CHILD LABOUR IN INDIA

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By

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I hereby declare that the Thesis, **"CHILD LABOUR IN INDIA"** is the record of original research work carried out by me and it has not previously formed the basis for the award of any degree, diploma, associateship, fellowship or other similar title or recognition.

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Certified that the important research findings included in this Thesis, **"CHILD LABOUR IN INDIA"** have been presented in a research seminar held at the School of Legal Studies, Cochin University of Science and Technology, on 25th March 1996.

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CONTENTS

CHAPTER ONE

CHILDHOOD AND ITS PROFILE IN INDIA: A PROLOGUE

Children are "supremely important assets" of the nation, India proudly asserts in the National Policy for Children (1974) gracefully acknowledging that they are future citizens on whose shoulders the destiny of our nation rests. Citizens really make the nation feel elated is proverbial and for that matter, citizens are counted upon. For, they alone with the exceptional input of citizenship can carry through the prospects of the mankind; they alone with utmost discipline and diligence can combine democracy and development in a purposeful manner. Keeping in tune with the best traditions of democracy, the grand conception of citizenship has been drafted into our Constitution with a reverential hope of its realisation through a vibrant culture of rights and obligations, a culture of compassion and cooperation and a culture of active citizens' participation in the programme of transformation for each and every one of India's teeming millions. Acceleration on the recognition and realisation of human worth is seemingly the hallmark of that conception, which with its moral consciousness, is the hope and promise of our common humanity.[1] Eventually, as Jawaharlal Nehru says, it is the human being that counts, and if the human being counts, well, he counts much more as a child than as a grown up. Childhood shows the man, as morning shows the day, says John Milton. Today's children are tomorrow's world.

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1. Singhvi, L.M. Dr., Citizenship values, *Freedom on trial*, Vikas Publishing House Pvt. Ltd., New Delhi, 1991, p.234.

1.1 CHILDHOOD: THE CONCEPT AND ITS PERSPECTIVE

Childhood is something precious. It is a happy, carefree life which one would like to look back and recollect time and again, in the whole of life time.[2] It is a dynamic, vital part of life that moulds one's total personality and hence calls for nurture.[3] It has its own perfection and it is a distinct part of life having its own charm. It is short in duration, intense and transcient that without a conscious awareness, we would be letting it slip by, then lost in wilderness for ever, leaving the individual to carry through life the yearning of an unfinished childhood. As formative years of child are crucial, adults have to pay attention to what must be done to generate a favourable environment so that the coveted, cherished movements of life add lustre to our future personalities.[4]

Childhood is thus paragon of values and obviously, priceless begging its protection as long as possible.[5] Hence, nurture, in proper sense, moves close to the most essential things which children need to venture into life worth living with ease. As wholesome personhood is only through the vehicle of childhood, the needs of children are illuminating and admittedly are worthy of reference. Children need love and care, respect, nurture, support and encouragement. Above all, they seek recognition from one and all. Such an urge flows from the basic desire of being a worthwhile as an individual entity which is perhaps the

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2. Nahemiah, Asha, Lost Childhood. *Indian Express*, November 10, 1990.

3. Srinath, Padma, Those Charming Childhood Years, *The Hindu*, November 13, 1988.

4. *Ibid.*

5. *Ibid.*

most fundamental dimension of the intrinsic sense of human dignity.[6] Play plays equally a significant role in the phase of childhood. It strengthens one's physical, spiritual, moral and ethical side of life.[7] Health and nutritional status stand as the third important aspect that contributes for a joyful childhood. In children, normal growth and development are signs of good health and nutrition. Health in its technical sense does not imply the state of absence of disease. It rather refers the level desirable to permit a child to lead a socially and economically productive life.[8] Healthy development of child is quite indispensable to design a future closer to our heart's desire - emancipation of mankind. The process of healthy childhood development is the first step toward a healthy fulfilling life for an adult. It needs to be influenced positively in the early years for the benefit of the later years of the life span[9] which represent not only humanitarian improvements but also fundamental contributions to long-term economic development.[10] Education, is an other essential input of the right environment to help the child to develop its unique personality. Sound mind is as essential as a sound body for a healthy nation. Hence basic knowledge of various disciplines is necessary. It is a purposeful mission aiming at building up the personality of the childhood by assisting his physical, moral, intellectual and

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6. *Ibid.*

7. *Ibid.*

8. About WHO, *Global Child Health News and Review*, Vancouver. B.C, Canada, Vol.1, (1), 1993, p.17.

9. Salk, Jonas Dr., The Salk Approach: Enhance the Positive. *Global Child Health News and Review, Ibid*, p.12.

10. Chaudhry, Maya, SAARC and the South Asian Child, *Mainstream*, Vol.xxxi, (16), Feb. 27, 1993, p.12.

emotional development. The creation of well educated, healthy young generation with a rational progressive outlook to life is the desired object of education.[11] It is defined as an "assistance to life". It is discernible that children constitute the foundations of life, but the foundations can be strong only if parents and the state are sensitive to their responsibility to ensure optimal physical, mental, emotional and spiritual growth of children.[12]

The broad life processes involving various human tendencies require us to render the best possible assistance to a nascent human being, the child. The child with all its inherent potential interacts with the opportunities we offer and builds itself. And if we do not providerequired healthy atmosphere for the development of the child, it remains undernourished or may deviate. A majority of psychological disruptions in adults can be traced back to impressions and experiences of childhood. Man's journey to adulthood is thus through the pathway of childhood. However, it is not a mere preparation for adulthood but something more. A happy childhood increases the probability of a well-balanced personality needed to shoulder the responsibilities of adulthood.[13] It is amply clear that there is need to influence the course of events to control not only the quantity of children but quality of life of children.[14] It is in this practical context that the government needs to define what it calls human resource development. India's numbers will remain its liability rather than its potential

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11. *University of Delhi* vs. *Ram Nath*. AIR 1963 S.C.1873.

12. Singh, Meherban, Rites of Parenthood, *Indian Express,* May 22, 1993.

13. Srinath, Padma, Those Charming Childhood Years, *The Hindu*, November 13, 1988.

14. Salk, Jonas Dr., The Salk Approach, *Global Child Health News and Review, op.cit.*

strength unless it invests in ensuring that every child born grows up to be a productive contributor to its economic growth.

1.2 SOCIO-ECONOMIC PROFILE OF CHILDREN IN INDIA

The adage that happy is the nation where children are the wealth of the people, will have some meaning only when a country has created for itself the right climate for the healthy growth of the future citizens.[15] It is worth recalling, John Green of UNICEF who warned the world saying: "starve a child of food, of affection, of freedom, of education - and you produce an adult who is stunted as an individual and hold back progress towards development rather than accelerate it".[16] Painfully, these words reflect the condition of the vast majority of children and the state of development in India today; they do indeed stand deprived of their four basic needs. Those who survive the ordeal fortunately, pay for this deprivation during the rest of their lives. Such survival, only as shadows of the people, they might have been, is a national tragedy.[17] Decrying the loss of lives of millions of children for want of food and care as unconscionable waste of human potential, James Grant of UNICEF said in distress:

"There is no reason, on the threshold of the 21st century, for a child to go to bed hungry. And certainly, there is no excuse, for the deaths of 13 million children every year, and the mental and the physical stunting of millions more,

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15. *Economic Times*, January 6, 1980.

16. Child in India, *Child in the Third World*, New Delhi, p.25.

17. Child in India, *ibid.*

due to the combined effects of malnutrition and infections. If we did not know how to prevent most of these deaths and disabilities, we would lament the loss and refrain from making moral judgments. But now we do command the knowledge, resources and wherewithal to avoid the tragedies. It is, therefore, as obscurity not to prevent them, and an unconscionable waste of human potential no society can afford".[18]

This being the state of children generally, still more crude and shameful is the abject pain and misery of child labour, the problem under study.[19] While some use washing machines, vacuum cleaners and microwave ovens, we still have little children picking through refuse dumps, sorting out garbage etc.[20] While some eat the 'Big Mac' and fast foods, we have little boys not more than nine years old working an eighteen hours a day, standing in dirty soapy water, washing utensils in the grubby little back rooms of restaurants.[21] There are some who still use children to scrub and clean their comfortable homes while their own little kids go to school and watch television.[22] The matches we use, the beedies we smoke, the bangles we wear, the carpets we walk on, the zari embroidered garments we crave for, the slates we write on and much more, are all produced by tiny hands - hands that should be playing,writing, painting,

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18. Grant, James, Toward Nutritional Security For All, *Global Child Health News and Review*, *op.cit*, p.37.

19. This study is devoted to the problem of employment of children below the age of 14.

20. Reddy, Nandana, Blossoms in the Dust, *The Lawyers*, August, 1988, pp.21-23.

21. *Ibid.*

22. *Ibid.*

gesticulating in joy and helping to build a better world.[23] While the reality speaks this way, a growing child is a healthy child, says, the nation profusingly celebrating National Nutrition Week.[24] The plight of millions of 'supreme' national asset working for pittance in adverse situations is beyond doubt if the deafening silence of the administration on these versions is any indication. While the employment of children itself is hotly contested, the Union Minister of State for Labour and Rehabilitation came out with a statement in the Rajya Sabha stating that as many as 64,628 candidates below the age of fourteen were on the live register of Employment Exchange as on December 31, 1983 and said that these teenaged job seekers represented 0.29% of the total job seekers.[25] It is a matter of regret, admittedly, that the state[26] enjoined with the constitutional mandate to ensure the welfare of the children, should have come with such a statement in the Parliament without compunction. Reference made to employment of the hapless millions in adverse scenario highlights the blatant denial of joys of childhood which the state pledged to shower. These child workers are completely denied of their childhood; they miss all those basic requirements for healthy growth and development. They lack the freedom, the leisure, the recreation, the learning, and the health care. They are forced into adulthood almost at birth and are destined to be bonded labours almost as soon

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23. *Ibid.*

24. Singh, Lata Dr., Nutrition: The Right of Every Child, *Indian Express*, September 2, 1993.

25. *Indian Express,* March 13, 1984.

26. The term 'State' is used in this study in the sense in which the term is defined in Article 12 of the Constitution.

as they learn to walk.[27] They are meek submitters to their fate. It is further vital to emphasise that these children are not only deprived of cheerful and vital part of life, but also visited with premature damage to their bodies and minds due to intensive and back-breaking work.

1.3 MISSING INITIATIVES

Do the values of childhood carry any meaning for those children who are employed in factories, mines, quarries and other avocations? Are they worth the name of being called human beings? These are simple but crucial questions for the state to ponder. Children are tomorrow's generation in the making. They are the nation's future human resources. Hence, in all fairness, their energy, vitality and perception, aspirations and anxieties demand all our attention. What does the state have to offer its own children? To put it alternatively, what is the country doing about its own future? For the belighted future of its children only means endangering the survival of the society. Children alone can provide answer, though voiceless, through what they reflect as state of development of human beings. The hometruths children have to tell are the most important to hang on and the clearest index for Judging ourselves.[28] As the Nobel Laureaute Gabirala Mistal wrote: "We are guilty of many errors and many faults, but our worst crime is abandoning children, neglecting the foundation of life. ... many of the things we need can wait. The child cannot ...".[29]

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27. Reddy, Nandana, Blossoms in the Dust, *The Lawyers*, August, 1988, pp.21-23.

28. Sethi, Sunil and Dubashi, Jagannath, Children Speaking Out in Ravi, S (ed.) *Child Labour: Concerns for Justice*, CCLC, Bangalore, January 1986, p.ix

29. Reddy, Nandana, Blossoms in the Dust, August, 1988, pp.21-23.

What does a child need? It needs enough food to eat and pure water to drink; a house to live in, clothes to wear; a school to study in and interact with other children and books to read; space to run about and play, and a toy or two play with; medical care and protection against sickness; and most of all the knowledge that someone cares.[30] All these are very simple things which the state committed to provide poignantly recognising that investment in child development is thus an investment in the country's future and in improving the nation's quality of life.[31] Shockingly, words and deeds fall apart reflecting the gulf between the national policy and stark reality. Deprivation is synonym for children in India as the term childhood does not apply to millions of children in India to-day. Nor are they protected as labourers notwithstanding the existence of constitutional directives and host of labour welfare legislations intended for their protection. Exploitation of child labourers speaks volumes about violations of labour welfare legislations. Children who already stood stunted as a result of poverty and deprived of their joyful phase of childhood, are employed in working conditions which are totally unsafe and detrimental to growth and development. It is not uncommon to find children who are impoverished and undernourished and of age as low as five or six employed to perform the arduous task of knotting carpets in carpet industry at Mirzapur or in cramped environments with hazardous chemicals thus exposing to chemical powder and strong vapour in match factories at Sivakasi or in the unrelenting heat of 1300 degrees celsius in

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30. Ravi, S (ed). What Does a Child Need, *Child Labour: Concerns for Justice*, *op. cit.*, p.29.

31. Singh, Lata Dr., Nutrition: The Right of Every Child, *Indian Express*, September 2, 1993.

the bangle and glass works at Firozabad.[32] The consequences of such employment are not unknown; nor can there be such pretence if the state of development of technology and medical jurisprudence is any indication. The kind of work they do, the 'deprived' do, adds further problems like filaria, asthma, TB and others. Equally, it is a common experience in this country that many things have been sought to be abolished through the waving of magic wand, the wand being the constitutional amendment, legislation, executive fiat or just the plain spoken word - the speech of the Minister, the Member of Parliament and the Member of Legislative Assembly. But, the hard, stubborn reality remains; impervious to the flow of language and sound. One such thing happens to be child labour.[33] The borders of the present day human logic, shorn of all its sophistry and frills, does not go beyond pious declaration and pompous programmes of inaction.[34] Half-hearted legislations there have been and wholeheartedly they have been strangled at birth or in infancy by the executive by their failure to implement them. The depressed and the deprived are the most unfortunate specimens as they are forced to live in stoic silence. "The Indian people made a Midnight Tryst, long years ago, to deliver Human Justice through Human Law. ...Our guilt by default or dubiety, on the charge of social injustice to the millions, has been proved beyond reasonable doubt as the blood sweat and tears of the masses, year after year, demonstrate...".[35] We are living a

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32. Bakshi, P.M., Tackling the Child Labour Problem, *Financial Express*, October 1985.

33. Ravi, S (ed.) *Child Labour: Concerns for Justice*: *op.cit.*, p.48.

34. Rupa Kaul, Millions for Arms but Pittance for Children, *Economic Times*, January 6, 1980.

35. Justice Krishna Iyer, V.R. (ed). *Justice And Beyond*, New Delhi, Deep and Deep Publications, 1980, p.9.

life of contradictions which we entered into on 26th January, 1950 willingly but, however, under a warning note cautiously made by Dr. Ambedkar. He said: "... In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life we shall,by reason of our social and economic structure, continue to deny the principle of one man and one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life?...".[36] Implicit in the warning signalled by Dr.Ambedkar was his anguish that such process of inequality reverberating the inner contradictions in the society shall be halted immediately failing which we will be treading on an unfamiliar path. At the concluding part of his reminder speech, Dr.Ambedkar said: "If we continue to deny it for long we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up".[37] The phase of life the country entered through `We the people of India` willingly continue even today ofcourse unwillingly at least in the case of one-fifth of the country's population. The fact that the impressions the process of inequality left in the life of those one-fifth of the 800 million of the self-reliant India indicates that it has become permanent feature of the Indian society making the Indian Constitution alien to them. For, "...The tryst with destiny the Constitution has made is Justice, Equality, Liberty and Fraternity to every citizen... We must banish our

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36. Justice Krishna Iyer , V.R., The Judicial System - Has it a Functional Future In Our Constitutional order, *Justice and Beyond*, *ibid.*, p.59.

37. *Ibid.*

feudal-capitalists culture and the Raj heritage of injustice and brighter the Republic's flame of equal justice.... Social justice demands that one man, one value, shall be the Rule of Law and Rule of Life".[38]

1.4 IN SEARCH OF RULE OF LAW

The conscience of our Constitution speaking through its Preamble resolves to constitute a Sovereign, Secular, Socialist Republic and to secure certain cherished human rights to "all its citizens". It underscores the fundamentality of social justice[39] while sharing its concern for the poor and underprivileged. "Social Justice" says Subba Rao, the former chief Justice of India, "must begin with children. Unless tender plant is properly tended and nourished, it has little chance of growing into a strong and useful tree. So, first priority in the scale of social justice shall be given to the welfare of children.[40] This is the reason why the Constitution begs for protection- protection to which a citizen is ordinarily entitled - and additional protection - protection to which children are additionally entitled. Shockingly, the baffling situation unequivocally confirms deprivation - by denial of food, care, education etc. and additional deprivation - what little is left is robbed of by forcing the children to enter employment or avocation unsuited to their age and strength. Still, the political

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38. Justice Krishna Iyer, V.R., *Justice in Words and Injustice in Deeds for the Depressed Class*, ISI Monograph Series 14.

39. Justice Krishna Iyer, V.R., Ideology and Organs of Popular Justice: Forensic and Para-Forensic Remedies for Forgotten People's Maladies, *Equal Justice And Forensic Process: Truth And Myth*, Lucknow, Eastern Book Company, 1986, p.102.

40. Prasad, Anirudh, *Social Engineering and Constitutional Protection of Weaker Sections in India*, Deep and Deep Publications, New Delhi, 1980, p.85.

statement and official policy assert and claim that children belong to privileged group. Though the voice is loud and stubborn, still it is hollow in as much as they are only high sounding words with no consequences, whatsoever. However, the statement may be true the other way in the sense that they are more privileged because they are specially deprived. Constitutional ethos are at stake and Rule of Law is in a shambles but rarely the nation speaks through the conscience of the mankind. Eyes refuse to go blind, ears refuse to go deaf and the conscience refuse to go to sleep so that evils may not go unnoticed, unheard and unconcerned. This is true only in case of 'true' human beings constituting minority in the society who are spearheading silent revolution by stirring up the conscience of the mankind. This is only a whisper which is lost in the din. The voice against such inhumanising treatment is thus least raised and is least heard. For, the exploiters and the exploited, the parents who are forced to send their children for employment, constituted the bulk. The exploited parents thus become accomplice to the evil syndrome unwillingly. While the voice of conscience is so choking and shrilling that it often goes unheard, the voice of the elite and the exploiters is loud and overwhelming. The powerful interest looks upon the employment of children as necessary to their prosperity while making fanciful claim that these children are really dexterous, and their factories cannot do without them, and to add further that the industry will collapse without children and children are the life breadth.[41] Strangely enough, also most of the writers on the Constitution of India and those evaluating the status of children in India have not been lagging much behind in the race to show their gratitude to children. For their share, they have also driven nails into

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41. Venkataramani, S.H., Tamil Nadu Vested Interests, *India Today*, July 15, 1983, pp.60-61.

the corpse. They have not spared the best of their efforts to highlight the rights of the little citizens meaningfully so as to make worth of it and to name a few, Basu, D.D.,[42] Seervai, H.M.,[43] Gajendragadkar, former Chief of Justice of India [Report of the National Commission on Labour, 1969].[44] The vested interests are thus so powerful and plenty that the state stands unmoved eventually making it possible for its agencies to stamp out humanity with an iron hand. In the same wave length, it cannot be assumed that the state can give up the National Policy and other relevant measures to the dismay of one and all. For, it is the government sworn to faithfully discharge the constitutional obligations. Indeed a nation pronounces on the performance of a system not by myths and cults and inherited aura but through hard proof reflected in the progress sheet. This, of course, applies also to the parliamentary process, says Justice V.R. Krishna Iyer while recapitulating the oft-quoted words of Abraham Lincoln.

"This Country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it".[45]

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42. Basu. D.D., *Shorter Constitution of India*, Prentice-Hall of India, New Delhi, 1989.

43. Seervai, H.M., *Constitutional Law of India: A Critical Commentary*, N.M.Tripathi Private Limited, Bombay, 1984.

44. Government of India, Ministry of Labour, *Report of the National Commission on Labour, 1969*, Nasik, Government of India Press.

45. Justice Krishna Iyer, V.R., The Dialectics of Social Justice vs The Realities of Forensic Praxis, *Equal Justice and Forensic Process: Truth And Myth*, *op.cit.*, p.18.

The state being caught between the National Policy commitment and the stark reality echoing double deprivation is thus placed in a piquant position making it necessary for it to address to the problem. Eventually, it keeps up the pretence of being serious about protecting the supreme asset and therefore appropriate noises continue to be made as an earnest of the state's intent. Administration of stern warning to the industry to comply with the provisions relating to the prohibition and regulation of child labour is more of a habitual alarm. Repeated assurances on the floor of the Parliament and on solemn occasions are meant for public consumption.[46] The evil stays and will stay for ever. Many commissions and committees are often appointed in the pretext of looking at the problem more "objectively, dispassionately and sympathetically" but no relief to the deprived human specimens. It is no more a guarded secret that commissions and committees so appointed are treated by the rulers of the day as a vehicle of convenience either to settle political scores or sweep a raging controversy under the carpet. The moral of the story is that once the dust settles down over the issue concerned, the government hardly ever bothers about the reports. Seldom are the findings of the commission made public or follow-up action taken. Even attempts made by media to gather information regarding the fate of the report are stonewalled by the bureaucrats brandishing the Official Secrets Act.[47]

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46. Child Labour Problem Getting Worse, *Indian Express*, July 3, 1993. See also, Government Warns Carpet Industry: Eliminate Child Labour in Three Months, *Indian Express*, July 22, 1993; ILO Scheme to Abolish Child Labour Launched, *The Hindu*, January 21, 1993; Child Labour To Go, *Indian Express*, July 3, 1993; Sunderarajan, P. and Shankar, T.S., No child's Play This..., *The Hindu*, June 13, 1993.

47. Thomas, K.M., Who is Afraid of Inquiry Commissions? *Indian Express*, September 4, 1993.

Constitutional obligations apart, there are other reasons as well which force the state to be alert and defensive notwithstanding its indifference and apathy. More important and immediately relevant to the context is the one pertaining to the foreign trade and foreign exchange earning. It is really commendable that the U.S.[48] and Germany[49] have made strides putting their foot down heavily on the employment of children in carpet industries and other hazardous employment. Nothing is more damning than to realise that the government at the centre and in the State of U.P. which stood unperturbed over the conscientious violation of the constitutional directives made swift changes in the entire scenario of the carpet industry the moment a bill was introduced by US senator Mr.Harkins in the House of Commons seeking ban on import of carpets produced by Indian industries in the State of U.P. employing child labour in abundance. Senator Harkin's Bill seeking US to boycott the Indian carpets on the ground of exploitation of children prompted the State Government to extend the Factories Act, 1948 to all the carpet weaving and manufacturing units in the districts of Varanasi, Mirzapur and Sonabhedra.[50] What is unsaid is that it is not human rights of the supreme asset but only the possible economic loss that forced the sworn constitutional entities to fall in line. For them human rights issue was not at stake but only dollar currencies and the survival of the elite were at stake. Hence was the oblige to extend the provisions of the Act to those

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48. Bill to Fight Overseas Child Labour Reintroduced in U.S. Congress, *The Hindu*, March 28, 1993. See also, Americans Put Their Foot Down on Carpets by Kids, *Indian Express*, May 21, 1993.

49. Doval, N.K., Child Labour: Time to Act, *The Hindu*, April 12, 1993.

50. Americans Put Their Foot Down on Carpets by Kids, *Indian Express*, May 21, 1993.

industries nearly four decades and more after its enactment. Another convincing reason implicit in the background is that India is a signatory to the Universal Declaration of Human Rights and has acceded to the two International Covenants and it has taken part extensively in the draft of the child rights convention adopted by the U.N. recently. Besides, India is also a member of ILO which acts a crusader in the protection and promotion of workers' rights.[51] Having formally identified with these outstanding human rights institutions and affirmed faith in their ideologies, India cannot afford to take a back seat with ease on human rights issues to talk with two tongues.[52] Aid consortium from the developed nations also plays a significant role in the sphere of human rights violations in India. The status report of the developed nations, especially the U.S., on human rights issues including child labour use to keep the Indian government on its toes fearing economic reprisal by the U.S.[53] This can well be read also into the recent decision of the central government directing the compilation of 'facts sheets' by the concerned state governmentsin 230 cases of torture and gross human rights abuse in the country listed by the Amnesty International in its 1992 report.[54] These matters are not quoted out of context. Nor is the government misquoted. They are concrete and uncontroverted pieces of evidence unquestionably valuable and essential to evaluate the credentials of the government committed to the Rule of Law. Shift in conviction or belief more frequently for no valid reasons present unpleasant contradictions

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51. ILO Scheme To Abolish Child Labours Launched, *The Hindu, January* 21, 1993.

52. Abraham, Thomas, India Links Terrorism to Human Rights, *The Hindu*, May 3, 1993. See also, Bhushan, Ranjit, Abuse of Human Rights: Amnesty Reports Now Credible, *Indian Express*, September 27, 1993.

53. Bhushan, Ranjit, Abuse of Human Rights, *Indian Express*, September 27, 1993.

54. *Ibid.*

testifying to the lopsided policies of the government designed to serve short term ends. Such contradictions are on the spree even with respect to the issues of global importance namely human rights. These contradictions unmistakably facilitate the reading the mind of the state permeating every fabric of the measure, either administrative or legal, it adopts. The way in which the state attempts to raise loud noise about its commitment to the citizens of tomorrow has ripped the facade off its pretensions of principled administration honouring human values. The reason is not far to seek. There is backlog of illiterates. Healthy childhood is not even in the neighbourhood of reality. Exploitation thrashing out the left-over potentials in the surviving children is the blissful sight. It is nothing but glorification by the state of most painful evils. Policies and programmes are pious and rhetoric falling short of will and action. Playing down the ramifications of the dreaded evil significantly, it is symbolised as shadows of poverty and economic backwardness and stretched further to stress the importance of the income that the working child brings to the family. At the very least, it is pointed out, the working child is able to survive rather than starve.[55] It is indeed pathetic that poverty and economic backwardness and survival of

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55. Ms. Bharati Thakkar said: "When the West was combating the evil, India chose to ignore it and continued to opt for child Labour. Today, child Labour is no longer a medium of economic exploitation but is necessiated by the economic compulsions of the parents and in many cases that of the child himself. They work because they must for their own survival and that of their families. Vijapurkar, Mahesh, Child Labour - An Economic Necessity, *The Hindu*, November 11, 1986.

While the agitated members in the Rajya Sabha criticised the government for its "indifferent attitude' towards child labour, Mr.P.Sangma, Minister of State for Labour said that following the recent penal action against some glass industries for employing children, some parents came to him complaining that they were starving since their children had been denied employment. He said that the government had to adopt a reasonable approach and could not at once abolish child labour as a populist measure. *The Hindu*, August 17, 1993, p.6.

children through bondage are often made easy casualties in answer to the plea of accountability under the Constitution. Such pleas are more of ritual than really worthy of advancement. They are, *prima facie*, dubious. Scotching the specious plea of poverty and economic development, in 1990, UNICEF estimated at $ 20 billion a year the extra financial resources needed to meet the health, nutrition, education, and water and sanitation goals agreed at the World Summit for Children, which is in comparable perspective far less than the amount the Japanese Government has allocated to the building of a new highway from Tokyo to Kobe; which is two to three times as much as the cost of the tunnel soon to be opened between the United Kingdom and France; which is less than the cost of the Ataturk Dam Complex now being constructed in eastern Turkey; which is a little more than Hong Kong proposes to spend on a new airport; which is about the same as the support package that the Group of Seven agreed in 1992 for Russia alone and which is significantly less than Europeans will spend this year on wine or Americans on beer.[56] Appropriately allocating the rankings for things essential for meeting these basic needs, UNICEF said that financial resources are a necessary but not sufficient prerequisite and the above exercise of presenting comparative perspective is the result of its resolve to reduce the plea of financial resources to the denomination of dollars only to dislodge the idea that abolishing the worst aspects of poverty is a task too vast to be attempted or too expensive to be afforded.[57] Alternatively, the surviving plea of ensuring survival of children through employment is too fragile to reinforce the pretensions. It is faintly argued that children in distress have a greater appeal to their human essence

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56. *Global Child Health News and Review*, *op.cit.*, p.16.

57. *Ibid.*

than the adults. Therefore providing succour to a destitute or forsaken child is considered a moral act of highest merit.[58] The National Commission on Labour, 1969 for its part also found that it was the feeling of sympathy rather than the desire to exploit which weighed with some of the employers.[59] Instead of condemnation they expected commendation from society for their benevolent act of saving the child from starvation and waywardness.[60] The above arguments so flung are destined for state's faithful affirmation and endorsement even without an inch of departure besides helping it to shroud its inefficiency through repeated sermons on the floor of Parliament and in various forums. The spirit, however, that is lying around the employment of children in vast scale points to the other way. It is necessary to appreciate that had the employers really been interested in helping the starving children and had the state really been interested to endorse employment of children only to bail them out of starvation, the employers could have confined themselves, and the state could have restrained the employers to confine, only to the violation of the provision relating to the employment of children below the stipulated age. It is highly reprehensible that several steps employers have gone further than obviously contemplated by the moral act of highest merit. Indeed the employers have reached the point of no return in putting the children to work beyond ten hours under inhuman conditions for a pittance. Children are made to slog as bonded labours. The child in the womb is pledged to the factory. Maternity loans are

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58. Government of India, Ministry of Labour, *Report of the Committee on Child Labour, December 1979*, p.10.

59. *Ibid.*

60. *Ibid.*

obtained on the understanding that the child born would work for the factory.[61] Should their jobs hold a lifetime's guarantee, the basic argument of poverty driving these young ones to work would hold true. But, it is a well known fact that in many industries, children are retrenched at the smallest sign of fatigue or should they grow physically "too big for the job", as their profits depend on child labour.[62] The earnestness of the so called benevolent employers, as put by the National Commission on Labour in its anxiety to add feather to the cap of the employer reportedly commendable for his benevolence, in providing conveyance is not for the convenience but for securing cheap hands. Productivity and profit are the watchwords of the enterprise and children are expendable commodities to be used for financial advantage.[63] To nail the lie of

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61. Sankaranarayanan, A., Remember Today These Kids Too, *Indian Express*, November 14, 1987. See also, *The Hindu*, August 17, 1986, p.3.

62. Planned Effort To Retain Child Labours, *The Hindu*, August 17, 1986, p.3. It is observed that children are forced to remain unemployed when they become adults, either because the employers deliberately sends them away since his profits depend on child labour, or because their health breaks down by the time they are 30. See, Fernandes, Walter, Child Labour: Harsh Reality or Vested Interest, *The Hindu*, December 11, 1986; By the time a boy is 30 and his fingers have stiffened and lost their nimbleness,he would be out of the job and unemployable except as a manual labour. And another eight year would have taken his place. See, Gupta, Subhadra Sen, Children of Darkness, *Indian Express*, September 4, 1988.

63. Employers prefer children because they are agile and nimble, more amenable to discipline, consume less food and do not unionise. The problem is high turnover and vulnerability to moods. The last, however, is tackled by harsh disciplinary action.

The challenge to the benevolence alleged to have been the motivating factor is further substantiated by the fact that the Sanat Mehta Committee appointed in 1983 to study the problems of child labour was told that if child labour were to be prohibited in carpet industry, the cost of carpets would rise and consequently Indian prices would not be competitive in the international market, and our export earnings would fell. See, Vijapurkar, Mahesh, Child Labour - An Economic Necessity, *The Hindu*, November 11, 1996. *op. cit.*

At a workshop held at Banaras Hindu University, the General Manager of the Handloom and Handicrafts Exports Corporation (HHEC), a Delhi - based

the employer further, it may be said that had they really been interested in the welfare of children, they could have used the money saved illegally out of cheap labour[64] of children to improve their well being. If it were so, there would not have been talk of employment of children now since their conditions of living would have improved substantially, and consequently, there would not have been need for the state to admit the existence of child labour and to plead even after the lapse of 33 years since the adoption of the Constitution that their abolition is neither practicable nor desirable in view of the prevailing economic situation.[65] Thus it is amply clear that benevolence is only a shadow plea and it

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government undertaking vehemently opposed the banning of child labour as "it would be suicidal for the carpet industry". See, Barse, Sheela, Legitimising Child Labour, *Indian Express*, July 28, 1985. A Carpet Export Promotion Council official stated that the government should not be allowed to "kill the goose that lays golden egg" by banning child labour. Fernandes, Walter, Child Labour, *The Hindu*, December 11, 1986.

It is stated: "In open and brazen violation of labour laws and the Bonded Labour Abolition Act, some 100 persons, many of them children below 14 years... are being kept in a 60- feet by 15 feet tin cage, made to work 12 hours and more, paid an eighth or less of the statutory minimum wage, and left unattended and uncared for to suffer malnutrition, disease and even death.... The offending employers are not only private companies but, astonishing as it may seem, also public sector and government undertakings". Slavery at High Noon, *Indian Express*, October 4, 1985, p.8. Mr.Chandramouli reported that countless rural households supply child labour to the match and fireworks units. *where children form just another raw material to be consumed by the industry.* [Emphasis supplied]. See, Chandramouli, Playing With Fire, *Indian Express*, March 4, 1990.

64. Since children are paid paltry wages and the employers escape having to pay taxes, insurance and various social security contributions, child labour yields a quite substantial amount: at the lowest *estimate about $ 2 per day per child employed.* [Emphasis supplied] United Nations, *Exploitation of Child Labour*, New York, 1982, p.13.

65. The Ministry of Labour in its annual report for 1983-84 stated that it had accepted the harsh reality of child labour but went on to say *that it would be neither feasible nor opportune to prevent children from working at the present stage of economic development* [Emphasis supplied]. However, it failed to mention at what stage of economic development it would be possible to abolish child labour. Iyengar,Vishwapriya L.,Rights for Little Workers? *Economic and Political Weekly*.

is only a strategy for enslavement of child labour. It is the wound of neglect that the government of a welfare state has inflicted upon its citizens in turning crores of children into exploited workers on the plea of poverty and economic development and hence the need for survival through employment.[66] Child labour is no answer for poverty. The relationship between them is far-fetched, remote and indirect thus incapable of sustaining nexus.[67] Captains of industries, however, are unrepentant. Legal remedies are mostly unavailable. "Child protection legislations in India are an apology for child welfare,"claims the

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September 7, 1985, p.1509. The reason for the indifferences to such dismal statistics [statistics furnished by the Operations Research Group, Baroda] is clearly the general feeling that nothing can be done about child labour, which is a product of the country's abysmal poverty. Some of the children might well starve if they were not employed. Children of Neglect, *Indian Express*, September 4, 1985, p.8. See also, Child Labour Aplenty in City Hotels, Workshops, *Indian Express*. May 25, 1993, p.1.

66. Iyengar. Vishwapriya L., Rights for Small Workers? *Economic and Political Weekly*. September 7, 1985, p.1508.

67. It is claimed if the constitutional directive for free and compulsory education for all children up to the age of 14 were implemented, then child labour would disappear automatically. Studies have shown that the rural landlord and urban industrialist have a vested interest in indebtedness, bondage and child labour and they ensure that they do not go to school and are deprived of any avenue of freedom from exploitation. Walter Fernandes further said: "The Labour Department is unable to stop this exploitation and uses the argument of poverty to justify its inaction. Fernandes, Walter, Child Labour, *The Hindu*, December 11, 1986; Irrigation of dry lands of Tirunelveli and Kamarajar Districts, which would go a long way towards easing the burden of poverty in the area, has been discussed at least 40 times by successive legislatures with little conviction or effect, thanks to the industry lobbies. Chandramouli, Playing with Fire, *Indian Express*. March 4, 1990; The problem of child labour exists not just because of the poverty of the parents but because of the government's inability to implement the schemes, worth several thousand crores, designed especially for the children of the poor. Singh, Talveen, Children of Darkness, *Indian Express*, July 9, 1989.

former Chief Justice of India, Justice K.N. Singh.[68] Economic development, technological advance and legal provisions have done little to enhance the status of millions of children in India who, because of poverty and deprivations, are exploited. If india has anything at all to be proud of in our otherwise shameful record, it is the fact that the problem of slave labour appears to be much worse in countries like Nepal, Pakistan and Bangladesh.[69] It is a silent conspiracy against children in which big leverages continued to be used inspite of the numerous measures, legal and social, that existed for their protection.[70] In an apparent coincidence with the government's "helplessness" and the official view that the child labour cannot be abolished given the present economic conditions but only can be "regulated", the welfare schemes [including 'food' and 'benefits' at the work place] will only legitimise the presence of children in factories. The sheer illogicity of expecting a working child to take advantage of evening school or "after work" education programmes points not only to a lack of sensitivity among our planners,[71] but, in fact, works to perpetuate and

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68. Vajpeyi, Yogesh, The Wages of Woe, *Indian Express (Sunday Magazine)*, November 22, 1992, p.2

69. Singh, Talveen. Children of Darkness, *Indian Express*, July 9, 1989.

70. Lakshman, Nirmala, A World of Endless Exploitation, *The Hindu*, October 2, 1988, p.18.

71. It is correctly pointed out how an eight or twelve - year old buried in the loom pits of the carpet industry or haunched over matches in Sivakasi from dawn until dusk every day, can participate and benefit from the numerous schemes of education planned for him? Lakshman, Nirmala, A World of Endless Exploitation, *The Hindu*, October 2, 1988, p.18. Given the laxity in the implementation of laws, how will the government provide non-formal education after a 12 hour working day, claimed Mr.Walter Fernandes. The scheme will not be implemented since, as many studies have shown, employers have a vested interests in keeping the weaker sections illiterate in order to ensure a continued supply of child labour. See, Fernandes, Walter, Child Labour, *The Hindu*, December 11, 1986.

strengthen the system of child labour.[72] It is no more than just a question of skewed priorities and half-hearted strategies. With 56 million children in the country out of schools, they form a vast and endless source of cheap labour for unscrupulous employers and parents to draw from. In the scenario of what is described as the "state abuse of the child",[73] the government banks heavily on the apathy of public at large.[74] While the nations strive to make the achievement of basic human rights a reality, violations continue. Government often lends support to proxy pleas of the vested interests who treat people inhumanely. Notwithstanding the laws and lofty sentiments about the rights of children, they invariably wind up at the bottom of the national agenda for political and social action.[75] It is not surprising that after several decades of planning,

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72. Lakshman, Nirmala, A World of Endless Exploitation, *The Hindu*, October 2, 1988, p.18; Explaining the far - reaching implications of providing food for children at the work site, Mr.Walter Fernandes further said: "A child who for one reason or the other does not come to work, cannot get food. The offer of food will become an additional incentive for parents to send their children to work. Several studies have indicated that attendance in schools improved substantially when the Tamil Nadu Government introduced the mid-day meal scheme in schools. The same thing will happen again. More children will be sent to work by their parents for the free food.... The employer is thus not only provided with a steady stream of child labourers..." See, Fernandes, Walter, Child Labour, *The Hindu*, December 11, 1986.

73. Lakshman, Nirmala, A world of Endless Exploitation, *The Hindu*, October 2, 1988, p. 18. Aptly describing the situation as abuse of child by the state itself in the face of its failure to measure up to its obligation of providing equality of opportunity and status even at the most basic level to every child as promised in the Constitution, Justice Desai called for a constant "creative interpretation" of the law to safeguard the interests of the child, as the "guardians of all minors" in the country the "Judiciary could be held responsible" whenever the lacunae in the system were not corrected. See, Lakshman, Nirmala, A World of Endless Exploitation, *The Hindu*, October 2, 1988, p.18.

74. Sarkar, Chanchal, Lost childhood: Sharp and Bitter, *Indian Express*, February 5, 1989.

75. Lakshman, Nirmala, A World of Endless Exploitation, *The Hindu*, October 2, 1988, p.18.

economic development in its slow and uneven course does little dramatically to alter the situation of the millions of working children whose childhood are lost in endless exploitation and who are then pushed to the extreme fringes of society.[76] It is axiomatic as observed by Justice V.R. Krishna Iyer that paramount right of any human being is wholeness of personhood, free from disablement and this right begins with conception, continues in the foetus, buds at birth and blooms as the babe grows into adolescent and adult status, manifesting the potential perfection which is his natural endowment.[77] In the face of continued onslaught on the human values, there is no gainsaying that world conference on human rights often provides an opportunity to listen, share and reach consensus in search for a life with dignity for all and, most important, the need to respect the right to be a human being. For it is heart-rending that oft-quoted consensus stops at making knee-jerk responses often ending with quoting of constitutional scheme *sans* spirit with contentment only to refurbish the image lost. One such an occasion Dr.L.M.Singhvi used saying "India has no reason to be apologetic about human rights, this is in keeping with our legal and constitutional traditions. We have always taken a larger view of development that includes human rights not only in the civil and political field, but also social, cultural and economic rights... Our Constitution, with chapters on Fundamental Rights and Directive Principles, has recognised the indivisibility of these two sets of human rights".[78] India never falters but only bothers much about its citizens is the message that such responses seek to convey. Though such messages

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76. *Ibid.*

77. Justice Krishna Iyer, V.R., *Salvaging Democracy: Some Reflections*, Konark Publishers Pvt. Ltd., 1990, pp.39-40.

78. Abraham, Thomas, India Links Terrorism to Human Rights, *The Hindu*, May 3, 1993, p.6.

are hard to believe, they are well intended - intended to create hope with silver lining which are never destined to be realised. However, they seek to unfold the truth which is conspicuous that the government is aware that the human race need more care than they have been given thus far and that there are far too many including children in particular, dying and subsisting in barely tolerable circumstances to be ignored much longer. Laudable though as it is a civilised thought, it is no more than a perverse kind of paternalism when the state agents [hardly to be dignified with the description of "policy-makers"] argue that the state ought not to intervene "since poor parents need the income of their children. It is thus a matter of social justice that the children of the poor be allowed to work".[79]

Material abandonment of children is the cherished legacy of the state and the defiling and defacing of human values are dear to the hearts of the agents of the state thus throwing to the winds the doctrine of *parens patriae*.[80] A more whole - hearted repudiation of the Constitution by those who seek and derive power and authority from it is hard to imagine.[81] It is really disgusting to

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79. Baxi, Upendra Dr., Unconstitutional Politics and Child Labour. *Mainstream*, Vol.xxxi (47), October 2, 1993, p.17.

80. It means literally 'parent of the country' and refers traditionally to the role of the state as a sovereign and guardian of persons under legal disability. Conceptually, the *parens patriae* theory is that it is the obligation of the state to protect and take into custody the rights and the privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the state to secure to all its citizens the rights guaranteed by it and where the citizens are not in a position to assert and secure their rights, it is necessary for the state to assume responsibilities analogous to *parens patriae* to discharge the obligation. See, *Charan Lal Sahu* vs. *Union of India*. (1990) 1 SCC 613.

81. *Ibid.*

learn and believe that the Declaration has turned to be 'Pious', the Fundamental Rights have proved to be 'Empty' and the implementation of the National Policy for Children has become 'Doubtful'. However, it may be hastened to add that this is not the end but only a prologue to a 'tragic story'. Time is ripe to tell the state that 'the unconcern' about the children should be halted forthwith. At least, let them not be forgotten citizens any more, be our wish. For if such a heartless exercise is to continue, it would knock the death knell to the human rights and fundamental freedoms of those "little millions". Not to belittle, social and economic freedoms will follow suit.

It is worth emphasising that Ghandhiji desired *Swaraj* for the poorest and the lowliest. He firmly believed that democracy grounded on individual freedom alone can provide the right environment for the growth or happiness of the individual. He desired that this democracy should have meaning not for a few but for all, including the poorest. That is why he said: "The *Swaraj* of my dreams is the poor man's *Swaraj*. He further stressed: "The necessaries of life should be enjoyed by you in common with those enjoyed by the princes and moneyed man. ...Real *Swaraj* must be felt by all men, women, and children".[82] Nehru, even in the Constituent Assembly, warned about the writing on the wall if our massive poverty were not liquidated before long. He said: "If we cannot solve this problem, all our paper Constitution will become useless and purposeless... If India goes down, all will go down, if India thrives, all will thrive, and if India lives,

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82. Ali, Sadiq, A Gandhian Approach to Current Problems, *Main Stream*, Vol.xxxi (47), October 2, 1993, p.7

all will live...".[83] Injustice, Inequality and Indignity make men unfree. As far back as 3000 B.C. the Greek Poet, Homer, complained:

> "Injustice, suave, erect and unconfirmed, sweeps the wide Earth and tramples o'er Mankind; while Prayers to heal her wrongs move slow behind".[84]

The integral yoga of liberty and justice is basic to *Swaraj*, claims justice V.R.Krishna Iyer while quoting with approval Robert G. Ingersoll. Robert G. Ingersoll said:

"A Government founded upon anything except liberty and Justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities, and all the nations that have passed away - all are a warning that no nation founded upon injustice can stand. From the sand - enshrouded Egypt, from the marble wilderness of Athens, and from every fallen, crumbling stone of the once mighty Rome, comes a wail as it were, the cry that no nation founded upon injustice can permanently stand".[85] Justice V.R. Krishna Iyer further solicited the words of Joseph Stalin to drive home the theme that a free people, wedded to authentic democracy, must realise the indivisibility of people's freedom and social justice.[86] John Stalin said:

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83. Justice Krishna Iyer, V.R., Dimensions of Development, *Mainstream*, July 30, 1983, p.24.

84. Justice Krishna Iyer, V.R., *Equal Justice and Forensic Process: Truth and Myth*, *op.cit.*, p.104.

85. *Ibid*, p.1.

86. *Ibid*, p.4.

"We have not built this society in order to cramp human freedom. We have built it in order that human personality might feel itself actually free. We built in for the sake of genuine freedom, freedom without quotation marks".[87] Referring to the unassailable consequences that would ensue, the unperturbed Justice V.R. Krishna Iyer said:

"True, but when the objective conditions of social inequality ripen to bursting point and the subjective status of people's consciousness, canalised by militant leadership, hots up, a revolutionary eruption of the masses will force the pace of change for sheer survival of orderly society. Soon the common people will clamour for militant justice as the core imperative of independence and will tell the commanders of the rule of law to mutate the system or suffer eclipse...".[88] The consequences adverted to are not new for us but just a reminder of the caution mildly toned by Dr. Ambedkar 40 years back which has failed to bring impact on the state apparatus. Familiarly styled as Delhi Declaration, the Report of the International Congress of Jurists in a stronger vein emphasised saying:

"The Rule of Law is a dynamic concept... which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realised...".[89] Notwithstanding, the rule of law in India remains to be a dark

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87. *Ibid*, p.2.

88. *Ibid*, p.3.

89. *Ibid*, p.39.

horse. The administration of Delhi was pleased once earlier to play the role of the host to organise the conference for preaching values but it has never bothered all these years to honour the host of values it preached. Hosting conference for preaching host of values is only for clamour and not for action; hence the resultant breach. It requires no further proof to affirm that preaching and breaching are two sides of the same coin. Hence there is yawning gap between promise and performance, precept and practice. Of course, it requires a lot and lot to prove that there is breach after breach, but it only requires a small and minicule exercise of power through state action to tilt the scale in favour of showering concern by the state. A point to the hilt is the recent accession by India to the Convention on the Rights of the Child.[90] Accession to the convention is not to be mistaken for change of heart of the government to win the hearts of the poor specimen suffering in silence. Such a belief, even remotely held, will be a disservice to the humanity, if the bewildering past experience is any indication. Rather it is only a change of strategy and quite understandably mischievous *prima facie*. It is a strategy earmarked only to silence the protests from the international quarters. However, the Delhi administration is more likely to be holed up for its audacious indifference to similar pressures within the country.

1.5 OBJECT OF THE STUDY

Displayed above is a picture of contrast fairly indicating the missing reconciliation between the shocking profile of the millions of children and

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90. On December 11, 1992, the instrument of accession by the Government of India to the Convention on the Rights of the Child was deposited with the U.N. Secretary - General. See, Baxi, upendra, Unconstitutional Politics and Child Labour, *Mainstream*, October 2, 1993, p.19.

apparent concern for human values and rights of mankind as reflected in the national and international instruments of protection. Hence, the obvious is to assert that child labour is not a problem of economical or social nature as contended with ease. But, fundamentally, it is a problem involving higher values of human rights of children. Such a contrast is only a proof of anomaly exposing the worth of the state to ridicule. It is in this context, the question of state's accountability arises as a major theme for discussion. This concept visualises answerability of the state in respect of its responsibility towards children. In the reckoning of childhood reverence, what emerges significantly is the affirmative responsibility of the state of ensuring worth and human dignity of children. Remarkably, such reverence only transpires the state's commitment to spirit and values of mankind and gracefully, its honour without blunt excuses is the real mark of respect to Rule of Law. Drifting from such commitment even minimally is sheer malignancy brought to bear upon common good for which the state and its agencies should be made accountable. Retrieval of the principle of accountability is so vital that in the Indian extent, principled activism is not an option but a constitutional obligation. Ultimately, this sets the parameters for the study.

1.6 METHODOLOGY ADOPTED

The methodology adopted in the present study is theoretical oneinvolvinganalysis of the problem on the basis ofthe international instruments, the provisions of the Constitution and other relevant statutory materials, besides the relevant cases decided by the Supreme Court. While these constitute the original source, books and articles from the pool of secondary sources are also used.

1.7 SCHEME OF THE STUDY

The study is divided into ten chapters. Chapter One gives introduction to the problem under study, highlighting the contrast between the shocking profile of the millions of children and apparent concern for human rights as reflected in the national and international instruments.

In an apparent exposition of the problem involving human rights abuse, Chapters Two to Five of this study bring into focus the human rights jurisprudence with special reference to the rights of children. As children have a particular identity as children and a universal identity as human beings, Chapter Two in the first instance dwells at length on the human rights and fundamental freedoms of mankind with focus on the right to life. It emphasises the consensus reached over the well-being of men and women underscoring the intrinsic value of man and his inherent dignity. It also discusses the accountability of the states under the Bill of Rights in the context of massive poverty and disease and eventually, traces the wider obligation of the state to ensure to all, access to survival requirements.

Chapter Three discusses the rights of children as enumerated in the international instruments. It refers to the basic needs of children that are essential for their survival, growth and development and to the obligations of ensuring growth and development of children and protecting them against exploitation. As a follow up, the rights of children to health, food, education and right against exploitation are stressed. The first three rights namely right to health, right to nutritive food and right to education are dealt with in Chapter Four.

Right against exploitation is discussed in Chapter Five of this study. This essentially relates to the realm of employment of children at an early age in adverse conditions. The underlying emphasis is on the continuance of the growth and development of children without postponement and deprivation until they become complete in all respects ensuring wholesome personhood. With this object in view, the protective child labour policy of the ILO is analysed in the light of the international labour standards laid down in its Conventions and Recommendations.

In Chapter Six, an attempt is made to evaluate the provisions of the Constitution and other statutes on the employment of children set against the international standards enumerated earlier.

Chapter Seven and Eight of this study diagonise the problem of child labour in India and present its scale and severity bringing out all its ramifications in the particular context of various occupations the children are forced to visit frequently.

Chapter Nine proceeds to discuss the principle of accountability of the state for administrative failure and its application.

In the final chapter, the inferences drawn earlier are summarised and based on these inferences, some suggestions are made.

CHAPTER TWO

RIGHTS OF MANKIND

2.1 EVOLUTION AND GROWTH OF HUMAN RIGHTS

The international legal order is nowadays witnessing an increasing importance being attached to the promotion and protection of human rights. International institutions accords human rights questions a priority that in many cases even exceeds questions of peace and security.[1] Human rights are undergoing a stage of continuing evolution. Following the increasing concern of the international community for human rights, the process of evolution goes at a pace making the catalogue of human rights as now constituted as essentially open-ended.[2] Human rights, representing claims for a right to life at a genuinely human level though concerns the international community presently for a wide variety of reasons, are part of man's struggle for the realisation of all his human values.[3] Human rights in retrospect were seen as struggle for the protection of the dignity of human person as a reaction to the authoritarian and repressive regimes. The American and French revolutions, each of which substituted a

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1. See Richard A. Falk in John Carey (ed), International Protection of Human Rights (1968) 41, in Bhalla, S.L., *Human Rights: An Institutional Framework for Implementation*, Docta Shelf Publications, Delhi, First Edition, 1991, p.1.

2. Meron, Theodor, *Human Rights and Humanitarian Norms As Customary Law*, Clarendon Press, Oxford, 1989, p.99.

3. See Singhvi, L.M. Dr., (ed), Horizons of Freedom (1969) xv. in Bhalla, S.L., *Human Rights, op.cit.*, pp.1-2.

republic ruled by elected representatives for the previous rule of a hereditary Prince marked the birth of human rights jurisprudence. The French Declaration is frequently taken as a convenient point of departure in tracing the origin and growth of human rights and civil liberties during the preceding centuries before its amplitude is assessed in modern times.[4]

The French Declaration with clout of political philosophy declares the protection of the natural and imprescriptible rights of man as the aim of all political association besides general affirmation of faith in liberty, property, security and resistance to oppression.[5] Mirabeau who was *rapporteur* of the drafting committee which produced the French Declaration and who was an elected representative of the people in the first National Assembly, invited the Belgians who were then under the domination of Austria - but, by implication, the French, to accept as their goal:

> a list of rights which belong to you as men, rights which are inalienable and imprescriptible...which constitute the common basis and eternal foundation of any political association.... They are of such nature that without them it is impossible for humankind in any climate to preserve its dignity, to secure its development or to enjoy in tranquillity the blessings of nature.[6]

Similar sentiments stood reflected in the words of Jafferson, principal author of the American Declaration, when he became the Second American Minister in

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4. Roberston, A.H., *Human Rights in the World*, Manchester, 1972, p.1.

5. *Ibid.*, pp.1-2.

6. M.Lheritier, Mirabeau et nos liberte's, (Paris, 1951), in Roberston, A.H., *Human Rights in the World*, *ibid.*, p.3.

Paris.[7] The drafting committee considered several drafts submitted by individual deputies of which one was submitted by La Fayette which was based on the Declaration of Independence and the Virginia Bill of Rights.[8] The French Declaration of the Rights of Man of 1789, besides affirmation of faith, proceeds to proclaim a number, of the "natural and imprescriptible rights of man" ranging from the proclamation that "all men are born free and equal" to freedom from arrest except in conformity with the law, protection against retroactivity of the law, the presumption of innocence, freedom of opinion, freedom of religion, freedom of expression and right of property. Later, Declaration of 1793 was proclaimed to reaffirm the faith in these rights and to add a few more rights including freedom of the Press.[9]

On similar lines was the political philosophy of America which permeated the fabric of the American Declaration of Independence. This appears clearly enough from the Preamble to the Declaration of Independence of 4 July 1776:

> We hold these truths to be self-evident: That all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends it is the rights of the people to alter or to abolish it and to institute a new government, laying its foundation on such principles, and organising its powers in such form as to them shall seem most likely to effect their safety and happiness.[10]

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7. P. Alfaric, *Les Declarations Francaises du droits de l'Homme* [Paris, 1954], p.9. See also Willson, *America's Ambassadors to France* [London, 1928], pp.30-7, in Roberston, A.H., *Human Rights in the World*, *ibid.*, p.3.

8. P. Alfaric, *ibid.*, p.6, in Roberston, A.H., *Human Rights in the World*, *ibid.*

9. Roberston, A.H., *Human Rights in the World*, *ibid.*, pp.1-2.

10. *Ibid.*, p.4.

American ideas of the liberty of the subject and the protection of the individual against arbitrary power were not the eighteenth century's explosion in asmuch as the Americans were already very much familiar with the tradition of political liberty and the rule of law which was considered to be the birth-right of Englishmen. They came to be reinforced only through Philadelphia Declaration[11] and later in the Bill of Rights added to the Constitution in 1791[12] Admittedly, the American Declaration had its solace in the philosophy of John Locke, who sought to justify the two English revolutions. These revolutions had led to the dethronement and execution of Charles I, and the 'peaceful revolution' of 1688 which caused the abdication of King James II, who were regarded as the symbols of arbitrary power.[13] The victorious subjects spelt out in an important document the English Bill of Rights of 1688, their 'ancient rights and liberties' which their Princes were henceforth to maintain sacrosanct, and not to infringe.[14] These rights were regarded as natural rights as they were endowed by the creator and Supreme Being thus implying the authority for the proposition that "Men are born free and equal in respect of rights" which are sacred and undeniable. These two declarations accompanied by catalogue of rights. the first of their kind in the history of mankind, came to exert a pervasive influence over the later development of the theory of human rights, and the practice of

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11. *Ibid*. It was only when the attempt to secure English Liberties on American soil had failed that the colonists had recourse to the proclamation of independence and the revolutionary war.

12. See Roberston, A.H., *Human Rights in the World, ibid.*, p.13. The catalogue of rights entrenched in the U.S. Bill of Rights were similar to the one proclaimed in the French Declaration.

13. *Ibid.*, p.2.

14. Sieghart, Paul, *The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights, 1985*, p.25. The English Bill of Rights is similar to Magna Carta which the barons extracted from King John in 1215.

ensuring respect for them.[15] Despite the claim that the source of these rights in these two declarations is not authentic, they carried significance and stood apart at least in one fundamental respect from all that had gone before, including particularly Magna Carta and the English Bill of Rights of1688. Significantly they were in the sense that they were no longer concessions extracted from an unwilling Prince; but they were coherent catalogues of fundamental rights and freedoms, aptly called the Rights of Man, and regarded as 'inherent' in all human individuals in virtue of their humanity alone, and as 'inalienable' - that is, as universal rights and freedoms which it lay in no one's power either to give or to take away.[16] The written constitutions in which Americans and French 'entrenched' the catalogue of rights provided the very foundations of these new states governing the relationship between the state and its subjects. Similar pattern of entrenchment of catalogues of fundamental rights was followed suit by many countries, by incorporating them in their written constitutions. However, the catalogue was to be enlarged at least in some cases of the countries where the evils of the unrestricted exploitation of human beings in the productive process were on the increasing scale demanding claims on the intervention of the public authorities of the state.[17] While so, the more immediate reasons for the *genesis* of international concern for human rights were, however, born out of the events connected with the origin and conduct of Second World War.[18] The shift from the national to the international concern

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15. *Ibid.*, p.27. See also Bhalla, S.L., *Human Rights, op.cit.*, p.2.

16. *Ibid.*, p.28.

17. *Ibid.*, p.30.

18. The other reason are not far difficult to seek. Notwithstanding the fact the rulers then had exclusive sovereign over their subjects in the determination of the kind of treatment to be meted out and any attempt to influence the process of such

for protection and promotion of fundamental human rights was evidently purposeful. The infinite misery and devastation which was the outcome of the Second World War were the fiercest and without any parallel then in the history of mankind besides reflecting the inadequacies of rules of traditional international law incapable of evolving techniques and methods for protecting the individual from his own government. The marginal concern shown by the international community only enabled the community to deny any plausible plea of its absence as such concern was only peripheral. The events preceding and precipitating the Second World War made it plain that the international community constituted by all those states could not any more afford to continue to leave the issue of rights of the mankind solely to the internal jurisdiction of nation states. A superior and external set of constraints was considered to be inevitable as well desirable in the interest of all the states.[19] There was consensus in the message disseminated that the effective international protection of fundamental rights was a major purpose of the war in as much as it

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(Contd.,)

determination could be rightly rejected as an attempt to infringe the personal sovereignty - an 'illegitimate interference in the internal affairs of a sovereign Prince' - , by small degrees the international community did begin to concern itself with the mankind. It may be pointed out there was a move in this direction when the Congress of Vienna as early as 1815 demonstrated international concern for human rights and agreed in principle to abolish slavery.

The Red Cross movement which Henri Dunani had founded began to promote reforms in the laws of war in order to make warfare more humane. [referred to as evolution of humanitarian law] The ILO established in 1919 took the lead in proposing and negotiating the demand for better pay, conditions of work, health and safety of industrial workers. Two multilateral labour conventions were adopted in Berne in 1906.

19. See Sieghart, Paul, *The Lawful Rights of Mankind*, *op.cit.*, pp.39-40: Bhalla, S.L., *Human Rights*, *op.cit.*, p.3.

is an essential condition of international peace and progress.[20] The response for such a perceptive change in the role of international community of states in the protection of human rights was overwhelming.[21]

It may be recapitulated that before the First World War, the need for some limitation of the right of governments to engage in war and for constructive co-operation between governments in the larger interest of peace and stability was recognised.[22] President Wilson was an eloquent and effective exponent of the view that man's capacity for manipulation and planning had to be turned to the task of arranging relations between peoples and states so that war would

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20. See Hersch Lauterpatch, Human Rights and International Law [1950 reprinted in 1968] 79, in Bhalla, S.L., *Human Rights*, *ibid.*, p.3.

21. See Bhalla, S.L., *Human Rights*, *ibid.*, p.3. President Roosevelt gave a new meaning and importance to the role of human rights in international affairs in his 'Four Freedoms" message to Congress, of 6 January 1941, in which he pointed out that: "In the Future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.... Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights or keep them. Our strength is in our unity of purpose. To that high concept there can be no end save victory". See Louis B. Sohn and Thomas Buergenthal, International Protection of Human Rights, 1973 p. 506. Also, "Atlantic charter": [14 August 1941] wherein President Roosevelt and Prime Minister Winston Churchill declared: "After the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want". Louis B.Sohn, cases and Materials on World Law (1950) 1144. And those four freedoms were given general endorsement in the declaration by the United Nations signed on 1 January. 1942. The signatories expressed their conviction "that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own land as well as in other lands..." Sohn, Louis B. and Buergenthal, Thomas, *International Protection of Human Rights*, The Bobbs - Merrill Company, Inc., 1973, p.506.

22 There was a view that the growth of economic and social interdependence and recognition that certain common human needs could be met only by an organised inter-governmental co-operation.

become infrequent and if it occurred would be suppressed firmly by joint forces of those committed to the maintenance of peace. He was equally instrumental in getting the noble idea translated into working international arrangements at the end of the First World War.[23] The League of Nations was thus founded with dedication to the maintenance of peace.[24] It is, however, unfortunate that the outbreak of the Second World War proved the League to be inadequate to fulfill the hopes which it engendered by its formation and its miserable failure is an history. The Assembly of the League signed its own death warrant by adopting a simple resolution on April 16, 1946 formally declaring its demise.[25] Fall of the League of Nations did not mean sounding death knell to the theme of collective security system. It continued to have its sway over the major powers and fascinating impact on the international setting as a potential ideal capable of promoting international co-operation among states which was lying at its lowest ebb inspite of the existence of the League to protect the international community from the scourge of war.[26] This was overwhelmingly demonstrated by the

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23. Earlier, it was believed that the possible economic and social consequences of war would keep the incidence of war involving nationalist rivalries at the minimal but said hope stood shattered with the outbreak of the First World War. The aftermath of First World War provided initiative for an alternate strategy. See Goodrich M. Leland, *The United Nations*, Stevens and Sons Limited. London. 1960, pp.7-8.

24. The objective was "to promote international co-operation and to achieve international peace and security" based on the system of collective security envisaged in the covenants. See Bowett, D.W., *The Law of International Institutions*, Stevens and Sons Limited, London, Fourth Edition, 1982. p.1.

25. *Ibid.*, pp.21-22.

26. D.W. Bowett claims that the failure of the League was not due to its constitutional defects but because members were not prepared to fulfil their obligations and thus ensure its success. Eventually the failure of the League did not destroy the conviction that only by some form of general organisation of states could a system of collective security be achieved which would protect the international community from the scourge of war, *ibid.*, p.21,23.

spate of events which took place after the failure of the League to prevent the outbreak of the Second World War and before the rise of the U.N as its successor.[27] The formulation of definite plans for such an organisation took shape in stages, at Teheran in 1943, at Dumbarton Oaks in 1944, at Yalta in 1945 and, finally, at the San Francisco conference in 1945 where fifty governments, upon the basis of the Dumbarton Oaks proposals prepared by the four sponsoring states, together drafted the United Nations Charter.[28]

2.2 U.N. AND AFTER

The birth of U.N.[29] marked the beginning of era of human rights. It was not only a successor to the League of Nations which was constituted with the limited objective of preserving international peace and security but a sheet-

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27. When the Second World War became imminent the Allies, even in 1941, calling themselves "The United Nations" signed on January 1, 1942 the Declaration by United Nations which became the legal basis of a powerful military coalition and which was to provide the name for the successor to the League of Nations.

    Also the, joint declaration by the President Roosevelt and Prime Minister Churchill, subsequently known as Atlantic Charter, recognised in principle the need of some form of permanent international organisation by providing for the disarmament of aggressive nations "pending the establishment of a wides and permanent system of general security."

    Also, Moscow Declaration signed in October, 1943 by the foreign ministers of the then Soviet Union, the United Kingdom, and the United States and the ambassador of the Republic of China declaring " the necessity of established at the earliest practicable date a general international organisation, based upon the principle of sovereign equality of all peace-loving states, large and small, for the maintenance of international peace and security. See Goodrich, Leland M., *The United Nations*, *op.cit.*, p.20,22.

28. Bowett, D.W., *The Law of International Institutions*, *op.cit.*, p.23.

29. U.N. was formerly constituted with the signing of charter on June 26, 1945 by the delegations of all fifty states participating in the San Francisco Conference held at the invitation of the sponsoring governments.

anchor of human rights and rallying hope for the mankind. The Charter of U.N., also known as its Constitution, came as a shot in the arm of human rights and served as a booster facilitating its rising to the sphere of internationalism.[30] It reflects new approach to human liberty and freedom born of the experience of the Second World War and the years immediately preceding it, when flagrant violations of human rights and denial of the basic dignity were the hallmarks of regimes challenging and violating international peace and security.[31] Multiple reasons were admittedly behind the establishment of the U.N but primary and strong among them were those concern for mankind. Some countries, who have long pioneered in the development of Bills of Rights for the protection of their own citizens, felt that humanity as a whole should benefit from their experience. The theme of human rights in the sphere of international affairs came to acquire a new dimension with the new meaning and importance of the role it has to play, it received from the message of President Roosevelt to Congress, of 6 January 1941. In his "Four Freedoms" message to Congress, he was proud of saying.

> "This nation has placed its destiny in the hands and heads and hearts of its million of free men and women;

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30. Earlier individual rights and freedoms were declared and entrenched only in the written constitutions of America and France and other countries. For the first time, the theme came to be recognised and found expressed in an international treaty which was not only unprecedented but was a complete innovation in international law and relations. See Roberston, A.H., *Human Rights in Europe*, Manchester University Press, Manchester, Second Edition, 1977, p.2; Bhalla, S.L., *Human Rights*, *op.cit.*, p.5.

31. Goodrich, Leland M., *The United Nations*, *op.cit.*, p.242. It is also claimed that the evident emphasis on individuals in the charter is clearly discernible in its opening words "We the peoples of the U.N." which denotes a great advancement over the covenant of the League of Nation which began with the phase "The High Contracting Parties." See Bhalla, S.L., *Human Rights*, *op.cit.*, pp.5-6.

> and its faith in freedom under the guidance of God. Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights or keep them. Our strength is in our Unity of Purpose.
>
> To that high concept these can be no end save victory".[32]

These freedoms were again emphasised in the Declaration by the United Nations of January 1, 1942, thus underlying broader consensus among the signatory nations. These freedoms, however, were not the same freedoms which were traditionally recognised and subsequently entrenched in the constitutions then existing. Freedom so conceived was broader in perspective in as much as the objectives underlying the freedom from fear and the freedom from want were more of social in nature necessiating administrative and legislative action for their achievement. President Roosevelt seized of the concept, in his address to Congress on January 11, 1944[33] and made elaboration of its content with thrust on human welfare. Included in this list were "...the right to a useful and remunerative job in the industries, or shops, or farms or mines of Nation..., the right to earn enough to provide adequate food and clothing and recreation..., the right to adequate medical care and the opportunity to achieve and enjoy good health..., and the right to adequate protection from the economic fears of old age, sickness and unemployment".[34]

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32. President Roosevelt's "Four Freedoms" message to Congress, of 6 January 1941. in Sohn, Louis B., and Buergenthal, *International Protection of Human Rights*, *op.cit.*, pp.506-507.

33. For the text, See House Doc. 377, 78th Congress (1949), in Goodrich, Leland M., *United Nations*, *op.cit.*, p.245.

34. *Ibid.*

It is needless to emphasise that President Roosevelt was emphatic in his concern for broadbased human welfare and towards this end, in ushering of ideals encompassing not only traditional human rights but also economic and social rights- human rights conceived in much a larger context than in the past. The spirit of human welfare as envisaged by President Roosevelt was further carried through by the United States wresting the initiative in the preparation of draft charter.

Department of United States in 1942 was the one who submitted a draft of the Charter of U.N. The draft included a Bill of Rights containing "a Common Programme of Human Rights" to which all Members of the United Nations world have to subscribe. While there was consensus on principal provisions relating to political and civil rights, there was an impasse with respect to the formulation of such rights and freedoms as freedom from want and right to public education.[35] After several stages of discussion, the delegates at the invitation of the sponsoring governments met finally at San Francisco in 1945 to discuss the Dumbarton Oaks proposals along with request for several amendments relating to the concern for promotion of human rights and non-discrimination be added in the statement of purposes and in other provisions.[36] Explaining the objective underlying these amendments, the Secretary of State of the United States Mr.Edward R.StettiniusJr., stated:

> "They are essential if we are to build peace on the basis of justice and freedom for all;" the people of the world "rightly demand the active defense and promotion of

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35. *Ibid.*, pp.507-08.

