paid for the child services and terminable at not more than seven days' notice. It is not an agreement within the meaning of the definition.¹⁷ As per this Act all such agreement to pledge the child labour shall be void.¹⁸ A person whether parent or guardian of a child makes such agreement shall be punished with fine which may extend to fifty rupees.¹⁹

While an employer who violates the law and knowingly enters into an agreement with a parent or guardian of a child to pledges the labour of child where by such parent or guardian pledges the labour of child shall be punished to a fine up to Rs. 200.²⁰

4.5. THE EMPLOYMENT OF CHILDREN ACT, 1938

The Employment of Children Act, 1938 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 exploitation of child labour in workshops and other specified occupations and to regulate the employment of children in certain industrial employments. The Act was passed to implement the Convention adopted by the International Labour Organization (1937), which inserted a special Article on India. Children under the age of 13th years shall not be employed or work in the transport of passengers, or goods or mails by rail, or in the handling of goods at docks, quays of wharves, but excluding transport by hand. Children under the age of 15th years shall not be employed to work in occupations to which this Article applies which are scheduled as dangerous or unhealthy by the competent authority.

The Statement of objects and reasons of the repealed Act stated,²¹ The twenty-third session of the International Labour conference adopted a Convention in which a

¹⁷ Section 2 The Children (Pleading of Labour) Act 1933.

¹⁸ Section 3 The Children (Pleading of Labour) Act 1933.

¹⁹ Section 4 The Children (Pleading of Labour) Act 1933.

²⁰ Section 5 The Children (Pleading of Labour) Act 1933.

special Article for India was inserted fixing the minimum age at which children may be employed or may work in the transport of passengers, goods or mails by rail, or in the handling of goods at docks wharves or quays at 13th years. This Bill provides for prohibiting the employment of children under 15 in occupations connected with the transport of goods passengers or mails on railways and for raising the minimum age fixed by section 6 (1A) of the Indian Ports Act, 1908, to 14, the age recommended by the Royal Commission of Labour. A simple procedure enabling employers to safeguard themselves against transgression of the Act by furnishing themselves with or requiring candidates for employment to possess, certificate of age is provided in the Bill. The key points of this Act are;

(A) Prohibited the employment of children under 15th years in occupations connected with transport of goods, passengers, mail or railways;²²

(B) Raised the minimum age for handling goods on docks from 12th to 14th years;

(C) Provided for the requirement of a certification of age;

(D) In pursuance of the International Labour Conference at its 31 session held in 1948 adopted a Convention (No. 90) concerning night work of young person's employed in industry. Accordingly in 1951, a provision was added for prohibition of the employment of the children between 15th and 17th years at night in railways and ports and also provided for requirement of maintaining register for children under 17th years; and (e) In 1978, a provision was added for prohibition of employment of a child below 15th years in occupations in railway premises such as under picking or cleaning of ash pit or building operations, in catering establishment and in any other work, which is carried on in close proximity to between the railway line. The penalty for the breach of the act, punishable with simple imprisonment extending to one month or fine up to Rs. 500 or both. One of the draw backs of the Act is that it has not provided any provision in regard to the health, safety, medical examination and welfare of children. This Act

²¹ Gazette of India, 1938, Part V, p. 284.

²² Section 3 (3), The Employment Act, 1938

was amended many times during the year 1939, 1948, 1949, 1951 and 1978 only to better working conditions to children.

4.6. FACTORIES ACT, 1948

An entirely new Act to consolidate and amend the law relating to labour in factories was passed in 1948 and it came into force on April 1, 1949. By the same act government of India tried to adopt the provisions of ILO, code of Industrial Hygiene as they were practicable under Indian conditions. The first major Act Factories Act, 1948 which applies to the establishments in which 10 or more persons are employed to work with the aid of power or 20 or more persons without the aid. The provision of this Act applicable to the whole territory of India except the State of Jammu & Kashmir. This Act prohibits employment of children below 14th years of age. A person who has completed 14th years but not completed 18th years can work in the factory provided a certificate of fitness is granted to him by a certifying surgeon, and that he carries a token to that effect while at work. Such certificates are valid only for a period of one year. Restrictions are also placed on their employment in certain dangerous occupations. The hours of work of children are limited to 4 ½ hours on any day; period of work is to two shifts and spread over to 5 hours a day. They cannot be employed between 10.00 pm and 6.00 am. There should be a manager of factory and it is his necessary duty to maintain a register which contains the all necessary information related to child workers. The Act prescribes penalty of imprisonment of two months or fine up to Rs. 1,000/- or both in case of using false certificate of fitness and of a fine up to Rs. 1,000/- on parent or guardian in case of double employment of children.

In *Walker T. Ltd. v. Martindale*²³ it was held by the Supreme Court that the prohibition is absolute and not restricted to employment in one of manufacturing processes; thus a child employed as a sweeper to clean the floor of a factory is in contravention of the provisions of the section, even though he is not employed in any of the manufacturing processes.

²³ (1976) 85KL KB, 1543

In an important judgment, Orissa High Court in, *Jhunjhunwala v. B.K. Patnaik*²⁴ punished the owner of the glass factory for employing 14 adolescents in blowing section of the factory which is a hazardous occupation, without the certificates of fitness violating.²⁵ Court observed that it was the duty of the employer to ascertain by reasonable means that the applicant was a requisite age and merely by the statement of child about his age should not be treated as correct. Thus, the provisions of Factories Act, 1948 on very important in connection with prohibition of employment of children below 14th and regulate the conditions of work for employment which should bring any menace for their physical and moral growth.²⁶

4.7. MINIMUM WAGES ACT, 1948

The act makes provision for fixation of minimum rates of wages in certain employments which have been specified by appropriate Government in the Schedule of the Act. The Act maintains some expressions of adult, adolescent and child as in case of Factories Act, 1948. The Act does not make any specific provisions except that it says different minimum rates of wages may be fixed for adults, adolescents and children. Rule 24 of the Minimum Wages (Central) Rules, 1950 provides that in the case of a child, the number of hours in a normal working day shall be 4½. Thus, it can be concluded that the minimum wages act provides for a work day of 4½ hours and differential rates of minimum for child workers.

4.8. THE PLANTATION LABOUR ACT, 1951

The Plantation Labour Act, 1951 Prohibits employment of children below 12th years of age. It also regulates hours of work with no work at night. No child can be allowed work for more than 40 hours a week and only between 6 a.m. and 7 p.m. it prescribes a few welfare measures for the children as well as education facilities for children of the

²⁴ (1964) 2 L.L. J. 551).

²⁵ Section 68 and 69 of The Factory Act 1948

²⁶ Jain Devaki and Chand Malini, "Rural Children at Work: Preliminary Result of Pilot Study" Vol no 30 *Indian Journal of Social Work* 23 (1978).

plantation workers. The act has the same provisions for offences and penalties as the Factories Act.²⁷

4.9. THE MINES ACT, 1952

This Act also extends to the whole of India²⁸ and includes all excavations where any operation for the purpose of searching for or obtaining minerals is carried out.²⁹ This act also defines child as a person who has not completed his fifteenth year.³⁰ This Act prohibits the employment of children in mines and also prohibits the presence of children in any part of a mine which is below-ground or in any open cast-working in which any mining operation being carried on.³¹ Children did not allow to work in part of a mine which is below ground under this act unless he has completed his 16th year and has a medical certificate of fitness for work.³² Validity of certificate is only for 12 months.³³ The Act also says that adolescent is allowed to be employed in any mine except between 6 a.m. and 6 p.m..³⁴ Like the factories act the provisions of canteen, whole-some food and rest shelters, etc., have also been made under this Act.

4.10. THE MERCHANT SHIPPING ACT, 1958

The Merchant Shipping Act, 1958 applies to all the ships which are registered in India. This Act prohibits the employment of below the 15 subjects to certain exceptions. This act also restrains the employment of any person under 15 as trimmers and stokers except under certain specific conditions. Such persons, if employed, are required to produce a certificate of fitness. This Act also empowers the Government to make necessary rules with relation to employment of young person according to demands of occasion.³⁵

4.11. THE MOTOR TRANSPORT WORKERS ACT, 1961

²⁷ Mohd. Mustafa and Onkar Sharma, *Child Labour In India : A Bitter Truth* 69 (Deep & Deep Publication, New Delhi, 1996).

²⁸ Section, 1 (2) of The Mines Act, 1952

²⁹ Section , 2 (J) of The Mines Act, 1952

³⁰ Ibid.

³¹ Section, 45 of The Mines Act, 1952

³² Section, 40 (1) of The Mines Act, 1952

³³ Ibid.

³⁴ Ibid, Sec. 1, (2)

³⁵ Kulshreshtha Chandra Jinesh, *Child Labour in India* (Ashish Publication House, New Delhi, 1978)

This Act applies to the whole of India;³⁶ State Governments are permitted to apply all or any of the provisions of this Act to engine companies employing less than five employees.³⁷ This Act also prohibits the employment of children under 15 in any capacity in the motor transport undertaking.³⁸ This Act requires a fitness certificate for the fitness of adolescent for work. Certificate is valid only for 12 months.³⁹ An adolescent can work only for 6 hours including a rest interval of half an hour and between 10 a.m. and 6 p.m. only.⁴⁰

4. 12. THE APPRENTICES ACT, 1961

The Act extends to the whole of India⁴¹ and provides for the regulations and control of training of apprentices in trades and for matters connected therewith.⁴² The Act provides that no person shall be qualified for being engaged as an apprentice or to undergo apprenticeship training in any designated trade unless he is at least 14th year's age and satisfies such standards of education and physical fitness as may be prescribed.⁴³ Guardian is required to enter into a contract of apprenticeship if the person is minor, with the employer⁴⁴ and such contract should be registered with the Apprenticeship Advisor.⁴⁵

4.13. THE CONTRACT LABOUR (REGULATIONS AND ABOLITION) ACT, 1970

This Act also extends to the whole of India.⁴⁶ The Act applies to Establishments and Contractors employing 20 or more workers.⁴⁷ It is not applied to establishment in which work only of an intermittent or casual nature is performed.⁴⁸ There are no specific provisions under the Act pertaining to employment of children. A comparative study of

³⁶ Section, 1 (2) of The Motor Transport Workers Act, 1961.

³⁷ Ibid, Sec. 1, (4).

³⁸ Section, 21 of The Motor Transport Workers Act, 1961

³⁹ Section, 23 (2) of The Motor Transport Workers Act, 1961

⁴⁰ Section, 14 of The Motor Transport Workers Act, 1961

⁴¹ Section, 1 (2) of The Motor Transport Workers Act, 1961

⁴² Ibid, Preamble.

⁴³ Section, 3 of The Apprentices Act, 1938

⁴⁴ Section, 4 (a) of The Apprentices Act, 1938

⁴⁵ Ibid, Sec. 4 (b).

⁴⁶ Section, 1 (2) of The Contract Labour (Regulation and Abolition) Act, 1970

⁴⁷ Ibid, Sec. 1(4)

⁴⁸ Ibid, Sec. 1 (4),(5)

the above statutes make it clear that the provisions providing for canteen, rest shelters, drinking water supply, conservancy services, first aid, bathing facilities, cleanliness, for workers including child workers are made in Factories Act, Mines Act and Beedi and Cigar Workers (Conditions of Employment) Act. But there had no provisions under plantation Labour Act regarding the latrines, ambulance, lighting, cleanliness, etc. Regarding drinking water facilities, the scales have been laid down by the Assam, West Bengal, Kerala and Tamil Nadu Governments. The provision for first aid is made under the Act. The Plantation Labour Act alone provides for education of child workers.

4.14. BEEDI AND CIGAR WORKERS (CONDITIONS OF EMPLOYMENT) ACT, 1966

This Act extends to the whole of India.⁴⁹ This is a special legislation governing Beedi and Cigar workers working in special circumstances. Although the Factories Act applies to such employees, the employers deliberately divide the issues into tiny units in order to escape the Factories Act regulations. In addition, a unique characteristic of this sector is that Beedi's producers get the job done through contract labour, as well as in private dwellings, which again contributes to the Factories Act's regulations being avoided. This Act is tired of meeting these problems.

Section 24 of the law enacted for the welfare of labour and for the regulation and enforcement of better working conditions, among those engaged in the manufacture of Beedi's and Cigars, prohibits the employment of children in industrial premises where all processes related to the manufacture of Beedi's and cigars are carried out. "Child" for the purpose of this Act, means a person who has not completed fourteen years of age.⁵⁰ The employment of young person's between 14th and 18th years is prohibited between 7 p.m. and 6 a.m.⁵¹ Provisions for canteen⁵², first aid,⁵³ ventilation, and cleanliness are made under the Act.⁵⁴ The administration of the Act rests with the State who appoints chief

⁴⁹ Section 1 (2) of The Beedi and Cigar Workers (Condition of Employment) Act, 1966

⁵⁰ Section 2 (b) of The Beedi and Cigar Workers (Condition of Employment) Act, 1966

⁵¹ Section 25 of The Beedi and Cigar Workers (Condition of Employment) Act, 1966

⁵² Section 16 of The Beedi and Cigar Workers (Condition of Employment) Act, 1966

⁵³ Section 15 of The Beedi and Cigar Workers (Condition of Employment) Act, 1966

⁵⁴ Section 8 of The Beedi and Cigar Workers (Condition of Employment) Act, 1966

Inspector or inspector the purpose. The Act provides for penalties for breach, which may be imprisonment up to three months or a fine up to Rs. 500 or both.⁵⁵

Supreme Court in the case of *M/s P.M. Patel and Sons v. Union of India*⁵⁶ has held that the terms of the definition of employee are very wide. They include not only persons employed directly by the employer but also employed through a contractor. Moreover, they include persons employed in connection with the work of the factory engaged in the task of rolling Beedi's. Therefore, the home workers rolling Beedi's are employees under this Act.

4.15. CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

After a plethora of laws containing provisions to prevent child labour, it was soon realised that child labour is still a problem. Taking this into consideration efforts were made to regulate the conditions of child labour in order to avoid exploitation in areas where child labour could not be avoided. The Child Labour (Prohibition and Regulation) Act 1986 is a result of various recommendations made by a series of committees. The reading of the recommendation made by various committees led to a national consensus in favour of a uniform comprehensive law, which prohibited the employment of children in certain employment. To achieve this goal, the Parliament enacted the Child Labor (Prohibition and Regulation) Act, 1986 which came into force on 23rd Dec., 1986.⁵⁷

The legislative history in India has come a long way since 1881, providing legal protection to working children. Provisions relating to child labour have been manually focused under various enactments, such as reducing working hours, raising minimum age, the prohibition of employment of children in occupations and mental health of children of tender age. The Employment of Children Act, 1938 which was the first act on child labour was repealed by the Child Labour (Prohibition and Regulation) Act, 1986.

4.15.1 Objectives

⁵⁵ Section 32 of The Beedi and Cigar Workers (Condition of Employment) Act, 1966

⁵⁶ AIR 1987 SC 447

⁵⁷ Asha Bajpai (Ed.), *Child Rights in India Law Policy and Practice* 163 (Oxfords University Press, Allahabad, 2nd Edition, 2006).

The objectives of the Child Labour (Prohibition and Regulation) Act, 1986 are:

- Banning the employment of children, i.e. those who have not completed their fourteenth year, in specified occupations and processes;
- Laying down procedures to decide modifications to the schedule of banned occupations or process;
- Regulating the conditions of work of children in employment where they are not prohibited from working.

The Act consists of 4 parts in which Part-I deals with the definitions of terms like ‘child’, ‘day’, ‘establishment’, ‘family’, ‘Occupier’, and such like. A child means a person who has not completed his fourteenth year of age.⁵⁸

Part-II lists certain occupations and processes in which employment of children is prohibited.⁵⁹ The occupations are: transport of passengers, goods or mail by railways; cinder picking; clearing of an ash pit or building operation in the railway premises, work in a catering establishment at a railway station, involving the movement of vendor or any other employee of the establishment from one platform to another or into or out of a moving train, work relating to construction of a railway station or with any other work where such work is done in close proximity to or between railway lines; and work in a port authority within the limits of any port.

The eleven processes are: Beedi-rolling; Carpet weaving; Cement manufacture, including bagging of cement; Cloth printing, dyeing and weaving; Shellac manufacture; Soap manufacture, tanning; Wool cleaning and building and construction industry.

Employment of children in the above mentioned hazardous occupation and processes is exempted in the case of the employer being an occupier’s family or Government-run/aided/recognised schools. In addition it proposes to form a Child Labour

⁵⁸ Section 2 of the Child Labour (Prohibition and Regulation) Act, 1986

⁵⁹ Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986

Technical Advisory Committee⁶⁰ to identify more processes and industries which are hazardous for children so that these may then be banned.

Part-III lays down the broad regulations of conditions of work of children. These are applicable to only permissible occupations and processes of juvenile employment. A child can work for a maximum of six hours per day, with an hour's rest pause after three hours of work. Children are prohibited to work overtime and between 7 p.m. and 8a.m.⁶¹ Every working child should be given a full holiday per week.⁶² Health and safety rules for working children are to be framed and implemented by the respective state governments.⁶³

Part-IV lays down the penalties for offence, the procedures and powers to make rules or amendments, and also some specific amendments to the earlier Acts of 1948, 1951, 1958 and 1961. For employing any child or permitting any child to be employed in contravention of the provisions of the Act, the punishment prescribed is imprisonment for a term, which will be a minimum of three months, extendable upto one year, or fine from Rs. 10,000/- to Rs. 20,000/- or both, as the case may be.⁶⁴

4.16 CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016

In July 2016, the Parliament passed the Child Labor (Prohibition and Regulation) Amendment Bill, 2016. It makes amends in the Child Labor (Prohibition) Act, 1986. This amendment bill provides for strict punishment for violation of child labor, violation of the Child Labor (Prohibition) Act, 1986. Act of 1986 prohibits the employment of children under 14 years of age in hazardous occupations and processes. The consent of the President got on July 29, 2016, from July 30, 2016; this Act has been implemented in India.⁶⁵

⁶⁰ Section 5 of the Child Labour (Prohibition and Regulation) Act, 1986

⁶¹ Section 7 of the Child Labour (Prohibition and Regulation) Act, 1986

⁶² Section 8 of the Child Labour (Prohibition and Regulation) Act, 1986

⁶³ Section 13 of the Child Labour (Prohibition and Regulation) Act, 1986

⁶⁴ Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986

⁶⁵ Child Labor (Prohibition and Regulation) Amendment Act, 2016, *available at*: https://www.gktoday.in_ (Visited on 22 Nov, 2017).

This act has completely banned the employment of children under the age of 14 in all businesses and enterprises, except by their or their family, provided that education is not obstructed. In the 1986 Act, there were some occupations prohibiting the employment of children below the age of 14th years, such as beedi making, mines, electric looms, automobile workshops, carpet weaving etc. By this act, add a new category of persons named “Kishore”. It defines children between the ages of 14th to 18th years as adolescents and bans their employment in any hazardous occupation.

This act makes child labour a cognizable offense. If any person works with children under 14th years of age, then the person is sentenced to 6 months to two years for a jail sentence or a fine of twenty thousand to fifty thousand rupees or both. If the perpetrator is guilty of having child labour more than once, then he will be punished for imprisonment from 1 to 3 years or fine or both. If the perpetrator is the parent of the child, then the penalty provision proposes a fine of Rs. 10,000. The Act provides for the creation of rehabilitation funds for the rehabilitation of the children.

This act has been brought down from the number of hazardous occupations 83, which is now just 3. These three types of business are under the mining, flammable substances and dangerous acts under the Factory Act. This Act empowers the Central Government to add or drop any dangerous occupation from the list included in the Act. With the passage of this Act, the law of India has now been amalgamated with the law of the International Labour Organization Conference. It says full restriction on child labour. So that the children can get mandatory primary education under the right to education. In addition to this, the Act has allowed children to help their families run with their parents in order to promote family enterprises.

4.16.1. The main objectives of the Act are;

1. to bring uniformity in the definition of child in the related laws;
2. to ban the employment of children in specific occupations and processes;
3. to modify the scope of banned industries and processes by laying down a procedure;

4. to regulate the conditions of work of children when they are not prohibited from working; and
5. to lay deterrent punishment for violators.

The Act came into force in respect of all classes of establishments throughout the territory of India. The Act defines, child to mean a person who has not completed his 14th year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), which-ever is more.⁶⁶

The Act is divided into four parts. Parts I and IV deal with the definition and miscellaneous aspects respectively and miscellaneous aspects respectively; while Parts II and III, being the most important, deal with prohibition of employment and regulation of conditions of work respectively.

4.16.2. Prohibition of Employment of Children in any Occupations and Processes

Prohibition of employment of children in any occupation and process.⁶⁷ No child shall be employed or permitted to work in any occupation or process. Nothing in sub-section (r) shall apply where the child;

Works as an artist in an audio-visual entertainment industry, including advertisement, films television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child Explanation, For the purpose of this section, the expression,

(a) “Family” in relation to a child, means his mother, father, brother and mother’s sister and brother;⁶⁸

(b) “Family”⁶⁹ enterprise means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other person;

⁶⁶ Section, 2 (2) of the Child labour (Prohibition Regulation) Amendment Act, 2016

⁶⁷ Section, 3 of the Child Labour (Prohibition and Regulation) Amendment Act, 2016

⁶⁸ Ibid

(c) “Artist”⁷⁰ means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2). Prohibition of employment of adolescents in certain hazardous occupations and processes.⁷¹

No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule. Provide that the Central Government may, by notification, specify the nature of the non-hazardous work to which and adolescent may be permitted to work under this Act. The Central Government has been the power to amend the Schedule vide.⁷²

The Central Government after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any occupation or process to the Schedule.

4.16.3. Penalties

The Act provides punishment up to two year (minimum being six months), or with fine up to Rs.50,000 (minimum being Rs.20,000), or with both to one who employs or permits any child to work in contravention of the provisions of section three.⁷³

By the Amendment of Section 14:

(a) For sub-section (I), the following sub-section shall be substituted, namely:

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend for fifty thousand rupees, or

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Section 3A of the Child Labour (Prohibition and Regulation) Amendment Act, 2016

⁷² Section 4 of the Child Labour (Prohibition and Regulation) Amendment Act, 2016

⁷³ Section, 14 of the Child Labour (Prohibition and Regulation) Amendment Act, 2016

with both.⁷⁴ Provide that the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of Sec. 3.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.⁷⁵ Provided that the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of Section 3-A.

Notwithstanding anything contained in sub-sections (1) and (1-A) that parents or guardians of any child or adolescent referred to in Section 3 or Section 3-A, shall not be liable for punishment, in case of the first offence.⁷⁶

(b) For sub-section (2), the following sub-sections shall be substituted, namely,

Whoever, having been convicted of an offence under Section 3 or Section 3-A commits a like offence afterwards he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.⁷⁷

Notwithstanding anything contained in sub-section (2), the parents or guardian having been convicted of an offence under Section 3 or Section 3-A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.⁷⁸

(c) Clauses (a), (b) and (c) sub-section (3) shall be omitted.

4.16.4. Constitutional Advisory Committee

The Act envisages the constitution of an advisory committee to be called the Technical Advisory Committee to advise the Central Government for the purpose of addition of

⁷⁴ Ibid, Sec, 14 (1).

⁷⁵ Ibid, Sec, 14 (1A).

⁷⁶ Section, 14 (1,B) of the Child labour (Prohibition Regulation) Amendment Act, 2016

⁷⁷ Ibid; Sec, 14 (2).

⁷⁸ Ibid; Sec, 14 (2A).

occupations and processes to the Schedule. Constitution, The Committee shall consist of a Chairman and members, not exceeding 10, to be appointed by the Central Government.⁷⁹ The Committee has the power to regulate its own procedure and meet as and when it considers necessary.⁸⁰ It may also constitute one or more sub-committees, if it feels necessary, on some particular matter or generally.⁸¹ The Central Government framed the Child Labour (Prohibition and Regulation) Rules, 1988 which are related to the child Labour Technical Advisory Committee.

4.16.5. Regulation of Conditions of Work of Adolescents

Part III of the Act, which entered into force on 26 May 1993, lays down clauses governing the working circumstances of adolescents and applies to institutions or classes in which none of the professions or procedures referred to in Section 3 are carried out.⁸²

4.16.5.1. Hours and Periods of Work Weekly Holidays.

The conditions regarding hours and periods of work to be performed by a adolescent have been laid down. According to it,⁸³

- (a) No Child shall be required to work in excess of hours which are prescribed for such establishment;
- (b) No adolescent shall work for more than three hours,
- (c) No adolescent shall work for more than three hours, unless he has had an interval of at least one hour;
- (d) Inclusive of period of rest, periods of work shall not spread over six hours;
- (e) No adolescent shall work form 7:00 p.m. to 8:00 a.m.;
- (f) There shall be no overtime for an adolescent for adolescent;

⁷⁹ Section, 5 (2) of the Child labour (Prohibition Regulation) Amendment Act, 2016

⁸⁰ Ibid; Sec, 5 (3).

⁸¹ Ibid; Sec, 5 (4).

⁸² Section, 6 of The Child Labour (Prohibition Regulation) Amendment Act, 2016

(g) No adolescent shall be required or permitted to work in any establishment of any day on which he has already been working in another establishment;

The Act provides for weekly holidays. It suggests that in each week each adolescent will be permitted a one-day holiday. In a notice displayed in some conspicuous location, the day shall be indicated. The day thus reported shall not be changed in three months by more than one.⁸⁴

4.16.5.2. Notice to Inspector Regarding Employment of Adolescent.

Section 9 lays down that every occupier who employs or permits any adolescent to work shall within a period of 30 days from the date of such employment, send to the Inspector, within whose local limits the establishment is situated, a written notice containing

- (a) Name and situation of establishment;
- (b) The name of the person in actual management of the establishment;
- (c) The address to which communication relating to an establishment should be sent; and
- (d) The nature of the occupation or process carried on in the establishment.

In case of a dispute regarding the age of any adolescent, it will be referred to the prescribed medical authority.⁸⁵

4.16.5.3. Maintenance of Registers

Mandates the occupier of an establishment where adolescent are employed to maintain a register showing,⁸⁶

- (a) Name and date of birth of every adolescent employed;
- (b) Hours and periods of work, intervals of rest for an adolescent;
- (c) Nature of work of any such adolescent; and

⁸⁴ Section, 8 of The Child Labour (Prohibition Regulation) Amendment Act, 2016

⁸⁵ Section, 10 of The Child Labour (Prohibition Regulation) Amendment Act, 2016.

⁸⁶ Section, 11 of The Child Labour (Prohibition Regulation) Amendment Act, 2016.

- (d) Such other particulars as may be prescribed.

This register is to be made available for inspection to an Inspector at all times. Inspectors are appointed by the appropriate government.⁸⁷

4.16.5.4. Health and Safety Provisions

The appropriate government may, by notification in the Official Gazette, make rules for the health and safety of adolescent employed or permitted to work.

The rules may provide for all or any of the following;⁸⁸

- (a) Cleanliness;
- (b) Disposal of wastes and effluents;
- (c) Ventilation and temperature;
- (d) Dust and fumes;
- (e) Artificial humidification;
- (f) Lighting;
- (g) Drinking water;
- (h) Latrines and urinals;
- (i) Spittoons;
- (j) Fencing of machinery;
- (k) Work at or near machinery in motion;
- (l) Employment of adolescent on dangerous machines;

⁸⁷ Section, 17 of The Child Labour (Prohibition Regulation) Amendment Act, 2016.

⁸⁸ Section, 13 of The Child Labour (Prohibition Regulation) Amendment Act, 2016.

- (m) Instructions training and supervision in relation to employment of adolescent on dangerous machines;
- (n) Device for cutting off power;
- (o) Self-acting machines;
- (p) Easing of new machinery;
- (q) Floor, stairs and means of access;
- (r) Pits, sumps, opening in floors, etc.;
- (s) Excessive weights;
- (t) Protection of eyes;
- (u) Explosive or inflammable dust, gas etc.;
- (v) Precautions in case of fire;
- (w) Maintenance of building; and
- (x) Safety of buildings and machinery.

Failure to give notice,⁸⁹ failure to maintain a register or make false entry,⁹⁰ failure to display a notice,⁹¹ or failure to comply with or contravene any other provision shall be punishable with fine which may extend to Rs.10,0000, or simple imprisonment which may extend to one month, or both.

4.16.6. Procedure Relating to Offences

1. Any person, police officer or Inspector may file a complaint about the commission of an offence under this Act in any court of competent jurisdiction.

⁸⁹ Section 9 of The Child Labour (Prohibition Regulation) Amendment Act, 2016.

⁹⁰ Section 11 of The Child Labour (Prohibition Regulation) Amendment Act, 2016.

⁹¹ Section 12 of The Child Labour (Prohibition Regulation) Amendment Act, 2016.

2. Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

3. No court inferior to that of a Metropolitan Magistrate or Magistrate of the First Class shall try any offence under this Act.⁹²

In order to tackle the problem of child labour, the Supreme Court in *M.C. Mehta v. State of T. N.*⁹³ issued directions to State Governments to fulfill the legislative intent behind the enactment. The offending employers were directed to pay compensation of Rs.20,000 for every child employed. In *N. Bhageerathan v. State*⁹⁴, it was held that if an accused or employer is unable to prove that children employed were not below 14 years, he can be convicted for the offence of employing child labour.

4.17. The National Policy on Child Labour

The National Policy on Child Labour is a landmark endeavour in progressive elimination of child labour in India.⁹⁵ A National Child Labor Policy was created in conjunction with the legal initiatives to address the socio-economic issues influencing child labour, and to provide a framework for a particular program of action. The policy attempts to deal with the situation where the children work, or are compelled to work, on regular or a continuous basis to earn wages for themselves and/or their families, and where their conditions of work result in their being severely disadvantaged and exploited, and where abuses connected with such factors impacting on wage-employed children need to be given close attention by the state for rectification, amelioration, and regulation through specific legal and administrative instruments and measures. The policy includes intervention in the fields of education, health, nutrition, children's integrated development and employment.⁹⁶

⁹² Section 16 of The Child Labour (Prohibition Regulation) Amendment Act, 2016.

⁹³ (1966) 6 SCC 756; 1997 SCC.

⁹⁴ 1999 Cri L J 632 (Mad).

⁹⁵ National Policy on Child Labour 1987, Government of India.

⁹⁶ Ashok Narayan, Child Labour Policies and Programmes: The Indian Experience, Government of India, Ministry of Labour, New Delhi, 1988.

4.17.1. The Evolution of Child Labour Policy in India

Sr. No.	Event	Date	Details
1	Ratification of ILO, Night Work of Young Persons (Industry), Convention 1919 (No. 6).	July 1921	Night work by young persons in any public or private industrial undertaking prohibited.
2	Ratification of ILO, Minimum Age of Trimmers and Stokers Convention, 1921 (No. 15).	November 1922	Employment of young person's as trimmers and stokers in vessels or ports prohibited.
3	Ratification of ILO, Medical Examinations of Young Persons (Sea) Convention 1921 (No. 16).	November 1922	Compulsory medical examination of children and young person employed at sea provided for.
4	Enactment of Children (Pledging of Labour) Act 1933	February 1933	Pledging of labour of children prohibited and penalty for parents/guardians and pledging of child labour prescribed. Employment of children below fifteen years prohibited in certain occupations.
5	Enactment of Employment of Children Act 1938.	February 1938	Employment of children below fifteen years prohibited in certain occupations.
6	Adoption and Enactment of the Constitution of India Act by the Constituent Assembly.	1949	Prohibition of employment of children below fourteen years of age in factories, mines, and hazardous employment in terms of a fundamental right, and directive principles laid down against the abuse of the tender age of the children and for free and compulsory education for children up to fourteen years of age.

7	Ratification of ILO, Night Work of Young Persons (Industry) Convention (Revised) 1948 (No. 90).	July 1950	Night work by children and young person's abolished.
8	Ratification of ILO, Minimum Age (Industry) Convention 1919 (No. 5).	September 1955	Employment of children less than fourteen years of age in public of private industrial undertaking prohibited.
9	Report of the National Labour Commission.	1969	Recommended combination of work with education and flexible employment hours, which would not inhibit education.
10	Ratification of ILO, Minimum age (Underground Work) Convention 1965 (No. 123).	March 1975	Employment of persons below sixteen years of age for work underground in mines prohibited.
11	Report of Gurupadaswamy Committee	1979	Recommended setting up of child labour advisory board ; setting minimum entry age for any institution ; enhancing enforcement equipment ; formulating efficient instructional strategy with emphasis on integrating instructional demands with local craftsmanship.
12	Establishment of the Central Child Labour Advisory Board with Labour Minister as Chairman.	March 1981	To review implementation of existing laws; to suggest legislative and welfare measures for working children; and to recommend industries where child labour should be eliminated.
13	Enactment of Child Labour (Prohibition and Regulation) Act 1986	December 1986	Employment of children under the age of fourteen years in specific occupations and processes; Procedures for modifying the schedule of restricted businesses or processes; Regulation of

			working conditions for children in non-prohibited employment, penalties for violation of the law provided; And uniformity in the definition of 'child' for relevant laws. To prevent child labour, children should develop and children develop mentally, physically and educationally.
14	Adoption of the National Child Labour Policy 1987.	August 1987	Provided for a legislative action plan; focusing of general development programmes for the benefit of working children as well; and formulation of project-based action plain in areas of high concentration of child labour.
15	Report of the Task Force on Child Labour set up by the Child Labour Advisory Board under the Chairmanship of Dr L.M. Signhvi.	December 1989	Recommended amendments to child labour laws and National Policy on Child Labour.
16	Reports of the National Commission on Rural Labour,	July 1991	Recommended enactments of compulsory Primary Education Acts by states; creation of non-formal education centers; enhancement of outlays for elementary education guaranteed, wage employment for parents of working children; universal prohibition of child labour;, media publicity against child labour.
17	Report of the study group on women and children of the 11 th National Commission on Labour	2002	Recommended the enactment of child Labour (Prohibition of Child labour (Prohibition and Education Bill 2000.

18	The National Policy for Children	2013	The policy gives utmost priority to right to life, health and nutrition and also gives importance to development, education protection and participation. The constitution of India guarantees fundamental rights to all children in the country and empowers the state to make special provision for children. To affirm the government commitment to the rights based approach in addressing the continuing and emerging resolution on the national policy of children 2013. Through this policy the state is committed to take affirmative measures legislative, policy or otherwise to promote and safeguard the right of all children to live and grow with equity, dignity, security and freedom to ensure that all children have equal opportunities and that no custom, tradition, cultural or religious practice is allowed to violate or restrict or prevent children from enjoying their rights.
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4.18. THE NATIONAL POLICY ON CHILD LABOUR IS SET UNDER THE FOLLOWING THREE HEADS:

- The Legislative action Plan.
- Focussing of general programmes for benefiting child labour wherever possible.
- Project-based plan of action in areas of high concentration of child labour engaged in wage/quasi-wage employment.

4.19. LEGISLATIVE ACTION PLAN

Under the Legislative Action Plan, emphasis is laid on strict and effective enforcement of the provisions of the Child Labour (Prohibition and regulation) Act 1986, the Factories Act 1948, the Mines Act 1952, the Plantation Labour act 1951, and other Acts containing provisions relating to the employment of children.

4.20. FOCUSING OF GENERAL PROGRAMMES FOR BENEFITING CHILD LABOUR

Various national development programmes exist in the areas of education, health, nutrition, integrated Child development income and employment generation for the poor. These programmes will be utilized to create Socio-economic conditions in which the compulsions to send the children to work diminish and the children are encouraged to attend school rather than take up wage employment.

4.21. PROJECT BASED PLAN OF ACTION IN AREAS OF HIGH CONCENTRATION OF CHILD LABOUR

This involves launching of projects for the welfare of working children in areas of high concentration of child labour. These projects withdraw children from hazardous employment and ensure their rehabilitation through education in special schools. According to government sources, ninety-one child labour projects have been sanctioned till 2009 for rehabilitant nearly 0.19 million children in the most endemic areas and 145,725 children have already been enrolled in the special schools.⁹⁷

4.22. RIGHT TO EDUCATION ACT, 2009

Right to education of every child is clearly human right. It enables the child to develop and realise its full potential as a human being. Education plays a major role in the character formation of a child and the Subsequent development of personality. The right to education has got considerable recognition in the national as well international arena.

⁹⁷ Indian Report on the World Summit for Children, Department of women and Child Development, Ministry of Human Resource Development, Government of India, 2000.

The Indian Constitution itself was amended so as to include the right to education as a fundamental right. Moreover, Parliament has enacted a statute to regulate the implementation of the said right. This is a humble attempt to evaluate the right to education of the children in India as available to the now and the changes that may come across in the near future.⁹⁸

Article 26 of the Universal Declaration of Human Rights, the founding document of international human rights, recognizes the right to education. Elementary education is mandatory ; general technical and professional education is available ; and merit-based higher education is equally accessible to all. Parents shall have a prior right to choose the kind of education that shall be given to their children. Article 13 of the ICESCR envisages right to education for everyone, including free and compulsory primary education to all⁹⁹ and prohibits discrimination in education under Articles 2 and 24 recognizes the right to education. All children shall have the right to education. All children shall have the right to free primary education provided [Art. 28]; a child is any person below the age of 18. The UN Committee on Economic, Social and Cultural Rights has identified four components of the right to education. It includes availability, accessibility, acceptability and adaptability.¹⁰⁰

“The State shall endeavour to provide free and compulsory education, within a period of ten years from the commencement of this Constitution, for all children until they complete the age of fourteen years.”¹⁰¹ Stipulates that the State shall direct its policy toward securing facilities and opportunities for children to develop in a healthy manner and in conditions of freedom and dignity and to protect them from exploitation.¹⁰² Constitution also directs the State to make effective provisions for securing the right to education within the limits of its economic capacity.¹⁰³

⁹⁸ Supra note 59 at p. 591

⁹⁹ The International Covenant on Civil and Political Rights (ICCPR), 1966.

¹⁰⁰ The Convention on the Rights of the Child (CRC), 1989.

¹⁰¹ Article 45 of the Indian Constitution.

¹⁰² Article 39, (f) of the Indian Constitution.

¹⁰³ Article 41 of the Indian Constitution.

4.23. THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT BILL, 2012

The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 was introduced in the Rajya Sabha on December 4, 2012 by the Minister of Labour and Employment, Mallikarjun Kharge.¹⁰⁴ The Bill seeks to amend the Child Labour (Prohibition and Regulation) Act, 1986, which prohibits the engagement of children in certain types of occupations and regulates the condition of work of children in other occupations.

The Act prohibits employment of children below 14 years in definite occupations such as automobile workshops, bidi-making, carpet weaving, handloom and power loom industry, mines and domestic work. In light of the Right of Children to Free and Compulsory Education Act, 2009, the Bill seeks to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours.

The Bill adds a new category of persons called “adolescent”. An adolescent means a person between 14 and 18 years of age. The Bill prohibits employment of adolescents in hazardous occupations as specified (mines, inflammable substance and hazardous processes). The central government may add or omit any hazardous occupation from the list included in the Bill. The Bill enhances the punishment for employing any child in an occupation. It also includes penalty for employing an adolescent in a hazardous occupation. The penalty for employing a child was increased to imprisonment between 6 months and two years (from 3 months one year) or a fine of Rs 20,000 to Rs 50,000 (from Rs 10,000-20,000) or both.

The penalty for employing an adolescent in hazardous occupation is imprisonment between 6 months and two years or a fine of Rs 20,000 to Rs 50,000 or both. The government may confer powers on a District Magistrate to ensure that the provisions of the law are properly carried out. The Bill empowers the government to make periodic inspection of places at which employment of children and adolescents are prohibited.

¹⁰⁴ The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 (/billtrack/the-childlabour-prohibition-and-regulation-amendment-act-2012-2553) accessed on 17/06/2019

JUDICIAL TRENDS IN PREVENTION OF CHILD LABOUR IN INDIA

5.0 INTRODUCTION

Children have been protected under special laws and legal provisions. Because of her delicate years, frail body, and inadequately created brain and seeing, each youngster needs assurance from good and physical mischief and abuse by others. In the early years of his life, the child needs special care to realize his full potential for growth and development. There are about 300 central and state laws regarding children. These have been created with the purpose of protecting children and achieving the goal of child labour welfare enshrined in the Nations Charter.¹ In addition, these laws apply to children in various walks of life, which are regulatory, protective and corrective in nature. Laws seek to protect and promote the rights of children. Under the law, children are entitled to special care, support and essential needs and should be given the highest priority in the allocation of resources.² The Constitution of India gives the judiciary a respectable and important place. This is the biggest feature of the Constitution of India. The Supreme Court is at the top of the country well-organized judicial structures. It exposes and defines the true meaning of the law. It is the final interpreter of the constitution and it puts the first break on the legislature and the executive, balancing this work of the judiciary. The Constitution imposes obligations on every organ of the state, including the judiciary. To do justice in the social system in which social, economic and political justice, equality of status and opportunity prevail. The final weight of interpretation of these elastic provisions rests with the courts. The court is meant to contribute to the development of the law without abolishing the boundaries of the system. It is the duty of the judiciary to recognize the development of the nation and apply the established principles of the positions that the nation imposes from time to time in its progress. The Indian judiciary carries out the duty of balancing a state, between states and the union, between state and citizen, and sometimes between state and individual.

¹ Encyclopedia of Social Work in India, (1987), Vol I. p. 69.

² Dr. Lingaraj, M. Koninkar “*Child Labour in India: Legal Regulation*, 165 (Regal Publication, New Delhi, 1st edn., 2014)

Sometimes the judiciary has to hold the scales of justice without fear or favour even in the legal battle between rich or poor, strong and weak. The role of the judiciary in India has been very important in promoting child welfare. Former Chief Justice of India, Mr. Justice Subba Rao has said that “the important task of development of the country should be the development of children because they are the hope of the future of the nation.”³

5.1 LABOUR JURISPRUDENCE AND PUBLIC INTEREST

LITIGATION

In *Fertilizer Corporation Workers Union v. Union of India*⁴, the Constitutional Bench recognized the worker’s Locus-Standi ‘to challenge the legality of the sale of the plants of the Sindri Fertilizer Factory. The Court established the principle that decisions directly affecting the rights of workers are taken by management, with workers in a factory having Locus-Stadi ‘to challenge this key decision of management.

In *People Union for Democratic Rights v. Union of India*⁵ the Court treated a letter written by petitioner organization as ‘Public Interest Litigation’. The Court declared that right to minimum wages is a fundamental right of workers under Art., 21 of the Constitution.

In *Bandhua Mukti Morcha v. Union of India*⁶ the three Judges bench of the Court entertained a petition filed by a an organization dedicated to the cause of release of bonded labourers form Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan working in human and intolerable condition in stone quarries situated in Faridabad and some of them were bonded labourers. The Court issued a number of directions to Central and State Governments to free the bonded labourers. In *Shiela Barse v. Union of India*⁷ the Court issued the direction to lockup female prisoners only in female lockups guarded by female constables and to interrogate female accused only in the presence of female officials. In

³ Shakeel Ahmad Khan, *Child Labour: A Global Challenge* 102-103 (Deep Publications, New Delhi 2006)

⁴ AIR 1981, SC 344.

⁵ AIR 1982, SC 1473

⁶ AIR 1984, SC 802

⁷ AIR 1983, SC 378

*Gaurav Jain v. Union of India*⁸ the Supreme Court took cognizance of the problem of the children born to prostitutes and constituted a committee of lawyers and social activities to look into the matter. The Court also issued number of directions for the rescue and rehabilitation of child prostitute and established Juvenile Homes for them. In *Visahakha v. State of Rajasthan*⁹ the Court issued of guidelines and norms to protect and to enforce the Fundamental and Human Rights of working women against the sexual harassment. In *Lakshmi Kant Pandey v. Union of India*¹⁰ the Supreme Court laid down various principles and norms which should be followed in determining whether child should be allowed to be adopted by the foreign parents. One example of innovation in recent times has been the experimentation in the Indian Supreme Court of ‘open letter jurisdiction’ where any individual or group with bona fide intention can by open letter activate the fundamental rights jurisdiction of the Court. In addition, the Court has made provisions for setting up of commissions to inquire into the violations of groups rights, especially with regarded to social exploitation. These innovations point to the need for creativity on the part of third world legal systems to cope with the actual problems which confront it. Such innovations will in fact turn out to be the important effective areas of legal change. For the present and the near future, however, there is little prospect of the Court reverting to its traditional adjudicatory posture, where people’s causes appear merely as issue, argued by lawyers and decided in the mystery and mystique of the inherited common-law-like judicial process.¹¹ People now know that the Court has Constitutional power of intervention, which can be invoked to arrest their miseries arising from repression, governmental lawlessness or administrative deviance. Under-trial as well as convicted prisoners, women in protective custody in juvenile institutions, bonded and migrant labourers, unorganized labourers, untouchables and scheduled tribes, landless agricultural labourers who fall prey to faulty mechanization, women who are bought and sold, slum dwellers and pavement dwellers, kin of victims of extra judicial executions-these and many other groups-now flock to the Supreme Court seeking justice. They come with unusual problems, never before confronted

⁸ AIR 1990, SC 292

⁹ AIR 1997, SC 241

¹⁰ AIR 1992, SC 118

¹¹ Deepak Das, “Child Labour in India Rights, Welfare and Protection”, 103(Deep and Deep Publication, New Delhi 2011,).

so directly by the Supreme Court. They can seek now extraordinary remedies, transcending the received notions of separation of powers and the inherited distinctions between adjudication on the other. They bring too, new kind of lawyer and novel kind of judging. They add poignant twist to the docket explosion which was previously merely a routine product of the Bar committed only to justice according to the fees. They also bring a new kind of dialogue on the judicial role in changed society. The medium through which all this has happened, and is happening in Social action litigation a distinctive by-product of the catharsis of the 1975-77 emergency. What emerged as an expiatory syndrome is now a catalytic component of a movement for judicial democracy, through innovative uses of judicial power.

A Striking factor of “Social Action Litigation” is that it is primarily judge-led and even judge-induced and it is turn related to juristic and judicial activism, an active assertion of judicial power to avert the miseries of the masses. Although there was an almost explosive assertion that judicial population had become pronounced even before the emergency, particularly in the great decisions of *Golaknath* and *Kesvananda Bharati* but *Bombay Kamgar Union v. Abdul Bhai*¹² is probably the first case in which Justice V.R. Krishna Iyer sowed the seed of Public Interest Litigation in most formidable manner. In subsequent cases e.g. Judges Transfer case, *Fertilizer Corporation Kamgar Union v. Union of India*¹³ Justice Y.V. Chandrachud and P.N. Bhagwati joined the movement and clearly laid down the contours and procedural aspects and their consequence for mitigating the miseries of general person at the hands of Government. In this decision, judges who wished parliament to have unbridled power to amend the Constitution invariably sought to justify it in the name of and for the sake of, general masses in India. They sought to mould constitutional interpretation with doctrine in surcharged people-oriented ways.

The Social Action litigation may be viewed as relatively minor exercises in class-transcendence, subject to all the frailties of struggles. Back sidings are bound to occur, but it is doubtful whether, the evolution of the Court as a people-oriented institution can be arrested subsequently. Of-course, nothing is irreversible, at least history. It would require

¹² AIR 1976, SC 591

¹³ AIR 1981, SC 52

considerable mobilization of regressive forces, to return the Court to its club-house cloistering. In fact, the SAL movement is well under way to institutionalization. Hopeful sign for the growth of the SAL type professional competence is abound. The National Legal-Aid movement is rapidly acquiring SAL orientation and more and more High Court judges are becoming Sal-prone. The response to the administration of SAL has also been mixed. The top bureaucrats seem to resent the mini-takeover of administration through creeping Jurisdiction. Their resentment is shown indifferent compliance with the courts interim directions in many proceedings but in some cases, the tenacity of SAL petitioners and of the Bench have overborne their resistance. For those who take people's sufferings seriously, there is no rejoicing but even revolutions provide occasions of celebration. The SAL is at best an establishment revolution. Still, it nourishes hope in an otherwise darkening landscape of Indian law and jurisprudence.

5.2. CONCEPT OF LOCUS-STANDI AND CHILD LABOUR

The traditional syntax of law in regard to Locus-Standi for a specific judicial redress, sought by an identifiable person or determine class or identifiable group of persons, is available only to that person or class or group of persons who has or have suffered a legal injury by reasons of violations of his or their legal right or a right legally protected, the invasion of which gives rise to action-ability within the categories of law. In a private action, the litigation is bipolar; two opposite parties are locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike the public action. The character of such litigation essentially that of vindicating private rights, proceedings being brought by the persons in whom the right personally their legally constituted representatives who are thus obviously most competent to commence the litigation.¹⁴

In Contrast, the strict rule of Locus-Standi applicable to private litigation is relaxed and broad rule is evolved which gives the right of Locus-Standi to any member of

¹⁴ Deepak Das, *Child Labour in India Rights, Welfare and Protection* 111 (Deep and Deep Publication, New Delhi 2011).

the public acting bonafide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body of meddlesome interloper. The dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona-fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like action popular is of Roman law whereby any citizen could bring such an action in respect of public delict.

Though in our country, courts have recognized a departure from the strict rule of Locus-Standi as applicable to a person in private action and broadened and liberalized the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the Constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress. As yet no precise and inflexible working definition has been evolved in respect of Locus-Standi of an individual seeking judicial remedy in the field of Public Interest Litigation. Truly, in defining the role of Locus-Standi, no rigid litmus test can be applied since the broad contours of Public Interest Litigation, are still developing apace seemingly with divergent view on several aspects of the concept of this philosophy.

The liberalization of the concept of Locus-Standi to make access to the Court easy is an example of changing attitude of the courts. It is generally seen that all the working children are from the families which are below the poverty line having no means to ventilate their grievance regarding infringement of their fundamental rights. Keeping in view the pitiable conditions of the child workers, the apex Court has shown its generosity by relaxing the concept of Locus-Standi. The Court has shown its wisdom by injecting the philosophy of Public Interest Litigation. The judiciary is intended to vindicate and promote public interest by rendering help to those people of the society who are unable to approach the Court because of their poor-economic conditions. This issue of Locus-Standi has arisen

in number of cases the Supreme Court. The Supreme Court has very daringly held in a case.¹⁵

“Similarly Krishna Iyer”, J., in *Fertilizer Corporation Kamgar Union v. Union of India*¹⁶ also stated, “In simple term locus standi must be liberalised to meet the challenge of time.” The liberalised rule of locus standi has further been reflected in various Supreme Court’s decisions including *Ratlam Municipality case*.¹⁷

Keeping in mind the recent development of the doctrine of Public Interest Litigation, and the judicial exposition of the rule governing Locus-Standi, Supreme Court should revert to the facts and examine each case brought before it and determine whether the petitioner has Locus-Standi to this litigation and whether this litigation will fall within the ambit and scope of Public Interest Litigation, seeking declaratory as well as injunctive reliefs. Indeed, the true public interest litigation is one in which a selfless citizen having no personal motive or nay kind except either, compassion for the weak and disabled or deep concern for stopping serious public injury, approaches the Court either for,

(i) Enforcement of fundamental right of those who genuinely don not have adequate means of access to the judicial system or denied benefit of the statutory provisions incorporated in the directive principles of state policy for amelioration of their condition or,

(ii) Preventing or annulling executive acts and omissions violative of constitution or law resulting in substantial injury to public interest. The newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far reaching change is the nature and form of the judicial process.

So it is quite clear that the Court has widely enlarged the scope of Public Interest Litigation, relaxing and liberalizing the rule of standing by treating letters or petitions sent by any person or association complaining violation of any Fundamental Rights and also entertaining Writ petitions filed under Art., 32 of the Constitution by public spirited and

¹⁵ AIR 1981 SC, 344,

¹⁶ AIR 1974 SC 2177

¹⁷ AIR 1980 SC 1622.

policy oriented activist person or journalists or of any organization rejecting serious petitions. It has rendered effective pronouncements and issued manifold directions of the Central and State Governments, all local and other authorities within the territory of India or under the control of the Government of India for the betterment of the public at large in many fields in conformity with the Constitutional prescriptions. The newly invented proposition of law laid down by many learned judges of Supreme Court in the Arena of Public Interest Litigation; irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial system in other part of the world. In *Jantadal v. H. Choudhury*¹⁸ it has been held that Supreme Court in defining the rule of Locus-Standi has not applied any rigid litmus test as the law is still developing. In addition to above, some Public Interest Litigation, cases decided by different High Courts and Supreme Courts where the traditional rule Locus-Standi has been relaxed are namely *B.L. Wadhera v. Union of India*¹⁹ As regards to the welfare of child labour the Court opined that Compulsory Insurance scheme should be provided for both adult and child employees taking into consideration the hazardous nature of employment.²⁰

5.3. PROHIBITION OF TRAFFICKING IN CHILDREN

The Indian Constitution specifically prohibits trafficking in persons. The expression “trafficking in human beings refers to trafficking in women and children for immoral purposes.”²¹ Art., 23 in the Fundamental Rights section of our Constitution states trafficking in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. This Article intended to protect the individual not only against the State but also from private citizens. It imposes duty on the State to take effective steps to abolish this evil practice. Art. 23 prohibits the system of bonded labour as it is one of the forms of force labour. The constitution of India ‘Begar’ means involuntary work without payment and other forms of forced labour means to compel a person to work against his will. The payment of minimum wage to the worker even to the prisoners who provides

¹⁸ AIR 1993.

¹⁹ HC CWP 1796/1999.

²⁰ AIR 1991 SC 419.

²¹ *Raj Bahadur v. Legal Remembrancer*, AIR 1953 Cal. 522.

labour series to another amounts to forced labour under Art., 23.²² In *Peoples Union for Democratic Rights v. Union of India*²³ the Supreme Court considered the scope and ambit of Art., 23 in detail. The Court held that the scope of Art. 23 is wide and unlimited. In this case Justice Bhagwati observed, “Art., 23 strikes at forced labour in whatever form it may manifest itself, because it is violation of human dignity and is contrary to basic human values.”

In *Bandhua Mukti Morcha v. Union of India*²⁴ a survey conducted of stone-quarries situated in Faridabad District of the State of Haryana and found that labourers working in human and intolerable conditions and many of them were from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan bonded labourers. The petitioner prayed to the Supreme Court that a writ to be issued for the various provisions implementation mentioned in the Constitution and other statutes relating to labourers and also release of bonded labourers. The Court appointed a commission consisting of two advocates to visit these stone quarries and after an inquiry send report to the Court about the existence of bonded labour. The Supreme Court also held that it is not proper on the part of the Government to raise preliminary objection on such PIL. It may give the Government an opportunity to examine the existence of the bonded labour system and to take appropriate steps to eradicate this system. It is the obligation of the Government to prohibit the forced labour in any form. It was only parliament enacted Bonded Labour System (Abolition) Act, 1976, to prevent the economic and physical exploitation of peoples. In *Neeraja Chaudhari v. State of M.P.*²⁵ Court, held that it is not sufficient to identify and release the bonded labourers but the most important need is that to rehabilitate them, otherwise they would be once again driven to poverty due to their poor economic condition. In case of the failure to take proper action on the part of the State it would be the violation of Art., 32. *Sanjit Ray v. State of Rajasthan*.²⁶ The Court declares that where a person provides labour or service to another for remuneration which is less than the minimum, the labour or service provided by him clearly falls within the scope and ambit of the words “forced labour” under Indian

²² *Deena v. Union of India*, AIR 1983 SC 1155.

²³ AIR 1982 SC 1473.

²⁴ AIR 1984 SC 803

²⁵ AIR 1984 SC 1099.

²⁶ AIR 1983 SC 328.

Constitution Art., 23. In *Santhal Pargana Antyodaya Ashram v. State of Bihar*²⁷, in PIL, Court obtained a report of the Committee recommendations as far as possible, where issues to the State Government. Supreme Court in *Peoples Union for Democratic Rights v. Union of India*²⁸ which is popularly known as Project Case held that the non-payment of minimum wages to the workers employed in various said Projects in Delhi was a violation of Art., 21 Right to Life with Human Dignity of the Constitution.

Similarly in *Laxmi Kant Pandey v. Union of India*²⁹, writ petition was filed, where a letter complaining about the malpractices followed by the various social and voluntary agencies in the adoption of Indian children to foreigners. The letter exposed that in the adoption there was a great risk to children lives and if they were not provided any shelter and relief homes, the due to lack of proper care and protection they become beggars and prostitutes. The Court took active steps to abolish the bonded domestic service and slavery of poor Indian Children which had been in practice under the guise of foreign adoption. Justice Bhagwati (as he then was) laid down principles and norms which should be followed in case of the foreign adoption

In *Sheela Barse v. Union of India*³⁰ where a petitioner a social worker collected information relating to the children below the 18th years detained in the jails of different States and submitted to the Court, the Court directed that the Children Acts enacted by various States must be brought into force and they should be implemented vigorously. The Court also desires that Parliament should pass a Central Legislation on this subject.

In a significant judgment in *Gaurav Jain v. Union of India*³¹, the petitioner requested the Court to establish separate hostel and schools. But the Court rejected the demand for providing separate schools and hostels for the children of prostitutes as it was not in the interest of such children. The Supreme Court held that a committee ought to be established to analyses prostitution and the situation of the child prostitutes and the children

²⁷ 1987, Supp - SCC 141.

²⁸ AIR 1982 SC 1473.

²⁹ (301984) 2 SCC 244.

³⁰ (1986) 3 SCC 596.

³¹ AIR 1990 SC 292.

of the prostitutes. The Court also stipulated that the children of the prostitutes should not be permitted to live in the inferno and undesirable surroundings of prostitute homes and thus the human rights of such children had to be protected.³²

In *Vishal Jeet v. Union of India*³³, the Supreme Court directed steps to protect the child prostitutions. The Court referred Art. 23 of the Constitution and clause (e) and (f) of Art., 39, which inter alia, provides that Constitution prohibits the trafficking in human beings and it is the duty of the State that the tender age children are not abused and due to their economic necessity the citizens cannot compel them to enter in to such work which unsuited to their age and strength.

It also states that it is the duty of the State that childhood and youth are protected against exploitation and against moral and mental abandonment. The Court held that of the provision to rehabilitate girls who had been forced in to prostitution were in adequate and ordered with the other supplementary measure, to review of the Central and State Governments performances with respect to the implementation of provisions. *The Public at large v. State of Maharashtra & Ors*,³⁴ this petition arose due to Suo-Moto notice taken by the Court of a newspaper article which indicated that minor girls were illegally confined and forced to be sex workers. The Court issued directions and the Respondents were directed by the Court to show cause as to why action had not been taken under sec. 336 and 366 of the Indian Penal Code³⁵ and Sec. 5 and 6 of the suppression of Immoral Traffic in Women and Girls Act, 1956.³⁶

In *Prerana v. State of Maharashtra*,³⁷ where the petition was filed by a NGO working for the welfare and development of women and children who are victims of commercial sexual exploitation. The Court passed directions for their rehabilitation.

³² Sen, Sankar and Nair P.M. A. Report on Trafficking in Women and Children in India. 2002-2003, Volume I. NHRC, UNIFEM, Institute of Social Sciences, New Delhi, 2004, p. 283.

³³ AIR 1990 SC 1412.

³⁴ 1997 (4) Bom. C.R. 171

³⁵ Indian Penal Code, Section 336 and 366.

³⁶ Suppression of Immoral Traffic in Women and Girls Act, 1956, Section 5- 6.

³⁷ Writ Petition No. 1332 of 1999-Bombay High Court

In Subsequent order in *Gaurav Jain v. Union of India*,³⁸ the petitioner, who is a public spirited advocate Gaurav Jain, inspired by reading an Article which published in “India Today” magazine date on July 11, 1988 under a heading “A red light trap”, Society gives no chance to prostitutes offspring. He sends the application under Public Interest Litigation, asking for the direction to the Government for making such provisions for the children of prostitutes. In this case the Supreme Court issued a number of directions to the Governments and social organizations to take upon appropriate measures for preventing child prostitution, to rescue them and to rehabilitate their children. The Court observed that the “eradication of prostitution is integral to social welfare and the glory of women hood.”

The Court directed to constitute a Committee within a month from the judgment which evolve suitable schemes after the in depth study of the problem, which are supplementary to the above directions. The Court further stated that the rescue and rehabilitation of the child prostitutes and their children should be kept under nodal department and to establishment juvenile Homes.³⁹

The Court stated that it was in the interest of the children of prostitutes and of society that they “be segregated from their mothers and be allowed to mingle with others and become part of society.” It was of view that “accommodations in hostels and other reformatory homes should be adequately available to help segregate these children from their mothers living in prostitute homes as soon as they are indentified.”

The Supreme Court also observed that a prostitute has little ability to pay for the education of her children, which will not be able to relieve her children from social strife and it will always be that the interest of children is to stay in court or her mother, Therefore, it is necessary for them to be rehabilitated in order to save them. To take part in child prostitution and with child prostitute counseling and help of women taken is a more effective and meaningful way to save a child prostitute or a neglected teenager.

³⁸ AIR 1997 SC 3021, 3023.

³⁹ Department of Women and Child Development under the Ministry of Welfare and Human Resources Government of India.

The provisions incorporated in the Constitution show that the fathers of the Constitution were very conscious to protect and safeguard the welfare of children. The Supreme Court rightly followed the object mentioned under Art., 23 of the Constitution by the Constitution makers.

The Court rightly reminded us as,⁴⁰ “Constitution-makers, when they set out to frame the Constitution found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to common man. Large masses of people bleached white by well-nigh two centuries of foreign rule were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society with little respect of dignity of the individual who was in the lower rung of the social ladder or in an economically impoverished condition. The political revolution was completed and it has succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher level of achievement and bringing about their total advancement and welfare. Political freedom had no meaning, unless it was accompanied by social and economic freedom and it was, therefore, necessary to carry forward the social and economic revolution with a view to creating socio-economic revolution in which everyone would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the Constitution-makers enacted the Directive Principles of State Policy in Part-IV of the Constitution setting out the Constitutional goal of a new socio-economic order. Now there was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large part of the country. This evil was the relic of a feudal exploitative society and it was totally incompatible with the egalitarian socio-economic order which “We the People of India” were determined to build and constitute a gross and most revolting, denial of basic human dignity. It was therefore, necessary to eradicate the pernicious practice and wipe it out altogether from the national scene and this

⁴⁰ *Peoples Union of Democratic Rights v. Union of India* AIR 1982, SC 1473

had to be done immediately because which the advent of freedom such practice could not be allowed to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the Directive Principles of the State Policy because then the outlawing of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of the basic Constitutional norms and value until some appropriate legislation could be brought by the legislature forbidding such practice. The Constitution-makers, therefore, decided to give teeth to their resolve to obliterate and wipe out this evil practice by enacting Constitutional prohibition against it in the chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective in Art., 23 included in the chapter of Fundamental Rights. The prohibition against “traffic in human beings and beggar and other similar forms of forced labour”, is clearly intended to be general prohibition, total in its effect and all pervasive in its rage and it is enforceable not only against state but also against any other person including in any such practice. The judiciary has always fought for the cause of child labour including child trafficking. Judiciary always worked hard to discourage such evil and barbarous practice. The Courts in India are quite sensitive to tackle the problems of child workers and always suggests effective measures to curb this problem. Despite of judicial activism, there are many cases where the trafficking of children is still continued.