36. *Ibid.*

> basic human rights and fundamental freedoms. It is a matter of elementary justice that this demand be answered affirmatively".[37]

He went further assuring in the following words that the United States Government "will work actively and tirelessly, both for its own people, and - through the international organisation - for peoples generally, toward the protection and promotion of these rights and freedoms. We must also act affirmatively to enlarge the scope of their protection and to nourish their growth. As long as rights and freedoms are denied to some, the rights and freedoms of all are endangered".[38]

Regardless of the hurdles encountered in drafting the Charter, the very fact of insertion in the Charter of various provisions on human rights was considered as one of the major accomplishments of the San Francisco. An instrument dedicated to the achievement and observance of human rights and fundamental freedoms thus came into being and, in due course of time, has become part of the life of mankind.

The Charter provides for a multipurpose organisation the establishment of which is for the reasons authenticated in the Preamble. The United Nations formally resolved to intervene on behalf of men,[39] when it reaffirmed faith in

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37. *Ibid.*, p.509.

38. *Ibid.*

39. The drafters of the charter were looking behind the facts of war to its causes, one of which had been shown by experience to be the existence of dictatorships. There was consensus that the state could not any more be left to remain the sole arbiter in deciding the fate of its citizens. See Roberston, A.H., *Human Rights in Europe*, *op.cit.*, p.2. See also, Moskowitz, Moses, *The Politics and Dynamics of Human Rights*, Oceana Publications, New York, 1968, p.83.

fundamental human rights and in the dignity and worth of the human person and made the promotion and encouragement of respect for human rights and fundamental freedoms of all the responsibility of the new world organisation.[40] The affirmation and commitment was construed as a prelude to an evolution of an international order capable of effectively securing of human rights thereby guaranteeing peace and security.[41] The expression of concern of the United Nations with human rights and fundamental freedoms is a welcome departure from the traditional past and has made these rights and freedoms, which have traditionally remained within the pre-empted province of the state and its exclusive responsibility, matters of international concern and the subject of relations between states.[42] It is widely claimed that the commitment under the Charter to the promotion of human rights and fundamental freedoms marked the

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40. Articles 55 and 56 of U.N. Charter. For the text, see Annexure I, *infra*.

41. The closing speech to the conference of President Truman is a pointer to the direction. He said: " Under this document [the charter] we have good reason to expect an international Bill of Rights acceptable to all the nations involved. That Bill of Rights will be as much a part of international life as our own Bill of Rights is part of our Constitution. The charter is dedicated to the achievement and observance of fundamental freedoms. Unless we can attain those objectives for all men and women everywhere - without regard to race, language or religion - we cannot have permanent peace and security in the world." See Sohn, L.B. and Buergenthal, *International Protection of Human Rights*, *op.cit.*, pp.313-14.

    China's Foreign Minister, Wellington Koo, asserted with authority before the first session of the General Assembly: "If the world is to enjoy lasting peace, the dignity of men must be respected as the first principle of the new order; and the implementation of this principle will not only strengthen the basis of our civilisation but remove suspicion between nations and thus contribute to the cause of peace". United Nations General Assembly, First Session, *Official Records*, Plenary Meetings, 8th Plenary Meeting, 15 January 1946, pp.123-124, in Moskowitz. Moses, *The Politics and Dynamics of Human Rights*, *op.cit*; see also, Roberston, A.H., *Human Rights in Europe*, *op.cit.*, p.2.

42. Moskowitz, Moses, *The Politics and Dynamics of Human Rights*, *ibid.*, p.81. See note 30, *supra*.

most important advancement of the United Nations over the League of Nations and was its greatest promise.[43] This is stood confirmed in the following words of former Prime Minister Clement Atlee noted in his welcoming statement at the opening of first General Assembly in London. He said:

> "The Charter of the United Nations does not deal only with Governments and states or with politics and war, but with the simple elemental needs of human beings whatever be their race, their colour or their creed. In the charter we reaffirm faith in fundamental human rights. We see the freedom of the individual in the state as an essential complement to the freedom of the state in the world community of nations. We stress, too, that social justice and the best possible standards of life for all are essential factors in promoting and maintaining the peace of the world...".[44]

The first session of General Assembly, in successive Plenary Meetings, witnessed tumultuous welcome and honour of human dignity as the other representatives of Member States went even further and asserted that the whole aim and purpose of the United Nations was the defence of the dignity and rights of mankind. The spirit of values of mankind thus was the hallmark of the speeches of the representatives of Uruguay and Peru. Representative of Uruguay said:

> "Our most fervent wish is that the order of law in all spheres, national and international, should have as its ultimate effective end the freedom and the rights of man; and that if we were to be asked one day why we are here and what we are doing, we may be able to answer, simply and modestly, with the very words of the

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43. *Ibid.*, p.82.

44. U.N. General Assembly, First Session, *Official Records* Plenary Meetings, First Plenary Meeting, 10 January 1946, p.41, in Moskowitz, Moses, *The Politics and Dynamics of Human Rights*, *ibid.*, p.82.

> great American Poet, Henry George, "We are for man".[45]

And even the statement of the representative of Peru, which was highly critical of obscurist attitude of political regimes traditionally in vogue, went through without any dissent was evidently the emotional response of the debate shown in honour of human dignity at the first session of the General Assembly. He said:

> "...Man as the central figure of international law was a theoretical conception of philosophers and jurists, for all practical purposes obscured by the political interests of the moment. No one can deny that today it is man, his liberties, needs and guarantees who is the real hub of the life of the world...".[46]

The general philosophy of the authors of the Charter with respect to the importance of the provision regarding human rights and fundamental freedoms was well stated in the report of the Secretary of State to the President on the work of the San Francisco Conference. Commenting on the general significance of these provisions he observed,

Finally, no sure foundation of lasting peace and security can be laid which does not rest on the voluntary association of free peoples. Only so far as the rights and dignity of all men are respected and protected, only so far as men have free access to information, assurance of free speech and free assembly, freedom from discrimination on grounds of race, sex, language, or religion and other fundamental rights and freedoms, will men insist upon the right to live at

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45. *Ibid.* Fourteenth Plenary Meeting, 18 January 1946, p.209, in Moskowitz, Moses, *The Politics and Dynamics of Human Rights*, *ibid.*, pp. 82-83.

46. *Ibid.* Eleventh Plenary Meeting, 17 January 1946, p.170, in Moskowitz, Moses, *The Politics and Dynamics of Human Rights*, *ibid.*, p.83.

peace, to compose such differences asthey may have by peaceful methods, and to be guided by reason and good will rather than driven by prejudice and resentment.[47] The Charter formulated with so broad and enlightened outlook on human values, envisages a commitment on the part of the Member States to specific purposes and principles outlined there in.[48] It is a constitutional document setting forth guidelines for future development.[49] The extensiveness of the Charter commitment is unprecedented the acceptance of which involves a positive commitment by the Member States to the recognition and advancement of human rights.[50] Pledge in disguise guarantees fulfilment of this obligation by the Member States by taking joint and separate action in cooperation with the Organisation.[51] The salutary effect of the provisions of the Charter is fortified by its formal recognition of existence of certain human rights before and during the time of its adoption. Reposition of faith by the U.N. in such rights which are so basic and reaffirmation of the said faith when stood shrunken following unpleasant eventualities are relative to the steadfastness of the United Nations with which it strives for the future of the mankind. The above view stood confirmed significantly by the advisory opinion rendered by the International

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47. *Charter of the United Nations, Report to the President on the Results of the San Francisco Conference by ... the Secretary of State, June 26, 1945* [Department of State Publication 2349], p.116, in Goodrich, Leland M., *United Nations*, *op.cit.*, pp.246-247.

48. Goodrich, L.M., Hambro and Simons, *Charter of the United Nations: Commentary and Documents* [1969] p.1, in Bhalla, S.L., *Human Rights*, *op.cit.*, p.15.

49. *Ibid.* It is stated that the charter by incorporating provisions on human rights, it was responding, on one hand, to immediate past, and providing, on the other, for the long term needs of human society. See Bhalla, S.L., *Human Rights*, *ibid.*, p.14.

50. *Ibid.*, p.16.

51. Article 56 of the Charter.

Court of Justice on "Namibia Question',[52] which goes a long way in reinforcing the Charter commitment towards humanity thus putting an end to raging controversy. The court observed: "*Under the Charter of the united nations*, the former Mandatory had *pledged itself to observes and respect, in a territory having international status, human rights and fundamental freedoms for all without distinction* as to race. To establish instead, and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origins which *constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter*"[53] [Emphasis added].

The Charter, thus, meets not only a just aspiration of the humankind for the active defence of man's basic rights and freedoms but also transforms the notion of "human rights and fundamental freedoms" into a principal norm of international law.[54]

2.3 INTERNATIONAL BILL OF RIGHTS

It may be stated again that the United Nations' interest in the promotion and encouragement of respect for human rights and fundamental freedoms corresponds to the increasing concern of the international community for the

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52. Advisory Opinion on the "Legal consequences for states of the continued presence of South Africa in Namibia [South West Africa] notwithstanding Security Council Resolution 276 (1970)". ICJ. Reports (1971) 16, in Bhalla, S.L., *Human Rights*, *op.cit.*, p.17.

53. *Ibid.*, p.57, in Bhalla, S.L., *Human Rights*, *ibid.*

54. Bhalla, S.L., *Human Rights*, *ibid.*, p.19.

rights and aspirations for dignity of all human beings everywhere and the specific inclusion of promotion and encouragement of respect for human rights and for fundamental freedoms for all among the purposes of the United Nations is nothing but the consequence of such reflection. It is indeed unfortunate that such an illuminating document on human rights is bereft of a precise definition; nor is there any catalogue of such rights and fundamental freedoms to serve as a source of guidance.[55] Though unfortunate was such an omission,still it was not to be regarded as serious lapse in as much as at the San Francisco Conference, which drafted the Charter of the United Nations, a proposal to embody an international bill of rights in the Charter itself was put forward but not proceeded with for the reason that it required more detailed consideration.[56] However, in stark contrast to temporary deferment, its total absence would have rendered the instrument [Charter] totally inadequate thus forcing the efforts taken in pursuit of such internal concern to go waste.[57] Hence, the adoption of

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55. However, there is one aspect of human rights problem which is regulated with sufficient precision in the charter namely the inadmissibility of distinction based on race, sex, language or religion.

56. *Documents of the United Nations Conference on International Organisation*, Vol.vi, p.705, in United Nations, *United Nations Action in the Field of Human Rights 1974*, New York, p.8.

57. From 1948 to 1966 the Universal Declaration of Human Rights was the only part of the international bill of rights in existence, and it was only in 1966 the undertaking of the international bill was completed by the adoption of the two covenants. Because of the considerable lapse of time between the proclamation of the Universal Declaration of Human Rights and the entry into force of the other parts of the international bill of rights, the Universal Declaration has, temporarily at least, fulfilled part of the role originally contemplated for the international bill of rights as a whole. It is further explicitly stated in the Preamble of the Universal Declaration that a "common understanding of these rights and freedoms is of the greatest importance for the full realisation of *this pledge*" [emphasis added] thus recalling the pledge made by the Members states under Article 56 of the charter to achieve, in co-operation with the United Nations, the promotion of Universal respect for and observance of human rights and fundamental freedoms. United Nations. *United Nations Action in the Field of Human Rights 1974, ibid.*, pp.8-9.

the Universal Declaration of Human Rights was another milestone in the history of mankind.[58]

Falling in line with the directive in the Charter, preliminary steps essential to the formulation of an international bill of rights were taken. It is worth recounting that such steps even preceded the establishment of the United Nations and presumably, the heightened conscience for the promotion of human rights outlined in the Charter might have been the sole urge.[59] The Universal

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(Contd.,)

> It is also claimed emphatically that but for the existence of the document [Universal Declaration] it was very likely that the articles on human rights in the charter might have died a quiet, if premature, death. It only helped to transform the general provisions of the charter into a real concern for human rights thus demonstrating that the issue was alive and kicking. Bhalla, S.L., *Human Rights*, *op.cit.*, p.34.

58. In a statement following the voting, the President of the General Assembly pointed out that the adoption of the Declaration, 'by a big majority, without any direct opposition, was remarkable achievement". The Declaration, he said, only marked a first step, since it was not a convention by which states would be bound to carry out and give effect to fundamental human rights; nor would it provide for enforcement; yet it was a step forward in the great evolutionary process. It was the first occasion on which the organised community of nations had made a declaration of humar rights and fundamental freedoms. The document was backed by the authority of the body of opinion of the U.N. as a whole and millions of people - men, women and children all over the world - would turn to it for help, guidance and inspiration. United Nations, *United Nations Action in the Field of Human Rights 1980*, New York, p.10. See also, Joyce, James Avery, *World Labour Rights and their Protection*, Croom Helm Ltd., London, 1980, p.19.

59. Steps preliminary to the adoption of the Declaration were taken even before the charter was ratified and entered into force and before the establishment of the U.N. Such steps were the following:

> The Preparatory Commission of the U.N. and its Executive Committee recommended that the work of the Commission on Human Rights, the establishment of which is provided for in Article 68 of the charter, towards the formulation of an international bill of rights which was subsequently approved by the General Assembly, by resolution (I), adopted at the first part of its first session in 1946. Accordingly the formulation of the international bill of rights ranked top on the agenda of the Commission on Human Rights. See United Nations, *United Nations Action in the Field of Human Rights 1980*, *ibid.*, p.8.

Declaration of Human Rights was adopted in the form of a resolution of the General Assembly on 10 December 1948.[60] Remarkably, the resolution was adopted without dissent, but, of course, with 8 abstinence and 2 absentations. The adoption of the Declaration was the result of a compromise solution emphasising the need to divide the international bill of rights positively into two or more international instruments and eventually the Declaration emerged as the first of these several instruments.[61] The Declaration's concern for human rights is more revealing. The concern so expressed is not merely immediate but also deep and pervasive, given the nature and content of the provisions. This is more amply stated in the Preamble of the Declaration authenticating the nature of the document and the purpose it was intended to serve. It reads:

> The General Assembly,
>
> Proclaims this Universal Declaration of Human Rights, as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.[62]

The Declaration further stresses in paragraph 1 of its Preamble that "recognition of inherent dignity and of the equal and inalienable rights of all Members of the

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60. General Assembly, Resolution 217 A[III], 10 December 1948, in Bhalla. S.L., *Human Rights*, *op.cit.*, p.28. For the text of the Declaration, See Annexure II, *infra*.

61. United Nations, *United Nations Action in the Field of Human Rights, 1980*, *op.cit.*, p.8.

62. Universal Declaration of Human Rights, concluding paragraph of the Preamble.

human family is the foundation of freedom, justice and peace in the world", while recalling that "disregard and contempt for human rights resulted in barbarous acts which have outraged the conscience of mankind".[63] In an attempt to facilitate the fulfilment of the pledge undertaken by the Member States under Article 56 of the Charter, the Declaration consciously underscores "the importance of a common understanding of the rights and freedoms"[64] envisaged by the Charter and dwells at length in its provisions. Though the Universal Declaration was humanity's unanimous response to the authoritative and repressive regimes and the horror of the Second World War, it was, in fact, conceived from the start as a global "Bill of Rights" to be carried through the succeeding covenants to be formulated by the United Nations.[65] The provisions of Articles 1 and 2 are general in nature. While proclaiming that "all human beings are born free and equal in dignity and rights",[66] the Declaration states that "everyone is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind, such as race, colour, sex, language, religion, political or other status".[67] It is further stated that "no distinction shall be made on the basis of the political, jurisdictional or

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63. *Ibid.*, Preambular paragraph 2.

64. *Ibid.*, Paragraph 7.

65. Joyce, James Avery, *World Labour Rights and Their Protection*, *op.cit.*, p.20. It may be recalled that the Declaration was the result of decisions taken in 1947-48 to produce the international bill of rights not by one single, comprehensive and final act, but to divide it into several instruments, of which the Declaration was the first. The other parts of the international bill of rights are the two covenants which were adopted by the General Assembly on 16 December 1966, i.e., 18 years after the adoption of the Universal Declaration. See also, note 61, *supra*.

66. Universal Declaration of Human Rights, Article 1.

67. *Ibid.*, Article 2.

international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".[68] Articles 2 to 21 deal with the traditional civil and political rights. Articles 22 to 28 of the Declaration set forth, mostly in general terms, the economic, social and cultural rights. They are of a more novel nature.[69] Possibly the most novel provision of the Declaration is to be found in Article 28 which declares that "...everyone is entitled to a social and economic order in which the rights and freedoms set forth in the Declaration can be fully realised".[70]

The Declaration, also called as Bible of Humanists, despite its innovative and welcome enumeration of the catalogue of human rights and fundamental freedoms, has failed to stir the human conscience.[71] The words and deeds of the national governments in respect of human rights are often at much variance with the proclaimed standards in the Declaration.[72] The accusations charging human rights violations by one nation against another are not infrequent. It must be admitted that considerable part of the Universal Declaration consists of

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68. *Ibid.*, Second paragraph of Article 2.

69. It is stated that the enumerated catalogue of human rights and freedoms under the Declaration contrasts the Declaration with various constitutional and fundamental law of the eighteenth and nineteenth centuries and of the beginning of the twentieth century in such a way that the Declaration catalogue consists not only the traditional civil and political rights but also those rights which have become known as economic, social and cultural rights and which have subsequently been codified in the International Covenant on Economic, Social and Cultural Rights. United Nations, *United Nations Action in the Field of Human Rights, 1974, op.cit.*, p.8.

70. Goodrich, Leland M., *United Nations, op.cit.*, p.250.

71. Bhalla, S.L., *Human Rights, op.cit.*, p.33.

72. *Ibid.*

well-meaning platitudes that any government on earth can happily assent without altering its existing policies by one iota,[73] for casual assent entails no risk, demands no sacrifice.[74] However, this is not to undermine the significance of the Declaration. Notwithstanding its non-binding character, it has proved to be the starting point of a new legal order[75] and it is profoundly claimed that the

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73. Evan Luard, *The International Protection of Human Rights* (1967) 31, in Bhalla, S.L., *Human Rights*, *ibid.*, p.34.

74. Moskowitz, Moses, *The Politics and Dynamics of Human Rights*, *op.cit.*, p.102.

75. Paul Sieghart claims that despite its great moral authority, the Declaration was not intended, by itself, to impose legally binding obligations on the states that adopted it in 1948. However, with the passage of time, he claims, important developments have happened so quickly changing the entire scenario. He states that" not only do the U.N. and the specialised agencies keep citing it in official documents of one kind or another, but so do many individual states. Between 1958 and 1972 alone, for instance, twenty - five new national constitutions included references to it. Whatever their actual performance, sovereign states are never heard to denounce it in public; on the contrary, they constantly quote it with approval - especially when it suits their interests to accuse some other state of violating it. On grounds such as these, it is therefore now strongly arguable that the Universal Declaration is becoming, if it has not already become, part of customary international law, and so binding on all states, regardless of any treaty obligations".

    He then refers to a solemn proclamation adopted at the International Conference on Human Rights convened by the U.N. in Teheran in 1968. The Proclamation which said that the Universal Declaration is not only a common under standing concerning rights and liberties it proclaims but 'constitutes an *obligation* for the members of the international community' goes some way towards supporting the status of the Declaration as part of binding international law, at least for all the members of the U.N..

    He further says that it is a strongly arguable that the human rights and fundamental freedoms which every member state of the United Nations is, by its charter, bound to respect and observe are, and can only be, precise those rights and freedoms which are enumerated in the Universal Declaration. Elaborating further, he states that the linkage between these instruments has in fact been recognised by the International Court of Justice, which observed in the *Iranian Hostage case* that 'wrongfully to deprive human beings of their freedom and to subject then to physical constraint in conditions of hardship is itself manifestly incompatible with the principles of the charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights'. Sieghart, Paul, *The Lawful Rights of Mankind*, *op.cit.*, pp.64-65. See also, Joyce, James Avery, *World Labour Rights and their Protection*, *op.cit.*, p.90: United Nations, *United Nations Action in the Field of Human Rights 1974*, *op.cit.*, p.17.

process of transformation from constitutionalism to internationalism of human rights issue, initiated by the Charter, received a great fillip with the adoption of the Declaration.[76]

The adoption of the Charter in the first instances and the Universal Declaration of Human Rights as the next step in the direction towards the formulation of the global bill of rights,[77] though courageous and welcome one, still fall short of standard adequate to translate the words into action.[78] The attempt made was so feeble leaving behind a void in the midst of concern continuing with the same spree. The void was so fundamental to incapacitate the realisation of objectives and was capable of becoming irretrievably detrimental, if not redeemed earlier.[79] Existence of such void was well contemplated and not the consequences of the experience gained subsequent

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76. Bhalla, S.L., *Human Rights*, *op.cit.*, p.34.

77. It is claimed that the proclamation of the Universal Declaration of Human Rights marked the high point in the evolution of the U.N. human rights programme and was intended as a first step towards an international bill of rights. See Moskowitz, Moses, *Human Rights and World Order: The Struggle for Human Rights in the United Nations*, Oceana Publications, New York, 1958, p.59. See note 61, *supra*.

78. See note 57, *supra*.

79. The covenant on human rights was to be the second and decisive step towards the achievements of that goal. Even as the efforts taken in that direction were half-way through, hopes for their completion within a reasonable period of time had virtually been abundance. The remoteness of the covenants as a practical reality came to be accepted almost as a self-evident proposition as the difficulties encountered in the course of drafting the two international covenants did not lend themselves to easy solution and with the passage of time these difficulties were only compounded and member governments became increasingly reluctant to venture seriously into new international undertakings in an atmosphere of growing uncertainty and mutual suspicion between countries of varying degree of economic and social development. This created a vacuum which threatened to reduce what the charter intended to be a broad programme of international action to an insignificant by-product of the United Nations. Moskowitz, Moses, *Human Rights and World Order*, *ibid.*, p.59.

to the entry into force of the Charter and the Universal Declaration.[80] What was intriguing was the smart failure on the part of the international community to respond to the concern in the manner it was earnestly warranted to bring the covenants on the statute book. Thus the concern to highlight the concern for promotion of human rights through appropriate instruments was lacking. For avoidable reasons, the adoption of two covenants was delayed by nearly 20 years[81] and finally both covenants received sufficient ratifications to enter into force by early 1976. A decisive factor then that was focused to shift the blame for dithering spirit and attitude in this regard was the reversal of United States policy, largely as the result of the opposition of many Senators to any treaty dealing with human rights. The then position of the United States appeared to

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80. See note 58, *supra*.

81. It is stated that although the work on preparation of a binding instrument on human rights began simultaneously with preparation of Declaration, it was only in 1945 that the Commission on Human Rights could complete its work and submit the draft covenants to the General Assembly through the Economic and social council. The same year, The Third committee of the Assembly attended to the draft covenants, though only casually. It was in 1963 that the third Committee completed the consideration of substantive articles in the two covenants. In 1966 the Committee returned in right earnest to the provisions on implementation in the covenants and completed the task. The covenants, a fruit of some twenty years of labour and debate in the United Nations, were adopted unanimously by the General Assembly on 16 December 1966. With this step, the whole of International Bill of Rights came into being. See, Bhalla, S.L., *Human Rights*, *op.cit.*, pp.28-29.

'The progress in the area of human rights has been almost exclusively in the direction of clarifying and codifying the substantive law norms....' Lillich, *Editors Foreword*, in J. Carry, U.N. Protection of Civil and Political Rights vii(1970), in Meron, Theodor, [ed.] *Human Rights in International Law: Legal and Policy Issues*, Vol.i, Clarendon Press, Oxford, 1984, p.115.

be that it would participate in discussions but would not be a party to any treaty or treaties.[82]

The international concern for human rights thus came to be reckoned as new force in international affairs to point the way towards international peace and international co-operation. To make the force vigorous and effective, the concern must be consciously directed towards making the human person the centre of international attention and the overriding problems of man, the deliberate aim of international co-operation, was the consensus. In the process, thus emerged was man as the ultimate common denominator and the point at which all conflicting interests ultimately converge. Man became the mean of all international endeavour, as in their essentials, man's interests are the same everywhere and they spring from the same inalienable sources. The preservation of their individual liberties and their participation in the distribution of political, economic and social rights and privileges, are goals shared by all men.[83] The Charter of San Francisco is commended as a unique opportunity to lead the world to its triumphant emergence from the struggle for national advantage into a new era of constructive co-operation for the good of man. It is graciously acknowledged that the introduction of human rights into the sphere of international relations was a revolution of tremendous propositions; and what

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82. For the letter of April 3, 1953 from Secretary of State Dulles to Mrs. Oswald B. Lord, stating the new policy, and Mrs. Lord's statement before the Commission on Human Rights on April 8, See Department of State, *Bulletin*, xxviii (1953), pp.579-82, in Goodrich, Leland M., *The United Nations*, *op.cit.*, p.253.

    It may be recalled that the united states was one of the four sponsoring governments on whose invitation the delegates met finally at San Francisco to discuss the Dumbarton Oaks proposals. See note 36, *supra.*

83. Moskowitz, Moses, *Human Rights and World Order*, *op.cit.*, pp.20-21.

marked the emergence of the United Nations on the scene of history was its commitment to the proposition that "the eventual objective of all its functions and activities is the well-being of individual men and women".[84] There is no other concept on the horizon than the concept of international concern with human rights that is more attuned to the needs and opportunities of man and society. Because it so forcefully sketches the dimensions of the world's needs, international concern with human rights plots the surest course to international peace and justice as its triumphant climax.[85] The Charter envisaged what might be said to be a universal regime founded on the dignity of the human person everywhere and his enjoyment of human rights and fundamental freedoms under the protection of the organised international community. This purpose was to be served by the covenants on human rights.[86] Its provisions

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84. In the Introduction to his final report on the work of the United Nations, Secretary - General U Thant stated: I feel more strongly than ever that the worth of the individual human being is the most unique and precious of all our assets and must be the beginning and the end of all our efforts. Governments, systems, ideologies and institutions come and go, but humanity remains. The nature and value of this most precious asset is increasingly appreciated as we see how empty organized life becomes when we remove or suppress the infinite variety and vitality of the individual. [Official Records of the twenty - sixth session of the General Assembly, 1971, supplement No, 1A, paragraph 146], in Moskowitz, Moses, *International Concern with Human Rights*, Oceana Publications INC., Dobbs Ferry, Ney York, Second Printing, 1976, p.1.

85. *Ibid.*, p.18.

86. Moskowitz, Moses, *Human Rights and World Order*, *op.cit.*, p.53. The emphasis was clearly on binding international agreements to secure human rights. It may be recalled that the Universal Declaration purported to be only the first step in a broader programme for the promotion of human rights. It merely proclaimed a standard of achievement for the guidance of governments and peoples. Moskowitz, Moses, said: "...Thus, it is only by assimilating treaties and other binding agreements that we can hope for the development under the aegis of the United Nations of a body of precepts and practices which alone holds out the promise of effective international protection of human rights....Just as no man is beneath its protection, so no government is above its restraint. Until there exist clearly established international obligations for whose breach a government can be called to account, the United Nations human rights programme is bound to remain, at best, an unknown and unpredictable quantity." *ibid.*, pp.80-81.

on human rights thus in a broader perspective create a setting for consistent and comprehensive development in all areas of human activity and provide a context for social, political, economic and cultural innovations which are full of opportunities for expansive thought and action. They embrace and define everything the international community may hope to achieve and everything it may intend to fulfill.[87] Human rights are more than a collection of formal norms; they are conditions - political, social, economic, judicial as well as moral, cultural and philosophic - which define the intrinsic value of man and his inherent dignity. Their total realisation calls for thought and action which are at once cause and effect of the transformations in the affairs of man necessary to bring peace, freedom, justice and plenty into this troubled world.[88] Reacting to the sentiments wishing the evolution of standards of human rights underscoring the intrinsic value of man and his inherent dignity, the stage was set with the adoption by the General Assembly of covenants binding on governments willing to subscribe to them. By doing so, the United Nations committed itself not only to the idea of international treaties as the most appropriate means of realising human rights goals set by the Charter, but tacitly accepted the thesis that implementation, in the sense of enforcing certain international standards of practice and observance, was inseprarable from the covenants.[89] This marks the beginning of a long process of investiture of a great idea with the substance of power capable of producing effective change in all realms of personal, national and international life. These international treaties are binding

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87. Moses Moskowitz, *International Concern with Human Rights*, *op.cit.*, p.3.

88. *Ibid.*

89. Moskowitz, Moses, *Human Rights and World Order*, *op.cit.*, pp.60-61. See also note 86, *supra*.

commitments of states towards their own citizens, towards one another, and towards the community of nations to ensure, observe and safeguard the rights and freedoms which are today almost universally acknowledged as being emanations of human personality.[90] The imperative need to provide a framework of international relations in terms of honest human values that make the covenants so eminently relevant today. It is common knowledge that no state is any longer in a position to guarantee to its citizens freedom from war, nor secure to them the blessings of permanent peace. The national governments are not capable of guaranteeing against arbitrary deprivation of life and liberty of its subjects by their own agencies, the least, either. It is these covenants, through expression of obligation of states, provide the depth of inspiration to all contemporary international cooperative efforts to elevate the material conditions of man and to promote his social and spiritual welfare. They are the vehicle through which the great social ideas and ideals can express themselves forcefully in international relations and become far and away the most potent instrument of peaceful change.[91] At last, the persuasive function of the Universal Declaration, reinforced by binding commitments to forthright

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90. Moskowitz, Moses, *The Politics and Dynamics of Human Rights, op.cit.*, p.101.

91. *Ibid.*, p.101,107.109. In his discourse at the opening of the second session of Ecumenical Council Vatican II on September 29, 1963, Pope Paul VI said: "Take Courage, rulers of nations, today you can give to your peoples many good things necessary for their life, bread, education, work, order, the dignity of free and peaceful citizens, provided only you know who man is ...." [*The New York Times*, September 30, 1963], in Moskowitz, Moses, *The Politics and Dynamics of Human Rights, ibid.*, p.107.

deeds under international guidance and accountability, were geared to creative action capable of heralding a new dawn of human history.[92]

Pursuant to the directive of the General Assembly embodied in resolution 543 [IV][93] that the two covenants should contain as many similar provisions as possible, the provisions of the Preamble and of Articles 1,3 and 5 of the International Covenant on Civil and Political Rights are almost identical with the provisions of the Preamble and of Articles 1, 3 and 5 of the International Covenant on Economic, Social and Cultural Rights. The Preamble to each Covenant which serves as an introduction to the articles to follow, sets forth general principles relating to the inherent dignity of the human person, portrays the ideal of freeman in accordance with the Universal Declaration of Human Rights, reiterates the obligation of states under the Charter of the U.N. to promote human rights, and reminds the individual of his responsibility to strive

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92. Moskowitz, Moses,*International Concern with Human Rights*, *op.cit.*, p.9. On accountability he said: "With all their limitations and short comings as texts. the covenants...constitute the first world - wide attempt to breach the walls of resistance which have long barred the way toward the reconstruction of international relations on new foundations. They not only give specific content to the broad spectrum of human rights; they also provide the constitutional framework within which the necessary pressures can be brought to bear on the policies and actions of governments and within which the necessary pressures can be evolved to deal with violations of human rights" Moses, Moskowitz, *ibid.*, p.108.

93. After a long debate at its sixth session in 1951-52, the General Assembly decided to ask the Commission on Human Rights, through the Council, To draft two covenants on human rights...one to contain civil and political rights and the other to contain economic, social and cultural rights...the two covenants to contain, in order to emphasise the unity of the aim in view and to ensure respect for and observance of human rights, as many similar provisions as possible. [Resolution 543 [vi] General Assembly, *Official Records*, Sixth Session, supplement No.20], in Moskowitz, Moses,*Human Rights and World Order*, *op.cit.*, p.177.

for observance of human rights.[94] These Preambles reiterate the unstint commitment undertaken by the United Nations to the mankind. Perhaps to flush out the ambiguity and uncertainty created by the Universal Declaration,[95] they seek to unfold the common object,[96] which they intend to achieve, through distinctively characterised provisions enumerated in the Covenants. The triptych construction of the International Bill of Human Rights conveyed a sense of inter-relatedness of its parts in a self-balancing system based on a plausible

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94. For the text of the covenants, see Annexure III, *infra*.

95. Moskowitz Moses said:

> "And if human rights are to be protected internationally, they must be juridically defined and contractually binding.... Governments have a marked preference for ambiguity; The more international programs and co-operative efforts are ambiguous, the more they are malleable and adaptable to the vagaries of politics and the changing requirements of the national interest".
>
> He further apprehended that until the entry into force of the covenants, governments would be able to continue to remain at ease with the discipline of international commitments while violating both their spirit and their letter. This was confirmed by the fact that the standards and practices in the larger world were at variance with the spirit and letter of Universal Declaration. See Moskowitz, Moses, *International Concern with Human Rights*, *op.cit.*. pp.107-108.

96. The General Assembly through its resolution 543 [VI] desired to emphasise the unity of aim in view and to ensure respect for and observance of human rights following its resolve at its fifth session in 1950 that "the enjoyment of civil and political freedoms and of economic. social and cultural rights are interconnected and interdependent " and that " when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as of free man." Accordingly, it decided to request the Commission, through the Council, "to include in the draft covenant a clear expression of economic, social and cultural rights in a manner which relates them to the civil and political freedoms proclaimed by the draft covenant. [Resolution 421 E [V], General Assembly, *Official Records*, Fifth Session, Supplement No.20], in Moskowitz, Moses, *Human Rights and World Order*, *op.cit.*, pp.176-177.

conception of structure.[97] According to U Thant, they are a "Magna Carta" for mankind.[98]

While the first treaty, the Covenant on Economic, Social and Cultural Rights, recognises the right to work and to free choice of employment, to fair wages; to form and join unions; to social security; to adequate standards of living; to freedom from hunger; to health and education, the second one, the Covenant on Civil and Political Rights, recognises, *inter alia*, the right of every human person to life, liberty and security of person. Bread and liberty thus constitute two sides of the same coin.

2.4 RIGHT TO LIFE AS A HUMAN RIGHT

The basic international standards on the right to life are contained in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights. It may be noted that Article 6 is the only article of the Covenant where the inherency of a right which is expressly referred to.[99] The protection of life is an essential pre-requisite to

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97. Moskowitz, Moses, *International Concern with Human Rights*, *op.cit.*, pp.8-9.

98. M.C. Bhandare, United Nations Action in the Field of Human Rights and Its new Directions.in Justice E.S. Venkataramiah [ed], *Human Rights In the Changing World*, International Law Association, New Delhi, 1988, p.15.

99. Paragraph 1 of Article 6 of the International Covenant on Civil and Political Rights. It says: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

See also Ramcharan, B.G., The Concept and Dimensions of the Right to life, in Ramcharan, B.G., [ed], *The Right to Life in International Law*, Martinus Nijhoff Publishers, Dordrecht, 1985, p.19. It follows that, the rights, to life existed before the covenant and further that this right is recognised in customary international law. Haluk A. Kabaalioglu, The Obligations 'To Respect', and 'To Ensure' the Right to life, in Ramcharan, B.G., [ed], *The Right to Life in International Law*, *ibid.*, p.161.

the full enjoyment of all other human rights. If there is no security to life there is nothing left to human dignity. Hence, the right to life is regarded as the most basic, the most fundamental, the most primordial and supreme right which human beings are entitled to have and without which the protection of all other human rights becomes either meaningless or less effective.[100] Similarly, the United Nations General Assembly, in a resolution which it adopted on 18 December 1982, expressed its firm conviction that all peoples and all individuals have an inherent right to life and that the safeguarding of this foremost right is an essential condition for the enjoyment of the entire range of economic, social and cultural, as well as civil and political rights. The General Assembly, therefore, requested the Commission on Human Rights, in its future activities, to stress the need to ensure the cardinal right of everyone to life, liberty and security of person, and to live in peace.[101] Adorning the inherent right matching the distinguishable spirit and letter, Article 2(1) of the Covenant speaks of responsibility and accountability of the State Party to the covenant to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised inthe Covenant without distinction of any kind. In the above backdrop, the content of the right to life assumes significance. The

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100. F.Menghistu, The Satisfaction of Survival Requirements in B.G. Ramcharan [ed], *The Right to Life in International Law*, *ibid.*, p.63.

101. General Assembly resolution 37/189 A, paras 1 and 6. in Ramcharan, B.G., The Concept and Dimensions of the Right to Life, *ibid.*, p.4.

For its part, the Commission on Human RIghts expressed similar sentiments in its resolutions 1982/7 adopted on 19 February 1982 and 1983/43 adopted on 9 March 1983. In the latter resolution, the Commission stated that 'for people in the world today there is no more important question than that of preserving peace and ensuring the cardinal right of every human being, namely, the right to life. [See, B.G. Ramcharan, The Concept and Dimensions of the Right to Life, *ibid.*, pp. 4-5.

exposition of the provision reveals that the right to life has both negative and positive dimensions. There is a school of thought which argues that Article 6 of the Covenant is limited to arbitrary deprivation of life such as by homicide and thus the right to live is not to live as one wishes.[102] The above view is dismissed as restrictive virtually amounting to emasculation of the content of the supreme right. On the contrary, obliging the compulsions arising out of dynamic and changing events of the world today,[103] a broad spectrum of the right encompassing the positive obligations by the state as well is considered to be necessary with the possible adoption of liberal interpretative technique. The circumstances warranting such liberal interpretation are more convincing. Can a civilised nation boast of honouring its commitments to human rights covenant when it is really shutting its eyes to the problem of mass casualties of its subjects as a result of hunger and malnutrition?. This is admittedly different from the question to come which is simple from the point of view of answer. Whether any civilised state will dare to go on public record expressing reservation about the need for promotion of human rights at all. While the straight answer for the latter is emphatic 'no', the former admits of no such answer with ease. It is found from UNICEF reports that 40,000 children die each day as a result of hunger and malnutrition.[104] According to the World Bank, nearly 800 million persons live below any acceptable level of human decency.[105] In the words of Mr.McNamara, ex-President of the World Bank,

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102. Y. Dinstein, 'The Right to life, Physical Integrity and Liberty', in L. Henkin [ed.]. The International Bill of Rights, [1981], p.115 in "F.Menghistu, "The Satisfaction of Survival Requirements", *ibid.*, pp.63-64.

103. F.Menghistu, The Satisfaction of Survival Requirements, *ibid.*, p.64.

104. *Ibid.*

105. World Bank Sector Policy paper on Health [1980] p.3, in F.Menghistu, in The Satisfaction of Survival Requirements, *ibid.*, p.64.

'1.2 billion do not have access to safe drinking water or to a public health facility. 700 Million are malnourished. 550 Million are unable to read or write. 250 Million living in urban areas do not have adequate shelter. Hundreds of millions are without sufficient employment'.[106] Viewed from the above context, it would be legitimate to ask whether the millions of poor people around the world have rights at all?. If they have some rights at all wouldn't the right to survive come among the foremost of rights?. If their right to survival is denied wouldn't such a denial violate Article 6?[107]

2.4.1 Right to Freedom from Hunger

In response to these searching questions, the telling effects of hunger and disease on the values of mankind afflicted must be evaluated properly. They are as tall as the concern for human values, it is claimed. The situation is so alarmful and panicky that no individual could remain unperturbed by such shocking revelations. Highlighting such affects, Mr.Willy Brandt stated:

> "We have learned that 800 million people in the world live in a condition known by the experts as 'absolute poverty'....Yet behind every digit in this total...lies the fate of a human being with a right to life, a right to unimpaired health and a right to an existence imbued with dignity, a human being capable of paying a meaningful role in our human society, a human being who could take part in the things which make life worth while...the fate of every single hungry person in the areas of mass poverty...constitutes a crime against the values, the principles and the goals which allegedly inspire the

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106. Robert S. McNamara, Address to the Board of Governors of the World Bank [Washington D.C., World Bank, 1977] para 11, in F.Menghistu, The Satisfaction of Survival Requirements, *ibid.*, p.64.

107. *Ibid.*

> lives of those of us who do not suffer from hunger....Even in the countries where people get enough to eat, a sense of indignation is growing about the failure to take action, about the incompetence of a number of governments and the complacency of a number of bureaucracies, about the indifference of our fellow humans".[108]

The clinching evidence of heavy death toll as a result of hunger and disease points to the derogation of human values substantively. The devalued human spirit cannot provide unflinching support anymore to the concern for the protection of human rights and the whole of the international bill of human rights must fall to the ground as the avowed object for which they stand, standsvanished. "[N]o right has meaning or value once starvation strikes. It is an ultimate deprivation of rights, for without food, life ends, and rights are of value only for the living....Moreover, without adequate nutrition, the value of rights is greatly diminished....[M]alnutrition curtails growth, constrains mental and physical development, and limits the possibilities of action".[109] As long as law sustains and fortifies a system which tolerates the prevalence of hunger and malnutrition on an extensive scale, its legitimacy must be open to question as the rule of law by any standard is itself only legitimate if it is based upon respect for human rights.[110] Dignity and dignified existence are life lines of Bill of

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108. Chairman of the Independent Commission on International Development Issues, spoke at FAO headquarters in Rome on World Food Day 1983. FAO, Food Comes First, World Food Day 16 October 1983, pp.3-5, in F.Menghistu, The Satisfaction of Survival Requirements, *ibid.*, pp.64-65.

109. Gorovitz, "Bagotry, loyalty and malnutrition", in Brown and Shue [eds], Food Policy: The Responsibility of the United States in the Life and Death Choices [1977] at pp.131-32, in Alston, P. and Tomasevski, K., [eds], *The Right to Food*. Martinus Nijhoff Publishers, SIM, 1984, p.19.

110. Alston, P., International Law and the Human Right to Food, in Alston, P. and Tomasevski, K., (eds), *The Right to Food*, *ibid.*, p.19.

Rights which can be made more vibrant only when human beings are assured of basic needs. Integrating human dignity with the concept of equality, Justice K.K.Mathew said: "...no human being can possibly be replaced by another. What entitles him to a place in this sphere is simply his having human dignity; it is a quality intrinsic to his being. This very thought is expressed in the common place remark that the dignity of every human being respected. Dignity here connotes not pride or manner, but the intrinsic worthiness of every human being, without regard to his intelligence, skills, talents, rank, property or beliefs".[111] Quoting Abraham Lincoln having said, with considerable display of clear thinking and eloquence, on American Declaration of Independence, Justice K.K.Mathew proceeded to recite. "...Authors of that notable instrument intended to include all men, but they did not intend to declare all men equal in all respects. They did not mean to say all were equal in colour, size, intellect, moral developments, or social capacity. They defined with tolerable distinctiveness in what respects they did consider all men created equal - equal "with certain inalienable rights among which are life, liberty, and the pursuit of happiness".[112] Summing up the - principle of equality within the broad spectrum of moral values, Justice succinctly puts: "Human beings are entitled to be treated as if they are equal on all matters important to them and matters really important to them are matters that are common to them".[113] Descending on to the next and equally important aspect of equality namely the principle of equal respect for all, it is said: "...that every human being is of an equal intrinsic value and hence equally entitled to respect or as Frankena puts it, the meaning

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111. Baxi, Upendra Dr., (ed), *K.K.Mathew on Democracy, Equality and Freedom*, Eastern Book Company, Lucknow, 1978, p.206.

112. *Ibid.*, p.207.

113. *Ibid.*, p.208.

of the equal intrinsic value of all persons, is that we should be concerned for the good lives of every individual, that the just society, must, so far as possible, provide equally the conditions under which its members can by their own efforts achieve the best lives of which they are capable. This means that the society must at least maintain some minimum standard of living, education and security for all its members".[114] Hence it sounds loud urging that quality of life is the watchword as Ernst Block wrote: "human dignity is not possible without economic liberation, economic liberation is not possible without human rights....No genuine human rights can be established without the end of exploitation. No genuine end of exploitation can be arrived at without human rights".[115] Incompatibility to any degree, the least or the most or the middle path, with the obligation aforesaid by any standard of civilised society is apologetic. Human dignity is desideratum. Food security to all especially children may be the obvious solution.

"With all emphasis at our command that freedom from hunger is man's first fundamental right".[116] This is an unmistakable signal made as early as by a Special Assembly of eminent personalities of world stature which met in Rome and issued a Manifesto on Man's Right to Freedom from Hunger.[117] In the same wave length the First World Congress which assembled in 1963 adopted a Declaration in which they asserted " that the persistence of hunger and

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114. *Ibid.*

115. Spitz, P., Right to Food for Peoples and for the People, in Alston, P. and Tomasevski, K., (eds), *The Right to Food*, *op.cit.*, p.185.

116. Alston, P., International Law and the Human Right to Food. *op.cit.*, p.58.

117. FAO, 4 Freedom from Hunger campaign News, September, 1963, in Alston, P., International Law and the Human Right to Food, *op.cit.*, p.58.

malnutrition is unacceptable morally and socially, is incompatible with the dignity of human beings and the equality of opportunity to which they are entitled, and is a threat to social and international peace".[118] In 1966, the FAO Conference acknowledged as a gesture of reciprocity to the designation of 1968 as International Year for Human Rights by declaring "that the future of mankind and the peace of the world cannot be secure unless man's fundamental right to be free from hunger is universally realized". The Conference also requested all FAO Member States to explore the possibility of ratifying the International Covenant on Economic, Social and Cultural Rights, "and to undertake all necessary measures to achieve man's right to freedom from hunger and want".[119] In 1974 the World Food Conference made an unambiguous call urging: "that all Governments should accept the removal of the scourge of hunger and malnutrition, which at present afflicts many millions of human beings, as the objective of the international community as a whole, and should accept that within a decade no child will go to bed hungry, that no family will fear for its next day's bread, and that no human being's future and capacities will be stunted by malnutrition".[120] "Hunger and malnutrition must be eliminated as soon as possible and certainly by the end of this century" was the resolve earmarked by the International Development Strategy for the Third United Nations Development Decade.[121] Further the U.N. Conference on the Least

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118. FAO Conference Resolution 5/63 [1963], in Alston, P.,International Law and the Human Right to Food, *ibid.*, pp.58-59.

119. UN doc. A/CONF. 32/16 (1968), para.9. in Alston, P.,International Law and the Human Right to Food, *ibid.*

120. UN doc. E/CONF. 65/20 (1975), Chap.ii, Res.i, in Alston, P., International Law and the Human Right to Food, *ibid.*

121. G.A.Res. 35/56 [1980] Annex. para.28, in Alston, P., International Law and the Human Right to Food, *ibid.*

Developed Countries called upon the states to "prepare strategies, plans and policies... which will ...[eliminate] hunger and malnutrition as rapidly as possible and at the latest by 1990".[122] In 1981 Prime Minister Gandhi of India, addressing the FAO Conference specifically endorsed an earlier proposal made by President Kaunda of Zambia for the drawing up of a "Hunger Elimination Treaty".[123] In 1984, there was another proposal by the FAO for the preparation of a "World Food Compact" which would be a codification of already agreed food security objectives.[124] The plethora of instruments speaking commitments through consensus started flowing unchecked during the next four decades following the address of President Roosevelt to Congress in 1944 urging the adoption of second bill of rights dealing with economic issues. Among the rights to which he referred were "...the right to earn enough to provide adequate food.... the right of every farmer to raise and sell his products at a return which will give him and his family a decent living...(and) the right to adequate protection from the economic fears of old age, sickness, accident and unemployment".[125] True to his desire, in 1975 the US Congress adopted a joint "resolution declaring as national policy the right to food", in which it resolved, *inter alia*, that "(1) every person in this country and throughout the world has the right to food - the right to a nutritionally adequate diet - and that this right is henceforth to be recognised as a cornerstone of S policy; and (2)

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122. U.N.doc. A/CONF. 104/22 (1981), Chap.i, para 10, in Alston, P., International Law and the Human Right to Food, *ibid.*

123. FAO doc. C81/PV/4 (1981), 8, in Alston, P.,International Law and the Human Right to Food, *ibid.*. p.60.

124. Alston, P., International Law and the Human Right to Food, *ibid.*

125. 90 Congressional Record 57 (1944), in Alston, P., International Law and the Human Right to Food, *ibid.*, p.56.

this right becomes a fundamental point of reference in the formation of legislation and administrative decision in areas such as trade, assistance, monetary reform, military spending and all other matters that bear onhunger...".[126] The commitments so undertaken all through are unanimous whether spoken in the context of global statements of policy such as the Universal Declaration on the Eradication of Hunger and Malnutrition or the strategy for the Third United Nations Development Decade or in specific instruments such as the Food Aid Convention, or through institutional arrangements such as those relating to FAO, IFAD, or the WFC, is the unmistakable conclusion which one cannot escape. The obvious is the right to freedom from hunger.

In the result, wider grasp of the right to life is the best available choice to restore the values lost. It is the satisfaction of survival requirements that can make good the loss of human values. If deprivation of the lives of millions of people through lack of access to survival requirements is not a right to life issue, it can only be said that the whole concept and notion of the right to life in its restricted and narrow sense does not apply to more than a billion people around the globe.[127] The survival requirements have very often being identified as having absolute priority. In biological terms, this appears to be justified.

Commendable indeed was the observation of the Government of Australia which overwhelmingly emphasised the twin elements of the right to life

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126. The Right to Food Resolution, Hearings Before the Subcommittee on International Resources, House of Representatives, 94th congress, 2nd Session [1976], in Alston, P., International Law and the Human Right to Food, *ibid.*, p.58.

127. F.Menghistu, The Satisfaction of Survival Requirements, *op.cit.*, p.65.

similar to the sentiments reflected in the public opinion referred above. The Government of Australia in its reply to the invitation for comments on the draft international covenants stated:

> "Two elements have engaged the attention of the draftsmen during the preparation of the article. These may be described as, firstly, expression of what might be termed a traditional imperative of all civilised societies - "Thou shalt not kill" - and secondly, some positive provision concerning the right to life which, although not defined in the covenant or in the Universal Declaration, may be assumed to mean *the right of every person to preservation and enjoyment of his existence as an individual.* In the earlier drafts, attention was concentrated on the first element, but at the sixth session of the Commission, attention was given to the second element by providing that 'the right to life shall be protected by law'.[128] [Emphasis added]

Expressing similar views, the Inter-American Commission on Human Rights rightly pointed out:

> 'The essence of the legal obligation incurred by any Government in this area is to strive to attain the economic and social aspirations of its people, by following an order that assigns priority to basic needs of health, nutrition and education. The priority of the "rights to survival" and "basic needs" is a natural consequence of the right to personal security'.[129]

Similarly the European Commission on Human Rights also expressed that:

> "The concept that "everyone's life shall be protected by law" enjoins the state not only to refrain from taking life

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128. GAOR, Tenth Session, Annexes (10), 28-I, p.12, in Ramcharan, B.G., The Concept and Dimensions of the Right to Life, *op.cit.*, p.9.

129. Inter-American CHR. Ten Years of Activities, 1971-1981 (1982) p.322, in Ramcharan, B.G., The Concept and Dimensions of the Right to Life, *ibid.*, pp.9-10.

"intentionally" but, further, to take appropriate steps to safeguard life'.[130]

The Human Rights Committee, for its part too, in its general comments, on Article 6 of the International Covenant on Civil and Political Rights expressly states that '... the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures....'.[131]

Therefore, it is quite evident that the liberal approach adopted by the United Nations and other regional bodies tend to confirm that the right to life has negative as well as positive dimensions and that the latter, encompasses the right of everyone to preservation and enjoyment of his existence as an individual. Direct and inevitable consequence being that there is an obligation cast upon Governments of states assigning priority to the basic needs of the human being viz., health, nutrition, education etc. Adding succinctly to the twin dimensions of the right to life by way of further exploration it is claimed that when a need is of 'paramount importance' and 'when the meeting of it is practicable 'such a need ' comes to be called a right'. The species of human needs that are most closely tied to rights are those things that a person needs to reach and to maintain a 'minimum subsistence' - food, clothing medical care etc... Those things a that a person needs for a minimum subsistence are

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130. Decision on Admissibility, Application 7154/75, in Ramcharan, B.G., The Concept and Dimensions of the Right to Life, *ibid.*, p.10.

131. UN DOC CCPR/SR 222 para 59 [1980], in F.Menghistu, The Satisfaction of Survival Requirements, *op.cit.*, p.66.

among those needs which have 'paramount importance' which Feinberg calls 'Crying needs'[132].

This is formally characterised as a type of development that attaches a special weight to the fulfilment of basic needs, both material and non-material, in a given society and aims at meeting this objective in the shortest time-span[133]. The strategy underlying the theme of development is to ensure to everyone an opportunity to have access to food, education, shelter, clothing, employment in default of which the right to life becomes meaningless as the threat to sustenance looms large.

To drive home the above theory with force and vigour, strong reliance is placed additionally on the principles of general and special accountability of the member states of the United Nations. The principle of accountability is concomitant to the principle of responsibility arising out of obligations undertaken by them under the U.N. Charter and the covenants. It may be recalled that the U.N. Charter constitutes the spinal cord of international law today and the provisions of the charter are binding legal obligations[134]. The duty to co-operate is a basic and fundamental norm in international law and international relations, which all member states pledge to undertake for the

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132. William J.Winsdale, Human Needs and Human Rights, in Human Rights. Ervin H.Pollack [ed.], Amintaphil I, Jay Stewart Publications, New York, 1971, p.32, in F.Menghistu, The Satisfaction of Survival Requirements, *ibid.*, p.68.

133. A.S.Balla, Technologies Appropriate for a Basic Needs Strategy in A.S.Bhalla, [ed.] Towards Global Action for Appropriate Technology, Geneva 1977, Pergamon Press, p.25, in F.Menghistu, The Satisfaction of Survival Requirements, *ibid.*, p.67.

134. Note 53 and 75, *supra*

achievement of the purposes set forth in Article 55. The pledge relative to the duty enshrined in Article 56 pertains to the purpose of the United Nations which *inter alia* includes the one 'to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character....'[135] besides promoting and encouraging 'higher standards of living, full employment, and conditions of economic and social progress and development'[136]. The general accountability of the member states sprouts from the responsibility they undertake following the pledge. The intended consequences of such responsibility are such to make any member state accountable generally for acts of commission and omission which constitute a breach of an international obligation under the Charter and UDHR. The fact that the aspiration of the U.N. is to achieve *inter alia* higher standards of living of the peoples of the world implies that it takes for granted that the satisfaction of survival requirements is an obvious requirements from which higher standards of living are aspired. The implied inclusion of survival requirements as the minimum international obligation is further reiterated in Article 25 (1) of the Universal Declaration of Human Rights where it expressly states that 'everyone has a right to adequate food, clothing, housing and medical care and necessary social services' for the health and well-being of himself and of the family. It is quite emphatic that the universal right of everyone to access to survival requirements is as much essential as one cannot aspire to adequate and higher standards of living without the satisfaction of survival requirements[137]. The said principle of accountability obliging oneself to be responsible for one's own

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135. United Nations Charter, Article 1 [3].

136. *Ibid.*, Article 55[4].

137. F.Menghistu, The Satisfaction of Survival Requirements, *op.cit.*, p.76.

act of commission or omission, seems to assume more significance in the context of special responsibility arising out of specific obligations undertaken under the covenants by virtue of ratification.[138]

In the above context, it may not be inappropriate to submit that a government may be internationally accountable not only for deliberate deprivations of the right to life but also for failing to take all possible measures to meet survival requirements. In such as eventuality, the U.N. is entitled to require explanations and accounting on the part of the government concerned and may assess the conduct of the government and recommend measures for correcting adverse situations.[139] Thus there is ample affirmation of the view that it is that the highest standards of conduct are required of governments in order to respect and ensure the right to life. These high standards of conduct do not only apply to measures of prevention and protection as well to positive measures designed to ensure realisation of the right to life.[140].

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138. The parameters of special responsibility of the states are proposed to be discussed in the next chapter.

139. Ramcharan, B.G., The Concept and Dimensions of the Right to Life, *op.cit.*, p.29.

140. Haluk A. Kabaalioglu, The Obligations to 'Respect' and to 'Ensure' the Right to Life, *op.cit.*, p.180.

CHAPTER THREE

CHILDREN: THE FUTURE OF MANKIND

A Precept in Retrospect

3.1 CHILD FIRST - MAN NEXT

The right to be a human being is the fundamental requirement which everywhere people are aware and which they deserve by the very fact of existence. The universality of human rights as the rights of all mankind - as the rights of all members of the human family - is the foundation of freedom, justice and peace in the world which alone can enable any one, rich or poor, man or woman, child or old and abled or sick, to live with human dignity. The concern for mankind expressed unequivocally and transcending the globe will be real and moving and not rhetoric and ritual if and only if it begins with children, as, to repeat the words of Nehru, the human being counts much more as a child than as a grown up. The concern will be clearly steered towards the cherished ideal of freedom; equality and justice to all the human beings only if it sweeps the voiceless as well. A child is a delightful bundle of joy and is blessed with several natural gifts.[1] As the public rhetoric extols the sanctity of children with the

1. Mr.T.G.L. Iyer is of the view that every human being is endowed with certain traits and qualities and this is potential. This has to be farmed i.e., detected, discovered and tapped from inside, nursed and made to grow facilitating a balanced physical, mental, emotional, intellectual and spiritual personality. He is of further view that children have empty minds to be filled up with instructions relating to character, values, morals, ethics and so on. Obviously, they have an edge over grown-ups as the minds of the latter are already filled up thus nailing with vehemence the legacy of adult education in India. See, Iyer, T.G.L., A Guide and Philosopher, *The Hindu*, March 8, 1994, p.26.

platitudes of the 'future of mankind' and 'our most precious investment', they are to be cared for properly. Tender plants will have to be tended and nourished, lest it will have little chance of growing into a strong and useful tree. Similarly, children need to be given sufficient opportunity to grow with potential as otherwise the blessed gifts will be lost. Once lost, they are irretrievable.[2] Children should grow and live freely as children as the healthy and educated children of today are the active and intelligent citizens of tomorrow. Today's children will be the leaders of tomorrow who will hold the country's banner high and maintain the prestige of the Nation.[3] To bestow blessings on those little innocent lives bloomed on earth who have brought the message of joy from heavenly garden is the most rewarding and valuable service expected of the mankind. To make children smile is the most fundamental and the noblest duty which the mankind owes. We can make them smile only if their stomachs are full and they are healthy. Children reflect the elders and the nation as we see what kind of parents the children have, if we watch children and we can understand what kind of world we live in, if we look at the world's children. The society and the grown-ups comprising therein need to be generous to the rising generation, which is both essential and important. Hence, there is a vow to put "children first". Future is now, the slogan which rents the air renders unnecessary further proof of concern for infants both nationally and internationally. As the promise is in the hands of the grown-ups, it is reconciled to be an obligation of the society - obligation of utmost care for children.

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2. *Ibid.*

3. *Sheela Barse* Vs. *Secretary, Children's Aid Society* (1987) 3 SCC 50 at p.55.

The problem of care for children involves intricate but fundamental issues which the state cannot ignore. Either there can be no pretension. There is a veritable wave on the global plane today for the assertion of human rights being part of the democratic upsurge on a wide scale and in an exciting departure from the past, there is equally a growing recognition that children are citizens, entitled to basic rights. Right to childhood and the right to be treated as children are fundamental ethics emphasising that childhood is a time for growth and education. This is unassailable in as much as while an adult and abled is entitled to seek protection against the excesses of the state and to look forward to the state for protection to fill the vital economic needs - to be fed, housed, clothed and educated,[4] the nascent voiceless should be doubly entitled to state protection. Such double entitlement which is a synonym for special protection i.e., protection in addition to that is generally available to others.[5] sounds loud

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4. Freedom from the excesses of the state implies freedom "from governmental violation of the integrity of the person" - which include torture; cruel, inhuman or degrading treatment or punishment; arbitrary arrest or imprisonment; denial of a fair public trial, and invasion of the home. The Carter Administration has fused these "freedoms from" with a couple of "freedoms to" that can only be assured by the states' affirmative action. These are an entitlement to the fulfilment of basic human needs. See, Harlon Cleveland,Introduction: The Chain Reaction of Human Rights, in Henkin, Alice H., *Human Dignity: The Internalization of Human Rights*, Aspen Institute for Humanistic Studies, New York, 1979, p.xi.

5. Human Rights of Children are meant to raise the standard of, or add to, rights afforded to human beings in general. They do so in order to take account of the particular needs of children as especially vulnerable, essentially dependent and developing human beings.

   In relation to human rights in general, rights accorded to children may:

   (i) reaffirm or reflect rights granted to human beings of whatever age, e.g., protection from torture, the right to a name and nationality, the right to social security;

   (ii) improve, with regard to children, the standards applicable to human beings in general, e.g., special conditions of employment, administration of juvenile justice, conditions of deprivation of liberty;

logically. Morally and legally, it is just and valid. This one may unfailingly clinch pointing to the need to provide special protection for certain exposed, weak and vulnerable individuals and groups[6] and for that purpose, assisting children in their growth and development is considered imperative as implied by the principle of *loco parentis*.[7] Value in the human person of children is protected by law, as it seems so superfluous and absurd to challenge the wisdom of

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(Contd.,)

(iii) address issues that are solely or more especially relevant to children, e.g. adoption, primary education, contract with parents.

See DCI-UNICEF, The Future Convention: How it Came About, in *A DCI-UNICEF Briefing Kit*, Document No.1, Defence for Children International, May 1989, p.1.

It is stated that this Briefing Kit on the future of United Nations Convention on the Rights of the child was a joint project of DCI and UNICEF.

While examining the issue whether International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights besides other regional human rights instruments apply in general to children, it is stated that except the provisions in which children's rights are specifically mentioned, articles of general application do not refer to children even though they encompass some of the most fundamental human rights, such as the right to life, freedom from torture and slavery and the basic civil rights of thought, speech, religion and participation in the political process. It is further stated that on analysis of the Covenants themselves and relevant supporting material that most of these rights, except for those obviously intended exclusively for adults, such as the rights to vote and hold public office, do apply to children. It is also quoted that the *travaux preparatoires* of the Covenant on Civil and Political Rights also demonstrate that if applies to children. Finally, it is forcefully observed that the purpose of both Conventions is to broadly promote international human rights and claimed that denial of the application of the most basic rights in the Covenants to children would squarely refute this essential intent. See Bennett, Walter H. Jr., A Critique of the Emerging Convention on the Rights of the Child, *Cornell International Law Journal*, Vol.20(1), Winter 1987, pp.26-29; See also, Bhanu, Udai, Rights of the Child in India, *Mainstream*, Vol.xxxi (9), January 9, 1993, pp.28-29.

6. Leuprecht, Peter, Reflections on Human Rights, *Human Rights Law Journal*, Vol.9, 1988, pp.163-174 at p.172.

7. Sachs, Christina, Children Rights, in Bridge, J.W., Lasok, D., Perrott, D.L. and Plender, R.O., (eds), *Fundamental Rights*, Sweet and Maxwell, London, 1973, p.31.

endowment of childhood with the right to live with human dignity especially when the foetus in the womb itself is wrapped by protection overwhelmingly.[8] Once the child is assured of survival, he is entitled to live with human dignity embracing within its sweep full and material development of personhood. This the child can stake in his own right in as much as the unrelented pursuit of the doctrine of welfare of child treats such rights as something very precious and distinct from the rights of adults.[9] Equally the state is overwhelmingly and unmistakably bound to endorse, without reservation whatsoever, the inherent dignity of children as the vocal supporter of human rights.

Secondly, the child also stakes through the society as the well-being of the citizens is being looked upon as the underlying need of development. The measure of development is the level of well-being which the state has ensured to its citizens - the rising generation in particular. Popularly coined as development with a human face, it is coming increasingly to be understood as a process of expanding the capabilities of the people. Though eloquently styled as humancentred development, the contemporary thinking underlying the theme is nothing but a renewed assertion of Gandhian philosophy of development with singular emphasis on people and their needs.[10] Reflecting unequivocally the

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8. It is stated that advanced legal systems in their peculiar ways recognise the rights of the unborn. The *nasciturus* is either regarded as a person and therefore, is a bearer of rights and duties, within the scope of his personality or is treated as part of the mother's body and hence a dependent capable of inheriting or otherwise acquiring and holding property and also other rights. Lasok, D., the Rights of the Unborn, Bridge, J.W., (ed), *et al.*,*Fundamental Rights*, *ibid.*, p.28.

9. See note 7, *supra.*

10. K.R.Narayanan, For a New Strategy of Development, *Mainstream*, November 20, Annual 1993, p.17.

sentiments of the Father of our Nation on development, the First Five Year Plan Document said:

> "...economic planning has to be viewed as an integral part of a wider process aiming not merely at the development of resources in a narrow technical sense, but the development of human facilities and the building up of an institutional framework adequate to the needs and aspirations of the people".[11]

Unmistakably, adverting to the theme,Nehru, in the Introduction to the Third Five Year Plan, stated:

> "Although planning involves material investment, even more important is the investment in man....Basically the task is one of developing the natural and human resource of the country through the widest use of knowledge and technology and improved organisation...".[12]

Talking in the same wavelength, Nehru later in 1962 stated:

> "We can measure success or failure in development by certain physical standards and statistical methods. But those standards and methods ignore certain immaterial and immeasurable things, which ultimately count for more than anything else. Success means raising the material, moral and spiritual level of the people".[13]

Fundamentally thus it is inevitable and incontrovertible to assert that for real development, there is a need of doing what can now be done to improve the lives and the development of the rising generation.[14] The protection of the

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11. *Ibid.*

12. *Ibid.*

13. *Ibid.*

14. UNICEF, *The State of World's Children 1989*, Oxford University Press. London, p.60.

most vulnerable, and particularly the growing minds and bodies of young children, is both a moral imperative and a pre-requisite for sustained economic and social progress.[15] Such earnest concern underlying the notion of protection is founded on moral considerations manifesting humanitarian improvements and social considerations embracing fundamental contributions to long-term economic development. Protecting the health and the education of today's children is the most basic of all investments in the physical and mental capacity of the next generation and therefore in the social and economic development of societies.[16] In similar vein, Theodre Schultz also said:

> "The wealth of nations has come to be predominantly the acquired abilities of people.... The future productivity of the economy is not foreordained by space, energy, and cropland. It will be determined by the abilities of human beings. It has been so in the past and there are no compelling reasons why it will not be so in the years to come".[17]

To deprive the children of the chance to grow with physical and mental potential is undoubtedly to deter the progress of the nation - in particular the developing countries like ours engulfed by mass poverty. Children who are denied the right to develop can neither contribute fully to, nor are to benefit fully from, the development of their societies.[18] Essentially, we recognise the societal interest in children - their needs and rights, and their health and development. The crucial and fundamental aspects underlying such social considerations point to attending to the needs and rights of children not as a mere by-product of

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15. *Ibid.*

16. *Ibid.*, p.10.

17. *Ibid.*

18. *Ibid.*, p.40.

progress but as an end and a means of progress itself. It is but true test of a civilization is how well it protects its vulnerable and how well it safeguards its future, children being both its vulnerable and future asset. Children are, thus, often and essentially regarded as the unifying theme of development as they are singularly a sensitive indicator of the well-being of the community. Investing in their development today - by meeting their most obvious needs and attending with all the wisdom and resource at our command to their physical, mental and emotional development - is the only level of action which both meets pressing human needs today and leads to the pre-emption and solution of what may otherwise become the almost insoluble problems of tomorrow.[19]

It is thus well markedly borne out that elders speaking through conscience overwhelmingly acknowledge that it is both logical and legal for children to assert childhood rights, more so when it is felt that they are more imperative for the protection of inherent dignity of human beings and for the survival and sustained development of the society. Rights of childhood and their protection are basic postulates of a civilised society professing creedal faith in democratic polity wedded to Rule of Law. It does not bristle with contradiction to assert and emphasise that the rights of childhood are both essential and important to protect the inherent dignity of the human person. Disseminating with equal vehemence that every child is essentially a person, first and last, stake for children in sustainable development has been well outlined as "development that meets the needs of the present generation without compromising the ability of future generations to meet their own ends".[20]

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19. *Ibid.*, p.61.

20. UNICEF, *Annual Report Supplement 1989,* New York, 1989, p.5.

Wholesome personhood is essentially much desired as the pragmatic outlook of human resource development. Children ought to be provided with opportunity in order to help them grow as healthy and normal persons as otherwise numbers will remain liability rather than potential strength of the nation.[21] Nehru said: "The sign of any living thing is in its capacity to grow and change. The moment its growth is stopped, it is dead".[22] Federico Mayor, Director-General of UNESCO in an address to the Executive Board said: "The struggle to save children's lives must go hand in hand with an effort to change the lives thus saved".[23] It needs no further elaboration. It is enough to say that this is a fundamental thing which one cannot oblivious of. Thus a new principle - of the preferential option for the child - related to the concept of 'first call for children', is gaining greater strength in the global arena recognising that in satisfying the needs of the child we are contributing to ensuing a better future for all mankind.[24]

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21. As World Bank President Barber Conable said in September 1988: Poverty on today's scale prevents a billion people from having even minimally acceptable standards of living. To allow every fifth human being on our planet to suffer such an existence is a moral outrage. It is more: It is bad economies, a terrible waste of precious development resources. See UNICEF, *The State of World's Children 1989*, *op.cit.*, pp.68-69.

22. Shafi, Sayed S., Nehru on the Adventure of Building a New India, *Mainstream Annual 1993*, November 20, 1993, p.93.

23. UNICEF, *Annual Report Supplement 1989*, *op.cit.*, p.2.

24. As development should be adjudged by human indicators, not economic variables, nations must give first call to those whose development will shape tomorrow's world. For growth to be sustainable, nations must protect and develop their human capital. See UNICEF, *The State of World's Children 1990*, Oxford University Press, London, p.4.

3.2 ETHICS OF CHILDHOOD AND EVOLUTION OF A CONSENSUS ON GLOBAL ACTION FOR PROTECTION

Fortunate, though, are the children to possess rights, proneness to abuse and denial is abundant and plenty as they are meek and weak. They are too fragile to assert and vindicate their rights. Deny and abuse the rights of children are none but the elders who had solicitude of their own elders once. It is nothing but present day elders' sheer refusal to turn back and look to the past when they were at the mercy and dependent on the charity of the then elders. It is more bewildering and regrettable that children are more often deprived of their rights by their own parents, more particularly their mothers who gave birth to them. It is indeed paradoxical that creators take away the rights of their creatures. The gullible are forced to bear the brunt of such abuse and indelible impressions are left on the personhood marked by stunted growth of children both physically and mentally.[25]

Heeding thus to the call "hear our voices and provide our needs", there emerged a consensus to ensure ways and means to secure the position of children at the centre of concern not only within their families but also within communities and nations. The consensus so emerged is welcome though belated. In the bringing up of our children are sown seeds of peace and prosperity poignantly conceiving the children's lot as a zone of peace. "Until that position is secured, children will all too often be the last to benefit from progress, and the first to suffer from economic, political and social deterioration".[26] Thus there is a discernible and marked change in the attitude of the elders of the

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25. UNICEF, *The State of World's Children 1989*, *op.cit.*, p.12.

26. *Ibid.*, p.3.

society towards their own descendants underlying a shift in the focus from the nation of children who are malnourished, sick and illiterates to the children of nation who are normal, healthy and educated.

Unraveling the history of children's rights before the emergence of the consensus, it may be stated that children's rights are a relatively new and emerging concept.[27] It is by the end of the nineteenth century, the state had assumed a more active role as protector.[28] Until such time, children were legally little more than chattels of their father capable of being sold, abandoned, abused and mutilated with impunity.[29] The authority of the parents and the exploitation and the abuse that were brought under the check by the assumption of power by the state. The welfare state guided by the assumed mandate of welfare of children[30] recognised the child as a subject of law as such, with the right to live guarded by special protection as a child. It was followed by significant expansion of rights occurring in the last twenty to forty years.[31] Displaying a rare show of unanimity, the international community transcending the national boundaries began to express concern for protection of children's rights.[32] The conceptualisation of global children's rights which dates back to the "Geneva Declaration" of 1924 was the first significant international

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27. Bennett, Walter H. Jr., A Critique of the Emerging Convention on the Rights of the Child, *Cornell International Law Journal*, *op.cit.*, p.15.

28. *Ibid.*

29. *Ibid.*

30. See note 7, *supra.*

31. Bennett, Walter H. Jr., A Critique of the Emerging Convention on the Rights of the Child, *Cornell International Law Journal*, *op.cit.*, p.16.

32. *Ibid.*, p.17.

instrument. The instrument which devoted primarily to the children's rights and which was adopted by League of Nations spoke in elegant tones of the duties of nations towards children.[33] The Declaration which lost the track of focus substantively with the passage of time survived essentially as aspirational document.[34] This five-point was expanded in succeeding years into the basis for what was to become the Declaration on the Rights of the Child adopted by the General Assembly of the United Nations in 1959.[35] This Declaration is based on the premise that the mankind owes to the child the best in has to

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33. *Ibid.*

The text of the Declaration of Geneva is as follows:

DECLARATION OF GENEVA

"By the present Declaration of the Rights of the Child, commonly known as the Declaration of Geneva, men and women of all nations, recognising that mankind owes to the child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

i. The child must be given the means requisite for its normal development, both materially and spiritually;

ii. The child that is hungry must be fed; the child that is sick must be helped; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured;

iii. The child must be the first to receive relief in times of distress;

iv. The child must be put in a position to earn a livelihood and must be protected against every form of exploitation;

v. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men". For the text, see, League of Nations, O.J., Spec.Supp.21 (1924).

34. *Ibid.*

35. DCI-UNICEF, *The Future Convention: How it Came About*, Document No.2, *op.cit.*, p.1.

give[36] which reflects the perception about the special vulnerability of children and the social duty to guarantee their protection.

The Declaration of the Rights of the Child elaborates upon the human rights with exalted reassurance of the fundamental principles of freedom and dignity of human person and entitlement thereto as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights.[37] Recognising and reassuring the need for special safeguards and care for child which has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognised in the Universal Declaration of the Human Rights and in the statutes of specialised agencies and international organisations concerned with the welfare of children,[38] the child is blessed with childhood and enjoyment for his own good and for the good of society and recognition and observance of the same by the state and individuals is solicited.[39] It is an edifice on which charter of rights of children is built thus complementing the general human rights. The Declaration sets forth a code for the well-being of every child without any exception whatsoever. Every child shall be entitled to the rights set forth in the Declaration without distinction or discrimination on account of race, colour,

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36. The Declaration of Geneva 1924, Preamble; The Declaration of the Rights of the Child; 1959, Preamble, para 5. For the text of the provisions of the Declaration see, Appendix IV, *infra*.

37. United Nations, *United Nations Action in the Field of Human Rights 1974*, *op.cit.*, p.77. See also, The Declaration of the Rights of the Child 1959, Preamble, paras 1 and 2; Children's rights are specifically mentioned in Art.25 [Special Protection for childhood] and Art.26 [Right to education] of the Universal Declaration of Human Rights.

38. The Declaration of the Rights of the Child 1959, Preamble, paras 3 and 4.

39. *Ibid.*, Preamble, Para 6.

sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.[40] It is provided that the child shall be given opportunities and facilities to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. The best interests of the child shall be the paramount consideration in the enactment of laws for this purpose.[41] The child shall be entitled from his birth to a name and nationality.[42] The Declaration also deals with the enjoyment by the child of the benefits of social security and the right to adequate nutrition, housing, recreation and medical services.[43] The Declaration proclaims that the child is entitled to receive education which will be free and compulsory, at least in the elementary stages, and which will promote his general culture and enable him to develop his abilities, his sense of moral and social responsibility and to become a useful member of society.[44] The child shall be protected against all forms of neglect, cruelty and exploitation and shall not be the subject of traffic in any form. It is provided that a child in no case shall be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development.[45] A passing acquaintance with the do's and don'ts so entrenched in the code points to the level of conscience of the mankind veering round the growth and development

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40. *Ibid.*, Principle 1.

41. *Ibid.*, Principle 2.

42. *Ibid.*, Principle 3.

43. *Ibid.*, Principle 4.

44. *Ibid.*, Principle 7.

45. *Ibid.*, Principle 9.

of the promising young generation. Though the code is impregnated with laudable object and affirmed without least dissent by all the then members of the United Nations, it is not a catalogue of rights as understood in the technical sense accompanying attendant legal consequences. Nor has it risen to the level of *jus cogens* as attained by the Universal Declaration of Rights in certain respects.[46] Essentially, it is no more than an appeal fervently made urging the conscience of the mankind to be aware of, and to abide by, the obligations which they have earmarked for themselves, towards children. Affirmation to the Declaration by the Member States the and later, is the promise held out to the voiceless of the signatory-nation in particular and of the world in general making them jointly and severally accountable. The code for the well-being of children being an addition to the fortress of human rights, the obligations so undertaken thereunder though illustrated through promise, cannot be ignored in the lighter vein. For, promise is for fulfilment; it is not intended to be broken before the signature fades. The code is the signature tune of the Bill of Rights. The reason is not strange but quite obvious. The fullest participation of men and women constituting mankind in the enjoyment of civil, political, socio and economic rights can be ensured thereby reinforcing the well-meaning existence of the Bill of Rights only if children are assured of special safeguards and care without variance and fail as they are tomorrow's adult citizens whom the said Bill of Rights seek to protect till they lay their lives[47]. In an attempt to make what is morally sound to be effective and binding, children's rights are specifically

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46. *Jus Cogens* means the body of peremptory principles or norms from which no derogation is permitted, and which may therefore operate to invalidate a treaty or agreement between states to the extent of the inconsistency with any of such principles or norms. See Shearer, I.A., Starke's International Law, Butterworths, London, Eleventh Edition, 1994, pp.48-49.

47. See notes 10 to 21, *supra*.

mentioned in four articles of the International Covenant on Civil and Political Rights and in three articles of the International Covenant on Economic, Social and Cultural Rights[48].

Nine hundred and seventy nine was the year of fascination for children of all age and both the sex throughout the planet as it was declared to be the International Year of the Child. Fascinating indeed because it was the year in which Declaration of 1959 was remembered in a historic way[49]. Being aware of the glaring mismatch between the protection which was required to be showered and the one that was flown in reality, the United Nations acting with reverential promptitude and irresistible impulse called upon - the protector and provider - the national governments to rise and act with a sense of urgency and gratitude to stand by and honour the commitments to which they subscribed. It was intended to be an year of action to begin with, vindicating the commitment subscribed and the concern expressed less contemptuous and less deceptive, if not wholly virtuous. It was intended to help the children realise their 'blessed childhood' at least thereafter.[50]

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48. International Covenant on Civil and Political Rights, Art.6.[barring death penalty for crimes committed by minors], Art.14 [Judicial Procedure for juveniles], Art.23 [Protection for children at dissolution of marriage] and Art.24 [Special protection for children and rights to a name and nationality]. International Covenant on Economic, Social and Cultural Rights, Art.10. [Protection of family and children], Art.12 [Right to health care] and Art.13 [Right to education].

49. It was in commemoration of the twentieth anniversary of the United Nations Declaration (1959) that 1979 was designated the International Year of the Child.

50. The United Nations General Assembly adopted on the 21st December, 1976, the Resolution 31/169 proclaiming the year 1979 as the International Year of Child with the objective of creating world-wide consciousness towards promoting the well-being of children, drawing attention to their special needs and encouraging national action on behalf of children, particularly for the least privileged and those who were at work. See Government of India, *Report of the Committee on Child Labour, op.cit.*, p.1.

Heap of insults surging around the sweeping millions of children were to be garbaged to make them real sovereign was the message conveyed politely in disguise. Humane approach to the needs of the hapless voiceless was the hallmark of philosophy for action. Ranking the priorities to accelerate the process of elevating the children to the top of national agenda to make them the real asset of the nation was the task assigned to the planners and administrators. Educators and physicians were required to follow suit in the signal service. Close on the heels of the humble call for noble action, national governments, including India, swung into action with pompous declarations[51]. The International Year of the Child thus unfolded the message of expressed concern for the well-being of children. The message though clamoured for

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51. India's role in the declaration of the Year of the Child is significant. Few people only are aware that the idea of having an International Year of the Child was first proposed in the 50's by India's then U.N. representative, Mr.Krishna Menon. However, when the U.N. finally opted for 1979 as the Year of the Child, India was the first to pledge its contribution of $ 100,000 [Rs. 8.2 lakhs] towards the UN Children's Fund. Further, the Indian theme styled for the IYC was "Reaching the Deprived Child" and the logo chosen for the purpose depicted a child with a slate and this was the background representing education and health respectively. Strangely enough, a degree of optimism was quite evident in the views held by :he officialdom. Said Tara Ali Baig: "The IYC can, more than anything else, accelerate the consciousness among people that there is a desperate need to do something for the deprived child. This will eventually snowball, I am quite convinced of that". The level of optimism that was looming large was reflective of the least level the administration desired to achieve at the end of the 'fanfare' exercise. For as warned by Ms.Devika Singh, " ...between plans and implementations there is always a wide gap". Ms.Devika Singh was the chairman of the Mobile Creche Movements in New Delhi. In another instance, enthused by the global consensus on child protection, the International Confederation of the Free Trade Unions, for its part, in its meeting held during November 1979 observed that child labour, which subsists in numerous parts of the world, constitutes a violation of Convention No.138 and of Recommendation No.146 on Minimum Age [1973] and urged the affiliated organisations to pursue systematic action aiming at the creation and effective functioning of labour inspection in all sectors, in order to supervise the application of the prohibition of child labour and to guarantee the necessary moral and physical protection to children who still work; and to ensure that this action also promotes the development of children's welfare and the extension of compulsory education. *ICFTU, Breaking Down the Wall of Silence: How to Combat Child Labour,* Belgium, p.59.

action was intended for the grasp of the children that there were human specimens rallying round to care for their well-being bestowing their special attention their special needs. As part of this celebration, Poland proposed that an international treaty be drafted which would put into legally binding language the principles set forth in the 1959 Declaration[52]. Responsibility for drafting the Convention on the Rights of the Child [CRC] was given to the Commission on Human Rights[53]. Drafting of the Convention was originally based on a model text submitted by Poland to the Commission on Human Rights.[54] The model text of twenty substantive rights gave rise to the Convention in its final form

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52. The Polish proposal for drafting of a legally binding convention was readily accepted without active consideration of the exigencies underlying the proposal as the UN was quite convinced with such an action. This itself is proof of tacit recognition by the UN of the protection the children deserve in their own right probably assuming that reasons therefor are purely academic.

    Notwithstanding, reasons are more revealing and are not far difficult to seek. Bennett is of the view that survey of existing international instruments reveals that most of the provisions on human rights apply to children and afford them a broad range of rights. However, he hastens to add that in certain respects the body of instruments either omits some children's rights, or where provided, the coverage is not thorough and finally, the international rights and needs of children are scattered and disorganised making use and development of the same difficult thus hindering the establishment of international consensus and understanding. See Bennett, Walter H., A Critique of the Emerging Convention on the Rights of the Child, *op.cit*. pp.29-31.

    It is also stated that the CRC was in response to the felt -need for a comprehensive, recognisable and enforceable legal regime which could guarantee the welfare of the child in the 1990s recognising three basic facts namely that (a) children have special human rights which adults do not have; (b) the human rights standards in relation to children are higher than those of adults; and (c) that many of these rights cast obligations as much on parents themselves as on the state and society. National Law School of India University and United Nations Children's Fund, *Report of a Seminar on the Rights of the Child*, National Law School of India University, Bangalore, 1990, p.21.

53. The question of a convention on the Rights of the Child was first proposed by the govemment of Poland as one of the initiatives to be undertaken during the IYC. The EcoSoc referred the proposal to the UN Commission on Human Rights which created the "Open-Ended Working Group" in 1979.

54. U.N. ESCOR Supp.[No.16], UN. DOC. E/CN.4/1349 [1979].

containing more than forty rights and covering the full spectrum of human rights protections.[55] On November 20, 1989 the United Nations General Assembly adopted, without a vote, the Convention on the Rights of the Child[56] marking a milestone in the international recognition of the status and dignity of children everywhere.[57] The United Nations Convention on the Rights of the Child has become part of International Law with its ratification by over sixty member countries. With entry into force, the Convention sets universally agreed standards for the protection of children and provides an invaluable framework for advocacy on behalf of children and families, and for the development of programmes and policies that will ensure a healthier and safer future for children in every country in the world. Thus 1989 was a symbolic year for children, as the adoption of the Convention that year was a fitting commemoration of the 30th anniversary of the Declaration of the Rights of the Child and the 10th anniversary of the International Year of the Child.

The Convention on the Rights of the Child recalls the basic principles of the United Nations and specific provisions of certain human rights treaties and proclamations. It reaffirms the fact that children, because of their vulnerability, need special care and protection, and it places special emphasis on the primary caring and protective responsibility of the family. It also reaffirms the need for legal and other protection of the child before and after birth, the importance of

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55. Cohen, Cynthia Price, United Nations: Convention on the Rights of the Child, *International Legal Materials*, Vol.28, 1989, p.1450.

56. U.N.DOC.A/44/736.[1989]. For the text of the Convention, See Annexure V, *infra*.

57. National Law School of India University, *Report of a Seminar on the Rights of the Child, op.cit.*, p.1.

respect for the cultural values of the child's community, and the vital role of international cooperation in securing children's rights. The following are some of the key provisions of this historic agreement.

The Convention applies to all persons below the age of 18 unless, according to national law, they have attained majority at an early age.[58] The provisions of the Convention are based on the principle of non-discrimination. They apply to all children regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, birth or other status. It is the state's obligation to protect children from any form of discrimination.[59] All actions concerning the child shall take full account of his or her best interests.[60] The state must do all it can to implement the rights contained in the Convention.[61] The state must respect the rights and responsibilities of parents and the extended family to provide guidance for the child which is appropriate to her or his evolving capacities.[62] Every child has the inherent right to life, and the state has an obligation to ensure the child's survival and development.[63] The Convention gives the child the right to a name and a nationality.[64] All children are entitled to the right of parental care and not

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58. Convention on the Rights of the Child 1989, Art.1.

59. *Ibid.*, Art.2.

60. *Ibid.*, Art.3.

61. *Ibid.*, Art.4.

62. *Ibid.*, Art.5.

63. *Ibid.*, Art.6.

64. *Ibid.*, Art.7.

to be separated from their parents.[65] All applications for family re-unification are to be dealt with in a positive, humane, and expeditious manner.[66] Freedom of expression,[67] freedom of thought, conscience and religion,[68] freedom of association[69] and right to privacy[70] are also provided. Parents have joint primary responsibility for raising the child, and the state shall support them in this. The state shall provide appropriate assistance to parents in child raising.[71] The state must adopt all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.[72] A disabled child has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.[73] The child has a right to the highest standard of health and medical care attainable.[74] The Convention also recognises the right of the child to benefit from social security.[75] Every child has a right to a standard of living adequate for his or her physical, mental,

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65. *Ibid.*, Art.9.

66. *Ibid.*, Art.10.

67. *Ibid.*, Art.13.

68. *Ibid.*, Art.14.

69. *Ibid.*, Art.15.

70. *Ibid.*, Art.16.

71. *Ibid.*, Art.18. 72. *Ibid.*, Art.19.

73. *Ibid.*, Art.23.

74. *Ibid.*, Art.24.

75. *Ibid.*, Art.26.

spiritual, moral and social development.[76] The child has a right to education, and the state's duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child and to make higher education to all on the basis of capacity.[77] The child has the right to leisure, play and participation in cultural and artistic activities.[78] The child has the right to be protected from work that threatens his or her health, education or development. The state shell set minimum ages for employment and regulate working conditions.[79] Children, deprived of their liberty or who are in conflict with the law, are given special attention in the provisions contained in Articles 37 and 40; the former also prohibits torture, life imprisonment or execution of children. The implementation machinery of the Convention is designed to give special emphasis to creating a setting for global co-operation and development in the realisation of the provisions and ideals of the Convention[80]

The Convention is undoubtedly a great leap forward in the matter of justice to the child in as much as defining children as human beings with rights rather than merely as helpless victims, this landmark document has dramatically changed the international landscape. It provides clear goals and possible strategies for action. The fundamental principle of "best interests of the child"

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76. *Ibid.*, Art.27.

77. *Ibid.*, Art.28.

78. *Ibid.*, Art.31.

79. *Ibid.*, Art.32.

80. *Ibid.*, Art.42-45.

emphasises the approach and illuminates the philosophy for action.[81] However, the protection offered by the Convention may, at the moment, seen bleak.[82] Nonetheless, it is a major achievement in that it has set up an agreed international standard by which nations will in future be judged. It therefore provides a 'place to stand' for all those who would exert leverage on behalf of children.[83]

The Convention which is driven by a deep vision expressed in several articles is a powerful and eloquent document, unique among international conventions. Unique in character which deserves distinction is marked by two reasons. It is far closer to universal ratification in the four years since its

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81. National Law School of India University, *Report of a Seminar on the Rights of the Child, op.cit.*, p.23.

82. It is sadly often the case that such international conventions are often more honoured in defiance than in deference. See UNICEF, *The State of the World's Children 1989, op.cit.*, p.11. It is stated that there is some confusion resulting from the mixing up of legal rights with entitlements and benefits. Again, obligations of different parties [state, family, parents, international organisations, voluntary agencies] are stated along with rights of the child even when such obligations do not necessarily create concomitant rights. If it has to be a legal document, there ought to be some re-organisation of contents in terms of enforceability and degree of acceptance in the legal systems of the world. See, National Law School of India University, *Report of a Seminar on the Rights of the Child, ibid.*, p.23.

83. *Ibid.*, R.A.Stainsby, United Nations High Commission For Refugees said: "The Convention on the Rights of the Child will be a legal standardsetting instrument. It will be an agreement between state about children. Once a state becomes a party to the convention, and the convention comes into force, the state will be under a duty to ensure that its domestic law and practice are in conformity with its international obligations. It will serve as a point of reference... both as a guide to Governments and others in recognising specific problem areas for children and as the basis of persuasive argument in promoting appropriate action on behalf of children".

Panudda, Boonpala, Child Workers in Asia Support Group also said: The convention is not an end in itself. It exists as a tool to spearhead action which will pressurize governments into seriously analysing the possibility of acknowledging those rights...".

adoption than any of the other, older conventions. Secondly, linking the traditional notions of civil and political human rights with social and economic development, it is the first to address the rights of children in such a far-reaching and holistic manner. The Convention is a document with a 'soul'.[84] The latter makes it to be seen as an instrument of empowerment for children's rights. Defying the traditional classification of human rights unequivocally, the Convention by grouping the rights catalogued therein together attempted to demonstrate their necessary inter-dependence and integrated nature if one is to enable children to fulfil their potential. The rights in the Convention are interwoven and mutually reinforcing. In other words, it is both pointless and reprehensible to ensure that a child is adequately nourished [a social right], if he or she is not protected from arbitrary detention [a civil right], and a child has to be protected from exploitation at work [a socio-economic right] if he or she is to be able to benefit from education [a cultural right].[85] In the backdrop, the rights set out in the Convention can be broadly grouped under the headings of survival and development, protection and participation.[86] Descending on such classification to its logical end will push one to find that survival is inclusive of nutrition, adequate standard of living and access to medical services. These are the basic rights that ensure that a child may quite simply live, but as such they

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84. UNICEF,*First Call for Children*, New York, January - March 1994, p.13.

85. DCI-UNICEF, *The Future Convention: How it Came About*, Doc.no.1, *op.cit.*, p.2.

86. *Ibid.* The one-time-strong barrier between the political and civil rights and the socio-economic rights having broken down to pieces, there is a need to resort to a classification which serves a tool in analysing special problem areas for children and suggesting action to remedy the same. Purposerelated classification - analysing whether or not specific standards and practices are appropriate and adequate in meeting the needs of children - is one such type of classification which looks more appropriate.

are only necessary, not sufficient. To them must be added "development rights", such as access to information, education and cultural activities, opportunities for rest, play and leisure, and the right to freedom of thought, conscience and religion. Then comes protection in the hierarchy. The rights mentioned above will be assuring and worth pursuing only if protection is afforded against violation and material deprivation. Finally, the right to express opinion freely and to have those opinions taken into account in matters affecting the child's own life and the right to play an active role in the community and society, through freedom of association and other activities are encompassed within the realm of participatory rights which help to complement the blossom of personhood of a child. Included here are the rights which ensure not merely survival but survival with the dignity that befits the human person. Thus the inevitable culmination is the intricate web and mutual reinforcement of human rights of children focussing poignantly on their right to development, a relatively new concept to which the international community is favourably disposed.

Closely on the heels of a rare show of unanimity in the call for protection of children, the national governments poised for a big leap as the UNICEF was rapidly heralding to integrally link the Convention on the Rights of the Child to the programmes of action that countries were required to undertake obviously intending to bridge the gap between policy and implementation. It is UNICEF's most fundamental belief, as the world struggles to free itself from the old preoccupation with war, that there could be no more important new occupation than protecting the lives and development of the largest generation of children ever to be entrusted to mankind.[87] Wresting the initiative, the UNICEF hosted

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87. UNICEF, *The State of World's Children 1990*, *op.cit.* p.19.

the World Summit for Children in 1990 which witnessed demonstration of political will as the nations present were all set to move from rhetoric to action seizing the opportunity. An unprecedented gathering of world leaders lit a beacon of hope at the World Summit when they made *the Declaration on Survival, Protection and Development of Children* which vows to save the lives of some 50 million children by the year 2000 and improve the quality of life for hundreds of million more.[88] Quite evidently laying down a new international ethic for children, the topmost leaders from some 70 nations, and senior representatives from the other U.N. Member States, pledged themselves to change the dismal outlook,[89] giving the plight and fate of their most vulnerable citizens new priority on national and international political agendas. Re-enacting the historic solemn pledge at the regional level, notably India and its other counterparts of SAARC which assembled in Colombo on September 1992 on behalf of the 410 million children of South Asia endorsed their commitment to give children the highest priority in national development planning and appealed for enhanced budgetary allocations to the social sector, asserting that investment in children be made a "non-negotiable political commitment".[90] The new developments and some practical achievements that have taken place are clear proof of vision the industrialised and developing countries have gained focussing sharply on the growing recognition that the physical, mental, and emotional needs of the young are a legitimate matter of concern for a nation's

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88. *Child Health News and Review, op.cit.*, p.13.

89. *Ibid.*, p.17.

90. *Mainstream*, February 27, 1993, pp.16-17.

political leaders.[91] The current thinking thus eloquently transpires the vow to remove disabilities of children symbolising the fundamental rights to health and education and halting of merciless exploitation of children to their prejudice causing material deprivation of full personhood synchronising with the right not to be employed. While the former visualises the obligation of the state to ensure the survival and development of children, the latter points to the obligation of preventing employment of children prejudicial to their interest. As a follow up, the rights of children to health, food, education and right against exploitation are stressed. The first three rights namely right to health, right to nutritive food and right to education are dealt with in the fourth chapter leaving the rest to be carried through the chapter after next.

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91. UNICEF, *The State of World's Children, 1990*, *op.cit.*, p.45.

CHAPTER FOUR

RIGHT TO SURVIVAL AND DEVELOPMENT

4.1 HEALTH AND NUTRITION: THE BEDROCK OF RIGHT TO LIFE

Health is declared to be a fundamental right of every human being. The objective of the WHO, a specialised health agency of the United Nations, is "the attainment by all peoples of the highest level of health" which is set out in the Preamble of its Constitution.[1] Health, the once forgotten entity both at the national and international levels, is of late perceived as a worldwide social goal. It is considered as an imperative to the satisfaction of basic human needs and to an improved quality of life. During the past few decades, there has been a reawakening for the better. The year of 1977 is a new leaf in the history of mankind as the august World Health Assembly in its 30th meet launched a movement known as "Health for all by the year 2000" ushering in the principle of "equity in health"[2] - an equal health status for people and countries ensured by an equitable distribution of health resources. In 1978, the Alma-Ata

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1. The Preamble of the Constitution of the World Health Organisation states: "... The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political life, economic and social condition". Art.25 of the Universal Declaration of Human Rights also states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family...". See also Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966.

2. Park, J.E. and Park, K., *Preventive and Social Medicine*, Banarsidas Bhanot, Jabalpur, 1991, p.489.

International Conference on Primary Health Care reaffirmed health for all as the major social goal of governments and called on all governments to formulate national policies, strategies and plans of action to launch and sustain primary health care as part of a national health system.[3] Keeping in view the national commitment to attain the goal of Health for All by the year 2000,[4] the Government of India evolved a National Health Policy in 1983 laying stress on the preventive, promotive public health and rehabilitation aspects of health care and comprehending the need of establishing comprehensive primary health care services to reach the population in the remotest areas of the country in the back drop of the need to view health and human development as a vital component of overall and integrated socio-economic development.[5] This gave new direction to the concept of health planning the purpose of which is to meet the health needs and demands of the people.

The irreversible policy changes contemplating health as an essential component of socio-economic development makes the concept of health development as more significant and distinct from the provision of medical care.[6] Right to health as originally conceived as the right to health or medical care or the right to health protection implied only the responsibility of the state to provide material security in cases of illness or accident, and free medical education, medicaments and other necessary materials and the right to be

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3. *Ibid.*

4. As a signatory to the Alma-Ata Declaration in 1978, the Government of India is committed to taking steps to provide Health for All to its citizens by 2000 A.D. See Park, J.E. and Park, K., *Preventive and Social Medicine, ibid.*

5. *Ibid.*, p.474.

6. *Ibid.*, p.19.

cared for by the society in the old age and invalidity.[7] It is the increasing recognition of the role of human beings in the developing process of the nation which provided stimulant to the perceptible change in the current policy thinking. Discernible as "the process of continuous progressive improvement of the health status of a population",[8] the growth of health development is measured by rising level of human well-being, marked not only by reduction in the burden of disease, but also by the attainment of positive physical and mental health related to satisfactory economic functioning and social integration.[9] It is based on the fundamental principle that governments have a responsibility for the health of their people through public participation, both individually and collectively.[10]

Health in the broad sense of the term as visualised in the changing scenario not only means the absence of disease but also includes a state of physical, mental and social well-being, for brevity styled as a positive health.[11] The trinity well-being is all pervasive emphasising the state of positive health symbolising the notion of "perfect functioning" of body and mind in the social setting in which a person lives. The concept of well-being couched in an abstract sense conceptualises health biologically, as a state in which every cell

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7. WHO [1976], Health Aspects of Human Rights, WHO, Geneva, in Park, J.E. and Park, K., *Preventive and Social Medicine*, *ibid.*, p.17.

8. WHO [1984], Health for All, Ser.No.9, in Park, J.E. and Park, K., *Preventive and Social Medicine*, *ibid.*, p.19.

9. WHO [1984], Health Planning and Management Glossary. Reg.Health Paper 2, SEARO, New Delhi, in Park, J.E. and Park, K., *Preventive and Social Medicine*, *ibid.*, p.19.

10. Park, J.E. and Park, K., *Preventive and Social Medicine*, *ibid.*, p.19.

11. *Ibid.*, p.14.

and every organ is functioning at optimum capacity and in perfect harmony with the rest of the body; psychologically, as a state in which the individual feels a sense of perfect well-being and of mastery over his environment, and socially, as a state in which the individual's capacities for participation in the social system are optimal. While this is explained away as an ideal state which is quite inconceivable, it is described in the contextual development as a potentiality.[12] In the real and working sense, the concept of well-being is attributed to the standard of living which is defined as pointing to the usual scale of our expenditure, the goods we consume and the service we enjoy including the level of education, employment status, food, dress, house, amusements and comforts of modern living.[13] A well-measuring definition drawn by WHO dwells on measures of economic status serving as an index of the standard of living.[14] Showing similar concern for human dignity, the U.N. also seeks to ensure quality of life of mankind through an adequate level of living. The U.N. documents in an attempt to elaborate the level of living enumerates components which are considered as necessary to influence the well-being of the mankind.[15] Health is thus unmistakably ranked as high as any other component of the level of living because its impairment always means impairment of the level of living. In an

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12. Twaddle, A.C. and Hassler, R.M. [1977], A Sociology of Health, St. Louis, Mosby, in Park, J.E. and Park, K., *Preventive and Social Medicine*, *ibid.*, p.14.

13. Nagpal, R. and Sell, H. [1985], Subjective Well-being, Reg. Health Paper No.7, SEARO, WHO, New Delhi, in Park, J.E. and Park, K., *Preventive and Social Medicine*, *ibid.*, p.14.

14. Standard of living is defined by WHO as under: "Income and occupation, standards of housing, sanitation and nutrition, the level of provision of health, educational, recreational and other services may all be used individually as measures of socio-economic status, and collectively as an index of the "Standard of living". See WHO [1975], Promoting Health in the Human Environment, Geneva, in Park, J.E. and Park, K., *Preventive and Social Medicine*, *ibid.*, p.14.

anxiety to broaden the spectrum of health, there is also concern expressed for improving the quality of life of the humanbeing thus highlighting that positive health treads not only on medical care but also on other economic, cultural and social factors operating in the community. Succumbing to the temptations to widen the sweep of the components of health, the concept of well-being is made open ended through the induction of new phenomenon namely quality of life. However, there is some measure of optimism reflected in the quality of life as defined by WHO by taking the concept of well-being to a new height. The new phenomenon is used as a conduit whereby the concept of well-being is stretched too far to make it an all inclusive of elements imperative in the opinion of an individual to ensure the quality of life. Implicit in the definition of the term quality of life are the elements of subjective nature making the quality of life transient as it is kept floating to suit the wishes of individuals.[16]

Extreme views representing of standard of living and level of living on the one hand and quality of life on the other makes reconciliation extremely inevitable as it is indisputably clear and it cannot be doubted even least that people are demanding adequate and substantial concern for their well-being by

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15. The level of living as emphasised in the United Nations documents consists of nine components: health, food consumption, education, occupation and working conditions, housing, social security, clothing, recreation and leisure and human rights. See Park, J.E. and Park, K., *Preventive and Social Medicine*, ibid., p.14.

16. "A composite measure of physical, mental and social well-being as *perceived* by each individual or by group of individuals - that is to say, happiness, satisfaction and gratification as it is experienced in such life concerns such as health, marriage, family work, financial situation, educational opportunities, self-esteem, creativity, belongingness, and trust in others". See Mary Ellen Cladwell, "Well-Being: Its Place Among Human Rights, in Towards World Order and Human Dignity (ed) Michael Reisman and B.H. Weston (1976) p.193, in Subramanya T.R., *Rights and Status of the Individual in International Law*, Deep and Deep Publications, New Delhi, 1984, p.126.

the state through reduction of morbidity and mortality, provision of primary health care and enforcement of physical, mental and social well-being. 'To wipe every tear from every eye' is the humanist tryst the world order has made. The brief survey of international human rights instruments disclosed that the dimension of the right to life encompasses both positive and negative obligations[17] insisting upon the state to take positive measures including the steps to reduce the infant mortality rate, prevent industrial accidents and protect the environment.[18] It is this exalted position of the right to life as an imperative norm which makes the unimpeachable evidence of heavy death as a result of hunger and malnutrition strikingly significant. Faced with the grim reality of the world food problem which is described as the 'balance sheet of anchor' by FAO, WHO said:

> 'Nearly 1000 million people are trapped in the vicious circle of poverty, malnutrition, disease and despair that saps their energy, reduces their work capacity and limits their ability to plan for the future...'.[19]

As similarly expressed concerns are not infrequent,[20] there is a view widely prevalent but kept under check that it is morally no different for beings to be killed, in war than for them to die through starvation.[21] Obviously, the responsibility of breaking through the cycle of poverty, hunger, ignorance and disease through a plan of action or strategy rests primarily on the just

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17. See Chapter Two, p.78, *supra*.

18. Res.No. 421[V] of the General Assembly. Kabaalioglu, Haluk A., The obligations to 'Respect' And to 'Ensure' the Right to Life, *op.cit.*, p.165.

19. Menghistu, F., The Satisfaction of Survival Requirements *op.cit.*, p.65.

20. *Ibid.*, p.65.

21. *Ibid.*, p.77.

government seeking to govern and to represent the people living under its jurisdiction. As otherwise, the abrasive style of functioning of the state betraying lack of grace to satisfy the basic needs of its population guaranteeing thereby the survival of society and its individual members will make it unfit. The signature tune of the international human rights instruments is the emancipation of mankind through their spiritual and material development besides protection against arbitrary and active deprivation of life by the state and its agencies.[22] This call for development as the process aiming at the creation of conditions whereby every one may enjoy his economic, social and cultural rights as well as his civil and political rights so that the ideal of human beings enjoying freedom from want and fear can be achieved.[23] Repression and the denial of either civil and political rights or economic, social and cultural rights, or both sets of rights, is a total negation of the development[24] which each state by becoming a party to the Covenants undertake to promote through social and international order.[25] Development speaking through the channel of Bill of Rights emerges as a dynamic process involving a greater realisation of the potential of each individual, community or nation to fulfil political, economic and cultural

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22. De Waart, Paul J.I.M., The Inter-Relationship between the Right to Life and the Right to Development, in Ramcharan, B.G., (ed), *The Right to Life in International Law, ibid.*, p.89.

23. International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights respectively, preambular para.3.

24. Doc.E/CN.4/1488 of 31 December 1981, paras 139 and 309, De Waart, Paul J.I.M, The Inter-Relationship between the Right of Life And the Right to Development, *op.cit.*, p.88.

25. Article 28 of the Universal Declaration of Human Rights.

capabilities for the purpose of human dignity.[26] Simply, it envisages the promotion of the quality of life by the state.[27]

It is obvious from the above that the right to health and nutrition is so basic and fundamental that it cannot be brushed aside with impunity as it is the sheet anchor and bed rock of right to life with human dignity. Apparently, it stands tall unassailable. Equally it is unimpeachable that the same is continuous and never receding. Nor can it be shrunken so as to confine it to a particular time or stage. This is self-explanatory as the nature owes an explanation. Known things do not merit a detailed recount like man passes several stages in between from cradle to grave. Drawing the meaning in the context, the term 'life' in respect of which the obligation is earmarked is so wide that it sweeps throughout. Each new generation offers humanity another chance is proverbial. If we *provide* for the survival and development of children everywhere, *protect* them from harm and exploitation and enable them to ***participate*** in decisions directly affecting their lives, we will surely build the foundation of the just society we all want and that children deserve.[28] Doing

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26. GA Resolution 2542 [xxiv] of 11 December 1969, Declaration on Social Progress and Development, art.2; GA Res. 35/56 of 20 January 1981, International Development Decade, para 8, De Waart, Paul J.I.M, The Inter-Relationship between the Right to Life And the Right to Development, in Ramcharan, B.G., *The Right to Life in International Law, ibid.*, p.86. In this context, the right to development as a human right is defined as under: 'The right to development i the inalienable human right by virtue of which every individual, and all people pursuant to the right of self-determination, are entitled to participate in, contribute to and enjoy a comprehensive political, economic and social and cultural order, in which all human rights are fully respected and can be fully realized'. See De Waart, Paul J.I.M., The Inter-relationship between the Right to Life and the Right to Development, *op.cit.*, p.90.

27. See Chapter Two, note 129, *supra.*

28. *Child Health News and Review, op.cit.*, p.41.

the obvious is the new ethic coined by UNICEF for observance of nations without aberration as the international community is visibly upset over the disability being brought to bear upon the mankind.[29] Shedding traditional qualms, the international community smartly put on record that more than 500 million people in the world today cannot take full part in the ordinary activities of daily life because of some form of physical, mental or sensory disability. Highly deplorable is to suggest that at least 150 million of them are children.[30] Dissection through scientific knowledge places six major diseases and malnutrition as major causes of death and disability. It is catastrophe indeed as disability is writ large clasping the breathe of mankind to utter dismay of scientific temperament which is capable of affording first line of defences against such disability with ease.[31] It is highly distressing and obnoxious to note that avoidable is ruling the roost unfailingly clinching the principle of accountability of good government. The much entrenched principle suggests unequivocal intervention by the state through measures to help its citizens gaining the entitled potentialities in their own right.

Avoiding the avoidable is the inevitable target lying ahead towards which nations are inching, of course, with much discomfiture as economies have to be adjusted to new and more difficult external circumstances - the now-all-too-familiar theme of 'adjustment with a human face' unfolded by UNICEF in

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29. UNICEF, *The State of World's Children 1990*, *op.cit.*, p.35.

30. *Child Health News and Review*, *op.cit.*, p.32.

31. *Ibid.*

1980s.[32] For this calls for a fundamental shift in ethos underlying the need to demand intolerance and insistence that something be done in response to the less visible but far greater problem of the many millions of children who are victims of the 'silent emergency' of readily preventable illness and malnutrition.[33] What is required is a new commitment to a style of development which Mahatma Gandhi called *antoyodaya*, a development which gives priority to the poor and particularly to the health, nutrition and education of their children,[34] as the Poet Robert Frost would say, the road "less traveled by". It is a commitment and an universal appeal to give every child a better future in a fresh bid to evolve concerted international action to fight the 'abused child syndromes'.

Children are an asset to the mankind and nations as well, as the collective future depends on children growing to become productive members of society. As children are weak and meek, they are as vulnerable as environment. The fundamental core of civilisation emphasises protection of the vulnerable over the early years of life as child illness and malnutrition sapping potentialities *dehors* conscience of mankind.[35] Hence the principle of children first implying that the lives and the normal development of children should have *first call* (emphasis already provided) on society's concerns and capacities and that children should be able to depend upon that commitment in good times and in bad, in normal times and in times of emergency, in times of peace and in

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32. UNICEF, *The State of World's Children 1990*, *op.cit.*, p.11.

33. UNICEF, *The State of World's Children 1989*, *op.cit.*, p.13.

34. UNICEF, *The State of World's Children 1990, op.cit.*, p.37.

35. *Ibid.*, p.7.

times of war, in times of prosperity and in times of recession.[36] The bubble of protection being the offshoot of the principle of first call needs to be cast through moulding of appropriate public policies and national planning to ensure the physical, mental and emotional development of children at appropriate stage and time as children cannot wait. It is now that their minds and bodies are being formed and it is now that they need adequate protection.[37] As UNICEF Deputy Executive Director Richard Jolly told a Committee of the United States Congress in 1989:

> "Human capital is a more important factor for achieving economic growth than physical capital....Investment in human capital in the form of nutrition, basic education, and health cannot be postponed : it either takes place at an appropriate age when the need is present - or it does not, for the young child, there is no second chance...".[38]

This explains the *raison d'etre* for offering protection to expectant mothers as the state is eager to give protection from as close to birth as possible.

Children, whether normal weighing or low weighing, once come to life are entitled to, and eventually must be provided with every opportunity to help them to survive, grow and develop into full personhood. By all means they are the fundamental obligations of the family in which they take birth and the society in which they live. All families share a role and responsibility to provide emotional and financial support to members, particularly infants and children. The family remains a primary source of nature, as well as a conduit for values, culture and

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36. *Ibid.*

37. *Ibid.*, p.37.

38. *Ibid.*, p.11.

information. In a broader sense, it strengthens individuals and acts as a vital source for development as the same is in the survival, health, education, social development and protection of children. Efforts are to be made by the society, in the wake of failing obligations by the family, to provide support and replacement of the family's function is a necessary corollary to the principle of functional responsibility of the family.[39] The perplexing role and responsibility, the family assumes, brings into focus its empowerment as what a child gets, he or she gets from the family and what the child does not get starts with the family. A family battered by poverty will not have a lot to give to its children hitting them first and hardest.[40] With few exceptions, what we are in fact seeing is the exact opposite of the principle that the growing minds and bodies of children should have first call on the protection of society.[41] No economic theory or political theory can justify even a temporary sacrifice of children's growing minds and bodies. And the strategy of 'adjustment with a human face' is one of the most important examples of the spirit of the Convention on the Rights of the Child and of its central principle that all children should be protected from the worst consequences of the adult world's excesses and mistakes, whether we are talking about violence and war or the cumulative effects of economic mismanagement.[42]

The business of tiny tots is to grow and growth can take place only with good food. During intrauterine life, nutrients for growth and development are

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39. UNICEF, *First Call For Children*, January-March 1994, p.10.

40. UNICEF, *First Call For Children*, April-June 1992, p.2.

41. UNICEF, *The State of World's Children 1990*, *op.cit.*, p.11.

42. *Ibid.*

supplied through the umbilical vessels. Infants and young children grow very rapidly. Children have comparatively higher nutritional requirements because they have to develop the body tissues rapidly and they have a relatively higher need for protein. If the growth is rapid, there is a high demand for all nutrients including vitamins. A toddler needs at least as much as half "the quantity" of food, as his father requires. In the young, the tissues are labile, and will develop dehydration or hypoglycaemia or other deficiencies too readily. They have high demands and slender reserves. Although infants and young children are small and appear to be inactive, they are in fact very active. Their need for energy in relation to their body size is much greater than that of an adult. Special care is therefore necessary to include in the diet energygiving foods. Good nutrition and good health inextricably go together.[43]

In children normal growth and development are signs of good health and nutrition. One of the best ways to measure a child's health is to measure growth, and one of the easiest ways of measuring growth is to weigh a child regularly and ascertain how his body weight is increasing with age in comparison to the weights of healthy children of the same age.[44] Food is needed for growth, development and maintenance of health as foods contain nutrients which can be divided into three categories according to their functions: energy-giving nutrients, body-building nutrients and protective nutrients.[45]

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43. WHO, *Guidelines for Training Community Health Workers in Nutrition*, Geneva, Second Edition, 1986, p.22.

44. *Ibid.*, p.30.

45. *Ibid.*, p.15.

While *growth* is the gradual increase in size of the body and its organs, *development* is the increase in the number of skills performed by the body including the brain and facilitates the optimal performance of those skills. Growth and development are fundamental features of children.[46] If an infant is properly fed during the first year, he or she will grow well and have a good start in life.[47] A child is probably healthy and adequately fed if he is growing well. Correct feeding and appropriate growth in the first year ensure that the risk of malnutrition in the successive years is markedly less.[48] Similarly, development of skills and their optimal performance are also considered significant in the life of an individual. When a child is born it can do very little for itself. Gradually he develops and is able to function in the way he wants and he can do simple things. He develops special skills later. Brain and nervous systems are very much behind the development of an individual and hence the proper and adequate growth of the same is *sine qua non* for which adequate nutrition is both necessary and essential.[49] Improving a child's diet not only betters the child's immediate survival prospects but also his or her physical and intellectual status later in life.

Good health and good nutritional status are thus totally interdependent. Enough food is needed for good health, as freedom from disease is needed for good nutritional status. This interdependence is crucial to the concept of primary health care. It is basically both a health concept and a development

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46. *Ibid.*, p.29.

47. *Ibid.*, p.59.

48. *Ibid.*, p.29, 59.

49. *Ibid.*, p.30.

strategy which in all probability demand wide-ranging improvements not only in access to medical services but also to social and economic developments parallely as forming part of the working policy of 'health for all' evolved by consensus.[50] Adequate nutrition is thus overwhelmingly recognised as a basic need and a pre-requisite for health.[51] Increasingly, development planners and economists are looking for social indicators such as health status measurements to guide decisions on economic development strategies in as much as the level of health and nutrition itself is a direct indicator of the quality of life, and an indirect indicator of overall social economic development.[52] Evidently, basic needs, primary health care, and food and nutritional planning have similar and complementary objectives, however, with different sectoral emphases.[53] Health for all and food for all are thus mutually reinforcing and complementary thus making them real facets of quality of life which is the self-styled object of the protagonists of human development.[54]

Instinctively, it is the right to life that is at issue and at stake for the billion people around the world as national governments have the primary and inherent obligation and duty to look after the well-being of their own people in particular

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50. WHO, *Nutritional Surveillance,* Geneva, 1984, p.24.

51. WHO Technical Report Series, No.667, 1981. [The role of the health sector in food and nutrition, Report of a WHO Expert Committee], in WHO, *Nutritional Surveillance*, *ibid.*, p.13.

52. Development of indicators monitoring progress towards health for all by the year 2000, Geneva, World Health Organisation, 1981, ["Health for All" series, No.4], in WHO, *Nutritional Surveillance*, *ibid.*, p.20.

53. *Ibid.*, p.21.

54. WHO Technical Report Series, No.667, 1981. [The role of the health Sector in food and nutrition, Report of a WHO Expert Committee], in WHO, *Nutritional Surveillance*, *ibid.*, p.24.

children. It only requires the state to guarantee access to the material conditions necessary for supporting life. Meeting survival requirements in the areas of nutrition and health, reducing infant mortality and eliminating famine, malnutrition and epidemics are the broad spheres of the responsibility emanating from the absolutely fundamental nature of the right to life as a norm of *jus Cogens* in international law.[55] Needless to say, the national law must be interpreted in a way that the results achieved would not be inconsistent with the obligations of the state concerned under international law. The terms 'to respect and to ensure' will be key rules in this area too. The rule of law must be the guide which orients the conduct of those in power.

The decade of 1990 is, at last, to be the turn of the child as global recognition that healthy children and healthy families are essential for human and national development is steadily increasing.[56] This increasing concern at the highest political levels[57] shows that the majority of heads of state in the developing world have publicly committed their governments to achieving such

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55. See Chapter Three, note 46, *supra.*

56. 'Protecting the World's Children - an agenda for the 1990's was the main subject under discussion at the meeting of the Task Force for Child Survival held in Tallories, France, in March 1988. The Task Force, established in March 1984 by the World Bank, the United Nations Development Programme, the World Health Organisation, the Rockfeller Foundation and UNICEF, periodically brings together health ministers from developing nations and leaders of bilateral aid organisations to discuss progress in implementing today's low-cost, high-impact strategies for protecting the life and health of children. See UNICEF, *The State of the World's Children 1989*, *op.cit.*, p.64.

57. The President of the U.S, for example, has expressed the belief that "our national character can be measured by how we care for our children". And in making the same point about the world's responsibility for its children, President Gorbachev has stated simply that "mankind can no longer put up with the fact that millions of children die every year at the close of the twentieth century". See UNICEF, *The State of the World's Children 1990*, *op.cit.*, p.5.

goals as universal immunisation and a halving of the 1980 child death rate by the year 2000.[58] Thus change is in prospect everywhere as there now appears to be a widening concern for children contemplating a promising move from rhetoric to action.[59] Wresting the initiative, the World Summit for Children set a

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58. Part cause and part consequence of this new concern is the increasing number of personal and political commitments made by many of the world's political leaders in the last years. (a) In *Asia*, the seven heads of State of the South Asian Association for Regional Co-operation [SAARC] jointly stated that "the meeting of the needs of all children is the principal means of human resource development.... Children should therefore be given highest priority in national development planning". The SAARC leadership also committed itself to "achieving universal immunization by 1990 and universal access to primary education, adequate nutrition, and safe drinking water by the year 2000"; (b) In *Central America*, the heads of state of the seven nations in the region made an unprecedented television appeal for the immunization of all the region's children; (c) In *Africa*, where forty countries have sharply accelerated their immunization programmes since 1984, the personal leadership of heads of state had been the key in almost all cases. Seven Sub-Saharan countries had already achieved 75% immunization coverage, and several more were expected to reach that mark by the end of 1988. Under the aegis of the Organisation for African Unity, over fifty heads of state proclaimed 1986 'African Immunization Year' and later expanded this concern to make 1988 the 'Year for the Protection, Survival and Development of the African Child'. The OAU summit, with 31 heads of state in attendance, also endorsed the Bamako Initiative, launched by the region's health ministers in September 1987 and designed to help spread primary health care throughout Sub-Saharan Africa by the mid-1990s; (d) In the *Middle East*, the Council of Arab Ministers of Social Affairs announced the target of having the region's infant mortality rate by 1990 and proposed that reductions in infant death rates should rank alongside growth in GNP as an indicator of progress and development; (e) Even the 1988 *Moscow Summit Meeting* convened principally to address issues of strategic arms limitation, acknowledged the importance of the Child survival and development issue. The Joint Communique issued by President Reagan and General Secretary Gorbachev stated: "Both leaders reaffirm their support for the WHO/UNICEF goal of reducing the scale of preventable childhood death through the most effective methods of saving children. They urged other countries and the international community to intensify efforts to achieve this goal". See UNICEF, *The State of the World's Children 1989*, *op.cit.*, p.14.

59. President Clinton, in his address to the United Nations General Assembly in September 1993, also spoke of a new commitment to the world's children. He said: "Just as our own nation has launched new reforms to ensure that every child in America has adequate health care, we must do more to get basic vaccines and other treatments for curable diseases to children around the world. It's the best investment we'll ever make". See UNICEF, *The State of the World's Children 1994*, *op.cit.*, p.40.

range of new social goals agreeing that each nation would adopt the goals to its own circumstances and draw up a national programme of action for achieving the goals by the year 2000.[60]

On the lines hopefully expected the most important aspect of the progress now being achieved for children in the developing world is the gradual ascendancy that is gained over the major diseases of childhood. The score being made also unmistakably represents a significant gain against the fundamental problems of malnutrition and poor mental and physical development.[61] Notwithstanding the sumptuous gain made, there is nothing for the state to glee about it especially when it is faltered miserably to provide adequate nutrition to mother and child. Neglecting this vital aspect is a sabotage within which no state worth the name can afford to do. Irretrievably, it is no less than a monumental mistake especially when malnutrition halts the growth beyond retreat given the ground realities of reinforcing relationship between health and nutrition.[62] Neither the state can be complacent, nor can

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60. United Nations Children's Fund, 'World Declaration on the Survival, Protection and Development of Children' and 'Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s', UNICEF New York, 1990, in UNICEF, *The State of the World's Children 1994, ibid.*, p.11.

61. UNICEF, *The State of the World's Children 1994, ibid.*, p.7.

62. Various studies conducted during 1930s in different parts of India clearly showed that a very large proportion of the population suffered from undernutrition and malnutrition, and that as a result, they became susceptible to infections of various sorts draining their mental and physical energy. 'The Nutritive Value of Indian Foods and the Planning of diets', Indian Medical Gazette, No.72 May 1937, pp.299-300; Wilson, D.C., and Widdowson, "A Comparative Nutritional Survey of Various Indian Communities', Indian Medical Research Memoirs No.34 March 1942 in Muraleedharan, V.R., Diet, Disease and Death in Colonial South India, *Economic and Political Weekly*, January 1-8, 1994, p.55. Quoting statistics as reflective of the poor state of health of children in colonial India, it is observed: "Poor physique, impaired vigour, gastro-intestinal disturbances, low

there be any pretence. It can only be said that such a gain is only a reprieve for the beleaguered state to ride through the rough weather. Ensuring survival without sustenance is morally atrocious and legally dubious. Skeletal existence is no existence at all which the state cannot dispute ruthlessly. For the state knows better as it is well placed. The policy of child and family welfare structured on the treasure of statistics of extensive maternal and infant mortality is clear proof of knowledge which the state cannot bury deep to draw a small comfort of accomplishment. Paradoxically, the state is put to the choice of proving the relevance of its existence to the furtherance of the cause of mankind[63] or preparing itself to face the uphill task of accounting for its omission in the context of repeated assurances and reassurances on the floors

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resistance to infections, low resistance to infections and other pronounced symptoms of malnutrition - all these features are common among school children throughout a great part of India". B.N.Gangulee, Nutrition and Health in India, 1939, p.215 in Muraleedharan, V.R., Diet, Disease and Death in Colonial South India, *Economic and Political Weekly*, January 1-8, 1994, p.55. Explaining the incidence of infant mortality and in the background of malnutrition, it is said: "A diet deficient in protein, iron, vitamins, etc., also had adverse effects on maternal and infant mortality rate. By late 1930s sufficient medical evidence had been collected to show that nutrition was at the bottom of the problem of maternal mortality. A deficient diet of the mother was found to cause cessation of the growth of the child in the foetus. This was an important cause for the high incidence of feeble and premature birth of infants all over colonial India; and premature birth was certainly a cause for the higher infant mortality". It is also stated: "Also, the effect [sic] a still birth as compared to a live birth on the survival chances of a undernourished mother was significantly higher.... Pregnancy - anaemia, largely nutritional in origin, was found to be one of the chief causes for the high maternal mortality in India, particularly among the working class". Wills, L., and Mehta, M.M., 'Studies in Pernicious Anaemia of Pregnancy", Indian Journal of Medical Research 18, July 1930, pp.283-306 in Muraleedharan, V.R., *Diet, Disease and Death*, January 1-8, 1994, p.55.

63. It is said: "Govt. is a service on behalf of rights, [of citizens] and not a power outside their range: '*servitium proper jura, non potestas praeter jura*'. See Barker, Ernest, *The Duty of the Government to the Citizen: Principles of Social and Political Theory*, Oxford University Press, 1965, p.226.

of the house and elsewhere in the country and the official rebuff of human rights violations as baseless, of course, through strategic display of ideology underlying the commitment using diplomatic channels skillfully. The latter may be the obvious choice for reasons which are not strange.

4.1.1 Right to Food

There is an abundance of evidence to suggest that in India a large number of the people, especially women and children, suffer continually from a number of deficiency diseases; their susceptibility to these diseases is the results of their diets which is defective in many respects, particularly in terms of 'protective food'. Under and malnutrition mean not only low resistance to infections, loss of vitality and productivity, but in many cases also death. A large number of death are mostly due to malnutrition alone, while the same aggravated by the onset of certain infectious diseases is responsible for the rest. This is the saddest spectacle on the planet which is highly deplorable. Yet there is not even a whisper of protest as the hapless seem destined to suffer in silence. One cannot be oblivious to the fact that hunger and malnutrition do not stop with halting the growth or sapping the potentialities. They intrude irretrievably the path of enjoyment of rights especially fundamental human rights. Despite the tall claim of significance attached to the concern for elimination of hunger and malnutrition,[64] experience at the international and national levels with respect to the same has been disappointing.[65] Nevertheless, the validity of such basic principles do not lose ground. Rather, it

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64. See, Chapter Two, notes 116-126.

65. Alston, Philip, International Law and the Human Right to Food, *op.cit.*, p.58.

points to the need to devise more effective means by which to increase the accountability of states to ensure the consistency of their rhetoric with their actions in domain.[66] This turns the primary focus on the right to food in the context of various international instruments on human rights.

Starvation deaths can reflect legality with a vengeance leaving the legitimacy of the system at stake. Total and continuing destitution and impoverishment exposes people at a loss of humanity. In no society that takes human rights seriously should there be allowed a state of affairs where human beings become sub-human.[67] "The expression "human rights" presupposes a level at which biological activities are bestowed with the dignity of being called human. The bearers of human rights must have an implicit right to be and remain human".[68] Echoing the intrinsic worth of the humanbeing, the Declaration of Cocoyoc stresses that human beings have basic needs; "food, shelter, clothing, health, education. Any process of growth that does not lead to their fulfilment - or even disrupts them - is a travesty of the idea of development".[69] This is quite indicative of steadily growing emphasis on a conception of development - development which meets basic needs - resurrecting the general principle of the right to freedom from hunger more forcefully than ever before. This testifies to the existence of the veritable need for intervention to bring about nutritional improvements in fulfilment of

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66. *Ibid.*, p.14.

67. Baxi, Upendra, From Human Rights to the Right to be Human, Some Heresies, Baxi, Upendra, (ed), *The Right to be Human*, Lancer International, New Delhi, 1987, p.187.

68. *Ibid.*

69. *Ibid.*, pp.188-189.

fundamental obligations of the state. It is beyond doubt that it is the fundamental duty of the state to guarantee the child and adolescent, with absolute priority, the rights to life, health, food, education, dignity, respect and to protect them from all forms of negligence, discrimination and exploitation.[70] The rights of children are a national priority and will remain high on the political agenda. Hence there is a need to find a way to create accountability for the state - to transform commitment into actions.

Human dignity is a password for the mankind to seek its worth and an impregnable duty for the state bound by rule of law to respect and ensure. "The dignity of a human being and the worth of his personality do not depend upon the colour of his skin or the community he belongs to or the religion he practises or the language he speaks. This dignity and this worth are the inalienable rights of man. If you deny him these, you deny him his very manhood. His religion, his caste, his community are minor and insignificant appendages which you attach to a man as a label, but what is common and universal to mankind is the indestructible human soul to man his dignity, his personality".[71] It is now recognised that it is the fundamental and inalienable right of a human being not merely to exist but to live.[72] And it is for the welfare state to build the bridge which will enable the citizen to cross over from a state of degrading existence to

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70. This issue is being discussed in a limited way restricting to the rights of children.

71. Justice M.C.Chagla's Human Rights Day Talk broadcast over the Bombay Station of AIR on 10 December, 1953. See Chagla, M.C., *The Individual and the State*, Asia Publishing House, Bombay, 1961, p.113.

72. As Bertrand Russel has pointed out we cannot be content merely to be alive, rather than dead. We should wish to live happily, vigorously and creatively. And the function of the welfare state is to provide a part of the necessary conditions. See Chagla, M.C., *The Individual and the State*, *ibid.*, p.16.

a state of life which is ennobling and purposeful.[73] Stressing that man is the centre and the goal of all culture, it is expressed that all things in this world have a price - that is, a relative or instrumental value - except man, who has no price, because he has dignity, because he is an end in himself and for himself, because he is the substratum for the realisation of the supreme values namely of moral values.[74] " The State or Government was made for the sake of man and not vice versa" is the ground norm of humanism, according to which, the state, the government [and consequently the law] as well as all culture, will have meaning and justification as a means put at the service of an individual human persons, as an instrument for the realisation of their ends".[75] Justice M.C.Chagla urging in the same vein said: "It is a cardinal article in the democratic faith that the state exists for the individual. He is the pivot round which society revolves, and the main function of the state is to help the individual to develop his personality to the full. The state has no personality or existence independently of its citizens. The prosperity or power of the state is the prosperity or power of all its citizens combined...".[76]

Liberty has no meaning unless it is a monument erected on the edifice of equality. To vary the metaphor, it is only in the setting of equality that true liberty can be enjoyed. And the real function of the welfare state is to make

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73. *Ibid.*, p.13.

74. Recaseus, Luis, Dignity, Liberty and Equality, in Dorsey, Gray, (ed), *Equality and Freedom: International and Comparative Jurisprudence*, Vol.1, Oceana Publications, New York, 1977, p.4.

75. *Ibid.*, p.5.

76. Chagla, M.C., *The Individual and the State*, *op.cit.*, p.19.

possible the enjoyment by the citizen of real freedom.[77] Fundamentally the state exists to do social justice offsetting the inequalities which prevent every citizen from realising the full results of his own personality.[78] The state is not responsible merely for security of the life and limb of this citizens. It is also responsible for their economic security. In this context it is essential to bear in mind the Aristolelian principle that the state exists for the good life - in order that citizen should achieve the good life. There is general agreement that greatest good that an individual can aspire to is the full and complete realisation of his own personality. Therefore every compulsion that impedes or prevents this consummation is to be deprecated. Unless we look upon the state as having an existence independent of its citizens and put it upon the pedestal of a mighty and semi-divine corporation, the quality of the state must ultimately depend upon the qualities of its individual citizens. Therefore the state should itself be interested in preserving and safeguarding individuality.[79]

Realising that where they stand, it may be recalled, all member nations of the U.N accept the international legal obligation "to take joint and separate action" in cooperation with the U.N to achieve *inter alia* higher standards of living, conditions of economic and social progress and development, solutions of international economic, social health and related problems, and respect for human rights, the content of which was later spelt out by the UDHR.[80] The

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77. *Ibid.*, p.13.

78. *Ibid.*, p.20.

79. *Ibid.*, p.5.

80. Articles 55 and 56 of the UN Charter.

famous four freedoms of Roosevelt found their full expression in the provisions of the Declaration is history.[81] As a special gesture in appreciation of freedom from want, reference to food is contemplated under the Universal Declaration in Article 25, paragraph 1, which refers equally to a range of other economic and social rights. It states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...".[82] Reasons for the anxiety showered on the freedom is not found wanting. It is rather ironic to speak of the right of a starving man who fears for his own security and for that of his own dependents and who does not know what the morrow will bring, to give expression to his opinion and to practise his religion. There are rights which only a well-fed man who has a comfortable job has time to think. It is no freedom to be free in poverty and destitution.[83] It is for this reason the Declaration emphasises the principle of the right to freedom from hunger. It may graciously be accepted that the Declaration has undoubtedly awakenened the social conscience in the world. It is like a brave banner flying

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81. Chagla, M.C. *The Individual and the State*, *op.cit.*, p.9.

82. During the drafting of the article by the Commission on Human Rights several proposals were made for articles dealing with the right to food. One such formulation provided that "everyone without distinction as to economic and social conditions, has the right to the preservation of his health through the highest standard of food...which the resources of the state or community can provide...". However, a clear preference emerged for a single integrated provision dealing equally with the various component parts of an adequate standard of living. The right to food is thus broadly stated, without any degree of specificity, but in such a way that it clearly goes beyond a right only to be free from hunger. Thus the amount of food to which every human being has a right is that which is adequate for his health and well-being and not merely for his bare survival. See Alston, Philip, International Law and the Human Right to Food, *op.cit.*, p.22.

83. Chagla, M.C., *The Individual and the State*, *op.cit.*, p.9.

from the highest tower in the world which no one can ignore.[84] It is worth recalling in the present context that the General Assembly recognised and proclaimed the essential Rights of the Child in the formulation of principles to the end that the child may have a happy childhood and be enabled to grow up to enjoy for his own good and for the good of society, the fundamental rights and freedoms, particularly those specified in the Universal Declaration of Human Rights. With the result, there is an obligation in general that the child shall be given the means necessary to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity and another in particular that the child shall have the right to adequate nutrition pointing to the existence of the right to food.[85] The children then were on the threshold of receiving special protection in recognition of special needs is a significant fact to remember. Next comes in the enumeration is the Magna Carta guaranteeing, *inter alia*, right to life which is a common denominator to both the grown up and the growing. The right to life being the supreme right which admits of no derogation even in times of public emergency[86] comes as a shot in the arm of the strategy of protectionism.

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84. *Ibid.*, p.114. Reference may be made to a contemporary national standard entrenched in the Indian Constitution [Article 47] in which "raising of the level of nutrition" is declared to be a primary duty of the state. To come down further, the 1979 statute on the right of Nicaraguans in which [Article 38] "The state recognises the fundamental right of Nicaraguans to be protected against hunger". See Alston, Philip, International Law and the Human Right to Food, *op.cit.*, p.58.

85. See Chapter Three, notes from 36 to 45, *supra*. It may fairly be noted that India took part extensively in the deliberations preparatory to the adoption of the Declaration.

86. Report of the Human Rights, UN doc A/37/40 [1982] Annex v, para.1, in Alston, Philip, International Law and the Human Right to Food, *op.cit.*, p.21.

Philosophically and physiologically the right to food must be considered an important component of the right to life. However, there are arguments against flexing the imagination to stretch the broad conceptualization to its legal interpretation.[87] Such obstructionist strategy, it may be hastened to add, has become a thing of past in as much as the Human Rights Committee, in its General Comments on Article 6 of the Covenant on Civil and Political Rights, has criticized what it terms unduly narrow interpretations of the right to life and has urged states parties to the Covenant to take positive measures to protect the right, including *inter alia*, "measures to eliminate malnutrition and epidemics".[88] The implication of this approach is that a state party's failure to take appropriate measures to deal with serious hunger and malnutrition would constitute a violation of its obligations under Article 6 of the Covenant.[89] It is a chord of happy note struck on the drafting of state party's failure to arrest malnutrition which is singularly referable to children. A new dimension which deserves to be drawn into the controversy is the apathy of the officialdom. Indifference is nothing but callous disregard of the public duty with which they are charged with. Such an attitude of insensitiveness is obnoxious as it exposes

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87. For such arguments, see Dinstein, "The right to life, physical integrity, and liberty", in Henkin (ed), The International Bill of Rights: The Covenant on Civil and Political Rights [1981] at 92-106; Scheuner, "Comparison of the jurisprudence of national courts with that of the organs of the convention as regards other rights", in Robertson (ed), Human Rights in National and International Law (1968) at 214-239; Prezetacznik, "The right to life as a basic human right", 9 Revue des droits de l'homone, (1976) at 585-603; Robinson, the Universal Declaration of Human Rights: Its Origins, Significance and Interpretation [2d ed.,1958] at 106, UN doc.E/CN.4/21 (1947) at 59.

88. See, Chapter Two, note 131, *supra*. See also note 18, *supra*.

89. Report of the Human Rights Committee, UN doc. A/37/40 (1982) Annex V, para 5, in Alston, Philip, International Law and the Human Right to Food, *op.cit.*, p.25.

to ridicule the principle of welfarism which the state is claiming to pursue rigourously.

It may not be out of place to refer to the other regional human rights instruments especially in the context of specific provisions therein which constitute recognition of, or have some direct bearing on, the right to food. A casual reference reveals that none of the three main regional human rights instruments contains any specific reference to the right to food.[90] In the case of the European Convention on Human Rights, it is not really surprising, since economic, social and cultural rights are dealt with in the European Social Charter of 1961. Notwithstanding the omission to make explicit reference to the right to food in the latter, there is an undertaking by Contracting Parties to take appropriate measures to "remove as far as possible the causes of ill-health [Article 11].[91] Though the provision is obviously speaking about health, yet the same may be considered significant as the nexus between health and food is not new and strange but strong and appealing and is too transparent to be missed.[92] The American Convention on Human Rights of 1969, the second in the series of the regional instruments, contains only one reference to economic,

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90. Alston, Philip, International Law and the Human Right to Food, *op.cit.*, pp.26-27.

91. *Ibid.*

92. Notes 52-54, *supra.* Such a link between food and health is also exemplified in the American Declaration of the Rights and Duties of Man, of 1948, article xi of which provides that "every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing, and medical care, to the extent permitted by public and community resources". See, Pan American Union, Final Act of the Ninth Conference of American States, [1948] at 38-45, in Alston, Philip, International Law and the Human Right to Food, *ibid.*, p.27.

social and cultural rights [Article 26].[93] It is true that the provision at the outset looks disappointing but fortunately the Inter-American Commission on Human Rights in its 1980 report elaborated upon the legal obligation of the state to assign priority to the basic needs of health, nutrition and education.[94] As a follow-up measure, the Commission also called upon Member States to provide it with information on nutrition levels and the measures which they have adopted in order to improve these levels.[95] The new dimension so added is welcome as necessity.[96] Finally comes the African Charter of Human and Peoples' Rights adopted in June 1981. The provisions of the Charter as in the other two cases falling short of the expected requirement proclaims "the right to enjoy the best attainable state of mental and physical health" and "the right to education".[97] As the omission to reference of the right to food is common to all the three instruments, the reason underlying such omission may be the same or similar in nature. The obvious reason may be one of 'substituted' protection.[98]

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93. Article 26 reads: "States Parties undertake to adopt measures, both internally and through international co-operation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth by the Charter of the Organization of American States as amended by the Protocol of Buenos Aires". See Alston, Philip, International Law and the Human Right to Food, *ibid.*

94. See, Chapter Two, note 129, *supra.*

95. Annual Report of the Inter-American Commission on Human Rights, OAS doc. OEA/Ser. G, CP/doc 1110/80 [1980] at 153, in Alston, Philip, International Law and the Human Right to Food, *op.cit.*, p.27.