5.4. JUDICIAL RESPONSE TO CHILD LABOUR AND RIGHT TO EDUCATION

Education develops the human personality. A right to education is indispensable in the interpretation of a development as human rights. This right to development is also considered basic human right. Education of children is an important right of a child. Education is critical for economic and social development.⁴¹ It is crucial for building human capabilities and for opening opportunities. The social benefits of education spread in many directions. Education leads to better health care, smaller family norms, greater community and political participation, less income inequality and a greater reduction of absolute

⁴¹ *Brown v. Board of Education* 347 U.S.448 (1954)

poverty.⁴² The abolition of child labour must be proceed by the introduction of compulsory education, since compulsory education and child labour laws are interlined. Art., 24 of the Constitution bars employment of child below the age of 14 years.⁴³ Art., 45 are supplementary to Art., 24 for if the child is not be employed below the age of 14th years he must be kept occupied in some educational institutions. Now Art., 45 is amended.

5. 4. 1. Importance of Education

In *J.P. Unni Krishan v. State of Andhra Pradesh*,⁴⁴ Supreme Court while dealing with education as a fundamental right has emphasized the importance of education by stating that; “The fundamental purpose of education is the same at all times and in all places; it is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotion and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter.” Further and old Sanskrit adage state; “That is education which leads to liberation’, liberation from ignorance, which shrouds the mind, liberation from superstition, which paralyses effort, liberation from prejudices which blind the Vision of the truth. Education is enlightenment. It is the one that lends dignity to a man as was *Delhi in University of Delhi v. Ramnath*,⁴⁵ The Supreme Court held that “Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development.”

In *P. A. Inamdar v. State of Maharashtra*,⁴⁶ Supreme Court observed that; Education is “Continued growth of personality, steady development of character, and the qualitative improvement of live. A trained mind has the capacity to draw spiritual nourishment form every experience, be it defeat or victory, sorrow or joy. Education is training the mind and not stuffing the brain.”

⁴² 165th Report of the Law Commission of India on Free and Compulsory Education for Children 1998, p. 3

⁴³ Article 24 of Constitution: “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”.

⁴⁴ AIR 1993 SC 2178, 1993 AIR SCW 863 (1993); I SCC 645, JT 1993 (I) SC 474.

⁴⁵ AIR 1963 SC 1873 AT P. 1874

⁴⁶ AIR 205 SC 3226

Swamy Vivekananda has quoted “We want that education by which character is formed, strength of mind is increased and the intellect is expanded, and by which one can stand on one’s own feet.” The end and aim of all education, all training should be man-making. The training by which the current and expression of will are brought under control and become fruitful is called education.⁴⁷ Planning Commission of India stated that⁴⁸ education is an important input both for the growth of the society as well as for the individual. Properly planned educational input can contribute to increase in the Gross National Products, Cultural richness, built positive attitude towards technology and increase efficiency and effectiveness of the governance. Education opens new horizons for an individual, provides new aspirations and develops new values. It strengthens competencies and develops commitment. Education generates in an individual a critical outlook on social and political realities and sharpens the ability to self-examination, self-monitoring and self-criticism.”

“The Term ‘Knowledge Society’, ‘Information Society’ and ‘Learning Society’ have now become familiar expression in the educational parlance, communication emerging global trends with far-reaching implications for growth and development of any society. These are not to be seen as mere cliché or fade but words that are pregnant with unimaginable potentialities. Information revolution, information technologies and knowledge industries, constitute important dimensions of an information society and contribute effectively to the growth of a knowledge society.”

“Alwin Toffler (1980) has advanced the idea that power at the dawn of civilization resided in the ‘muscle.’ Power then got associated with money and in 20 century it shifted its focus to ‘mind.’ Thus, the shift from physical power to wealth power to mind power is an evolution in the shifting foundations of economy. This shift supports the observation of Francis Bacon who said ‘knowledge itself is power’; stressing the same point and upholding the supremacy of mind power, in his characteristics expression, Winston Churchill said, ‘The Empire of the future shall be empire of the mind.’ Thus, he corroborated Bacon and professed the emergence of the knowledge society.”

⁴⁷ Ibid., p. 20.

⁴⁸ India-Vision 2020 published by Planning Commission of India at p. 250.

It could be seen that several international documents have recognized the right to education as a human right.⁴⁹ The process of moulding the right to education as a fundamental right was triggered-off by Mohini Jain's case⁵⁰ and subsequently strengthened by Unni Krishan's case⁵¹ which rules that right to education is a fundamental right that flows from the Right to life in Art., 21 of the Indian Constitution. Every child has a right to free education up to the age of 14th years to thereafter the right would be subject to the limits of the economic capacity of the state. This decision was upheld and confirmed by the 11 Judge constitutional bench of the Supreme Court in *TMA Pai Foundation v. Union of India*.⁵² In the year 2002, the Indian Constitution through its 86th Amendment Act, has made "Right to Education a Fundamental Right."⁵³ The State is obliged to duty bond to provide free and compulsory education to all children of age 6th to 14th years in such manner as the state may by law determine. It was also provided that, it is the fundamental duty of a parent or guardian to provide opportunities for education to his child between the age of 6th to 14th years.⁵⁴ In pursuance of this development in the field of education recognizing it as fundamental right, the Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009 which provides for free and compulsory education to all the children of the age of 6 to 14 years. Chief components of the enactment were:

1. Adding Article 21-A in Part III (Fundamental Right);
2. Modifying Article 45; and
3. Adding a new clause (k) under Article 51-a (Fundamental Duties) making the parent or guardian responsible for providing opportunities for education to their children between 6th and 14th years.⁵⁵

⁴⁹ Article 26, Universal Declaration of Human Rights

⁵⁰ *Mohini Jain v. State of Karnataka*, AIR 1992, SC 1858.

⁵¹ *J.P. Unnikrishnan v. state of A.P.*, AIR 1993, SC 2178.

⁵² AIR 1996, SC 2652.

⁵³ Article 21-A of the Constitution

⁵⁴ Amendment of Article 51- of the Constitution by inserting clause (K) y the Constitution of India (86th Amendment) Act, 2002, Sec. 4.

⁵⁵ Central Act, No. 35 of 2009

5.5. CHILD LABOUR WELFARE AND JUDICIAL ACTIVISM

The judiciary has almost brought a revolution in the life of child labour in India. It has always remembered to expand and develop the law so as to respond to the hope and aspirations of people who are looking to the judiciary to give life and content to law. The judicial institutions in India have played a significant role not only for resolving inter-disputes but also act as a balancing mechanism between the conflicting pulls and pressure in the society. It has virtually played a vital role in the task of providing political, social and economic justice to the poor child workers in this country. The judiciary has taken a stand when there is no proper enactment for the welfare of the Child Labour and goes extent to look out the problems of them and some of these case are there in which judiciary considers as poverty is the reason for the exploitation of children and other economic factor and in this situation we can left the child in the condition of lurch and they have Judgment which gives us good lesson to the society for the welfare of the children. Some of the cases are like *Labourers working on Salal Hydro- Project v State of Jammu and Kashmir*.⁵⁶

Labourers Working on Salal Hydro-project v. state of Jammu and Kashmir and Others,⁵⁷ Justice P. N. Bhagwati observed that construction work is a hazardous employment and therefore under Art. 24 of the Constitution, no child below the age of 14 years can be employed in construction works by reason of the prohibition, enacted in Art., 24 and this constitutional prohibition must be enforced by the Central Government.

In this case Supreme Court also agreed that child labour is a bigger problem and it is purely on account of economic reasons that parents often want their children to be employed to augment their meager earnings. And child labour is an economic problem, which cannot be solved by legislation. Because of poverty and destitution in this country it will be difficult to eradicate child labour, so attempts should be made to reduce if not to eliminate child labour because it is essential that a child should have be able to receive proper education with a view to equipping itself to become a useful member of the society

⁵⁶ AIR 1984, SC 177.

⁵⁷ AIR 1984, 3 SCC, 538

and to play a constructive role in the socio-economic development in the country. They must concede that having regard to the prevailing socio-economic conditions it is not possible to prohibit the child labour altogether and in fact, any such move may not be socially or economically acceptable to large masses of people. That is why Art., 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments clearly construction work is a hazardous employment and no child below the age of 14th years can therefore be allowed to be employed in construction work by reason of the prohibition enacted in Art., 24 and this Constitutional prohibition must be enforced by the Central Government.

The Supreme Court also suggested that whenever the Central Government undertakes a construction project which is likely to last for some time, the Central Government should provide that children of construction workers which are living it or near the project site should be given facilities for schooling because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country. We must concede that having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact; any such move may not be socially or economically acceptable to large masses of people. So we can say that literacy (absence of) is a main cause of child labour.

In *Lakshmi Kant Pandey v. Union of India*.⁵⁸ It is obvious that in a civilized society, the importance of child welfare cannot be over emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said “Child show the man as morning the day” and the Study Team on Social Welfare said much to the same effect when it observed that the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages. The child is a soul with a being a nature and capacities of its own, who must be

⁵⁸ AIR 1984, SC 469

helped to find them, to grow in their maturity , into fullness of physical and vital energy and the utmost breadth, depth and height of its emotional intellectual and spirituality being; otherwise there cannot be a healthy growth of a nation. Now obviously children need special protection because of their tender age and physique, mental immaturity and incapacity to look after the usefulness. That is why there is growing realization in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they must be able to attain full emotional intellectual, and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of the role which they play in the nation and building process without which the nation or cannot develop and real prosperity because a large segment of the society would be then be left out of the developmental process. In India this consciousness is reflected in the provisions enacted in the Constitution. Clause (3) of Art. 15 is enable the state to make special provisions inter alia for children and Art. 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clause (e) and (f) of Art. 39 provide that the state shall direct its policy towards- securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter, avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. These constitutional provisions reflect the great anxiety of the Constitution- makers to protect and safeguard the interests and welfare of children in the country. The government of India has also in pursuance of their constitution provision evolved in National Policy for the welfare of children. This policy with a goal oriented perambulatory introduction.

The Nation's children are a supremely important asset. Their nature and solicitude are our responsibility. Children's welfare programme should find a prominent part in our national plan for the development of human resources, so that our children grow up to become robust citizens, physically fit , mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would seem our larger purpose off reducing in equality and ensuring Social Justice.

5.6. JUDICIAL RESPONSE TO CHILD LABOUR

We in India have given to ourselves a written constitution guaranteeing justice, liberty and equality. We attempted to achieve administrative and political unity and an economic and social revolution under a democratic constitution. We aimed at a synthesis' which could give economic justice with political safeguards and political justice with economic safeguards, for achieving these objectives; we have three organs of government, the legislature, the executive and the judiciary. Each of these is supreme within the sphere allotted to it. To interpret the constitution, keep the three organs of government within their allotted spheres and enforce the rule of law and independent authority is absolutely essential and this is furnished by the court of justice. The Supreme Court of India, at the apex has been assigned a very important role and constituted as a guardian of the constitution which is the yardstick of ground norms for other legislation.⁵⁹

Our constitution accords a dignified and crucial position to the judiciary. It is the greatest unifying and integrating force of our country. The Supreme Court is at the apex of the well ordered and well regulated judicial structure of the country. It expounds and defines the true meaning of law.⁶⁰ It is the ultimate interpreter of the constitution and this puts a second break on the legislature and the executive the first being the political check of the people themselves.⁶¹ The constitution puts on obligation on every organ of the state, including the judiciary, to usher in a new social order in which justice-social economic and political and equality of status and opportunity prevail. The final burden of interpreting these elastic provisions is upon the courts. Courts are to contribute to law's growth without overstepping the boundaries of the system in other words, how to reconcile tradition and convenience to the claims of stability and those of change. It is the duty of the judiciary to recognize the development of the nation and to apply established principles of the positions which the nation in its progress from time to time assumes. The judicial organ would

⁵⁹ Dr. Ashhad Ahmad, *Child Labour in India A Politico- Legal Study* 176 (Kalpaz Publication, Delhi, Reprint, 2013).

⁶⁰ M. P. Dubey (1987) "Role of Supreme Court in Indian Constitution 10 (Deep and Deep Publication, New Delhi, 1987).

⁶¹ M.Hidayatullah , *Democracy in India and the Judicial Process* 45 (Lajpat Rai Memorial Lecture Series, Asia Bombay, 1966)

otherwise separate itself from the progressive life of the community and act as a clog upon the legislative and executive department rather than as an interpreter Indian judiciary is charged with the duty of holding the balance even between a state or states and the union and between the state and the citizen, and sometimes between the states and the individual. It has to hold the scales even in the legal combat between the rich and the poor, the mighty and the weak without fear or favour. The role of judiciary in India has been quite significant in promoting the child welfare. Mr. Justice Suba Rao, the former Chief Justice of India, rightly remarked

“Social Justice must begin with child unless tender plant is properly nourished; it has little chance of growing into strong and useful tree. So, first priority in the scale of justice should be given to the welfare of children.”⁶² It is in this spirit that the apex court has laid emphasis on the fact that the important task of social justice is to take care of child, for him lies the hope of nation’s future.

The Constitution of India is a social document which imposes an obligation on every organ including the judiciary to transform the status quo ante into a new human order in which there will be equality of status and opportunity for all. The judiciary has, therefore, a socio-economic destination and creative function. In the same spirit the judiciary in India has played a significant role in promoting the child welfare. It is in this spirit that the Supreme Court has laid emphasis on the fact that the nation is to take care of the child for in him lies the hope of nation's future. The Supreme Court held in *Vikram Deo Singh Tomar v. State of Bihar*⁶³ that it is the constitutional duty of the state to abide by the constitution standard and provide at least the minimum conditions ensuring child's dignity. Describing the care home Patna as a crowded hotel in which a long number of human being had been thrown together compelled to subsist in conditions of animal survival, the Supreme Court directed the state of Bihar to takes immediate steps to comply with the various directions given by the Court for the welfare of the children of the care homes. Supreme Court showed a particular regard for children and felt the need to afford them

⁶² Justice Suba Rao, *Social Justice and Law* 110 (National Public House, Delhi, 1974).

⁶³ AIR, 1988 Sc 1782.

opportunities to live with dignity and maintain establishment for the care of these unfortunates who were the caste ways of an imperfect social order and for whom necessary provision, must be made for their protection and welfare. The court was highly critical about the miserable conditions of the establishment where the children and women were detained compelling most of them to sleep on broken floors in damp and dark condition with no covering whatever to protect them from the chilly wind and near freezing temperatures of the North India winter who were fed wretched health denying diet were denied the basic amenities of convenient toilets and a private bathing place, who if they complained, were beaten up although attacked by diseases and illness were unable to find timely medical relief. The court further directed the State Government to renovate the existing building, in which the inmates were housed and provide sufficient amenities by way of learning rooms, bathrooms toilet within the building also to provide adequate water electricity, suitable range of furniture, including cots and adequate number of blankets and bed sheets.⁶⁴

The court was equally aware of the need to provide justice to these unfortunate fellow beings and thus the court held vehemently. The time has come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as un-holders of the established order and the status quo. They must be sensitized to the need of doing justice to the large masses of the people to who Justice has been denied by a cruel and heartless society for generation. In order to save the children from professional hazards, the court held that employment of children under the age of 14th years should be employed in the construction work under the Union of India and also every State Government must ensure that this constitutional mandate is not violated in any part of the country Accordingly, the court directed every State Governments to amend schedule of Children Act, 1938 without any undue delay because construction work was clearly a hazardous occupation.⁶⁵

Frankly speaking the court has played a parental role while directing the Central Government to persuade the workmen to send their children to nearby school and arrange

⁶⁴ Supra note 59 at pp. 177-178

⁶⁵ *People's Union of Democratic Republic v. Union of India*, AIR, 198 SC. 1473.

not only for the fee to be paid but also provide free of charge, books and other facilities such as transportation.

The court also put forth the suggestion that wherever the Central Government undertakes a construction project which is likely to last for some time the Central Government should provide that the children of the construction labourers who are living at or near the project sites should be given facilities for schooling and this may be done either by the Central Government itself or if the Government entrusts the project work any part thereof to a contractor necessary provisions to this effect may be made in the contract with the contractor. The court, however, pleaded for the positive role to be played by the Government and desired that attempt must be made to reduce if not eliminate the incidence of child labour, because it was absolutely essential that a child should be able to receive proper education with view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country.⁶⁶

Similarly a sincere effort have been done by the Supreme Court to uphold the dignity of the children born to prostitutes by rejecting the submission that provision should be made for separate schools and hostels for children of the prostitutes. The court was of the view that separating prostitutes' children by locating separate schools and providing separate hostels would not be in the interest of such children and of society at large. The court further added that children of prostitutes should not be permitted to live in interiors and the undesirable surroundings of prostitute homes, This is particularly so for the young girls whose bodies and minds are likely to be abused with growing age for being admitted into the profession of their mothers Accordingly, instead of disposing of this writ petition with a set of directions, a committee, comprising of seven members was constituted to examine the material aspects of the problem and submit containing recommendations to the Court on the basis of which further orders were to be made.⁶⁷

It is thus evident from the judicial trend that the issue of child welfare remained always under the active consideration of the Supreme Court Justice Bhagwati, in *Laymi*

⁶⁶ *Labour Working on Salal Hydro- Project v. State of Jammu and Kashmir*, AIR 1984 SC. 177.

⁶⁷ The Report of the Committee is Still Awaited. Also See *Vishal Jeet v. Union of India*, AIR, 1990, SC. 292.

*Kant Pandey v. Union of India*⁶⁸ has expressed his view point on the importance of children in the following words,

“It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized because the welfare of the entire community, its growth and development, depend on the health and well being of its children. Children are a supremely important national asset and the future well being of the nation depends on how its children grow and develop.”

The question of the child welfare seems to have caused considerable anxiety to the court in eradicating sexual exploitation of children. Perhaps, it was due to this reason that the Supreme Court of India gave certain directions in this regard to State Government and union territories. In the same case Supreme Court laid down the procedure to be followed in adoption of children. It quoted with approval of the report of the study team on social welfare where it was said the physical and main health of the nation is determined largely by the manner in which it is shaped in the early stages.

The Supreme Court also quoted with approval from the National Policy for the welfare of children where it was said the nation's children are supremely important asset. Their nature and solicitude are our responsibility, children's programme should find a prominent part in our national plane for the development of human resources so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim for this would serve our larger purpose or reducing inequality and ensuring social justice. Thus the judicial response to the child welfare is positive and progressive to secure in particular to education, economic exploitation, a healthy environment, nutrition, living condition and employment in jobs like construction work.

The strength of any society depends on the health and welfare of the child. It is in this perspective that wise founding fathers of our constitution have envisaged many

⁶⁸ AIR 1984, SC., 469.

provisions for their welfare which cast an obligation on each any every instrumentality of the state, including the judiciary, to transform the status quo into a new human order in which there will be equality of status and opportunity for all the children, high or low.⁶⁹ The constitution accords a dignified and crucial position to the judiciary which expounds and defines the true meaning of the law. Indian judiciary has put earnest effort and shown deep interest in promoting the welfare of child workers in the light of philosophy and spirit contained in our National Charter. The Supreme Court has introduced new method in the form of Public Interest Litigation to provide justice to the poor and weaker sections of the society. It is generally seen that all the working children come from the poor families and there are no means to ventilate their grievances that their fundamental rights are being breached with impunity. Thus, this method of Public Interest Litigation is available to those who are denied basic rights and for whom liberty and freedom have no meaning. The history of Public Litigation started when entertained a letter, sent by post as Public Interest Litigation in *People's Union for Democratic Rights v. Union of India*,⁷⁰ popularly known as Asiad Case. It was contended that the Employment of Children Act, 1938 was not applicable in the case of children employed in the construction work of Asiad Project in Delhi. The activist of Supreme Court rejected this contention and held that the construction work is hazardous employment and it is clear that the reason of constitutional prohibition that no child below 14th year can be allowed to be engaged in construction work. Further a high water mark in the application of Art., 24 of the constitution has been reached in the decision of the Supreme Court in *Labourers Working on Salal Hydro Project v. Jammu & Kashmir*⁷¹, where in the court reiterated the above ruling. It was held that whenever the Central Government under takes a construction project which is likely to last for some times the Central Government should provide to the children of construction workers who are living at or near the work site facilities for schooling, and this may be done either by Central Government or through contractors if the work is entrusted to the latter.

⁶⁹ Alice Jacob and Kusum Kumar, "Child Welfare", in Jain, S. N. (Ed.), *Child and the Law* (1979), J. K. Mittal and V. K. Bansal, p. 441

⁷⁰ AIR, 1982, SC. 1473.

⁷¹ AIR, 1984, SC. 183.

In *M.C.Mehta v. State of Tamil Nadu*⁷² the Supreme Court while expressing grave concern on the plight conditions of the child workers, observed that the provision of Art. 45 in the Directive Principles of State Policy had still remained a forever, though according to this provision all children up right to the age of 14th year were supposed to be in school. However, the court moved by the social reality, did not absolutely prohibit children to work in the prohibited occupation. The court recognized the socio-economic realities and held that children could be employed in the process of packing however, from the place of manufacturing to avoid exposure to accident. It held that every child must be insured for a sum of Rs. 5,000 and premium to be paid by the employer as a condition of service.

Further, the Supreme Court in *Sheela Barse v. Secretary Children Aid Society Others*⁷³, held “If there is no proper growth of children of today, the future of the Country’s will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today’s children will be leaders of tomorrow who will hold the country’s banner high and maintain the prestige of the nation. Further, in *Laxshmi Kant Pandey v. Union of India*,⁷⁴ the Supreme Court took active steps to abolish bonded domestic service and slavery of poor which had been in practice under the guise of foreign parents. The Courts have shown vigorous courage to point out that both State and Central Governments have badly failed to execute the spirit of labour welfare legislations and with the result that there is witnessed a large scale violation of the provision and there by the employers have miserably exploited the innocent child workers. Similarly the Andhra Pradesh High Court in its momentous decision in Murali Krishna Public School Case held that ‘Right to Education’ to Dalits is a Fundamental Right and it is the mandatory duty of the state to provide adequate opportunities to advance educational interests by establishing schools. This landmark decision has paved the way for better educational opportunities for deprived class children. The Details hitherto neglected specimens of humanity, who are dragging their earthly existence under a grinding poverty have now been encouraged to claim their right to education as their fundamental right and compel the state to take positive nation to provide educational facilities to their children.

⁷² AIR, 1991, SC. 183.

⁷³ AIR, 1987 SCC. 50.

⁷⁴ AIR, 1984 SCC. 669.

Justice Kuldeep Singh has gone one step further while declaring the unequivocal words that right to education is concomitant to fundamental rights enshrined under part III of the constitution.⁷⁵ Similarly in *J.P. Unikrishnan v. State of Andhra Pradesh*⁷⁶, The Supreme court maintained that right to free education up to the age of fourteen years is a fundamental right under Art., 21 of the constitution. Thereafter, the right to education is subject to the limits of economic capacity and development of the state for the reasons that higher education call heavily on national economic resources and social circumstances. What is thus, transpired from the decision of Unikrishnan's case is that the apex court has for the first time in the judicial history declared that the right to education up to 14th year as fundamental right with the result that it will necessarily enable the poor children to have access to education which will enable them in achieving social economic and political justice.

5.7. CHILD LABOUR IS VIOLATIVE OF HUMAN DIGNITY

The human dignity is an important aspect of the right to life guaranteed under Art. 21 of the constitution of India. Its importance has been highlighted by C, J. Sarv Mittra Sikri when he observed that the supremacy of the constitution and its basic structure of the constitution which consists of secular and federal character, republican and democratic forms of government and separations of power are built on the basic foundation i.e. dignity and freedom of the individual.⁷⁷ Similarly Chandrachud, C. J. also observed that the dignity of the individual could be preserved through the liberty and equality.⁷⁸ They V.K. Krishna Iyer, C, J. in the case of *Inder Singh v. State*,⁷⁹ held that the spiritual basis of our constitutional order is human dignity and social justices and not the sadistic cruelty and hard confinement. In *Francis Coralie Mullin v. Administration, Union Territory of Delhi*,⁸⁰ The Supreme Court observed that we think that right to life include the right to live with human dignity and all that goes along with it, namely the bare necessities of life such

⁷⁵ *Mohini Jain v. State of Karnataka*, AIR 199 SCW 2100.

⁷⁶ AIR, 1993, SC. 2178.

⁷⁷ *Keshavanand Bharti v. State of Kerala*, AIR, 1973, SC. 1561.

⁷⁸ *Minerva Mills v. Union of India*, (1960), 2 SCC.660

⁷⁹ AIR, 1978, 4 SCC. 161.

⁸⁰ AIR, 1981, 1 SCC. 618.

adequate nutrition, clothing and shelter and facilities for reading writing and expressing one self in diverse from freely moving about and mixing commingling with fellow being, right to protect against torture, cruel and inhuman and degrading treatment. The child labourers are firstly children and then labourers so they should also not be treated cruelly and inhumanly.

In *Bandhua Mukti Morcha v. Union of India*⁸¹, Justice P. N. Bhagwati, observed. It is the fundamentals right to everyone in this country assured under the interpretation given to Art. 21 to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Art., 21 derives its life breath from the Directive Principle of State Policy and particularly clauses (e) and (f) of Art., 39, 41 and 42 and therefore, it must include protection of the health and strength of workers, men and women and the tender age of children against abuse, opportunities and facilities for children to developed in an healthy manner and in conditions of freedom and dignity educational facilities, just and human conditions of work and maternity relief. There are the minimum requirements which must exist in order to enable a person to live with human dignity and no state neither the Central Government for the States Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials which go to make up a life of human dignity.⁸²

In the light of Supreme Court judgment in the cases of *Maneka Gandhi v. Union of India*⁸³ and *Sunil Batra v. Delhi Administration*⁸⁴, any kind of brutality constant fear of violence, psychological restraint, encroachment of person, destruction of any organ of the body through which the soul communicates with the outer world, physical assault, allotment of degrading labour, lack of adequate medical care, poor food service inadequate or non-existent rehabilitative and educational facilities and payment of nominal subsistence allowance have been forbidden, under Art., 21 of the Constitution of India. However, it remains a bitter truth that in most of the case the little workers are not provided adequate

⁸¹ AIR, 1984 SC. 802.

⁸² Srinivas Gupta, "Child Labour is Violative of Rights of the Child", *Central India Law Quarterly*, Vol. XII, (1999), p. 367.

⁸³ AIR, 1978, 1 SCC. 248.

⁸⁴ AIR, 1978, 4 SCC. 494

medical care rehabilitation and educational facilities, good food, service, payment of normal subsistence allowance and so on. Then Supreme Court observed that welfare of entire community its growth and development depends upon the health and well-being of its children and that children need special protection because of their tender age and physique, mental immaturity and in a capacity to look after themselves.

The Supreme Court is of view that the construction work is hazardous employment and hence to child below the age of 14th years cannot be allowed to be employed in construction work, in the case of *M. C. Mehta v. State of Tamil Nadu*.⁸⁵ This court has said that the children must be provided basic diet working period. However, the court could not maintain its activism and championship for the rights of the child in this case when it went out of tune with the constitutional spirit and aspirations envisaging a fair deal for children. It is a matter of surprise that Supreme Court in this case allowed children to be employed in match factories of Siva-Kashi in Madras, where admittedly hazardous manufacturing process of match and fireworks is carried on the Hon'ble Court could not force that risk is also involved in sorting out and processing for the purpose of picketing of such objects, when it observed that tender hands of young workers are more suited to sorting out the manufactured products and process it for the purpose of packing. Going a step further against the rights of the child it considered children's special adaptability working in match and fireworks in sorting out and packing manufactured products and ruled that at least sixty percent of the prescribed minimum wages for an adult worker doing the same work should be given to the child worker.⁸⁶

5.8. JUDICIAL INTERPRETATION OF LIFE AND LIBERTY OF CHILD LABOUR

With the changing attitude of the courts, there has been a realistic view of position of children and is in agreement with the prevailing condition of Indian society. Critical

⁸⁵ (1984), 2 SCC. 417.

⁸⁶ Srinivas Gupta, “ Human Rights of the Child and Judicial Activism in India”, *Central India Law Quarterly*, Vol. VII, (1994), p. 68.

analysis of the judicial interpretation can be viewed in two angles, namely, the expression of personal liberty and the expression condition of employment.

5.8.1. Personal Liberty

The Supreme Court has magnified the scope of Art. 21 to include within its ambit the right to food, the right to clothing, the right to shelter, the right to decent involvement etc. But it seems the human rights syndrome of the Indian jurisprudence has yet not expanded enough to include the right of the child to live with dignity. In yet another instance period making judgment was rendered by two judge bench of the apex court comprising Justice M. M. Punchhi and Justice B.P. J. Reddy, in the case of *Balmazdoor Union v. Registrant of Trade Union*, it was held that the right to form a union bin Fundamental Right there should be no age limit. In the instant case, the union had approached Registrar of Trade Union, who refused to grant registration to the union under the Trade Union Act, 1926. A writ petition was filed in Delhi High Court challenging the decision of the Registrar. The High Court refused to admit the petition as it found no merit in it. The Union's Counsel Mr. Soli J. Sorabjee moved the Supreme Court and stated that it was necessary to register the children's union for child workers were not organized not were there any proper rules, working hours limit and health facilities. Further, it was argued that the Government's refusal to do the same was violative of the United Nations convention on the Rights of the Child, ratified by India in the year 1992.⁸⁷

5.8.2. Conditions of Employment

The liberalized rule of Locus- Standi has been reflected in Supreme Court's decision *Bandhua Mukti Morcha v. union of India*⁸⁸ and *People's, Union of Democratic Rights v. Union of India*⁸⁹ commonly known as, Asiad Case. The Supreme Court rule that Art., 24 is enforceable against and by reason of its compulsive mandate and no one can employ child below 14th years in hazardous employment. While the Supreme Court in Bandhn

⁸⁷ The Times of India, 28th, Nov., 1993.

⁸⁸ AIR, 1997- 10, SCC 549

⁸⁹ AIR, 1982, SC, 1473.

Mukti Morcha v. Union of India, gave direction to the State Government of U.P. to frame a scheme for rehabilitation of children employed in carpet manufacturing industries. While in *M.C. Mehta v. State of Tamil Nadu*, a petition under Art., 32 of the constitution had been brought by way of Public interest litigation before the Supreme Court. It related to the problems of employment of children in hatch factories of Sivakasi. In this case, the question arose as to whether children could be employed in the process of packing if such packing was done in an area away from the place of manufacture. The court was of view that children should not be employed in factories as childhood is the formative period. However, the court opined that the compulsory insurance scheme should be provided for both adult and children employees taking into consideration the hazardous nature of employment. The State of Tamil Nadu shall insure that every employee working in these Match factories is insured for sum of Rs. 50,000/, and the Insurance Corporation, if contacted should come forward with a viable group insurance scheme to cover the employees in the match factories of Shiva Kasi area.

Various International provisions Indian constitutional provisions, welfare enactments and judicial verdicts are only teasing illusion and promise of unreality unless they are effective and make the right to life to the child driven to labour reality, meaningful and happy. In spite of all the legal remedies for the elimination of child labour it is hard reality that due to poverty child is driven to be employed in a factory.

PROBLEM OF CHILD LABOUR IN LUCKNOW DISTRICT

6.1. INTRODUCTION

Lucknow, the city of Nawab, is one of the oldest city of India. Lucknow is famous for its innovation, heritage and her love relationships all over the world. These merits separate Lucknow from other cities of India. It was a part of the state of Awadh. Now it is the capital of Uttar Pradesh. It has its own history.