96. See notes 54-55, *supra.*

97. Alston, Philip, International Law and the Human Right to Food, *op.cit.*, p.28.

98. "Perhaps the most plausible explanation for the omission of the right to food from the regional instruments is that the right to work is viewed as a more fundamental right, the realization of which should permit the satisfaction of nutritional needs. In the event of its non-realization the focus "presumably is on the right to social security..." says Alston, Philip. He himself seeks revision of the assumptions. See Alston, Philip, International Law and the Human Right to Food, *ibid.*, pp.28-29.

As a next and last step, Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, 1966[99] is to be turned to the lime light. This article which proclaims the right to adequate food as well as the right to be free from hunger is more direct and relevant to the issue on hand pre-empting the others. An inquiry into the legislative history of Article 11 reveals that in an introductory paragraph to the part dealing with economic, social and cultural rights, there was mention of the resolve of States Parties "to combat the scourges, such as famine..." and "to strive to ensure that every human being shall obtain the food, clothing and shelter essential for his livelihood and well-being". It further reveals that the general principle of the right to freedom from hunger was unanimously resolved and the objections whatsoever raised did not deter the adoption of a detailed text including measures of implementation.[100]

The 'right to food' is infact a shorthand expression encompassing two separate norms contained in Article 11. The first, stated in paragraph 1, derives from the "right of everyone to an adequate standard of living for himself and his

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It is submitted that the term 'substituted' protection refers to the scheme of the right to work and the right to social security relied by Alston. The scheme of 'substituted' protection will not hold good for children in as much as the presumptions underlying such protection namely, the right to work and the right to social security in the alternative, are not intended for children. They are intended only for able-bodied individuals.

99. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

100. For a detailed discussion on the legislative history of Article 11 of the Covenant, see Alston, Philip, International Law and Human Right to Food, *op.cit.*, pp.30-31.

family, including adequate food" and can be termed the right to adequate food. The second, proclaimed in paragraph 2, is the "right of everyone to be free from hunger".[101] Though many consider them as being synonymous, they are different substantially by standards given the practical implications. Whereas the former facilitates the adoption of a maximalist approach, the latter, which is infact a sub-norm, is able to be fully satisfied by the adoption of policies designed to provide a minimum daily nutritional intake. Yet both the principles of human dignity on which the International Bill of Human Rights is founded, and various provisions of the Covenants make it clear that the normative thrust is towards progressive improvement rather than a static concern with the satisfaction of bare minimum needs. While it may be appropriate to focus on freedom from hunger as a means by which to mobilize public support and as a starting point for national and international efforts, such an effort should be seen only as the first steptowards realization of the primary norm which is the right to adequate food.[102] Explaining the reasons behind the view, it is stated that in terms of quantity the notion of adequacy implies enough food to facilitate a normal, active existence rather than a minimum calorific package which does no more than prevent death by starvation.[103] Further, in terms of quality, it is claimed, the adequacy standard goes further than the freedom from hunger sub-norm in focussing on the cultural appropriateness of the food.[104]

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101. *Ibid.*, p.32.

102. *Ibid.*, p.33.

103. See the discussion pertaining to note 63, *supra.*

104. It is argued that food obviously has a nutritional dimension since some nutritional elements should be part of the diet, in certain quantities and proportions, if not every day then at least over a short period of time, as the body does not effectively store many elements. See Spitz, P., Right to Food for Peoples and for the People: a Historical Perspective, *op.cit.*, p.170.

The Covenant speaking in general terms through Article 11(1), in conjunction with Article 2, makes it clear that States Parties are required to take all appropriate steps to ensure realization of the right to food. Without prejudice to the generality of this provision, Article 11(2) spells out certain objectives as well as particular means by which they may be achieved.[105] The two general aspects which are laying the basis for the obligation under this Article are sufficiently prominent. While the first concerns the obligation "to take steps", the second relates to the obligation to devote all "available resources". These two aspects are inextricably related to each other but they are not identical.[106] In the backdrop. the principle of responsibility and consequential accountability become formally relevant and significant.

What follows is that what is needed is good government rather than bad government. What does not follow is that the best government is the least government. The best government is the government that most fully honours human rights. Sometimes this means simply not violating rights, which is in itself a major achievement, but sometimes too it means protecting rights with institutions well designed for the job.[107] Drawn upon the widely accepted general principles of responsibility is the trio of interdependent duties to respect,

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105. See note 99, *supra*.

106. Alston, Philip, International Law and Human Right to Food, *op.cit.*, p.38.

107. Shue, Henry, The Interdependence of Duties, in Alston, P. and Tomasevski, K., (eds), *The Right to Food, op.cit.*, p.88.

protect and aid.[108] Stretching the enumeration to its logical pursuit urges an enviable display of principles allocating responsibility. Principles of responsibility are rather very significant to fasten liability for the poor state of affairs which may be the result of either the system failure or human failure. Without general principles of responsibility, we cannot firmly decide and clearly explain who owes what to whom. It is no denying fact that responsibility-free system would be conducive to the violation of the right at will, leaving the 'right' seriously compromised at best.[109] Such principles are not only determinative of persons bound but also the extent to which they are bound. Uniformity eludes the scale of responsibility. It is placed on graduated scale varying with the felt necessities.

Eventually, the incidence of responsibility is fixed, while the scale of responsibility is variable. This is well taken care of by the allocative principles of

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108. The tripartite typology of interdependent duties are explained as under : "If anyone is to be secure in the enjoyment of anything, no one else can be at liberty to interfere - hence, the duty to respect. Since some people can be expected to fail to fulfil their respective duties to respect, some protection of rights-holders against such rights-violators will need to be organised-hence, the duty to protect. Since even well-organised protection is bound to fail sometimes, some assistance will need to be organized for the victims of the rights-violation-hence, the duty to aid". Explaining the reasons behind such categorisation it is said: "The current situation, unfortunately is one in which hundreds of millions have already been deprived of food by the very political and economic institutions that ought to have been protecting their supplies of food. Our most urgent duty would be to assist these deprived, even if these were, strictly speaking, no longer a matter of protecting their rights, which have long been violated, but of assisting their recovery from past violations....What is distinctive about the duty to aid is that it is what is owned to victims - to people whose rights have already been violated. The duty to aid is,..., largely a duty of recovery - recovery from failures in the performance of duties to respect and protect". See Shue, Henry, The Interdependence of duties, *op.cit.*, pp.85,86,90.

109. *Ibid.*, p.88.

responsibility.[110] First of such principles concerns about the special relationship in which the parties stand to each other or the special transaction involved between the parties.[111] Strongly dissenting from the view that it is not that the right arises out of the relationship or transaction, it is asserted with vehemence that it is the relationship or transaction which provides the basis for the assignment of one or more kinds of duties - a "general" duty to respect and some "special" duties to protect and assist.[112] Providing an unequivocal support to the above view, an inference may be drawn comfortably given the specter of hunger and poverty looming large on the face of millions of children leaving them malnourished and under nourished to the detriment of their development. Children are not the kind to end up with general protection. They deserve more as they stand tall in as much as not everyone is as vulnerable as an infant. Vulnerability speaks large and claims more protection as the state stands to lose much, if the interest of children is not spared through special efforts. Obviously, the relationship or the bond in which the state and children stand to each other is special which furnishes the basis of allocating special responsibilities to the state.[113] For that reason alone, the state is always on

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110. It is stated that specification of sensible, well - informed principles for the allocation of responsibility is one of the central tasks of contemporary political philosophy. *Ibid.*, p.91.

111. H.L.A. Hart in his classic article, "Are There Any Natural Rights?" said: "When rights arise out of special transactions between individuals or out of some special relationship in which they stand to each other, both the persons who have the right and those who have corresponding obligation are limited to the parties to the special transaction or relationship...". *Ibid.*, p.89.

112. *Ibid.*, p.90.

113. Notwithstanding that such relationship is more casual and far less linear and simple than mother-child relationship, it is still believed that large and complex institutions and organisations like governments, corporations, armies, and unions ought to include in their plans mechanisms for taking due care. *Ibid.*, p.92.

the defensive wisely playing down the consequences of hunger and poverty on the well being of children and at the same time harping on financial crunch very frequently. Such an attitude, no doubt, is both pre-emptive and cautious to keep off - criticism. Nonetheless, it is more of an affirmation of such special relationship. Secondly, the allocative principle underlying the theory of sovereignty emphasises that the state is generally considered to have among its central responsibilities the protection of the rights of everyone within the territory over which it is sovereign. These responsibilities could be exercised by some other kind of agent, including one created for this purpose. The fact that they are exercised by states has more to do with the reigning theory of sovereignty that it does with any particular theory of rights. The grounds for allocating duties of protection to states is not as much the nature of the rights in question or the nature of duties to protect as it is the nature of sovereignty as now conceived.[114] Finally, those who stand to gain from the ongoing operation of some institution which is causing harm to anyone are drawn to responsibility through its allocative principles. Styled as "responsibility through complicity - complicity by continuing acceptance of benefits", it is explained that one may not have intended to cause anyone harm at all, but once one knows that serious harm is resulting from the ongoing operation of some institution, the benefits of which one continues to accept, one can no longer claim to be ignorant of the harm to be done: "In such situations, knowledge is not only power but also responsibility, because it places us in a position to act".[115] The keys which unfold the principle of responsibility sweeping the duty - holder are the influence which the duty-holder may have over the institution and the benefits flowing

114. *Ibid.*, p.91.

115. Shue, Henry, "Exporting Hazards", in Boundaries: National Autonomy and Its-Limits, edited by Peter G.Brown and Henry Shue, Maryland Studies in Public Philosophy, p.136, in Shue, Henry, The Interdependence of Duties, *ibid.*

from the existence of the same to the advantage of the duty - holder. Influence wielding mechanism is more prone to controlling techniques which the state asserts in the interest of public in the protection of which the state is more interested. Influence coupled with benefits make the state responsible for the operation of the system which is not fail-safe. Harm-spree system puts the state in a spot forcing it to share the concern through prevention. Complacency is antithesis of responsibility - responsibility to take due care.[116] Callous disregard of interest which is vulnerable is *prima facie* proof of failure to take due care which may at least as often be a failure to foresee a harm as a willful failure to prevent it once foreseen.[117] Given the latitude of the principle of responsibility, it will be totally unpalpable to hear the state saying that the situation is not conducive to take on the challenge, so it will not be able to do very much better for a while, although it will certainly try what best it can do in the given situation.[118]

As we are aware, most of the people in circumstances in which they must invoke their rights to adequate food - circumstances in which they cannot provide for their own subsistence - are children. Hence there is a duty to protect and taking due care is itself respecting rights. "To will the end is to will the means". To vary the metaphor, if we really ought to accomplish some goals, then we really ought to take the necessary steps to get there. And if taking the

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116. *Ibid.*, pp.91-92.

117. *Ibid.*

118. It is argued: "This is analogous to the residents on a rough and lawless frontier saying: "Gee, wouldn't it be nice if we had a sheriff with the authority to form a posse ad round up outlaws, but since we don't have any institutions of law and order here, I guess the best we can do is to let everyone fight for himself". *Ibid.*, p.93.

necessary steps means building some institution that may be long and hard in coming, then we ought to get started. What we ought not to do is to use the absence of the institutions as an excuse for failing to accomplish the purpose.[119] This closely approximates to the first of the twin aspects of the obligation envisaged under Article 11 namely, obligation" to take steps" - measures oriented specially towards the realisation of the right to food. Such a course of action is both an inevitable fundamental obligation and a well felt-need as well which a state clamouring really for the welfare of its subjects cannot ignore. This formally shifts the emphasis to the other aspect of the obligation, namely, obligation to devote all "available resources". While this does not amount to an obligation to ensure immediate realization, the leeway provided by this provision does not obviate the need to adopt at least rudimentary laws, regulations and/or programmes designed to establish appropriate policies and to form the basis on which progressive realization can be built.[120] Equally on the resources front, while it is true that the obligation does not require that a state should expend resources which it does not have or that it is bound to spend all its resources on satisfying these rights, but it does comport some freely accepted limitations on the State Party's freedom to allocate its resources, and also accords a degree of priority, over and above other goals, to promotion of the rights specifically proclaimed in the Covenant. In this respect, the government is accountable to its people for the manner in which it allocates its resources and for the consequences of such allocations in terms of food availability.[121]

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119. *Ibid.*, pp.93-94.

120. Alston, Philip, International Law and the Human Right to Food, *op.cit.*, p.39.

121. *Ibid.*, p.38.

4.2 EDUCATION: THE INFLUENCE BEHIND DEVELOPMENT

The concept of the "whole child" cogently expresses the need for all-round growth and development. Blessed with invaluable traits they need to be allowed to bloom naturally rather to be put to stress and strain robbing of their childhood - a most precious possession which can never to replaced.[122] There is an impregnable need to look after the children, if a nation is to prosper and thrive in all spheres of human activities. Towards that end, growth and development assumes significance next to survival as Mr.James Grant, the Executive Director of UNICEF puts it.

> "Worldwide some 40,000 children die each day of malnutrition and childhood diseases that are easy and inexpensive to prevent. UNICEF'S first priority is to save these young lives. Once survival is assured, however, children need protection to develop their physical, emotional and social capabilities".[123]

It requires only elementary knowledge to suggest that there is a need to place accent on the development of child which implies accession to skills, desirable social attitudes, emotional maturity by guiding him to express, understand, accept, and control his feelings and emotions, and stimulation of intellectual curiosity to help him understand the world in which he lives, by giving him opportunities to explore, investigate and experiment.[124] The tool available for the purpose is education which the state can use to influence the development of minds of children as the formative years are highly

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122. *The Hindu*, March 22, 1994, p.26.

123. *Mainstream*, August 20, 1994, p.14.

124. *The Hindu*, March 22, 1994, p.26.

impressionable. The significance of the influence of education is also implicit in its reference in the Bill of Rights and other international instruments.[125]

According to the ancient Shastras a child is to be showered with affection till he is five years old.[126] The bond through love and affection of the parents, especially of the mother, is pre-requisite for the emotional development of the child. Psychologists opine that separation from the mother will reduce the state or level of happiness and cheer of the child.[127] Next, the Guru will put a piece of chalk in the hand of the child on an auspicious day and guide him to write the first alphabet[128] which makes the beginning of learning.'Learning' says a popular sanskrit verse, "bestows 'vinaya' which, etymologically means, 'to lead out in a particular way' - to lead the inborn faculties and resources of human beings drawn out and developed or manifested or awakened or enlightened". The same term in popular sense connotes 'humility' or 'modesty' encompassing the idea of formation of character.

Thus Shastras speak of charter of rights of children envisaged by the Law of Nature. The end pursued is excellence in life which ensures a world order where the worth of the human person, individual dignity, enjoyment of beauty, love of knowledge and warm fraternity are inalienable values.[129]

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125. Article 26 of the Universal Declaration of Human Rights; Principle 7 of the Declaration of Rights of Child; Article 13 of the International Covenant on Economic, Social and Cultural Rights; Article 28 of the Convention on the Rights of Child.

126. *The Hindu*, March 22, 1994, p.26.

127. *The Hindu*, August 15, 1993, p.v.

128. *The Hindu*, March 22, 1994, p.26.

129. Krishna Iyer, V.R., *Justice And Beyond*, *op.cit.*, p.233.

Excellence is perfection in the attainment of which the role of education is emphasised as crucial. Reiterating a similar view, Swami Vivekananda, with matchless simplicity, says: "Education is the manifestation of the perfection already in man. But 'perfection' belongs to everyone, the humblest and the highest. The difference is that creativity that dwells in everybody lies dormant in most. Why? because man's full potential on the physical, mental and spiritual planes of life is not unfolded but inhibited His consciousness; and so, his mind functionally fails".[130] Hence he forcefully says : "Educate and raise the masses. A nation is born".[131] Will for equal and universal excellence is the need of the hour for a new uprising of the human spirit and fulfilment of our tryst with destiny. The present day's charge on power is to seek "to lead us from untruth; from darkness to light". To quote the verse:

> "*Asato ma sat gamaya*
> *Tamaso ma jyotir gamaya*".

This backdrop makes for perspicacity of understanding of the essentials of education for human excellence in the conditions as they are.[132] The immortal Poet Valluvar whose Thirukkural will surpass all ages and transcend all religions, said of education:"Learning is excellence of wealth that none destroy; To man nought else affords reality of Joy".[133]

To Bertrand Russel, education is "a pursuit of excellence for public good".[134]

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130. *Ibid.*, pp.239-240.

131. *The Hindu*, March 8, 1994, p.26.

132. Krishna Iyer, V.R., *Justice And Beyond*, *op.cit.*, p.236.

133. *J.P. UnniKrishnan* v. *Andhra Pradesh* AIR 1993 S.C. 2178 at p.2187.

134. *The Hindu*, September 13, 1994, p.26.

> An old Sanskrit adage states: "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.[135]

Emphasising further the significance of education in the above case, the Supreme Court held:

> "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 emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter".[136]

On an earlier occasion, the apex court explaining the principle of equality of opportunity vis-a-vis development of potentiality observed:

> "...What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his potentiality... given proper opportunity and environment, everyone has a prospect of rising to the peak.... If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed...".[137]

In essence, the objective of education is to bring out the latent faculties of a person. It is that education helps in unfolding inner activities of a person. It

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135. Note 133, *supra*.

136. *Ibid.*

137. *Pradeep Jain* v. *Union of India* [1984] 3 SCC 654 at pp.672-73.

develops the mind, the skills and brings maturity in the thinking of human beings.[138] The multi-faceted development of man-development implicit in physical, moral, intellectual and cultural growth of the human person for a better quality of life - cannot become complete unless he is 'prepared' by the education he receives. Thus education is the functional fulfilment of the founding faith and fighting creed that all men are equal in endowment, dignity and worth and the collective consciousness of the whole community is heightened by a spirit of brotherhood. If justice to the individual is a meaningful mandate of the Constitution, true education must be the catalyst which maximises the unfolding of the full potential of every humanbeing.[139]

The concept of 'full personhood' indicates and emphasises the broad sweep of potentials and abilities which make a man worthy of some values and priceless. Such intrinsic worth or value is synonym for human dignity. It is that dignity to which an individual is entitled by virtue of, and in consequence of, being a human being. It is its existence which makes an individual really a 'human' specimen and hence there is concern for relentless pursuit for its preservation and promotion. An individual without such intrinsic worth or value - dignity - ceases to be 'human' thus reducing him to a disgraceful state of animal existence. Human dignity is thus indispensable and hence inviolable. People devoid of worth and so devoid of dignity are aliens to the 'sea of humanity' and they are irrelevant to the scores of instruments, both international and national,

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138. *The Hindu*, September 13, 1994, p.26.

139. Krishna Iyer, V.R., *Justice And Beyond*, *op.cit.*, p.217.

promising 'human' touch to their existence.[140] Such a state of affair is palpably derogatory of human values and negation of commitment assuring the citizens of dignity. The underlying assumption of the concept of human rights and civil liberties is the need to preserve liberty and human dignity as the precious heritage of mankind.[141] For that very reason, there is duty to relieve great stress to which the citizens especially children are likely to put and towards that end, to provide them will all such things as may be necessary to place them on the pedestal of honour and dignity. Service to mankind to make them tall on the planet is really a honour to Rule of Law as it is entrenched in the philosophy that the freedom of the individual is crucial to the freedom of the society, that the good of the society cannot be achieved by ignoring or affronting the individual, that the dignity and the worth of the individual should be recognised as the foundation of civilised society.[142]

"The only hope of India is from the masses..." says Swami Vivekananda. He is convinced that, given the proper atmosphere and opportunity the toilers

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140. Nevertheless, they are priceless as they are neither ignored by the state in the head count for the purpose of furnishing statistics at the national or international meet or drawing up policies in the name of sympathising with their cause; nor are they denied due regard or let down in the election process including the matter of issuing identity cards to the voters [i.e. to the subjects of the state] by the state in its anxiety to ensure the political democracy. The state does not show the same anxiety in ensuring such worth at the right time. For eg., an old man who is presently in the bracket of the Adult Literacy Programme might be a child when the Constitution was adopted. Had the spirit of the provisions of the Constitution been allowed to have the sway in the policy making, he would have successfully avoided the disgraceful hunt by the state for providing literacy literally when he is counting the days to the grave. Ironically, they are of no use for themselves but they are useful to others especially the state. This is only to emphasise that the state cannot survive without population as the same is considered to be an essential attribute.

141. Justice H.R.Khanna, *Issues Before the Nation*, B.R. Publishing Corporation, Delhi, 1988, p.39.

142. Singhvi, L.M. Dr., *Freedom on Trail, op.cit.*, p.97.

are capable of highest intellectual activity as he proceeds to say; "A number of geniuses are sure to arise form among them".[143] Enlightened citizenship is a balance wheel in a functional democratic polity. Intellectual attainments are both important and necessary for citizenship development which is a national imperative. "...On the assumption of universal participation... all boys and girls have not only to be trained for a productive occupation but also educated for active and intelligent citizenship, and further for all the rest of the activities of life..." so observed by the Webbs in the early days after October Revolution.[144] This extract may not fall out of the present context as the citizens count much for the state for the citizenship development and for its own development. While the citizens yearn for better quality of life, state shall tread on the path of progression in social and economic condition is the axiom. "The laws of the state may confer, recognise and regulate citizenship, but it is the citizens who constitute the civil society, and therefore the status of a citizen and the dignity of a citizen as a constituent determinant of the state cannot be belittled. The concept of citizenship is obviously much more than a mere physical fact of certain individuals residing within certain territorial boundaries and obtaining identity cards or passports to facilitate their travel form one country to another. Citizenship postulates *the relationship of belonging to a state by birth or choice* and an intention to continue such a relationship. ... In operative terms and in the vocabulary of rights, citizenship connotes a right and a duty to take part in the affairs of the civil society."[145] [Emphasis already provided]. Hence, there is an international endeavour in defining the Right to Development as inalienable

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143. Krishna Iyer, V.R., *Justice And Beyond, op.cit.*, p.220.

144. *Ibid.*, p.216.

145. Singhvi, L.M. Dr., *Freedom on Trail, op. cit.*, p.239.

human right based on the citizens 'democratic participation in the processes and programmes of development'.[146] The reiterated view that the quality of citizenship makes or unmakes a civil society is amply demonstrated by historical evidence as well. Many of the developed nations of the world have achieved, augmented and maintained their momentum of development and growth because of the exceptional input of citizenship. A high level of citizenship in England enabled it to achieve, with outstanding success, its own democratic self-government, parliamentary institutions and rule of law. A sense of citizenship with particular emphasis on discipline and diligence made the miracle of Japanese and German recovery after the Second World War possible. Demonstratably, an inert and indifferent citizenship can impede and arrest or deflect and distort the progress of a nation just as a dynamic, humane and coherent citizenship can combine democracy and development in a purposeful and fruitful manner. The obvious is indicated and vindicated when it is said that citizenship is one of the most vital determinants in the direction that a country takes, the speed at which it moves, and the magnitude and quality of what it achieves. It is the most important single human resource on which the future of society depends. It is no exaggeration to say that the quality of citizenship is the measure of our deserving what we desire.[147] Steering clear of such values in the service of the mankind is a political necessity. It is also a constitutional imperative underscoring the social ethos - also familiarly called as constitutional culture. The survival of constitutional democracies depends not on populism or licentious indiscipline and wayward self-indulgence but on citizenship values and

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146. *Ibid.*, It is also stated that India, as an acknowledged leader among the developing nations of the world, has been in the forefront of such an endeavour.

147. Dr.L.M. Singhvi, *ibid.*, pp.240-41.

civic culture. Constitutions are fulfilled when citizenship values are woven into the fabric of the society's and citizen's way of life. As Bertrand Russel put it : "Without civil morality, communities perish; without personal mortality their survival has no value".[148] Aristotle aptly encapsulated the basic idea when he said in *Politics* that "The greatest of all the means.. for ensuring the stability of Constitution is the education of citizens in the spirit of the Constitution".[149] The future of human societies depends today on the "general will" and individual observance in the realm of civic ethos.[150] Ultimately, the culture of the constitution and the momentum for socio-economic power will draw strength from people's power, *lok shakti* or what was called in the ancient times in the sevenfold theory of state, *praja-bal*. This power of the people is not synonymous with mob mentality but means an enlightened movement for citizens' participation.[151] Once the capability and strength of citizens movement is demonstrated we will find the value of democratic participatory system will be appreciated and cherished. We will then be able to augment the strength of the people themselves.[152] As a corollary, the system of accountability emerges with the import of the citizen's right to make power accountable. Neither the right is a grant from the state, nor is it conceded by the state as a measure of goodwill. This is essentially an attribute of citizenship in a participatory democracy the endorsement of which found its way into the dictum

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148. *Ibid.*, p.234.

149. *Ibid.*

150. *Ibid.*

151. *Ibid.*, p.252.

152. *Ibid.*, p.253.

of the Supreme Court in *Judges Transfer Case.*[153] Placing accent on the principle of accountability, the apex court held:

> "Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government...".[154]

Elaborating further the principle, the court proceeded to observe :

> "It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rulers and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means *inter alia*, that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind...".[155]

So delightful is indeed to transcend through the passage of the scholastic work of Justice P.N.Bhagwati unraveling the myths and realities of the participatory democracy. Fanning through various extracts the Supreme Court

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153. *S.P. Gupta* v. *Union of India and Others*. AIR 1982 S.C.149.

154. *Ibid.*, p.232.

155. *Ibid.*, pp.232-233.

counted upon the values of citizenship to make citizens the real actors of a democratic society which they are constituting. Democracy is not to be made an exercise in futility, and hence the court emphasised the principle of accountability. For that purpose, the apex court held that citizens would be entitled to insist upon information from the state as of right by reading the same into Article 19 (1) (a) of the Constitution.[156] Flexing the imagination in the logical pursuit requires an emphasis to be put on education in the culture of the Constitution, which is the workaday culture of democracy. It is the culture of democracy, the culture of rule of law, the habit of fairness, the ability to see that power is accountable which alone can ensure for us the efflorescence of our Constitutional culture.[157]

Education is an economic necessity as well. "Human Resources -not capital, nor income, nor material resources - constitute the ultimate basis for the wealth of nations. Capital and natural resources are passive factors of production; human beings are the active agents who accumulate capital, exploit natural resources, build social, economic and political organizations, and carry forward national development. Clearly, a country which is unable to develop the skills and knowledge of its people and to utilize them effectively in the national economy will be unable to develop anything else", said Frederick Haribson.[158]

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156. *Ibid.*, p.234.

157. Singhvi, L.M. Dr., *Freedom on Trail*, *op.cit.*, pp.250-51. It is stated that education should prepare every child to play a responsible role in the process of building our nation which has accepted values like democracy, socialism and secularism. Since the majority of our children do not go for higher education these values should be instilled in them at the primary stage itself to equip them to play their role successfully in the national life. See *The Hindu*, August 3, 1993, p.19.

158. Ansari, M.M., *Education And Economic Development: Prospectives for Policy Planning*, Association of Indian Universities, New Delhi, 1987, p.vii.

Education is the single most important factor which assists in improving practical skills which, in turn, raise productivity and production, and thereby, additional income and wealth. Income, in turn, is needed to finance the educational programmes. The relationship between education and economicdevelopment therefore is reciprocal.[159] A wide range of human skills and a high level of specialised manpower are essential for fueling the dynamics of development. In the absence of a relatively high level of human skills, it is not possible to utilize efficiently the many complex forms of modern physical capital. As the contribution of human resources in promoting economic growth is very close to that of natural resources, the development of human capital is crucial for improving efficiency and thereby raising productivity which in turn, promotes economic growth and improves the quality of life.[160] The influence of educational variables on economic development is affirmed more than once and it is established beyond controversy that the relative neglect of the education sector, as judged in terms of allocation of financial resources in the Five Year Plans, is one of the major factors responsible for holding down the rate of economic growth in our country.[161] It is needless to say that in a developing country like India which lacks both economic affluence and sufficiently trained labour force, the human resource development is both necessary and important not merely because of abundance of unskilled and uneducated labour but also for strengthening the capabilities of the human factor which interacts with all other factors of production at every stage and in varying degree.[162] Illiteracy is

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159. *Ibid.*, p.6.

160. *Ibid.*, p.1.

161. *Ibid.*, p.ix.

162. *Ibid.*, p.6.

the major detrimentto the adoption of modern techniques of production that emerge from the advances in science and technology resulting in emergence of unskilled workers in abundance swarming the unorganised sector.[163] Existence of too many for too little jobs with limited scope for absorption of skills drives the unskilled lot from bad to worse. A bee line of unskilled workers depresses the real wage of the labour force taking them to a new height of vulnerability in a poverty and hunger ridden society. The unreal wage failing to meet the needs necessary for recompensing the spent energy of the workers saps their potentialities forcing them to go waste much early. Exit from employment precedes exit from the earth given the long expectancy of life thus adding to the staggering pile of economically inactive population of the country. Thus the failure of education left its indelible mark on the frail human specimens and in turn on the economy of the state. The effects so left are highly deplorable and deserve to be deprecated. The reason is not far too seek. The system of education has failed both positively and negatively. There is failure in the positive sense that the system has failed to provide what is necessary and failure in the negative that it has proved its worth only in scrapping what is at least possessed. The tragedy is the state-made if not everywhere at least in India. It has become a national shame for a country which is proud of claiming to be the biggest democracy. Ghandhiji realised that education was the only sovereign remedy for all ills and evils in India[164] and the state for its part, as

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163. It may be stated that by beginning work too early-before they have acquired the necessary training and strength-child workers destroy their chances of becoming energetic, healthy and skillful adult workers. Children who begin to work too early often find themselves without jobs as adults. They are often too unhealthy, tired or unskilled to succeed in the world of adult workers. See, ICFTU, *Breaking Down The Wall of Science: How to Combat Child Labour*, *op.cit.*, p.1.

164. *The Hindu*, August 17, 1993, p.23.

Ghandhiji said, admits saying: "the realisation of national goals presupposes changes in knowledge, skills, attitudes and values of the people as a whole. This is basic to every programme of social and economic betterment of India stands in need... If this "change on a grand scale" is to be achieved without violent revolution there is one instrument, and one instrument only, that is education".[165] Pushed to the point of no return, the former Prime Minister of India in a rare show of magnanimity, at the Education For All Summit held at New Delhi in December 1993, said: "It is no more a question of lighting a candle here or there, it is total electrification. The whole world has to glow with the light of literacy".[166] This statement was the reflection of the sentiments of various speakers at the Education for All Summit (EFA), attended by representatives of nine countries - Bangladesh, Brazil, China, Egypt, India, Indonesia, Mexico, Nigeria and Pakistan - together accounting for more than half the world's population and seventy per cent of the world's illiterates.[167] Optimism, the last refuge of the world's runners-up, marked the opening of the EPA Summit of the nine most populous developing countries on December 15, 1993 at New Delhi with the Prime Minister of India, Mr. P.V.Narasimha Rao invoking the visions of a future in which there would be no illiterates, gender disparities would be thing of the past and the education system would be awash with funds.[168] The Delhi Summit was the follow-up of the World Conference for Education for All held in Jomtein [Thailand] in 1990 which launched the worldwide movement

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165. *Ibid.*, p.19.

166. See *Frontline*, Vol.11(1), January 14, 1994, p.99.

167. *Ibid.*

168. *The Hindu*, December 17, 1993, p.1.

of EPA.[169] The said conference was repeatedly described by speakers at the Delhi Summit as a "turning point" in pushing forward the process of universalising primary education.[170] At the end of the conference the nine signed the Delhi Declaration reinforcing their commitment "to the goal of Education for All [EPA] and intensifying their efforts to achieve it by the year 2000 or *at the earliest possible moment*".[171] [Emphasis already provided].

The Delhi Declaration is a statement of good intent. But much more than good intents is needed. While the statistics, the balance wheel of the administration, pointed to some progress in the area after the World Conference on EFA was held in Jomtien, the dark patches relating to gender disparities, high dropout rates and paucity of resources still continued as formidable impediments to EFA in nine countries thus proving to be lackadaisical.[172] In this context, the Delhi Summit is a pointer to the direction of re-dedication of the polity to the values of mankind. There is awakening for the better and yet another opportunity earned with grace for action to prove their commitment to the international community. To seize the opportunity to provide education to one and all in the endeavour of empowerment of individuals, women and disadvantaged groups, emancipation of minds and democratisation of societies is the desideratum. It is really heartening to note the Indian Government has

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169. The year 1990 was observed as the United Nations International Literacy Year. The World Conference for Education for All was held in Jomtien [Thailand] the same year.

170. *The Hindu*, December 14, 1993, p.9.

171. *Frontline*, Vol.11(1), January 14, 1994, p.99.

172. *The Hindu*, December 15, 1993, p.8.

finally decided to raise its investment in education true to its creedal faith in education as a "unique investment in the future" and deserves to be congratulated on redeeming the national resolve made several years ago and clearing the signal for the start of a "new story" as termed by the former Prime Minister Mr.P.V.Narasimha Rao at the Conference of Chief Ministers convened as a follow-up of the Delhi Summit.[173]

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173. *The Hindu*, February 17, 1994, p.8.

CHAPTER FIVE

FREEDOM FROM EXPLOITATION: GLOBAL CONSENSUS AND ILO'S STRATEGY

5.1 CHILD LABOUR: A CAUSE FOR CONCERN

Children - the ragpickers, shoeshine boys, *dhaba* or cafe workers, coolies - came in droves taking procession under the scorching sun in New Delhi on 10th December, 1993 to mark the Human Rights Day.[1] Excitement was not writ large on their faces but they looked grim. This exercise was not part of celebrations undertaken usually in commemoration of recognition and observance of human rights. Rather it was part of their endeavour to remind the senior citizens generally and the administrators in particular that they are also designated as human specimens like children of theirs and hence deserve a better deal. Such an exercise is not a news to come through for the first time but an event being re-enacted every year but in vain. It is nothing but the specter of child labour which has been assuming an increasingly scary visage in India. This presents an issue of contrast in nature. Instead of flocking into school, they are flocking into factories. The issue of their pre-mature employment thus takes on human rights smartly under the strict vigilance of the welfare administration in India. The contrast is patent. Children are to be told of the human rights in the school, says T.G.L Iyer, as growing children should

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1. *The Hindu*, December 12, 1993.

know what they really want and should exercise their voting rights in a way that representatives elected would protect these human rights.[2] Tilting the scales the other way in reality, children are forced to demand those rights through demonstration under public gaze without being told about them. A peep into the statistics revealing the magnitude of the problem will unfold the sad story of teeming millions of children. Children are made to run after workshops instead of school shops thus virtually putting them on trial to learn rights by experience in sweat shops. 'Learn while earn' is this what it actually implies in the Indian context, it is apprehended. "For every labour there is a reason, and a child for every labour under heaven :

> A child to hoist, and a child to tow;A child to hire out, and a child to lock in;A child to reap, and a child to sew;A child to push, and a child to pull;What gain has the child from his toil ?".[3]

This highlights the exploitation of children through child labour in this country and in countries abroad. The highlight march on the Human Rights Day only adds the voice of the voiceless to those who are raised against this evil practice. Where children are available as cheap labour, without unions to protect them, and above all with many friends of the same age, they will be exploited. It is child abuse. Here, it is child abuse not by neglect of the child's right to full

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2. Mr.T.G.L. Iyer, in his article "Teaching Children Human Rights" is of the view that human rights are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being should receive respect and protection. He falls in line with the human rights activists recommending that there is a need to introduce human rights as a subject in school education which could reverse the trend of dehumanisation and put back growing human beings at the human level. Human Rights teaching should foster literacy of a very important sort an educated capacity for making responsible and rightful judgment is vital to survival. See *The Hindu*, October 18, 1994, p.26.

3. *Newsweek*, January 1993.

physical and mental development by failing to provide children with education, food and shelter, but through positive act of trooping them into the place of employment under the fragile shelter of economic necessity. There could be no worse rationalization of the callous exploitation of the child than to say that the economic interests of parents dictated it. It is abuse in the latter case as the premature entry into labour force steals the opportunity of development into personhood. Nothing is more abhorrent than child labour. Expressing serious concern sentiments, Francis Blanchard, Director - General in his report to the International Labour Conference [69th Session] held in 1983, said:

> "The persistence of child labour is an affront to our conscience: the effective abolition of child labour is a challenge to the international community".[4]

If an enlightened society believes that children should not be employed, then a vigilant society must prevent the abuse. This is more so when there is total unanimity in the perception about the special vulnerability of children and the social duty to guarantee their protection. The first protection they require is against avoidable illness and death. Once survival is assured, however, children need protection to develop their physical, intellectual, emotional and social capacities. It is here that actions regarding child labour are important for exploitative work arrangements have clearly demonstrated to be detrimental to the health and normal development of children.[5] Work can stunt development during the period of growth, prevents children from going to school, and creates cheap labour. It tends to lead to unemployment, poor health and finally to the

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4. ILO, *Report of the Director - General (Part I), Child Labour*, International Labour Conference, [69th Session, 1983], Geneva, 1985, p.6.

5. Trade Union Congress, *All Work And No Play: Child Labour Today*, London, 1985, p.5.

vicious circle of poverty for future families as child labour makes children "less employable" as adults.[6] Thus children who are made to work for economic and other development reasons are "at risk" in terms of individual growth and development.[7] Children who are warmly wrapped by pernicious effects of poverty are the most under-privileged and for that reason they are more prone to employment at an early stage of their life. In order to avoid their jeopardising their future, children must benefit from protective measures to guard against any subsequent damage to their physical, intellectual and moral development. Children's rights to basic needs and health care have been defended on various grounds.[8] Unless children are well educated and healthy they will not grow into a new adult labour force for an industrial economy. It is more than a matter of social investment. Children, our most precious resource, are literally the key to the future of our planet. Every effort should be made to provide the young of our species with the time to grow, to play and to learn during that period which we call childhood, to provide them from the beginning with the potential for being better adults. The value we accord to life is affirmed in our treatment of children.[9] Any obstacle to such development is to be hit with a firm hand.

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6. It is stated that work capacity is significantly related to several direct and derived parameters such as current body weight, physical activity status, age as well as height and weight at five years of age. It is also pointed out that those with severe growth deficit in height for age at 5 years will have significantly lower work capacity than others with normal growth. See Naidu, Usha S., Child Labour and Health in India, in Defence for Children International, *Child labour: A Threat to Health and Development*, Geneva, 1985, p.93.

7. Philista Onyango, Africa : The Child Labour Situation, in Defence for Children International, *Child Labour*, *ibid.*, p.65.

8. See Chapter Four, *supra*.

9. Ihsan Degramaci, Child Labour : An overview, in Defence for Children International, *Child Labour*, *ibid.*, p.12.

It is more so in the case of child labour as the effects of child labour are well pronounced as atrocious.[10]

Ironically, premature employment interferes with human rights and fundamental freedoms of children like right to life, health, education and so on thus making a posture of conflict much to the discomfiture of the international community. Perspectives vary. There are those who write from an "Abolish all child labour" stance against a "Look at the children's high capacity for social and economic independence". It becomes a matter of focus : the overwhelmingly negative elements on the one hand and the positive side on the other. When one gets horrified by the former, it is not surprising if the first cry is "Away with it".[11] An emphatic understanding of the human rights approach to the problem of child labour was underlined saying:

> "fully conscious of the fact that the struggle for the recognition of the rights of children is inextricably linked and is, in fact an integral part of the overall struggle for human rights, not only civil and political, but also socio-economic and other human rights, this seminar of lawyers, journalists and social activists advocates that the strategies employed in the overall human rights struggle be applied in combating the practice of child labour".[12]

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10. Mr.Van Leeuwen, Representative of the International Federation of Free Teachers' Unions, said : "We hold the view that each and every form of child labour is undesirable and that protection against such practices should be guaranteed...". See ICFTU, *Breaking Down The Wall of Silence: How to Combat Child Labour*, *op.cit.*, p.v.

11. *The Lawasia Human Rights Newsletter*, Vol.1(5), March 1987, p.1.

12. Lawasia and Defence for Children International, *Report of Lahore Seminar on the Exploitation of Child Labourers*, Lahore, February 25-28, 1988, p.7.

Hence there is guarantee of freedom against social and economic exploitation envisaged under various instruments[13] as a part of strategy to co-ordinate the efforts to help in the growth and development of the child - "From the womb, away from the tomb".[14] Concern for the young should prompt the society to think of holistic development of children as individuals, social beings, spiritual entities and inhabitants of the planet, said the Chairperson of the Indian Council for Child Welfare Trust.[15]

5.1.1 Labour Standards and World Trade

Child labour is an antithesis of childhood. Nonetheless its presence is felt everywhere wrecking the conscience of mankind. It is a synonym for abuse and neglect. Childhood rights are conspicuous by their absence. There is systematic deprivation of rights through stages approaching fast the point of climax when their employment is rationalised by the state pleading the *alibi* of poverty. Violence to childhood makes their right to be human blunt. Labour in the case of child is harmful because the energy that should have been expended on the nurturing of his latent powers is consumed for purposes of

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13. Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery of 1956 prohibits the exploitation of child labour in cases where children are delivered to another person for that purpose; Principle 9 of the Declaration of the Rights of the Child of 1959 embodies a similar prohibition; Article 10 (3) of the International Covenant on Economic, Social and Cultural Rights of 1966 imposes a general prohibition on the employment of children under a certain age and the employment of children in work constituting a threat to their health or their morals; Article 32 of the Convention on the Rights of the child of 1989 envisages a similar prohibition.

14. *Indian Express*, September 29, 1994, p.5.

15. *The Hindu*, September 21, 1994, p.15.

bare survival. It hinders, arrests or distorts the natural growth processes and prevents the child from attaining his full-blown childhood.[16] It interferes with education as well. Child labour abuses children and the violation it symbolises abuses us. Hence it enjoys a place of reverence in the human rights abuse report prepared by various agencies including governments of other countries which is dedicated to the governments charged with violations.[17] Such dedication is an annual affair always matched with mute response from the defaulters. Ripples are unlikely to make the event unusual. To utter dismay of the state, time made it unusual forcing it to strain its nerves to lay special response for consumption. It is the GATT episode which brought the eventful change in the attitude of the state driving the same to the receiving end. There is no doubt that the Western nations exert pressure on countries which have shown total inaction in dealing with child labour, with India qualifying a prime target.[18] The U.S.- French combine forcefully insisting on labour standards charge that developing countries are engaged in "social dumping" - competing unfairly by denying their workers basic rights and decent conditions. "By labour standards we mean basic rights, freedom of association, freedom to organise and to bargain collectively, freedom from forced or compulsory labour, child labour standards and conditions of work," said the U.S. Trade Representative, Mr.Mickey Kantor, voicing America's determination to include a discussion on labour rights and standards as part of the agenda for the preparatory Committee of the World Trade Organisation.[19] Washington and Paris, in a rare display of

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16. Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.8.

17. See, *Indian Express*, February 3, 1994, p.9.

18. *The Hindu*, August 17, 1994. p.12.

19. *Indian Express*, April 13, 1994, p.1.

agreement, said the time had come to make protection of workers' rights a priority item.[20] A major conflict virtually was on between the U.S. led developed countries and many developing countries, over the bid to introduce labour rights and other social issues into the agenda of the Dunkel proposal. As expected, response promptly came from India trumpeting its no less concern for its workers. Appreciably, the response was both quick and noisy; but paradoxically, it was not potent. Criticising the bid as a "veiled protectionism", the detractors sought to explode the myth of strategic concern as a mere ploy to deny imports of goods from countries which fall short of those standards.[21] There is no dissent, whatsoever, to the view subscribed in various quarters that U.S. had no qualms on introducing social issues into the agenda in as much as the U.S. has until now never been known to express any great concern for worker or trade union rights.[22] However, it is entirely a different thing to say that there is nothing to complain about India in this behalf given the *proven* [emphasis supplied] record of inefficiency in implementing labour legislations. It is true that India does not have to be apologetic because of its record in enacting laws to ensure against the employment of children. It is time that Indians themselves take a hard look at labour practices and realise how

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20. *Indian Express*, March 30, 1994, p.1.

21. See *The Hindu*, March 28, 1994, p.10; *The Hindu*, April 2, 1994, p.14. Notably, the one-day Thirty-Second Session of the Standing Labour Committee unanimously resolved to resist at all fora any attempt to link the "social clause" with international trade. See *The Hindu*, October 29, 1994, p.14. Earlier, in the wake of raging controversy over the labour - trade link, the Government of India constituted a three member Commission with Dr.Subramanian Swamy as its Chairman. The Commission was constituted during August 1994. Its task was to formulate India's response to the ILO's Conventions on exploitative practices in terms of prison labour, slave labour and child labour and other Conventions pertaining to issues like freedom of association, collective bargaining and non discriminatory practices. See *The Hindu*, August 4, 1994, p.1.

22. *The Hindu*, March 28, 1994, p.10.

disgraceful many of them are. Child labour is cruel and atrocious which the political establishment likes to pretend is essential for the well-being of the poor themselves. That has been the chief cause for four decades for not taking children out of their servitude in sweat shops, match factories, and stone quarries.[23] The ban on forced labour and child labour for all its obvious centrality to the cause of human dignity and social justice is a long way away from effective enforcement in many parts of the world.[24]

Regrettably, the strategy pursued by the U.S. led combine was only a smoke-screen and the counter - strategy adopted by India and other nations was equally sham. India and others fought the battle desperately and the victory, if any to be proud of, is only technical as the reality is becoming starker with staggering population increase. Reference to the above is obviously to emphasise and indicate that the relationship between employment of children and the human rights and freedoms is to close to be visited with neglect.[25] To be human or not to be human is not a question which needs to be answered. Right to be human is a necessity which needs civilised treatment. Anything which imperils such necessity is only to be perceived as a violation of human rights. It is too late in the day to suggest that childhood rights - survival and development, health and education - are only pious declarations deserving to be honoured through glorification. It can scarcely be imagined that such rights can

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23. *Indian Express*, April 19, 1994, p.8.

24. *The Hindu*, June 13, 1994, p.12.

25. The National Human Rights Commission constituted under the Protection of Human Rights Act of 1993 received complaints alleging exploitation of children through employment. It promised a detailed study of laws on child labour and examination of the problem in detail. See *The Hindu*, March 11, 1994, p.14.

be rolled up with ease either. Existence and development of potentials are mutually reinforcing and are hallmarks of human dignity and dignified existence. This only reflects the responsibility of the state in thought and action trickling down to the cause of mankind as reaffirmation of faith in the dignity and worth of the human persons in the U.N. Charter is not due to accident of diplomacy or draftsmanship, but the considered estimate of statemanship.[26] If the state chooses to function as if it did not exist, there could be no worse condemnation of its *raison d' etre*. It is necessary and desirable, perhaps, inevitable that child labour needs to be prohibited as it steals the childhood and curtails the adulthood.[27] The appraisal of circumstances underlying the threat to the rights of childhood renders the commitment to prohibit child labour imminent. This is a sequel to recognition of man as the centre of development. The opportunity for growth and development of children implying their human right to live with dignity which is well entrenched in the obligations of the state, both international and national, envisages its responsibility to ensure that either it is not denied to, or taken away from, the children forcing them to walk into the trap of servility and indignity. As otherwise, the promise of future to the children will become perverted and be drained of its *raison d'etre*. The point is terse. The choice is not for the state to provide opportunity for growth and development or to deny the same through perpetuation of child labour. For the society's survival itself is before it seeking anxious consideration as the interest of the society cannot be separated from its own children by any logic. Hence the stake is very high at least for those states which desire to vouchsafe their intention to uphold their

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26. Lauterpacht, Hersch, International Law And Human Rights, [London, 1950], pp.6-7, in Vaidyanathan, N., *I.L.O. Conventions and India*, Minerva Associates [Publications] Private Limited, Calcutta, 1975, p.90.

27. See notes 5,6,7 and 17, *supra*.

commitment to, and to be seen as champion of, human rights. India is especially not lagging much behind in the race eventually making its task no less onerous in this regard.[28] A well defined expression of commitment relating to non-employment of children emerge from scores of Conventions and Recommendations adopted by the International Labour Organisation from time to time[29] awaiting only the grace of Member States to prove its main thrust, to say the least for the time being.

5.2 HUMAN RIGHTS AND WORK LIFE: INTERNATIONAL LABOUR ORGANISATION'S THRUST

Speaking of 'Magna Carta' of its limited beginnings and its luxuriant growth, Sir Hersh Lauterpacht, one of the godfathers of international human rights, said : "The vindication of human liberties does not begin with their complete and triumphant assertion at the very outset. It commences with their recognition in some matters to some extent, for some people, against some organ of the state".[30] The vindication of the rights of man began two hundred

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28. "...The evidence is that a number of states have signed the Covenant as a token gesture to appease the international community of their good intentions in relation to human rights, but reality is that a signature is a meaningless act if all it amounts to is broken promises". See Lehrfround, Saul, Paper Rights, *New Law Journal,* Vol.143, 1993, p.918.

29. International Labour Organisation, a specialized agency of the United Nations, marks a landmark in the history of international co-operation trying to solve the problem of poverty by improving the working and living conditions of labourers throughout the world. The ILO was founded in 1919 to work for social justice as a basis for lasting peace. It carries out this mandate by promoting decent living standards, satisfactory conditions of work and wages and as well as adequate employment opportunities. The international standards established by the ILO are set forth in a large number of Conventions and Recommendations.

30. Lauterpacht, H., International Law And Human Rights [1968], p.131, in Subramanya, T.R., *Rights and Status of the Individual in International Law, op.cit.*, p.125.

years ago, in some matters, to some extent for some people.[31] Today, human rights are alive, if not wholly well everywhere, but for most people, perhaps everywhere, human rights are much better than they were two hundred years ago.[32] With their growing consciousness of their right to a way of life consonant with human dignity and their growing desire and impatience for conditions and guarantee that will secure them such a life, the peoples of the world are coming to attach greater importance to human rights - ideals that have found their loftiest expression in the Universal Declaration of Human Rights and the two International Covenants.[33] But they did not represent the beginning of the international endeavour. It was the 'International Labour Organisation [hereinafter will be referred as 'ILO'] which made it and further gave an initial thrust to the theme of 'functional integrality' of the two sets of rights - the civil and political rights and the socio-economic rights - is history. The Constitution of the ILO[34] and the Declaration of Philadelphia[35] preceded nearly by 30 years and 5 years respectively the Universal Declaration of Human Rights[36] which

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31. Henkin, Louis, The Rights of Man Today [1978], p.133, in Subramanya, T.R., *Rights and Status of the Individual in International Law, ibid.*

32. *Ibid.*

33. ILO, *Report of the Director - General, [Part I]: The ILO And Human Rights*, International Labour Conference, [52nd Session, 1968], Geneva, 1968, p.1.

34. The original text of the Constitution was adopted in 1919 when the ILO came into existence.

35. A Conference convened in Philadelphia on April 20, 1944 re-defined the aims and purposes of the ILO in the form of a Declaration known as the 'Declaration of Philadelphia of 1944', which was formally annexed to the Constitution of the ILO which became a specialised agency of United Nations in 1946. See Joshi, Preeta, *International Labour Organisation and Its Impact on India*, B.R. Publishing Corporation, Delhi, 1985, p.19.

36. Jenks observed that on the international plane, the process of historical development, namely, attaining civil liberties through revolutions anticipated for almost thirty years before the Universal Declaration of Human Rights. See Jenks, C.Wilfred, Law in the World Community, London, 1968, p.53, in Vaidyanathan, N., *ILO Conventions and India, op.cit.*, p.1.

only gave further push to the said theme by clearly acknowledging that economic and social rights are the corollary of civil freedoms. The said theme as evident from the Constitution of the ILO and the Declaration of Philadelphia is based upon the principle of social justice.[37] The emphasis the ILO laid recognising that the protection and advancement of the human rights proclaimed in the Universal Declaration were of fundamental importance for the fulfilment of its objectives may be seen as the reflection of the ILO's desire to make its own contribution to human rights.[38] The human rights aspect of all the ILO's activities were brought particularly into sharp relief with the adoption of the Universal Declaration and the Covenants constituting a recognition of the general trend towards inclusion among human rights of all forms of protection that can free man from fear and want.[39]

The historic part that the 1944 Declaration played is stressed because its edifices of both the Human Rights Covenants and the ILO Conventions concerning labour rights have been based on it.[40] The Declaration, familiarly known as declaration of labour rights, reaffirms the ILO's basic principles: namely, that labour is not a commodity, that freedom of expression and of

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37. The aims and purposes of the ILO are given in the Preamble of its Constitution where it is recognised that universal and lasting place can be established only if it is based upon social justice and according to Article II (a) of the Declaration of Philadelphia, 'Central aim of national and international policy' should be the attainment of social justice which meant, "All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity".

38. ILO, *Report of the Director - General 1968*, *op.cit.*, p.2.

39. *Ibid.*, p.3.

40. Joyce, James Avery, *World Labour Rights and their Protection*, *op.cit.*, p.30.

association are essential to progress, that poverty anywhere constitutes a danger to prosperity everywhere, and finally, that the war on want must be carried on both within each nation and by concerted international effort.[41] The ILO is the specialized Agency in the United Nations system having responsibility for social and labour questions, related especially to the right to work and to social work. It deals also with certain aspects of the right to an adequate standards of living, to family protection and to education.[42] Although the ILO was the product of the social thought of the industrially developed countries of Europe and America, the objectives assigned to the new Organisation were not those of any particular society or time, for it was conceived as the protector of the interests of working men and women everywhere. The universal nature of the goals set before the ILO more than a generation ago has enabled the Organisation to respond and adapt itself to the growing challenge of the developing world.[43] Some of the above aims found their way into the Universal Declaration of Rights and subsequently into the International Covenant on Economic, Social and Cultural Rights, 1966.[44]

As noted earlier, the ILO, to a far greater extent than other agencies, operates by way of international standards in the form of Conventions and Recommendations. It is when we turn to the more specific standards and procedures established by the ILO, that we come closer to the basic realities of the worker's protection under world law. In fact, 'world law' is not a misnomer in

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41. *Ibid.*, p.29.

42. *Ibid.*, p.26.

43. *Ibid.*, pp.28-29.

44. *Ibid.*, p.31, 38.

the ILO vocabulary, because eminent authors have for decades referred to ILO Conventions as 'international legislation'.[45] The International Labour Code, as it is called today, comprises the Conventions and Recommendations adopted by the International Labour Conference. By far the great majority of these Conventions and Recommendations can be said to relate to human rights in their widest sense, as defined in the Universal Declaration of Human Rights and the subsequent, Human Rights Covenants.[46] They may be said to cover the fundamental freedoms and most of the economic and social rights now regarded as essential elements in the enjoyment of human dignity. Ratification of Conventions and declarations of application have created a closely woven net work of legally binding international commitments between member states on a great variety of subjects connected directly or indirectly with those human rights that lie within the competence of the Organisation.[47] In relation to the Universal Declaration of Human Rights and the U.N. Covenants of Human Rights, the International Labour Code is the bridge from principle to practice; as a factor in the development and unification of labour legislation it is, as the President of International Confederation of Free Trade Unions said when addressing the 50th Anniversary Session of the International Labour Conference, the source and fount of social legislation of world-wide applicability.[48] The Constitution of the ILO is thus the beginning of an entirely new development in the matter of the

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45. *Ibid.*, p.26.

46. *Ibid.*, p.35.

47. ILO, *Report of the Director - General 1968, op.cit.*, p.11.

48. Jenks, Wilfred, Social Justice in the Law of Nations: The ILO Impact After 50 Years, 1970, p.79, in Subramanya, T.R., *Rights and Status of Individual in International Law, op.cit.*, p.124.

position of the individuals in the international sphere.[49] Added to this was the Declaration of Philadelphia which forcefully stated the principal objectives of the ILO - freedom, dignity and equality-reiterating the philosophy of social justice. The activities of the ILO - whether standard setting or operational - in the field of human rights was hence then guided both by the Universal Declaration and the two Covenants on human rights. In commemoration of tenth anniversary of the Universal Declaration of 1958, the ILO adopted a resolution containing a major affirmation of policy that the International Labour Conference believes in "the protection of human rights by the rule of law..." and pledged its continued co-operation with the United Nations in the observance of Human Rights and their universal application.[50] Goaded by the spirit of human development, the ILO has been steadfastly harping on the theme of expansion of responsibility of the U.N. and specialised agencies to keep the zone of freedoms and rights wide so that fundamental civic rights, such as freedom of thought, opinion and expression, freedom of information, the right of any person to take part in the conduct of public affairs in his country and the right of the people to express their will in honest elections will assist in creating the conditions needed if individuals are to want to improve their lot and to be able to do so, while the international guarantees of the right to freedom from hunger and the right to health are obviously essential to the achievement of satisfactory living conditions for all.[51] Seeking supportive measures from the parent organisation and the sister agencies is the obvious intended by the ILO for it is very much in its interest that rights which are not within its sphere but undoubtedly help to

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49. Subramanya, T.R., *Rights and Status of Individual in International Law*, *ibid.*

50. Vaidyanathan, N., *ILO Conventions and India*, *op.cit.*, p.91.

51. ILO, *Report of the Director - General 1968*, *op.cit.*, pp.4-5.

ensure the practical exercise of the rights and freedoms that do concern it should be protected as far as possible at the international level.[52] The strength it gains from such support may firm up its authority to draw up a comprehensive set of obligations converting the juridical standards of the Universal Declaration which are formally binding on states.[53] For its part the ILO in its own sphere has been seeking the best way of fitting its operational activities into a properly concerted programmes assigned to promote human rights in general and as a sequel thereto establishment of such a concerted programme has became a matter of the highest priority.[54] With the result, it can safely be said that all the activities of the ILO contribute, in accordance with its mission, to translating the rights and freedoms within its sphere into reality for the great mass of mankind.[55] The favoured approach of the ILO is simple but loud. It is to evolve the concept of man in the light of the principal objectives to ensure that mankind is protected from all scourges of life which prove to be monumentally fatal in the case of scores of millions of the underprivileged.

The concept of free man is the hallmark of growth with development. However, the ILO felt that the promotion of human rights cannot be left to itself. It is not brought about automatically by economic growth either. There must be a conscious and well thought-out policy guaranteeing economic and social rights underscoring economic security.[56] It is no denying fact that no one will deny

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52. *Ibid.*, p.4.

53. *Ibid.*

54. *Ibid.*, pp.5-6.

55. *Ibid.*, p.7.

56. *Ibid.*

the importance of economic security in freeing man of fear in exercising his freedom in every field. To put in simple terms, economic security helps to realise fundamental aspirations to freedom and equality. Again, economic and social rights, while an end in themselves, cannot be achieved without promoting fundamental rights and freedoms. The essential justification for freedom of association is thus the defence of the economic and social rights of those concerned. Equally, the aim of freedom of labour is to enable workers to choose employment providing them with satisfactory conditions and economic security, while at the same time affording them real opportunities of improving their living standards. The promotion of equality is only fully effective if it creates opportunities compatible with the requirements of human dignity in every day life.[57] It is conspicuous by its emphasis that it is not only sufficient to give due weight to the absolute need to raise the standards of material wealth all round but to ensure that this wealth is devoted to ends that serve the freedom and dignity of man. It is thus beyond shadow of doubt that the concept of man so visualised is so intricate and complex making the worth and dignity to depend on several factors which are inextricably woven thus reinforcing the premise of functional integrality of freedoms and rights.

5.2.1 ILO's Protective Child Labour Policy and Standard - Setting

For the ILO, the abolition of child labour and more generally the protection of children and young persons against work of a character or under conditions unsuitable to their age have been constant concerns since its

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57. *Ibid.*, p.6.

foundation.[58] While the Preamble to the Constitution of the International Labour Organisation includes among the objects of the Organisation the protection of children and young persons and the organisation of vocational and technical education,[59] the Declaration of Philadelphia recognises the solemn obligation of International Labour Organisation to further among the nations of the world programmes which will achieve "provision for child welfare and maternity protection" and "assurance of equality of educational and vocational opportunity".[60] The ILO has since then shown its constant and continuing concern for the implementation of this principle; more particularly, the minimum age for admission to employment, medical examination and prohibition of night work of young persons have been made the subject of a number of Conventions and Recommendations. In addition, standards relating to other conditions of work, employment and training of young persons have been laid down in Recommendations, and special provisions in favour of young persons have been included in many conventions of general application in these fields.[61] A comprehensive statement of the problem and the types of action needed to deal with it was made in a resolution concerning the protection of children and young

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58. ILO, *Report of the Director - General 1985*, *op.cit.*, p.4.

59. See Annexure VI, *infra.*

60. See Annexure VI, *infra.* It is also worth tracing Article 41 of the ILO Constitution which was existing prior to the amendment made 1946 whereby it was omitted. The said article provided: "...abolition of child labour and imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development". See International Labour Office, *The International Labour Code*, Vol.1, Geneva, 1952, p.24.

61. ILO, *ILO Standards on the Work of Children And Young Persons*, Supplement to Report II, Third European Regional Conference, Geneva, October 1979, p.1.

workers adopted by the International Conference in November 1945.[62] This comprehensive approach was followed in the subsequent instruments adopted on the subject.[63] A further policy statement was issued by the Conference in 1979, the year designated as International Year of the Child, in the form of a resolution concerning the International Year of the Child and progressive elimination of child labour and transitional measures to be pursued pending such abolition. This resolution impressed upon the Member States the urgency to ratify and implement the relevant international labour standards and further appealed to Member States to ensure the proper protection of children with regard to work.[64] Humanise the work life pending abolition is the theme underlying the policy of the ILO.

The affirmation of the elimination of child labour as an objective coupled with commitment to action, pending its attainment, to improve the conditions of working children are the two planks of ILO policy.[65] The two-faceted policy - abolition-cum-humanisation of work life through regulation - envisage strategies

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62. On 4 November, 1945 the International Labour Conference, in the course of its twenty-seventh session, held in Paris, adopted the resolution. The purposes and scope of this resolution are outlined in the following passage from the Second Report of the competent Committee: "The text proposed by the Office, which is to be found on pages 165 to 180 of Report III on the protection of children and young workers, constitutes a draft resolution of principles which presents a co-ordinated scheme of various measures for the realisation of the essential objectives of the ILO concerning the protection of youth which was formulated in its Constitution and in the Declaration of Philadelphia. This plan aims at inspiring co-ordinated social policies and at promoting on the international plane the future development of measures in accordance with these purposes...". See International Labour Office, *The International Labour Code*, Vol.2, *op.cit.*, p.4.

63. ILO, *Report of the Director - General 1985*, *op.cit.*, p.5.

64. *Ibid.*

65. *Ibid.*

which are distinct and independent. A general improvement of living standards and a reinforcement of the educational infrastructure are the long run strategies earmarked in the process of progressive elimination of child labour. On the other hand, short run measures are protection oriented in as much as they are directed towards better working and living conditions.[66] In the backdrop of ground realities, the ILO wanted national policies of states to make their impactful presence felt to wipe out the conditions that give rise to child labour and further geared to the most effective means of promoting the welfare of children.[67]

A major part of the ILO's work in this area has been the adoption by the International Labour Conference of a series of Conventions and Recommendations dealing with child labour.

5.2.1.1 Freedom of labour

In consonance with the aim of the ILO to encourage formal recognition of the human rights that lie within its sphere and of the conditions for their realisation, the rights and freedoms that have been proclaimed as such represent a varied aspects of the four main objectives reinforced in the Declaration of Philadelphia relative to human rights.[68] While certain rights, such as the right to work, the right to conditions of work and life compatible with human dignity or the right to equality of opportunity, are essentially goals to be

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66. *Ibid.*

67. *Ibid.*

68. ILO, *Report of the Director - General 1968, op.cit.*, p.13.

reached, others, such as freedom of association and the right to collective bargaining are not only objectives, but also represent means of action that can render great service to the cause of all the rights and freedoms that concern workers.[69] Steady progress in widening the concept of freedom of labour led recently to recognition of the right to freedom of choice of employment against the background of which problems arising in connection with the forced labour Conventions must be examined.[70]

Freedom from forced labour has, in fact, been dealt with in two separate ILO Conventions. The Forced Labour Convention, 1930 [No.29], was the first instrument in which the ILO endeavoured to lay down a set of standards for the protection of a human right, and it is also the instrument which has obtained the largest number of ratifications.[71] It provided for the progressive abolition of forced labour in all its forms. Pending this abolition, its use for public purposes only as an exceptional measure, was subject to conditions set out in detail in the Convention. When it was adopted, the ILO was mainly concerned with the position in the colonial countries and certain independent states at a similar stage of development, and the Convention therefore dealt mainly with the forms of forced labour for economic purposes employed in those countries.[72] At a later stage, the existence of system of forced labour as a means of political coercion also attracted attention at the international level. Their abolition was one of the main objectives of the Abolition of Forced Labour Convention, 195?

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69. *Ibid.*

70. *Ibid.*, p.41.

71. *Ibid.*

72. *Ibid.*

[No.105], which provides for the immediate and complete abolition of forced or compulsory labour for political purposes, as a method of mobilising and using labour for purposes of economic development, as a means of labour discipline, as a punishment for having participated in strikes and as a means of racial, social, national or religious discrimination.[73] Even though the question of compulsion to labour was considered as a political necessity and was permitted on selective grounds, later the same came under cloud as it was more likely to endanger fundamental human rights especially when the schemes underlying such compulsory labour might lose their transitional or emergency character.[74] Adapting to the changing needs of time and in its quest of making freedom of labour a reality for all, the ILO felt desirable to give suitable assistance in employment policy and to help these governments which were harping on forced labour to provide adequate opportunities of vocational training and employment.[75] Styled as human resources development representing a major contribution to the promotion of freedom of labour, it is emphasised that the primary need is to devise ways and means of achieving full employment and speeding up economic development in tune with the honour of human rights.[76] Alongside the initiative of the ILO encouraging the national governments to abolish forced labour in honour of human dignity, there have been instances of all forms slavery, servitude, in particular child servitude, and exploitation of workers which amount more or less openly to forced labour[77] causing much

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73. *Ibid.*, p.42.

74. *Ibid.*, p.43.

75. *Ibid.*

76. *Ibid.*

77. *Ibid.*, p.45.

concern and set back to the human rights movements. An example of this is the labour imposed in many countries on thousands of workers who are victims of their chronic indebtedness.[78] Testifying to the shameful existence of such a pernicious practice, a Report of ILO said: "...thousands of farm workers still alive under systems of tenure entailing conditions akin to serfdom, especially in Latin America.... This applies,for instance, to certain forms of tenure whereby agricultural workers, and often the members of their families also, are required to perform various services free of charge and to work for lower wages than other farm labourers in exchange for a plot of land for their own use".[79] In this context it is worth quoting the point made by the Under-Secretary for Economic And Social Affairs of the United Nations Organisation : "Land reform transcends even the distress we feel at the social plight of millions of the earth's workers whose life, to quote Gandhiji's words, is nothing but a 'compulsory and eternal fast'. The problem is often placed in the context with which it is much more difficult to grapple : that of the actual structure of political and constitutional power linked with certain features of the land tenure system".[80] The wide prevalence of such practice led in 1956 to the adoption by the U.N. of a Supplementary Convention on their abolition, which was designed to intensify the efforts being made, both nationally and internationally to this end.[81] The Supplementary Convention, *inter alia*, prohibits the exploitation of child labour

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78. *Ibid.*

79. *Ibid.*

80. *Ibid.*, pp.45-46.

81. *Ibid.*, p.46. This is supplement to the Slavery Convention adopted by the United Nations on September 25, 1926, obliging the Contracting Parties to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

where children are delivered for that purpose.[82] It is paradoxical that the campaign against the different forms of exploitation of other peoples' labour has still fallen far short of the results that were hoped for.[83]

5.2.1.2 Prohibition of child labour

(i) Instruments prescribing minimum age for admission to employment:

Between 1919 and 1965, ten Conventions were adopted to set a minimum age for admission to employment, first in industry, then in other occupations[84]. These Conventions laid down the general standard of 14 years of age, then raised it to 15, while providing for a higher age for particularly

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82. Article 1 of the Convention states that: "Each of the states parties to the Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of ...any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of labour".

83. ILO, *Report of the Director - General 1968*, *op.cit.*, p.46.

84. Minimum Age [Industry] Convention, 1919 [No.5]; Minimum Age [Sea] Convention, 1920 [No.7]; Minimum Age [Agriculture] Convention, 1921 [No.10]; Minimum Age [Trimmers and Stokers] Convention, 1921 [No.15]; Minimum Age [Non-Industrial Employment] Convention, 1932 [No.33]; Minimum Age [Sea] Convention [Revised], 1936 [No.58]; Minimum Age [Industry] Convention [Revised], 1937, [No.59]; Minimum Age [Non-Industrial Employment] Convention [Revised], 1937 [No.60]; Minimum Age [Fishermen] Convention, 1959 [No.112]; Minimum Age [Underground Work] Convention, 1965 [No.123].