Notable examples of architecture in Lucknow will be found. Examples are Imambara (1784), a single-story structure that tells the story of being the city of Lucknow. Rumi Darwaza, Begum Hazrat Mahal Park is also evidence of Lucknow's historic city. The scene of rescue by British soldiers during the Indian Rebellion is the most protected monument 'residency' also in Lucknow. Hazarat Ganj markkit of British time is famous all over the world as a mark of Lucknow. Located in Gomti Nagar, Lucknow, Ambedkar Park, Lohia Park, Jnaneshwar Mishra Park and Gomti River Front in Lucknow and four moon stars.

Like India, Lucknow has its own mixed culture. Lucknow is also a mixed language house and people of different cultures live with great love in Lucknow. The culture of Lucknow has become famous in the country and even around the world. The tradition that Nawab used to follow is still followed, and this reason makes Lucknow different from other cities of the world. Lucknow's famous Tunde Ke Kebab is a famous dish and it is famous all over the world and Biryani is also very famous. People of Lucknow are artistic and contain poetic worms contained in them. People of Lucknow celebrate all the festivals with love and love. Lucknow city is located on the junction of many roads and railway lines. Chaudhary Charan Singh International Airport is located in the south-west about 8 miles south of the city. In the city of Lucknow, agricultural products are grown on a large scale, mango, melons, watermelon and various grains.

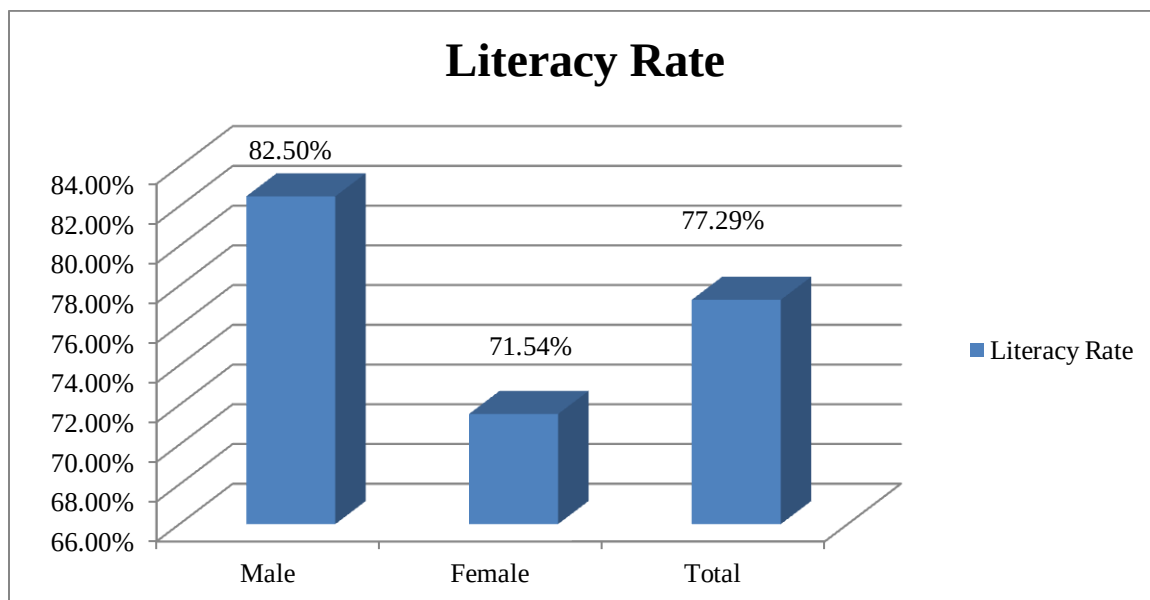
Educational Institutions of Lucknow include Babasaheb Bhimrao Ambedkar Central University, Lucknow University, Rammanohar Lohia National Law University, VV Giri Labor Institute, King George Medical University, Abdul Kalam Technical University, Music Academy, an Institute of Muslim theology, Central Drug Research Institute, Arts and crafts colleges, all of which are educationally in Lucknow.

The area of Lucknow district is 2528 square kilometers. The total population of Lucknow district is 45, 89,838, the number of men is 23,94,476 and the number of women is 21,95,362. According to the 2011 census, 66.21 % of the population of the Lucknow district lives in urban areas of the district, which is 3,038,996. The number of men is 1,580,724 and females 1,458,272. While 33.79% of the population of Lucknow districts live in rural areas and the population of the rural areas of the Lucknow district is 1,550,842, out of which the number of men and women is 813,752 and 737790 respectively. According to the 2011 census, sex ratio of people in urban areas is 923 in Lucknow district and gender ratio is 906 females for every 1000 males in rural areas. In Lucknow district, the child population is 543641 in the age group of 0 to 6 years in which the number of males is 283952 and the number of females is 259689¹.

Table 6.1 Literacy Rate of Population of Lucknow District

Lucknow District	Literacy Rate
Male	82.5%
Female	71.54%
Total	77.29%

1.<https://www.Censusindia.co.in>,_(Visited on June 22, 2019).

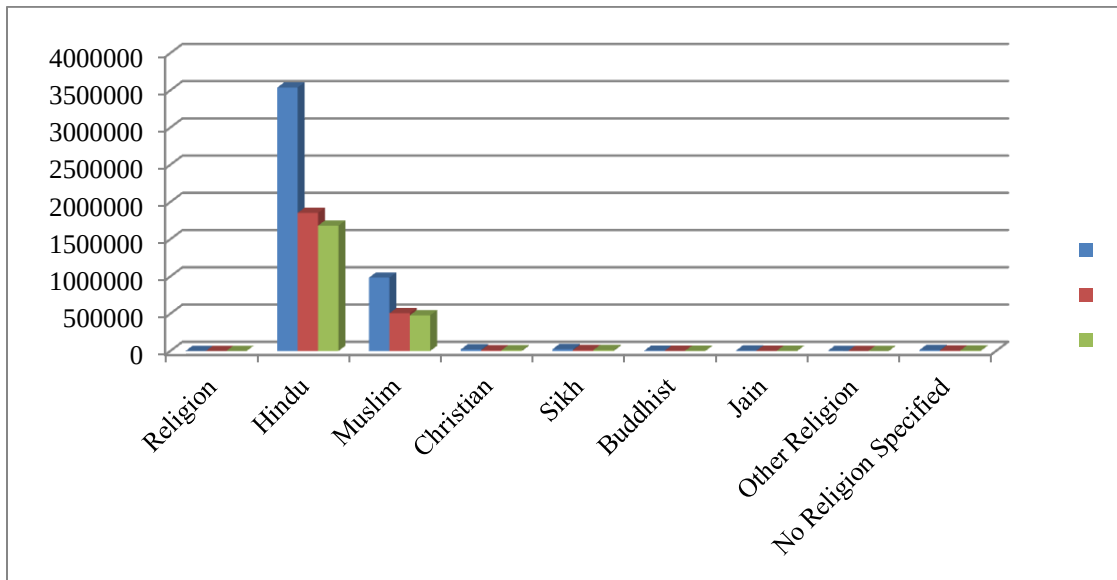
Figure 6.1 Literacy Rate of Population of Lucknow District

Source: Field Survey

Based on the 2011 census data, the table first shows the literacy rate of the population of Lucknow. According to the information, Lucknow district has a total of 45,89,838 populations, of which 77.29 % is literate. In which the %age of men is 82.56 and 71.55 % of the females.

Table 6.2 Religion Population of Lucknow District

Religion	Total	Male	Female
Hindu	3537787	1854475	1683312
Muslim	985070	505928	479142
Christian	20493	10079	10414
Sikh	23883	12573	11310
Buddhist	3877	2076	1801
Jain	4975	2508	2467
Other Religion	504	251	253
No Religion Specified	13249	6586	6663

Figure 6.2 Religion Population of Lucknow District

Source: Field Survey

Table number 6.2 has been explained in detail about the population of Lucknow district. How many of the total people are going to believe in religion? It has also been told how many people do not believe in any religion.

Apart from this, there is another reality of Lucknow which is like a stigma on Lucknow. It is the truth that Lucknow comes to second place in the case of Child Labour in India. According to a report by V.V. Giri National Labour Institute of India and UNICEF, the title of which is 'Child State of Child Workers in India'². It has been revealed that in Lucknow district 30342 child labor works. In the case of Child Labor, the first number is Hyderabad City.

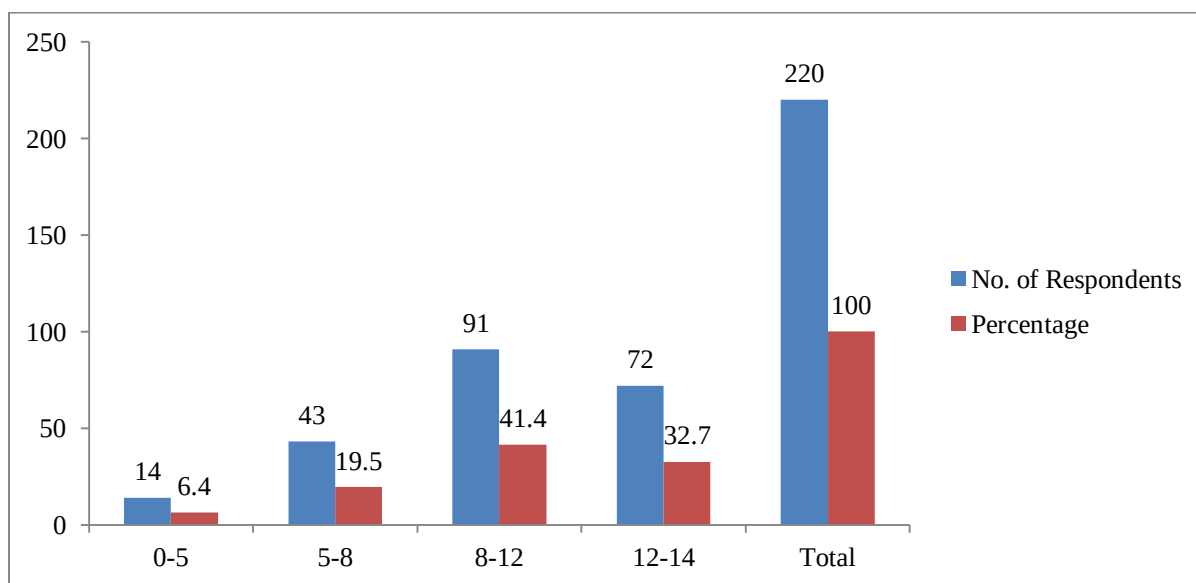
1. https://www.timesofindia.indiatimes.com/city/Lucknow_ (Visited on June 25, 2019).

ANALYSIS AND INTERPRETATION OF PRIMARY DATA

Table: 6.3 Age wise Distribution of Child Labour

Age (years)	No. of Respondents	Percentage
0-5	14	6.4
5-8	43	19.5
8-12	91	41.4
12-14	72	32.7
Total	220	100

Figure: 6.3 Age wise Distribution of Child Labour



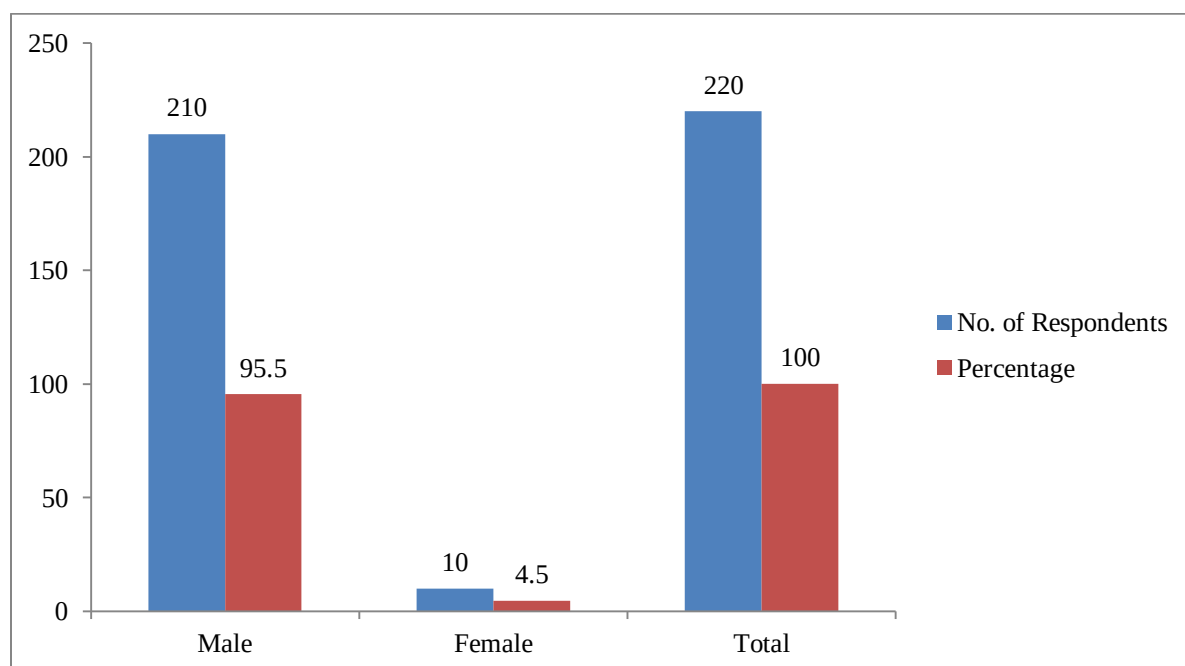
Source: Field Survey

Table and figure 6.3 shows age wise distribution of Child Labour in Lucknow district. 6.4 % of the children are working in the age group of 0-5 years, 19.5 % children are in the age group of 5-8 years, 41.4 % children are working in the age of 8-12 years and 32.7 % children are working in the age group of 12-14 years.

Table 6.4 Gender Wise Distribution of Child Labour

Gender	No. of Respondents	Percentage
Male	210	95.50
Female	10	4.50
Total	220	100

Figure: 6.4 Gender Wise Distribution of Child Labour

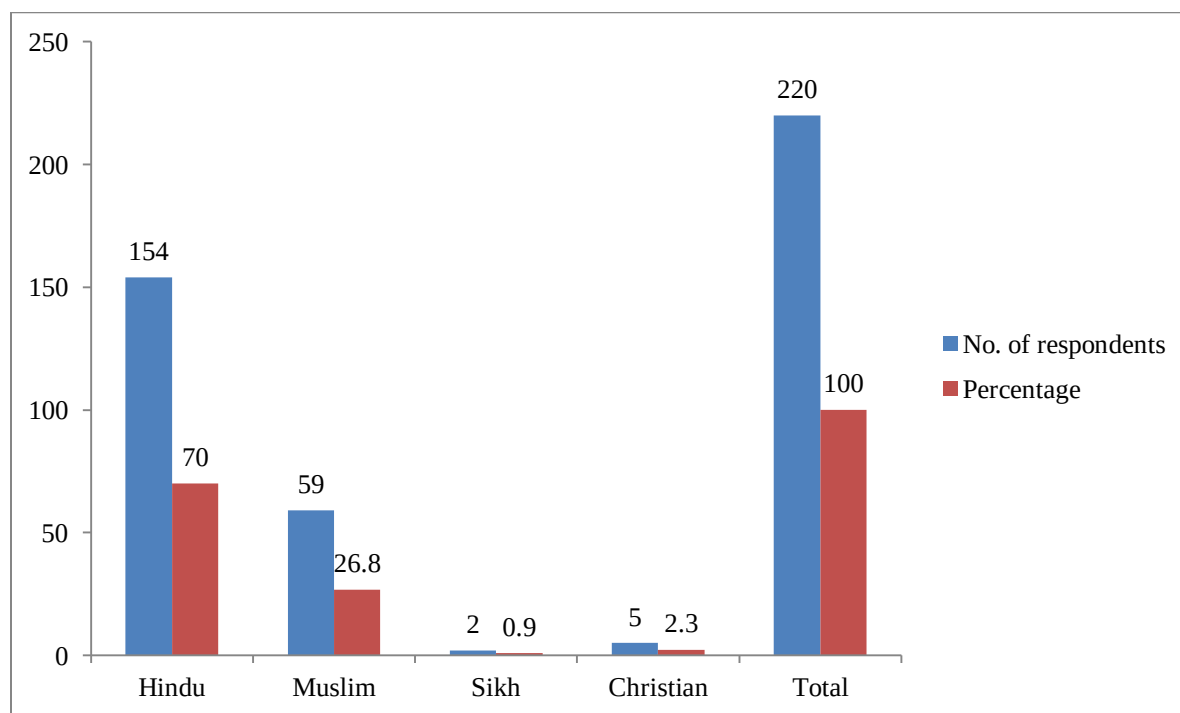


Source: Field Survey

Table and figure 6.4 shows Gender wise distribution of child labour in Lucknow district. Out of 220 respondents, 210 respondents are male child labour which constitute 95.5% and ten are female child labour which constitute 4.5%. Above data clearly shows that mostly child labours are male.

Table 6.5 Distribution of Child Labour on the Basis of Religion

Religion	No. of Respondents	Percentage %
Hindu	154	70
Muslim	59	26.8
Sikh	2	0.90
Christian	5	2.3
Total	220	100

Figure: 6.5 Distribution of Child Labour on the Basis of Religion

Source: Field Survey

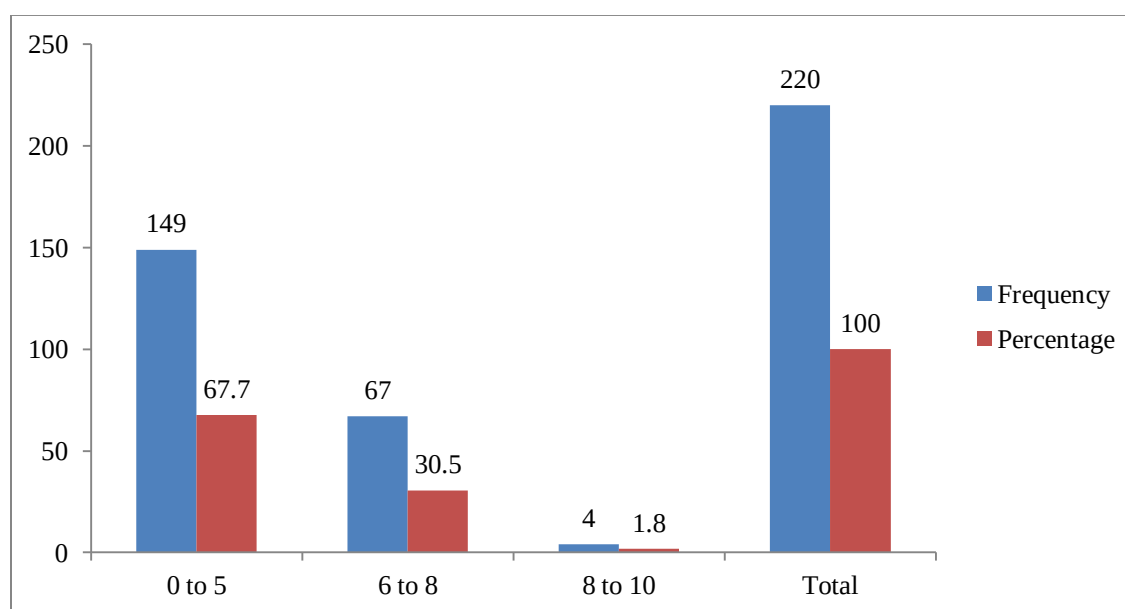
Table and figure 6.5 shows Distribution of child labour on the basis of religion in the Lucknow district. Researcher has collected 220 sample in which 154 are from Hindu community which constitute 70 %, 59 are from Muslim community which constitute 26.8

%, 2 are from Sikh community which constitute 0.9 % and 5 are from Christian community which constitute 2.3 %.

Table 6.6 Educational Status of Child Labour

Level of Education	Frequency	Percentage %
0 to 5	149	67.70
6 to 8	67	30.50
8 to 10	4	1.80
Total	220	100

Figure: 6.6 Educational Status of Child Labour

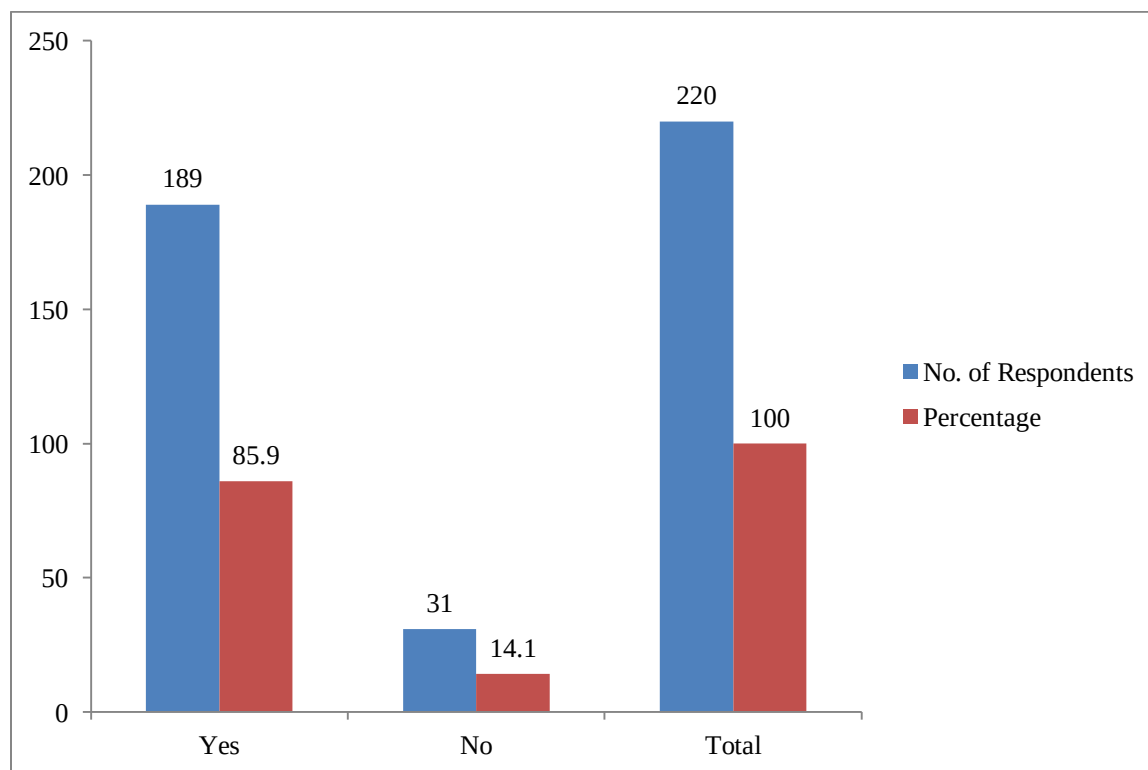


Source: Field Survey

Table 6.6 showed that. Among the 220 workers working on tea and dhabas, from 0 to 5, 149 children has read, these children is 67.7%. The number of children studying in class 6 to 8 is 67 and 30%. The number of children studying in class 8 to 10 is 4, which is 1.8%.

Table 6.7 Dropout of Child Labour from School

Dropout of children	No. of Respondents	Percentage %
Yes	189	85.90
No	31	14.10
Total	220	100

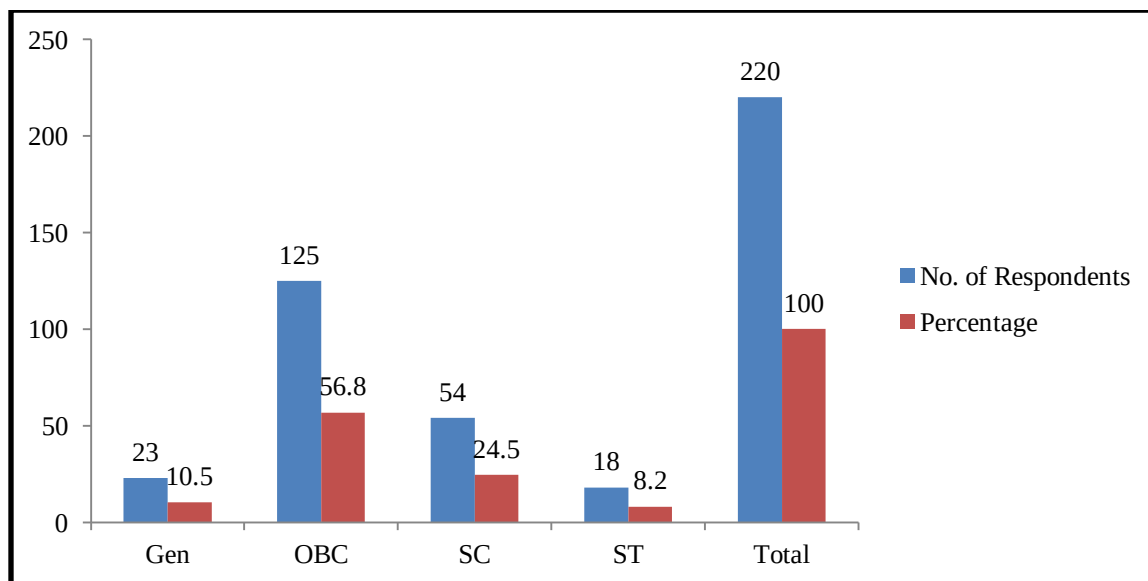
Figure: 6.7 Dropout of Child Labour from School

Source: Field Survey

Table and figure 6.7 shows dropout of child labour from school in the Lucknow. According to collected data 85.9 % respondents are school dropout while 14.1 % are still attending the school while working as child labour.

Table 6.8 Caste Wise Distribution of Child Labour

Category of child	No. of Respondents	Percentage %
Unreserved	23	10.50
OBC	125	56.80
SC	54	24.50
ST	18	8.20
Total	220	100

Figure: 6.8 Caste Wise Distribution of Child Labour

Source: Field Survey

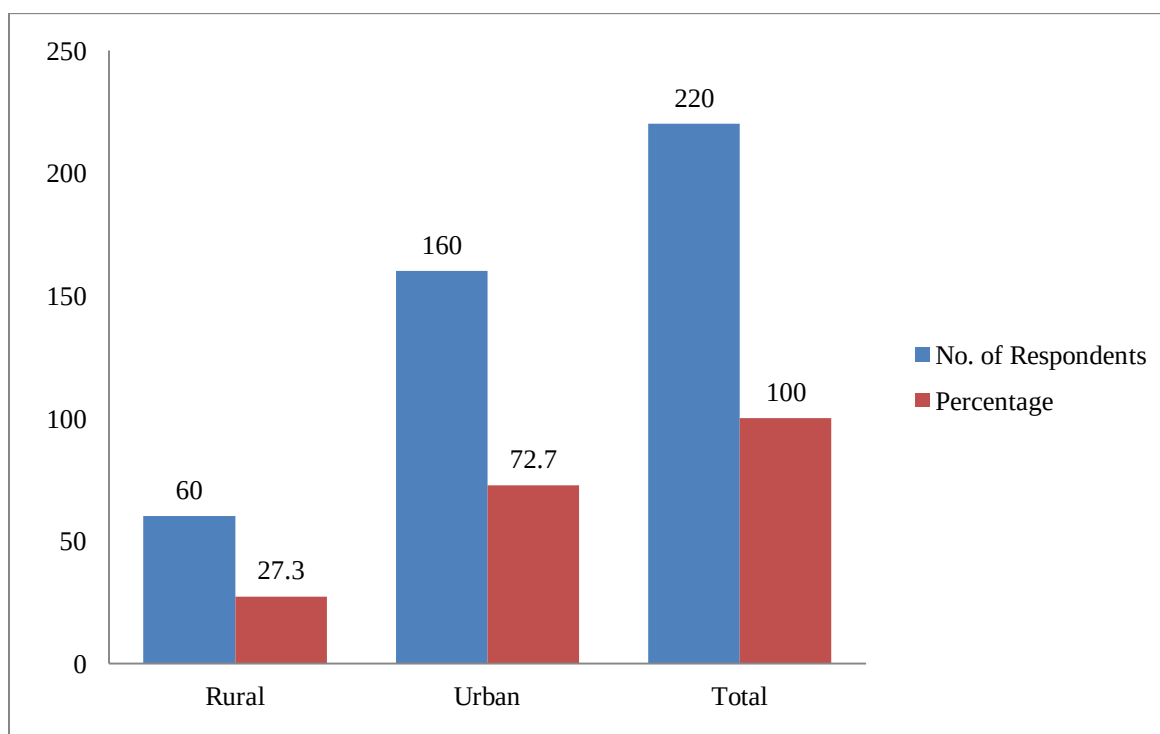
Table and figure 6.8 shows caste wise distribution of child labour in Lucknow district. 10.5 % respondent belongs to unreserved category, 56.8 % respondent belongs to OBC category, 24.5 % belongs to schedule caste and 8.2 % respondent belongs to

schedule tribe category. The above data shows that maximum number of child labour belongs to other backward and schedule caste categories.

Table 6.9 Native Place of Child

Native place	No. of Respondents	Percentage %
Rural	60	27.30
Urban	160	72.70
Total	220	100

Figure: 6.9 Native Place of Child



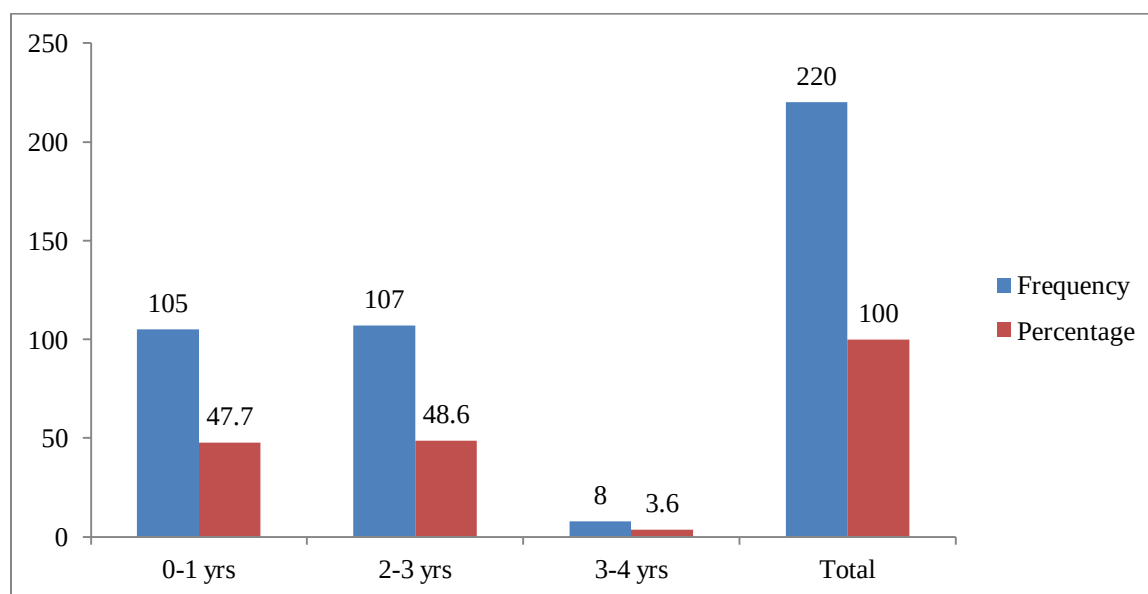
Source: Field Survey

Table 6.9 shows native place of child labour working in Lucknow district Out of 220 respondent 60 respondents belong to village which constitute 27.3 % while 160 respondents are from urban areas which constitute 72.7 %. Data shows that majority of child labour are from urban background.