Besides the adoption of these Conventions, the resolution adopted on November 4, 1945 by the Conference reaffirmed its duty to promote the abolition of child labour, and, convinced that it is in the best interests of children in order to assure an adequate preparation for their future to fix the minimum age for admission to employment as high as possible for all categories of employment and invited all Members to ratify the Conventions and urged them to take as their objective the gradual raising to sixteen years of minimum age of admission to employment. See International Labour Organisation, *The International Labour Code*, Vol.2, *op.cit.*, p.11.

arduous types of work.[85] The prohibition of the employment of children under 14 years of age was initially provided for in the Convention adopted by the ILO General Conference at its first session, in 1919.[86] A similar prohibition was provided for maritime work in 1920, and in regard to non-industrial undertakings in 1932.[87] Admission to employment in agriculture was dealt with in more flexible terms in a separate Convention adopted in 1921.[88] The higher minimum age of 15 was laid down in later Conventions.[89] Conventions also provide, without prescribing any particular age, that a higher minimum age must be laid down for occupations dangerous to the life, health or morals of the persons employed. More specifically, Convention No.123 of 1965, provides that a minimum age which may not be less than 16 must be fixed for admission to employment underground to mines, and Conventions No.15 of 1921 and No.112 of 1959 establish a minimum age of 18 years for admission to employment as trimmers and stokers on board sea-going vessels or fishing vessels.[90]

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85. ILO, *ILO Standards on the Work of Children and Young Persons*. 1979. *op.cit.*, p.1.

86. Minimum Age [Industry] Convention, 1919 [No.5].

87. Minimum Age [Sea] Convention, 1920 [No.7]; Minimum Age [Non-Industrial Employment] Convention, 1932 [No.33].

88. Minimum Age [Agriculture] Convention, 1921 [No.10]

89. Minimum Age [Sea] Convention [Revised], 1936 [No.58]; Minimum Age [Industry] Convention [Revised], 1937 [No.59]; Minimum Age [Non-Industrial Employment] Convention [Revised], 1937 [No.60]; Minimum Age [Fishermen] Convention, 1959 [No.112].

90. ILO, *ILO Standards on the Work of Children and Young Persons*. 1979, *op.cit.*, p.1.

During 1932 and 1937, two Recommendations were adopted with a view to restricting the employment of children. The former Recommendation desires that, so long as children are required to attend school, their employment should be restricted to as great an extent as possible in order that children may derive full benefit from their education and that their physical, intellectual and moral development may be safeguarded. It also lays down standards found desirable to be adopted in the employment of children and young persons on light work or employments which are dangerous to the life, health or morals of the persons employed.[91] The latter Recommendation urges the members to make every effort to apply their legislation relating to the minimum age of admission to all industrial undertakings, including family undertakings, even though the employment carried on is not dangerous to the life, health or morals of the persons employed therein.[92]

The efforts of the ILO to abolish child labour took on a new dimension with the adoption of the Minimum Age Convention, 1973 [No.138]. As stated in the Preamble, the aim of this instrument is gradually to replace the existing instruments applicable to limited economic sectors "with a view to achieving the total abolition of child labour".[93] This text, the Minimum Age Convention, 1973 , which has been supplemented by a Recommendation, is general in scope and provides that states which ratify it undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise

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91. Minimum Age [Non-Industrial Employment] Recommendation, 1932.

92. Minimum Age (Family Undertakings] Recommendation, 1937.

93. United Nations, *Exploitation of Child Labour*, *op.cit.*, p.29.

progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.[94] Ratifying states are obliged to specify a minimum age for admission to employment or work, which should not be less than the age of completion of compulsory schooling and, in any case, should not be less than 15 years or 14 years as an initial step for countries whose economy and educational facilities are insufficiently developed.[95] A minimum age of not less than 18 years is prescribed for any type of employment or work which might jeopardise the health, safety or morals of young persons.[96] However, a ratifying state may authorise employment in dangerous work as from the age of 16 years provided that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.[97] The Convention is not made applicable to work done by children and young persons in schools for general, vocational or technical education or in other training institutions or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority and where this work is an integral part of a course of education or training.[98] States may also authorise the employment of children between 13 and 15 years of age [between 12 and 14 years of age for states which have adopted 14 years as a general minimum age], and of older children

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94. Minimum Age Convention of 1973, Article 1.

95. *Ibid.*, Article 2.

96. *Ibid.*, Article 3.

97. *Ibid.*, Article 3(3).

98. *Ibid.*, Article 6.

who have not completed their compulsory schooling, on "light work" which is "not likely to be harmful to their health, or development" and " not such as to prejudice their attendance at school [or] their participation in vocational orientation or training programmes".[99] Exceptions to the general minimum age standards, which shall take the form of permits granted in individual cases for such purposes as participation in artistic performances are also provided.[100] Further, while the prescribed minimum age is normally to be observed in all branches of activity, certain limited categories of employment or work may be excluded from the application of the Convention and these categories may be wider for countries whose economy and administrative facilities are insufficiently developed, but the Convention specifies the industries to which it should always be applicable.[101]

Recommendation No.146 of 1973, which supplements the Convention No.138, lists five areas to which national policy should give special attention.[102] It also urges the states to take as their objective the progressive raising to 16 years of the minimum age, while steps are required to be taken urgently, when the minimum age is still below 15 years, to bring it to that level.[103] The Recommendation further specifies various standards which conditions of employment should meet and provide for enforcement.[104]

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99. *Ibid.*, Article 7.

100. *Ibid.*, Article 8.

101. *Ibid.*, Articles 4 and 5.

102. Minimum Age Recommendation of 1973, Paras 1 and 2.

103. *Ibid.*, Para 7.

104. *Ibid.*, Paras 12-15.

(ii) Instruments prohibiting the employment of children and young persons in certain categories of hazardous work

Next to the minimum age, hazardous work assumes significance in the realm of prohibition culminating in a series of standards adopted in this behalf. Firstly, in view of the danger involved in the function of maternity and to the physical development of children, women and young persons under the age of 18 years are not to be employed in the processes enumerated under the Lead Poisoning [Women and Children] Recommendation, 1919. However, their employment in processes involving the use of lead compounds is permissible under the conditions stipulated in this behalf.[105]

Secondly, employment of males under eighteen years of age and of all females is prohibited in any painting work of an industrial character involving the use of white lead or sulphate of lead or other products containing these pigments.[106]

Thirdly, employment of persons under the age of sixteen in work involving ionising radiations is prohibited under the Radiation Protection Convention of 1960. Besides, it is provided that the maximum permissible doses of ionising radiations which may be received from sources external to or internal to the body and maximum permissible amounts of radioactive substances which can be taken into the body shall be fixed in respect of workers

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105. Lead Poisoning [Women and Children] Recommendation 1919. Paras 1 and 2.

106. White Lead [Painting] Convention of 1921, Article 3.

who are directly engaged in radiation work and are aged eighteen and over and under the age of eighteen.[107]

Fourthly, another Convention made with regard to protection against hazards arising from benzene provides that young persons under 18 years of age shall not be employed in work processes involving exposure to benzene or products containing benzene.[108]

5.2.1.3 Protection of child labour

As stated earlier, ILO has pursued the policy of fixing standards with the object of protecting child labour against exploitation alongside the prohibition of child labour and to this end also, since 1919, it has adopted a number of Conventions and Recommendations. The major categories of instruments adopted in this regard may be classified as under.

(i) Instruments prohibiting night work

Employment of young persons under eighteen years of age during night in any public or private industrial undertaking is prohibited except in an undertaking in which only members of the same family are working. By way of exception it is provided that young persons over the age of sixteen years may be employed during night in the specified undertakings which, by reason of the

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107. Radiation Protection Convention of 1960, Article 7(1) and (2).

108. Benzene Convention of 1971, Article 11.

nature of the processes, are required to be carried on continuously day and night.[109]

Member states are also required to regulate the employment of children and of young persons below the age of eighteen years in agricultural undertakings during night, in such a way as to ensure to them a period of rest compatible with their physical necessities.[110]

In the case of non-industrial undertakings, it is provided that children under fourteen years of age who are admissible for employment and children over fourteen years of age who are still subject to full-time compulsory school attendance shall not be employed nor work at night during a period of at least fourteen consecutive hours. However, this period is fixed as twelve consecutive hours in case of children over fourteen years of age who are no longer subject to full-time compulsory school attendance and young persons under eighteen years. It is also provided that national laws may empower appropriate authority to grant individual licenses in order to enable children or young persons under the age of eighteen to appear as performers in public entertainments.[111] This is followed by the Recommendation of 1946 specifying more activities.[112]

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109. Night Work of Young Persons [Industry] Convention of 1919, Article 2(1) and (2).

110. Night Work of Children and Young Persons [Agriculture] Recommendation, 1921.

111. Night Work of Young Persons [Non-Industrial Occupations] Convention of 1946, Article 2, 3 and 5.

112. Night Work of Young Persons [Non-Industrial Occupations] Recommendation of 1946, Para 1.

The revised Convention of 90 adopted in regard to industrial undertakings, like its predecessor, prohibits the employment of young persons under eighteen years of age during night. However, employment of such persons during night is permissible inpursuant to the authorisation issued by the competent authority for purposes of apprenticeship or vocational training in specified industries or occupations which require to be carried on continuously.[113]

Further, employment of persons under the age of sixteen is prohibited during night in another convention made in regard in maritime work.[114]

(ii) Instruments prescribing medical examination for children and young persons admissible for employment

The first convention to provide that the employment of children and young persons under eighteen years of age shall be conditional on medical examination and that this examination shall be repeated at intervals of not more than one year was adopted in 1921 concerning employment at sea.[115] Again in 1946, the Conference adopted two Conventions requiring the medical examination of young persons employed in industry and in non-industrial occupations.[116] Convention No.77 provides that children and young persons under eighteen years [in certain countries, sixteen years] of age shall not be admitted to employment by an industrial undertaking unless they have been

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113. Night Work of Young Persons [Industry] Convention [Revised] of 1948, Article 3.

114. Wages, Hours of Work and Manning [Sea] Convention [Revised] of 1958. Article 20.

115. Medical Examination of Young Persons [Sea] Convention of 1921.

116. Medical Examination of Young Persons [industry] Convention of 1946.

found fit for the work on which they are to be employed by a thorough medical examination.[117] The fitness of a child or a young person for the employment in which he is engaged shall be subject to medical supervision until he has attained the age of 18 and the continued employment of a child or young person under 18 years of age shall be subject to medical examination at intervals of not more than one year.[118] In occupations which involve high risks, medical examination and re-examinations for fitness for employment shall be required until at least the age of twenty one years [as earlier, in certain countries, 19 years].[119] The Convention provides for measures for vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations.[120] Convention No.78 contains analogous provisions and itapplies to occupations other than industrial, agricultural and maritime. Recommendation No.79 of 1946 supplements these two Conventions with regard to the scope of regulations, provisions concerning medical examinations, measures for persons found to be unfit or only partially fit for employment, and methods of enforcement.[121] Two more recent ILO instruments also provide that medical examination and periodic re-examinations shall be required up to the age of twenty one years for employment in the occupations covered.[122]

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117. *Ibid.*, Article 2.

118. *Ibid.*, Article 3.

119. *Ibid.*, Article 4.

120. *Ibid.*, Article 5.

121. Medical Examination of Young Persons Recommendation of 1946.

122. Medical Examination [Fishermen] Convention, 1959; Medical Examination of Young Persons [Underground] Convention, 1965.

(iii) Instruments making provision for stricter standards for young workers with regard to hours of work, weekly rest, paid holidays, apprenticeship etc.

In 1924, the Conference adopted a Recommendation aiming to secure for workers an adequate period of time which may provide an opportunity for workers to develop freely using such spare time their physical, intellectual and moral powers especially when such development is of great value from the point of view of the progress of civilisation. Towards this end, it suggests those schemes aiming at the development of the physical health and strength of the workers by means of games and sports which enable young workers who are working under the highly specialised conditions prevalent in modern industry to give free play to their energies in a manner which encourages initiative and the spirit of emulation.[123] Another Recommendation was adopted in 1924 emphasising upon the desirability of adopting a more advantageous system for young persons and apprentices in regard to provision of annual holidays with pay in order to ease the transition from school to industrial life during the period of physical development.[124] A 1939 Recommendation made in regard to apprenticeship insists upon taking of measures to make apprenticeship as effective as possible in which such system of training seems necessary. The measures, the Recommendation further elaborates, shall *inter alia* make provision in respect of the conditions governing the entry of young persons into apprenticeship.[125] Two Recommendations dealing with holidays with pay were adopted in 1952 and 1954. These Recommendations generally insist upon the

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123. Utilization of Spare Time Recommendation of 1924, Preambular Paras 2,3 and 1.

124. Holidays with Pay Recommendation of 1936, Para 5.

125. Apprenticeship Recommendation of 1939.

desirability of making more favourable provision for young workers.[126] The weekly rest Convention adopted in 1957 stipulates that young persons under eighteen years of age should, wherever practicable, be granted an uninterrupted weekly rest of two days.[127] Yet another convention adopted in 1962 provides that in carrying out measures for progressively reducing hours of work, priority should be given to industries and occupations which involve a particularly heavy physical or mental strain or health risks for the workers concerned, particularly where these consist mainly of women and young persons. It is further provided that in arranging overtime work, due consideration should be given to the special circumstances of young persons under eighteen years of age, of pregnant women and nursing mothers and of handicapped persons.[128] Recommendation No.125 adopted in 1965 supplements the standards under the existing Conventions and Recommendations made in regard to the conditions of employment of young persons underground mine.[129] A Convention adopted in 1967 applicable to regular manual transport of loads provides that the assignment of women and young workers to manual transport of loads other than light loads shall be limited and that where women and young workers are engaged in such work, the maximum weight of such loads shall be substantially less than that permitted for adult male workers.[130]

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126. Holidays with Pay [Agriculture] Recommendation, 1952; Holidays with Pay Recommendation, 1954.

127. Weekly Rest [Commerce and Offices] Convention of 1957.

128. Reduction of Hours of Work Recommendation of 1962, Paras 9 and 18.

129. Conditions of Employment of Young Persons [Underground Work] Recommendation of 1965, Preamble.

130. Maximum Weight Convention of 1967, Article 7.

It is crystal clear that the endeavours of the ILO in the direction of international legislation can be viewed as bold and innovative.[131] Even though the Conventions gain the force of law only on ratification, the fact that they are formulated for domestic application on the basis of consensus arrived at on an international plane, despite the differences in the economic, social, and political system of its members, must be construed as a unique contribution of the ILO.[132]

5.2.1.4 Principles relating to social protection, education and industrial welfare of children and young persons

Having convinced about the responsibility of Member States for ensuring by all appropriate means that children, the citizens and workers of the future, are brought into the world and grow up under conditions which afford opportunities for proper physical, mental and moral development and for training for a useful employment or career, the International Labour Conference evolved through consensus the following principles for guidance and compliance.[133]

The Conference reaffirmed its conviction that in order to develop to the fullest extent the capacities of workers and citizens of the future that Governments should accept responsibility for assuring the health, welfare and education of all children and young persons and the protection of all youthful

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131. Vaidyanathan, N., *ILO Conventions and India*, *op.cit.*, p.110.

132. *Ibid.*

133. Note 62, *supra*.

workers both by national action and international cooperation.[134] The Conference affirmed its deep interest in the furtherance among the nations of the world of programmes which will make possible the complete abolition of child labour by providing for every child proper maintenance and such conditions of life as will foster the talents and aptitudes of the child and his full development as a citizen and worker.[135] Measures which are required to be undertaken to assure the material well-being of children and young persons should, among other things, include the following : the provision of a living wage for all employed persons sufficient to maintain the family at an adequate standard of living; redistribution of the cost of maintenance of children and services through which homeless normal children and young persons, if not placed in private homes, are cared for in circumstances approximating to home life as closely as possible, in order to place such children on an equal footing with other children of their age, as regards well-being, health care and general and vocational education suited to their aptitudes.[136] Medical care besides general health services for maintaining and improving the health of children and young persons, including, for example, services providing adequate food for pregnant and nursing mothers, infants and school children etc. are required to be provided as a minimum. Measures to protect children and young persons from moral or physical neglect and harmful influences are also insisted on.[137] The Conference reaffirmed the conviction expressed in the Declaration

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134. See note 84, *supra*. See also para 1 of the Resolution of the International Labour Conference, November 4, 1945.

135. Para 4 of the Resolution.

136. Para 5 of the Resolution.

137. Para 6 of the Resolution.

of Philadelphia that the assurance of equality of educational opportunities[138] and hence desired that all children and young persons should be provided free of charge with general education which should be of a standard and duration permitting adequate physical, intellectual and moral development.[139] Economic assistance should be provided, to aid in raising the school-leaving age, to facilitate compulsory school attendance and effectively to assure equal access to all stages of technical, vocational and higher education.[140] In order that young workers may obtain income security as soon as possible, apart from any indirect claim which certain young workers might possess as dependents of either an insured person or a person entitled to social security benefits, young persons should be compulsorily included under social insurance or social security on entering employment. Workmen's compensation should be payable in respect of any occupational accident occurring to a child illegally employed and in such cases the employer should be liable for the payment of additional compensation.[141] The Conference also laid down international standards for the protection of young workers with the object of extending and improving the protection of such workers in all types of occupation.[142] The standards so laid also relate to industrial safety and hygiene,[143] wages,[144] methods of

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138. Para 7 of the Resolution.

139. Para 8 of the Resolution.

140. Para 16 of the Resolution.

141. Para 23 of the Resolution.

142. Para 24 of the Resolution.

143. Para 28 of the Resolution.

144. Para 30 of the Resolution.

supervision[145] and right of association.[146] In respect of wages, it was laid down that provisions with reference to wages paid to young workers should have the objective of assuring that they are paid wages commensurate with the work performed, observing wherever possible the principle of equal pay for comparable jobs.[147] Young workers should have the same freedom as adults to join the trade union of their own choosing as from their entry to employment.[148]

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145. Para 32 of the Resolution.

146. Para 33 of the Resolution.

147. Note 142, *supra*.

148. Note 144, *supra*.

CHAPTER SIX

PROTECTIVE LEGISLATIONS ON CHILD LABOUR IN INDIA

The potency of the ILO as an instrument of social progress is not exhausted by its principal task of adopting Conventions nor is its function limited to persuading the Member-States to enact legislation regulating labour conditions. There is streak of truth that the improvement of labour conditions is being brought about by a combination of devices and not solely by the legislative activity of the ILO. Labour legislation is primarily a domestic problem and the fact remains that the improvement in the status of the worker in any country can be brought about only when public opinion supports and the domestic economic situation permits such improvement. Therefore, it would not be inappropriate to measure the value of the ILO by the influence it exerts in developing public opinion favourable to labour legislation. In this respect, it can be deemed to have influenced the evolution of labour legislation in India.[1]

Fascinating indeed it will be to reflect the historical association of India with the ILO. India being an original member of the United Nations is also an active member of its specialised agencies. It has been a member of the ILO, since its inception in 1919. India was not independent then. Still it was member of League of Nations and the ILO. An assurance then gave by the British government that British India was 'democratically administered' made possible

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1. Vaidyanathan, N., *ILO Conventions and India*, *op.cit.*, pp.115-116.

the entry of India alongwith China, Iran, Japan and Thailand to the ILO membership.[2] After independence, India was quite convinced as a necessity that its association and commitment to the ILO was not only for its own interest but also in the interest of the world peace based on the principle of economic and social justice.[3] Closely on the heels of the initiative, Constitution came to be adopted providing an opportunity for the government to demonstrate its intentions. Wresting the opportunity, the independent India gave to itself a constitution sharing the ideals of the ILO.[4] As was pointed out by the Director-General of the ILO, there is striking similarity between the aims stated in the Preamble to the Indian Constitution - "Justice, Liberty, Equality, Fraternity" and the goals of the ILO.[5] And also, many principles of the ILO reflect in the Constitution in disguise in the form of "Directive Principles of State Policy".[6] Extolling ILO's endeavour for peace and social justice, Shri V.V.Giri at the International Labour Conference held at Geneva on June 10, 1970 said: "We need a plan of social justice. The social and economic order, required by the new society which we are building, should appear not as an objective to be achieved in the distant future, but it must appear as a reality at every step of policy and practice, pervading all our activities. This is our concept of a socialist

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2. Dhyani, S.N., International Labour Organisation and India, New Delhi, National Publishing House, 1977, p.121, in Joshi, Preeta, *International Labour Organisation and Its Impact on India*, *op.cit.*, p.40.

3. Joshi, Preeta, *International Labour Organisation and Its Impact on India*, *ibid.*, p.42.

4. *Ibid.*

5. Dhyani, S.N., International Labour Organisation and India, *op.cit.*, p.22.

6. Joshi, Preeta, *International Labour Organisation and Its Impact on India*, *op.cit.*, p.85.

society which we are trying to establish and build in India. I am sure that this Conference will strive to fulfil this expectation, and I hope that the ILO will be a leader in this process.[7] The mantle of social justice and peace brought India in the neighbourhood of the ILO making its impact more pronounced in a way that there was a "remarkable change in the country's attitude towards labour and labour questions".[8] And its result was the ratification of the ILO standards but admittedly the extent of ratification of instruments by India is totally disappointing.[9] The scale of ratification alone is not an appropriate barometer to measure with accuracy the level of its influence on the Indian scene.[10] Rather, the revered association of India with the ILO owing a striking allegiance to its ideals[11] and the participation of

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7. Indian Worker, June 22, 1970, in Joshi, Preeta, *International Labour Organisation and Its Impact on India*, *ibid.*, pp.42-43.

8. Pillai, P.P., India and the International Labour Organisation, Patna, 1931, p.117, in Joshi, Preeta, *International Labour Organisation and Its Impact on India*, *ibid.*, p.67.

9. Joshi, Preeta, *International Labour Organisation and Its Impact on India*, *ibid.*, p.45.

10. *Ibid.*, p.87.

11. The Parliamentary Consultative Committee attached to the Ministry of Labour adopted on August 25, 1994 a resolution recalling the role of the ILO and India's association with it. It reads: "On the occasion of the 75th anniversary of the ILO and the 50th anniversary of the Declaration of Philadelphia, reaffirming the principles and fundamental values, upon which the ILO was founded and which continues to retain their relevance in the fast changing world: considering that the ILO, with its unique tripartite structure and specific mandate in the social and labour field, has an important role to play in the United Nations System: taking note of the position that ILO's standard setting function is as relevant today as ever before: *recalls with pride India's long and enduring association with the ILO in different fields having a bearing on labour and requests the tripartite partners to reaffirm and respect their commitment to the ideals of ILO and to translate this into practical action to improve the working and living conditions of all*" [Emphasis supplied]. See *The Hindu*, August 27, 1994, p.16. Further, India recently released coins of 5,50 and 100 rupee denomination to mark the 75th Anniversary of the International Labour Organisation and 50th Anniversary of the Philadelphia Declaration. See *The Hindu*, October 28, 1994, p.13.

India in international fora[12] matter much pointing to the focus of influence. Poignantly, nation's commitment to its own people, leaving it to itself, looms large in the background. What concerns one is the acquaintance the aims and objectives of the ILO have received in the supreme *lex* of the nation driving the factum of ratification or non-ratification into pale of insignificance.[13] Hence, non-ratification of instruments can never be an *alibi* to avoid any obligation arising from such commitment. Any state which keeps avoiding such obligation on fanciful pleas will only be thriving on the sufferings of their subjects, to say the least.

Following the foot prints of the ILO aiming at safeguarding freedom of association,abolition of forced labour, elimination of discrimination in employment, and promotion of the principle of equal pay for work of equal value, India ratified the Forced Labour Convention, 1930 [No.29], the Equal Remuneration Convention, 1951 [No.100] and the Discrimination [Employment and Occupation] Convention, 1958 [No.111]. Provisions equivalent thereto are also available in the Constitution of India.[14] What a considerable impact the

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12. To quote a few instances, India was present along with Bangladesh, China, Japan and Sri Lanka at the meetings of the Working Group of the United Nations Commission on Human Rights which was drafting the text of the Convention on the Rights of the Child since 1979. The meetings were held in 1986, 1987 and 1988. Regrettably their active participation in the debates was limited, however. See *Report of the Second Asian Regional Conference on Child Abuse and Neglect*, Bangkok [Thailand], 8-13 February, 1988, p.71.

13. It may be stated, however, that which ratification of an instrument is necessary for ensuring accountability to the organisation, commitment of national governments to constitutional ideals make them accountable to their subjects ultimately.

14. Article 23 of the constitution prohibits forced labour; Article 39(d) provides for equal pay for equal work; Articles 14-16 provides for equality before law, equality of opportunity in public employments and prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

other ILO's Conventions, basic human rights Convention apart, had in the field of labour legislations one would get if labour legislations passed in India since 1919 are scanned. The impact will be much revealing in as much as the same was direct and tangible before 1932 as they have played a significant role in making a beginning which is quite illustrative.[15] Other Conventions though not ratified and Recommendations for their part have served as best guide in this regard.

6.1 SOCIAL JUSTICE: A CONSTITUTIONAL PLEDGE

Children are dear to the hearts of Indian leaders. Such a thing is not really strange where ritual honour for the holistic development of children is the hall mark of Indian tradition. In a unique way, India serveschildren and pledges to serve them better. It is unique in the sense that the nation remembers Pandit Jawaharlal Nehru, the former Prime Minister of India, every year on November 14 through glorification of children and dedication of the nation to their cause.

True to its traditional spirit, India has also joined the comity of nations in successive reaffirmation of global commitment to children's welfare as a signatory to the world declaration and by ratifying the Convention on the Rights of the Child.[16]

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15. India and the ILO-Fifty Years in Retrospect, [Government of India, Department of Labour and Employment, 1969], pp.34-35, in Joshi, Preeta, *International Labour Organisation and Its Impact on India*, *op.cit.*, p.68.

16. *The Hindu*, November 14, 1994, p.15.

India, that is Bharat, belongs to all, whatever the creed, caste or class; that is the categorical imperative of our Republic, as the historical Preamble proclaims. A society where everyone may unfold his personality without inhibitions-social, cultural, economic or other-alone is truly democratic and the Indian Constitution, the founding deed of our free nation, expresses these values in its text and texure. Indeed, the very title of our Republic as democratic, secular, socialist is an emphatic affirmation of this principle. The great Preamble is a perspective setter because it is not only the conscience of the Constitution but is an imperative guide to the meaning of the whole instrument.[17] The Constitution of India proclaims in its Preamble, among other things, three most important constitutional goals of the nation.[18] In exercise of the sovereign will as expressed in the Preamble, the people of India have unfailingly adopted the democratic ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality.[19] It is a document of social revolution casting an obligation on the state to transform the *status quo ante* into a new human order in which justice social, economic and political, will inform all institutions of national life and there will be equality of status and opportunity for all.[20] It is plausibly through a charter that the government of men turns into a

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17. Krishna Iyer, V.R., *Salvaging Democracy: Some Reflections*, *op.cit.*, p.21.

18. "We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens; JUSTICE, social economic and Political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of nation.

19. *A.K. Gopalan* Vs. *State of Madras*. AIR 1950 S.C. 27.

20. Chaturvedi, R.G. Dr., *Justice: Natural, Social, Economic and Political*, The Law Book Company (P) Ltd., Allahabad, 1990, p.22.

government of laws. Hence it is all the more necessary for a modern state to promote the social and economic welfare of the community through satisfaction of minimum needs and ensuring of distributive justice to all individuals in the society and for that purpose, the state's intervention in every aspect and sphere of human life has become important these days and the negative attitude of being let alone stands gradually abandoned.[21] "The state, therefore, which seeks to survive must continually transform itself to the demands of men who have an equal claim upon the common welfare which is its ideal purpose to promote", says Laski.[22] This marked the significant development of the growing realisation that the traditional rights like those of freedom, liberty and equality could hardly be meaningfully enjoyed unless accompanied by social and economic rights or that the concept of that rights of the individual had to be tempered with the concept, "Justice - social, economic and Political".[23] Social justice is thus the objective of democracy as also the objective of Indian Constitution having richer contents for freedoms and the rule of law as integral parts of social justice. Social justice wedded to democratic polity ordains justice to all the members of the society in all the facets of human activity-physical,

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21. Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights: Relationship and Policy Perspectives*, Deep and Deep Publications, New Delhi, 1990, pp.9-10. Distributive Justice is explained as justice which is not confined to a fortunate few but takes within its sweep large masses of disadvantaged and under-privileged segments of society, justice which not only penetrates and destroys inequalities of race, sex, power, position or wealth, but is also heavily weighted in favour of the weaker sections of humanity; justice which brings about equitable distribution of the social, material and political resources of the community. See Sharma, Sudesh Kumar, Distributive Justice under Indian Constitution 45-47 [1986], Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, ibid.*, p.10.

22. Harold Laski, A Grammar of Politics 39 [1975], in Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, ibid.*

23. Subhash C.Kashyap, Human Rights and Parliament, 4 [1978], in Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, Ibid.*

intellectual and spiritual and in all fields of human endeavour - social, political and economic.[24] The democratic republic thus destined to fulfill the needs of the society stakes the privilege of being styled as a welfare state - a state that strives to secure the welfare of the people establishing the essential conditions of good living.[25] The leaders of our freedom movement also wished the vision of future India within which liberty and distributive justice would be meaningful ideals for all, a society in which the means of spiritual, social and economic self-fulfilment and self-expression would be secured to every human being by mutually complementary fabrics of legal protection and shared ideals of distributive justice.[26] To recapitulate, it will not be difficult to persuade ourselves convincingly that the whole basis of entire freedom movement was to secure the people of India not only civil and political rights, but also social and economic rights. This was sequel to the idea that political freedom without socio-economic justice would be puerile and hence with due promptitude the same was propagated by the national leadership from the days of freedom

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24. Justice K.Subha Rao, *Social Justice and Law*, Dr.Shyma Prasad Mukerjee Memorial Lecture Series, The Institute of Constitutional And Parliamentary Studies, National Publishing House, Delhi, 1974, p.4.

25. Chaturvedi, R.G. Dr., *Justice: Natural, Social, Economic and Political*, *op.cit.*, p.513.

26. It is stated that in ancient India also people enjoyed 'civil rights', 'economic rights' and 'legal rights'. These were comprehended in *Dharma* or inferred from the concept of duties and occupied an important place in the literature of Smritis. See Rangaswami Aiyangar, Ancient Indian Polity 118 [1935]; See B.A Saletore, Ancient Indian Political Thought and Institutions 249-266 [1963], U.N. Goshal, A History of Indian Political Ideas 550 [1959]. In Arthasastra Kautilya recorded the specific injunction that "The King shall provide the orphan, the dying, the infirm, the afflicted and the helpless with maintenance, he shall also provide subsistence to helpless expectant mother and also the children they gave birth to". See B. Shiva Rao, The Framing of India's Constitution: A study 319-320 [1968], S.Sundara Rami Reddy, "Fundamentalness of Fundamental Rights and Directive Principles in the Indian Constitution", 22 Journal of Indian Law Institute 399-407 [1980], in Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, op.cit.*, pp.34-35.

struggle.[27] Mahatma Gandhi for whom *Puran Swarajya* meant not only liberation from foreign yoke, but a means to give to the people of India what was due to them, in the form of dignified life where they would be free from want and misery, degradation and discrimination and be enabled to live a good though simple life.[28] Even as he desired "to wipe every tear from every eye", he observed: "Let there be no mistake about my conception of *Swaraj*. It is complete independence of alien control and complete economic independence.... Then take economic independence. It is not a product of industrialisation of modern or western type. Indian economic independence means to me the economic uplift of every individual, male and female by his or her own conscience effort".[29] In the same vein, Austin has rightly observed that 'two revolutions, the national and the social, had been running parallel in India since the end of the First World War.... With independence, the national revolution would be completed, but the social revolution must go on. Freedom

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27. See generally, B.Pattabi Sitaramayya, The History of the Indian National Congress [Padma Publications, Bombay, 1946], Vol.i and ii. It is observed that To Indians, the sense of enjoying rights had their roots from the ancient days. There occurred a long gap between ancient and modern history due to foreign invasions and assertion of political power. That is why most of the contemporary scholars trace them to the Indian freedom struggle. For tracing the origin of rights in ancient India reference may be made to U.N. Ghoshal, A History of Indian Political Ideas 550 [1959]; V.P.Verma, Studies in Hindu Political Thought and Its Metaphysical Foundations 259 [1974]; A.S Altekar, State and Government in Ancient India 64 [1958]; B.A. Saletore, Ancient Indian Political Thought and Institutions 248-266 [1963], in Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, ibid.*, p.20.

28. Granville Austin, The Indian Constitution, *op.cit.*, 52-53. See Dr.Pattabi Sitaramayya, The History of the Indian National Congress, 1935-1947. Vol.ii, 5 [1974]; Tarachand, History of the Freedom Movement in India 283 [1987]; A.B.Keith, Constitutional History of India 164-225 [1961] [Reprint]; Subash C.Kashyap and Savita Kashyap, Tryst with Freedom [1973], Sharma, Sudesh Kumar *Directive Principles And Fundamental Rights, ibid.*, p.34.

29. See The Challenge of Social Justice 11-12, in Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, ibid.*

was not an end in itself, only a means to an end.[30] Nehru who is second to none in advocating for the establishment of a true democratic society cherished "that end being the raising of people... to higher levels and hence the general advancement of humanity".[31] The pledge of dedication to the service of India and her people meant for Nehru, "the ending of poverty and ignorance and disease and inequality of opportunity".[32] The Indian Nation marched to freedom in this background. Its path was strewn with pledges of national leaders which the Constituent Assembly was to tread upon. The Constituent Assembly adopted the historic Objectives Resolution on 22 January 1947 the substance of which was substantially incorporated in the Preamble and Parts III and IV of the Constitution.[33] Para V states:

> "Wherein shall be guaranteed and secured to all the people of India, justice-social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality".[34]

Dwelling on the need to make provisions for re-structuring the socio-economic order and ensuring social and economic justice to he people, Nehru, speaking

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30. Granville Austin, The Indian Constitution, *op.cit.*, p.26, in Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, ibid.*, p.35.

31. *Ibid.* See Nehru, Unity of India II [1938], in Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, ibid.*

32 . Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights, ibid.*

33. *Ibid.*, p.37.

34. *Ibid.*

on the resolution regarding the aims and objectives before the Constituent Assembly, said:

> "The first task of this Assembly is to free India through a new Constitution, to feed the starving people and clothe the naked masses and give every Indian fullest opportunity to develop himself according to his capacity".[35]

The interlinked goals of personal liberty and economic freedom then came to be incorporated in two separate parts, nevertheless parts of an integral, indivisible scheme which was carefully and thoughtfully nursed over half a century. They are an expression of same urge[36] assigning a visibly important place to human rights covering both the traditional political and civil rights and the relatively new socio-economic rights.[37]

The Indian Constitution is thus not merely a constitutional document but rather a social document in the furtherance of bringing about socio-economic revolution. Hidayatullah, J., emphatically said:

> "... This social document is headed by a Preamble which epitomizes the principle on which the Government is intended to function and these principles are later expanded into Fundamental Rights in Part III and the Directive Principles of State Policy in Part IV...".[38]

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35. *Minerva Mills Ltd. and Others* Vs *Union of India and Others*. [1980] 3 SCC 625 at p.701.

36. See S.K. Agarwal, "Directive Principles of State Policy" in Hidayatullah, M. [ed], *Constitutional Law of India*, Vol.i, Bar Council of India Trust, New Delhi. 1984, p.650.

37. *Motilal* Vs *U.P.Government*. AIR 1951 All.257.

38. *Golaknath* Vs *State of Punjab*. AIR 1967 S.C.1643 at p.1693 - 94.

In the same judgment, Subba Rao, C.J., said:

> "...It [Part IV] enjoins to bring about a social order in which justice, social, economic and political shall inform all the institutions of national life. It directs it to work for an egalitarian society where there is no concentration of wealth, where there is plenty, where there is equal opportunity for all, to education, to work, to livelihood, and where there is social justice...".[39]

Speaking in the same vein but highlighting the importance and relevance of compromise between the Fundamental Rights and the Directive Principles, Mathew, J., in *Keshavananda Bharati and Others* Vs *State of Kerala and Others* observed as under:

> "The object of the people in establishing the Constitution was to promote justice, social and economic, liberty and equality. The modus operandi to achieve these objectives is set out in Parts III and IV of the Constitution. Both Parts III and IV enumerate certain moral rights. Each of these parts represents in the main the statements in one sense of certain aspirations whose fulfilment was regarded as essential to the kind of society which the constitution-makers wanted to build. Many of the Articles, whether in Part III or Part IV, represent moral rights which they have recognised as inherent in every human being in this country. The task of protecting and realising these rights is imposed upon all the organs of the state, namely, legislative, executive, and judicial....Free and compulsory education under Article 45 is certainly as important as freedom of religion under Article 25. Freedom from starvation is as important as right to life. Nor are the provisions in the Part III absolute in the sense that the rights represented by them can always be given full implementation in all circumstances whereas practical exigencies may sometimes entail some compromise in the implementation of the moral claims in Part IV. When you translate these rights into socio-political reality, some degree of compromise must always be present. Part IV of the Constitution translates moral claims into duties imposed on

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39. *Ibid.*, p.1655.

> government but provided that these duties should not be enforceable by any Court...".[40]

Elaborating the proposition that though the Directive Principles and the Fundamental Rights are placed in two distinct parts of the Constitution, yet both together constitute "broad spectrum of human rights", thereby furthering the goals of social, substantial and real justice to the people, Bhagwati, J., in another case observed:

> "It is not possible to fit fundamental rights and directive principles in two distinct and strictly defined categories, but it may be stated broadly that fundamental rights represent civil and political rights, while directive principles embody social and economic rights. Both are clearly part of the broad spectrum of human rights. If we look at the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 18, 1948, we find that it contains not only rights protecting individual freedom [See Articles 1 to 21] but also social and economic rights intended to ensure socio-economic justice to everyone [Article 22 to 29]. There are also two international covenants adopted by the General Assembly for securing human rights,... Both are international instruments relating to human rights. It is therefore not correct to say that fundamental rights alone are based on human rights while directive principles fell in some category other than human rights. The socio-economic rights embodied in the directive principles are as much a part of human rights as the fundamental rights. Hegde and Mukerjee, JJ., were to my mind right in saying in *Keshavananda Bharati's Case* at page 312 of the Report that : [SCC p.479, para 646]
>
> > The directive principles and the fundamental rights mainly proceed on the basis of human rights.
>
> Together they are intended to carry out the objectives set out in the preamble of the Constitution and to

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40. AIR 1973 S.C. 1461 at p.1948.

> establish an egalitarian social order informed with political, social and economic justice and ensuring dignity of the individual not only to a few privileged persons but to the entire people of the country including the have-nots and the handicapped, the lowliest and the lost".[41]

He further observed in the same case:

> "... But it is in the directive principles that we find the clearest statement of the socio-economic revolution. The directive principles aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from fulfilling their best selves. [Granville Austine: The Indian Constitution: Cornerstone of a Nation, p.51]. The fundamental rights are no doubt important and valuable in a democracy, but there can be no real democracy without social and economic justice to the common man and to create socio-economic conditions in which there can be social and economic justice to everyone, is the theme of the directive principle. It is the directive principles which nourish the roots of our democracy provide strength and vigour to it and attempt to make it a real participatory democracy which does not remain merely a political democracy but also becomes social and economic democracy with fundamental rights available to all irrespective of their power, position or wealth. The dynamic provisions of the directive principles fertilise the static provisions of the fundamental rights.... There is a real connection between individual liberty and the shape and form of the social and economic structure of the society. Can there be any individual liberty at all for the large masses of people who are suffering from want and privation and who are cheated out of their individual rights by the exploitative economic system?... The directive principles, therefore, impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the

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41. *Minerva Mills Ltd. and Others* Vs. *Union of India and Others*. [1980] 3 SCC 625 at p.702.

> country. It will thus be seen that the directive principles enjoy a very high place in the constitutional scheme and it is only in the frame work of the socio-economic structure envisaged in the directive principles that the fundamental rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our people and deprived people who do not have even the bare necessities of life and who are living below the poverty level".[42]

Expressing the view that the constitutional framework is founded on a fine balance and harmony between the two, Chandrachud, C.J., again in the same case speaking through the majority view of the constitution bench said:

> "The significance of the perception that Parts III and IV together constitute the core of the commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution. Granville Austin's observation brings out the true position that Parts III and IV are like two wheels of a chariot one no less important than the other... They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In otherwords, the Indian Constitution is founded on the bed rock of the balance between Part III and IV....
>
> ... But just as the rights conferred by Part III would be without a radar and a compass if they were not geared to an ideal, in the same manner the attainment of the ideals set out in Part IV would become a pretence or tyranny if the price to be paid for achieving that ideal is human freedoms...".[43]

The excerpts from the judgments of the Supreme Court are quite reflective of the message of the framers of the Constitution, travelling far and

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42. *Ibid.*, p.705.

43. *Ibid.*, p.654.

wide, in the nature of warning. The warning - forecast was the realisation of the fact that the survival of India depended on the achievement of the great social and economic change.[44] President Rajendra Prasad assured the nation that the Assembly's and the government's aim was 'to end poverty and squalor... to abolish distinction and exploitation and to ensure decent condition of living.[45] Shri B. Das said : "It is the primary duty of the Government to remove hunger and render social justice to every citizen and to secure social security".[46] Shri K. Santhanam wrote that the choice for India is between rapid evolution and violent revolution because the Indian masses cannot and will not wait for a long time to obtain the satisfaction of their minimum needs.[47] Jawaharlal Nehru aptly warned the Constituent Assembly saying: "If we cannot solve this problem, soon all our paper Constitution will become useless and purposeless".[48] The whole gamut of problem facing the nation concerning good of her own national shaped the task of the government around forty years ago.

The vantage point the constitutional scheme has reached unfolding its potentials true to the aspirations of the people and true to the wishes of the makers of the Constitution through the judicial craftmanship of the apex court and as a result thereof, the place of salience the Fundamental Rights and the

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44. Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights*, *op.cit.*, p.42.

45. *Constituent Assembly Debates*, Vol.v, pp.1-2.

46. *Ibid.*, p.339.

47. *The Hindustan Times*, August 17, 1947; Granville Austin, The Indian Constitution, *op.cit.*, p.27, in Sharma, Sudesh Kumar, *Directive Principles And Fundamental Rights*, *op.cit.*, 43.

48. *Constituent Assembly Debates*, Vol.ii, p.317.

Directive Principles received, have made it imperative to draw together the provisions of the Constitution relating to children for closer scrutiny of their status under it. The ideals of the democratic republic, as stated earlier, as envisaged in the Preamble are staggered in various provisions of the Constitution. The following are the provisions relevant to the study.

6.2 EQUALITY OF STATUS AND OPPORTUNITY

The doctrine of equality which is the foundation of social justice is enshrined in Article 14 of our Constitution.[49] Article 14 is galaxy of concepts of equality before law and equal protection of law. While the former means that everyone is equal before law, that no one can claim special privileges and that all people are equally subjected to the ordinary laws of the land, the latter implies that no discrimination can be made either in the privileges conferred or in the liabilities imposed.[50] The expression "equality before law" is well known in the English constitutional law and to the readers of Dicey - though Article 14 takes it from the Constitution of the Irish Free State. The other expression "equal protection of the laws" is taken from the Fourteenth Amendment to American Constitution.[51] However, in a society of unequal basic structure, it is well-nigh impossible to make laws suitable in their application to all persons alike. So the courts have evolved and perfected the doctrine of classification to

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49. It reads: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

50. K.Subha Rao, *Social Justice And Law*, *op.cit.*, p.24.

51. Hidayatullah, M., [ed], *Constitutional Law of India*, Vol.i, Bar Council of India Trust, New Delhi, 1984, p.258.

give practical content to the principle of equality, for men differ physically, intellectually and spiritually.[52]

Article 14 embodies an affirmative content guaranteeing more than formal equality. There is a growing belief that the government has an affirmative duty to eliminate inequalities and perhaps to provide opportunities for the exercise of other fundamental rights. The force of the idea of a state with obligations to help its members does seem to have increasing influence. The idea seems to find expression, for example, in a number of cases in America involving racial discrimination and in the decisions requiring a state to offset the effects of poverty by providing counsel, transcripts on appeal and expert witnesses. Recent American judicial decisions in the areas of criminal procedure, voting rights and education, however, suggest that the traditional approach may not be completely adequate affirming that government has affirmative responsibilities for human rights and especially for the elimination of inequalities.[53] The same is true of India also.

The concept of equality under our Constitution is also seen as a dynamic concept sweeping every process equalisation and protective discrimination. Indeed, the primary imperative' of Article 14 is equal opportunity for all. What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality and given proper opportunity and environment, everyone has

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52. K.Subha Rao, *Social Justice And Law*, *op.cit.*, p.24.

53. Baxi, Upendra, *K.K.Mathew on Democracy, Equality and Freedom*, *op.cit.*, pp.224-225.

a prospect of rising to the peak.[54] Eventually, in the view of the Supreme Court equality must not remain mere idle incantation but it must become a living reality for the large masses of people. Progressive measures to eliminate group disabilities and promote collective equality are not antagonistic to equality. The same cannot be countenanced as it would make the equality clause sterile and perpetuate existing inequalities.[55] Reinforcing the theme of affirmative content of equality, the court said:

> "Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, in fact, legal equality always tends to accentuate it. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality".[56]

This is the reason and the justification for the demand of social justice that the under-privileged citizens of the country should be given a preferential treatment in order to give them an equal opportunity with more advanced sections of the community.[57] "It is, therefore, necessary to take into account defacto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring

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54. *Pradeep Jain* Vs. *Union of India* [1984] 3 SCC 654 at p.672.

55. *Ibid.*, p.676.

56. *Ibid.*

57. K.Subha Rao, Social Justice And Law, *op.cit.*, p.26. Justice M.Hidayatullah goes to argue that: "Positive action by the state which is called in the USA as the affirmative action has to be legalised under Article 14. This action has to treat the underdogs more favourably so that they can be given an equality of status with the more fortunate few. It is only then that the equality of status will lead to equality of opportunity. See Hidayatullah, M., (ed), *Constitutional Law of India*, Vol.i, *op.cit.*, p.258.

about real equality".[58] Similar view is also expressed by Shri R.K. Gupta in his article published in the Journal of the Indian Law Institute. He said thus :

> "Equals must be treated equally, unequals must be treated unequally, not to perpetuate the existing inequalities but to achieve and maintain a real state of effective equality.... If the notion of equality were so defined as to include unequal but in separate treatment to the deprived, it would ensure justice to the people across the ideological bounds".[59]

However, it is emphasised that the equal protection enquiry no longer ends once numerical equality is established. Rather, the equal protection clause has been held to require resort to a standard of proportional equality based on need, which entails that states in framing legislation must take account of private inequalities of wealth and educational background.[60] The principle embodying the above proposition evolved by L.T Hobhouse in his book on "Elements of Social Justice" speaks as under:

> "Every person within the system has his needs. Everyone not incapacitated has his functions. Justice has to harmonise the needs with one another and the functions with the needs. Considering needs, it effects harmony by equal provision for equal needs but subject to the bearing of such provision upon functions".
>
> "The distribution is proportionate in the sense in which that term includes qualitative as well as quantitative adjustment and in this relation the equality of justice is a proportionate equality".[61]

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58. *Pradeep Jain* Vs. *Union of India*. [1984] 3 SCC 654 at p.676.

59. K.Subha Rao, *Social Justice And Law*, *op.cit.*, p.26.

60. Developments: Equal Protection of the Laws, [1968-69] 82 Harv. Law Review p. 1065 at p. 1177; also See, *Bennett Coleman* Vs *Union of India*. [1972] 2 SCC 788 [per Mathew, J., dissenting], in Baxi, Upendra, *K.K.Mathew on Democracy, Equality and Freedom*, *op.cit.*, p.225.

61. K.Subha Rao, *Social Justice And Law*, *op.cit.*, p.26.

Justice Mathew summing up the functional relationship of the concept of equality to the constitutional scheme observed:

> "Equality, therefore involves, up to the margins of sufficiency, identity of response to primary needs. And that is what is meant by justice. We are rendering to each man his own by giving him what enables him to be a man. We are, ofcourse, therein protecting the weak and limiting the power of strong".[62]

It is, therefore, manifest that the doctrine of equality has been so evolved that while it demands equal treatment between equals, it enables the under-privileged sections of the community to have equal opportunity with others. The concept of social justice only implements the doctrine of equality and indeed it gives practical content to the latter. The doctrines of equality and social justice are complementary to each other endeavouring to promote equal society.[63]

6.3 RIGHT TO LIFE WITH HUMAN DIGNITY

There are certain vital rights common to all men without any distinction on any ground which constitute the very foundation of these rights. The right to life and personal liberty belongs to this class. It is the most essential basic human right in a democratic society. It is most fundamental of all the Fundamental Rights guaranteed by the Constitution of India to the people in the country.[64] Respect for the life, liberty and property of everyman is today not

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62. Baxi, Upendra, *K.K.Mathew on Democracy, Equality and Freedom*, *op.cit.*, p.227.

63. K.Subha Rao, *Social Justice And Law*, *op.cit.*, p.27.

64. Bansal, V.K., *Right to Life And Personal Liberty in India*, Deep and Deep Publications, New Delhi, 1987, p.49.

merely a norm for decision or a policy of the state but has actually become a principle of the living law.[65] The right to life by no means merely mean the sanctity of life. It takes within its sweep every opportunity necessary to develop one's personality and potentiality to the highest level possible in the existing stage of our civilisation. Mere right to exist will have little value, if it is to be bereft of any opportunity to develop or to bring out what is in every man or woman. It follows inevitably that the right to life is the right to live decently as a member of a civilised society and have all the freedoms and advantages that would go to make life agreeable and living assured in a reasonable standard of comfort and decency. Being the basis of all the rights, the right to life is effectively provided under Article 21 of the Indian Constitution[66] which has come to occupy the position of 'broadening omnipresence' in the scheme of fundamental rights.[67] It has become 'a sanctuary for human values' and therefore has been rightly termed as the 'fundamental of fundamental rights.[68]

Freedom and well-being are the two facets of Article 21 pointing to the index of negative and positive contents as it is not correct to state that because the article is couched in a negative language, positive rights to life and liberty

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65. Clarence Morris, "The Great Legal Philosophers", p.449, in Bansal, V.K., *Right to Life And Personal Liberty in India*, *op.cit.*, p.9.

66. Article 21 states: "No person shall be deprived of his life or personal liberty except according to procedure established by law"

67. Bansal, V.K., *Right to Life And Personal Liberty in India*, *op.cit.*, p.49.

68. *Ibid.*, p.50.

are not conferred.[69] Article 21 is a fabric of human rights staking its clout from the Bill of Rights.[70] As stated earlier, though the Bill of Rights as conceived and formulated by revolutions were more in answer to the sufferings or grievances of their people against the then rulers than formal declarations of abstract rights, the rights incorporated therein are such essential claims of humanity that their declaration and enforcement must be deemed to be the primary function of every civilised government.[71] The right to life under Article 21 is the most precious right of human beings in civilised society. Its negative content requires that none should be deprived of his life - in its broader connotation, without a just, fair and reasonable procedure. The right to life, the court held, does not mean the continuance of a person's animal existence but a right to the possession of each of his limbs and faculties by which life is enjoyed.[72] Every limb or faculty thus enjoys protection under Article 21 for the enjoyment of life guaranteed thereunder. Liberty is the off-spring of high

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69. *J.P.Unnikrishnan* Vs. *State of Andhra Pradesh and Others* AIR 1993 Sc 2178 at p.2190. The Supreme Court while dealing with the scope of Article 21 observed in *Maneka Gandhi* Vs *Union of India*. AIR 1978 S.C. 547 at pp.620-21 that: "It is obvious that Article 21, though couched in negative language, confers the fundamental right to life and personal liberty...".

70. Article 21 is one of the fundamental rights which are said to have the texture of Basic Human Rights. [See *A.K.Gopalan* Vs. *State of Madras*. 1950 SCR 88 at pp.96-97, 248-293 and *R.C.Cooper* Vs. *Union of India*. AIR 1970 S.C. 564 at pp.592, 596-597]. See *J.P.Unnikrishnan* Vs. *State of Andhra Pradesh and Others*. AIR 1993 S.C.2178 at p.2188.

71. K.T Shah, A Note on Fundamental Rights, See B. Shiva Rao, Framing of India's Constitution, Vol.ii, p.39, in Bansal, V.K., *Right to Life And Personal Liberty in India*, *op.cit.*, p.87.

72. *Kharak Singh* Vs. *State of U.P.* AIR 1963 S.C 1295. Per Ayyangar, J., the court followed *Munn* Vs. *Illinois*, 94 US 113 [1877].

civilization as well.[73] Itpostulates the creation of a climate wherein there is no suppression of the human spirits, wherein there is no denial of opportunity for the full growth of human personality, wherein head is held high and there is no servility of the human mind or enslavement of the humanbody.[74] While the above visualises freedom from interference by the state or interjection by the state when such interference by anyone is on the spree, the concept of well-being enlists the dedication of the state to the cause of the common citizens, and the establishment of social order. If democracy is to mean anything it must have respect for the common man and his reasonable wants and not use him cynically as a pawn in the political game[75]. Liberty needs an expanding economy as its primary condition; for where this obtains, men feel that they have hope, and hope is, perhaps, the most vital condition for the respect of law[76]. To the large masses of citizens sulking in poverty and illiteracy, notions of individual freedom and liberty are apt to sound as empty words for it is plain that hunger makes impatient and angry leading to blindness.[77] Hence, the concept of social justice as the crusader of removing all inequalities and affording equal opportunities to all, steps in for salvation of liberty as social justice without liberty

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73. Webster's Work 293 Quoted in Chandra Pal, "Personal Liberty and P.D. in Free India," 1978 KLJ, Vol.4, p.143, in Bansal, V.K., *Right to Life And Personal Liberty in India*, *op.cit.*, p.87.

74. Khanna, J., 2 IJIL Vol.18 [1978], p.133, in Bansal, V.K., *Right to Life And Personal Liberty in India*, *ibid.*

75. P.B. Gajendragakar, "Law, Liberty and Social Justice," pp.65-66, in Bansal, V.K., *Right to Life And Personal Liberty in India*, *ibid.*, p.35.

76. Isaich, Berlin, "Two concepts of Liberty", p.14, in Bansal, V.K., *Right to Life And Personal Liberty in India*, *ibid.*

77. Bansal, V.K., *Right to Life and Personal Liberty in India*, *ibid.*, p.38.

leads to a dog's life.[78] In all fairness to the mission envisaged in the Preamble, Article 21 which is the heart of fundamental rights has received expanded meaning from time to time. The reason is that great concepts like life and liberty were purposefully left to gather meaning from experience as they related to the whole domain of social and economic fact. It has long been recognised that the right to life and liberty inhere in every man and political, social and economic changes entail the recognition of new rights and the law in its eternal youth grows to meet the demands of society.[79] More particularly, from Article 21 has sprung up a whole lot of human rights jurisprudence.[80]

Viewed in retrospect, it may be stated that it was in deference to such spirit underlying the Constitution, the court started making Article 21 a living reality for the poor and downtrodden by reading into it the concept of human dignity embracing the bare necessities of life such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing

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78. K. Subha Rao, "*Social Justice and Law*", *op.cit.*, p.118.

79. *J.P.Unnikrishnan* Vs *State of A.P and Others* AIR 1993 S.C 2178 at p.2189.

80. Right to go abroad [*Satwant Singh* Vs *A.P.O., New Delhi.* AIR 1967SC 1378]; Right to privacy [*Govinda* Vs *State of M.P.* AIR 1975 S.C.1378]; Right against solitary confinement [*Sunil Batra* Vs *Delhi Administration.* AIR 1978 S.C.1675]; Right against bar fetters [*Charles Shraj* Vs. *Supdt., Central Jail.* AIR 1978 S.C.1514]; Right to legal aid [*Hoskot* Vs *State of Maharashtra.* AIR 1978 S.C.1548]; Right to Speedy trial [*Hussainara Khatoon* Vs. *State of Bihar.* AIR 1979 S.C.1360]; Right against hand cuffing [*Prem Shankar* Vs. *Delhi Administration*, AIR 1980 S.C.1535]; Right against delayed execution [*T.V.Vaitheeswaran* Vs. *State of Tamilnadu.* AIR 1983 S.C. 361]; Right against custodial violence [*Sheela Barse* Vs. *State of Maharashtra.* AIR 1983 S.C.378]; Right against public hanging [*A.G. of India* Vs. *Lachmadevi.* AIR 1986 S.C.467]; Right to pollution - free environment [*M.C.Mehta* Vs. *Union of India.* AIR 1988 S.C.1037]; Right to doctor's assistance [*Parmananda Katro* Vs. *Union of India.* AIR 1989 S.C.2039]; Right to shelter [*Santistar Builder* Vs. *N.K. Totame.* AIR 1990 S.C.630].

ourself in diverse forms, freely moving about and mixing and commingling with fellow human beings.[81] Though the court admitted that the magnitude and content of the components of this right would depend upon the extent of the economic development of country, it was emphatic that it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Hence every act which offends against or impair human dignity would constitute deprivation *pro tanto* of this right.[82]

Explaining further the content and the spirit of Article 21 in the light of the Directive Principles of State Policy, the Supreme Court in *Bandhua Mukti Morcha Case* said:

> "...This right to live with human dignity enshrined in Article 21 derives its life breadth from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no state... has right to take any action which will deprive a person of the enjoyment of these basic essentials. ... but where legislation is already enacted by the state providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the state can certainly be obligated

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81. *Francis Carolie Mullen* Vs. *Delhi Administration.* AIR 1981 S.C.746. at p.753.

82. *Ibid.*

> to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21...".[83]

The Supreme Court then gave a gentle push to the theme of human dignity throwing open further to the deprived the portals of human rights portraying right to livelihood and right to education under Article 21 thus taking it to a new height. A batch of petitions challenged the eviction of the slum dwellers from their squalid shelters, without hearing and without alternative accommodation, on the plea of violation of the right to life as guaranteed by Article 21 contending that right to life would be illusory without a right to the protection of the means by which alone life can be lived.[84] Assuming the factual correctness of the premise that eviction of the petitioners from their dwellings would result in deprivation of their livelihood, the court examined the question whether the right to life includes the right to livelihood and answered by saying:

> "We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right of life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood".[85]

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83. *Bandhua Mukti Morcha* Vs. *Union of India and Others*. AIR 1984 S.C.802 at pp.811-12.

84. *Olga Tellis* Vs. *Bombay Municipal Corporation and Others*. [1985] 3 SCC 545.

85. *Ibid.*, p.572.

The court while pointing out that if the right to livelihood is not treated as a part of the right to life, then the most easy method of depriving a person of his life would be to deprive him of his means of livelihood to the point of abrogation, affirmed saying:

> "That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life".[86]

Article 21 riding on the crest of a wave has received further impetus from the decision of the apex court in *Delhi Development Horticulture Employees' Union* Vs. *Delhi Administration, Delhi and others.*[87] It observed:

> "There is no doubt that broadly interpreted and as a necessary logical corollary, right to life would include the right to livelihood and, therefore, right to work. It is for this reason that this court in *Olga Tellis* vs. *Bombay Municipal Corporation* [(1985) 3 SCC p.545] while considering the consequences of eviction of the pavement dwellers had pointed out that in that case the eviction not merely resulted in deprivation of shelter but also deprivation of livelihood inasmuch as the pavement dwellers were employed in the vicinity of their dwellings. The Court had, therefore, emphasised that the problem of eviction of the pavement dwellers had to be viewed also in that context. This was, however, in the context of Article 21 which seeks to protect persons against the deprivation of their life except according to procedure established by law. This country has so far not found it feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly, therefore, it has been placed in the Chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same "within the limits of its economic capacity and development". Thus

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86. *Ibid.*

87. [1992] 4 SCC 99.

> even while giving the direction to the State to ensure the right to work, the Constitution makers thought it prudent not to do so without qualifying it".[88]

The valiant Supreme Court stole march over the Legislature in affirming the ideals of the Constitution more faithfully making Article 21 more flamboyant by reading right to education into it as a component of life and liberty. Provided with an opportunity in *Mohini Jain's Case*,[89] a Division Bench [Two Judges] of the apex Supreme court addressed itself to the question whether life having come to be given expanded meaning takes within it education as well. On consideration of Articles 38, 39 (e) and (f), 41 and 45 of the Constitution, the Bench observed:

> (a) "the framers of the Constitution made it obligatory for the state to provide education for its citizens". (b) the objectives set forth in the Preamble to the Constitution cannot be achieved useless education is provided to the citizens of this country: (c) the Preamble also assures dignity of the individual. Without education, dignity of the individual cannot be assured: (d) Parts III and IV of the Constitution are supplementary to each other. Unless the "right to education" mentioned in Article 41 is made a reality, the fundamental rights in Part III will remain beyond the reach of the illiterate majority.[90]

Explaining the rationale, the Supreme Court said :

> "Right to life" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It

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88. [1992] 4 SCC 99 at p.110.

89. *Mohini Jain* Vs *State of Karnataka and Ors*, [1992] 3 SCC 666. This is the petition filed challenging the charging of capitation fee in consideration of admission to educational institution as amounting to denial of citizen's right to education and arbitrary and violative of Article 14.

90. *Ibid.*, pp.667-78.

> extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make an endeavour to provide educational facilities at all levels to its citizens".[91]

The same was, however, reconsidered later by a larger bench of the Supreme Court in *J.P.Unnikrishnan*.[92]

In an exciting and remarkable judgment, the court affirmed its earlier decision substantially except for a few changes. Reference to Article 45 of the Constitution in particular, Article 26(1) of the UDHR, the observation of John Ziman and other decisions of the courts of law was conspicuous with an emphasis on making education as a blissful reality for the majority of the under privileged.[93]

In this backdrop, Justice Mohan said:

> "14 years [sic.] spoken to under the Article, had long ago come to an end. We are in the 43rd year of independence. Yet, if Article 45 were to remain a pious wish and a find hope, what good of it having regard to the importance of primary education? A time limit was prescribed under this Article. Such a time limit is found only here. If, therefore, endeavour has not been made till now to make this Article reverberate with life and articulate with meaning, we should thing the court should step in. The state can be obligated to ensure a

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91. *Ibid.*, pp 679-80.

92. *J.P.Unnikrishnan* Vs *State of Andhra Pradesh and Others*, AIR 1993 S.C. 2178. The case was decided by a bench consisting of five judges.

93. *J.P. Unnikrishnan* Vs *State of A.P. and Others.* AIR 1993 S.C. 2178 at pp.2197-2198.

right to free education of every child up in the age of 14 years...".[94]

However, Justice Mohan hastened to add: He further observed:

> "...by holding education as a fundamental right up to the age of 14 years this court is not determining the priorities. On the contrary, reminding it of the solemn endeavour, it has to take, under Article 45, within a prescribed time, which time limit has expired long age".[95]

Concurring with Justice Mohan, Justice B.P.Jeevan Reddy speaking for himself and on behalf of Justice S.Ratnavel Pandian added:

> "*In Bandhua Mukti Morcha* [AIR 1984 S.C.802] this court held that the right to life guaranteed by Article 21 does take in "educational facilities". [The relevant portion has been quoted hereinbefore]. Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this court referred to hereinbefore, we hold, agreeing with the statement in *Bandhua Mukti Morcha*, that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In *Mohini Jain* [1992 AIR SCW 2100], the importance of education has been duly and rightly stressed.... In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail...".[96]

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94. *Ibid.*, pp.2196-97.

95. *Ibid.*, p.2198.

96. *Ibid.*, p.2230. Justice Jeevan Reddy quoted Articles 41, 45 and 46 of the Constitution to elicit the importance attached to education by the founding fathers. In regard to interplay between Part III and Part IV of the Constitution, Justice further observed: "It is thus well established by the decisions of this court that the provisions of Part III and IV are supplementary to each other and that Fundamental Rights are but a means to achieve the goal indicated in Part IV. It is also held that the Fundamental Rights must be construed in the light of the Directive Principles...".

Having declared the right to education as part of the fortress of Article, 21, Justice Reddy sought to draw comfort from parallel views held across the frontiers emphasising education as a mark of success in the life of mankind.[97]

6.4 RIGHT AGAINST EXPLOITATION AND EVOLUTION OF WHOLESOME CHILDHOOD

6.4.1 Article 23

Slavery was one of the most aggravated form of human bondages that existed in ancient times. The Indian class eulogized Hindu society of the past was not an exception to this.[98] In the Smrithis there was mention about different types of slavery practised in ancient India of which enslaving of human beings in order to clear a debt was one.[99] This practice continued even in modern India as bonded labour system. Under this system one person can be bonded to provide labour to another for years until an alleged debt is supposed to be wiped out which never seems to happen during the lifetime of a bonded labourer.[100] With the ushering in of independence, great anxiety was shown to protect the human decency and dignity and to abolish all sorts exploitation through constitutional protection. Thus the right against exploitation was made

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97. *Ibid.*, pp.2230-31.

98. M.Rama Jois, Legal and Constitutional History of India [1984], Vol.I, p.304, in T.Radhamani, "Public Interest Litigation and Abolition of Bonded Labour", 1994 *Lab.I.C.* 98 [Journal section].

99. *Ibid.*

100. *Ibid.*

as a guarantee under the Constitution[101] which later became the hallmark of Indian constitutional jurisprudence.[102] Later, a comprehensive and progressive piece of legislation was passed to supplement the mandate of Article 23 through abolition and rehabilitation.[103] The provision of the constitutional guarantee in 1950 and the adoption of its tail piece in 1976 did not bring cheer in the life of the deserved lot whom they wanted to protect. Article 23 and the bonded labour law faced their existential crisis in the face of the evil's continued threat forcing the rule of law to retreat ignonimously. However, the crest fallen Article 23 did not fail to receive from the Supreme Court the best of its attention when the existence of pernicious practice was brought to its notice through an innovative technique of Public Interest litigation.[104] In the arena of the abolition of bonded labour, the decision of the Supreme court in the *Asiad Labour Case*[105] is the pioneer.

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101. Article 23 reads: *Prohibition on traffic in human beings and forced labour*: Traffic 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".

102. According to the noted constitutional historian Dr.M.V.Pylee, 'the ideal of one man one vote one value, equality before the law and equal protection of the laws etc. will be a teaming illusion and a promise of unreality if one man was subjected to another man and one's life was at the mercy of another and this is the reason behind the passing of Article 23. See M.V.Pylee, Indian constitution [1967] pp.117-118, in T.Radhamani, Public Interest Litigation and Abolition of Bonded Labour, 1994 *Lab.I.C.* 98 at p.99.

103. The Bonded Labour System [Abolition] ordinance, 1975 was promulgated in the first instance. Later it was replaced by the Bonded Labour System [Abolition] Act, 1976.

104. Litigation instituted by *pro bona* public to espouse the cause of the underprivileged.

105. *People's Union for Democratic Rights* Vs *Union of India and Others*. AIR 1982 S.C.1473.

The Supreme Court explained in its own way to the detractors of the constitutional mandate the philosophy behind the provision in the following words:

> "... the constitution makers enacted Part IV of the Constitution setting out the constitutional goal of a new socio-economic order with a view to creating socio-economic order. Now there was one feature of 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 parts of the country. This evil was the relic of a feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which "we, the people of India" were determined to build and constituted a gross and most revolting denial of basic human dignity. It was therefore necessary to eradicate this pernicious practice and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such practice could not be allowed to continue to belight the national life any longer.... The constitution makers therefore decided to give teeth to their resolve to obliterate and wipe out this evil practices by enacting constitutional prohibition against it in the chapter on fundamental rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force.... The prohibition against "traffic in human beings and beggar and other similar forms of forced labour" is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the state but also against any other person indulging in any such practice".[106]

The Supreme Court in its wisdom felt that Article 23 sweeps every form of forced labour. Giving expression to the same, the court proceeded to add:

> "What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force" which would make such labour or service "forced labour" may arise in many ways. It may be

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106. *Ibid.*, p.1486.

> physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice or alternative and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force" it would be forced labour. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour"...".[107]

In another petition invoking the epistolary jurisdiction of the Supreme Court, it was pointed out that in some of the stone quarries in Faridabad district near the city of Delhi, large number of labourers were languishing under abject conditions of bondage.[108] The court,brushing aside the technical plea of the State Government of Haryana insisting on a formal, rigid and legalistic approach in the matter of a statute which is one of the most important measures for ensuring human dignity,[109] had taken a pragmatic approach in interpreting the

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107. *Ibid.*, p.1489-90.

108. *Bandhua Mukti Morcha* Vs. *Union of India and Others*, AIR 1984 S.C.802.

109. *Ibid.*, p.827.

term 'bonded labour' and held that it would be the plainest duty of the state to implement the provisions of law and gave as many as twenty-one directions.[110] Again in *Neeraja Choudhary* Vs. *State of Madhya Pradesh*,[111] the Supreme Court reaffirmed its view in *Bandhua Mukti Morcha* and held that the violation of the provisions of the bonded labour law is violation of Articles 21 and 23 of the Constitution.[112] The decisions of the Supreme Court subsequently made in *Mukesh Advani* Vs. *State of Madhya Pradesh*[113] and *P.Sivasamy* Vs. *State of Andhra Pradesh*[114] were also to the same effect.

6.4.2 Article 24

The Constitution of India is solicitous of children's well-being, development and their rights. First, Article 24, a fundamental right against exploitation, prohibits employment of children below the age of fourteen in hazardous employment.[115] This Article has been placed along with Article 23 under the caption "Right against Exploitation". Exploitation which means the utilization of persons for one's own ends, is opposed to the dignity of the individual, to which the Preamble to our Constitution refers. For child labour also, *Asiad Labour Case* is relevant. Taking note of the constitutional

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110. *Ibid.*, pp.834-37.

111. AIR 1984 S.C. 1099.

112. *Ibid.*, p.1106.

113. AIR 1985 S.C.1363.

114. [1988] 4 SCC 466.

115. Article 24 reads: *Prohibition of employment of children in factories*, etc. "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".

philosophy of childhood and its protection,[116] the Supreme Court observed: "...This is a Constitutional prohibition which, even if not followed up by appropriate legislation, must operate *propio vigore*...".[117] The court further said:

> "...many of the fundamental rights enacted in the Part III operate as limitations on the power of the state and impose negative obligations on the state not to encroach on individual liberty and they are enforceable against the state. But there are certain fundamental rights conferred by the Constitution which are enforceable only against the whole world and they are to be found *inter alia* in Article 17, 23 and 24".[118]

Much important are the same that it is the constitutional obligation of the state to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental rights by the private individual who is transgressing the same, as the poor too have civil and political rights and the Rule of Law is meant for them also, though today if exists only on paper and not in reality.[119]

6.4.3 Article 45

Secondly, the intent of protecting and promoting childhood is abundantly made clear by Article 45. It requires the state to endeavour, within the first

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116. It may be stated that the integrated child development and wholesome personhood was the ideal which the national movement stove for. The fundamental rights and freedoms inclusive of all types aspired for was towards ensuring the dignified existence of mankind under the sum and the childhood significantly marks the beginning of the journey towards such existence.

117. *People's Union for Democratic Rights* Vs *Union of India and Others*. AIR 1982 S.C.1473 at p.1480.

118. *Ibid.*, p.1485.

119. *Ibid.*, p.1490.

decade of independence, to provide "free and compulsory education for all children until they complete the age of fourteen years".[120] Article 45 exemplifies the notion of employment of children as being by its very nature hazardous. And so keen was the solicitude of the constitution - makers that in a rare dedication they enjoined vigorous action in the very first decade of India's Constitution.[121]

6.4.4 Article 39(e) and (f)

Thirdly, the Directive Principles embodied in Article 39 (e) and (f) reinforce the intent when they obligate the state to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.[122]

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120. *Article 45. Provision for free and compulsory education for children*: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years".

121. Baxi, Upendra, Unconstitutional Politics and Child Labour, *Mainstream* Vol.xxxi(47), October 2, 1995, p.17.

122. Article 39 reads: The State shall, in particular, direct its policy towards securing... (e) that the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment.

All these Articles on the collective plane pay reverence to childhood and its protection which is reverberated through their unmistakable intent. Giving a vivid picture of the constitutional philosophy of childhood, Prof.Baxi says:

> "And, therefore, the Constitution is crystal clear. Reading these formulations of the Constitution together we get a complete picture of the duties of the state and society towards India's children. There is not a moment's doubt in my mind that the Constitution of India prohibits child labour in all its forms. There is some possibility of equibbling about Article 24 which speaks of children being employed in hazardous professions. It is merely a quibble because what is hazardous has been identified by the formulations of the Directive Principles of State Policy which I just mentioned. If the child is denied primary, elementary education because of the need to work, it is hazard. According Article 45 every child is not merely expected but is under a duty to be educated. The duty belongs to the state. The duty is cast upon the child. The duty is cast upon the parents. Any negation of education is hazard. Any work that entails the negation of education is a hazard. Similarly any exposure to exploitation and material abandonment, I am using Directive Principles 39 - is a hazard...".[123]

Striking a concordant note the Supreme Court said:

> "The spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years. The provision of Article 45 in the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in school, economic necessity forces grown up children to seek employment".[124]

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123. Varghese, Jose, *Law Relating to the Employment of Children in India*, Socio Legal Resource Centre, Secunderabad, 1989, p.39.

124. *M.C. Mehta* Vs. *State of Tamil Nadu and Others*. (1991) 1 SCC 283 at pp.284-85.

Thus it is amply clear that Article 45 is not rhetoric but essentially a mission, more so after *Mohini Jain*[125] and *Unnikrishnan*[126] paying obeisance to Article 45 is the sacred endeavour of the state. Scrupulous observance of the same is a healthy covenant deserving commendation. Adherence to Article 45 is the observance of Article 24 under strict vigil. Thus provision of education is the two-in-one principle. The constitutional mandate was to enforce this principle immediately in respect of those who were eligible for education when the Constitution was brought into force and 'the ten-years reprieve' was meant to take care of the backlog of illiterates who had no such opportunity under the previous dispensation. It may also be stated that the constitution makers did not feel liking to place both Articles 24 and 45 under Part III for reasons which are not strange. They hoped that the warning they administered would make the future government on toes forcing them to implement the directives with all seriousness and every child, consequently, would be able to enjoy, *inter alia*, the facility of education without there being a right to demand. The government would then have proved to be a model state ensuring the all round welfare of the people and would have proved worth of its existence. As a parallel development, Article 24 would have become *otiose*. Equally, the intent is clear that by way of abundant caution the constitution makers desired to guarantee the right against exploitation by placing Article 24 under Part III. Perhaps, the intuition of the constitution makers that the future government might turn deaf ears to their call for an egalitarian society might have made them to be cautious in their endeavour. Hence they desired to go in for Article 24. It is with clear

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125. [1992]3 SCC 666.

126. AIR 1993 S.C.2178.

intent to avoid children who might be denied the educational opportunities as per the constitutional directive being put on the dock of being exploited through employment mercilessly, by arming them with a sword to fight the recalcitrant state which failed to prove its worth.[127] It is indeed paradoxical to note, at the cost of repetition, that such a great humanising principle dedicated to the citizens of tomorrow namely Article 24, has received inapt attention in the volumes of legal luminaries.[128]

Also, the intervention of the judiciary especially the apex court on the cause of children involving scores of violations of their rights under the Constitution is few and far between, to say the least. Even such rare interventions are not inspiring and are merely taken gestures intending to take

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127. The relationship between Article 45 and 24 and the follow-up which is borne out in the above discussion may not look out of-context especially in the background of what justice says: "It is the solemn duty of a welfare state, for its own existence, the well-being and progress of the people, to strive for the establishment of an egalitarian society wherein economic, social and political equality and justice prevail".

    Also, the prime architect of our Constitution Dr.Ambedkar paying a glowing tribute to the efficacy of Directive Principles said: "It is the intention of the Assembly that in future both the Legislative and the Executive should not merely pay lip service to these principles but they should be made the basis of the legislation and executive actions that may be taken hereafter in the matter of governance of the country", *Constituent Assembly Debates*, Vol.viii, p.41.

    Baxi characterises this approach as a *fundamentalist* strategy of outlawing child labour which the Constitution adopts [emphasis already provided]. Explaining the same he says: "A fundamentalist reading of these words [namely Article 24] emphasises that this Article prohibits employment and argues that all employment is *per se*, in itself, hazardous because to put a child to work is to confiscate *childhood*. But the constitutional intent was to promote and protect childhood" Baxi, Upendra, Unconstitutional Politics and Child Labour, *Mainstream*, Vol.xxxi (47), October 2, 1995, p.18.

128. See Chapter One, notes **42-44**, *supra*.

the petitions off the court without any vibrant touch. Rather it would have done well had it left literature on the philosophy of childhood which the legal luminaries failed to provide, to educate the honorable detractors about the constitutional imperative of educating the children.[129] Support for the above view may be gathered from at least two instances.[130]

Two more provisions are also significantly relevant. They are Article 15[3] and Article 51[e] of the Constitution. While the former enables the state to make special provisions for children, the latter directs the state to foster respect for International Treaty obligations.

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129. This is borne by the fact that the *Asiad Labour Case* is the pioneer in the arena of the abolition of bonded labour and child labour. The said decision came in 1982 and later, the Supreme Court intervened as and when PIL were filed invoking its jurisdiction. Mostly these petitions were disposed without any detailed discussion on the issue involved. Its absence has proved to be a major obstacle in the understanding of the constitutional philosophy of childhood. On the lack of knowledge on issues relating to child's rights. Baxi says: "What is needed, first, is the elimination of *adult illiteracy* [emphasis already provided] about child's rights. Adult illiteracy about child's rights is widespread among policymakers, intellectuals/idealogues, opinionators [media], and even among human rights communities. This illiteracy also makes possible a comprehensive and continual ignorance about linkages between the rights of the child and human rights enunciations which are not child-centered and yet affect their and our common future. Promotion of adult literacy about child's rights is a *sine qua non* for their realisation". See, Baxi, upendra, Human Rights of children: Reclaiming our Common Future, *Mainstream*, Vol.xxxii(20). April 2, 1994, p.6.

130. The response of the Supreme Court in the two petitions filed by this researcher was not encouraging. Summary disposal of the PIL *K.Chandrasegaran* Vs. *Union of India and Others* [W.P.No.8778/83] without any discussion on merits or alternatively without monitoring on the basis of the report of the Committee [the Haribhaskar Committee] came as a shot in the arm of the Government of Tamilnadu to wrap the report under cover. The second petition of this researcher also met the same fate but with a difference. Granting of three years' time in this case (*K.Chandrasegaran* Vs. *Tamilnadu and Others* [1992] 1 SCC 222) to the State Government of Tamilnadu to phase out child labour in beedi factories was disappointing and contradictory as well in the light of its own observation that the employment was hazardous and eventually the enforcement of the provisions of the law was to be accelerated. Consequently, the other direction of the apex court in the above case requiring the employer to insure the children against the risk of harmful employment would also lose significance.

6.5. NATIONAL POLICY FOR CHILDREN

Right through the ages, care for children has been one of the causes to which Indian policy has remained committed. In independent India, the commitment was enshrined in our constitutional provisions. As a follow up to this commitment, Government of India adopted a National Policy for children in 1974.[131] The policy document declares:

> "The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans 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 score our larger purpose of reducing inequality and ensuring social justice".[132]

Further, the policy reaffirming the constitutional provisions recalling the Resolution on a National Policy on Education, adopted by the Indian Parliament and reiterating its allegiance to the U.N. Declaration of Rights of Child declares that

> "it shall be the policy of the state to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The state shall progressively increase the scope of such services so that, within a reasonable time, all children in the

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131. Govt. of India, Department of Women and Child Development, National Plan of Action: A Commitment to the Child, August 1992, p.1.

132. Government of India, Department of Social Welfare, National Policy for children, August 22, 1974.

country enjoy optimum conditions for their balanced growth".[133]

With the passage of time, the government felt that legislation alone would not be sufficient to tackle the problem of child labour. The said constraint to which the government was subjected was notably subsequent to the adoption of a comprehensive legislation on child labour in 1986. Then the government, reacting with promptitude to the needs of time and the needs of its own subjects of which it is supposed to be aware, formulated a National Policy on Child Labour. The said policy was announced in parliament in August, 1987.[134] The said policy displays an action plan envisaging the legislative action plan, the focussing of general development programmes, for benefiting child labour wherever possible, and project-based plan of action in areas of high concentration of child labour engaged in wage/quasi-wage employment.[135] Under the legal action plan, emphasis will be laid on strict and effective enforcement of the provisions pertaining to employment of children. Secondly, various national development programmes which exist with wide coverage in the areas of education, health, nutrition, integrated child development and income and employment generation for the poor, will be activised to create socio-economic conditions in which the compulsions to send the children to work will diminish and children are encouraged to attend schools rather than take wage employment. Under the project - based Plan of action, ten projects were proposed to be taken up in areas of child labour concentration with special responsibilities.

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133. *Ibid.*

134. Government of India, National Policy on Child Labour, August, 1987.

135. *Ibid.*

The last decade saw dramatic technological development particularly in health, nutrition and related spheres opening up new vistas of opportunities for redeeming by India age-old pledges to the cause of children.[136] India's commitment to children became firmer and firmer with its joining comity of nations in the successive re-affirmations of the global commitment to the cause of children during 1989-90. The U.N. Convention on the Rights of the Child in November 1989, the World Conference on Education For All at Jomtien in March 1990, the global consultation on Water and Sanitation in September 1990, the World Summit on Children in the autumn of 1990 and the SAARC Summit on Children soon after the World Summit were all part of this reaffirmation process which transcended national barriers. To cap it all, India is a signatory to the World Declaration (September 1990) in the Survival, Protection and Development of Children and the Plan of Action for implementing it.[137] In response to such reaffirmation, India drew up a National Plan of Action identifying quantifiable targets in terms of major as well as supporting sectoral goals representing the needs and aspirations of almost over 300 million children in the spheres of health, nutrition, education and related aspects of social support.[138]

6.6 LEGISLATIVE FRAMEWORK ON CHILD LABOUR

During the last century, the legislative endeavours to regulate child labour in India were almost negligible. The only piece of legislation which can

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136. Government of India, National Plan of Action: A Commitment to the Child, *op.cit.*, p.1.

137. *Ibid.*, pp.1-2.

138. *Ibid.*

be termed as the fore-runner statutory protection of child worker in India was the Indian Factories Act, 1881 which prohibited employmentof children below the age of seven years in factories employing 100 or more workers. Besides, it also prohibited employment of children above seven years for more than nine hours a day. Successive employments on the same day werealso prohibited.[139] After ten years, the said act was amended and the statutory protection to the children was made to advance by increasing the minimum age to nine years, restricting the hours of work to a maximum of seven hours a day and prohibiting work at night between 8 P.M. and 5 A.M.[140]

In contrast, during the first half of the present century, there was significant improvement in the endeavour. Especially before independence, a number of legislative efforts were made offering protection to the working children and most of the enactments are still in force. They are (i) the Mines Act originally passed in 1901 and amended in 1923 [later replaced by the act of 1952];(ii) amendments to Factories Act especially the one in 1911, 1912 and 1926; (iii) the Tea District Emigrant Labour Act, 1932 which was later on replaced by the Plantation Labour Act of 1951; (iv) the Children [Pledging of Labour] Act, 1933; (v) the Indian Ports Act, 1931; (vi) the Employment of Children Act, 1938.[141] Among the above, the Children [Pledging of Labour] Act, 1933 was passed to combat the evil of practice of pledging child labour.

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139. Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.20. See also Varghese, Jose, *Law Relating to the Employment of Children in India*. *op.cit.*, p.11.

140. *Ibid.*

141. This Act was repealed by the Child Labour (Prohibition And Regulation) Act of 1986.

The Report of the Royal Commission on Labour which reported wide-spread prevalence of such practice especially in the carpet andbeedi factories of Amristar, textile mills of Ahmedabad and beedi factories of Madras recommended for early action.[142] In the same way, the Employment of children Act, 1938 was passed following the recommendations of the 23rd session of the International Labour Conference. The said Conference adopted a Convention in which a special article for India was incorporated requiring the ratifying Indian Government to prohibit children below the age of thirteen to work in certain employments and the result was the enactment of 1938.[143]

The period that followed the independence of the country saw more additions made to the existing legal framework with a difference. The difference lies in the fact that the endeavour was steadfast and concrete and in the adoption of the Constitution which, following the recognition of a number of rights for the children, further pushed in drastic changes in the legislative framework. The protective measures that were added after independence and further would include a new and comprehensive factory law adopted in 1948. the Minimum Wages Act of 1948, the amendment to the Employment of Children Act of 1938 seeking to raise the minimum age of employment to fourteen years, the Plantation Labour Act of 1951, the Mines Act of 1952, the Merchant Shipping Act of 1958, the Motor Transport Workers Act of 1961, the Apprentices Act of 1961, the Atomic Energy Act of 1962, the Beedi and Cigar Workers [Conditions of Employment] Act of 1966, the Shops and Establishment

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142. Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.21.

143. *Ibid.*, p.22.

Acts in various states and the Child Labour [Prohibition And Regulation] Act of 1986.

It would be noticed that of the various central legislations listed above, two namely, the Children [Pledging of Labour] Act and the Apprentices Act relate to employment in general. The Employment of Children Act and its successor the Child Labour [Prohibition And Regulation] Act, though the title is widely expressed, are in their scope confined to certain specified employments. The Factories Act may be said to cover a wide range of establishments, but even that act cannot be described as a kind of general law on the subject of child labour. The Plantations Labour Act, the Mines Act, the Merchant Shipping Act, the Motor Transport Workers Act, the Atomic Energy Act and the Beedi and Cigar Workers [Conditions of Employment] Act are even more narrow in their scope.[144] Thus, no 'general' law regulating child labour is to be found on the Indian statute book. This is because historically, legislation was passed not with a focus on the employment of children, or for that matter, persons falling under any other age group or any particular category, but with reference to the need to regulate employment in a particular industry as and when such need arose.[145]

The salient provisions of the different enactments are as follows:

(a) The Children [Pledging of Labour] Act, 1933

The Act defines 'child' as a person who is under the age of fifteen years. The Act prohibits the making of agreements to pledge the labour of children and

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144. *Ibid.*, p.25.

145. *Ibid.*

employments of children whose labour has been pledged. The Act also lays down that any agreement or contract to pledge the labour of a child is void and imposes penalties.[146]

[b] The Factories Act, 1948:

This Act regulates the conditions of service of persons employed in factories covered by Section 2(m). The expression 'factory' is defined under Section 2(m) as meaning any premises wherein the strength of workers is above ten in case where a manufacturing process is being carried onwith the aid of power, and above twenty where such process is being carried on without the aid of power. While the Act prohibits the employment of children below the age of fourteen years,[147] it regulates the employment of young persons comprising of children who have not attained the age of fifteen years and adolescents who have attained the age of fifteen but have not attained the age of eighteen years in the manner specified thereunder.[148]

(c) The Plantations Labour Act, 1951:

Under this Act, children of any age are employable subject to the conditions stipulated therein. Delineating permissive policy of employment of children of all age, this Act lays stress only upon the regulation of the conditions of their employment. It is provided that employment of children and adolescents

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146. The Children (Pledging of Labour) Act of 1933, Section 3.

147. The Factories Act of 1948, Section 67.

148. *Ibid.*, Sections 68-75.

is permissible if they are certified to be fit for work.[149] Besides, it prescribes hours of work in respect of children.[150]

[d] *The Mines Act, 1952*:

This law relating to health and safety of workers employed in mines prohibits the employment of children below fifteen years in any mine. Such persons are also prohibited from being present in any part of a mine, which is below ground or in any cast working in which any mining operation is being carried on.[151] An adolescent, a person who has completed fifteen years of age but has not completed eighteen years of age, is allowed to work in any part of a mine which is below ground, if he has completed his sixteenth year and possesses a medical certificate from a certifying surgeon to the effect that he is fit for work as adult. It also prescribes hours of work for which such persons are employable. An adolescent who is certified as fit for work as adult shall not be employed in any mine except between the hours of 6 P.M. and 6 A.M.[152] An adolescent who does not possess such a certificate may work in mine above ground for not more than four-and-a-hours in any day shall not be employed between the hours of 6 P.M. and 6 A.M.[153]

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149. The Plantations Labour Act of 1951, Section 26.

150. *Ibid.*, Section 25.

151. The Mines Act of 1952, Section 45.

152. *Ibid.*, Section 40.

153. *Ibid.*, Section 44.

(e) The Merchant Shipping Act, 1958:

Sections 109 to 113 of the Act deal with the employment of persons under eighteen years of age. With regard to children below the age of fourteen, it is stipulated that engagement or employment of such persons in any capacity in any ship is prohibited under the Act except in a school ship, or training ship, in accordance with the conditions prescribed in this behalf or in a ship in which all persons employed are members of one family or in a home-trade ship of less than two hundred tons gross or where such persons areto be employed on nominal wages and will be in the charge of their father or other adult near male relatives.[154]

(f) The Motor Transport Workers Act, 1961:

This Act prohibits employment of a child below fourteen years of age in any capacity.[155] An adolescent who is allowed to work on the basis of medical fitness certificate shall get it renewed every year.[156] He should not be allowed to work more than 6 hours a day including rest of interval for half-an-hour.[157]

(g) The Apprentices Act, 1961:

This Act providing for the regulation and control of training of apprentices prescribes the minimum age of fourteen for being engaged as an apprentice to

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154. The Merchant Shipping Act of 1958, Section 109.

155. The Motor Transport Workers Act of 1961, Section 21.

156. *Ibid.*, Sections 22-23.

157. *Ibid.*, Section 14.

undergo training in any designated trade.[158] In the case of a minor, a contract of apprenticeship is to be made by the guardian.[159]

(h) The Atomic Energy Act, 1962:

Employment of persons below the age of eighteen years as radiation workers is prohibited except with the previous permission in writing of the competent authority under the Act.[160]

(i) Beedi and Cigar Workers (Conditions of Employment) Act, 1966:

This Act also prohibits employment of a child below fourteen years.[161] An adolescent between fifteen years and eighteen years can be employed even without a certificate of fitness. However, such a young person is not allowed to work at night.[162]

(j) The Child Labour (Prohibition And Regulation) Act, 1986:

This Act prohibits the employment of children in certain occupations and processes, while regulating the conditions of work in other jobs. Child is defined

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158. The Apprentices Act of 1961, Section 3.

159. *Ibid.*, Section 4.

160. Radiation Protection Rules of 1971, Rule 5.

161. The Beedi and Cigar Workers (Conditions of Employment) Act of 1966, Section 24.

162. *Ibid.*, Section 25.

as a person who has not completed his fourteen year of age.[163] Workshop is defined as any premises [including the precincts thereof] wherein any industrial process is carried on, but does not include any premise to which the provisions of Section 67 of the Factories Act of 1948, for the time being, apply.[164] Children are prohibited from being employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on. It is provided that this section shall not apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.[165] The Central Government can add any occupation or process to the Schedule on the advice of the Child Labour Technical Advisory Committee to be constituted for the said purpose under the Act.[166] The Act also replaces various age limits prescribed in other statutes.[167] It provides for the protection of children employed in activities not enumerated in the Schedule. The Act regulates the hours and periodsof work of working children besides prescribing weekly holidays.[168] It also empowers the Central and State Government to make rules for ensuring health and safety of the working children.[169] Employers are required to maintain a register with the names and birth dates of all children they

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163. The Child Labour (Prohibition And Regulation) Act of 1986, Section 2(ii).

164. *Ibid.*, Section 2(x).

165. *Ibid.*, Section 3.

166. *Ibid.*, Sections 4-5.

167. *Ibid.*, Sections 23-26.

168. *Ibid.*, Sections 6-8.

169. *Ibid.*, Section 13.

employ.[170] Any citizen may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.[171] It is further provided that the provisions of this Act and the rules made thereunder are in addition to, and not in derogation of, the provisions of the Factories Act of 1948, the Plantations Labour Act of 1951 and the Mines Act of 1952.[172]

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170. *Ibid.*, Section 11.

171. *Ibid.*, Section 16.

172. *Ibid.*., Section 20.

CHAPTER SEVEN

CHILD LABOUR IN INDIA: SCALE AND SEVERITY

7.1 PROBLEM EXPLAINED

Even as the government and well meaning agencies debate their future more often, at least a few hundred million children continue to earn a pittance in the most unimaginable work conditions. At an age when their tiny hands should be handling toys only and their heads bent over story books, there are an estimated 18 million children in India alone who have no conception of what childhood actually is. Engaged as they are in the most hazardous occupations, their hands have toyed with explosives and molten glass, their nimble fingers have woven exquisite Kashmiri carpets and Benarasi sarees and their agile feet have run across furnaces where grown-ups fear to tread. The bane of child labour has been there in this country since ages. Today, India has the largest work force of child labour in the world. Every third household in India has a working child and every fourth child in the age group of 5 to 15 is employed.[1] However, disparate the figures, there is no dispute over the fact that most of these children work long hours under inhuman conditions and on starvation wages, almost certain to be burnt out in more ways than one by the time they reach adulthood.[2] In a stirring speech Ms. Margret Alwa, the then Union

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1. *Career and Competition Times*, April 1987, p.17.

2. *The Hindu*, November 14, 1990.

Minister of State for Youth, Sports and Women and Child Development said: "We have seen children who have no minimum hours [sic] of work, no social security ... no trade unions, no lobby in the Parliament; who have no guarantee of any kind except the guarantee of exploitation and complete destruction of childhood".[3] We need be reminded too often that it is a national disgrace that millions of small children in India spend the major part of their daytime hours at work. It is paradoxical indeed that the victims are precisely those for whose rights the U.N. signed a Charter of their rights. Among these rights are that of living and the natural one of being a child. Two simple rights these are which they are not able to enjoy.

India is a founding member of the U.N. and the ILO.[4] It is a signatory to the Universal Declaration and has ratified the Convention on the Rights of the Child. Besides, it has given a place of pride to the basic human rights and freedom in the Constitution and has completed four decades since its adoption. What meaning these rights have for the millions of children working for long hours in ramshackle factories to whom childhood still remains a distant dream.

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3. *The Hindu*, July 29, 1986.

4. Becoming a founder member of international organisations needs special mention. It is necessary to emphasise that the government having become a founder member of the international organisation becomes responsible for ensuring that the state reaps the maximum benefits from its membership of the international organisation. An analogy can be drawn from the unusual manner in which India became the member of the World Trade Organisation. It is stated that India formally became a member of the new WTO on December 30, 1994 after its Ambassador signed the WTO agreement and deposited the instrument of ratification signed by the President and only two days were left then to meet its obligations under the agreement. In order to meet its obligations, India amended its Patent Act of 1970, and Anti-Dumping law through late-night promulgations of two ordinances by the President on December 31, 1994 which act of the government invited criticism from the political quarters. See *The Hindu*, January 4, 1995; *The Hindu*, January 2, 1995; *The Hindu*, December 31, 1994.

Children are slaving for their masters from morning till night and receiving a pittance for the work done by them, with their souls and bodies mortgaged to their employers. Unfortunately, such places are abound in several parts of the country and at these places one may come face to face with stark naked poverty. Poverty is the greatest injustice from which they suffer and it is a source of manifold ills such as ignorance, illiteracy, helplessness and despair which in their turn give birth to innumerable kinds of injustices. They are worsted in their encounters with the dominant sections. The vested interests feel that civil and political rights for freedom and democracy, priceless and invaluable though they are, simply do not exist for the vast masses of our people. Utter grinding poverty has broken the back and sapped the moral fibre of our children. The customary rituals of Children's Day [November 14] tend to obscure facts such as these, which expose the grave situation in which the majority of Indian children find themselves. Nothing could be more damning than the shameful realities swarming the national scene even after the lapse of four decades since independence. Met with disastrous failure is the magnificent Constitution whose directions have been thrown overboard. We can only frown on what appears to us of the unconcern of the power holders, if not indifference. To conclude for the time being, it may be again said because of the unconcern of the state about its obligations towards its children,

> The Declaration has turned to be "*Pious*"; the Fundamental Rights have proved to be "*Empty*"; and the implementation of the National Policy for Children has become "*Doubtful*". [Emphasis added].

However, it may be hastened to add that the above is not the last word but only a prologue to a "tragic story".

That children are the future citizens of the country is a well worn phrase. But it is a sad fact that these millions of such 'future citizens' are forced to begin drudgery at a tender age, sometimes when they are barely out of their swaddling cloths, bereft of play and the elevating influence of education, leads a miserable and, many times a short life. Labour becomes an absolute evil in the case of the child when he is required to work beyond his physical capacity, when hours of work interfere with his education, recreation and rest, when his wages are not commensurate with the quantum of work done, and when the occupation he is engaged in endangers his health and safety i.e., when he is exploited. As the problem of child labour cannot be understood apart from the standpoint of human values, its extent as a social evil can be determined only by methods of qualitative analysis of the jobs they are engaged in, of the dangers they are exposed to and the desirable opportunities they are deprived of by reason of their being gainfully employed.[5]

7.1.1 Magnitude of Child Labour

It is customary but inevitable[6] as well to begin the study of the problem with a pathetic note on the incidence of child labour. The statistic profile of child labour is alarming and shameful. In the world, Asia has the largest number of

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5. Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.8.

6. It is submitted that reference to statistics is always customary to explain the magnitude of the problem under study. In this case, it is also inevitable. It is considered to be so especially in the context of a 'confrontationist' attitude of India marking, on the one hand, the highest incidence of child labour working in inhuman conditions and, on the other, preaching human values in loud and clear voice [voice or noise?] with unusual spree and unusual concern for children and also playing a host seriously to oppose any move of the developed nations to link social clause to the world trade explaining that the child labour and other problems as indigenous to be dealt with in an indigenous way.

child labour.[7] In Asia, India has the dubious distinction of possessing the largest child labour force.[8] In India, the State of Tamil Nadu enjoys the reputation of having the highest incidence of child labour.[9] It is still paradoxical that in the world map of child labour, the State of Tamil Nadu enjoys the place of pride for having the highest incidence of child labour in single pocket [Sivakasi].[10] The prevalence of child labour in India is so widespread and common that it renders it unnecessary to quote in arithmetical numeracy with precision. But it is imperative as the child labour is a hidden force too. While the ILO study has estimated that there are 17 to 20 million child labourers in India and official estimates also hover around 20 million, non-governmental organisations suggest a figure of 55 million.[11] The wide gulf is explained as non-inclusion in the official estimate of children participation in household chores and some other unpaid activities.[12] Partial eclipse of total scale of its prevalence is also attributable to the absence of coverage of children employed in industries not governed by the provisions of law[13] and non-reporting of its

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7. Rajya Sabha Proceedings, Starred question No.19. dt. 26-4-1993.

8. *The Economic Times*, May 30, 1994.

9. According to the Survey of National Sample Survey Organisation, the State of Tamil Nadu tops the list. See *The Hindu*, February 17, 1991.

10. Kothari, Smithu, There's Blood on Those Matchsticks: Child Labour in Sivakasi, *Economic and Political Weekly*, July 2, 1983, p.1192.

11. *The Economic Times*, May 30, 1994.

12. *Seminar*, October 1988, p.30.

13. Laws like Factories Act, 1948 apply only to factories above a certain size. As a result, majority of the workforce are employed in establishments which are beyond the control of the law. Not surprisingly, it is in just such situations that most child labour is to be found.

prevalence inspite of its coverage for obvious reasons.[14] ILO claims the figures to be mere estimates which are clearly understated saying that it is practically impossible to arrive at an accurate estimate. Nevertheless, various cross-checks suggest that the ILO figures are an absolute minimum.[15]

7.1.2 Bonded Child Labour

In some developing countries, bonded labour as the payment of debtis prevalent among the most deprived populations of societies. India is no exception to this rule. India appears to be the flag bearer of this archaic social evil notwithstanding the constitutional prohibition in unmistakable terms.[16] The constitutional declaration prohibiting forced labour remains only on paper as the evil continues to prevail unabated in the community proving Tolstoy true. Tolstoy said:

> "The abolition of slavery has gone on for a long time. Rome abolished slavery. America abolished it and we did, but only the words were abolished, not the thing".[17]

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14. The case of non-reporting is explained as the result of existing nexus between the employers of children and the government officials supposed to phase out child labour. The inspectors whose job it is to ensure that none employs children admit that they do not bother to report the prevalence of child labour because their seniors hobnob with factory owners and are unlikely to act on their findings so they might as well save their own skin by not incurring the wrath of the powerful and ruthless local industrialists. *The Hindu*, November 14, 1990.

15. United Nations, *Exploitation of Child Labour*, *op.cit.*, p.3.

16. This is the impression one will ultimately get without fail if travels through the decisions of the Supreme Court on the issue of bonded labour reminding the obligation of the state under the Constitution earmarked in this behalf.

17. *P.Sivasamy* Vs. *State of Andhra Pradesh*. (1988) 4 SCC 466 at p.476.

For a loan taken at an exorbitant rate of interest the debtor virtually sells himself to the creditor and gets bonded usually for life and renders service for the purpose of satisfying the debt.[18] Slavery does not, however, stop with men and women. At its arm's length also are children. The creditors anxious to exploit the situation ensures that the debt is never satisfied and often on the traditional basis of pious obligation the liability is inherited by the children of the original debtor.[19] Reflected thus is the virtual bondage of national asset to the detriment of human dignity and constitutional values.[20] Its extent is the scale of national waste bringing the human face to disgrace.[21] In a way of confirming the sordid tale of bonded children, a public interest litigation was filed alleging abduction from Palamau District of Bihar and holding in bondage of 32 children in Mirzapur.[22] The evil still goes down to the hilt envisaging passage from bad to worse. The manifestations of the povertysyndrome are so intense that

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18. *Bandhua Mukti Morcha* Vs. *Union of India and Others*. (1991) 4 SCC 177 at p.186.

19. *Ibid.*, pp.186-187.

20. The Supreme Court in *Bandhua Mukti Morcha* Vs. *Union of India* [(1984) 3 SCC 161 at p.173] said: "... This system under which one person can be bonded to provide labour to another for years and years until an alleged debt is supposed to be wiped out which never seems to happen during the life time of the bonded labourer is totally incompatible, with the new egalitarian socio-economic order which we have promised to build and it is not only an affront to basic human dignity but also constitutes gross and revolting violation of constitutional values".

21. Between 8.7-21.0 per cent of bonded labourers in India are reported to be below 16 years of age. Marla, S. and Maharaj, R.N (1978) National Survey on the Incidence of Bonded Labour (Preliminary Report), New Delhi. Gandhi Peace Foundation and National Labour Institute. in P.M.Shah, *Health Status of Working and Street Children and Alternative Approaches to their health care. Advances in international maternal and child health*, vol.7, Oxford University Press, 1987, p.75.

22. Juyal, B.N., *Child Labour and Exploitation in the Carpet Industry: A Mirzapur - Bhadohi Case Study*, Indian Social Institute, New Delhi, 1987, p.1. See also Juyal, B.N., Who Wants it? *Seminar*, October 1988, p.21.

parents are forced to kill their kids[23] or mortgage them. children thus, have not only an intrinsic economic value to their families but are also a security deposit for loans.[24] The fact that even a child in the womb for that purpose is not spared[25] marks only the ever lowest profile in the history of the value of mankind.

7.1.3 Child Labour in India: An Exploited Army

Survival of a child, the foremost, and its growth and development, the next best in the logical pursuit, are paramount considerations in the emancipation of mankind. Dignity and dignified existence are the hallmarks of such emancipation. Duty to respect and ensure such values are axioms underlying the need to assist the child in its growth and development. Much less, the deprivation of growth and development through any means cannot be, by any standard of civilisation, the norm of a society professing faith in human values. For, a deprived child is an exploited child.[26] So states the report of the National Seminar on Education for Working Children, "the working child is an exploited child, committed by circumstances to a work which does not assist in

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23. Practice of female infanticide widely prevalent in some parts of the State of Tamil Nadu is incidentally referred to emphasise the level of protection children enjoy generally. However, the State, in order to overcome the problem, has come out with cradle baby scheme.

24. *Economic and Political Weekly*, September 7, 1985, p.1509.

25. A study conducted in a Sivakasi match factory in Tamil Nadu reported a woman worker saying: "The child in the womb is pledged to the factory and consumption and maternity loans are obtainable on the undertaking that the child born would work for the factory". *The Hindu*, August 17, 1986, p.3.

26. For discussion See Chapters Three to Five, *supra*.

his growth as a human being".[27] The Committee on Child Labour is also of the view that labour in the case of the child is harmful as it will be a stumbling block to its growth and development.[28] When a child is deprived of his childhood, it is like an adult losing his moorings.

A word of reminder is made to reiterate that nutrition, health and child labour go together. As child labour is both the cause and consequence of poverty, they sail together in developing countries. The major paradox is that it is the poorest population, at the lowest levels of human existence, who are obliged to work the most prematurely and this fact, far from resolving nutritional and health problems, accentuates them.[29] The lack of immunity arising as a result of nutritional deficiency makes the child more vulnerable.[30] The work that children undertake seriously impairs their physical health. The effects of exertion, fatigue and overwork on the developing body are bound to hinder, counteract, retard or event halt growth, quite apart from the matter of industrial diseases and accidents.[31] The psychological equilibrium of a child is also

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27. *The Hindu*, January 1, 1995, p.iv.

28. Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.8. See also Chapter Five, note 16, *supra.*

29. United Nations, *Exploitation of Child Labour*, *op.cit.*, p.11.

30. It is stated that the natural immunity that a growing child develops against the various infectious factors in the environment cannot fully develop in the child worker primarily because of malnutrition which invariably results from the poor quality of food they are forced to live on. Substandard and inadequate food coupled with hard labour fails to provide the body of the child worker with necessary nutrients that can ward off infection. Ghosh, A., A New Approach, *Seminar*, October 1988, p.40.

31. United Nations, *Exploitation of child Labour, op.cit.*, p.11.

affected by work that is performed at too early an age and is ill-suited to his physical constitution and capacity.[32]

The deleterious effects of work on the health of young vulnerable children is history given the flood of reports submitted by the social scientists, the media, committees appointed by the government, national and international voluntary organisations besides international agencies of the United Nations. What is intriguing is that the government obviously intending to shield its inefficiency in tackling the menace of child labour and rehabilitating them, often draws solace from the conservative approach of experts that "not all work is hazardous to children"[33] or "work can in fact be beneficial to the child".[34] The Committee on Child Labour for its part also persuaded itself to adopt a finer view of child employment[35] to draw a comfortable margin from child labour which is according to its own admission harmful. The attempt is to make the former virtuous. While such views are not infrequent, what is more important is that in former cases the opinionists themselves admit such views are not based on any scientific study.[36] The 'rider' part of the study is always given short shrift by the government in dealing with the indigenous problem in an indigenous way. However, the finer version of the committee is made to depend on the view that work by its very nature is enriching and as a direct fulfillment of child's natural

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32. *Ibid.*

33. Gore, M.S. 'Opening Address' in Usha Naidu and Kamini R.Kapadia (eds), Child Labour and Health: Problems and Prospects, Bombay, Tata Institute of Social Sciences, 1985, pp.2-3 in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.24.

34. David C. Pitt. 'Child Labour and Health in Usha Naidu and Kamini R.Kapadia (eds), Child Labour and Health, *op.cit.*, p.12 in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.24.

35. Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.8.

36. Burra, Neera. Health Hazards, *Seminar*, October 1988, p.24.

abilities and creative potentialities is always conducive to his healthy growth.[37] Such a view though easily held out is hard to be sustained in the reckoning of economic reality. A child is likely to receive creative potentialities only under ideal conditions of employment which themselves are inconceivable in a poverty stricken society. A child on the lap of poverty is more likely to be exploited as poverty and exploitation are inevitable companions in developing countries. The interwoven fabric of such reality turns its accusing finger to the government to prove its bonafides of such a fanciful claim. This is true of even apprenticeship being given under the government programmes in "child labour intense centres" as they are only 'make-believe' strategies to contain the criticism of child labour, if the ongoing programmes are any indication and they are only curse in disguise.[38]

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37. *Ibid.*, The ILO reports that those children forced to perform as "small adults" suffer greatly from psychological defects, anxiety and stress. It is said "The child's creativeness and ability to transcend reality are blunted and his whole mental world is impoverished". Reddy, Nandana, 'Of inhuman bondage', *Indian Express*, February 24, 1985, p.3.

38. The Handloom and Handicrafts Exports Corporation (HHEC), a Delhi-based government body is running 200 training centres where children aged 7-14 years are taught to weave carpets - a job declared hazardous and forbidden by law since the woolen fibres floating around are dangerous for the child's lungs eyes and skin. The centre is badly ventilated, ill-lit and fitted with floating fibres and dust. Barse, Sheela, 'Legitimising Child Labour', *Indian Express*, July 28, 1985, p.8. The Sanat Mehta Committee also noted that although the child stipend holders of the HHEC under the Ministry of Commerce were supposed to be above 12 years, many of them looked much younger, *Indian Express*, November 21, 1986.

    In the 'residential schools' maintained under the Labour Ministry Project in the carpet industry in Mirzapur District, child labour trainees receive a stipend at the rate of 4 rupees per day and a nutritious food allowance of 5 rupees per day. Considering the prevailing price level, such schools are found similar to 'poor houses' prevalent in the early phase of industrial civilisation. Shock was expressed over providing of training for children in carpet weaving, which is hazardous, under a government sponsored scheme. Juyal, B.N., Who Wants it, *Seminar*, October 1988, p.22.

The dreadful exploitation to which children were subjected in the mines and factories from the Industrial Revolution up to the beginning of the present century has practically vanished from the modern sector but it can still be found in agriculture and the informal sector, especially in less developed countries.[39] The legislation of many countries sets a minimum age below which child labour is prohibited, and stipulates an age group to which special arrangements apply. The exploitation of child labour always takes place without reference to the standards laid down by official regulations: either the child is employed at an age below the minimum age stipulated under the law, or he is employed in contravention of the prescribed standards.[40] Regulations on a minimum age for admission to employment, hours and conditions of work and appropriate wages are seldom applied. Many children work in conditions of grave risk to their health, life and social development. Often the working conditions severely tax the children's physical and mental resistance as a result, for example, of suffocating heat in enclosed premises or exposure to the elements in open - air work; humid and unhygienic environments; badly lit, unhealthy and excessively noisy workshops lacking the necessary safety devices, rest areas, sanitary

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(Contd.,)

Another example of the dangers of vocational training is provided by the government run so called training programme for children from 8 to 15 years in carpet work in Rajasthan; the children are made to work from 8 a.m. to 5 p.m. with an hour's break for lunch; and moreover only 42 per cent of them, it was found, practised the craft later. Manju Gupta, 'We Cut our Fingers but no Blood Falls", in Manju Gupta and Kalus Voll (eds), Child Labour in India, Lucknow: Atma Ram and Sons, 1987, p.44, in Kumar, Dharma, What can we do, *Seminar*, October 1988, p.35.

39. Mendelievich, Elias, Child Labour, *International Labour Review*, September-October 1979, p.562.

40. ILO, Minimum Age, General Survey of the Reports relating to Convention No.138 and Recommendation No.146 concerning Minimum Age, Report iii (Part 4B), International Labour Conference, 67th Meeting (Geneva, 1981), in United Nations, *Exploitation of Child Labour*, *op.cit.*, p.16.

installations and medical facilities; having to lift and carry excessively heavy loads, etc., all in violation of the principles set forth in the international instruments adopted by the ILO.[41] Employment and misery mark the bottomline of the lives of children.

Rapt attention is necessary to the health hazards to which children are subjected to by virtueof employment. Health hazards are of different kinds with varying degree of impact on the growth and development of the child. In some cases, the hazard is obvious and in others it is insidious. An employment is intrinsically hazardous if the child comes into contact with harmful substances like chemical [as in cases of balloon, match and fireworks and lock industry] or fire [as in the case of the glass industry] or cotton fluff and dust that damage the lungs [as in the case of powerloom industry] or any other organ of the body. Children are likely to contact silicosis, pneumoconiosis, byssionis etc. by working in the slate, lock, glass and powerloom industry and these occupations are intrinsically hazardous. Hazards are insidious if they find their origin either in the poor working environment or caused by the vulnerability of children.[42] Given the intricate nature of the problem involving the misery of children who are struggling for survival, it is sad to note that enough attention has not been paid

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41. Mendelievich, Elias, Child Labour, *International Labour Review*, September-October 1979, p.562.

42. Burra, Neera, Health Hazards, *Seminar*, October 1988, p.25.

    Health hazards can be divided into four major categories; (1). *Chemical*: Exposure to dusts, vapours, gases, mists, fumes etc.; (2). *Physical*: Noise, vibration, heat and light radiation, pressure etc.; (3). *Biological*: Insects, mites, yeasts, hormones, bacteria, viruses and enzymes; (4). *Ergonomic*: Man-machine interaction, body position in relation to the task or machine. See Tewari, K.Navneet, Working Through Childhood, *Indian Express*, December 12, 1989.

to occupational diseases and even doctors are not able to say whether the disease is caused by the nature of the occupation or by the combination of poverty, malnutrition and unhygienic living conditions.[43] Children are indebted to investigative journalism who have kept a close watch on the wretched evil to build pressure on the government and its agencies who maintain deafening silence. The valuable efforts, as they are, provide adequate background to nail the lie of the government that work is beneficial to children. In this backdrop fanning through such information will be more instructive.[44]

(a) Match and fireworks industry

The case of exploitation of children in this industry came to be exposed in a unique way. In early 1979 when a bus accident in Sivakasi in which 37 children were killed led to an enquiry revealing the working conditions of child labourers in match factories. Later news has become history.[45] There are 45,000 children working in match and fireworks industries of Sivakasi. It is the largest single concentration of child labour in the world.[46] The precious proletariat of Sivakasi bears half the burden of running the match industry on its

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43. *Ibid.*

44. Alongside the media reports on the incidence of child labour, the hazardous nature of the occupations and consequences on their health, it is also proposed to consider the First Report of the Child Labour Technical Advisory Committee, (Unpublished) submitted during May, 1988 to draw necessary inferences. The committee was set up by the Central Government in 1987 in pursuance of Section 5 of the Child Labour (Prohibition And Regulation) Act, 1986.

45. Banerjee, Sumanta, *Child Labour in India*, Anti-Slavery Society, Child Labour Series, Report 2, 1979, p.21.

46. Kothari, Smithu, There's Blood on Those Matchsticks: Child Labour in Sivakasi, *Economic and Political Weekly*, July 2, 1982, p.1192; *Indian Express*, November 14, 1987; *Career and Competition Times*, April 1987, p.17.

frail shoulders. The ages of children range from 3½ years and 12 years and they work as long as 12 hours a day. Forced out of bed before the east turns gray, bundled into rickety buses from their villages to their workplaces, breathing in "noxious fumes" all day, they work under conditions reminiscent of nascent industrial era.[47] The children who are also counted as just another raw material to be consumed by the industry are working in conditions which are unsafe and detrimental to their mental and physical health.[48] Staying a total of 15 hours away from home-twelve at work-, they work in cramped environments with hazardous chemicals and inadequate ventilation.[49] Smithu Kothari who visited the match and fire works industries gave the first hand account of observation in his write-up on the issues relating to employment of child labour saying: "Dust from the chemical powders and strong vapour in both the store room and the boiler room were obvious at practically every site we visited. Minimum safety standards were not maintained in most of these units".[50] Vishwapriya Iyengar also expressing anguish over the health hazards to children in the match industry of Sivakasi, writes:

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47. *Indian Express*, March 4, 1990.

48. *Ibid.* See Chapter One, note 63, *supra.*

49. Kothari, Smithu, There's Blood on Those Matchsticks: Child Labour in Sivakasi, *Economic and Political Weekly*, July 2 1988, p.1192. The Sanat Mehta Committee on Child Labour set up by the Labour Minister's Conference (1983) was found to have appalled when it visited locations where children were employed. The committee was reported to have observed: "In Sivakasi, children worked with poor ventilation. Even lighting was poor. Drinking water was inadequate. Children were picked up by buses from villages in a radius of 15 kms and the work made them toil from 7 a.m. to 7 p.m., with half-an-hour lunch break. That means in-addition to the hard work, the child had to spend some more time commuting either way". *The Hindu*, November 21, 1986.

50. Kothari, Smithu, There's Blood on those Matchsticks: Child Labour in Sivakasi. *Economic and Political Weekly*, July 2, 1982, p.1192.

> "Children mixing chemicals in the boiler room get lungfulls of toxic fumes, suffer high degrees of intense heat and run the risk of being badly injured in fire accidents. Children who stamp frames on the metal sheet too suffer heat, toxic fumes and excessive strain on the arms and shoulders which have to remove and place the heavy frames with great rapidity. Delay of a second... can cause the entire frames to go up in roaring flames which cause instant death".[51]

In a milieu dominated by patron - clienties, the rigours of exploitation, low wage rates, hazardous working conditions and long hours are obfuscated.[52] The employment of children in match and firework is widely criticised as children are virtually playing with fire. The Supreme Court, for its part, affirming the manufacturing process of matches and fireworks to be hazardous, suggested for employment of children in innocuous activities.[53] The Committee on Child Labour as part of its study visited Sivakasi and found nearly 50,000 children working in deplorable conditionslike long hours of work, paltry wages, poor working environment etc.[54] The Child Labour Technical Advisory Committee for its part also affirmed the hazardous nature of this occupation. The Committee further affirmed that the amorphous red phosphorous and tetra-phosphorous trisulphide which are used in the manufacture of matches, are toxic. It also pointed to the potentiality of chronic poisoning by these chemicals.

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51. Iyengar, Vishwapriya, L., 'Child Labour In the Match Units of Southern Tamil Nadu'. Paper presented at a Seminar on Child Labour in India, New Delhi, Indian Social Institute, August 9, 1986, p.5, in Burra, Neera, Health Hazards. *Seminar*, October 1988, p.25.

52. *Indian Express*, March 4, 1990.

53. *M.C.Mehta* Vs. *State of Tamil Nadu and Others*. (1991) 1 SCC 283.

54. Government of India, *Report of the Committee on Child Labour, op.cit.*, p.17.

However, the Committee expressed its anguish that no systematic occupational health investigation has been carried out.[55]

The ghost of exploitation also haunts the children through deprived wages.[56] That children work for pittance is common knowledge. As the children are paid on piece-rate basis, they work feverishly to ensure maximum output. Their own requirement of food, relaxation etc. are completely neglected and in many factories children looked unhealthy and weak. In spite of an over twelve-hour work day and this feverish activity, the younger children between four and ten years earn an average of Rs 2 a day. The older children earn a maximum of Rs. 6-7 per day.[57]

(b) Glass and bangle industry

The home of glass-bangle industry of Firozabad in Agra District of U.P employs thousands of boys between the ages of 6 to 16 years literally playing with fire every minute.[58] The barefoot children in cheap ganche clothes stand

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55. Government of India, *First Report of the Child Labour Technical Advisory Committee* [Unpublished], May, 1988.

56. According to the Harbans Singh Report (the Committee investigated the problem of child labour in Sivakasi in 1976 the report of which has not been made public) the piece - rate wages fixed under the Minimum Wages Act worked out to less than the minimum daily wage. See Kothari, Smithu, There's Blood on those Matchsticks: Child Labour in Sivakasi, *Economic and Political Weekly*, July 2, 1982, p.1192.

57. *Ibid.*

58. Approximately 50,000 children are working in the glass and bangle industry, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.25. Affirming the employment of children, the Minister of State for Labour of the Central Government told the Rajya Sabha that about 4000 of the 6,000 child labour employed in Firozabad alone was withdrawn at the instance of the parliamentary delegation which visited the industrial area. *Indian Express*, March 11, 1987; 'Central Minister and Parliamentary Committee found Children Working. Four factory owners of Firozabad arrested', Amar Ujala, Agra, January 25, 1987, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.28.

near or move around gigantic furnaces containing moulds of boiling glass. The furnaces are maintained at 1400°C. The work environment is heavily polluted with heat, chemical fumes, soot and coal dust, while the floor is littered with broken glass. Child workers in the age group of 7 to 12 years deal with burning loams of glass struck on the tips of four-foot long 3 cm thick iron rods without handles. They hold the iron-rods in such a way that the burning glass is just two feet away from their own bodies and a foot away from the bodies of other child workers. The workers are constantly on the move with this blazing material in hand in the congested space. The glass manufacturing units work three shifts a day employing about 100 to 150 workers including children.[59]

The working conditions are appallable. Workers inhale substantial quantities of coal dust, carbon monoxide, and sulphurdioxide besides silica sand. Silicosis resulting therefrom can lead to lung cancer, says Dr.Ashok Saxena.[60] "It takes just three or four years, "says, Dr.Apurv Chaturvedi, one of the surgeons in town, "to destroy their lungs in the dangerously polluted atmosphere of the glass factories".[61] Ninety per cent of the workers, it is further asserted, contact pneumoconiosis, a condition can lead to T.B and too often

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59. Barse, Sheela, Glass Factories of Firozabad-I: Children Playing with Fire, *Indian Express*, April 5, 1986; Glass Factories of Firozabad-II: Fleecing of Hapless Labour, *Indian Express*, April 6, 1986 and Glass Factories of Firozabad-III: Nelson's Eye to Worker's Safety, *Indian Express*, April 8, 1986. See also Mathur, Anjali, 'Children and the Law: Power without Accountability', *Indian Express*, Sunday Magazine, February 24, 1985, p.3.

60. Pul, Bulbul, 'Bangle-Makers: A fragile existence', *Indian Express*, Sunday Magazine, May 4, 1986, p.3.

61. *Ibid.*

does.[62] The Committee on Child Labour confirmed the employment of children in this occupation as well. The Report states:

> "Children between 8 and 14 years form one-fifth of the total labour force employed in the industry. They are paid Rs. 3 a day for eight hours of work.... The temperature inside the factory is 40-45 degrees centigrade which makes working in summer miserable.... Cases of asthma and bronchitis are many. Workers suffer from various eye diseases. Firozabad ranks first as far as tuberculosis incidence is concerned".[63]

But, there is no reference to this occupation in the CLTAC.

(c) Bidi industry

The bidi industry, the largest employeroutside agriculture, is spread over India. The bulk of bidi-manufacturing is carried on in thousands of homes by women and children in large number. Either the workers take the materials home and roll the bidis and deliver the finished product the next morning or the manufacturer works through a contractor. The practice which is widely called as "putting out" system leaves only a semblance of employer-employee relationship.[64] Women and children work 12 hours a day and yet they are unable to earn enough to afford two square meals.[65] They are paid paltry

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62. *Ibid.*

63. Government of India, *Report of the Committee on Child Labour, op.cit.*, p.16.

64. Sharma, Kalpana, 'The human price of a bidi; *Indian Express*, November 12, 1987.

65. *Status*, July 15, 1985, p.24.

wages. Here again the dubious practice of piece-rate basis lends support to the employers to play havoc on poverty-stricken workers.

The workers are given 260 gms. of tobacco and 800 gms. of leaves to produce a thousand beedies. Even with scrimping and saving, the most they can produce is 900 leaving the balance to be made out from their pocket. Besides the said inevitable shortfall, there is a standard practice to deduct another 100 as rejection. Thus the inevitable shortfall and 'prerogative' deduction reduce much of the hard output they make sweating out their labour ultimately reducing their wages.[66] Still worse is that the workers are not paid the rate fixed by the government under the minimum wage law.[67]

The working conditions in this industry are no better than others already examined. The same scene is enacted and there is difference only in persons and place. Here again as usual and as expected, children and adults are made to work in the most unhygienic conditions. The dark hovels in which they work are lit by lanterns. The fumes of these lamps added to the tobacco dust harms their health and a large number of them suffer from lung disease.[68] Over - exposure of organic dusts of tobacco and absorption of large amount of nicotine give rise to respiratory problems and cardio-vascular troubles.[69] They also complain of stiffness in the finger-joints, severe back-ache [one has to sit hunch-

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66. *Ibid.*

67. *Ibid.*

68. *Ibid.*

69. Navneet K. Tewari, Working through childhood, *Indian Express*, December 12, 1989.

backed to roll bidis], stiff necks and fatigue.[70] Dwelling on the above issues, the Report of the Committee on Child Labour states:

> "Employers pay the children much less than adults on the pretext that the products did not come upto the required standard of quality. A survey in Murshidabad revealed that about 9 per cent of bidi workers between the ages of 10 and 17 showed definite signs of chronic bronchitis and 10 per cent of the boys suffered from anaemia. There was sufficient indication to suspect a high incidence of tuberculosis among the bidi workers and this, according to the survey, was due to starting work at a tender age, very long hours of work, excessive over crowding, and peculiar posture during work which was an impediment to the healthy development of the lungs of the children".[71]

The CLTAC also said:

> "a well executed study by National Institute of Occupational Health, Ahmedabad revealed the high concentration of nicotine and cotinine in the exposed workers. The impact of this showed symptoms such as vomiting, headache, giddiness, weakness and loss of appetite among 64 per cent of the exposed workers. The symptoms were reported to have manifested only during work days after heavy dust exposure especially during summer".[72]

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70. *Indian Express*, May 7, 1984.

71. Punekar, S.D., Child Labour in Unorganised Industries - Rural Vocations. Paper presented at National Seminar on Employment of Children in India, New Delhi, November 25-28, 1975, in Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.16.

72. Government of India, *First Report of the Child Labour Technical Advisory Committee*, *op.cit.*, 1988. See also *K.Chandrasegaran* Vs. *State of Tamil Nadu and Others*. [1992] 1 SCC 222.

(d) Powerloom industry

Thousands of children between the ages of seven and seventeen work under grossly exploitative conditions in the multi-crore powerloom industry of Bhiwandi in Maharashtra, says Sheela Barse.[73] Beaming and spindling are preparatory processes involved in this industry. The two processes for an estimated 2,25,000 powerlooms are handled entirely by boys in the age group of 7-17 and they constitute a fifth of the labour force of the industry.[74] The thousands of children who work on the powerloom inhale cotton dust and fibers which get embedded in the lining of the lungs and causes fibrosis of the tissue. This reduces the normal capacity of the lungs and puts pressure on the surviving tissues. A patient of byssionis which is caused by cotton dust and fibre is highly susceptible to bronchitis and tuberculosis.[75] The tale of woe still continues hovering around wage payment to the child workers. It is estimated that the powerloom owners who undertake assignments to manufacture cloth for the big business houses help to save at least 30 per cent in costs by not undertaking the said work in their mills where they would have to pay legal wages and provide statutory facilities and protection to the workers.[76]

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73. Barse, Sheela, Children of a Lesser God, *Indian Express*, May 19, 1985.

74. *Ibid.*

75. Barse, Sheela, 'Child Labour hit by powerloom closure', Indian Express, November 15, 1985, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.25.

76. Barse, Sheela, 'The Child Labour Bill: A wolf in Sheep's Clothing', *Indian Express*, November 10, 1985. It is observed that among the giants who get their cloth made in Bhiwandi are Garware, Raymonds, Bombay Dyeing, Mafatlal, Santogen, Fabina, Reliance Textiles (Vimal) and the Great Rajasthan Spinning Mills.

(e) Carpet weaving industry

Media has very often focused on the employment of children in the highly prized carpet industry in Bhadohi - Mirzapur belt in the State of Uttar Pradesh. This centre is known for world famous carpets. The strides made by the carpet industry in the world market were rather small. By turn of events to the advantage of the Indian carpet industry,[77] there was a big jump taking the command in the international market to a new height of 80 per cent of the total volume of export.[78] This is notwithstanding the stiff competition in the world market from Pakistan, Albania, China and Rumania.[79] The rise in the quality of carpets and a monopoly share of the export trade in carpets also contributed to the rapid infusion of child labour.[80] Eighty per cent of the workers engaged in the work of weaving of these carpets are children between 8 and 15 years.[81] Leaving aside the private employers, a government body, the Handloom and Handicrafts Corporation employs children between 7 and 14 years in the name of running training centres.[82] Children are attracted in more number as their

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77. India was blessed with the opportunity resulting from the sudden crash of the Persian carpet industry in the wake of 'oil boom' and the modernisation drive of the Shah of Iran, including the campaign for mass literacy and abolition of child labour upto the age of 18 years. India then seizing the opportunity without fail stepped into the vacuum created in the international market. Juyal, B.N., Who Wants it? *Seminar*, October 1988, p.22. See Mehta, Jaya; 'Child Labour', *Times of India*, March 30, 1994, p.10.

78. Juyal, B.N., Who Wants it? *Seminar*, October 1988, p.22. It is observed that Mirzapur and its adjoining areas in Uttar Pradesh are known as 'Dollar Land' as they account for 90 per cent of the nation's carpet exports. Shekar B., 'Weaving a tragic tale', *Indian Express*, December 22, 1991, p.2.

79. *Indian Express*, November 21, 1986.

80. Juyal, B.N., Who Wants it? *Seminar*, October 1988, p.22.

81. *Status*, July 15, 1985, p.24; *Indian Express*, November 21, 1986.

82. See note 38, *supra*: *The Hindu*, August 17, 1986, p.3.

nimble fingers help to weave quality carpets. The trade ethic which carpeteers follow with blind faith is: "Get them when they are very young : when their hands are nimbler, when their eyes are sharper, when they work faster...".[83] And the demand for them is also perennial. This is not, of course, the consequence of the industry expansion but the other trade ethic that they must be discarded as soon as they lose *these natural qualities*, [emphasis added] to be replaced by a fresh lot.[84] Hence the enforcement of the ban of child labour in this hazardous occupation is resisted thus forcing the state to provide play level field. Regrettably, state has only this to say. "...inspite of the ban child labour below 14 years continue to be employed in the carpet industry in a clandestine manner".[85] This is true of the carpet weaving industry of Jammu and Kashmir which employs some 6,500 children of 8 to 10 years of age.[86] This fact further stood confirmed when the bonded child labour in carpet industry became the subject matter of the Public Interest Litigation before the Supreme Court and the appointment of an inquiry commission with full authority to conduct raids and uncover child labour.[87] The attendant consequences of such clandestine

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83. Juyal, B.N., Who Wants it? *Seminar*, October 1988, p.23.

84. *Ibid.*

85. Sanat Mehta Committee recorded the Chairman of the All-India Carpet Manufacturer's Association as having said: "If child labour was to be prohibited, the cost of carpets would rise. Consequently, Indian prices would not be competitive in the international market and our export earnings would fall". The Chairman of Carpet Export Promotion Council, the Report of the Committee said, considered that the carpet production might fall by 50 per cent if the children were to be kept out of carpet weaving activity. *Indian Express*, November 21, 1986. See also Chapter One, note 63, *supra.*

86. Govt. of India, *Report of the Committee on Child Labour*, *op.cit.*, p.16; Mathur, Anjali, 'Children and the Law: Power without Accountability', *Indian Express*, Sunday Magazine, February 24, 1985, p.3.

87. Juyal, B.N., Who Wants it? *Seminar*, October 1988, p.21. See also note 22, *supra.*

employment are bound to creep in ritually once the child labour is shown to have been existing as in any other case. On the excepted lines, the Sanat Mehta Committee was reported to have observed:

> "The work was hard in difficult conditions for the children. As in Thathara near Bhadohi, children from the age of six were employed. They worked on about 200 looms in that village. For want of space, they had to sit in front of the looms with their backs almost touching the walls. There was no fixed working schedule. The rooms, were generally ill-ventilated and dimly lit".[88]

The abominable working conditions make up the life worse for the children who have become the hunting ground for those seeking a fortune in foreign trade. The occupation is hazardous since the woolen fibers floating around are dangerous for the children's lungs, eyes and skin. The boys often bend over the carpet, in order to be able to locate and separate each coloured strand. This maximise the flow of dye-and-acid strained wool into their lungs, eyes and onto their skins.[89] Incidence of respiratory tract infection, headache, backache and joint pains have been significantly higher among carpet weavers. Besides, other ailments are also potential depending on the nature of toxic chemicals used in

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88. *Indian Express*, November 21, 1986. See also Shekar, B., 'Weaving a tragic tale', *Indian Express*, December 22, 1991, p.2.

89. *Indian Express*, July 28, 1985, p.8. This is also borne out by a report prepared as far back as 1984, by Dr. Katagada, the then Deputy Director in the service of the State of U.P. The report notes: " The commonest disability is that of poor vision; body aches and strains due to prolonged uncomfortable postures and awkwardly positioned interfaces are also known to occur. Common colds tend to be chronic probably on account of fluff and dust in the ambient air"; Another study conducted in 1991 found that 35 per cent of the villagers in Haliya - a cluster of villages in the southern part of Mirzapur - were prone to night blindness. See Shekar, B., 'Weaving a tragic tale', *Indian Express*, December 22, 1991, p.2; The Committee on Child Labour also found that the air was thick with particles of cotton fluffs and wool and 60 per cent of the children were asthamatic or had primary tuberculosis, See, Government of India, *Report of the Committee on Child Labour, op.cit.*, p.17.

the dyeing process according to the CLTAC[90] When a child is to be gifted with the growth of the brain upto the age of 10, the growth of lungs upto the age of 14 and the growth of muscle and bone upto the age of 18, it is an irony that they are denied by blessing their employment in the carpet weaving which does irreversible harm. They are not even paid the minimum wages which they are entitled, the last to mention about.

(f) Gem polishing and diamond industry

The gem polishing industry, flourishing in the city of Jaipur, Rajasthan, is the single largest employer. Children are widely employed in this industry which fact was confirmed by the Committee on Child Labour. According to the Committee, the industry employs 10,000 children below the age of 14.[91] Children are employed in the polishing of semi-precious stones and of the gems with oxide.[92] In the former case, children are employed in large numbers in the making of *ghats*,[93] faceting and polishing, while in the later the entire labour force consists of children below the age of fourteen.[94] The gem which children polish is world class. The U.S. is the major importer of gem and jewels from India. In 1992-93, the U.S. imported gem and jewellery worth of

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90. Government of India, *First Report of Child Labour Technical Advisory Committee*, *op.cit.*, 1988.

91. Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.17.

92. Burra, Neera, 'Exploitation of Children in Jaipur Gem Industry', *Economic and Political Weekly*, January 16, 1988, p.76.

93. Ghat is a sliced stone which is given a rough shape.

94. Burra, Neera, 'Exploitation of Children in Jaipur Gem Industry', *Economic and Political Weekly*, January 16, 1988, p.76.

Rs. 3329.8 crores.[95] But the foreign exchange they help to earn hinders the sight of the beneficiaries and the state to the reality - miserable conditions under which they work. One dealer proudly said about his flourishing that his foreign clients were very impressed that small children could be made to work and this fact was used as a strategy to enhance his profit.[96] But the sight of the children, who are behind the massive foreign exchange trade, in lungis with their faces, hands and clothes streaked with green colour - cholorium oxide - the agent used for polishing emeralds sends only a distress signal to the conscience of the mankind.[97] Also they are paid very less as they are employed as apprentices. Apprenticeship as known to every body in India is synonym for cheap labour.[98] Thus, behind the veils, children toil and exporters prosper.

From Surat in the State of Gujarat comes another story of exploitation of children employed in the diamond cutting industry. Children who constitute 16.11 per cent of total labour force in the Surat city, are required to work on polishing discs operated by power. Deplorable working conditions also loom large in several small sheds located in multi-storeyed buildings. Apart from fumes and lack of ventilation, noise is also very much present.[99] The young

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95. Mehta, Jaya, child Labour, *The Times of India*, March 30, 1994. Burra states that the international demand and competitive prices need cheap labour and hence child labour is widely prevalent.

96. Burra, Neera, Exploitation of child labour in Jaipur Gem Industry, *Economic and Political Weekly*, January 16, 1988, p.79.

97. *Ibid.*

98. *Ibid.*, p.78. See also note 95, *supra*.

99. *Indian Express*, October 28, 1987.

diamond cutters develop eye defects very soon, which serves as a cause to retrench them in their teens.[100]

(g) Slate pencil industry

Mandsaur district in the State of Madhya Pradesh, where the slate industry is housed, is another place of horror for children. Approximately 1000 children are employed. They cut plates of shale into small pieces using power operated saws. The process emits dense clouds of dust which is light and the workers constantly inhale to their detriment. Blessed with silicosis by virtue of their employment they are prone to death in their early forties.[101] This is also confirmed by the Report of CLTAC which is to the effect that conglomerate silicosis develops among workers engaged in this industry and those who start work at a younger age have a higher mortality rate.[102] Stating that there is no cure for silicosis, Dr. J.N. Narodia, the head of the team of civil surgeons of Mandsaur hospital, explains the severity of the disease. He states:

> "...silicon dust... is very light and flies about, unlike say, coal dust in a coal mine which is heavier and falls to the ground. The silicon dust rises and enters the lungs, forming silica patches. This reduces the elasticity of the lungs, causing fibrosia. As a result the vital capacity of the lungs, that is the oxygen exchange rate, is reduced, since the surface area which absorbs oxygen is less due to the silica patches. The patient does not get oxygen and develops symptoms of chest diseases, like

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100. Government of India, *Report of Committee on Child Labour, op.cit.*, p.17.

101. Burra, Neera, Health Hazards, *Seminar*, October 1988, pp.25-26.

102. Government of India, *First Report of Child Labour Technical Advisory Committee*, *op.cit.*, 1988.

> TB. If the patches are large enough.... the person suffocates the death. The only treatment possible is not for silicosis but to secondary infections like pneumonia etc.".[103]

According to Amiya Rao:

> "...the medical check-up conducted by the Social Service Club of Indore earlier this year [in 1980] has revealed that most of the child workers have got this disease [silicosis] and will soon die." "We can't do a thing'" says the civil surgeon. "The disease causes fibrous changes in the lungs. Lungs are gradually eaten away, patients suffer respiratory trouble, begin to spit blood and then die a painful death".[104]

Not only the workers die painful death but also an early death. On the strength of medical evidence, Nirmal Mitra writes: "Most of the workers in this industry will choke to death before reaching 40 years of age".[105] The report further reveals that in the village of Multanpure, which has 60 percent of the slate pencil factories in Mandsaur, there is hardly any old person and almost every third person is widowed, whom are called as 'pollution widows'.[106] This serves as the index of the severity of the health hazard in the occupation of slate pencil industries. Nirmal Mitra thus observes:

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103. Mitra, Nirmal, 'Slave Children of Mandsaur', Sunday, June 15-21, 1986, p.105, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.26.

104. Rao, Amiya, 'Silicosis Deaths of Slate Workers', *Economic and Political Weekly*, Vol.25[44], November 1, 1980, p.1883, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.26.

105. Mitra, Nirmal, 'Slave Children of Mandsaur', Sunday, June 15-21, 1986, p.100, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.26.