Table 6.10 Experience of Child

Year	Frequency	Percentage %
0-1 yrs	105	47.70
2-3 yrs	107	48.60
3-4 yrs	8	3.60
Total	220	100

Figure: 6.10 Experience of Child



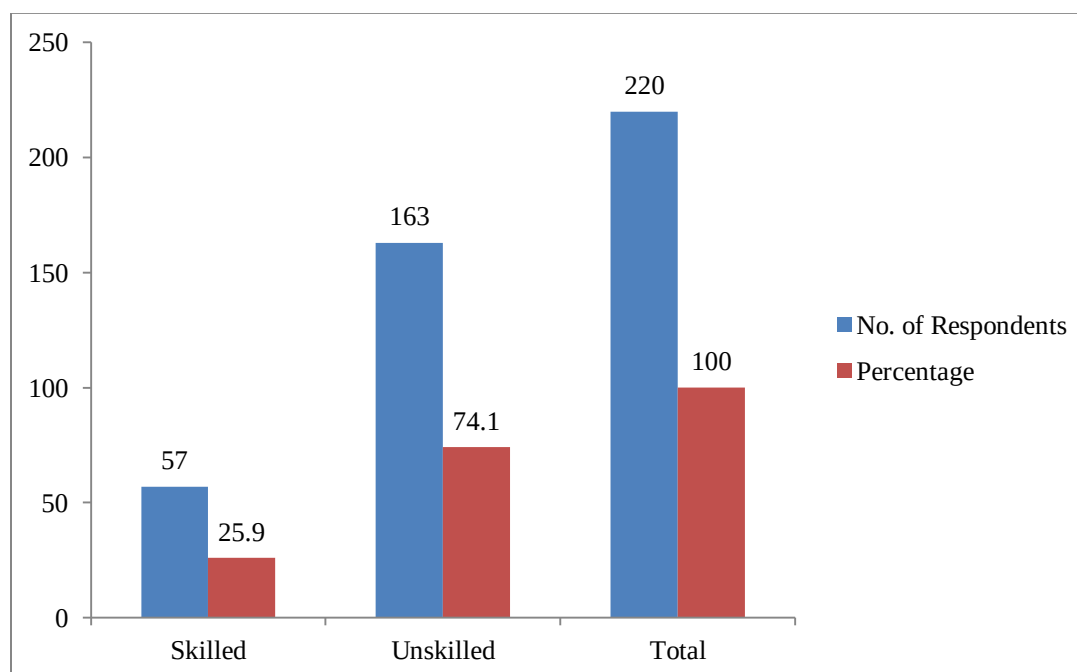
Source: Field Survey

Table 6.10 shows that 185 child labour out of 220 respondents are working for 1 year below. 107 seven child are working for 2-3 years (48.6%) while, only 8 labour on working for 3-4 years.

Table 6. 11 Nature of Work

Nature of work	No. of Respondents	Percentage %
Skilled	57	25.90
Unskilled	163	74.10
Total	220	100

Figure: 6. 11 Nature of work



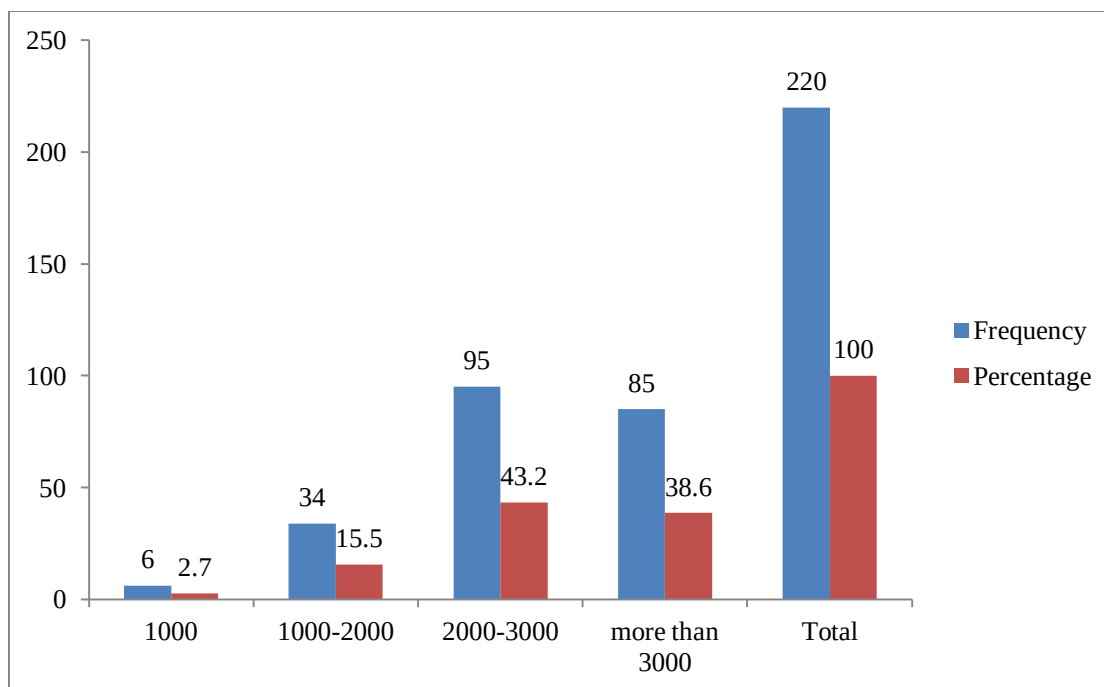
Source: Field Survey

Table 6.11 show, According to table 6.11, the number of skilled child labourers working on tea and dhaba are 57, of which 25.9 % and 163 children are doing unskilled work, of which is 74.1 %.

Table 6.12 Monthly Income of Child

Monthly income (Rs)	Frequency	Percentage %
1000	6	2.70
1000-2000	34	15.50
2000-3000	95	43.20
more than 3000	85	38.60
Total	220	100

Figure: 6.12 Monthly Income of Child



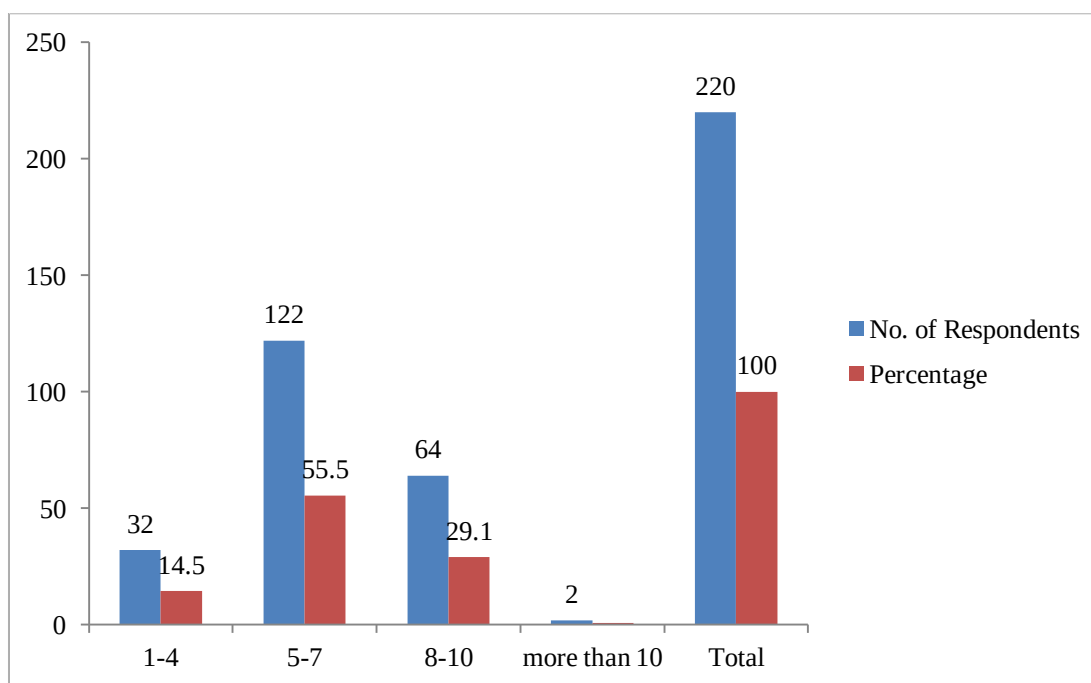
Source: Field Survey

Table number 6.12, tells that 6 child labourers earn 1000 rupees in a month, 34 children earn 1000 to 2000 rupees, 95 children earn 2000 to 3,000 rupees and 85 children earn more than 3,000 rupees per month.

Table 6.13 Members in the Family

Members	No. of Respondents	Percentage %
1-4	32	14.50
5-7	122	55.50
8-10	64	29.10
more than 10	2	0.90
Total	220	100

Figure: 6.13 Members in the Family



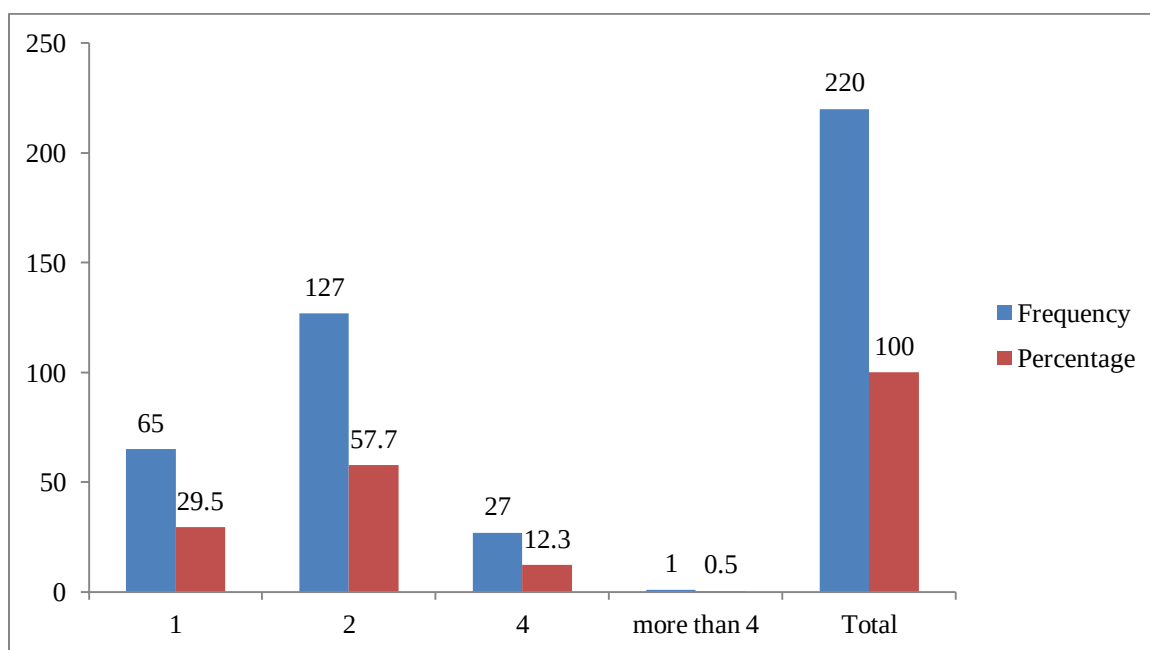
Source: Field Survey

Table 6.13 shows members in the Family of child labour in Lucknow District. 14.5 % respondent have 1-4 members in the family, 55.5 % respondent's family have 5-7 members, 29.1 % respondent have 8-10 members in the family. And 0.9 respondents have more than ten members in the family.

Table 6.14 Members Working in the Family of Child

Members	Frequency	Percentage %
1	65	29.5
2	127	57.7
4	27	12.3
more than 4	1	0.5
Total	220	100

Figure: 6.14 Members Working in the Family of Child



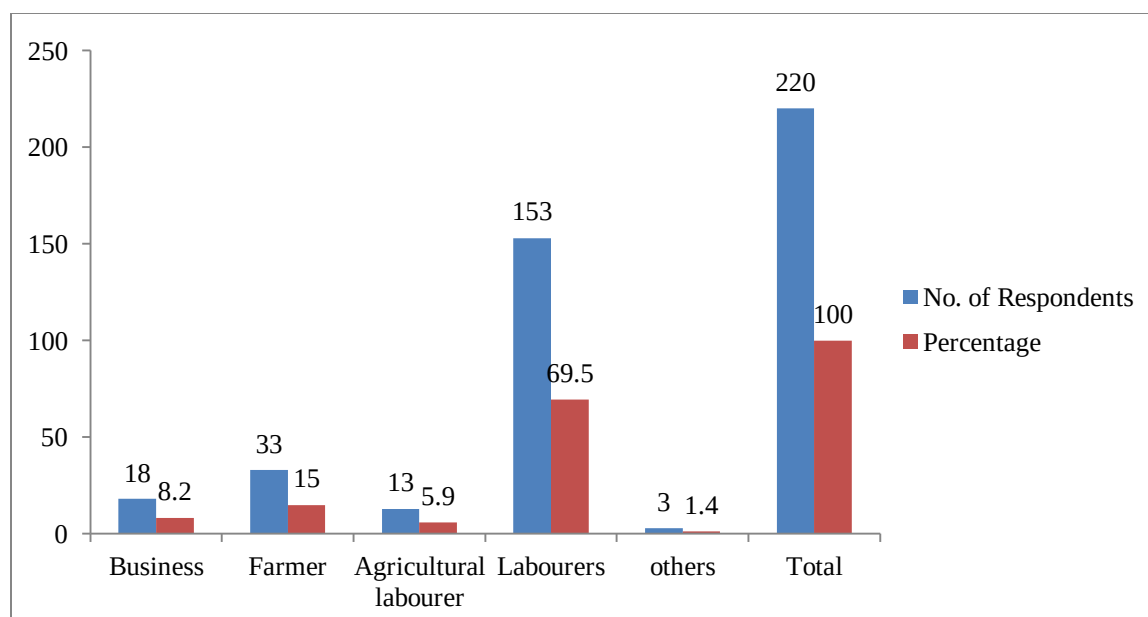
Source: Field Survey

According to Table 6. 14, 65 children said one person works in his house, 127 told that two people work in his house, 27 children told that 4 people work in his house and 1 child told them More than 4 people work at home.

Table 6.15 Parent's Occupation of Child

Occupation	No. of Respondents	Percentage %
Business	18	8.20
Farmer	33	150
Agricultural labourer	13	5.90
Labourers	153	69.50
others	3	1.40
Total	220	100

Figure: 6.15 Parent's Occupation of Child



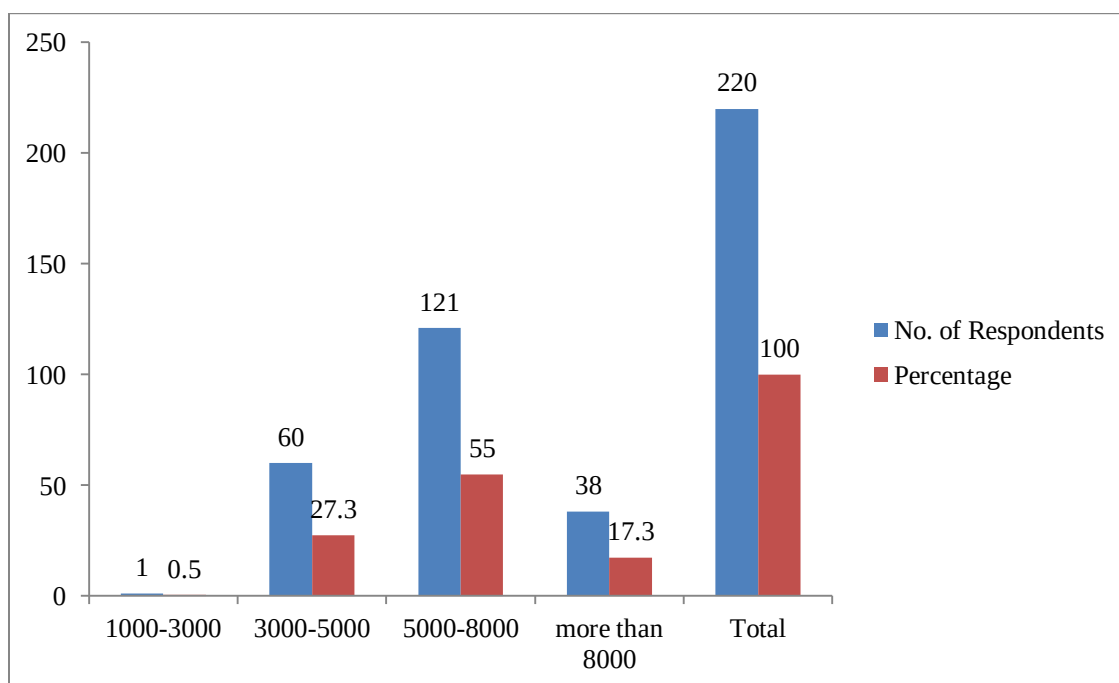
Source: Field Survey

Table and figure 6.15 shows Parents occupation of child labour in Lucknow district. 8.2 % respondent's father do small business for their livelihood. 15 % fathers of respondent do agriculture for their sustenance 5.9 % of father of respondent are agricultural labourer while father of 69.5 % respondent are labourers and father of 1.4 % respondent do some other works for their livelihood. Data shows that fathers of mostly child labour are labourer.

Table 6.16 Distribution of Respondents on the Basis of Monthly Income of Family

Income of family (Rs)	No. of Respondents	Percentage %
1000-3000	1	0.50
3000-5000	60	27.30
5000-8000	121	55.0
more than 8000	38	17.30
Total	220	100

Figure: 6.16 Distribution of Respondents on the Basis of Monthly Income of Family



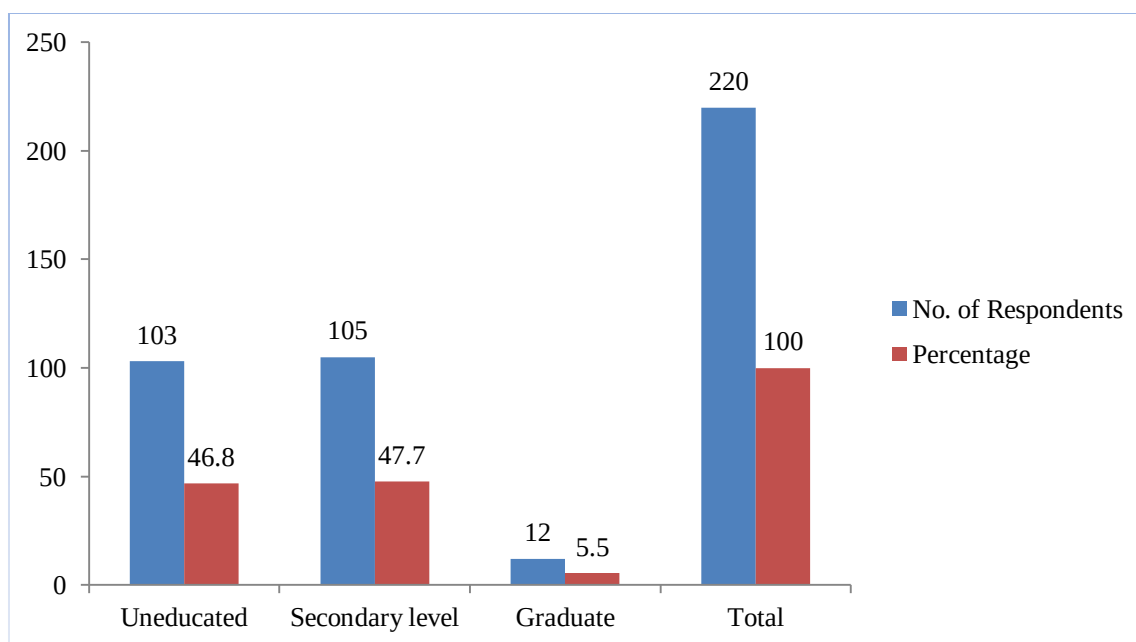
Source: Field Survey

Table and figure 6.16 shows the distribution of respondents on the basis of monthly income of family in the field area. 0.5 % respondent's family income is between Rs. 1000-3000 monthly, 27.3 respondents family income is between Rs 3000-5000 monthly, 55 % respondent's family income is between Rs. 5000-8000 and 17.3 respondent's family has more than Rs. 8000 monthly income.

Table 6.17 Status of Parent's Education

Education	No. of Respondents	Percentage %
Uneducated	103	46.80
Secondary level	105	47.70
Graduate	12	5.50
Total	220	100

Figure: 6.17 Status of Parent's Education

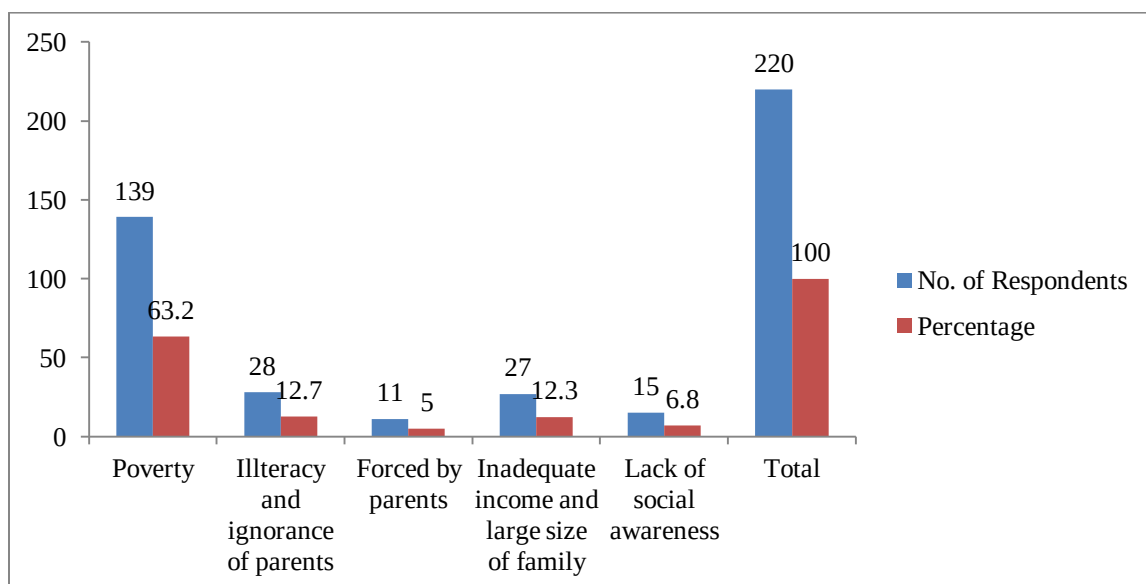


Source: Field Survey

Table and figure 6.17 shows status of parent's education of child labour in the study area. Out of 220 respondent parents, 103 respondents are uneducated, which constitute 46.8 %, parents of 105 respondents are educated up to secondary level, and parents of 12 respondents are graduate, which constitute 5.5 %. Data indicates that parents of majority child labour are illiterate.

Table 6.18 Reasons for Child Labour

Reasons	No. of Respondents	Percentage %
Poverty	139	63.20
Illiteracy and ignorance of parents	28	12.70
Forced by parents	11	5.00
Inadequate income and large size of family	27	12.30
Lack of social awareness	15	6.80
Total	220	100

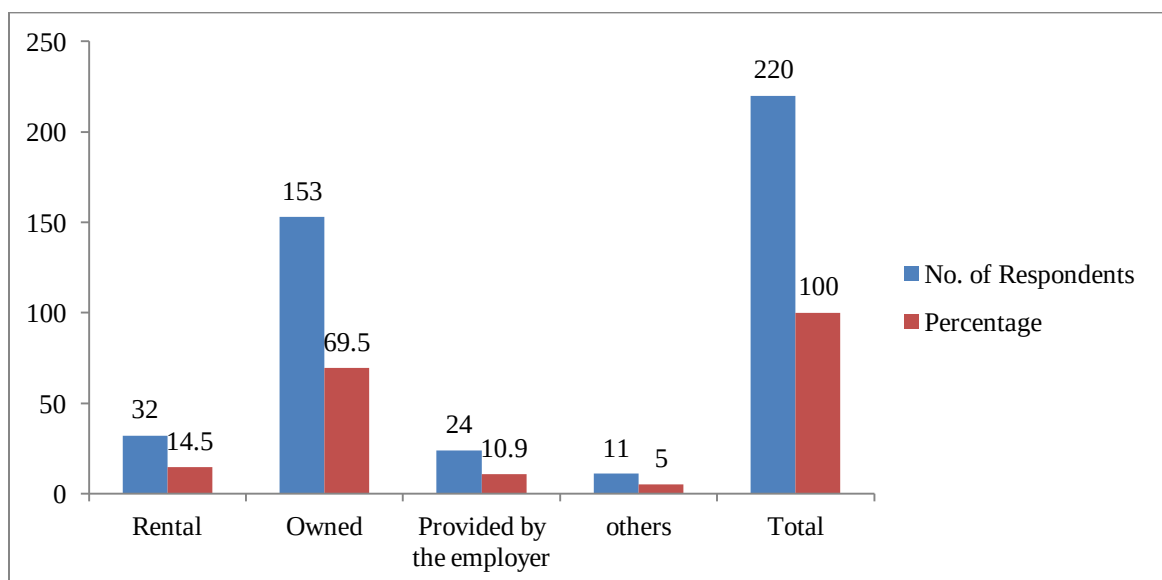
Figure: 6.18 Reasons for Child Labour

Source: Field Survey

Table and figure 6.18 show Reasons for child labour in Lucknow district. In the 220 research samples, 139 respondents are child labourers due to poverty 63.2 % of children working for poverty, 28 child labourers are due to the illiteracy of their parents, whose is 12.7%, the reason for 11 children's child labour is working with them by their parents, whose is 5%, the reason for the formation of child labourers of 27 children has come down to the family and the of these children is 12.3% and due to the formation of child labour of 15 children, there is a lack of social awareness, which is 6.8 %.

Table 6.19 Ownership of the House Where Your Family Lives

House	No. of Respondents	Percentage %
Rental	32	14.50
Owned	153	69.50
Provided by the employer	24	10.90
others	11	5.00
Total	220	100

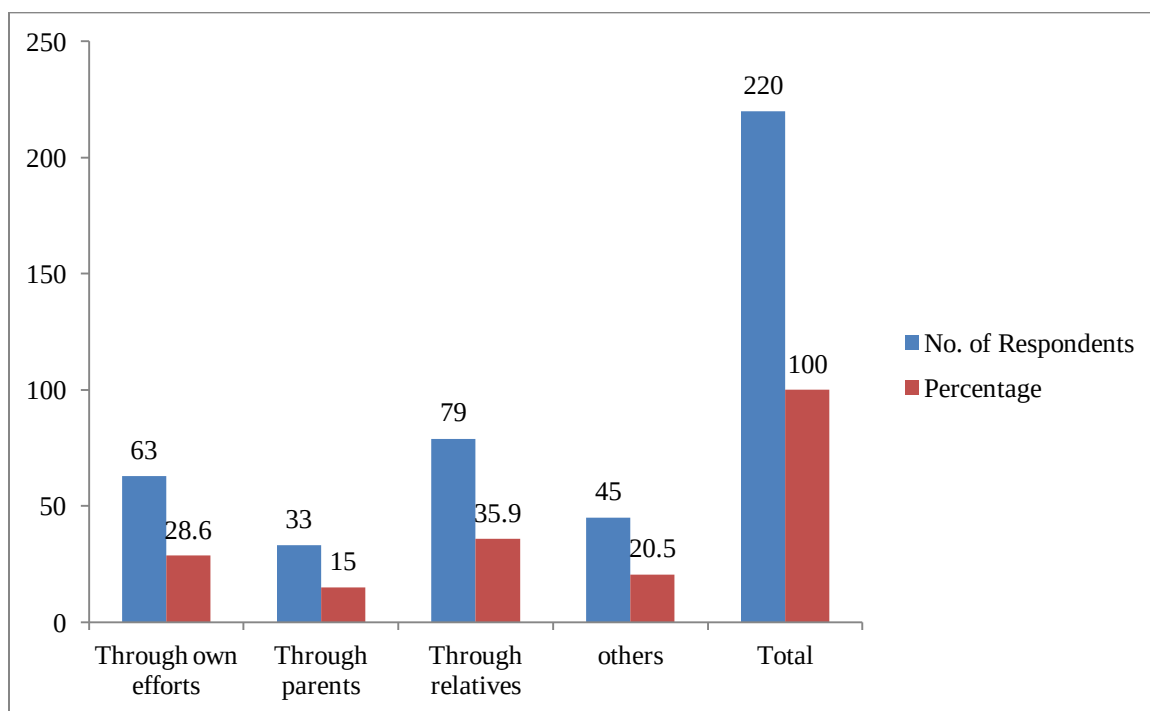
Figure: 6.19 Ownership of the House Where Your Family Lives

Source: Field Survey

Table and figure 6.19 shows type of ownership of the house where child labour family lives in Lucknow. 14.5 % child labour lives in the rented house, 69.5 % child labour has their own home in Lucknow. 10.9 % child labour are provided home by the employer and 5 % child labourer has other arrangement to for living. Data indicates that maximum child labour has their own home in Lucknow.

Table 6.20 How did you get Employment?

Getting employed	No. of Respondents	Percentage %
Through own efforts	63	28.60
Through parents	33	15.00
Through relatives	79	35.90
others	45	20.50
Total	220	100

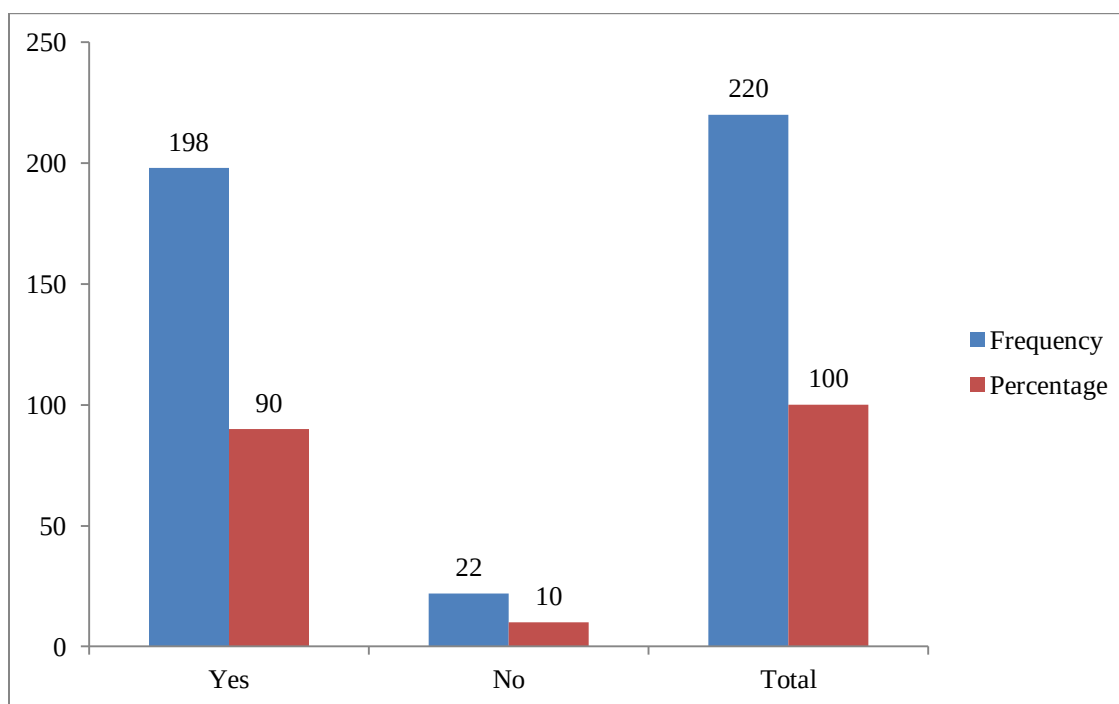
Figure: 6.20 How did you get Employment?