106. *Ibid.*

> "Children at the age of 12 and even less, are forced into the fatal work to sustain their dying parents, brothers and sisters, only to learn that they will die soon enough too - of the dust, fatigue and inhumanity. The story has been repeated year after year, for five decades now".[107]

(h) Zari making and embroidery industry

Yet another industry spotted with high incidence of child labour is zari making and embroidery industry. These industries are situate in Lucknow and Surat. Out of an estimated 45,000 child workers in Lucknow there is nearly one-sixth children in the age group of 8-15 years. They sit and work in over-crowded rooms with poor lighting and ventilation. Many of them suffer from eye diseases.[108] In Surat, zari making is carried on as a household work.

(I) Brassware industry

Children are employed in the brassware industries of Moradabad. The processesinvolved are intrinsically hazardous. Approximately 24,000 were reported to have been working in 1980.[109] The number has considerably increased now. Children work in furnaces. Their job is to remove the earthenware crucible full of molten brass from the underground furnace and

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107. *Ibid.*

108. Government of India, *Report of the Committee on Child Labour, op.cit.*, p.17.

109. Kulshreshta, D.K. and S.K. Sharma, 'Child Labour in Moradabad Metalware Industry', The Economic Times, October 19, 1980, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.26.

pass it to the adult worker. They are employed substantially in polishing units where they are more prone to dust. They inhale large quantities of metal dust which give rise to industrial tuberculosis.[110]

(j) Lock industry

Aligarh the town of lock industry also dependson children for cheap labour. Nearly 10,000 children are working in the lock industry. They are employed on hand presses, buffing machines, polishing rusted metal pieces, in electroplating workshops and in spray painting units. While workers employed in polishing units are afflicted by tuberculosis and other upper respiratory tract diseases, workers in electroplating units are complaining of breathlessness, asthma and acute headaches.[111]

(k) Balloon factory

Balloon factories in the State of Maharashtra form another area of worrying concern by reason of employment of children. The activities in which children work include mixing rubber with chemicals, coloration of balloons and testing of each balloon using gas. A thick pall of dust and chemicals pervades

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110. *Ibid.*

111. Burra, Neera, 'Exploitation of Child Worker in Lock Industry of Aligarh', Economic and Political Weekly, Vol.xxii[28], July 11, 1987, p.1119-1120. See also Burra. Neera, 'All this masala gets into our eyes', The Times of India, June 21, 1987. in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.25

the rooms which are small, cramped and ill-ventilated.[112] The children work nine hours a day and six days a week. The health reports of children employed in these factories conform the worst fear of being hazardous. A report on their health problems states : "Medical reports state that inhalation of such acids continuously over a period of time can burn respiratory lining and cause pneumonia, broncho-pneumonia, cough, breathlessness and even heart failure...".[113]

(l) Restaurant and domestic employment

Children employed in restaurants and as domestic servants also lead painful life. Occupations like domestic work, working in *dhabas* or cafe, selling newspapers etc. may be safe for adults. What is just a simple and innocuous job for an adult may be hazardous to a child of ten or twelve years. It is endurance that makes the difference. There are working situations which a grown up can tolerate without any serious harm to him. He can resist either. But for a child it portends definite physical hazard.[114] The arduous work the children are forced to perform and the long hours of work they sweat out are more common in their walks of life. Most child workers go without adequate food, clothing and proper shelter. They live on the foot - paths or on their employer's premises. It is true that they are fed. It is sad that often children are

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112. Burra, Neera, Health Hazards, *Seminar*, October 1988, p.25.

113. Menon, Geeta, 'Health Problems of Working Children: Some Observations' in Usha Naidu and Kamini R.Kapadia (eds) Child Labour and Health, *op.cit.*, p.212, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.25.

114. Ghosh, A., 'A New Approach', *Seminar*, October 1988, p.40.

given the left-over.[115] The obvious result of leading such a deprived life tells upon the process of their normal development.[116]

Deprivation is not the end as the tale of woe goes further. Children are even abused physically and mentally.[117] The fact that children are at the mercy of the employer and do not have the support of their parents or anyone else puts them in a very weak bargaining position. They are made still more vulnerable.[118] Girls who work as domestic servants are cursed still more. They are also often victims of sexual abuse by males within the employer family.[119] The institutionalised maltreatment often child workers confront are so brazen that they unfailingly leave trails on their well-being and development[120] thus making even these innocuous jobs beyond their physical capacity.

Children are also employed in a host of other activities namely agriculture, plantations, tanneries, automobile workshops and construction industry for their survival. The conditions under which they are employed, no doubt, are exploitative but we only lack words to repeat the tale of horror.

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115. Burra, Neera, Health Hazards, *Seminar*, October 1988, p.27. The writer made this observation in the context of a survey in Bombay conducted by Usha Naidu which showed that working children were better off than non-working children in these sectors. The said analysis was based on height and weight measurements and working children were found to have an edge over non-working children. The explanation preferred was that working children were given food on the premises.

116. Ghosh, A., 'A New Approach', *Seminar*, October 1988, p.40.

117. Burra, Neera, Health Hazards, *Seminar*, October 1988, p.27.

118. *Ibid.*

119. Joseph, Ammu, 'The Child Cannot Wait', *The Hindu*, Sunday Magazine, November 10,1991, p.18.

120. *Ibid.*, p.17.

Exploitation of children for economic gain ranks highest among the various forms of child maltreatment and this is likely to be the case in India where millions of children are victims of "child exploitation" in this sense of the term.[121] The fact that child labour is intense and scary is beyond doubt. Childhood in India has become negotiable. In the context of poverty, work is virtually hazardous in the case of children. To say that it helps children to acquire skill is only a misplaced faith. The intensity of child labour is not indicative of expansion of skill in them. Rather it is indicative of the extent of poverty which forces the teeming millions to flock into the sweat shops for survival. The reasons are not difficult to seek.

Work is undoubtedly necessary for a person's mental and psycho-social equilibrium, and in preparing a child for life one first has to teach him how to work.[122] In some cases work gains prominence,[123] while in others, it is not work as such that is in question, but its abuse and the conditions under which children are obliged to work so that their productive capacity may be fully exploited with the minimum remuneration.[124] In the former,the work itself renders the employment of children hazardous and in the latter, the working conditions and environment turn such employment hazardous. To work under such conditions cannot be seen as anything but an evil and a curse, says

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121. *Ibid.*

122. United Nations, *Exploitation of Child Labour*, *op.cit.*, p.11.

123. Work gains prominence, where it is intrinsically hazardous. See note 42, *supra.*

124. United Nations, *Exploitation of Child Labour*, *op.cit.*, p.11.

Bouhdiba, the Special Rapporteur, explaining the impact of the working conditions on the health of children.[125] He states:

> "The girls who weave the magnificent carpets of Iran, which are a source of admiration to all and of wealth to some spend *the entire day on narrow planks. They are unable to move and their work makes them adopt a squatting posture, invariably doubled up. Despite their youth, some children suffer from a form of ankylosis of the whole of the lower part of the torso. Many are sickly, suffering from tuberculosis or anaemia. By the time they become adults, they are often round - shouldered and have deformed arms and legs. In regions such as Kerman, where many young girls work in this industry, a large number of them are subsequently sterile, or have very difficult pregnancies because of the fixed posture that they have had to adopt".*[126] [emphasis already supplied]

To this must be added the working environment that is deplorable form the point of view of health had hygiene.[127] The dark and dingy rooms are their place of work where ventilation is scarce. Space constraints make the environment still worse resulting in overcrowding. Moving towards consensus on the fallout of these factors in combination, Special Rapporteur without dissent quotes Mendelievich:

> *"It is thus clear, and has been scientifically proved, that in the conditions in which it is usually carried out, the employment of children [not to mention the frequent risks of occupational accidents and diseases as such] is*

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125. *Ibid.*

126. C.Rimbaud, 52 millions d'enfrants an travail [Paris, Plon, 1980] p.125, in United Nations, *Exploitation of Child Labour, ibid.*, p.11.

127. United Nations, *Exploitation of Child Labour, ibid.*, p.11.

both directly and indirectly harmful for the child and its results will be carried over into adult life".[128]

Children who are visited with multiple deprivations ensuing from poverty and low food intake, repeated episodes of infectious diseases, minimal parental attention, poor sanitary conditions and low educational levels, often lack physical capacity even to do innocuous jobs. This is true of 40 per cent of India's total population which supplies largest contigents of working children.[129] It is also no exaggeration to state that moral development of children who are employed is also at stake.[130] It is claimed that child labour, far from bringing out children the qualities of which they will have great need in order to face up to the difficulties awaiting them, has the effect of marginalising them and making them depraved.[131]

Child labour makes mockery of laudable intents of apprenticeship too. Very frequently it is simply a subterfuge for evading the legislation on minimum age.[132] Apprenticeship sounds good should it last until the age of maturity.[133] But obverse only is true in India. Apprenticeship - employment either takes

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128. E. Mendelievich, (ed), Children at Work, [Geneva, ILO 1979] p.47, in United Nations, *Exploitation of Child Labour*, *ibid.*, p.11.

129. See notes 29 and 30, *supra*.

130. It is claimed that working in *dhabas* is unsafe for children because many of these tea-stalls or road side hotels become gambling dens at night. The child worker who may be serving tea in the day time is often made to carry bottles of liquor or peddle drugs among the clients at night. Anklesaria, Shahnaz, "Child Delinquents: Rebels without a Cause", Statesman, April 8, 1984, in Burra, Neera, Health Hazards, *Seminar*, October 1988, p.27.

131. United Nations, *Exploitation of Child Labour*, *op.cit.*, p.12.

132. *Ibid.*, p.19.

133. *Ibid.*

away their life, or deprives their health forcing their exit, in their teens. What is paid even does not commensurate with the work the children put and energy they expend. Exploitation of child labour is only perpetuated through apprenticeship despite the good intentions of the authorities.[134]

Mention about wage payment to children is a contextual imperative. Wages constitute an essential factor in the ideal relationship of employer and employee and to include various social security benefits. In many countries the wage to be paid to children is in fact laid down by legislation and there are inspectors whose task it is to enforce this legislation. Obviously the actual situation does not conform to the law at all times and in all places; it is on the basis of the law that possible abuses may be detected and reference made to exploitation.[135] Such abuses are abound in India and even the state for its part has abused. The self-centered employers are often prompted by "the good old law" of maximum profit without any restraint. On such abuse, Mendelievich writes :

> *"Children are usually paid much less than adults ... and some receive no pay at all .... In Santiago, Chile, the incomes earned by children interviewed during a survey varied from $ 1 to $ 3 a day; those doing a full working day and week received no more than $ 7 a week. ... In India, children earn approximately half as much as adults doing the same type of work, and in Indonesia between 70 and 80 per cent. This inequality of treatments is even more flagrant in the case of*

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134. United Nations, *Exploitation of Child Labour, ibid.*, p.19. However, it may be stated that the authorities in India do not deserve for such exoneration. Apprenticeship is abused not only by private employers but also by the government owned corporation and centres run by the government. See note 38, *supra*.

135. United Nations, *Exploitation of Child Labour, ibid.*, p.16.

> *"apprentices", who in reality are there to produce rather than learn a trade, receiving a paltry wage or none at all".*[136] [Emphasis already supplied].

Super-profits are made by exploiters by making reduction by one half which they regard as normal.[137] Exploiters save money still more. Since child labour is most often of a clandestine nature, the employers escape having to pay taxes, insurance and various social security contributions. This yields a quite substantial additional amount: at the lowest estimate about $ 2 per day per child employed. At all events, the sweated labour of children yields a high return.[138]

The foregoing brief analyses affirm the following:

(i) Children are held in bondage;

(ii) Children below the age of 14 are employed in occupations which are either hazardous or harmful to their physical, mental or moral development;

(iii) Children are made to work for long hours of work in deplorable conditions;

(iv) Working environment is poor by any standard or norm and is detrimental to the health of child workers;

(v) Apprenticeship or vocational training given to children in the occupations covered is exploitative and hence hazardous;

(vi) Children are paid lesser wages and

(vii) There is no semblance of social security schemes made applicable to child workers.

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136. E.Mendelievich, "Child Labour", *International Labour Review*, vol.118 [5], [Sept.-Oct. 1979] p.563.

137. United Nations, *Exploitation of Child Labour*, *op.cit.*, p.13.

138. *Ibid.*

The least said the better. Child endures the work inspite of the indelible impressions it leaves on them. Work is to be a state of grace and the best means of self-expression which makes up the day of life.[139] But one gets dismayed when the work turns out to be a dreaded evil under the deplorable conditions in which it is glorified. To set a child to such work prematurely is to give him a poor preparation of life.[140]

Child abuse and neglect are the grim realities of today in India. Viewed from the disturbing scenario, it can only be said that childhood is a promised heaven but a proved hell.

7.2 INDIAN LABOUR STANDARDS AND THEIR ADMINISTRATION EXPOSED

The Constitution of India is solicitous of children's well-being, development and their rights. Paradoxically, present day reality has choked life out of them. Countless number of children who work for pittance have been grabbed of their childhood. These are the children who live in utter deprivation and neglect; children who have never known a day without hunger; children who are torn away from the love, affection and protection of their parents; many of them do not have shelter which they can call home; children for whom education is an undreamt of luxury; who do not know what the word "childhood" means. Excitingly, India has thus not only given place of pride to human rights and fundamental freedoms but also to child labour with all its incidence and severity. "Ours is a deeply perplexing age in relation to rights" says Upendra Baxi. He

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139. *Ibid.*, p.11.

140. *Ibid.*

proceeds: "On the one hand, there is a virtual explosion of human rights enunciations; on the other, there is growing disregard of rights and cynicism about the future of human rights.... Thus we are in a situation where affirmations as well as violations of human rights on notable increase...".[141] Ironically, confrontation of the state with such human disgrace has only evoked unanimous response that the abolition of child labour is impracticable in the near future. The State even conceded without compunction the existence of child labour as a "harsh reality". *"It will not be feasible nor opportune"*, [emphasis supplied] to quote the words of the Report of the Labour Ministry 1983-84 tabled in the Parliament, "to prevent children from working in the present stage of economic development".[142] The Minister for Labour for the State of Tamil Nadu followed suit saying that it would not be possible to impose a total ban on child labour and it was a "ticklish problem" which had to be handled "dexterously".[143] It was also the unanimous resolve of the National Seminar on Employment of Children, 1975, that total eradication of child labour was neither feasible nor desirable in the foreseeable future in view of the present level of economic development of the country. What is unsaid is that they were not conscious of the human rights of children while responding to human catastrophe. The question though appears to be simple is more important today especially when the state is projecting itself as a saviour of mankind. Moreover, it is a larger question to be answered in the context of postures, both real and pretended, of both antagonists and protagonists of child labour including the state and employer.

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141. Baxi, Upendra, 'Human Rights of Children: Reclaiming Our Common Future', *Mainstream*, vol.xxxii[20], April 2, 1994, p.6.

142. See Chapter One, note 65, *supra*.

143. *Indian Express*, April 27, 1984.

7.2.1 International Labour Standards Versus National Labour Standards: The Missing Reconciliation

Initially, it may be stated that the standards laid down by various legislations regulating the employment of children and young persons fall much behind the standards laid down by the ILO. Though state intervention is justified on grounds of public interest, it seems that not only standards lower than those universally accepted have been adopted in Indiabut also even the adoptedstandards have not been strictly enforced. Consequently, the children are receiving raw deal at the hands of the self-centered employers. So as to be in a position to understand the seriousness of the government in the welfare of children, the zone of deficiencies, both in legislation and action, needs to be emphasised.

To recapitulate some of the deficiencies in the matter of minimum age, it may be pointed out that there is no law fixing any minimum age for employment in agriculture and in Plantations. Even the Factories Act, 1948 which claims to be the major legislation governing the area of industrial employments, fixes the minimum age of 14. The age fixed for non-industrial employments varies from 12 to 14. There is no law regulating employment of children in transport inland vessels and fishing vessels, and also the Merchant Shipping Act does not bar employment of children [except trimmers and stokers] in home trade ships of less than 200 tonnes.

Also, laws in respect of medical examinationof children is no better than the standards prescribed in relation to the minimum age. Though the Factories Act requires medical examination, yet such requirement is there only up to the

age of 18 years. On the contrary, the ILO Conventions state that in occupations involving high health risks the age up to which medical examination is to be required shall be at least 21 years. Also, the much claimed Employment of Children Act of 1938, the predecessor of the Child Labour [Prohibition And Regulation] Act of 1986, did not have any provision relating to medical examination.

As regards night work for children, India again does not fulfil the international standards. The ILO Conventions have laid down less stringent standards having regard to the conditions obtaining in India. India fulfills the same with respect to employees in industry but not completely in respect of employment in non-industrial activities.

With respect to ILO Recommendations concerning the above issues, it is needless to emphasise that they also lag for behind the standards emphasised by it.

The Minimum Age Convention, 1973 which was the result of relentless pursuit of the ILO in this direction has not been well received by India. This Convention in striking contrast to the earlier Conventions, has prescribed standards for employment without reference to particular economic sectors. This Convention which is expected to replace gradually the earlier Conventions testifies the idea of total abolition of child labour.[144]

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144. The proposal to the Governing Body to place the subject on the agenda of the 57th [1972] Session of the Conference noted: "as they now stand, the basic Conventions on minimum age for admission to employment can no longer be effective instrument of concerted international action to promote the well-being of children", and "a re-examination of the instruments in question would afford an

The Convention has not been ratified and the reason which is claimed to have taken aback the Indian government from ratifying the same is the higher age for employment. The other reasons which are counted in despair are economic backwardness necessiating a family in India to augment its income by employment of children, lack of educational facilities and the unorganised nature of the various economic sectors like agriculture and smallness of the manufacturing units making the enforcement of the laws difficult. These defences at best may be relevant to explain the difficulties of the state but not to avoid altogether the responsibility imposed on it under our Constitution. The dispensation of social justice compels the state to do what best it can in the interest of the mass at large, in particular weaker sections of the society. The rising and rising of child labour force day by day puts the state only in a fix. At times, the government has claimed to have brought down even the rate of inflation to single digit, but not the incidence of child labour even once, to say the least. The state owes an explanation to the nation.

The standards prescribed by the ILO at best cannot be squarely ignored for the simple reason that the higher age is not desirable. In fact, standards

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(contd.,)

opportunity to send social protection and at the same time to add greater flexibility". ILO: Minutes of the 181st Session of the Governing Body [Geneva, 1970], Appendix II, para 8 and para 12, in ILO, *Child Labour: A Briefing Manual*, Geneva, 1986, p.21.

In addition, the initial office paper put before the Conference stated that the discussion of the new instruments would "offer an occasion not only for the adoption of comprehensive new instruments establishing clearer, more systematic and more up-to-date international standards but also for an appeal by the Conference to governments and to the organisations in the United Nations family for vigorous practical action against the basic causes of the problem". ILO: Minimum age for admission to employment, Report iv[1], International Labour Conference, 57th Session, Geneva, 1972, p.31, in ILO: *Child Labour: A Briefing Manual*, *ibid.*, pp.21-22.

prescribed are not rigid as relaxation can be resorted to in view of special circumstances obtaining in any Member State. A lower level of minimum age of 14 years [as against 15 years] generally may be prescribed by Member States whose economy and educational facilities are insufficiently developed.[145] Even with respect to hazardous employments, a lower level of minimum age of 16 years is permissible as against 18 years on the ground of provision of adequate specific instruction or vocational training in the relevant branch of activity.[146] Existence of special and substantial problems with respect to application of this Convention are also recognised as grounds for excluding from its purview categories of work or employment which are not hazardous.[147] Further, the scope of the Convention may also initially be limited on the ground that economy and administrative facilities are insufficiently developed.[148] Thus it will be seen that the defences which India choose to dwell upon to avoid ratification are virtually covered by these provisions. Hence, India can initially specify a minimum age of 14 years and may gradually raise the level of age consistent with the policy of ensuring effective abolition of child labour and raising minimum age to a level consistent with the fullest physical and mental development of young persons.[149] However, it may not be out of context to point out here that the age of 14 is the law governing the employment of children under the Factories Act, 1948 which generally covers industrial employments and a host of other legislations including the Employment of

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145. The Minimum Age Convention, 1973, Article 2(5).

146. *Ibid.*, Article 3(3).

147. *Ibid.*, Article 4(1).

148. *Ibid.*, Article 5(1).

149. *Ibid.*, Article 1.

Children Act, 1938, the predecessor of the Child Labour [Prohibition And Regulation] Act, 1986. Also, the Employment of Children Act, 1938 prohibited employment of persons below the age of 18 in hazardous occupations which was not different from the provisions of the Convention in this behalf.[150] Hence, the plea of higher age does not merit consideration at all in answer to the non-adoption of the Convention. The State, it is understood, might have chosen not to ratify the Convention so as to avoid the obligation attached thereto which course of action may not be proper. It cannot avoid either.

The protection of children from work and at work is one of the basic principles of the ILO and since inception, the ILO called for the protection of children and young persons. From this follows the policy of eradication of child labour by which India is bound as its founder member. No doubt this policy has found expression in the 1973 Convention which India has not ratified so far. But it makes no difference as the said Convention only makes explicit what is otherwise implicit in the Constitution of the ILO. For, such policy alone can ensure adequate protection to children. At the cost of repetition, it may be said that such injunction is in consequence of recognition of certain absolutes arising from the inherent dignity of human person which nations are bound to ensure irrespective of their level of development. Eventually, the general view that is prevalent is that even though more detailed standards of the ILO Conventions in this regard cannot be imposed on States which have not ratified the relevant Conventions, the Organisation is entitled to promote the implementation of this

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150. See, Chapter Six, *supra*., The age limit under the Child Labour Act, 1986 is not stated here as it does not fit into the scheme. The reason being that the said law is under a different policy perspective which shall be adverted to at a later stage.

constitutional principle.[151] At this stage it will be more appropriate to draw an inference that the logic of the Government of India in ratifying the Convention on the Rights of the Child is unsustainable. The provisions of this Convention are far more general in nature than the Minimum Age Convention, 1973 whose specific and detailed standards India scrupulously desires to avoid. This serves as the true index of the mind of the Government of India confirming our apprehension that the ratification of the U.N. Convention is only a sham and India is not sincere about the welfare of its future citizens. So as to be in a position to evaluate the reaction of the state to the extensive violation of human rights and fundamental freedoms committed within its jurisdiction, it is found necessary to travel through stages over a period of time during which such violations were noticed by the state and the responses they received.

7.2.2 Child Servitude and Employment: Past and Present

7.2.2.1 Pre-constitution period: 1881-1950

Child labour in India has been in existence all through the ages. In ancient India, employment of children was in the form of slavery. Contemporary texts like Kautilya's *Arthashastra* testify to the existence of domestic slavery in prosperous households in the third century B.C., where the slaves were of low castes. Child slaves of less than eight years were known to have have been put to work in these homes. In the medieval period, children were placed as trainees in guilds of craftsman. They learned crafts under their parents or traditional craftsman.[152]

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151. Valticos, N., *International Labour Law*, Kluwer, Netherlands, 1979, p.228.

152. Banerjee, Sumanta, *Child Labour in India*, *op.cit.*, p.12.

It was in the middle of the 19th century, with the advent of factory type units that children began being employed for long hours of work under appalling conditions. The question of the regulation of the conditions of work was first broached in 1875 by the appointment of a Committee by the Bombay Government. It was after much deliberation thatthe Factories Act, 1881 was passed. It marked the beginning of statutory protection in India.[153] Act of 1891 was passed offering protection to women workers as well. Inspite of protection offered, children were continued to be exploited and there were demands made even for regulation of conditions of work of adult male workers. Even though there were no trade union organisations worth the name, there was some progress in the direction of protective labour legislation, due to other favourable influences. Important in this respect were Lancashire and other English manufacturing interests, which pressed for Indian labour legislation because they were concerned with cheap competition from Indian manufacturing enterprises. Then came to be enacted the Factories Act of 1911.[154] In the course of the 19th and early 20th century, people of European countries were more concerned about exploitation of children which sowed the seeds for the establishment of the ILO.[155] It may be pertinent to note that the developed nations who were not able to complete with the cheap products from developing nations made of labourers especially by children under exploitative conditions

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153. Gupta, Manju, 'We cut our Fingers but no Blood Falls', in Gupta, Manju and Voll, Klaus, *Young Hands at Work: Child Labour in India*, Atma Ram & Sons, Lucknow, 1987, p.91.

154. Myres, A.Charles and Kannappan, Subbiah, *Industrial Relations in India*, Asia Publishing House, Bombay, 1970, p.135.

155. Gupta, Manju, Child Labour: "A Harsh Reality", in Gupta, Manju and Voll, Klaus, *Young Hands at Work*, *op.cit.*, p.2.

were much behind the establishment of the ILO and the comprehensive factory legislation in India and this is parallel to the effort being made desperately now at their behest to link GATT and social clauses. British India then became the member of the ILO and was a signatory to the Convention on the prohibition of child labour which was adopted at the very first session of the International Labour Conference.[156] India is very proud of its association with the ILO and pursuit of policies for the past 75 years earnestly in protecting the interests of workers generally without realising that the developed nations were instrumental in bringing about these changes.[157]

The Report of the Royal Commission of Labour [1931] appointed to enquire into the working conditions in industrial establishments reported about the wide practice of pledging of child labour and their employment in unsatisfactory working conditions. Swiftly following the recommendation of the Commission, the Children [Pledging of Labour] Act, 1933 came to be enacted.[158] The Commission also reported about the inadequate protection made available to children as a result of which the factory legislation underwent complete revision.[159]

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156. Chapter Five, note 86, *supra*.

157. When India believes that its association with the ILO helped it in protecting the interests of workers why should it not adhere to social issues as the objective is the same ignoring the fact, as it did earlier, that the developed nations are very much behind it. Obviously, India wants to strengthen its economic position by exporting products at cheaper prices which is possible only if exploitation thrives. Hence, the decision to legalise child labour in the pretext of humanising work life pending abolition.

158. Chapter Six, note 143, *supra*.

159. Government of India, *Report of the Committee on Child Labour, op.cit.*, p.22.

The Twenty-third Session of the International Labour Conference, 1937 made a big dent in the history of legislative protection to children in India. The said Convention inserted a special article suiting the needs of India in pursuance of which the Employment of Children Act, 1938 was passed.[160]

The Labour Investigation Committee [1946] which examined the state of Indian labour in depth quoted extensively the exploitation of children and found the laws to be deficient in dealing with the situation. It quoted thus:

> "A most remarkable sight was that on arrival it was found that young persons of about the age of 8 or 10, particularly, girls, ran helter - skelter with trays on their heads. It was explained to me by the Factory Inspector that this was an usual sight when he visited those factories. The meaning of it all was that all these youngsters where all uncertified children working in the factories who were trained to pretend, on the appearance of the Factory Inspector or any other visitor, that they were only carrying the trays etc. to their homes for the work to be done by their elders in their homes. In these factories were also found working many children who were obviously under 12 years of age although they seemed to be in possession of the badges showing that they were certified".[161]

7.2.2.2 Post-constitution period: 1950-1986

In the midst of the disturbing trend revealed by the spate of official reports on child labour exploitation on a vast scale came to be adopted the magnificent document, the Constitution of India ushering in a new era of freedom and security. In a bid to preserve the childhood, the Constitution

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160. Chapter Six, note 144, *supra*.

161. Giri, V.V., *Labour Problems in Indian Industry*, pp.396-397.

assiduously prohibited employment of children through Article 24. A corollary to this prohibition is engrafted in Article 45 besides other provisions enumerated under Part IV of the Constitution. These wide ranging provisions were perceived as green pastures adding impetus to the protection of children. Reasons were abound to turn the hope into reality. Obviously, the mission was to make India a strong and modern country, where the weak and the poor also have a dignified place under the sun, and their cares and concerns continue to be the core of the issues that the state would attempt to address. The same is borne out in the reply of Dr.Ambedkar in the Constituent Assembly to the suggestion made by Mr.Ahmad to confine the duty of the government to provide education up to primary level. Explaining the functional relationship between Articles 24 and 45, Dr.Ambedkar said:

> "... The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. If my honourable Friend, Mr.Naziruddin Ahmad had referred to article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36...".[162]

The intent of the Constituent Assembly in enacting Article 45 put the prohibition of employment of children straight to take on the dreaded evil with ease. But the obvious intent failed to take off, if the Report of Labour Bureau (1954) was any indication. The Report much to discomfiture of the state pointed out:

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162. *Constituent Assembly Debates*, Vol.vii, p.540.

> "... it is however doubtful if statistics compiled from the regarding child labour. For, it is well within the experience of factory inspectors, as well as other officers engaged in field enquiries, that no sooner they make their appearance on the scene that a quite a large number of children run away from the factory. They are often children below the minimum age of employment".[163]

Even after 4 years since the adoption of the Constitution with noble objects the things continued to be the same in so far as the children were concerned was the distressing signal conveyed by the Report to the government.

Then came the turn of the National Commission on Labour (1969) to affirm the failure of the solemn obligation under the Constitution even after the turn of two decades. In spite of the existence of the wretched evil eluding the state for decades together quite comfortably even after the innovation of the statutory protection, the NCL dealt with issue of such magnitude incidentally. Attention was not paid adequately to highlight the problem of children in the perspective of the protection which the Constitution promised to shower. The Commission had to contend with the evil saying that it was more of economic nature.[164]

National assets begging protection made 1976 significant. Mr.Harbans Singh, former Member, Board of Revenue, was pressed into service in 1976 to investigate the problems of child labour in match and fireworks industries in Sivakasi, Tamil Nadu. The report was submitted in 1977 but was not made

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163. Government of India, Ministry of Labour, Child Labour in India, 1954, in Banerjee, Sumanta, *Child Labour in India*, *op.cit.*, pp.20-21.

164. Government of India, *Report of National Commission on Labour*, *op.cit.*, p.386.

public. Indicting the Government of Tamil Nadu for apathy in implementation of child labour legislations, the Report said:

> "Child labour is one of the most crucial factors for the development of the match and fireworks industries in Ramanathapuram area... a community of interest has developed between the employers and employees as a result of which employment of children continues without protest. The government agencies have also been partly responsible for this".[165]

This is yet another addition testifying to the existence of the sordid evil.

Coinciding with the celebration of the International Year of the Child with much fanfare in 1979, a Committee appointed by the Ministry of Labour under the chairmanship of Shri.M.S.Gurupadaswamy to investigate the causes relating to the existence of child labour in India. The Committee after an exhaustive survey on the nature of child labour in India, had this to say this:

> "Briefly, the existing situation in respect of child labour in India can still be summarised as one of 'continuing drift'. Though there is little evidence of children at work in the organised sector of industry and in certain pockets in the country, the overall position is as had been observed by the Whitely Commission nearly 50 years ago... The regulation by law of employment of children covers only a fringe of these occupations and ironically even where regulation has been sought, the enforcement is extremely half-hearted, and tardy. The Committee would wish to emphasise unequivocally that unless a systematic evaluation is made from time to time in respect of jobs in which children are employed and *certain purposeful policy decisions are taken to meet the deficiencies, the existing situation is not likely to undergo any dimensional, qualitative or quantitative change*".[166] [emphasis supplied].

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165. Kothari, Smithu, There's Blood on Those Matchsticks: Child Labour in Sivakasi, *Economic and Political Weekly*, July 2, 1982, p.1200.

166. Government of India, *Report of the Committee on Child Labour*, *op.cit.*, p.19.

Later, a Committee of State labour Ministers constituted under the chairmanship of Shri.Sanat Mehta, Labour Minister of Gujarat after its study reported:

> "The Committee feels that it is not possible to make any drastic changes in the existing legislation in the present socio-economic condition of the country. It is only through smaller but more positive steps providing for the welfare of working children, for upgrading their skills and by making it less profitable for anyone to employ child labour that it will become possible ultimately to abolish child labour altogether in future".[167]

As the earlier one, the Report of this Committee also was not made public.

Next in the series came the constitution of a Committee by the government of Tamil Nadu under the Chairmanship of Shri.N.Haribhaskar, IAS. Regarding the circumstances which compelled the government to constitute such a Committee, it may be pointed that the issue of child labour working in deplorable conditions in Sivakasi was raised in a Public Interest Litigation filed by this researcher in the Supreme Court of India on the basis of a write-up by Shri. Smithu Kothari. While the said petition was pending, the Committee was constituted by an order dated March 19, 1984 and following the constitution of the Committee the Supreme Court disposed of the said petition with the following direction. The order reads as follows:

> "Since by an order dated March 19, 1984, the Government of Tamil Nadu has constituted a committee for considering various aspects of child labour in Sivakasi, it is unnecessary to pass any further orders on this writ petition. The papers of this writ petition will, however, be forwarded to the committee appointed by the Government of Tamil Nadu in order to enable it to consider the various matters which are raised in this writ petition. The petitioners will be at liberty to place such

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167. *Indian Express*, November 21, 1986.

material as they desire to place before the committee".[168]

It is learnt that the Committee was constituted by the state of Tamil Nadu for the purpose of examining the extent to which the recommendations of the Harbans Singh Committee was implemented and suggesting suitable measures in this behalf.[169] It is hard to digest that the government could only say that a new committee was constituted only to examine the impactful performance of the recommendations of the earlier committee made in 1976. This only reflects the lackadaisical attitude of the government in handling the growing menace which the Supreme Court unfortunately failed to sense when it directed the complaints made to it by way of PIL to the Haribhaskar Committee. To put it aptly, it may be said that it was nothing but a strategy to save the face. Following the direction, the Committee proceeded with the enquiry into the issues[170] and submitted its report to the government which promptly obliging the tradition classified it and withheld it from the public.[171]

As the state was dangling the carrot before those who raised the issue with concern by appointing committee after committee in the guise of grappling

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168. *K.Chandrasegaran* Vs. *Union of India and Others* [W.P.8778/83/XA] [Unreported] order dated April 9, 1984.

169. *The Hindu*, April 12, 1984.

170. Following the direction of the Supreme Court of India, the Committee extended an invitation to this researcher to appear before it. This researcher appeared and offered written submissions in respect of measures to be adopted by the state. See Annexure VII, *infra*.

171. As the Report of the Committee was not made public, this researcher requested the Government of Tamil Nadu for access to the report for the purpose of this study but the same was not responded.

the problem, it really went out of hand inviting criticism from people around very often.[172] Left with no option the state conceded the evil as 'harsh reality'. It was really heart-rending to hear the state realising the grim reality ultimately as the state was hitherto denying the prevalence or its incidence under one pretext or the other. It was a change indeed but the change was not for the better. For, the change was not in the heart but in the strategy of the state. This became evident when the government unfolded its new plan through the new child labour legislation and new National Policy on Child Labour to tackle the ticklish problem. These measures gave a new twist to the policy followed by the state over the past one hundred years. The twist made the problem still worse.

7.2.2.3 The new twist: legitimisation of child labour

The tacit acquiescence of the state has perpetuated child labour if the indictment of state apathy by various reports is any indication. This practices was continued so long as state was able to keep the prevalence of child labour under the carpet. Such a view is not perverse as the state always chose to keep secret the reports of various official committees appointed from time to time as seen earlier. But the lid was blown off to the dismay of the state and it was no more be able to thrust its views suppressing the reality. It felt that it could not be continued any more as clandestine in view of the growing conscience and the mounting pressure. Nonetheless, it wanted the practice to be continued - *status quo* to be maintained. Eventually, it decided to legitimize

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172. Closely on th heels of the International Year of the Child, several studies were undertaken on the problem of child labour. These studies extensively quoted the abuse of child labour in various occupations in India. For e.g., United Nations, *Exploitation of Child Labour*, *op.cit.*; Banerjee, Sumanta, *Child Labour in India*, *op.cit.*

child labour,[173] a course no one ever thought of. It was the new twist. The much sought for cover of legitimacy to the new twist is provided by the policy framework of the ILO envisaged in the Resolution adopted by the International Labour Conference in the 65th Session [1979] at Geneva. India proudly claims that it has been following the resolution and is firmly committed to its progressive elimination over a realistic time-frame. This is only a farce as we shall see later.[174]

The eloquently styled 'harsh reality' marked the shift in the strategy. The official tolerance to the evil camouflaging their tacit collusion with the mighty

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173. The State knew that certain Indian industries could not survive without child labour. For e.g. the All India Carpet Manufacturers Association [AICMA] in a statement on 5.2.85 quoted the officials of the Labour Department [U.P] as having reported that the child labour was a must. Juyal, B.N., Who Wants it? *Seminar*, October 1988, p.22.

Also, the state might have felt ashamed of admitting the prevalence of child labour inspite of a host of legislations about which it is always proud of. A position paper issued by the Ministry of Labour before the Child Labour [Prohibition And Regulation] Bill was tabled in the Rajya Sabha, said: "Under the present legal framework, no protection is available to the children who are working in the banned sectors of employment and whose conditions of work are almost unsatisfactory. Therefore, it is necessary to make the law realistic and enforce it wholeheartedly after clearly defining the areas where employment of children is to be banned and where it is to be permitted with adequate protection and welfare measures". The report also proceeded to say: "We will legally be permitting Child Labour in many areas where it is banned at present..." Mitra, Nirmal, Child Labour: Freeing The Young Slaves, *Sunday*, September 14-20, 1986, p.33; See Chapter One, notes 49-50, *supra*.

Also, in the case of carpet industry a voluntary code of conduct was evolved, in pursuance of the directive of the Central Government, by the Carpet Export Promotion Council to eradicate child labour from the carpet industry. Under the code, carpet looms are required to be registered and every member of the Council is required to get carpets woven only on the registered looms. See *The Hindu*, March 15, 1994, p.15.

Thus it is clear from the above that the state wanted most of the activities in which children were employed were to be liberated from the clutches of legal ban as it did not want them seen any more as "condemned" for obvious reasons.

174. *The Hindu* October 6, 1994, p.3. See Annexure VIII, *infra*.

industry and the fact that most of the children employed are outside the protective legislations have prompted several trade unionists and activists to demand for legitimacy of child labour. The often repeated argument that it is poverty which perpetuates child labour and the grim reality dispensation have come shot in the arm of the protagonists to demand legitimisation in order to compel the employer to provide a good working environment and pay just wages.[175] Their ostensible claim is to give a better deal to the child workers in the form of a comprehensive legislation to regulate their working conditions and provide for formal and non-formal education.[176] The theme of legitimacy was virtually on the sell out with a fabulous claim of achieving eradication of child labour ultimately. The naive assumption on which such claim is based is that by enforcing minimum wages, shorter working hours, leave, compensation, non-formal education etc., the employer will gradually discover that child labour is not so cheap after all and will be forced to substitute adult labour.[177] Such a claim can only be utopian. We know how effectively labour legislations are enforced in India. They are honoured more in breach is history and history is a good teacher. The claim can only be a pretext.[178] Contrary to this claim the law will remain in the statute book as hitherto and employers and contractors will have a

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175. Mathur, Anjali, 'Children and the Law: Power Without Accountability', *Indian Express*, February 24, 1985, p.3.

176. Menon, Indira and Abraham, Taisha, Thoughts Too Deep For Tears, *The Hindu*, July 3, 1986.

177. *Ibid.*

178. It is observed: "Politicians and bureaucrats just draft new laws, with more clauses, more committees, more government servants. The public shrugs its shoulders and notes that this will just mean more public expenditure, more bribes and no fewer child labourers" Kumar, Dharma, What Can We Do, *Seminar*, October 1988, p.34.

field day recruiting a docile and cheap labour force and loopholes will soon be discovered to circumvent the law.[179] A bill embodying such a theme prepared by a Bangalore-based organisation was presented to the government for its consideration.

In the meantime, two projects under the National Child Labour Programme [NCLP] were proposed in the child labour intensive areas of Sivakasi and Bhadohi - Mirzapur belt. The main objects of the NCLP are to raise the income levels of the families of child workers by covering them under the programmes such as the Integrated Rural Development Programme, the National Rural Employment Programme [NREP] and the Rural Landless Employment Guarantee Programme [RLEGP], give non-formal education to child workers and their parents, provide better health care to child workers and improve the conditions of work and terms of employment of the children apart from providing one meal a day to child workers. The project in Sivakasi was inaugurated in April 1986 with an outlay of Rs.13.89 crores. As part of the programme, non-formal education centres were established.[180]

As the programmes were on as part of the new strategy, the Ministry of Labour proceeded to draft its own code inspite of reservations concerning its constitutional validity expressed by legal experts all over the country. The law, "Child Labour [Prohibition And Regulation] Act, 1986 came to be enacted repealing the half-a-century old the Employment of Children, Act, 1938. Soon

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179. Menon, Indira and Abraham, Taisha, Thoughts Too Deep For Tears, *The Hindu*, July 3, 1986.

180. *Indian Express*, April 21, 1986, *The Hindu*, April 21, 1986.

followed the National Policy on Child Labour [1987][181] effecting changes necessitated by the new child labour legislation and the National Child Labour Programme initiated in 1986. Later, the Programme was modified providing for establishment of special schools to accommodate children who have hitherto been working in industries and have since stopped working, with facilities like stipend, free clothes and nutritious meals. Such special schools were later established in Sivakasi.[182]

A close scrutiny of the Act reveals that a miniscule of zone of danger earmarked by the scheduled occupations and processes is alone kept out of the reach of children below the age of 14 years.[183] Left aside open for employment of children of any age is the bulk of industrial and non-industrial employments treating them innocuous. An anxious consideration initially is necessary at least in respect of two things. They are the exclusion of scores of activities as innocuous and fixation of the age of 14 for employment in hazardous activities. In the case of former, the government must have

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181. The Policy was announced in Parliament on August 12, 1987.

182. The NCLP envisages special schools and non-formal education centres. Special schools are meant for the children who have hitherto have been working in the match industries and have since stopped going. These schools were opened in and around Sivakasi with facilities like stipend, free clothes, nutritious meals and vocational training besides the normal literacy components. Non-formal education centres are for the benefit of the child labourers engaged in match industries in the project area. See *The Hindu*, April 5, 1988; *The Hindu*, December 12, 1987.

    It is submitted that the establishment of special schools as envisaged here was one of the suggestions made by this researcher in his submission to the Haribhaskar Committee. See note 170, *supra*.

183. The Child Labour [Prohibition And Regulation] Act of 1986, Section 3.

proceeded without caution of acting upon adequate information. The activities taken from the predecessor law mechanically reveals the far more ease with which the government acted. Any concern genuinely addressed in this regard will be brushed aside saying that the schedule is open ended and an expert committee [CLTAC] is envisaged to advise the government on such crucial matters. The argument however needs to be investigated in the light of the past experience. In the latter case, skill is rather displayed by the government to make its innocence felt by scrupulously adopting the age limit prescribed in the Constitution. Obviously, it is intended to make it apparent on one hand that the provision is free from prohibition and on the other hand, to facilitate the execution of its design to flood the employments with children. This raises the issue of constitutional validity of the law in question which needs to be discussed in the light of the brunt childhood is forced to bear. Besides, the task will also be made tough for the government if the manner of implementation of the Act and the adoption of administrative measures supplementary to the law are any indication.

In 1987, a Central Advisory Board on Child Labour [CAB] was constituted in accordance with one of the recommendations of the Committee on Child Labour [1979].[184] A gap of eight years between the report and the action cannot go unnoticed under any pretext. In December 1987, the CAB set up two task forces. One task force was charged with the responsibility of recommending "the institutions and mechanisms necessary for implementing the 1986 Act and the legal action plan contained in the Policy. The other task

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184. Joseph, Ammu, Child Labour: Case of Apathy and Inaction, *The Hindu*, November 14, 1990.

force was to recommend measures necessary for proper conceptualisation and implementation of projects under the policy. While the first task force submitted its report in December 1989, the second came only with an interim report by the same time. It is not known whether the second task force submitted its final report thereafter. The CAB which was reconstituted in the meantime met in July 1990 to consider the reports submitted six months back. The report of the first task force which was gathering dust till then was made public.[185] Similarly, under Sec.5 of the Act, a Child Labour Technical Advisory Committee [CLTAC] was constituted for the purpose of advising the Central Government on matters relating to addition of occupations and processes to the schedule. Till the close of 1990, the central government acted only on the recommendations contained in the first of several reports submitted by CLTAC adding four occupations and processes to the schedule.[186] This was reminiscence of the traditional official apathy haunting the administration.

Still worse we are yet to come a cross. The object of the law is to prohibit or to regulate the conditions of employment of children in order to pre-empt exploitation. The policy is supposed to be so wide to cover the entire gamut of activities in which children are likely to be employed.[187] Given the stage of development and the degree of poverty sweeping the millions of people, activities in which children may peep in elude enumeration. Adjusting the scheme of the law to such an environment is indeed a difficult task which indisputably calls for extensive planning and meticulous execution. That the

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185. *Ibid.*

186. *Ibid.*

187. See note 173, *supra*.

conscience of the officialdom stood unmoved by such a herculean task is indeed a curse. Lack of concern was exhibited with more vengeance here than anywhere else. Till 1990, three employments alone were notified for the purpose of regulation thus leaving the host of other activities outside the law which the state was clamouring for a quiet a long time.[188] The arm of the law will not reach employments which are neither prohibited nor notified for regulation. However, the Central Government was content with saying in 1990 that State Governments were addressed for suggesting areas where prohibition or regulation could be introduced in stages and responses were still awaited.[189]

Still reprehensible is the failure of state governments to frame rules even after lapse of several years leaving the statute practically dead from its inception.[190] Of the southern states, except Karnataka no other State or Union Territory had framed rules till mid of 1994.[191] State Governments burdened with the responsibility of implementing the provisions of law are vested with power to frame rules for the purpose of carrying out the object of the statute. Framing of rules is more important and this is more so when the reach of the law is to be assured to those occupations and processes at least earned the grace of the state apparatus fortunately. Otherwise there will be no difference whether or not an occupation or a process is governed by law.

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188. Joseph, Ammu. Child Labour: A case of Apathy and Inaction, *The Hindu*, November 14, 1990.

189. *Ibid.*

190. *Ibid.*

191. *The Hindu*, September 29, 1994, p.17; *The Hindu*, August 8, 1993.

Official apathy towards child labour is unequivocal and alarming. It matters not much whether the employment of children is banned or legalised. The Act of 1986 is nearing completion of a decade of existence but nowhere near the fulfilment of the mission. Seeking extension of time is always a favourite theme for the state which helps it to keep the hope of millions alive and kicking. Indian officialdom is a good reservoir of projects and action plans. We patronise a couple or two of leaders every year launching such scheme for seeking grace time.[192] The Indian scenario is thus replete with only one part of the drama being enacted with different actors and different sequences of course, with increased outlay, while the rest of the story is never heard of. Always there is no whisper about the result of the programmes and plan of actions already introduced. Alleged deficiencies for the failure are either not identified or even if they are identified, they are withheld from the public under the guise of secrecy. The ultimatum in this case is distanced further and taken to 2000 A.D. as the reports presently indicate.[193] Children are made to nurture the hope for about another five years. The compulsory wait betrays only common sense as any hope of turning them to joyful childhood as promised in the next five years too is very remote. Humanising the worklife is only a promise to the detriment of children made by the Act of 1986. It cannot bring cheer. It only assures a clout of legitimacy and striving for ruthless exploitation. Even as a child abandoning paternity cannot claim to be legitimate, the state bent upon compromising human values cannot bring happy and carefree life in the

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192. Grace time of a year or two is always conceded to enable the state to prepare ground for implementation of the scheme. Eg. framing of regulations or guidelines, allocation of funds, establishment of task force etc.

193. *The Hindu*, (Editorial), April 25, 1995, p.12.

neighbourhood of children. Employers can employ children and walk tall.[194] An employed child is an exploited child and what is known as child will thenceforth be known as deprived. The new twist is no better and it is a retrograde step as children are continued to be worsted in their fight for their rights. While the childhood rights are at the receiving end, the state sits pretty watching the vested interests thriving on the sufferings of the children.

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194. Barse, Sheela, A Wolf in Sheep's Clothing, *Indian Express*, November 10, 1985; Fernandes, Walter, Child Labour: 'Harsh Reality' or Vested Interest?, *The Hindu*, December 11, 1986.

CHAPTER EIGHT

CHILD LABOUR: A HARD BARGAIN

8.1 VESTED INTEREST: THE REAL FACE

While child labour plays havoc and the employers are enjoying a good time, the state played to a host of values at the third and final meeting of the World Summit's preparatory committee in New York during January 1995. Children's human rights abuse did not deter India from playing a lead role in the preparation of the Draft Declaration and Draft Programme of Action for the consideration of the Summit for Social Development which began on March 6, 1995. A significant contribution by the Indian delegation was the inclusion of a commitment in the Draft Declaration to "reaffirm, promote and strive to ensure the realisation of the rights contained in relevant international instruments and Declarations, such as Universal Declaration on Human Rights, the Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development, including those relating to education, food, shelter, employment, health and information, particularly in order to assist people living in poverty".[1] Again, affirmation, and violation, of human rights of which the state is the common denominator go hand in hand.[2] The contradictory postures India very

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1. Baru, Sanjaya, Social Summit: Putting money where the mouth is, *The Times of India*, February 17, 1995, p.15.

2. See Chapter Seven, note 141, *supra*.

often assume may throw people into a state of perplexity. But it will not be apologetic as it has got its own reasons. India always wants to be seen as the lover of human values underlying the message that it would like to be the last in the hunt. And when human rights abuse is shown to exist parallel to its tall posture, it pleads poverty and unemployment but in many cases, if not in all, especially in the case of child labour. It is also a bid to evoke sympathy to channelise aid into the state coffers. The ironical part of the double-talk of the state is that it is the same poverty and unemployment which the state pledged to root out when the Constitution was adopted. A look into the fervent plea of the state is more necessary to unravel the ramifications of the 'hard bargain'.

Children are deprived of everything they need as children in the bargaining and later as adults. Small persons-children-are made to lose great things. This is all what their employment seeks to convey innocuously. The *quid pro quo* is that they are fed. Economic necessity thus stands to reason for the state which sees in it the mitigating circumstance in the life of millions of people sulking in abject poverty.[3]

Generally, poverty is the main force that drives so many children to work instead of school. In most instances, the family income is so meager, adult wages are so low and the purchasing power of the mass of the people so negligible that child labour is not only additional to but an essential part of the family resources.[4] Every rupee is vial for families living below the poverty line. Undernutrition afflicting millions of people has the tendency of reducing

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3. Kumar, Dharma, What Can We do, *Seminar*, October 1988, p.34.

4. United Nations, *Exploitation of Child Labour*, *op.cit.*, p.23.

children's energy and motivation and undermine their performance in school and at work and reduce their resistance to diseases.[5] The debilitated adult who lacks natural immunity to fight diseases becomes vulnerable and is totally incapable of withstanding the consequences of poverty. With the result, the standard of living is very low.[6] Because of their poverty, parents find it totally impossible to make any investment in the development of their children. Besides, they are also reluctant to support them. At times, parents pledge child labour. Driven by poverty, children fall on the lap of vested interests that find them an extremely exploitable resource. This is often termed as economic necessity. It is as well claimed that the fact that economic necessity drives children to work creates a psychological hesitation in the mind of the administration that it is wise not to be too harsh in enforcement.[7] The Indian Labour Conference [1985] while arriving at the consensus on the proposal for a comprehensive legislation on child labour observed:

> "It was, however, of the view that the problem arises out of socio-economic compulsions and cannot be tackled merely by legislation. It felt that one of the ways of effectively dealing with the problem is to improve the economic conditions of the families which by force of circumstances have to send their children to work".[8]

The mindset of the government is quite clear that nothing can be done about child labour which is a product of the country's abysmal poverty. Hence it

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5. See Chapter Four, note 21, *supra.*

6. See Chapter Three, note 90, *supra.*

7. See Chapter One, note 67, *supra.*

8. Kamath, B. Vasudeva, *Child Labour in India: Socio-Economic Implications and the Law* (with special reference to SAARC/Third World), 1987 (unpublished) p.4.

maintains: "We have to tackle the problem of child labour in a realistic manner. Children are forced to work because of economic necessity. It is necessary to make the laws more realistic".[9] Obviously, this is the ideology behind the legitimisation of child labour and this is the reason for including income generation components in the National Policy on Child Labour [1987]. This argument goes that 'till poverty fades away', child Labour will continue to exist as a necessary evil.[10]

The state considers child labour as a harsh reality because it is assumed that poverty forces many families to send their children to work for their survival. But the story is different. At the outset, the genuiness of this statement can be challenged in the light of government's own claim of having achieved a drastic reduction in the poverty profile and prepared the country to enter the twenty-first century with a new outlook. Several rural employment and income generation programmes which are in store always come in handy. Leaving aside this, there are studies which suggest that child labour in practice is a vested interest and not a harsh reality.

As seenearlier, child labour-intensive occupations thrive on docile and cheap labour flocking into employment in millions. A child who enters employment at an early age is by and large illiterate and in the result becomes docile and subservient. He can be disciplined; he can be made to work for long

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9. *Femina*, November 8-22, 1986, p.95.

10. But recognition of this reality must not be used as a pretext of inaction, which sadly is the case now as is apparent from the way the laws prohibiting the employment of children in hazardous industries and regulating in others are enforced. The *Hindu* [Editorial] May 7, 1992, p.8.

hours; he can be paid less; he can be made to work in shanty work sheds and he can also be denied all the benefits under various social security legislations. Demand for higher wages as years roll on are unlikely in the natural course as they are meek. Upward mobility is also utopian as the work the child does, in no way helps him to learn skill. Besides, he works more faster to ensure maximum output as he is paid on piece-rate basis. The child is also of special interest to carpet manufacturer as he has nimble fingers to weave quality carpets for export. The widely accepted principle of employment guarantee does not hold good here. As soon as the attractions are lost, the child is turned out of the employment to be replaced by another. The tale still looks woeful as the one who works against heavy odds is a malnourished child. Balancing of heavy odds against the gain a child derives portrays a graph of inequity. While child is counted by the employer for several things, he is counted by the parents only for the paltry amount. The employer spins money as the child pays for his immediate earnings by losing his potential efficiency as an adult. Productivity and profit are the rules of thumb for the employer. For him, a child is an expendable commodity. Such a state of affair is *prima facie* contemptuous as a child is also a human being endowed with human dignity. Eventually, to accept the rationale of poverty in justification of what prevails is to ignore 'universally accepted values' and allow the continuation of 'universally condemned abuses'.[11] It is an irony in the present situation that many children work while many adults are unemployed.[12] The reason is quite obvious. An adult has no

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11. *Seminar*, October 1988, p.12.

12. *Ibid.*, p.14. According to one estimate, if all the children were eliminated from the labour force in India, employment opportunities for at least 15 million adult unemployed workers would be provided. See 'Effect of low incomes on the size of labour force and unemployment in India' by Ramesh Chandra in the Indian Labour Journal, 1961, in Banerjee, Sumanta, *Child Labour in India*, *op.cit.*, p.16.

attractions. Nor does he fit into any of the slots of the exploitative strategy. How can the state hope to achieve eradication of poverty[13] when the nation is flooded by unemployment of able-bodied citizens? The employment policy of the state also comes under cloud as no prudent state can watch millions of able bodied citizens sitting idle, when children in equivalent numbers are working. "It is a shame that forty years after independence we should run an economy that is dependent on child labour, that is, slave labour. No democratic government can hide behind any of these excuses",[14] says Vasudha Dhagamwar obviously pointing to the reasons aforesaid.

The theory of 'harsh reality' can further be nailed down by examining in depth the growth of child labour in the carpet industry in particular. The same will be quite instructive. As studies reveal, there has been increase in the incidence of child labour since the mid seventies coinciding with the gaining of prominence of the Indian carpet industry in the international market in the wake of the 'oil boom' and the modernisation drive of the Shah of Iran, including his

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13. Of late, the government is talking seriously about eradication of poverty. In a significant development, the Indian delegation to the World Summit for the Social Development Preparatory Committee meetings played a key role in replacing the term 'poverty alleviation' with the term 'poverty eradication' as one of the goals of the Summit. Another significant contribution by the Indian delegation was the inclusion of a 'Commitment' in the Draft Declaration to 'reaffirm, promote and strive to ensure the realisation of the rights contained in relevant international instruments and declarations, such as the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development, including those relating to education, food, shelter, employment, health and information, particularly in order to assist people living in poverty". This commitment was accepted unanimously by all delegates, including the U.S., and incorporated in the Draft Declaration. See Baru, Sanjaya, Social Summit: Putting money where the mouth is, *The Times of India*, February 17, 1995 p.15.

14. Dhagamwar, Vasudha, In a democracy, *Seminar*, October 1988, p.36.

campaign for mass literacy and abolition of child labour upto the age of 18 years.[15] The quality of carpets the small citizens weave with their nimble fingers alone helped the state to clinch the title of No.1 world exporter of carpets. The resultant increase in the trade of carpets led to the emergence of a new class of loom owners using children at times held captive. Actively encouraging the employment of children, the state also started training centres for imparting training to children below the age of twelve.[16] That the children of the poor became the hunting ground for those seeking a fortune in foreign trade.[17]

However, the carpet boom did not last long, as threats of boycott of Indian goods made of child labour started pouring in from the developed nations.[18] In a bid to pre-empt such moves from taking concrete shape as potential threats to the flourishing of the carpet industry, the Government of Uttar Pradesh hurriedly extended to the carpet industry, the provisions of law enacted nearly half-a- century back.[19] The state also evolved a voluntary code in the matter of employment of children for observance of the employers who are never heard of complying with the laws enacted by the legislature.[20] The state also must be taken to know the respect the code of conduct will command from Indian citizens especially by the employers who are motivated by

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15. See Chapter Seven, note 77, *supra*.

16. *Ibid.*, note 82, *supra*.

17. Juyal, B.N. Who wants it, *Seminar*, October 1988, p.23.

18. See Chapter One, notes 48 and 49, *supra*.

19. *Ibid.*, note 50, *supra*.

20. See Chapter Seven, note 173, *supra*.

productivity and profit. The vigorous campaign the state undertakes to give fillip to the voluntary code makes its intention abundantly clear. The intention of the state cannot be taken too seriously when it is talking about imponderables. Indulgence of the carpet industry which the state is counting is hardly to come about when the state itself feels morally less bound to set an example as model employer. It is also equally disappointing to note that the state is not taking on seriously the coercive power it enjoys to make the errand to fall in line. The legacy of exploitation is to continue is the direct and inevitable consequence. It is crying shame that the international competitiveness of some of the goods produced by the third world countries is achieved largely through the exploitation of the labour of their children.

8.1.1 The Minimum Wage Law: The Myth of Protectionism Exploded

That poverty is only a shàm for the coveted employment of children can also be established from another perspective as well. It is claimed that the question of child employment arises predominantly when the income of the bread - winner of the family reeling below the poverty line is not sufficient to make the ends meet. The act of benevolence is seen in the process of supplementing the income of the family through employment of children. This is contentious and needs to be examined. That the income of such family needs to be augmented is beyond doubt. But the manner of augmentation looks suspicious when adequate attention is not given to all the measures which are very much open for the purpose. Income of the family can be supplemented by augmenting the income of the adult bread winner whose low income necessitated such supplementation. In the alternative, an adult who is an idler can be employed to provide the needed succour. On the contrary children

whom the employer wants to bail out are preferred. For it is conducive to the interest of the employer and this proves the point to the hilt that child labour is perpetuated. Besides, such act is also not in consonance with human dignity and certainly not an appeal to human essence as the succour carries with it a burden which is both disproportionate to the relief and beyond the capacity of the young ones. Poverty serves only as the base cause which is used as a shield by the employer and the state is playing the song obliging promptly the vested interest. The state cannot be oblivious to the fact that the employment of children supplements the income of those who have been deprived of their reasonable livelihood only by its inaction. Further, as the children are paid only low wages such income can not help to keep the family above the poverty line either. Deficient income of the family is only a state made syndrome which pointedly brings into focus the relevance of minimum wage law to the problem.[21]

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21. The Minimum Wages Act, 1948 makes provision for the statutory fixation of minimum rates of wages in a number of industries wherein the sweated labour is most prevalent or where there is a big chance of exploitation of labour. The provisions are aimed at achieving social justice. The legislative policy is apparently intended to apply to those industries only where by reason of unorganised labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry are very low. For that purpose, it authorises the state to fix and revise at regular intervals the minimum rates of wages in the scheduled employments. The wage structure which approximates to a minimum wage at subsistence level is to be determined answering the following six components.

    1. In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.

    2. Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr.Aykroyd for an average Indian adult of moderate activity.

    3. Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.

The minimum wage law is an important piece of social legislation envisaging fixation of minimum wage rates in scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker.[22] The Supreme Court upheld the *vires* of the power of fixing the minimum wage under the Minimum Wage Act of 1948 observing that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages though they interfere to some extent with the freedom of trade or business guaranteed under Article 19(1)(g) of the Constitution are not unreasonable and being imposed in the interest of the general public and with a view to carrying out one of the Directive Principles of State Policy as embodied in Article 43 of the Constitution are protected by the terms of clause (6) of Article 19.[23] The hardship that might be caused to individual employers is also held to be irrelevant.[24]

(contd.,)

4. In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.

5. Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent of the total minimum wage.

6. Children's education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc., should further constitute 25 per cent of the total minimum wage.

See *Workmen rep. by Secretary* Vs. *Reptakos Brett. and Co. Ltd., and another.* [1992] 1 SCC 290.

Once the wage is fixed, it becomes the statutory obligation of the employer to pay the same and it can be enforced in the manner contemplated by law.

22. *Unichoyi* Vs. *State of Kerala.* AIR 1962 S.C. 12.

23. *Bijoy Cotton Mills* Vs. *State of Ajmer.* (1955) 1 SCR. 752.

24. *Unichoyi* Vs. *State of Kerala* AIR. 1962 S.C. 12.

Despite laudable intentions, the minimum wage law has failed miserably. The desirable impact on the social and economic profile of the depressed has successfully eluded the four decade old law. The law has only been kept alive all these years virtually stripped of its values for which state alone is to be blamed. The minimum wage law is no exception to the general trend of stifling welfare legislations through inaction of the state. The sordid tale is that the minimum wage is not prescribed; if prescribed, it is not revised at regular intervals; even if revised as and when the state feels so, it is not enforced by the state to secure to the workers the enjoyment of the benefit envisaged under the Act. There may be reasons which the state can advance pleading excuse for its failure to implement the law but there is nothing to indicate enough knowledge the state needs to perceive the noble mission behind the law especially when the employment of children is made an *alibi* for poverty. The statement of objects of the law makes it clear that it is intended to be in the armoury of the state to fight poverty. Paradoxically, it is the same poverty which is very much at work to deprive the unfortunate millions of their statutory minimum wage according to the Supreme Court. The missing state intervention made the minimum wage law to be at the disgraceful command of poverty.

The logic of the Supreme Court sounds loud in the context of freedom of dignity of labour sequentially making the obligation of enforcement of theminimum wage a constitutional necessity. The Supreme Court in its far reaching decision in *Asiad Case*[25] held that non-payment of the minimum wage violated Article 23 of the Constitution Explaining the expansive reach of Article

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25. *People's Union for Democratic Rights* Vs. *Union of India and Others*. AIR 1982 S.C.1473.

23 in the light of the constitutional philosophy of basic human dignity, the Supreme Court observed:

> "We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied".[26]

In another equally exciting judgment[27] the Supreme Court held that the law could not deny the minimum wage either. In striking contrast to the earlier situation, the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 sought to deny minimum wage by excluding the application of the minimum wage law to workman employed in famine relief work. Reiterating the expansive reach of Article 23 the Court held:

> "... Article 23, ... mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage and if the Exemption Act, by excluding the applicability of the Minimum Wages Act 1948, provides that minimum wage may not be paid to a workman employed in any famine relief work, it would be clearly violative of Article 23".[28]

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26. *Ibid.*, p.1489-90.

27. *Sanjit Roy* Vs. *State of Rajasthan*. AIR 1983 S.C. 328.

    It is submitted that while in the *Asiad Case* the Supreme Court came across the issue of payment of wages less than one fixed under the law, in the present case the law itself authorised payment of less wages by excluding the operation of the Minimum Wages Act, 1948.

28. *Ibid.*, p.333.

Rebuffing the plea by the state of financial constraint as the obvious reason for exclusion of the application of the minimum wage law, the Supreme Court observed:

> "... The state cannot be permitted to take advantage of the helpless condition of the affected persons and extract labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions. The state cannot under the guise of helping these affected persons extract work of utility and value from them without paying them the minimum wage. Whenever any labour or service is taken by the state from any person, whether he be affected by drought and scarcity conditions or not, the state must pay, at the least, minimum wage to such person on pain of violation of Article 23 and the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act, 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Article 23".[29]

Examining the said issue on the touchstone of equality under Article 14 of the Constitution, Justice R.S.Pathak said:

> "... the granting of relief to persons in distress by giving them employment constitutes merely the motive for giving them work. It cannot affect their right to what is due to every worker in the course of such employment. The rights of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere. The mere circumstance that a worker belongs to an area affected by drought and scarcity conditions can in no way influence the scope and sum of those rights. In comparison with a worker belonging to some other more fortunate area and doing the same kind of work, is he less entitled than the other to the totality of those

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29. *Ibid.*, p.333-34.

> rights? Because he belongs to a distressed area, is be liable, in the computation of his wages, to be distinguished from the other by the badge of his misfortune? The prescription of equality in Article 14 of the Constitution gives one answer only, and that is a categorical negative".[30]

The issue of maintainability of the public interest litigation filed under Article 32 made the Supreme Court to unravel the breach of various provisions of Part III of the Constitution resulting from violations of various labour legislations. The complaint of violation of the Minimum Wages Act, 1948 was one such opportunity assiduously seized by the apex court to state that the statutory minimum wage is a right guaranteed under Article 23 of the Constitution.[31] It is the obligation cast upon the employer, private or public, to adhere to.[32] The state as a sovereign power is as well under an obligation to ensure the payment of the minimum wage.[33] The obligation of the state is thus two fold. The state as an employer is to make payment of the minimum wage to its workers[34] and as a sovereign power to ensure the payment. The former enables the state to set an example as a model employer for the private employer to follow suit facilitating performance of the latter obligation of ensuring compliance with the law with ease. Contrary to the letter and spirit of the constitutional directive and the laws of which it was the creator, the state has

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30. *Ibid.*, p.335-36.

31. *People's Union for Democratic Rights* Vs. *Union of India and others.* AIR 1982 S.C.1473 at p. 1484-85.

32. *Ibid.*, p.1485.

33. *Ibid.*, p.1490

34. *Sanjit Ray* Vs. *State of Rajasthan.* AIR 1983 S.C. 328 at p.333.

excelled as a model delinquent.[35] The shrunken responsibility of the state which has engaged the rapt attention of the Supreme Court forms only part of the story as it relates only to the enforcement of the minimum wage law.

The state is primarily fastened under the law with the statutory duty of fixing and revising the minimum wage in scheduled employment at regulars intervals but not exceeding five years. But the track record of the Central and State Governments is not without stint. Providing a tip of their record will be quite instructive to understand how serious they are in protecting the interests of workmen and how true they are to their commitment to eradication poverty through raising the standard of living at least of workers.

The issue concerning fixation of the minimum wage in respect of quarry workers came under the scrutiny of the Supreme Court in a public interest litigation.[36] The petition essentially raised an issue concerning the plight of the bonded labourers working in stone quarries in the state of Madhya Pradesh. One of the allegations that was made was that in the absence of prescription of minimum wage under the law, the payment was paltry and there was naked and unabashed exploitation of workers.[37] In reply to a report submitted to the Supreme Court by the District Judge, Bhopal, the State of Madhya Pradesh pointed out in its counter - affidavit that the Central Government had not prescribed the minimum wage so far under the Minimum Wages Act, 1948.[38]

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35. The Report of the National Commission on Self-Employed Women and Women in the Informal Sector indicted the state saying that it was the biggest defaulter in paying minimum wages. See *Indian Express*, July 8, 1988, p.8.

36. *Mukesh Advani* Vs. *State of Madya Pradesh*. (1985) 3 SCC 162.

37. *Ibid.*, p.163.

38. *Ibid.*, p.166.

Swiftly reacting to the circumstances, the court made an order on February 18, 1983 directing the Union of India to come out with proposals setting out concrete steps to prescribe minimum wages on piece - rate basis for various occupations in flagstone mines. But things moved at a snail's pace eventually forcing the court to come out with another direction requiring the Union of India to issue a preliminary notification under Section 5 of the Minimum Wages Act, 1948 setting out its proposal for information of persons likely to be affected thereby. After taking several adjournments, the administration could only say that the issuance of notice under Section 5 of the Act was under active consideration and finally it was only on September 26, 1983 the learned counsel for Union of India made a statement that a preliminary notification would be issued by the end of the first week of November 1983. The Union of India issued a notification accordingly and a copy of which was submitted to the Supreme Court on April 16, 1984. It was then the court heaved a sigh of relief and observed that it was not the end of the journey but it was just a beginning.[39] The factual matrix of the case thus reveal that the whole episode related only to the issue of exercising power under the law for the benefit of workmen in respect of which a statutory duty is existing. That public exercise by the apex court is all the more necessary to make even simple things move that too in the acknowledged directions of securing to workers their enjoyment of constitutional and legal rights is the moral of this case.