Source: Field Survey

Table and figure 6.20 show that respondents how you got employment child labour in the Lucknow district. Out of 220 respondent 63 respondent replies that they got employment through their own efforts which constitute 28.6 %, 33 respondent replies that they get employment through their parents which constitute 15 % while, 79 respondent reply that they get employment by the help of their relatives and 45 reply that some other people have also helped them to get employment. Data indicates that mostly child have get employment through the relatives.

Table 6.21 Father and Mother of Child Labour Both Alive or Not

Both alive	Frequency	Percentage %
Yes	198	90
No	22	10
Total	220	100

Figure: 6.21 Father and Mother of Child Labour Both Alive or Not

Source: Field Survey

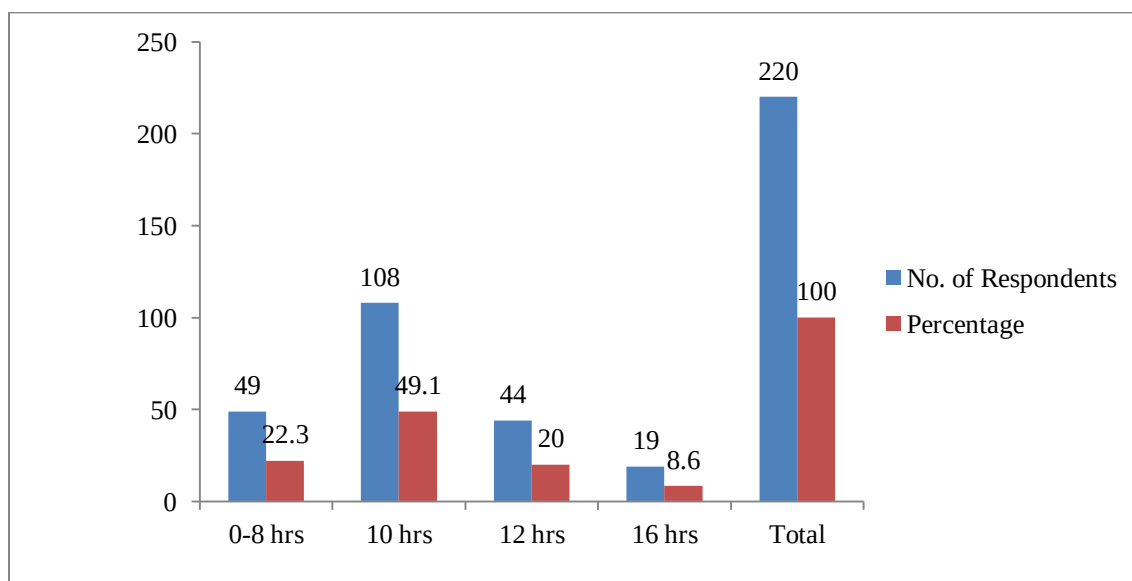
According to Table 6. 21, 198 children told that their parents live together, and 22 reported that their parents did not live together. Whose percentage is 90 and 10 respectively?

Table 6.22 Working Hours in a Day

Working hours	No. of Respondents	Percentage %
0-8 hrs	49	22.30
10 hrs	108	49.10
12 hrs	44	20

16 hrs	19	8.60
Total	220	100

Figure: 6.22 Working Hours in a Day

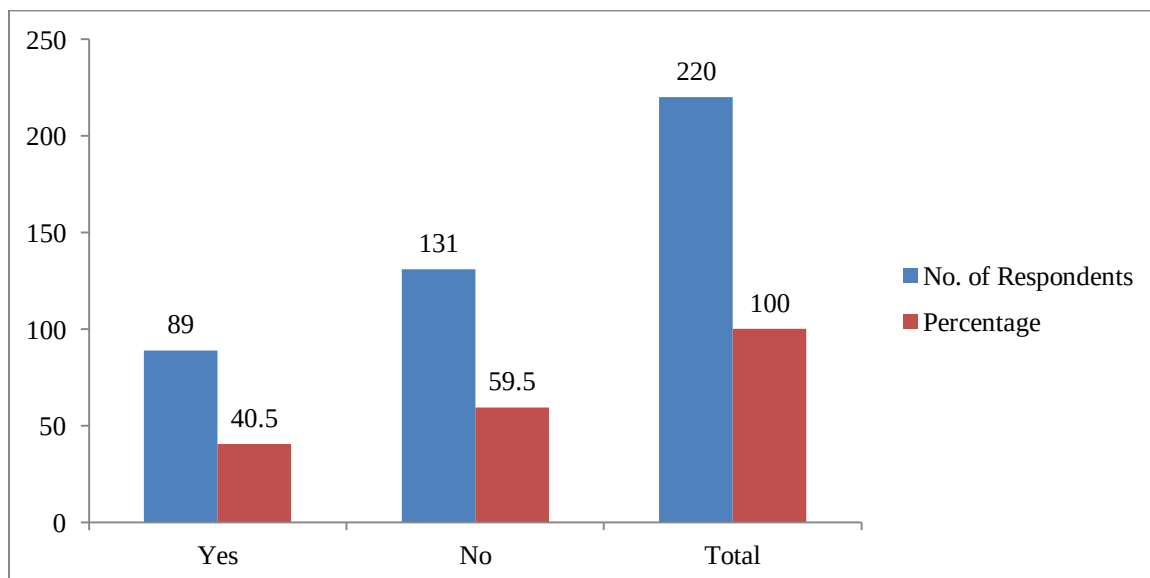


Source: Field Survey

Table and Figure 6.22 show working hours in a day. 22.3 % respondent says that they works for 0-8 hours a day, 49.1 respondent says that they works 10 hours a day, 20 % says they work 12 hours and 8.6 says that they works 16 hours a day.

Table 6.23 Rest Time between Working Hours

Rest time	No. of Respondents	Percentage %
Yes	89	40.50
No	131	59.50
Total	220	100

Figure: 6.23 Rest Time between Working Hours

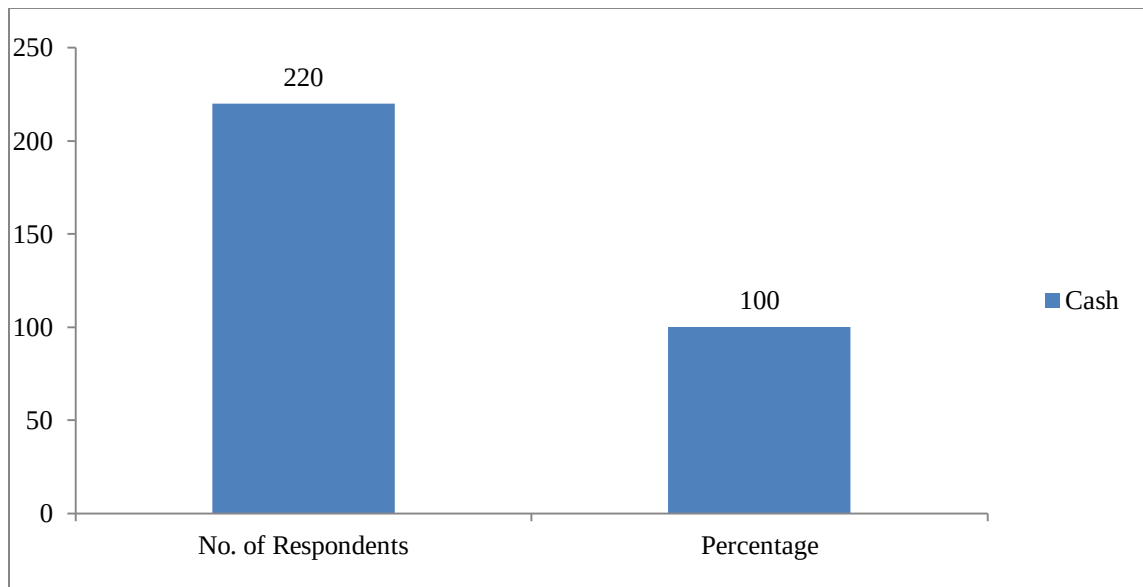
Source: Field Survey

Table and figure 6.23 show rest time between working hours. In the 220 sample taken in the research, 89 children said that they rest in the middle while doing the work, which is 40.5 % and 131 children, said that they do not rest during their work, which is 59.5 %. According to the research sample taken, most child labourers are not able to relax while doing their work.

Table 6.24 What is Mode of Wage Payment

Mode of payment	No. of Respondents	Percentage %
Cash	220	100

Figure: 6.24 What is Mode of Wage Payment



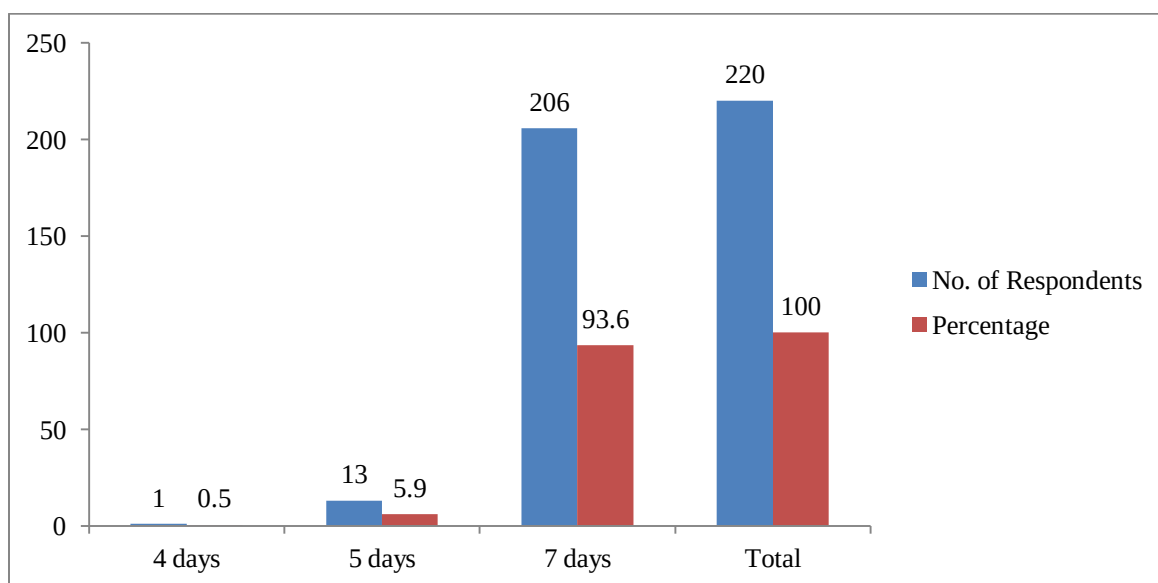
Source: Field Survey

According to Table 6.24, all 220 children said they get paid as cash.

Table 6. 25 Number of Days you Work in a Week

Days	No. of Respondents	Percentage %
4 days	1	0.50

5 days	13	5.90
7 days	206	93.60
Total	220	100

Figure: 6. 25 Number of Days you Work in a Week

Source: Field Survey

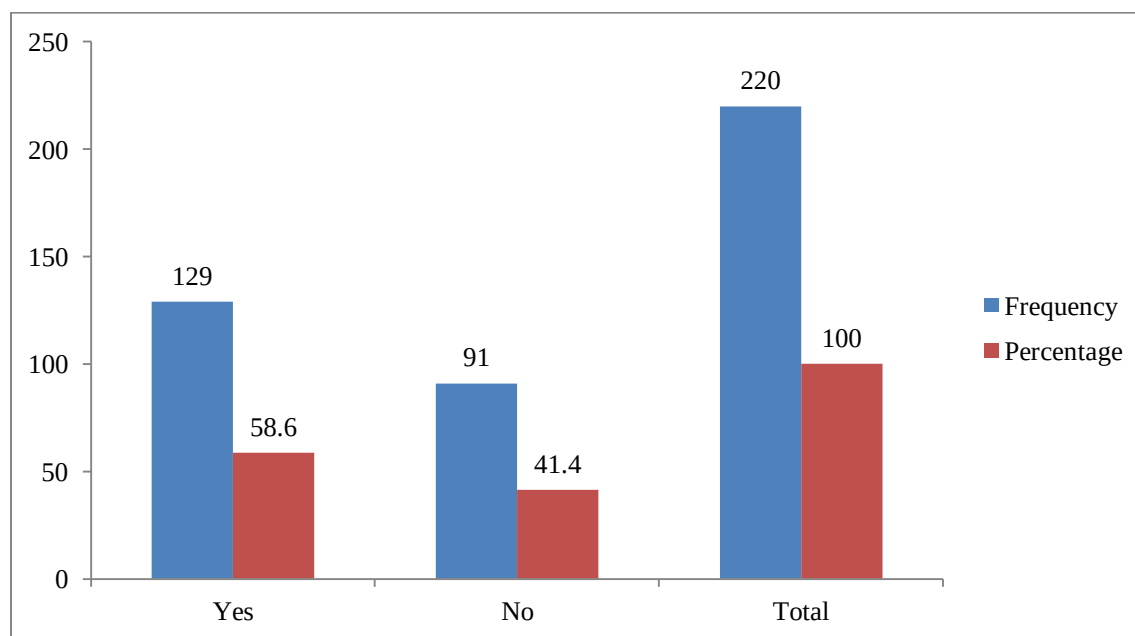
Table and Figure 6.25 show number of days respondents work in a week in the Lucknow district. 0.5 % respondent works 4 days in a week, 5.9 % respondent works in 5 days in a week while 93.6 respondent works in seven days. It clears from the data that maximum number of respondent works for whole week.

Table 6.26 Do you Enjoy a Holiday?

Holiday	Frequency	Percentage %
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Yes	129	58.60
No	91	41.40
Total	220	100

Figure: 6.26 Do you Enjoy a Holiday?



Source: Field Survey

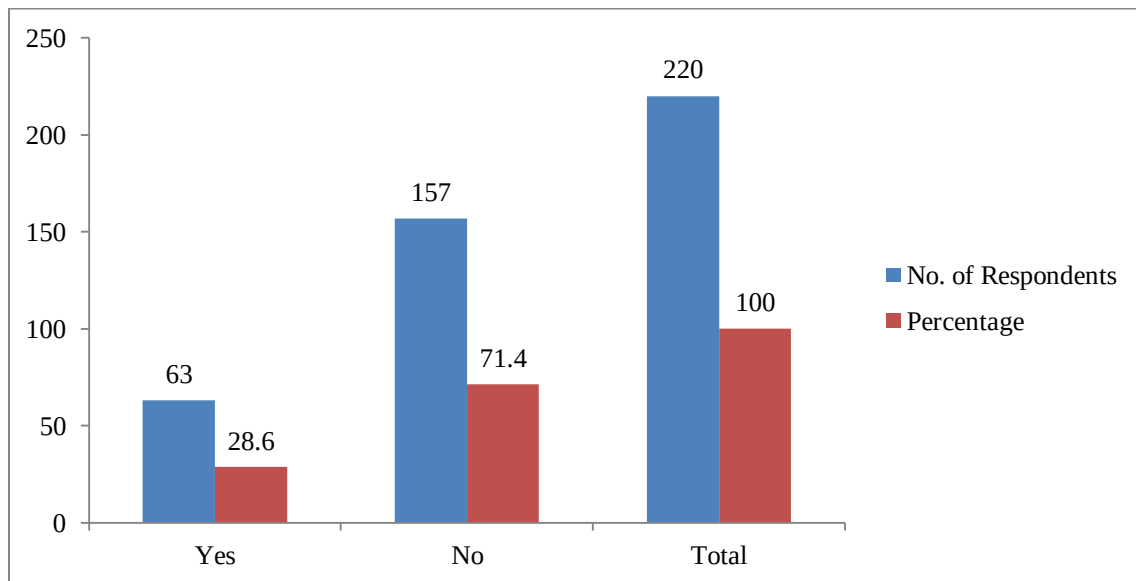
According to table 6. 26, after talking to 220 child labourers, in which 119 told that they get leave, of which is 58.6%. 91 Child Workers told that they do not get leave, they are 41. 4%.

Table 6.27 Wage Paid to the Child Labourers in Holidays

Holidays	No. of Respondents	Percentage %
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Yes	63	28.60
No	157	71.40
Total	220	100

Figure: 6.27 Wage Paid to the Child Labourers in Holidays



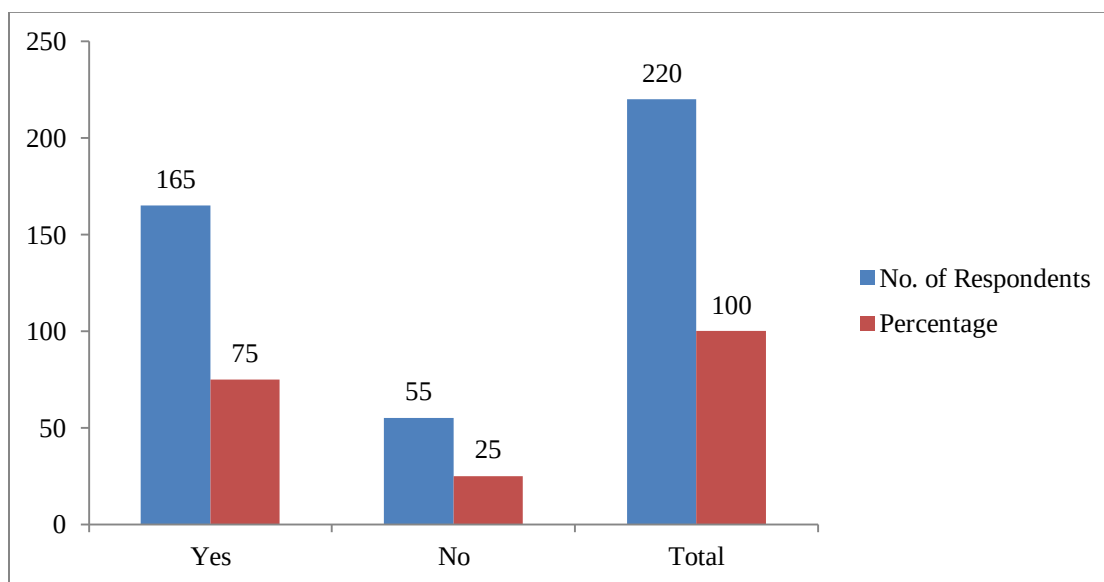
Source: Field Survey

Table and Figure 6.27 show Wage paid to the child labourers in holidays. Samples are taken in the research of 220 children, 63 of them said that they got holiday 28.6 % and 157 children said they do not get leave from their work; they have to work all the month without leave, whose is 71.4%.

Table 6. 28 Do your Employers treat you well?

Well treat by Employer	No. of Respondents	Percentage %
Yes	165	75
No	55	25
Total	220	100

Figure: 6. 28 Do your Employers treat you well?



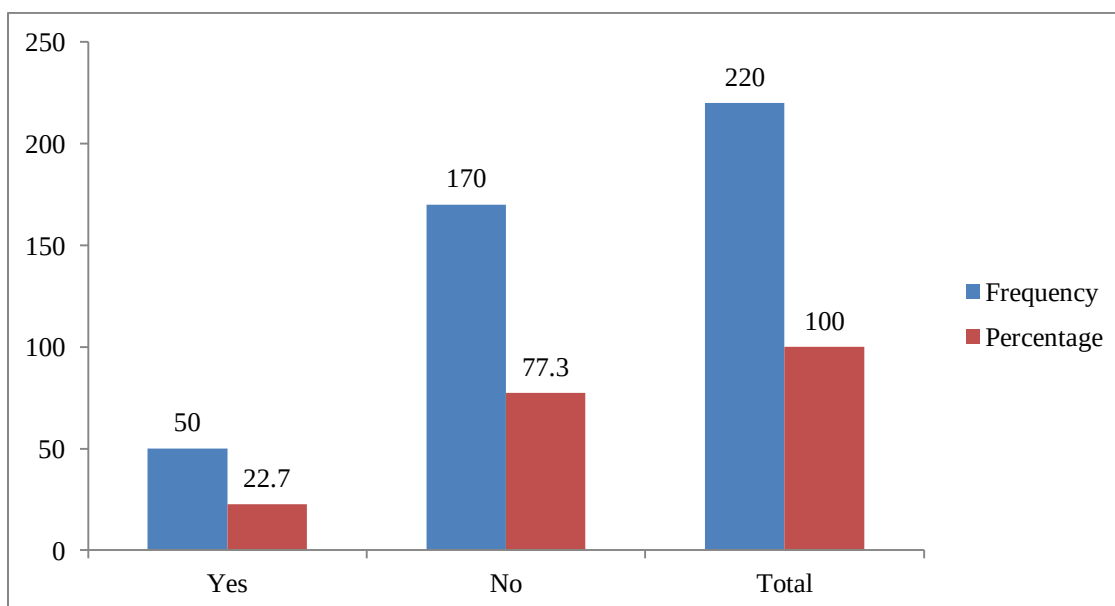
Source: Field Survey

Table and figure show 6.28 does your employer treat well with respondents in the field area. Of the total 220 respondents, 165 respondents said that their employer behaves well with them, 75 % and 55 respondents reported that their employer does not behaves well with them, which is 25 %.

Table 6. 29 Do you face any Problem on Work?

Any Problem	Frequency	Percentage %
Yes	50	22.70
No	170	77.30
Total	220	100

Figure: 6. 29 Do you face any Problem on Work?

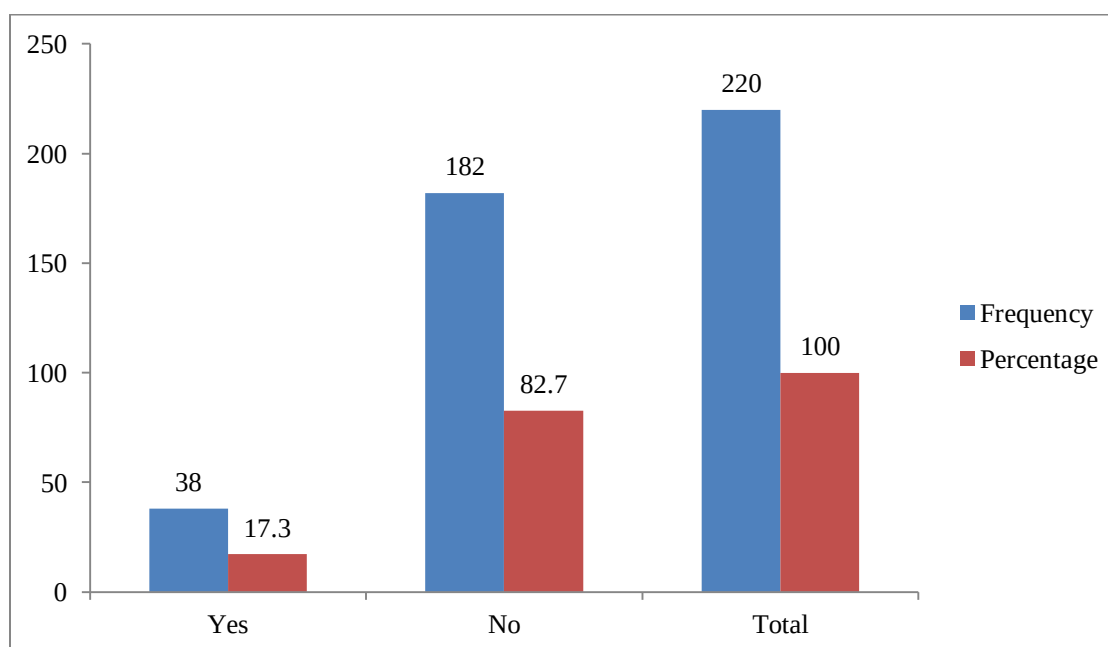


Source: Field Survey

According to Table 6.29, 50 child labourers have told that they have to face problems during their work, whose percentage is 27.3. 170 child labourers told them there is no problem during the work, there are 77. 7%.

Table 6. 30 Have you Suffered any Accident During Work

Accident	Frequency	Percentage %
Yes	38	17.30
No	182	82.70
Total	220	100

Figure: 6. 30 Have you Suffered any Accident During Work

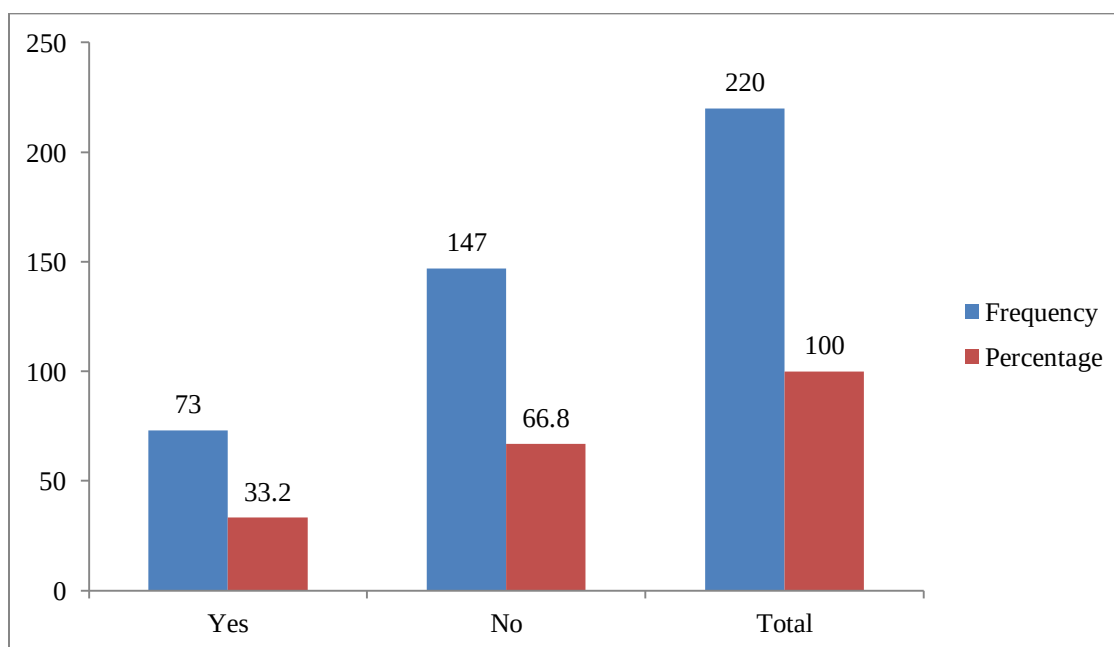
Source: Field Survey

Based on Table 6.30, 38 children out of 220 children working in tea and dhaba in Lucknow district said that during the work they faced the accident and 182 child labourers told them that due to their work there was no accident with them happened.

Table 6. 31 Are you Supposed to Stay Outside Home in Connection with Employment?

Outside employment	Frequency	Percentage %
Yes	73	33.2
No	147	66.8
Total	220	100

Figure: 6. 31 Are you Supposed to Stay Outside Home in Connection with Employment?

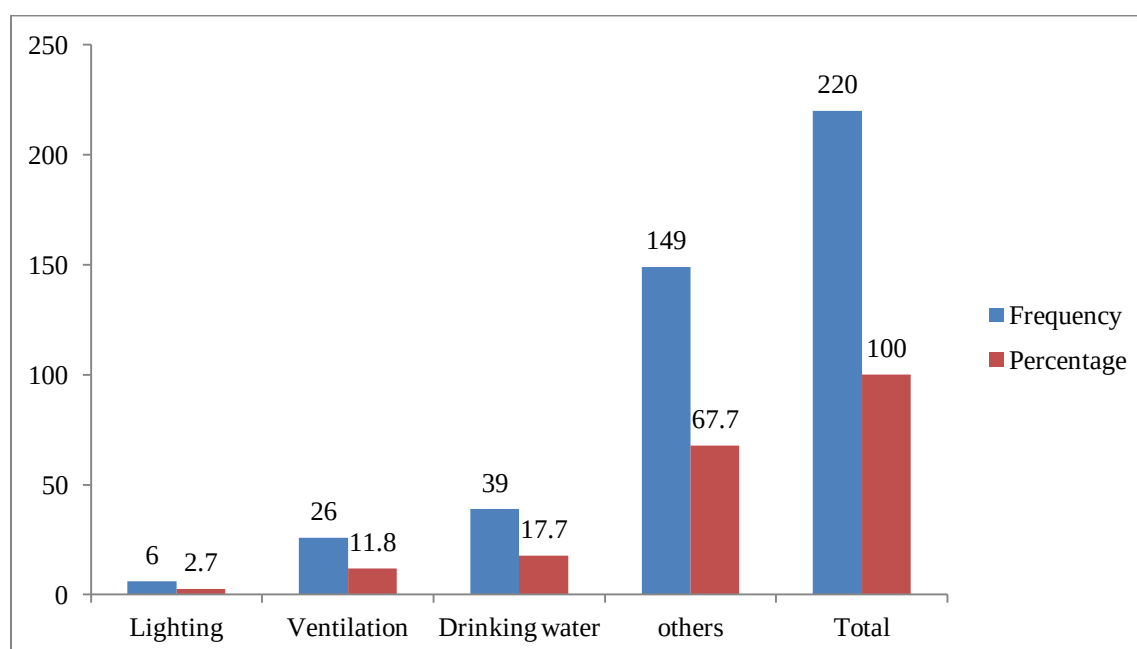


Source: Field Survey

According to table number 6.31, 73 child labourers stop functioning from home to work in 220 child labourers, 147 do not stop. 33.2% and 66.8% respectively?

Table 6. 32 Lack of Working Condition of your Work Place

working condition	Frequency	Percentage %
Lighting	6	2.70
Ventilation	26	11.80
Drinking water	39	17.70
others	149	67.70
Total	220	100

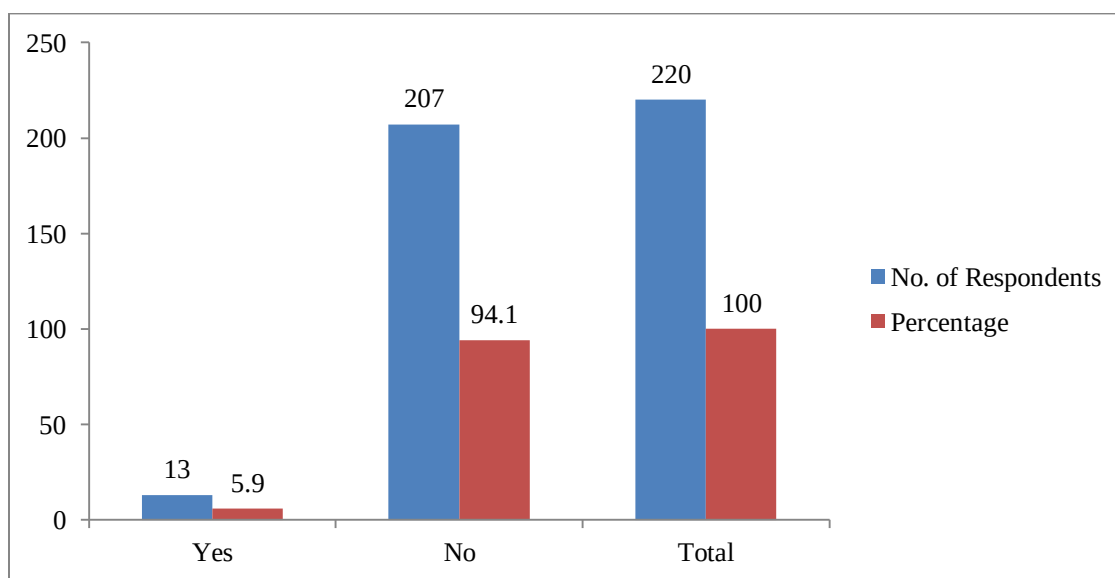
Figure: 6. 32 Lack of Working Condition of your Work Place

Source: Field Survey

According to Table 6.32, 220 children interviewed, they told about their work place, 6 children told where they did not get the light properly where they worked, 26 children told that the ventilation is not good at their work place, 39 children told that drinking water system is not good and 104 children told other things.

Table 6. 33 Do you Suffer any Disease?

Suffer any disease	No. of Respondents	Percentage %
Yes	13	5.90
No	207	94.10
Total	220	100

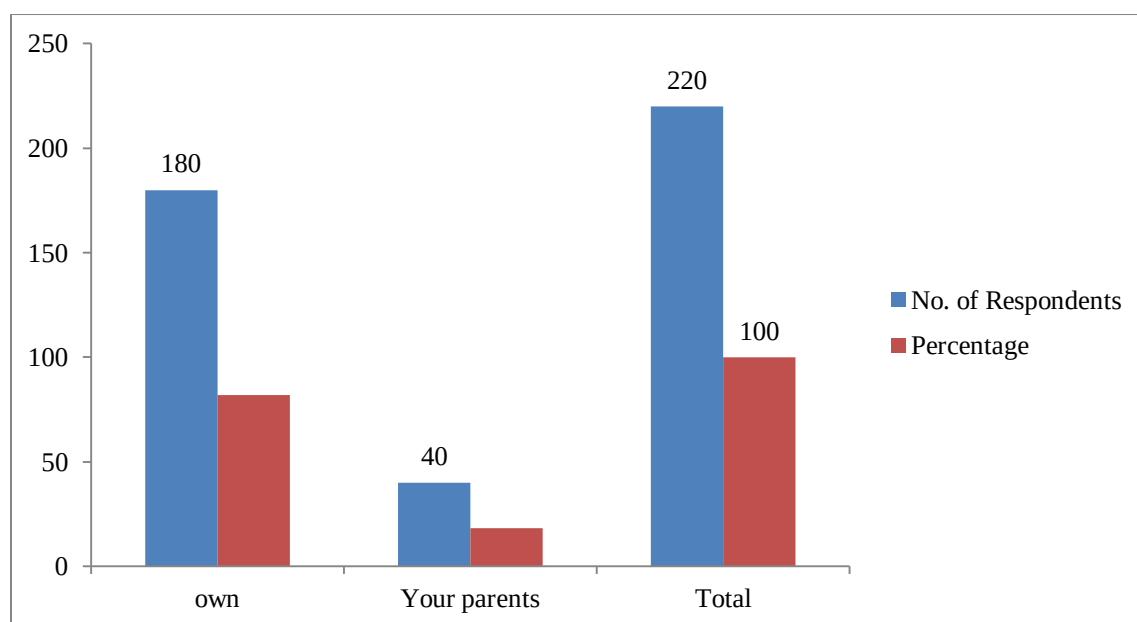
Figure: 6. 33 Do you Suffer any Disease?

Source: Field Survey

According to table 6.33, 13 child labourers are suffering from any disease and 207 child labourers said they are not suffering from any disease.

Table 6. 34 Receiver of Wages Earned by Child Labourer

Receiver	No. of Respondents	Percentage %
own	180	81.80
Your parents	40	18.20
Total	220	100

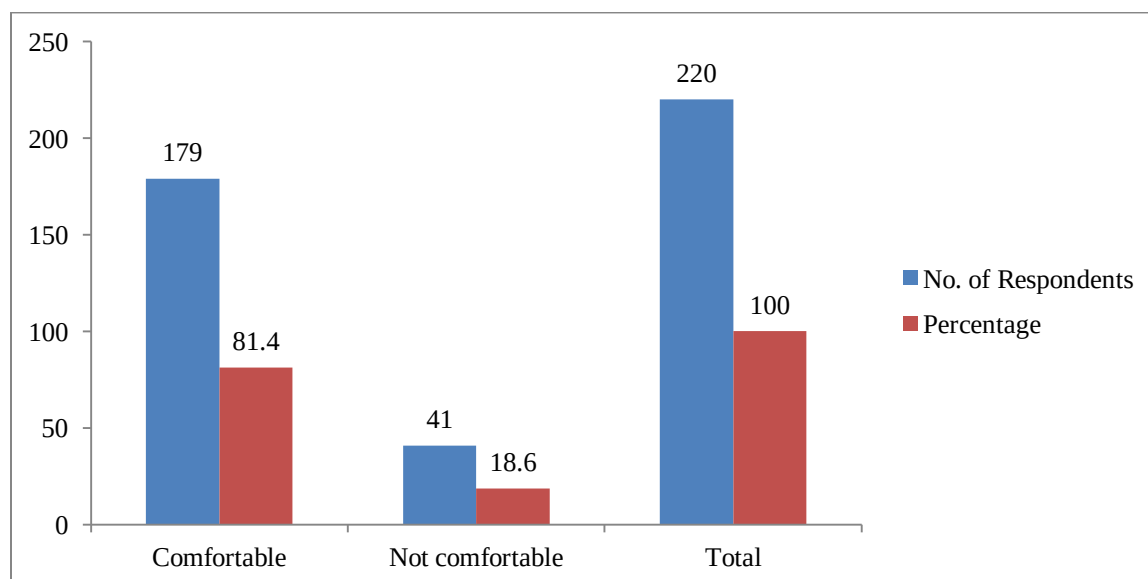
Figure: 6. 34 Receiver of Wages Earned by Child Labourer

Source: Field Survey

Table 6.21 shows receiver of wages earned by child labours in Lucknow district. 180 respondents say that they take the salaries of their work on their own, which is 81.8 % of 220 collected sample and 40 respondents told us that their salary is their parents whose is 18.2 %.

Table 6. 35 Working Conditions of Child Labourers

Employment working conditions	No. of Respondents	Percentage %
Comfortable	179	81.40
Not comfortable	41	18.60
Total	220	100

Figure: 6. 35 Working Conditions of Child Labourers

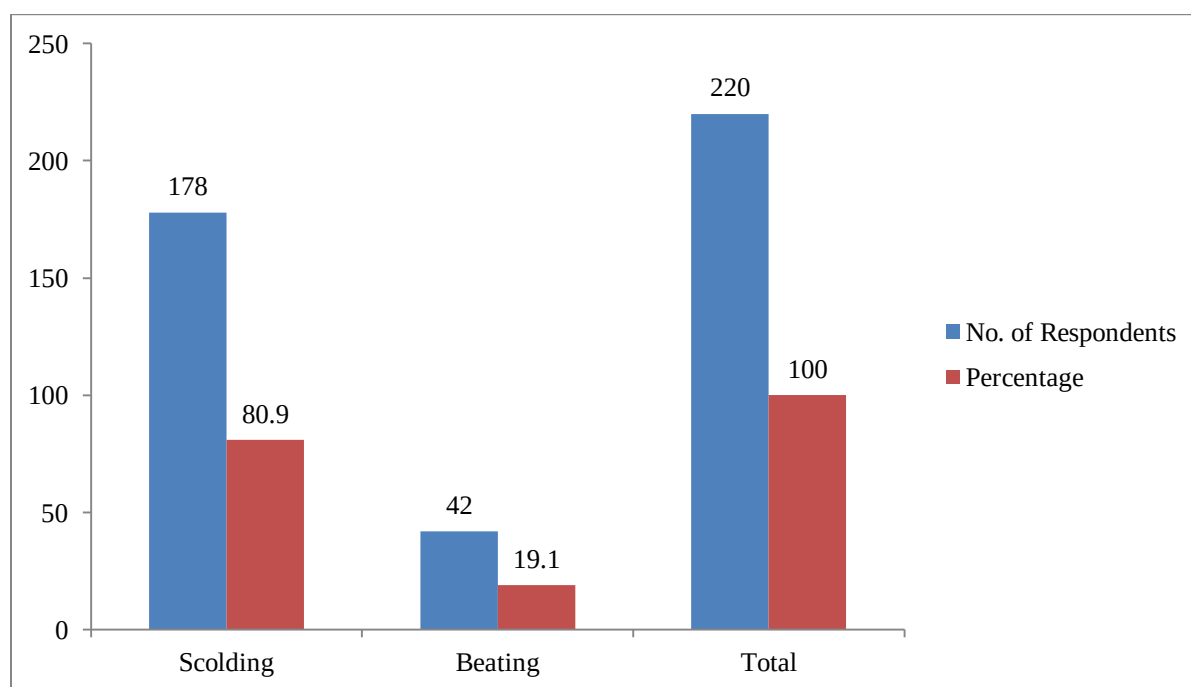
Source: Field Survey

Table 6.35 shows that about 220 child labourers working on tea and dhaba in Lucknow district, when talking about their work, 179 child labourers 81.4 % reported that their condition is comfortable and 41 working conditions of children not comfortable, which is 18.6 %.

Table 6. 36 Punishment by the Employer

Form of Punishment	No. of Respondents	Percentage %
Scolding	178	80.90
Beating	42	19.10
Total	220	100

Figure: 6. 36 Punishment by the Employer



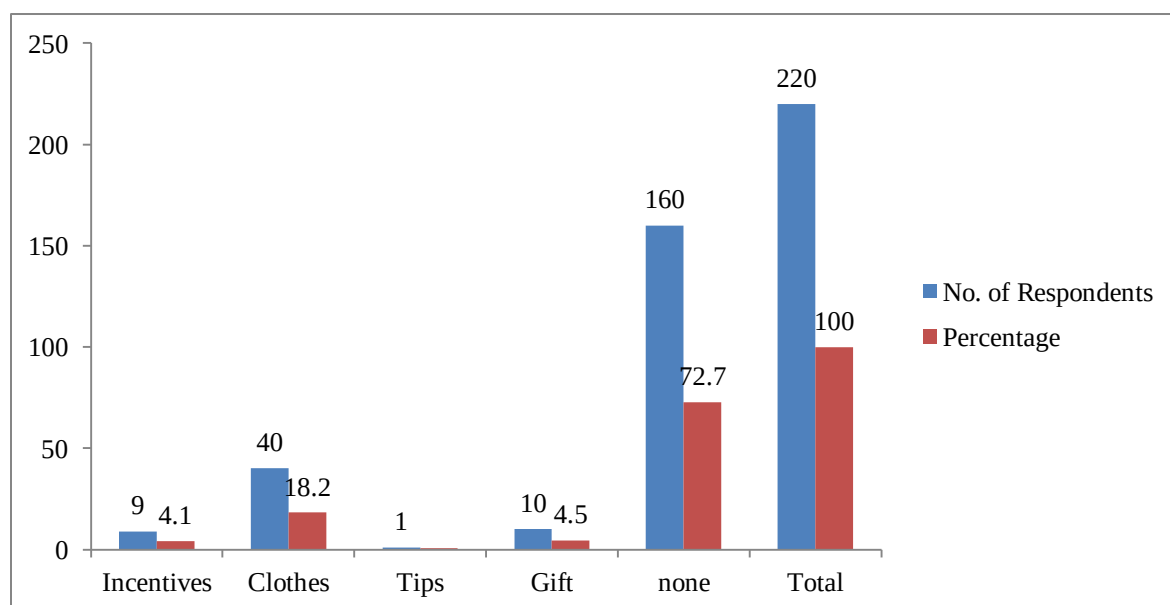
Source: Field Survey

Table and Figure 6.36 show punishment by the employer to the child labour in the Lucknow district. During the work 178 children are scolded for wrongdoing while working, which is 80.9 %, and 42 children are beaten for wrongdoing during the work, which is 19.1 %.

Table 6. 37 Kinds of Benefits Aailed by the Children

Kinds of Benefits	No. of Respondents	Percentage %
Incentives	9	4.10
Clothes	40	18.20
Tips	1	0.50
Gift	10	4.50
none	160	72.70
Total	220	100

Figure: 6. 37 Kinds of Benefits Aailed by the Children

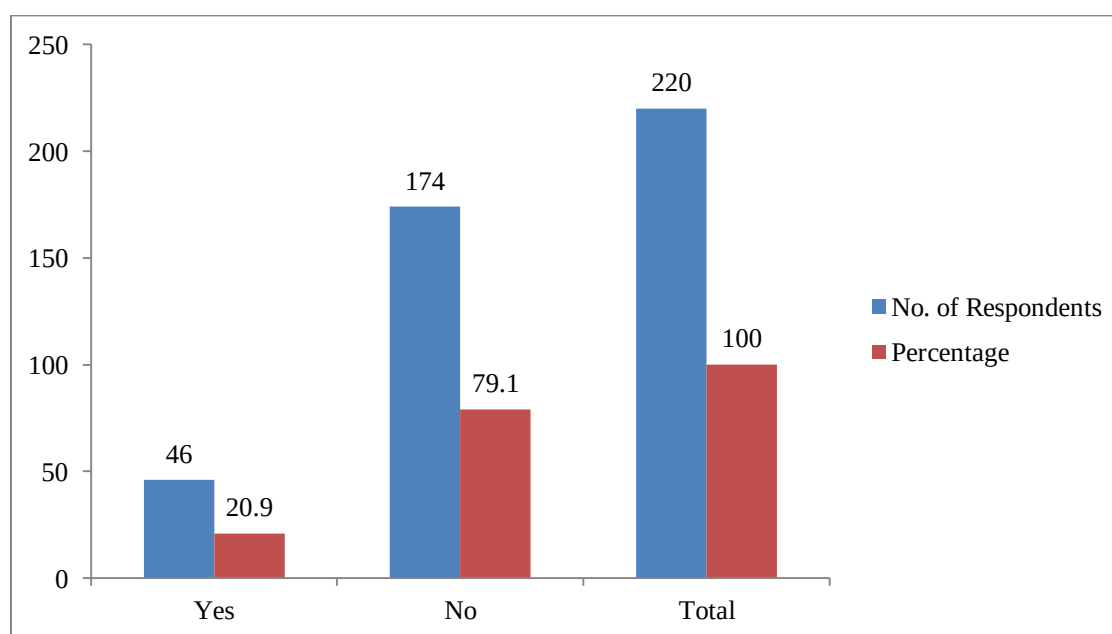


Source: Field Survey

According to table 6.37, shows the benefits of child labour. 9 child labourers told them get encouragement money, 40 told them to get clothes, 1 told them get tip, 10 told them get gifts and 160 told them they did not get anything.

Table 6. 38 Availability of First Aid at The Workplace in Case of Emergency

First aid facility	No. of Respondents	Percentage %
Yes	46	20.90
No	174	79.10
Total	220	100

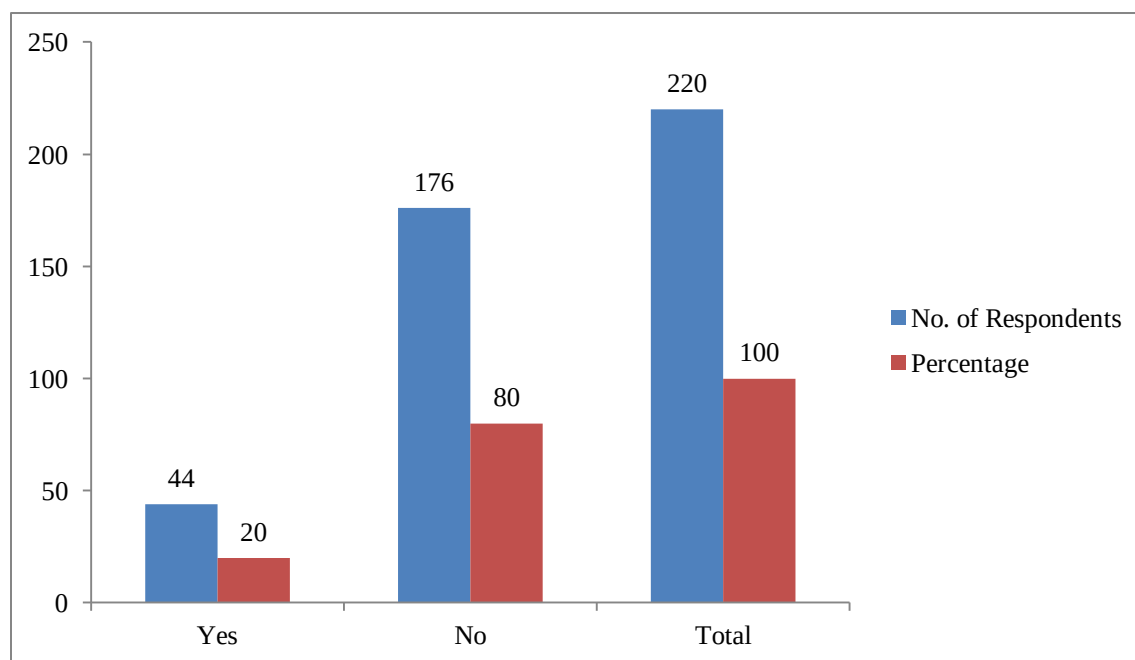
Figure: 6. 38 Availability of First Aid at The Workplace in Case of Emergency

Source: Field Survey

Table 6 38, out of 220 child labourers, 46 said that they have a first aid system and 174 told that there is no provision of first aid. The percentage of both of them is 20.9 % and 79.1 % respectively

Table 6. 39 Working During Night

Night work	No. of Respondents	Percentage %
Yes	44	20
No	176	80
Total	220	100

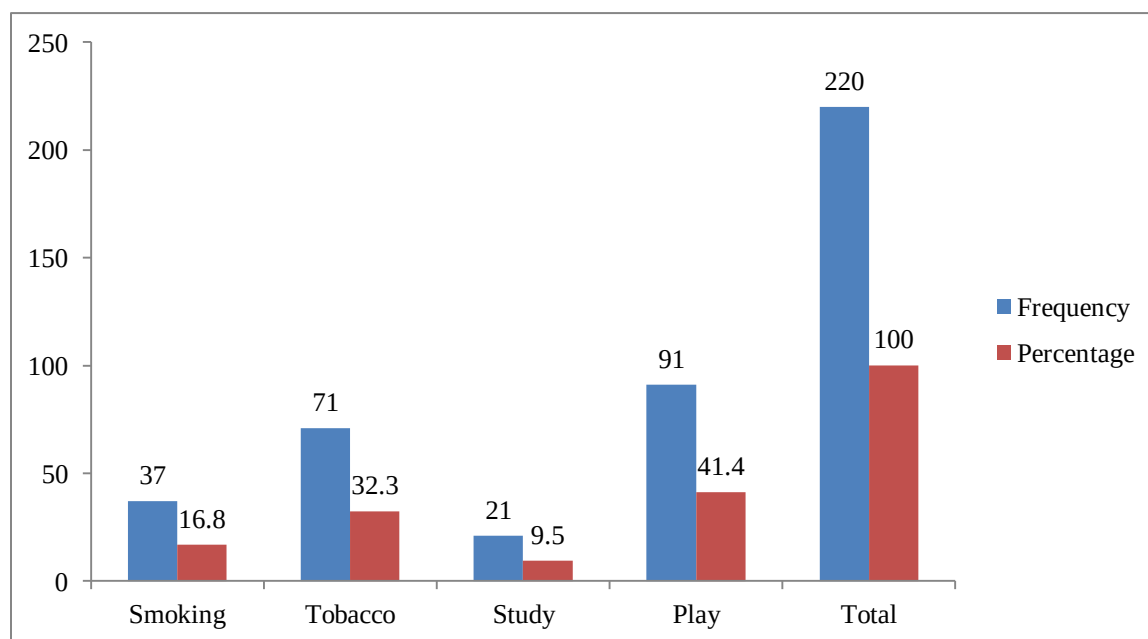
Figure: 6. 39 Working During Night

Source: Field Survey

In Table 6.39 show, 20 % of child labour work in the night, which is 44. 80 % and child labourers do not work in the night, which is 176, which is very high, from child labourers working in the night.

Table 6. 40 Habits of Child Labour

Habits	No. of Respondents	Percentage %
Smoking	37	16.80
Tobacco	71	32.30
Study	21	9.50
Play	91	41.40
Total	220	100

Figure: 6. 40 Habits of Child Labour

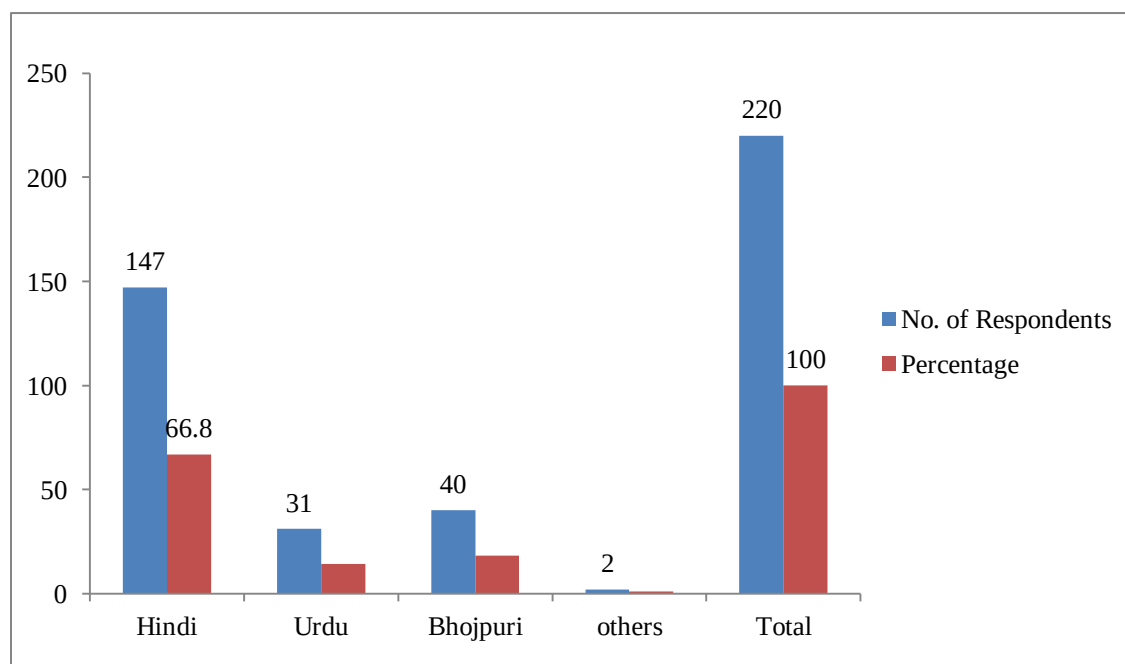
Source: Field Survey

In table 6.40, 16.8 % of the child labour told that they have a habit of smoking, 32.3 % of the child labour told that they have the habit of eating tobacco, 9.5 % of the child labour said they have a habit of reading and 41.4 % said they like the game.

Table 4. 41 Mother Tongue of Child Labour

Mother tongue	No. of Respondents	Percentage %
Hindi	147	66.80
Urdu	31	14.10
Bhojpuri	40	18.20
others	2	0.90
Total	220	100

Figure: 4. 41 Mother Tongue of Child Labour

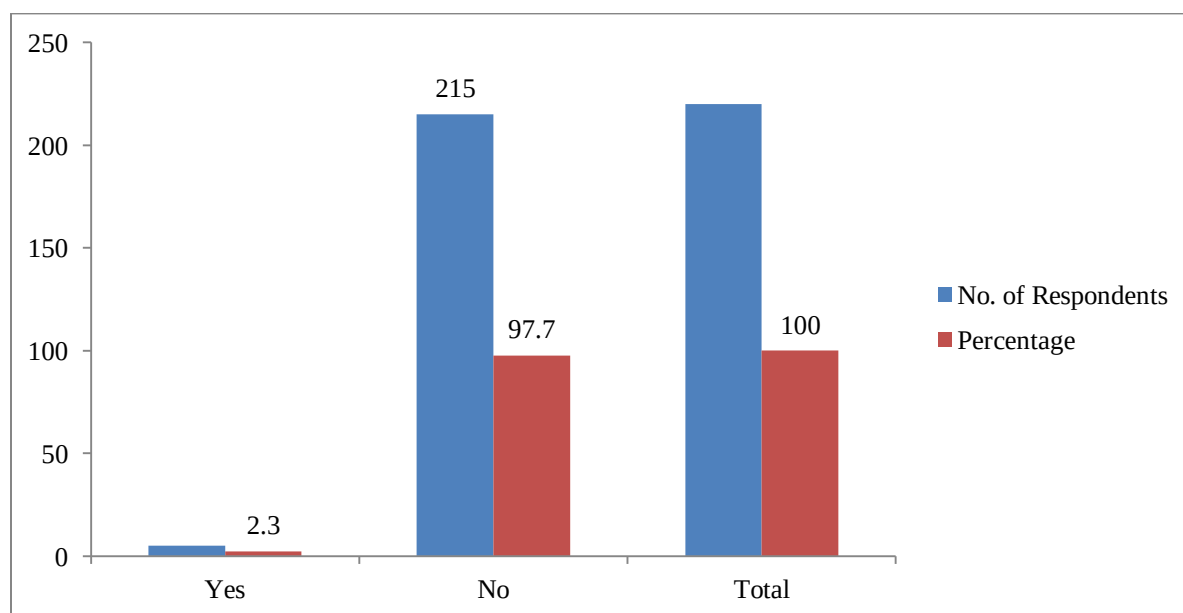


Source: Field Survey

Table and figure 6.41 shows mother tongue of child labour working in Lucknow district. 66.8 % respondent speaks Hindi, 31 % child labour speaks Urdu, 40 % respondent speaks Bhojpuri and 2 % speak other language. Thus data indicates that mostly child labourer are Hindi speaking.

Table 6.42 Advance Given to Parents

Advance given	No. of Respondents	Percentage %
Yes	5	20.3
No	215	97.70
Total	220	100

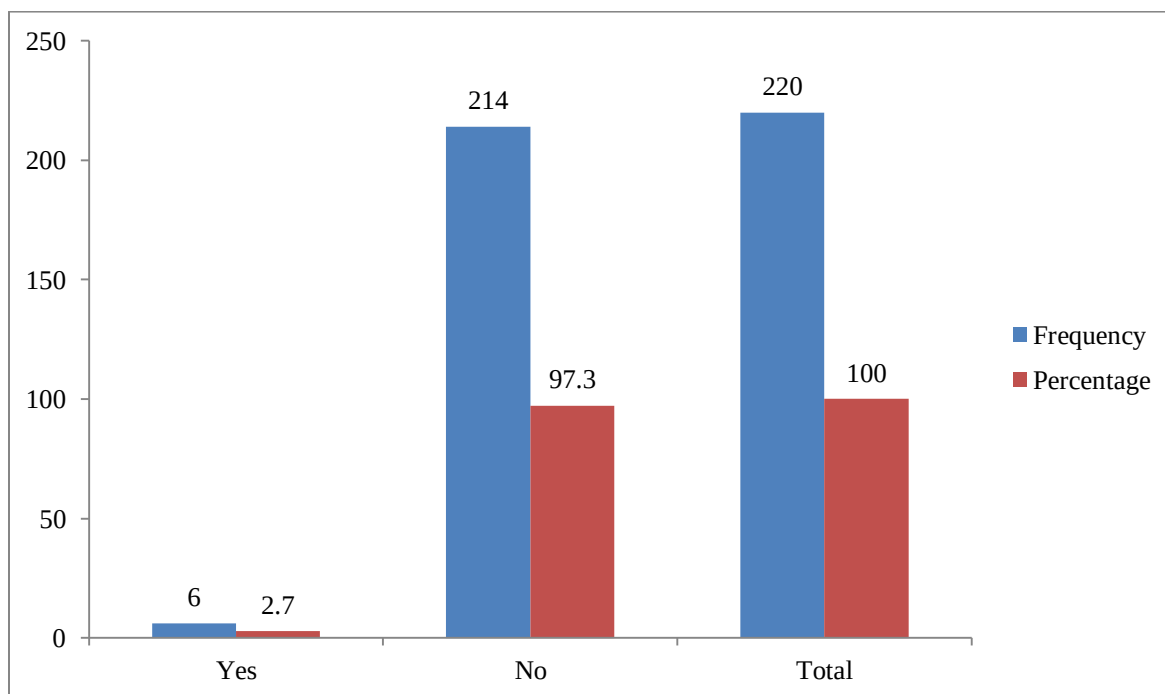
Figure: 6.42 Advance Given to Parents

Source: Field Survey

Table 6.42, out of 220 child labours, 5 child labourers said that their parents have taken advance money from their employer for their work and 215 child labourers informed that their parents did not take any advance money from their owner. Table analysis shows that parents of more child labourers have not taken any advance money from their owners.

Table 6. 44 Deduction Made in Wages

Deduction In wage	Frequency	Percentage %
Yes	6	2.70
No	214	97.30
Total	220	100

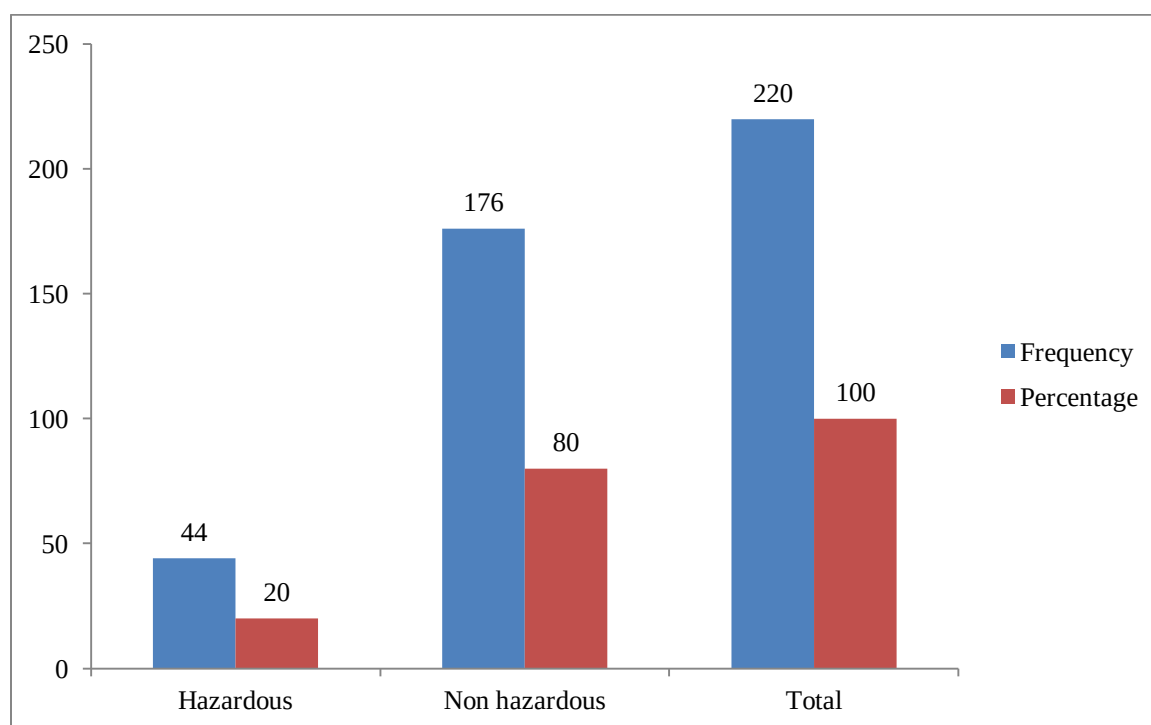
Figure: 6. 44 Deduction Made in Wages

Source: Field Survey

According to Table 6.44, 6 child labourers reported that their wages are deducted and 214 child labourers have reported that no deduction is made from their wages.

Table 6. 45 Distribution of Children on the Basis of Nature of Labours

Nature	Frequency	Percentage %
Hazardous	44	20
Non hazardous	176	80
Total	220	100

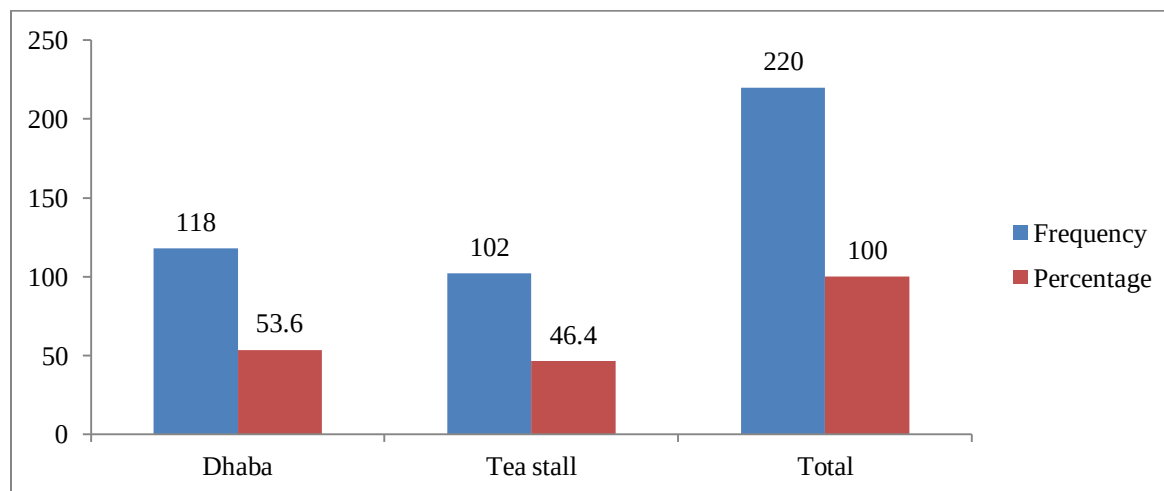
Figure: 6. 45 Distribution of Children on the Basis of Nature of Labours

Source: Field Survey

According to Table 6.45, 44 child labourers have told that they also have to do dangerous work during their work and 176 child labourers said they do non-hazardous work.

Table 6. 46 Fields of Child Labour Work

Fields	Frequency	Percentage %
Dhaba	118	53.60
Tea stall	102	46.40
Total	220	100

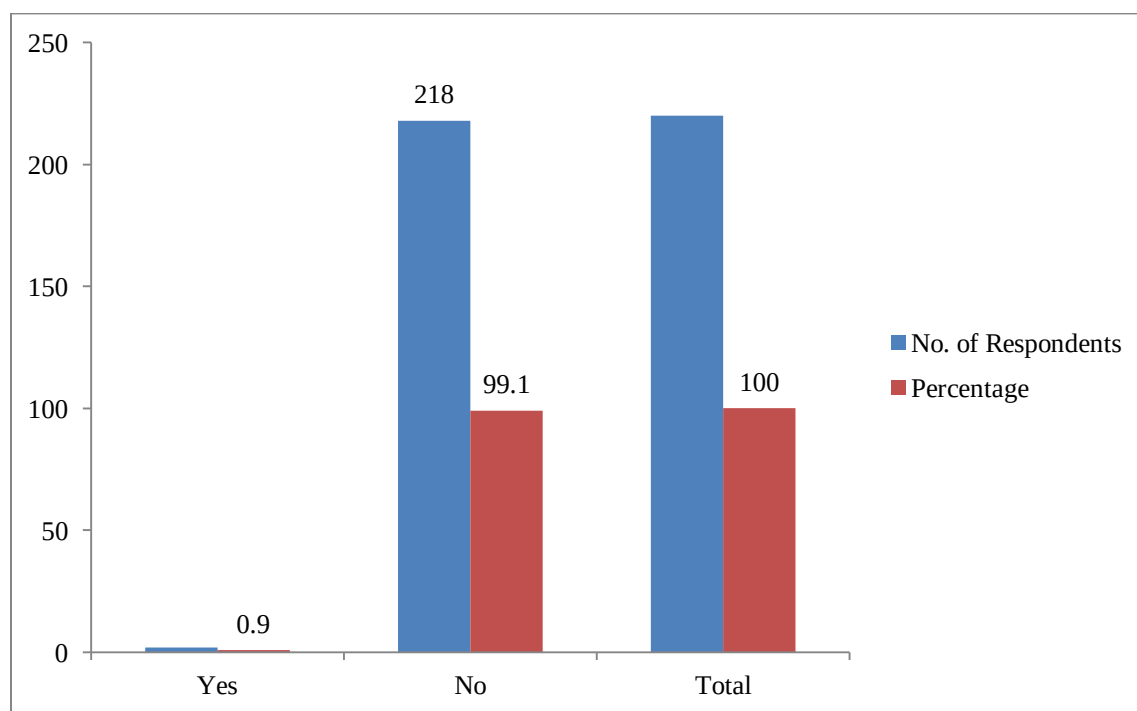
Figure: 6. 46 Fields of Child Labour Work

Source: Field Survey

According to Table 6.46, the research student surveyed 220 children working in tea stall and dhabas in Lucknow district, in which 102 children said that they work at the tea stall and 118 told that they work on the dhaba.

Table 6. 47 Do you know Right as a Worker?

Know rights	No. of Respondents	Percentage %
Yes	2	0.90
No	218	99.10
Total	220	100

Figure: 6. 47 Do you know Right as a Worker?

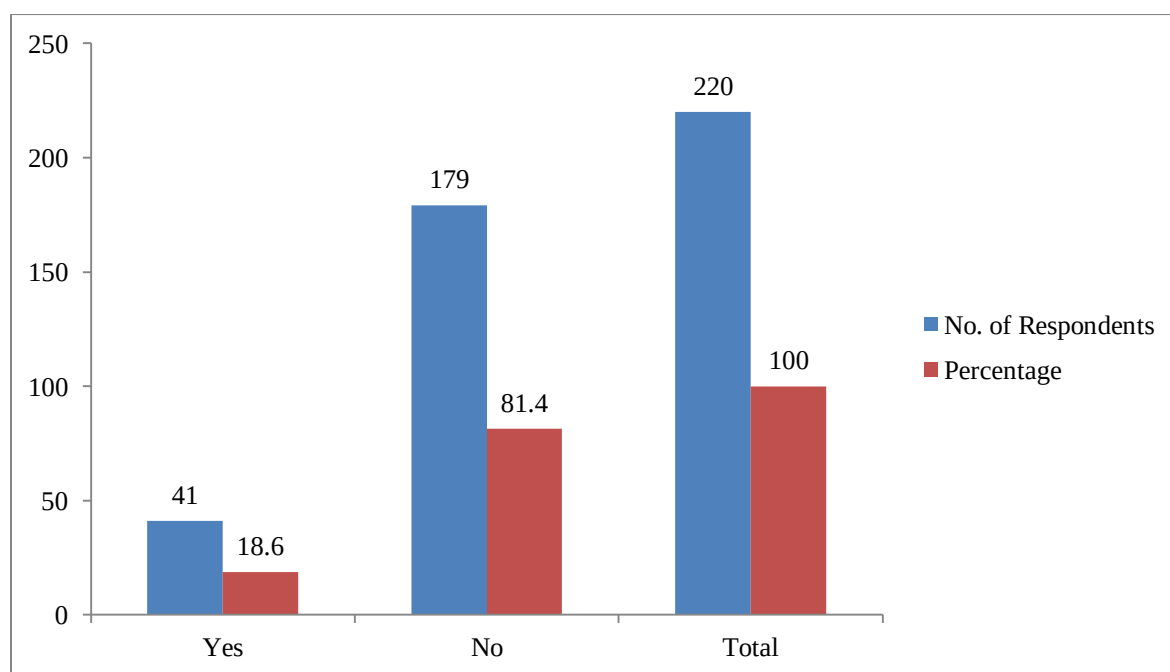
Source: Field Survey

According to Table 6.47, 220 Child Worker where interviewed to know their knowledge about their right as a worker. Then two child labourers told that they know what their rights are and 218 told them they do not know anything about the rights.

Table 6. 48 Knowledge of Law an Employment of Child Labour

Idea	No. of Respondents	Percentage %
Yes	41	18.60
No	179	81.40
Total	220	100

Figure: 6. 48 Knowledge of Law an Employment of Child Labour



Source: Field Survey

According to Table 6.48, 220 child labourers where interacted and 41 child labourers said they know that child labour is a crime and 179 children workers do not know what they said.

CONCLUSION AND SUGGESTIONS

7.0 CONCLUSION

Childhood is a precious heritage in the lives of all individuals. At any moment of life, when we remember our childhood, a sweet smile envelopes our lips. But when we look at the streets, intersections, railway stations, bus stations, or parks in our own surroundings, many children are found collecting garbage, working at tea shops, dhabas or other places. We turn our eyes as soon as we see the children doing those things. These are children who do not even know that they fall under the category of child labourers. Today, the problem of these children (child workers) is posing a challenge to the whole world.

In today's time, many children start working at an early age. The number of child labourers is highest in our country. The main reason of child labour is poverty, lack of child-rearing practice in parents, carelessness towards future, lack of guidance, lack of awareness, displacement, lack of clothes, lack of education, large families, overpopulation and lack of protection etc. If seen, child labourers who earn their income are very few. But due to poverty, parents of child labourers have the satisfaction that their child is doing some work which will help in household expenses. Therefore parents send the child to work. Child labourers get very little money, which is also very happy when he finds it. The situation of these child labourers becomes extremely pitiable, inhuman and inaccessible. On average, these children have to work 10 to 12 hours a day, which has a bad effect on their health. The average wage paid to child labour is about 80 rupees a day.

Currently, around 150 million children work in the whole world. The number of children working in India is also close to 80 million; child labour in the world is the largest in India. There is a concept about child labour that these are the most innocent and careless people. Child workers have no knowledge about their rights, so they are unable to enforce their rights. Harassment of child rights in a civil society shows the state's failure that the state is unable to give human rights to its citizens.

More general awareness of child labour is that the prevalence of child labour is a highly complex problem because it is the result of the system under which national economies operate. The problem of child labour should be considered a social problem in the context of the ideal of modern society. Child labour deprives the child of his education and thereby prevents proper development of his capacity. But the prevalence of child labour is a problem of poor and destitute families, where parents cannot motivate their children to teach. Child labour is not unique in India. Since time immemorial, it has always existed under various names. The fact is that despite statutory restrictions, child labour is a permanent phenomenon. Employment of children is given priority in the informal sector as employers consider it a source of heavy labour and quick profits. Children were employed in for-profit occupations due to various factors such as extreme poverty, lack of gainful employment opportunity, lack of income and low standards of living, which are some of the main reasons for the widespread of child labour.

In this research, an attempt has been made to bring out the major findings and to provide a unified view of many aspects of child labour participation. In the research presented, the researcher has done a socio-legal study of Lucknow district, tea stall and children working on the dhaba. Research scholar has taken major conclusions from the analysis in the earlier chapters. Based on the findings of the study, the researcher has also obtained some finding and makes some important suggestions for the elimination of child labour. Which is as follows;

International Provisions

To stop child labour at the international level, it started with the Geneva Declaration in 1924, in which it was said that children would be protected from all forms of exploitation. It was intended that the child involved in child labour should get help. An orphan or homeless child should be cared for. For trivial things, the child should not be considered a criminal, he should be helped. All the necessary things should be provided for the physical and spiritual development of the children so that they can grow and understand the value of human life.

After this, the “Declaration of Human Rights” which speaks of human values and bans the violation of human rights. Whose Article 25(2) states that “motherhood and childhood are entitled to special care and assistance,” all children, whether at birth or outside, will enjoy the same social security. “The Declaration of the Rights of the Child, 1959 was indeed a very important event as it was in relation to the international attainment of the child’s rights.” 1959 Child Rights the announcement included 10 principles for the development of children, which made to prevent child labour.

The 1966 International Covenant on Economic, Social and Cultural Rights provides that children and young people should be protected from economic and social exploitation which is so important for their development. According to Art., 24 of the 1966 International Covenant on Civil and Political Rights, all possible, social and economic measures should be taken to prevent forced labour and prostitution. United Nations Convention on the Rights of the Child, 1989 is one of the most important human rights documents to focus on children. There are 54 art., in the Convention and it provides civil, political, economic and cultural rights to children. In this document, political, social, economic and cultural rights for the child are contained in Article 41 out of 54 Art., These are right to protection, right to development, right to participation and right to life. Art.,32 bans the practice of child labour and supports the rights of the child which is as follows. It protects itself from economic exploitation and from performing any act that interferes with its education may be harmful to the child's health, physical, mental, moral or social development. The World Conference on Human Rights 1993 reiterates “the first effort for children.” In this regard, it mainly underlines the national and international importance, especially the importance of the United Nations Children’s Fund which promotes the rights of children’s protection, development and participation.

The “International Labor Organization” is the most important UN agencies for the elimination of child labour and which fights against child labour. The ILO primarily deals with the problem of child labour and has adopted a method that deals comfortably with the worst forms of child labour. It cooperates with the government to conduct a national survey on child labour and draft relevant reports, which can curb child labour. Apart from

this, the evaluation method of the ILO is to collect information about the worst forms of child labour, which has enabled many countries to identify the problem.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is a constituent body of the United Nations. Its work is to promote international peace through education, nature and social science, culture and communication. This special institution of the United Nations was created on November 4th, 1946. Its aim is to establish peace and security with international cooperation of education and culture, so that the justice described in the charter of the United Nations, the rule of law will be universal agreement, for human rights and fundamental freedoms. UNESCO has worked with the United Nations and International Labor Organization to end child labour.

In India, there are constitutional and statutory provisions for abolishing child labour, but at the same time, the Indian judiciary through its activities is playing the most important role to abolish child labour from India.

There are some constitutional provisions that prohibit child labour,

Art., 15 gives some special provisions to the state, for the children. Art., 21 gives the fundamental right to any person to live life with dignity and Art., 21A provides free education to all children from 6th to 14th years. Art., 23 prohibits human misuse, wasteful and any other kind of abuse. This article also ends bonded wages. Art., 24 prohibits children below the age of 14 to work in hazardous industries. In Part 4 of the Constitution, there are special provisions for children in the state's policy directional element which seems to curb child labour. As per Art., 39, the tender age of children will not be abused. Citizens will not be forced by financial necessity to enter into inappropriate avigation for their age or power. Children will be given opportunities and facilities to develop in a state of freedom and dignity in a healthy way. Children and youth will be protected against exploitation, against moral and material abandonment.

Legislations Provisions

The legislation has been a major contributor to ending child labour in India. The legislation has made many laws related to child labour from time to time, with the help of

which child labour has been curbed. The Children (Pleading of Labor) Act, 1933 by the Legislature, is a key document for the abolition of child labor which provides for the improvement of the status of children. “In this Act by the fine against any parent, middleman, or employer the penalties have been called for, which is involved in child labour.” The Employment of Children Act, 1938 the main objective of this Act is to prevent and regulate the exploitation of child labour in workshops and other specified occupations. A special clause was added to the Act to implement the Convention adopted by the International Labor Organization (1937) which does not allow children under the age of 13th years to work. Children under 15th years of age shall not be employed to work in the occupations to which this Article applies, which are scheduled by the competent authority as dangerous or unhealthy. Child labour was also banned by this Act. In order to consolidate and amend the law related to labour in factories, a completely new act was passed in the name of the “Factory Act, 1948”. This Act came into force on 1st April 1949. Through this act, the Indian government tried to adopt the provisions of the ILO and implemented the industrial code as the freedom of the workers in Indian conditions. The Act applies to the entire territory of India except for the state of Jammu and Kashmir. This Act prohibits the employment of children below the age of 14th years. The person who has completed 14th years but has not completed 18th years can work in the factory, but he has been provided fitness certification by the surgeon.

After a plethora of laws that prevent child labour, it was soon realized that child labour is still a problem. Keeping this in mind, an attempt was made to regulate the conditions of child labour to avoid exploitation in those areas in which children have not been saved from child labour. For this, the Government of India had created “Child Labor (Prohibition and Regulation) Act 1986” to free the country of child labour. The Child Labour (Prohibition and Regulation) Act, 1986 is a result of various recommendations made by a series of committees. The reading of the recommendation made by various committees led to a national consensus in favour of a uniform comprehensive law, which prohibited the employment of children in certain employment. To achieve this goal, the Parliament enacted the Child Labor (Prohibition and Regulation) Act, 1986 which came into force on 23rd December 1986.

The legislative history in India has come a long way since 1881, providing legal protection to working children. Provisions relating to child labour have been manually focused under various enactments, such as reducing working hours, raising minimum age, the prohibition of employment of children in occupations and mental health of children of tender age. The Employment of Children Act., 1938 which was the first act on child labour was repealed by the Child Labour (Prohibition and Regulation) Act, 1986.

The Child Labor (Prohibition and Regulation) Act, 1986 was enacted with some objectives in mind. Which makes this act a special document for the elimination of child labour? The objectives of this act are as follows. To bring uniformity in the definition of children in the laws relating to child labour, to prohibit some employment on children's employment, to regulate work conditions for children and to provide punishment for child labour.

7.1 FINDINGS

In this research work, the researcher has done socio-legal study of Lucknow district. The main objective of this research work is to survey child labourers working at tea stall and dhaba. The researcher surveyed 220 child labourers who worked in the Lucknow district during their research work. This study can be summarized as follows.

1. The researcher has found through the survey in research work that more children working in tea-stall and dhaba in Lucknow district have studied up to class 5. Out of 220 surveyed children whose total number is 149. This shows that children have to leave their studies due to working.
2. In the research study, the researcher found that the boys worked on a large number of tea-stall and dhabas compared to girls.
3. Through research from the working children, it was found in the research study that the children working at the tea-stall and the dhaba are working without learning any skill. They say that this is their compulsion otherwise they will not get any work. Whose number is 163 out of 220 child labourers.

4. According to the research study, the average number of members in the family of working children is 5 to 7. Which is more than the number of a normal family? The higher number of family members also compels the children to work.
5. The survey revealed that more children's parents are labourers. This is the reason for working at a young age. Some children said their parents are small farmers.
6. The average family income of most working children is between Rs 5000 to Rs 8000. Which is very less in this inflation time, which makes it difficult to spend the house. Because of which these children have to work as a worker. The effect of which is on the development of these child labour.
7. 46.8% of the working child workers found in the survey said that their parents are illiterate, 47.7% said their parents are educated up to secondary level and 5.5% said that their parents are educated up to graduation. Based on research survey, it is found that illiterate and less educated parents get their children to work for money.
8. On the most important question of research work, when the researcher asked the child labourers working at the tea stall and Dhaba in Lucknow district, for what reason they do the work. Out of 220 child labourers working then, 139 reported that their family is very poor due to which they have to work. 28 child labourers said they work due to illiteracy and ignorance of parents. 11 child workers told that their parents send them to work. 27 told that his work was due to insufficient income and family size. 15 child labourers said they work because of the lack of social awareness. According to the survey, most children have to work due to poverty at the age of reading. It can be said that primarily poverty is a great reason for child labour.
9. In the research study, Researcher found 153 child labourers working in Lucknow district have their own house in Lucknow. 32 child labourers live in a rented house. 24 lives in the house given by the employer. According to the survey, all the child labourers live in Lucknow. Which is a major cause of child labour in Lucknow district.
10. Talking to child labourers, it was revealed that 63 said that they have found work themselves. 79 told that relatives have got their work done. 33 said that they have

got work done by their parents. 45 gave other reasons. In the survey, Researcher found more children working at places discovered by themselves and relatives.

11. Based on the survey, it was found that the parents of 198 child workers live together. Parents of 22 do not live together.
12. 49 child workers spoke during the survey; they have to work for 8 hours in a day. 108 child workers said that they have to work for 10 hours. 44 said they work 12 hours. 19 said that they work 16 hours. The average of all child workers is 10 hours each day.
13. 131 child labourers said that they do not get rest during work. 89 child labourers say they get time to rest. Child workers said that due to not taking rest, it has a bad effect on their health which hinders their physical development.
14. All the child labourers said that they get the money in the form of cash.
15. 129 child labourers say they get holiday at work. 91 said they do not get any holiday. 63 child workers said they also get money for their holiday. According to the survey, more child workers do not get any money for the holiday, for which they are very worried about.
16. The survey shows that 165 child workers' employers treat them well and 55 child workers reported that their employer's behaviour with them is not good for them.
17. 147 child workers said in the survey that they do not have to stay away from home for work. 73 child labourers have to work and have to stay outside. This is also a problem with child labour.
18. In research work, the survey showed that there are some problems at the place where child workers are working. 6 child workers told that there is a lack of light where they work. 26 said he lacked ventilation. 39 told that drinking water is not good. 149 pointed out another problem that causes problems in working.
19. 180 child labourers told that they themselves take the wages of work done by them. The wages of 40 child workers are received by their parents.
20. 178 child workers are punished by the employer as scolders. 42 reported that they are beaten as punishment. Child workers get some punishment during their work either at their own fault or without fault.

21. 9 child workers working in the survey said that they get incentives for their work. 40 said that they get clothes. One said that he gets a tip. 10 said that they get gifts and 160 child labourers told that they do not get any kind of benefit for their work. More working children do not get any benefit for their work. These child labourers continue to work due to their compulsion even without any greed.
22. The survey has shown that there is no provision of any first aid service at the place of work of 174 child labourers. 46 said that they have a system of first aid service. More child labourers are working without first aid service, which is very harmful for them.
23. 44 child labourers tell that they also work at night. 176 child workers say that they work during the day.
24. In the survey, 37 child workers said that they have a habit of smoking. 71 told that they eat tobacco. 21 said that they have a habit of reading. 71 said they have liked to play. These child labourers have some bad habits while working which hinders their development. This also has a bad effect on society.
25. 215 child workers said their parents had not taken any advance money. 5 child workers told that their parents have taken advance money for their work. This also shows that child workers get very little advance money for their work.
26. 214 child workers said that there is no deduction from their salary while 6 child labourers said that their salary is deducted.
27. After studying 220 child labourers in the survey, it was found that 118 child labourers in Lucknow district work on the dhaba which is 53.6% of 220 child labourers. 102 child labourers work at the tea stall, which is 46.4% of the total number.
28. When the child workers were asked in the survey that they knew about their rights, 218 said that they do not know anything about their rights, whose percentage is 99.1. Only 2 child labourers said that they know their rights. Almost all child workers have no idea about their rights. Due to which they are exploited.
29. When asked about the Child Labor Act, 179 child labourers said that we have no information about it. 41 child workers said that they are aware of this law. This

shows that very few children are aware of child labour law, which is a thoughtful question for our society.

7.2 SUGGESTIONS

In the research work, the researcher has done socio and legal study of child labour in India. In which the researcher realized many reasons for the suggestion. Through which child labour can be eliminated. This is as follows:-

1. Child labour (Prohibition and Regulation) Amendment Act., 2016, section 3 sub clause 2 (a), allows children to work in their home. However it is correct to work in home but it promotes child labour specially in poor families, because children of these families assert that there is no difference between working home or for other family, shop or places etc. where they get money. Therefore working of child should be prohibited from their own family.
2. Child labour (Prohibition and Regulation) Amendment Act 2016, section 3 sub clause 2 defines 'Family' and it includes the siblings of father and mother by which the size of family becomes wide and some time it appears that in poor families these family members specially (siblings of father and mother) push them to work outside the home. Therefore the size of family what this law has defined must be curtailed only to the mother, father, brother and sisters.
3. The right to education should be reviewed in Art., 21A given in the Indian Constitution. For which a committee should be set up. Whose job is to see how many children are educated in non-government schools according to this right. If schools are not following this article, then action should be taken immediately.
4. Poverty is the main reason of Child labour; therefore government should take effective measures to abolish the poverty from society. State should strive to upliftment of living standard of their citizen by increasing the income. State should make special provision for severely poverty ridden and least employment generating region. The family of child labour should be provided monthly

economic assistance by which they can afford their basic essentials and restrain their child from child labour.

5. Illiteracy is also one of the important reasons of child labour in India. Therefore government should provide education to its entire citizens, because illiterate people do not understand the effect of child labour on his family and society as whole, therefore it leads to the increase in child labour. Government should emphasis on adult education and it should be implemented with more enthusiastically by which every individual can get aware about their rights and duties.
6. Increasing population is also very big factor for child labour. Therefore government should disseminate the information about family planning and it should be implemented strictly. Poor families does not consider about number of children they produces more child and when they grows up to fulfill their requirement they try to work outside the home and it leads to child labour.
7. To stop the child labour government should take strict actions. If any child found working on places like shops, mining, or any other hazardous place, government should immediately initiate the process to seize that place.
8. Government should immediately send the culprit of child labour to the prison. Because this will set example for the rest of society that working of children is punishable offence and if anyone will hire children to work, he will not be spared under any circumstances and will face the tough legal punishment.
9. Government should promote a culture among people to take service from only those places and shops where no child is involved in hard works. If people will start adopting such cultures, employer will avoid hiring child for their services in this way also child labouring may be prevented.
10. Government should stop providing government facilities to those who hire child for working and also to those parents who send their child in early age for working. In our country there are huge numbers of parents who send their

children for working on very meagre wages. Therefore when the parents of such families will be deprived from government facilities they will be afraid from sending their children to work.

11. Government should made it compulsory for every shopkeeper, company owner, and others to install a board clearly mentioning that there is no child worker involved in any activity while rendering the service.
12. Government should built fully residential schools for poor and orphaned children where they can get food, shelter, clothes and other essentials by which they will not be burden for their poor parents. If they will get all these things from government they will not move for work and will focus on their study. In this way child labour can be prevented.
13. Government should access to those children who does not go to school. Government should strictly instruct the government teacher to convince the parents of such children for sending them school. Government should prepare creative syllabus and innovative teaching including physical activities that increase the interest of children and they can use their full potential.
14. The education system will have to be made employable by the government; there should be no confusion in the society that not everyone will get jobs even after studying.
15. To prevent child labour, the state will have to make compulsory employment for all adults, so that no adult remains unemployed. When no adult is unemployed, there will be prosperity in society and the economic condition of all the families in the country will improve. Therefore, no person will send his children to work. Because most of the children of those families go to work whose financial condition is not good or the family income is very less. Due to which the expenses of the house are not able to run properly and there is a financial crisis in the house. Therefore, to prevent child labour, all persons should be given compulsory employment by the state, so that child labour can be curbed.

16. The government should promote those NGOs working in the field of child labour. Because the government has to do many other things. Due to which the government is not able to do all the work properly and it does not even get time. Consecutively some important tasks are missed by the government, which have to be taken care of. The government has taken necessary steps to stop child labour but has not been able to implement them at the right time. Due to which the number of child labourers in our country has increased. NGOs have played a very important role in curbing child labour. In which we cannot forget the role of the Bachao Bachao Andolan, as the abolition of child labour has not only in India but in the whole world has provided important examples for which Mr. Kailash Satyarthi has received the Nobel Prize. The role of NGOs is like a bridge in establishing relations between society and government. Relations between NGO and government will help in solving the creative problems of society. And the combined efforts of both can eliminate child labour very easily.
17. Laws to prevent child labour in India have to be made stronger and more powerful and at the same time, the government will also have to strengthen its will power to implement the law related to child labour with power. No one should get any concession on violation of child labour law.

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**DEPARTMENT OF LAW SCHOOL FOR LEGAL STUDIES,
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY**

Questionnaire on

CHILD LABOUR IN INDIA: A SOCIO-LEGAL STUDY WITH SPECIAL REFERENCE TO LUCKNOW DISTRICT

1.	Name of child	
2.	Age of child	0-5 ☐ 5-8 ☐ 8-12 ☐ 12-14 ☐
3.	Sex	Male ☐ Female ☐
4.	Religion	Hindu ☐ Muslim ☐ Sikh ☐ Christian ☐
5.	Education	0-5 ☐ 6-8 ☐ 9-10 ☐
6.	school Dropout	Yes ☐ No ☐
7.	Category of child	General ☐ OBC ☐ SC ☐ ST ☐
8.	Native Place of Child	Village ☐ City ☐
9.	Experience	0-1yrs ☐ 2-3yrs ☐ 3-4yrs ☐ More ☐
10.	Nature of work	Skilled ☐ Unskilled ☐
11.	Income of Monthly	1000 ☐ 1000-2000 ☐ 2000-3000 ☐ 3000-More ☐
12.	Member of family	1-4 ☐ 5-7 ☐ 8-10 ☐ More ☐
13.	Member's working in the family of child	1 ☐ 2 ☐ 4 ☐ More ☐
14.	Parent's occupation of child	Business ☐ Farmer ☐ Agricultural Labourer ☐ Labourer's ☐ Other's ☐
15.	Income of family	1000-3000 ☐ 3000-5000 ☐ 5000-8000 ☐ More ☐
16.	Parents status of Education	Uneducated ☐ Secondary Level ☐ Graduate, Master's ☐
17.	Reasons for child Labour	Poverty ☐ Illiteracy and ignorance of parents ☐

		Forced by Parents ☐ Inadequate income and large family size ☐ Lack of social awareness ☐
18.	Ownership of The house where your family lives.	Rental ☐ Owned ☐ Provided by the employer ☐ Other's ☐
19.	How did you get employment	Through own efforts ☐ Through Parents ☐ Through relative ☐ Through other's ☐
20.	Your father and mother both alive?	Yes ☐ No ☐
21.	Working Hours in a day	0-8 Hours ☐ 10 Hours ☐ 12 Hours ☐ 16 Hours ☐
22.	Rest time between working Hours	Yes ☐ No ☐
23.	What is mode of wage Payment?	Cash ☐ Cheque ☐ account ☐
24.	No. of day's you are work in a week	4 day's ☐ 5 day's ☐ 7 day's ☐
25.	Do you enjoy a holiday	Yes ☐ No. ☐
26.	Wages paid to the child Laboures during Holidays	Yes ☐ No. ☐
27.	Does your employer treat you well?	Yes ☐ No. ☐
28.	Do you face any Problem on work?	Yes ☐ No. ☐
29.	Have you suffered any accident or bodily injury during work?	Yes ☐ No. ☐
30.	Are you supposed to stay outside home in connection with employment?	Yes ☐ No. ☐
31.	Lack of working condition your work Place	Lighting ☐ Ventilation ☐ Drinking water ☐ Other's ☐
32.	Do you suffer any disease?	Yes ☐ No. ☐

33.	Do you receive wags?	Own ☐ Your Parents ☐
34.	Working conditions of child labourers	Comfortable ☐ Not Comfortable ☐
35.	Punishment by the Employer.	Scolding ☐ Beating ☐ Expelling ☐
36.	Various kinds of Benefits availed by the children.	Incentives ☐ Clothes ☐ Tips ☐ Gift ☐ None of above ☐
37.	Availability of first Aid at the workplace in case of emergency	Yes ☐ No. ☐
38.	Working during Night time	Yes ☐ No. ☐
39.	Habits of child Laborer	Smoking ☐ Tobacco ☐ Study ☐ Play ☐
40.	Mother Tongue of Child	Hindi ☐ Urdu ☐ Bhojpuri ☐ Other's ☐
41.	Advance given to parents.	Yes ☐ No. ☐
42.	Deduction made in wages	Yes ☐ No. ☐
43.	Distribution of children on the basis of Nature of Labours	Hazardous ☐ Non-Hazardous ☐
44.	Fields of child Labour work.	Dabha ☐ Tea Stall ☐
45.	Do you know your right as a worker?	Yes ☐ No. ☐
46.	Knowledge of Law an Employment of child Labour.	Yes ☐ No. ☐