Making worse the things is always the pet theme of the state and this is true even of the revision of the minimum wage. The ghost of non-exercise of power by the state does not spare the revision of wages either. This is the

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39. *Ibid.*, p.167-68.

second but equally primary and important limb of the statutory duty envisaged under the law. The power of revision assumes significance in the context of variation in the price level. Wage revision is conceived as a potent instrument to check the fall in the real wages and more particularly below the subsistence level. Fall in real wages below the subsistence level is allergic to the spirit of social justice which is the live-fibre of our society today. Insurance against sky-rocketing rise in the prices is indeed ensuring life with human dignity as ordained under Article 21 of the constitution.[40] For, the object of the minimum wage law is more transparent carrying the economic and social reverberations as its highlights. Hence, when the minimum wage at subsistence level is fixed, employees are entitled to receive the same at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.[41] It is also ruled that when the wage structure is at the level of the minimum wage, no revision to the prejudice of the workmen is permissible even on the ground of financial stringency.[42] Unfortunately, the law has lost the track beyond chances of retreat owing to official apathy to a greater extent. Stock proof of lapse is the measure of official indifference to the law. According to the records of the Union Labour Ministry relating to the southern states, the States of Kerala, Karnataka

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40. Workers and their families depend almost entirely on wages to provide themselves with the three basic requirements of food, clothing and shelter besides other necessaries of life. Therefore they are concerned with the purchasing power of the pay packets they receive. If the rise in the pay-packet does not keep pace with the rise in prices of essentials the purchasing power falls reducing the real wages leaving the workers and families worse off. See *Hindustan Lever Limited* Vs. *Dongre and Others.* (1994) 6 SCC 158 at p.172.

41. *Workmen rep. by Secretary* Vs. *Reptakos Brett. and Co.Ltd. and Another.* (1992) 1 SCC 290.

42. *Ibid.*, p.301.

and Tamil Nadu have last revised the minimum wages for scheduled employments in 1992, while the revision was undertaken by Andhra Pradesh and Lakshadweep in the first quarter of 1993. Minimum wages for two scheduled employments in the Union Territory of Pondicherry had not been revised since December 1989 and the minimum wage continued to be low ranging between Rs. 8 and Rs. 14.[43] What is clearly evident is the dereliction of statutory duty by the state swornby constitutional obligations. The dereliction is so pervasive crushing the law to death as it pushes down the level of earning to the detriment of those whose interest is sought to be wrapped with protection. The push may often be intriguing when the level of wage in force works out to less than the poverty rate at the current price level. As the liability of the employer under the law is to pay what is fixed, it is but natural that he can be compelled to pay only the same even if it is far below the current level of wages. It will really be too tragic if what little prescribed is not enforced. If it is enforced, it will only be satisfying the letter of law leaving its spirit begging earnest consideration of the state. No doubt there will not be any apparent breach of Article 23 but certainly it will be void and arbitrary and hence violative of Article 14 of the Constitution.[44] Enforcement of wages shrunken below the subsistence level is also violative of Article 21 as there is deprivation of decentlivelihood through state inaction. The attack of statutory inaction can also be grounded on violation of Article 23 as the economic necessity alone compels the labour to accept what is paid as statutory entitlement even if it is paltry.

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43. *The Hindu*, September 29, 1994, p.17. The report of the Harbans Singh Committee may also be quoted profitably. The Report submitted in 1977 observed that the minimum wages for the match industry had not been revised since 1968. Kothari, Smithu, Child Labour in Sivakasi: There is Blood on Those Matchsticks, *Economic and Political Weekly*, July 2, 1982, p.1200.

44. See *Mahesh Chandra* Vs. *Regional Manager, Uttar Pradesh Financial Corporation*. [1993]2 SCC 279.

The promise of economic and social justice, which is the sign post necessiating state intervention through discharge of obligations envisaged under the Constitution, is dwindling. Clearly and indisputably, the corridors of power are not fighting the causes of poverty as they pretend to be, but only breeding without dent. The state does not stop there but gives perplexing twist to the base cause by using the same unethically as a lever to legalise child labour. It is unethical because it is nothing but marginalisation of nation's asset-children-at the behest of the vested interest which no civilised society worth the name would do. Amidst the raging controversy over the issue, the state is talking about wage parity in the place of proportionate wage between child and adult workers in a bid to embarrass the employers economically.[45] The state cannot be taken to be unaware of what it is talking about. It is not the employers who are going to be embarrassed but only the Parliament, to enact or not to enact a law providing for wage parity. That if enacted, it is going to be another dead letter is a foregone conclusion and the employers will continue to occupy the field as ever.

Finally, the theory of supplementing the income of the family can also be nailed down by examining the nexus between child labour and the income of the child's family. A working child in effect supplants and not supplements the income of his family as the child is clearly a substitute for adult labour. Either he turns away from employment an adult of his own family or the family of another. In both the cases, there is loss of employment to adult workers and the loss is

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45. The then Labour Minister, Mr.P.A.Sangma informed the *Rajya Sabha* during the question hour that the government proposed to amend the Minimum Wages Act, 1948 shortly to provide equal wages for child and adult workers in an effort to discourage employment of children. He also said that the amendment to be introduced would also stipulate less hours of work for the child worker compared to the adult worker. See *The Hindu*, December, 13, 1994, p.15.

significantly great since children's wages are much lower than adult wages.[46] Further, employment of child labour on a large scale, especially in a labour surplus economy such as ours, depresses adult wages as the ready and plentiful supply of child labour can always be used to undercut demands for higher wages from adults thus posing a threat to the economic interests of the workers themselves as a class.[47] Leaving aside the painful impact on the wage of the contemporary adult workers, the low wages the children receive are not helpful in securing high wages when they grow up either. Wages as a result tend to rise slowly forcing a compromise on their capacity to meet their basic needs.[48] Also the market economy theory of demand and supply serves as a disincentive to technological upgrading as the vested interests continue to be benefited by the child labour-intensive strategy. Lack of technological upgradation in pace with the advancement of science and technology is a deterrent to the progress of the national economy.

The final tally of consequences of child employment looks distressing as various studies are furnishing clinching evidence closely followed by the admission of the government through its own records and the criticism the state invited from judiciary. Firstly, the security of employment till superannuation is not the rule. Secondly, the wages are so paltry that they are not adequate enough to equip the children and their families with capacity to secure the enjoyment of basic needs in conformity with human dignity. Thirdly, adults

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46. Kumar, Dharma. What Can We Do, *Seminar*, October 1988, p.34.

47. *Ibid.* Banerjee, Sumanta, *Child Labour in India*, *op.cit.*, p.23.

48. Banerjee, Sumanta, *Child Labour in India*, *Ibid.*

remain to be bread seekers and their numbers continue to be swelling while children are working at an young age. And finally, child employment also depresses the general wage level of labour to the detriment of their welfare and the development of the economy. It is thus beyond doubt that child labour is neither a shield to protect the children and their families from the scourges of poverty, nor a sword to fight it out. Ultimately, poverty is only a cause shadowing the vested interest and hence it is blessed with everlasting existence in which the state has acquiesced either by design or negligence. It is true that poverty is unanimously condemned but with varying degree of connotations depending upon the interest at stake as indicated below.[49]

Interest Involved	Reasons adduced for the prevalence of child labour	Reasons for which employment of children is intended
1. Employer	Poverty	In effect, employer is motivated by productivity or profit.
2. State	Poverty	The state has acquiesced in the state of affairs either by negligence or design and it lacks political will to fight. Hence it claims it as a harsh reality and pleads for its continuance till the poverty fades away.
3. Parents	Poverty	Economic necessity of the families sulking in poverty is so grave that they send their children to employment and are con with whatever earnings they make. Secondly, even if they can afford to send their children to school, they do not send them as schools are not properly maintained and eventually, no useful purpose would be served. At the same time, the parents do not want their children to be idlers and hence they prefer employment of their children.

49. It may be noted that in the first two cases, reasons stated are different from the one intended, while in the last case alone both go together.

8.2 RAMIFICATIONS OF EMPLOYMENT OF CHILDREN APPRISED

8.2.1 New Vistas of Right to Health

Poverty is thus a poor *alibi* for employment of children as the latter is devoid of positive contents of helping the children and their families to feed their stomachs full, hide their nakedness and fight the sickness. They continue to sulk in poverty eluding the promise of better life through employment of children. In stark contrast, the negative contents of employment are the most assured implying the deprivation of essentials to which the children are entitled. Such essentials are necessary to ensure 'childhood' in the early phase of life and 'full personhood' at the later stage in true compliance with the sprit of the Constitution envisaged under Articles 21, 39(a), (e) and (f), 41,42,43,45 and 47. The special circumstances of tender age and physique, mental immaturity and incapacity to look after themselves in which the children are hedged in necessitate efforts to meet minimum needs. As observed earlier, children who enter avocation unsuited to their age or physical capacity encounter countless health problems by virtue of employment. Children who are so exposed have got complaint against violation of their right to health. Alternatively, such a complaint points to the failure of the obligation of the state to protect the health of children. Adequate answer to the question warrants vertical spirit of the issue under consideration one emphasising the right of children and the other contemplating the right of the working children.

A child needs to be protected as a child. The realm of protection permeating the fabric of right of life with human dignity obligates the state to

provide them with health, nutrition and education.[50] More pathetically, such needs assume great significance in the case of children who are fighting heavy odds against poverty, as there is little virtue in saving lives if nothing is done to improve the health, nutrition and life prospects of the survivors. Such children face a situation of absolute material deprivation as "poverty and lack of education of their parents, combined with little or no access to essential services of health, sanitation and education, prevent the realisation of their full human potential making them more likely to grow up uneducated, unskilled and unproductive" and their life is belighted by malnutrition, lack of health care and disease and illness caused by starvation, impure water and poor sanitation.[51]

8.2.1.1 Total health and employment of malnourished: A contrast

Describing health as a right flowing from Article 21, the Supreme Court explained the ambit and reach of the obligation of the state in this behalf as under:

> "A healthy body is the very foundation for all human activities. That is why the adage "**Sariramadyam Khaludharma Sadhanam**". In a welfare state, therefore, it is the obligation of the state to ensure the creation and sustaining of conditions congenial to good health. This court in **Bandhua Mukti Morcha and Union of India** aptly observed: [SCC p.183, para 10]
>
> It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this court in **Francis Mullain Case** to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42

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50. Chapter Three and Four, *supra*.

51. *Lakshmikant Pandey* Vs. *Union of India*. AIR 1984 S.C.469 at p.476.

> and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These 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 nor any State Government - has the right to take any action which will deprive a person of the enjoyment of these basic essentials":[52]

The Supreme Court in the above case further referred to Article 47 and held:

> "This article has laid stress on improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the state.... As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority - perhaps the one at the top".[53]

This is the positive obligation emanating from Article 21 which courts of law always consider to be expedient to give force to in view of a series of pronouncements during the recent years. In those decisions, the Supreme Court has culled out from the provisions of Part IV of the Constitution these several obligations of the state and called upon it to effectuate them in order that the resultant pictured by the Fathers of the Constitution may become a reality.[54] Taking pride in setting the constitutional spirit into motion, the Supreme Court favoured inter-country adoption of Indian children and evolved

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52. *Vincent Panikurlangara* Vs. *Union of India*. (1987) 2 SCC 165.

53. *Ibid.*

54. *Ibid.*, p.174.

guidelines in this behalf to ensure the interest of children. In *Lakshmikant Pandey*[55] after making a survey of the provisions relating to welfare of children under the Constitution and the National Policy for Children, the court observed:

> "What Paul Harrison has said about children of the third world applies to children in India and if it is not possible to provide to them in India decent family life where they can grow up under the loving care and attention of parents and enjoy the basic necessities of life such as nutritive food, health care and education and lead a life of basic human dignity with stability and security, moral as well as material, *there is no reason why such children should not be allowed to be given in adoption to foreign parents. Such adoption would be quite consistent with our National Policy on Children because it would provide an opportunity to children, otherwise destitute, neglected or abandoned, to lead a healthy decent life, without privation and suffering arising from poverty, ignorance, malnutrition and lack of sanitation and free from neglect and exploitation, where they would be able to realise "full potential of growth".*[56] [Emphasis supplied].

Reiterating a similar view on the issue of discharge of special responsibilities towards the children, the Supreme Court in *Vikram Deosingh Tomar* Vs. *State of Bihar*[57] held:

> "Our constitution lays special emphasis on the protection and well-being of the weaker sections of society and seeks to improve their economic and social status on the basis of constitutional guarantees spelled out in its provisions. It shows a particular regard for women and children, and notwithstanding the pervasive ethos of the doctrine of equality it contemplates special provision being made for them by law. Under Article 21 every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen.

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55. *Lakshmikant Pandey* Vs. *Union of India*. AIR 1984 S.C.469.

56. *Ibid.*, p.476.

57. *Vikram Deosingh Tomar* Vs. *State of Bihar*. 1988 (Supp) SCC 734.

> And, so, in the discharge of its responsibilities to the people, the state recognises the need for maintaining establishments for the care of those unfortunates, both women and children, who are castaways of an imperfect social order and for whom, therefore, of necessity provision must be made for their protection and welfare. Both common humanity and considerations of law and order require the state to do so. To abide by the constitutional standards recognised by well accepted principle, it is incumbent upon the state when assigning women and children to these establishments, euphemestically described as "Care Homes", to provide at least the minimum conditions ensuring human dignity".[58]

The stage was thus all set, of course, beyond doubt declaring health as a component part of the right to life. In the result, the state is obliged to take all steps adequate to ensure the health of its citizens and for that purpose, to ensure the material well-being and development of children. As a necessary corollary, the state must be prepared to face any eventuality arising out of its failure to meet the obligation. Health is no more a charity but a constitutional necessity. The declarations the state make in this behalf are not pious platitudes any more. They are obligations which the state is bound to assume as a caretaker of its citizens. In tote, it is an indefeasible right available to all who happen to survive on this planet. This expansive reach of Article 21 encompassing positive obligations including the one in regard to maintenance of public health renders the plight of millions of poverty - stricken children curious and a subject matter for closer scrutiny.

It is our common knowledge that poverty-stricken children are malnourished with consequential impairment of physical and mental capabilities.

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58. *Ibid.*, p.736.

The material deprivation renders them impaired. They form a class within the class as they are the weakest among the weak - children as a whole. They need the maximum protective care as they are impaired for ever and the realisation of full potential growth will never turn into reality. The scale of responsibility will fairly be wide and deep necessiating the state to ensure that the impaired are neither neglected nor exploited. The protective cover to the exclusion of neglection and exploitation will alone be in strict compliance with the spirit of Article 21. But shockingly in total disregard of ethics and responsibility, both moral and legal, the state has acquiesced in the employment of the deprived by not enforcing the provisions of law. The irony is that the poverty which has stolen their ability is shown as the excuse urging it a measure of fighting it till the economy recovers. Such employment is plainly arbitrary and illegal denuding the finer facets of life violating Article 21.

8.2.1.2 Extinction through employment: A formidable challenge to Article 21

While the needy is craving for soothing and warm care of the state, it is sly on the part of the state to have put them hanging in balance for survival in the name of benevolence. Employment of the impaired is itself bad and contentious as it is both unsuited to their age and to their physical capacity and it implies denial of opportunity to facilitate the enjoyment of the right to life with dignity. In addition, the employment brings home the untold miseries of exploitation. The state calls child labour as *survival through employment*: but it is only *extinction through employment*. It is extinction from dignified existence as the exploitative conditions force them to go waste - human waste. In the context of the manifold problems of health arising from varied employments, the right to health becomes a still larger issue.

The decision of the Supreme Court in *M.K.Sharma* case[59] is a clear case of recognition of the right of workmen who are exposed to various hazards to claim appropriate relief on the ground of violation of their fundamental right to health. Moving closer to a distinct possibility of making the employer liable under the Constitution for employment injuries, the Supreme Court held:

> "The result of medical examination carried out shows that there is no clear proof of any injury or ill-effect on the workers following the alleged exposure. It is, however, not disputed on either side that the evil-effects take time to manifest and it is possible that even though no adverse effect is noticed now, on account of the exposure already suffered, the consequences may appear later. Mr.Nariman appearing for the employer - respondent 1 - does not disown the responsibility to compensate the workmen in the event of proof of ill-effects directly flowing out of employment at a future date. The only way in which this aspect of the demand can be dealt with is to say that as and when any related ill-effect is manifested, the aggrieved workman or workmen would be entitled to lodge claim for compensation".[60]

The Supreme Court further held:

> "...Every workman should be insured for a sum of Rs one lakh and officers should be insured to the tune of Rs two lakhs.... The cost for these insurance policies would be borne by respondent I as a related and necessary expenditure of business".[61]

The issue which was incidentally dealt with was adequately recognised and examined in the light of the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights and the Constitution in the dissenting judgment of K.Ramasamy, J., in *C.E.S.C Ltd. and Others* Vs. *Subash*

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59. *M.K.Sharma* Vs. *Bharat Electronics Ltd. and Others*. (1987) 3 SCC 231.

60. *Ibid.*, p.232.

61. *Ibid.*, p.233.

Chandra Bose and others.[62] In the trend-setting judgment, Justice K.Ramaswamy held:

> "The term health implies more than absence of sickness. Medical care and health facilities not only protect against sickness but also ensures stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful, economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt-edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. Health is thus a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. In the light of Articles 22 to 25 of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, right to health is a fundamental human right to workmen. The maintenance of health is a most imperative constitutional goal whose realisation requires interaction of many social and economic factors. Just and favourable conditions of work implies to ensure safe and healthy working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnesses their human resources. Prevention of occupational disabilities generates devotion and dedication to duty and enthuses the workmen to render efficient service which is a valuable asset for greater productivity to the employer and national production to the state".[63]

The concept of health received further impetus in the subsequent landmark and path-breaking judgment of the Supreme Court delivered in *Consumer Education & Research Centre and Others* Vs. *Union of India and*

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62. (1992) 1 SCC 441.

63. *Ibid.*, pp.463-64.

Others.[64] Affirming the views of K.Ramasamy, J., expressed in *C.E.S.C. Ltd. Case*,[65] the Supreme Court held:

> "The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would live a life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread winning to himself and his dependents, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the workers for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the state. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The state, be it Union or State government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution.... Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life,

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64. 1995 (1) scale 354.

65. *C.E.S.C. Ltd. and Others* Vs. *Subash Chandra Bose and Others*. (1992) 1 SCC 441.

economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to workmen".[66]

The new thrust of the concept of health received saw the horizon of a constitutional obligation on the part of the employer under Article 21. The state will also be bound by it if it is an employer too. The employer is obliged to provide protective health care which is inclusive of provision of medical care facilities continuously both during employment and after. He is further obligated to insure the health of the workers compulsorily.[67] But it is sad reading that the traumatic experience the children face are without bounds. As stated earlier, the Indian scenario is replete with scary visage. Some employments in which children are employed are inherently dangerous. Some others become so due to poor working environment. The exploitative conditions, which the children are readily assured of, turn the rest hazardous.[68] The state is quite aware of this sorry state of affairs as the Reports of the Committees affirming this were piling with it for decades together. Even where it is not so, it must be presumed that such employments are dangerous thus placing the burden on the state to prove otherwise.[69] Adverse situation is the hallmark of the child labour syndrome

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66. *Consumer Education and Research Centre and Others* Vs. *Union of India and Others*. 1995 (1) Scale 354 at pp.374-75.

67. *Ibid.*, p.377.

68. See Chapter Seven, notes 42, 123-125, *supra*.

69. In a similar situation, the Supreme Court felt that it was indeed difficult to understand how the State Government which was constitutionally mandated to bring about change in the life conditions of the poor and the down-trodden and to ensure social justice to them, could possibly take up the stand that the labourers should prove that they were made to provide forced labour in consideration of an advance or other economic consideration received from the employer and were therefore bonded labourers. The court further said that it would be a totally futile process because it was obvious that a bonded labourer could never stand up to

making those avocations or employments which the children frequent unequivocally unsuited to them both by virtue of age and physical incapacity arising out of material deprivation. Also it is not the case of the state that children are given medical facilities and other social security benefits anywhere in India at any point of time.[70] It talks about regulation but its words are not to be taken seriously. Eventually the state is in the red perpetuating the violation of Article 21. This reinforces the earlier view that children ought not to have been employed at all. The consequences flowing therefrom are avoidable which situation the state has failed to ponder over.

8.3 PROFILE OF BASIC EDUCATION IN INDIA

Employment at premature age deprives the children of their education as well. The veil of poverty helps the vested interest to keep children engaged in their workshops. As employment cannot co-exist with formal education, children are forced to stay away from the mainstream. However, dauntless efforts are being made by the enthused state to help the children have a bit taste of literacy. Hence they are stretched to the 'bye-lane' stream of non-formal education. The latter is used as a only strategy to stave off criticism leveled against the state and the employer of exploiting children through deprivation of

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(contd.,)

> the rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book. It concluded saying: "Therefore, wherever it is shown that a labour is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer". See *Bandhua Mukti Morcha* Vs. *Union of India and Others*. AIR 1984 S.C.802 at pp.826-27.

70. See Chapter Seven, p.293, *supra*.

education. For its part, the state made non-formal education a component of pilot projects implemented in child labour - intensive areas.[71] Non-formal education is intended to be a substitute or equivalent - equivalent means identical and equal in value-of formal education to make it less obvious that the state has failed to meet the obligation of providing free and compulsory education under Article 45.[72] Again, to make it less cynical and more equitable, the employer is made to bear the responsibility of providing non-formal education as a social cost of production. Despite maneuvering, the issue still bristles with difficulties as academicians have genuine belief that the non-formal education is not a real substitute but a poor substitute.[73] But it looks amazing that the state still talks loud about non-formal education to achieve literacy as formal education has failed miserably. The time-bound constitutional directive received a major and an unprecedented set back when it stood pushed and

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71. See Chapter Seven, notes 180 and 182, *supra*.

72. There is strong suspicion among many that the non-formal education has been devised to get away with the failure of ensuring universal elementary schooling for all children in the age-group 6-14. See Acharya, Poromesh, Universal Elementary Education: Receding Goal, *Economic and Political Weekly*, Vol.xxix (1-2), January 1-8, 1994, p.27.

73. The Programme of Action for the National Policy on Education, 1986 stated: "For their healthy development and to ensure that they enjoy conditions of freedom and dignity, the education system will strive to have all children in whole-time schools of good quality, and till that becomes possible they will be provided opportunities of part-time non-formal education". Quoting the above, the Ramamurthi Committee appointed for review of the National Policy on Education, commented as under: "It is clear that the POE itself places NFE at a level lower than the formal school. A feeling widely persists, legitimately or not, that NFE is some kind of a second-grade education for the poor, while the formal school is meant for those who are relatively better off. This feeling has grown in the public mind notwithstanding the fact that formal schools themselves are in poor shape and provide, by and large, what can be fairly described as second grade education". *Ibid.*, p.29.

pushed further to finally reach the turn of the next century.[74] The reprieve the state has gained by design is both hard and difficult to explain.

The dogma of policy on education looks ludicrous as there is talk of literacy through non-formal education which gained legitimacy in the National Policy on Education, 1986. The National Policy on Education while acknowledging the failure of universal elementary schooling for all children upto the age of 14, gave thrust to non-formal education for out-of-school children in the hope of fulfilling the constitutional directive.[75] "The big program in Indian education now is to expand non-formal education, so children at work can get some education", said a professor well-known for his studies of the problem of drop outs.[76] He further said:

> "We don't speak of 'compulsory' education anymore. We have eliminated that word. We now speak of education for all, or universal education, not compulsion. We cannot compel education. The government has enacted laws to punish parents who do not send their children to school, but they do not work. The public does not want compulsion. We are trying to develop an interest in education, but we are against compulsion.... And we want more children in the non - formal program".[77]

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74. It may be noted that the Constitution stipulated a time-frame of 10 years for achieving universal education for all children up to the age of 14 years. Later the time was extended to 16 years. The Education Commission allowed a further extension of the time limit and set 1985 as the target date. NPE 1986 pushed the target to 1995. The EFA document pledged to complete the unfinished task by AD 2001. *Ibid.*

75. *Ibid.*, p.27.

76. Weiner, Myron, *The Child and The State in India: Child Labour And Education Policy in Comparative Perspective*, Fourth Impression, Oxford University Press, Delhi, 1994, p.68.

77. *Ibid.*, pp.68-69.

Besides, persons in the age group of 15-35 are also sought to be covered by the National Adult Education Programme.[78] It is thus beyond pale of doubt that the state is committed to literacy rather than education.[79] The shift in emphasis was all the more complete with the substantial funding of part-time education in the sixth and seventh five year plans.[80] The same stood confirmed by the speech of the then Prime Minister at the summit of nine high population countries held in New Delhi in December 1993.[81]

The perceptive change in policy on education coincides with the shift in the attitude towards child labour. The scheme of non-formal education was on the threshold as the state chose to soften the legal ramparts in the guise of

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78. Acharya, Poromesh, Universal Elementary Education: Receding Goal, *Economic and Political Weekly*, Vol.xxix (1-2), January 1-8, 1994, p.27.

79. The aim of the literacy mission is to make people not covered by the formal school system functionally literate. The UNESCO defines a literate person as one "who can with understanding both read and write a short simple statement on his everyday life". A person is functionally literate when he can "engage in all those activities in which literacy is required for effective functioning of his group and community". See Vanaja. V., Where are the women? Review of Adult Education Primers, *Economic and Political Weekly*, vol.xxix (12), March 19, 1994, p.665.

    On the contrary, the aim of education offered in the formal education system is fundamentally distinct. In essence, the objective of education is to bring out the latent faculties of a person. It is that education helps in unfolding inner activities of a person. It develops the mind, the skills and brings maturity in the thinking of human beings. The multi-faceted development of man - development implicit in physical, mental, intellectual and cultural growth of the human person for a better quality of life - cannot become complete unless he is "prepared" by the education he receives. See Chapter Four, note 138, *supra*.

80. Weiner, Myron, *The Child and The State in India*, *op.cit.* p.12.

81. See Chapter Four, note 166, *supra*.

veiled threat from the portals of poverty.[82] The poor show on the front of formal education upto the age of 14 is also attributable to poor quality of education the system has provided so far. The reflective index of the poor system is worth revealing. Many who have stayed away from the schools are not employed. They remain idlers.[83] And many have stayed away from school for being employed, not because the employment is productive but, because education is not worth pursuing. This is fairly indicative of the attention the state has bestowed in fulfilment of the constitutional directive. The directive is thus at loggerhead exposing the state to ridicule. Nonetheless, the state is not hiding its inability again. Rather it proudly asserts that it has done the best despite heavy adds thus shelving the blame on poverty which is alleged to have been the moving spirit behind such odds. Poverty is made the prime cause assiduously which takes to its credit the second casualty.

8.3.1 Poverty and Mass Education

It would be naive to assume that the socio-economic reality of massive poverty has forced the state to stray from the constitutional imperative under

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82. Having accepted child labour as a "harsh reality", the government proposed that measures be taken to improve the working conditions of children rather than to remove them from the work force. Hence, under the new legislation (Child Labour (Prohibition And Regulation) Act, 1986 the government proposes to give attention to eliminating the employment of children in hazardous occupations, improving conditions of work, regulating the hours of work and wages paid, and providing non-formal supplementary education programmes for working children. As a follow-up, the Education Ministry concluded that in lieu of compulsion, alternative voluntary, non-formal education should be provided for working children. See Weiner, Myron, *The Child and The State in India*, *op.cit.*, p.12.

83. Though it was estimated that the out-of-school children in the age group 6-14 was as high as 24 million, the estimated figure of working children below 14 years of age was only 14.5 million comprising 5.5 per cent of the total child population. Government of India, Education For All, Department of Education, 1993, p.6, in Acharya, Poromesh, Universal Elementary Education: Receding Goal, *Economic and Political Weekly*, Vol.xxix (1-2), January 1-8, 1994, p.27.

Article 45. Rather it is only an exaggeration to hide the design of neglecting the vital social sector consciously. The causal connection between poverty and education is conspicuous by its absence. Poverty has never proved to be a stumbling block in the expansion of mass education or inmaking primary education compulsory anywhere. Many countries of Africa with income levels lower than India have expanded mass education with impressive increases in literacy. China, which had an illiteracy rate comparable to that of India forty years ago, now has half the illiteracy rate of India. South Korea and Taiwan, both poor countries with high illiteracy rates a generation ago, moved toward universal and compulsory education while their per capita incomes were close to that of India. Adult literacy rates in both countries are now over 90 per cent.[84]

The historical evidence delinking mass education from the level of national and per capitaincome is also persuasive. In many countries the diffusion of mass literacy preceded the Industrial Revolution, and governments often introduced compulsory education when levels of poverty were high.[85] A number of Asian countries experienced spectacular primary-school attendance rates prior to their rapid economic growth. In the short span of thirty years, between 1873 and 1903, the Japanese government introduced elementary - school attendance from 28 per cent to 94 per cent. By 1913, 98 per cent of the age group was attending school. South Korea with only a third of its children in primary schools in 1941, universalized primary education by the early 1970s. Its literacy rate increased from 55 per cent in 1944 to 90 per cent. In China,

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84. Weiner, Myron, *The Child and The State in India*, *op.cit.*, p.14.

85. *Ibid.*

primary - school education expanded rapidly after 1949. In 1979, china enrolled close to 147 million children in 920,000 formal schools, an enrollment ratio of 93 per cent, compared with 25 per cent in 1949. The literacy rate among the population aged fifteen and above is 72.6 per cent, an increase of 52 percentage points since 1949.[86] An acquittance with the smart and excelled performance of the State of Kerala with a per capita income no different than that of the rest of our country helps to discard firmly any allowance of relationship between the two.[87] Low per capita income apart, the scale of expenditure earmarked by these countries on education also counts much to discount any guided belief that the poverty has taken its toll by forcing resource constraint. These countries whose per capita incomes are comparable to India, spent equal or higher proportions of their Gross National Product on education. But the stunning level of literacy these countries have achieved is quite illuminating, successfully keeping at bay the relevance of expenditure to the level of literacy.[88] With the same level of expenditure, India is struggling with a staggering school survival rate. What makes the scenario more distressing is the fact that a few countries which spent even less than the one spent by India

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86. *Ibid.*, p.14.

87. *Ibid.*

88. "In the mid-1980s India was spending 3.6 per cent of its gross national product on education, about average for low-income countries. Many low-income countries with higher levels of literacy spent equal or higher proportions of their GNP on education: Sri Lanka, with 86.1 per cent literacy, spent 3.5 per cent: Zaire (61.2 per cent literacy, 3.4 per cent); Tanzania (85 per cent literacy, 4.3 per cent); Kenya (59.2 per cent literacy, 6.7 per cent); and Morocco (70.7 per cent literacy, 7.9 per cent)". Financing Education in Developing Countries: An Exploration of Policy Options [Washington, D.C.: World Bank, 1986]. See also Aklilu Habte, George Psacharopoulos, and Stephen P.Heyneman, Education and Development: Views from the World Bank [Washington, D.C.: World Bank. 1983]; World Bank, Education: Sector Policy Paper [Washington D.C.: World Bank, 1983]. *Ibid.*, pp.159-60.

achieved higher literacy rates than India and a higher proportion of children completing primary school.[89]

With the exit of the per capita income and the public expenditure as having no material bearing on the level of literacy, the shocking ground reality confronting India poignantly refers to the lopsided policies underlying the design to push down primary education to the state of indignity. The design takes root in the apportionment of public expenditure between primary education and higher education. In South Asia, according to the World Bank, less than half of the public expenditures on education between 1965 and 1980 was spenton primary education, a proportion well below that of the countries of East Asia and of East Africa. India ranked second [after Egypt] among the twenty-one largest developing countries in the proportion of its young people going on for higher education, but ranked fifteenth in overall literacy and twelfth in the percentage attending primary school. In other words, India committed less of its national resources to the development of its primary schools than most other low-income countries with higher literacy rates and higher primary-school enrollments.[90] The design is so entrenched that successive governments both at the centre and in the states have miserably failed to work for in all earnestness primary education warranted. Eventually, India sets the record as the state with the largest single producer of the world's illiterates.[91] Indeed, it is a sad story of neglect at all levels of such an important issue involved in the national-building venture.

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89. *Ibid.*, p.160.

90. *Ibid.*

91. *Ibid.*, p.4.

8.3.2 Education and Child Employment

Paradoxically, the commitment rate of primary education places India in the position of contradistinction. Higher outlay on primary education by many countries marking the commitment for holistic development of children is the result of implicit recognition of the nexus between education and child employment. The relationship between the two is so invincible that the recognition it has received has been generous globally. Reiterating the ILO's stance on child labour, the annul report (1983) of the Director-General of the ILO, Mr.Francis Blanchard, singularly emphasised the "close correspondence between school attendance rates and the incidence of child labour", which underscored the ILO's 1973 minimum - age recommendation that "full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively ensured up to an age at least equal to that specified for admission to employment.[92] Review of the past literature would reveal that all the advanced industrial countries and others adopted a system of compulsory, universal, largely [though not exclusively] state-run education, and a ban on the employment of children under fourteen, with restrictions on employment of adolescents over fourteen. Similarly, successful examples of state intervention among contemporary developing countries are liberally available from the current literature.[93] Dissection of policies so adopted tallying with the varied interests of the industrially developed and contemporary developing nations fairly discloses common minimal

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92. *Ibid.*, p.88.

93. *Ibid.*, p.126.

agreement. Discernible from the consensus is the emphasis on making child labour laws prohibiting employment effective through compulsory education. Ban on child labour was very much on the cards when it was realised that child labour forced wages down and displaced adult workers.[94] However, a faint plea of ineffective implementation of these laws was broadly focused on the ground that the number of establishments and small shops was so large. But in reply it was firmly asserted that they could be enforced if education was made compulsory legally. Explaining the relative importance of the compulsory education laws, reformers noted:

> "That enforcing school laws, though by no means simple, was easier than enforcing child-labour laws and factory acts. Teachers, social workers, truant officers, school census takers - the school bureaucrats responsible for the enforcement of compulsory - education legislation - knew their community. Once a child was enrolled in the local school, truant officers could go to the child's home if the child failed to appear. Parents were also less willing or able to bribe truant officers than employers were to bribe factory inspectors. Moreover, parents of young children in the six-to-ten or six-to-twelve age group were less likely to resist the pressures for compulsory education than the parents of older children".[95]

Nations which perceive education as an instrument for social development, take pride in having achieved near total literacy and correspondingly low levels of child labour. Their pride is India's envy as compulsory education is still a policy in-the-waiting. Planners and policy makers in India reject compulsory education arguing that schools are not attractive to

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94. *Ibid.*, p.118.

95. *Ibid.*, p.121.

children of poor parents and that they are economically active. Explaining the rationale, they say with vehemence that the schools do not fit the bill as they train them only for 'service' or 'white collar occupations' which is not conducive for the country already facing a mounting unemployment problem.[96] Pursuing the other lead, it is claimed that poor parents need the income of their children and it is a matter of social justicethat the children of the poor be allowed to work.[97] Giving a finishing touch to the issue, it is said that school drop outs and child labour are a consequence, not a cause, of poverty and eventually, it can be inferred from the arguments, that the abolition of child labour and the establishment of compulsory education must await a significant improvement in the well-being of the poor.[98] The banner of poverty is once again raised by the state to avoid being caught napping for its failure to honour its the constitutional obligation. This only tantamounts to rewriting the history of other equally poor countries that have achieved high literacy without eliminating poverty. Nor is poverty laying a trap for the poor to shun education. The proven record to the contrary makes the plea of poverty contentious with no force to carry conviction any more in this regard. The fall out is the rebuke the state has been receiving of late from human rights organisations within and outside the country. In a bid to rejuvenate its image, the state has recommitted to the cause of education.[99] The year of 2000 A.d. is going to be the year of childhood, if everything goes on well. For, this is the year by which children would be withdrawn at least from hazardous employments and every child would be ensured a place in the

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96. *Ibid.*, p.5.

97. *Ibid.*, p.13.

98. *Ibid.*

99. See Chapter Four, note 166, *supra*.

school. They are just a handful number of years away from the promised childhood. The children may not feel sad for counting years in despair if they are to get what they deserve at least a few years hence. The earnest desire the children may nurture is that the D-day is not stretched beyond 2000 A.D. For, of what use are words and statements to them if life on the ground remains as difficult?

8.3.3 Non-formal Education: A Poor Substitute

Fighting shy of facing the responsibility of vindicating itself from the charge of violating the constitutional directive, the state is talking more liberally about non-formal education. It is a point that deserves emphasise in the present context of the needs of children and their protection. It is not the intention of the state to eradicate child labour as it continues to stick to refrain. Again,as the state is talking about grand expansion of non-formal education, formal education will continue to be less attractive to idlers. No doubt there is a promise to increase from the next plan the public expenditure to 6 per cent GDP from the current level which is hovering around 3 per cent.[100] Such promise is as old as the hills since such promises were made on several occasions but not fulfilled. The utterances and actions which have followed have not helped the state in any way to pull itself out of the strait and the sincerityof the state in attending to the welfare of children still continues to be under cloud as there is no talk of compulsory education yet. However, there is a view widely prevalent among the bureaucrats and academicians that the non-formal education is not derogatory of the constitutional directive and will also be in true compliance with the spirit

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100. *Ibid.*, note 173, *supra*.

behind it.[101] It is submitted that the said view is wholly misconceived and unpalatable legally. Besides, it lacks substance qualitatively.

Firstly, non-formal education lacks substancemaking it deficient in quality. As the inputs vary with the object, so also does the quality. A broad assessment of these factors with an impassionate outlook will make it substantially different from formal education. Hence it cannot be a real substitute for formal education. Apprehensions expressed in certain quarters about the possibility of the neo-literates relapsing into illiteracy confirms the dubious value of the non-formal education.[102] Truetothe object of the education effectively, it must be provided in the formative years of the child. Any thrust at the subsequent stage will be without desirable consequences and that is why those who failed to gain education in the formative years, are later only made functionally literate. This is the much claimed object behind the non-formal education.[103] It is nothing but recycling the waste in reality. True assimilation of the above may also be put in a different way to ponder over. Planners, policy makers, academicians and the like who are in the age of the

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101. Acharya, Poromesh, Universal Elementary Education: Receding Goal, *Economic and Political Weekly*, Vol.xxix (1-2), January 1-8, 1994, p.27.

102. It was reported that the astonishing total literacy achieved in Kerala had not been sustained and it was alarming to learn that about half the neo-literates in that State had been slipping back into illiteracy. The same regressive pattern had also been observed in Burdwan in West Bengal. the first district outside Kerala to have achieved total literacy. *Indian Express*, February 4, 1993, p.8.

    True to such apprehension the President of India in his address to the Joint Session of Parliament on 21st February, 1994 emphasised the counter strategy evolved by the state in this regard. He said: "In the 32 districts which have already successfully concluded the Total Literacy Campaign. Post Literacy Campaigns have been launched to ensure that the neo-literates do not lapse into literacy". *The Hindu*, February 22, 1994, p.6.

103. Note 79, *supra*.

Constitution would not have been what they are today had they not been provided with formal education but only with non-formal education. It is sad that people who already gained want others to be the losers.

Secondly, formal consideration of the issue in the legal context makes two things relevant namely, placement and quality and content of education. While the former is the implicit mandate of the Constitution and the latter is visualised as the underlying spirit of the all-round development of the child contemplated under Articles 45, 24 read with Article 39 (e) and (f). The statement of intent of the framers of the Constitution may be quoted profitably to emphasise that formal education alone is solicited. Children below the age of 14 shall not have place anywhere except in the school is what Dr.Ambedkar sought to convey about Article 45 while replying a question in the constitutional debate.[104] This settles the controversy in as much as there is no question of children of that age group taking up employment and receiving education provided by the employer as a component of the work programme. For the same reason, the argument that Article 45 does not maintain any distinction between formal and non-formal education cannot also stand.[105] Also, anything that is imparted for an hour or two after tortuous schedule of work cannot be relevant to the constitutional philosophy of childhood. Non-formal education can only make 'second class' citizens eligible only for head counts.[106] Second class citizens as they are, they become alien to participatory democracy necessary to

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104. *Constituent Assembly Debates*, Vol.vii, p.540.

105. For contra view, see note 101, *supra*. It is submitted that such view is made owing to the absence of the term 'formal' in Article 45.

106. Note 73, *supra*.

make it true and vibrant. As well, the power centres take advantage of the absence of the instrument of education to avoid accountability to those who are deprived by omissions and commissions.[107] A picture of contrast is woefully present testifying to the skillful management by the state ofpolicies on education and employment. While it always makes apparent that it is serious about eradication of poverty through empowerment of the poor, admittedly it does little to make them productive through acquisition of knowledge and skill.

Formal education is ultimately the true and active response to the spirit of human dignity eulogized in the Constitution. So sure are we that free and compulsory education is a political, legal and economic necessity as well that we never spare a moment to question or re-examine its validity. Unfortunately, as the 'shadow policy'[108] of the state has been vigorously protecting the

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107. In the *Judges Transfer Case* [AIR 1982 S.C.149] the Supreme Court firmly emphasised the principle of accountability to make a society really democratic and for that purpose it held that citizens would be entitled to insist upon information from the State as of right by reading the same into Article 19[1][a].

    It is submitted that this would carry meaning only in the educated society. This is quite true of India as evidenced from the observation of the Supreme Court in *Bandhua Mukti Morcha Case* [AIR 1984 S.C.802] wherein the court held: "...that they [workers] are totally ignorant of their rights and entitlements. It is this ignorance which is to some extent responsible for the total denial of the rights and benefits conferred upon them. It is therefore necessary to educate the workmen ...so that they become aware as to what are the rights and benefits to which they are entitled under various social welfare laws. The knowledge of their rights and entitlements will give them strength to fight against their employers for securing their legitimate dues and it will go a long way towards reducing, if not eliminating their exploitation".

    It is also quite pertinent to note that only in the context of poverty, illiteracy, ignorance and socially and economically disadvantaged position of the majority of citizens, the instrument of the Public Interest Litigation was encouraged. [Vide *Judges Transfer Case*, AIR 1982 S.C. 149].

108. Shadow policy is the informal and undeclared policy of the state as opposed to the formal and declared policy.

employment of children irrespective of their age and capacity, it has not been in mood to relent to the demand for compulsory education. According to the state, twice deprived is the best - deprivation of education and deprivation through employment. Education has hitherto been kept as a distant object to help the employment of children. Now it is the turn of the non-formal education to keep the flow unchecked. All along, the policy is the same - to keep wide open the doors of factories and sweat shops for employment of children and to shut the doors of schools.

8.3.4 Formal Education: The Springboard of Human Dignity

Denial of education is not without legal consequences. It is an inescapable conclusion that denial attracts violations of provisions of the Constitution. Education upto the age of 14 is a fundamental right under Article 21 of the Constitution.[109] Presumably, the corresponding obligation is cast on the state to establish and maintain schools in adequate numbers within reasonable access to facilitate the enjoyment of the right. Administrative inconvenience or financial constraint cannot prevail over the obligation. Nor can the right be allowed to be waived. For the same reason, the state must enact compulsory education laws imposing an obligation on parents to educate their children.[110]

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109. *J.P.Unnikrishnan* Vs. *State of Andhra Pradesh and Others*. AIR 1993 S.C. 2178.

110. The State Governments' legislations on education contain provisions enabling the local authorities to make education compulsory. Only few local authorities made it compulsory but the same is not enforced effectively. Weiner, Myron, *The Child and The State in India*, *op.cit.*, p.57. The state of Tamil Nadu in 1994 passed a bill making education compulsory. The same is yet to become law as it is pending with the President of India for his assent. *The Hindu*, Sunday Magazine, June 12, 1994, p.iv.

Denial of education as shown earlieris not denial *simpliciter.* It is denial by design. It is the considerable view of the official machinery of the state that children throng employment centres as they belong to the brand of poor. The process of elimination of child labour is slowed down as a mark of commitment to social justice.[111] Hence, they cannot forcibly be removed to schools even though the state is more obliged to honour its commitment to provide free and compulsory education. When the state is drawn into the conflict seeking to justify its action encouraging employment of children in the context of the mandate under Article 45, it always draws comfort lavishly from two things. Firstly, it strongly contends that Article 45 is not an enforceable right[112] and secondly, that employment of children under 14 is not prohibited except in the cases enumerated under Article 24.[113] The projections the state make displays its anxiety to play down the consequences. It is nothing but a mischief the stateseeks to foist with the blessings of the Constitution.

With respect to the first, it may be stated that there is always double talk by the state on Directive Principles of State Policy. Evidence on this count isnotlacking. An all-familiar attitude of the state is that when it wants to impose responsibility on the subjects, it does so with great zeal. For that purpose, it enacts laws and canvasses for their constitutional validity squarely invoking the Directive Principles. When the stage, however, is set to put the state on the

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112. This view is based on the provision contained in Article 37 which reads as follows: "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws". It is stated that Part referred to above is Part IV of the Constitution dealing with Directive Principles of State Policy.

113. Emphasis is sought to be laid on the expressions "in any factory or mine or engaged in any other hazardous employment" [Article 24].

receiving end, it talks diametically opposite urging the court to persuade itself to accept that Directive Principles are not enforceable. This stance promptly hints at the attitude of the state dragging its cold feet when responsibility is sought to be fixed thereunder. The policy of 'dualism' is contemptuous. The allegiance of the state to this part of the Constitution as any other part is not under challenge and it cannot be so also. As a practical consequence, the state must accept both pleasure and pain. It cannot reject the latter as inconvenient obligations. Of course, citizens generally may not be entitled to claim entitlement to all those enumerated under this Part even if they are intended for the benefit of the community. But certainly they would be entitled to call upon the state to explain what steps did it take to implement those directives as implicit obeisance is the mandate. This is to fix accountability on the state for its acts of commissions and omissions which is gaining momentum in the decisions of the courts of law and the Report of the Committee of the Parliament.[114] The crux of the principle is to give a person the right to demand that policy be directed towards securing the objective of making the free and compulsory education a realisable one, even if that objective can not be achieved immediately. This is a right of a different kind - the right to such a policy carrying with itobjectiveofachieving free and compulsory education for all children upto the age of 14.[115] Making the administration judicially accountable is to incorporate in the policy corrective measures if any warranted by the letter and spirit of the Constitution.[116] When

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114. A detailed discussion on the issue of accountability based on the decisions of the court of law is deferred to the next chapter.

115. For a detailed discussion on this issue, SeeSen, Amartya. The Right Not to be Hungry, in Alston, P. and Tomosevski, K., (eds), *The Right to Food, op.cit.*, p.69.

116. *Delhi Science Forum and Others* Vs. *Union of India and Others*. [1996]2 SCC 405 at p.413.

any challenge to the policy is adequately made, it is but fair and reasonable to require the state to explain the rationale of the policy as the exchequer of the state is put into stake in its implementation. Unfortunately, the contrary was on the winning spree till the decision of the Supreme Court in *Unnikrishnan Case.*[117] Till then, the state has conveniently used the difference between the Part III and Part IV to make education a charity.

The uncharitable interpretation of Article 45 has made education irrelevant for majority of the child population in India as there is absence of adequate logical support i.e. infrastructure to facilitate the enjoyment of the facility of education. The 'operation denial' becomes complete with the active encouragement by the state of participation of children in productive employment in the name of helping them to fight poverty. Legal sustenance of the protective employment of children below the age of 14 is sought to be drawn from the restrictive prohibition envisaged under Article 24. Reference only to Article 24 to draw solace can only be pretense as the state cannot be taken to be unaware of other provisions by which it is bound. Knowledge is not only power but also implies responsibility. It may be recapitulated that the provisions under Article 34 (e) and (f) are thelogical companions of Article 45 for assuring childhood to reach ultimately full personhood with the guarantee of human dignity. On proper construction, these provisions in their plain meaning connate'implied prohibition' of employment of children below 14 years of age in activities not expressly covered by Article 24.[118] As stated earlier, Article 24 is

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117. *J.P.Unnikrishnan* Vs. *State of Andhra Pradesh and Others*. AIR 1993 S.C. 2178.

118. See also note 104, *supra*.

only a caveat.[119] Reading Article 24 in isolation is to cause violence to the noble cause of protecting the vulnerable. The view of 'implied prohibition' is not perverse as it furthers the object of the Constitution namely the enjoyment of fundamental rights and freedoms and social and economic rights as well. The 'implied prohibition' which is the make up of Article 45 and Article 39 (e) and (f) also bears relevance to the concept of right to development which is currently enjoying over whelming subscription. Such a holistic recipe under the Indian Constitution cannot be undermined without attracting legal consequences. Protective principles of constitutionalism acting as restraint on the power of the state will certainly yield to the vindication of interest by the children. The provision which the violation of the scheme of 'implied prohibition', will attract is Article 14 which guarantees equality of opportunity - opportunity for education and development.[120]

8.4 VIOLATION OF PROTECTIVE LABOUR CODE AND JUDICIAL INTERVENTION

As observed earlier, the dragnet of consequences of employment of children is cast so wide that children are imperiled in more than one way. In the third and last leg to witness are the attractions arising out of violations of labour legislations. Labour legislations, to say the least, are social welfare legislations emerging out of constitutional directives. They are legal ramparts in the armoury of labour to fight exploitation. Nevertheless, they prove to be uncharitable. Workmen always find themselves in a totally strange environment by reason of their poverty, ignorance and illiteracy; they remain totally unorganised and

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119. Chapter Six, note 127, *supra*.

120. *Pradeep Jain* Vs. *Union of India*. [1984] 3 SCC 654 at p.673.

helpless and become easy victims of exploitation. Still worse are children. Grabbing the opportunity, the employers have rolled on benefits under various legislations to make quick money. Ultimately, the welfare legislations have been crucified. The administration has become inert having left only on paper the laws they themselves made. Repeated sermons the state makes echoing its anxiety to prove its innocence but are of no use to workmen who have been dragging on their earthly existence in the hope that one day death will relieve them from their misery and suffering. Words do not bring cheer in the life of those who sweated their life to build the nation. The welfare state is committed to the well-being of each individual and family under its care and responsible for the growth and development of both the individual and society. Enjoyment of fruition of freedom and development is the hallmark of the new socio-economic order which the Constitution of India promised to ensure through the vehicle of legislative and administrative action of the state. Sketching out the role of law in the making of such order, the Vice-President of India, K.R.Narayanan in his address at the Third SAARC LAW Conference held in New Delhi [January 28, 1994] said:

> "...In poor and developing countries law has to be the instrument of social and economic change besides being custodian of the rights and liberties of the people... Ultimately, it is, however, economic development that puts content into the rights and liberties of the people and invests them with a minimum degree of power to assert and enjoy these rights and liberties. Conversely, the existence of these rights and liberties is essential for the development of the economy itself and the well-being of the people".[121]

The finer grasp of law as an instrument of social and economic change has successfully eluded the bureaucracy all these years thus making the socio-

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121. *Mainstream*, Vol.xxxii (13), February 12, 1944, p.8.

economic inequality to hold still the life line of the majority of the Indians. Neither the welfare legislations have been used to secure the well-being of the workmen. Nor have they been scrapped Consequently, workers have been reduced to penury.

For their part, children of the poor often labour under extremely hazardous conditions, handling poisonous chemicals, inhaling noxious fumes, hauling excessive weights. They are usually overworked, underfed and underpaid - if they are paid at all. Many risk both their physical and mental well-being. The state, for its part, concedes child employment and by its acccunt it is both harmful and exploitative.[122] Hence it is camouflage reflecting the indifference and inadequacy of the state administration in the implementation of legislations. The indifference and inadequacy is not accidental. But it is attributable to either negligence or design. The awkward reality that confronts the state in this context is that it has been left with no escape route. Having consistently sung the praises of childhood and their role in the development of the nation, the state cannot willingly admit that it was wrong all along. Eventually, children will have an edge and, of course, a cutting edge over the state making it accountable for its failure to implement the laws provided it is shown that such failure has violated their constitutional or legal rights.

It is necessary for the consideration of this issue to begin with the *Asiad Case*[123] which is a landmark decision of the apex court. Certain allegations of

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122. See Chapter Six, *supra*.

123. *People's Union for Democratic Rights* Vs. *Union of India and Others*. AIR 1982. S.C.1473.

violations of labour legislations in the construction of the Asiad project were raised by way of Public Interest Litigation. In reply to the said petition, the Union of India, the Delhi Administration and the Delhi Development Authority raised preliminary objections on the *locus standi* of the petitioner and the maintainability of the petition under Article 32 of the Constitution. The latter objection made the court to scan through the provisions of various statutes against which allegations of violations were set in order to find out any possible infraction of any of the provisions of the Constitution as a fall out of the former's non-observance.[124] The apex court set the process in motion with a thought provoking address on Rule of Law. The court observed:

> "...Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also though today it exists only on paper and not in reality".[125]

It is this sense of human touch that served as a golden key to unlock the portals of justice for the poor and the deprived workmen. Firstly on the charge of

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124. *Ibid.*

125. *Ibid.*, pp.1466-67.

infracting the provisions of the Employment of Children Act, 1938[126] by employing children well below the age of 14 in the construction industry, it was stressed with vehemence by the authorities that the Employment of Children Act, 1938 was not applicable in case of employment of children in the construction work of the projects, since construction industry was not a process specified in the schedule and was therefore not within the provision of sub-section (3) of section 3 of that Act. Admitting the plea of defence as technically correct, the court expressed its anguish that it was a sad and deplorable omission as it felt that construction work was clearly a hazardous occupation and it was absolutely essential that the employment of children under the age of 14 years should be prohibited. It also felt that the same would be in consonance with Convention No.59 adopted by the ILO and ratified by India.[127] It was the non-exercise of the power conferred under Sec.3A to include the construction industry in the schedule of the Act that came under criticism which the court felt could be set right by seeking recourse to Article 24. It proceeded to observe:

> "This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate *propio vigore* and construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in construction work. There can therefore be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Employment of Children Act 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every State Government must

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126. The Employment of children Act, 1938 was the predecessor law of the Child Labour [Prohibition And Regulation] Act, 1986.

127. *People's Union for Democratic Rights* Vs. *Union of India and Others*. AIR 1982 S.C. 1473 at p.1480.

ensure that this constitutional mandate is not violated in any part of the country".[128]

This made the beginning in the strategy of the apex court to sustain the plea of maintainability of the petition under Article 32. Expanding the strategy, the court moved on to Article 23 on the count of underpayment of wages contrary to the provisions of the Minimum Wages Act, 1948. The Supreme Court in its path-breaking judgment explained the rationale behind the incorporation of Article 23 and examined its content in the context of changing needs of time. Driven by the spectacle of human welfare, the court ultimately emphasised that failure to ensure minimum wages through the application of the Minimum Wages Act, 1948 would clearly attract Article 23 enjoining liability on the state.[129] Thirdly, complaint regarding non-observance of the provisions of the Contract Labour [Regulation and Abolition] Act 1970 and the Inter-State Migrant Workmen [Regulation of Employment and Conditions of Service] Act, 1979 was taken up for consideration. The said complaint of non-observance of these laws and denial by the authorities of constitutional responsibility for enforcement of the same in pretext provided the court with an opportunity of a rare kind to carry through the wind of change in the jurisprudence of human rights. Accelerating the process of change set in motion by the *Maneka* decision[130] and reinforced by *Mullain*,[131] the Supreme Court observed:

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128. *Ibid.*

129. *Ibid.*, p.1485. The court observed: "We are of the view that this complaint is also one relating to breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Article 23, which is violated by non-payment of minimum wage to the workmen".

130. *Maneka Gandhi* Vs. *Union of India and Others*. AIR 1978 S.C. 597.

131. *Francis Carolie Mullain* Vs. *The Administrator, Union Territory of Delhi*. AIR 1981 SC 746.

> "Where it has been held by this court that the right of life guaranteed under this Article is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes within its scope and ambit the right to live with basic human dignity and the state cannot deprive any one of the precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just. Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation that would clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen".[132]

Finally it was the turn of the Equal Remuneration Act, 1976 to await consideration by the apex court on the issue of non-compliance. In this case, the court found the breach stretched to Article 14 as the guarantee of equal remuneration for men and women for the same work or the work of a similar nature is implicit in this provision.[133] The final tally eventually turned to be a paradoxical abdication of responsibility by the state under the Constitution which is both legally and politically accountable to its subjects. This is quite reminiscent of the ploy the employers always use to avoid liability which,

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132. *People's Union for Democratic Rights* Vs. *Union of India and Others*. AIR 1982 SC 1473 at p.1485.

133. *Ibid*., p.1484.

however, has often been condemned by the courts of law. What is more obvious is that the concept of model employer has lost its relevance as the state is shedding the character of protector.[134] Later, the *State of Jammu and Kashmir*[135] was made to line up before the Supreme Court on charges of violating the labour legislations in the construction of the Salal Hydro-Electric Project.[136] The court examined each one of them in the light of the findings of the Labour Commissioner [J&K]. The apex court was virtually taken aback when it was told that the Inter-state Migrant Workmen [Regulation of Employment and Conditions of Service] Act, 1979 was not enforced in the State for want of bureaucratic set up. But the court found the plea wholly untenable

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134. Setting the tone loud and clear, the Supreme Court in *S.K.Verma* Vs. *Mahesh Chandra*. [1983 II LLJ 429] held: "There appears to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the state, instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation, etc., should attempt to evade decision on merits by raising such objections and, never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. *We expect public sector corporations to be model employers and model litigants.* We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from court to court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporations will henceforce refrain from raising needless objections, fighting needless litigations and adopting needless postures". [Emphasis supplied].

135. It is considered necessary and important to make special mention by supplying emphasis about the state governments involved in the legal battle in order to indicate that how they dragged themselves into litigations one after another on similar issues of proper administration of laws, wasting public time and money.

136. *Labourers Working on Salal Hydro-Project* Vs. *State of Jammu and Kashmir*. AIR 1994 S.C. 177. The complaint pertained to violations of the provisions of the Contract Labour [Regulation and Abolition] Act, 1970, the Inter-State Migrant Workmen [Regulation of Employment and Conditions of Service] Act, 1979, the Minimum Wages Act, 1948 and Article 24 of the Constitution.

holding that *faux pas* was attributable to the indifference of the state administration as well. It made reference to some of the provisions of the Act which, it felt, could have been enforced even without the support of the bureaucratic apparatus. It is appreciable that the intervention of the court was so timely that it alone made the state to lift the brake holding back the operation of law brought into force almost two years ago.[137] The court also gave directions in respect of the other laws.

In the wake of another complaint of workers being held in bondage and denied rights and benefits under various legislations, the Supreme Court appeared again on the scene to set the wheels of justice which was grinding slowly in proper motion.[138] Now it was the turn of the *State of Haryana* to put up a brave posture against the complaint of similar nature.[139] While the state

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137. *Ibid*. p.181. The law which received the assent of the President on 11th June, 1979 was brought into force on 2nd October, 1980. Further, the bureaucratic apparatus necessary for implementing the provisions contained in the Act and the Rules was not set up by the Central Government for a period of more than 20 months and it was only in the month of June, 1982 that the Central Government appointed various authorities such as Registering Officers, Licensing Officers and Inspectors. It was the absence of the said apparatus that was technically advanced in reply to non-implementation of the law which came into force on 2nd October 1980.

138. *Bandhua Mukti Morcha* Vs.*Union of India and Others*. AIR 1984 S.C. 802.

139. Note 135, *supra*. It was a complaint of non-observance of provisions relating to identification and rehabilitation of bonded labourers under the Bonded Labour System [Abolition] Act, 1976 and provision of welfare measures under the Mines Act, 1952, the Inter-State Migrant Workmen [Regulation of Employment and conditions of Service] Act, 1979, the Contract Labour [Regulation and Abolition] Act, 1970, the Minimum Wages Act, 1948 and the Maternity Benefit Act, 1961. The Supreme Court as it did earlier examined in detail the provisions of these statutes to make out a catalogue of rights and benefits as under.

(i) Bonded Labour System [Abolition] Act, 1976. (Identification and rehabilitation of workers including children held in bondage); (ii) Mines Act, 1952. (Health and safety, hours of work and leave with wages); (iii) Inter-State Migrant Workmen [Regulation of Employment and Conditions of Service] Act, 1979.

was flogging the line of maintainability of the petition under Article 32, the apex court reiterating its earlier view with firmer basis said:

> "Moreover, when a complaint is made on behalf of workmen that they are held in bondage and are working and living in miserable conditions without any proper or adequate shelter over their heads, without any protection against sun and rain, without two square meals per day and with only dirty water from a nullah to drink, it is difficult to appreciate how such a complaint can be thrown out on the ground that it is not violative of the fundamental right of the workmen. It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this court in *Francis Mullain's Case* [AIR 1980 S.C. 849] to live with human dignity, free from exploitation. by the state providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the state can certainly be obligated to ensure observance of such legislation for inaction on the part of the state in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every state *shall* [emphasis already provided] be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that state".[140]

(Contd.,)

(Wage rates, holidays, hours of work and other conditions of service, payment of wages fixed under the Minimum Wages Act. Workmen by reason of Section 21 of the Act is also entitled to the benefits of the provisions contained in the Workmen's Compensation Act, 1923, the Payment of Wages Act, 1936, the Employees' State Insurance Act, 1948 and the Employees' Provident Fund [and Miscellaneous Provisions] Act, 1952); (iv) Contract Labour [Regulation and Abolition] Act, 1970. (Canteen, rest rooms, first aid facilities and other facilities); (v) Minimum Wages Act, 1948. (Payment of the minimum wage fixed under the Act) and (vi) Maternity Benefit Act, 1961. (Maternity benefit).

The Supreme Court later issued directions for observance thereof in respect of the Mines Act, 1952, the Minimum Wages Act, 1948 and the Maternity Benefit Act, 1961 and ordered for inquiry in the case of other statutes.

140. *Bandhua Mukti Morcha* Vs. *Union of India and Others*. AIR 1984 S.C. 802 at pp.811-12.

A tail peace of *Bandhua Mukti Morcha Case*[141] from the *State* of *Madhya Pradesh*[142] came to be considered by the Supreme Court in 1984.[143] This time the issue pertained only to the rehabilitation of the bonded labour identified and released. The court which was excited over the half-hearted manner of implementing the welfare legislation, reacting sharply said:

> "It is the plainest requirement of Article 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated. The Bonded Labour System [Abolition] Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of Constitution".[144]

Yet another State that was humbled for non-observance of the legislation securing rights and benefits to the workers was the *State of Rajasthan*[145] when the Supreme Court struck down section 3 of Rajasthan Famine Relief Works Employees [Exemption from Labour Laws] Act of 1964 denying to workers employed in famine relief work the minimum wage fixed under the Minimum Wages act, 1948 as violative of Articles 23 and 14 of the constitution.[146]

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141. *Ibid.*

142. Note 135, *supra.*

143. *Neeraja Chaudhary* Vs. *State of Madhya Pradesh*. AIR 1984 S.C.1099.

144. *Ibid.*, p.1106.

145. Note 135, *supra.*

146. *Sanjit Roy* Vs. *State of Rajasthan*. AIR 1983 S.C. 328. See also notes, 28-30, *supra*

8.5 INJURY ASSESSED

It is really unfortunate that although Parliament has enacted various labour legislations imposing duties on appropriate authorities of the state to secure to the workers including children the rights and benefits envisaged thereunder, most of the provisions have just remained on paper without any adequate action being taken pursuant thereto. That every inch in the direction of the implementation of legislations more particularly social welfare legislations have to await the inducement of the apex court at the instance of the aggrieved is the saddest spectacle in the history of administration of laws. The will of the legislature very often needs tinkering by the apex court. It is the reflective barometer of the respect it commands from the executive. Another feature of this episode is that the apex court has been made to serve as a 'monitoring agency'.[147] This is what was meant by the Supreme Court when it expressed its anguish in the following words. The court said:

> "We have referred to the several orders made by this court from time to time during these five years that the proceedings have been before this court with a view to impressing on all the concerned as to how difficult it is to work out the Act and to give effect to the scheme of rehabilitation contemplated by the statute".[148]

It proceeded to observe:

> "Even those on whom the statute casts the responsibility of implementing the provisions of the Act do not appear to be in a situation to respond. It is difficult for the court to entertain repeated complaints of

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147. In the recent past, the Supreme Court is ensuring follow-up actions in certain cases through the technique of monitoring. The purpose of such technique is to command performance of the duty under law. See *The Hindu*, October 8, 1996, p.13.

148. *P.Sivasamy* Vs. *State of Andhra Pradesh*. [1988] 4 SCC 466 at p.475.

> this type and devote attention by way of monitoring the administration of the Act, as has been done in this case. We are surprised that about three years were necessary to persuade the State of Andhra Pradesh [where bonded labour was identified and from where repatriation was necessary] and the States of Karnataka, Orissa and Tamil Nadu where rehabilitation was to be provided to perform their statutory obligations. Here again Karnataka has not yet done its part. Once notice was issued to them there should have been immediate response and the obligations cost under the statute should have been readily discharged. The States should have indicated their regrets to the court that at their level they had failed to satisfy the requirements of the law and this court's interference has become necessary. This only shows how unsatisfactory the situation is. Where the man below the poverty line is a citizen entitled to all the benefits and protections so eloquently put into the Constitution, are 38 years not sufficient to generate the appropriate consciousness"?[149]

Indeed the apex court has made tireless efforts to make the state apparatus cognisant of its role, duties and obligations in the performance of the statutory scheme. The efforts are laudable. But the state has turned its deaf ears obviously intending to maintain the *status quo*. With the result, the policy of public good and welfare has gone astray forcing a third of the population to live on the edge of poverty. The Constitution has become alien to them. The unfortunate specimen is comprised of children of yesteryears and children of today. What was true of children of yesteryears applies *mutatis mutandis* to children of today. The latter are the signs of deprivation of today waiting to become aging sick and disabled. This is centered on the perceived indifference of the state to the sacrifices they are making and the state has done precious

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149. *Ibid.*, p.477.

little to clear this perception. The consequences of employment of children are so transparent that it leaves no one in doubt about the legal ramifications. The parameters of the law as traced earlier are so well sketched that the facts on hand fit well into them establishing beyond doubt the violation of the constitutional rights of the children so employed.

Firstly, where the children are held in bondage, Articles21 and 23 are violated;

Secondly, where the activity in which children employed is hazardous, Article 24 is violated;

Thirdly, the activities also turn to be dangerous by virtue of poor work environment and exploitative conditions which are consequences of non-observance of the provisions of law securing to the workers including children various benefits and rights. It is more so in the case of malnourished children. Such employment will be unsuitable to children both by virtue of age and physical incapacity and consequently harmful to their physical, mental and moral development. Hence, it is violative of Article 21;

Fourthly, where children are not paid the minimum wage fixed under the Minimum Wages Act of 1948, it will be violative of Articles 14 and 23;

Fifthly, where social security legislations are not enforced, Article 21 is violated;

Sixthly, where children by virtue of employment are denied their education and development, Articles 14 and 21 are violated; and

Seventhly, where children are deprived of their health, Article 21 is violated.

Painful indeed it is to note that the sheer inaction on the part of the state has resulted in violation of the most basic human rights enshrined under the Constitution. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this cannot be allowed to be frittered away the way in which the state has been doing. It may be asserted that the best way to go about restoring human dignity in the life of millions of people is to travel the route of effective

enforcement of laws under the pain of making the state and its officers accountable as we shall see in the chapter to follow.

Besides, this also helps to clear the misgivings in certain quarters that child labour is more of a economic problem alone. Basically, it is a legal problem. It is a problem involving the rights of children. The rights we talk about here are not the rights which can be brushed aside with ease when there are competing claims outweighing such rights. They are, on the contrary, rights essential and indispensable for the sustenance of human dignity. Firstly, we will have to survive as a nation for which people are necessary. And the progress of the nation is not measured by the income and expenditure on the economic scale. Rather it is measured on the scale of development ensuring quality of life the people deserve best in a civilised society. Such quality of life takes adequate care of economic aspects as well namely economic rights. Ultimately, the subjects who were children of yesterday and are children of today decide what the nation is. It is not what the nation claims that counts much. If all that make up human dignity are ensured, the problem disappears. The difference between the legal and economic factors is so thin that it will vanish if the theme of human dignity gains prominence both in words and actions of the state. The former is abundant but the latter is significantly absent. The Constitution has perceived the vision of human dignity. But the state has failed to stretch it out to make it a reality in the lives of 300 million people. Hence there is scary visage of child labour.

The answer to the problem lies in simply ensuring human dignity to children. They can be assured of human dignity only if they are provided with basic necessaries of life - health, education and food - and exploitation - free

life. For that purpose hands can be laid on the shoulders of the state and the society. The doctrine of *parens patriae*[150] can be singularly invoked in the case of children who constitute the most vulnerable segment of the society. Rights correlative to these obligations exist in all cases except in respect of food. However, it has already been noted that the emerging trend arising out of growing conscience of the international community favours imposition of an obligation in this respect as well under the international instruments.[151] In all probability, it must percolate down to the next level of providing constitutional guarantee, at least in the case of children, of this basic need under Article 21. This is quite justifiable in view of the constitutional necessity of upholding the paramount interest of children. It is conceivable that food plays an active role in the life of the human being. It is an essential component of health which lays the foundation for life. A child is to be provided with every thing it needs in its formative years. So is also the nutritive food which serves as the logistic support for the all round well-being of the child. Further, it has working relationship with the right of education upto the age of 14 and guarantee of non-employment below the same age to carry through such well-being to its logical end. Such working relationship is all the more persuasive as it is the case of every one that children shun schooland prefer prohibitive employments for the sake of livelihoods. Where the child steals the show, the constitutional philosophy of childhood is jeopardised. Children will be deprived of education and be employed in violation of the provisions of the Constitution. Hence, right to food must be treated as an integral part of the right to life with human dignity under Article 21 at least in the case of children up to the age of 14.

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150. See Chapter One, note 80, *supra*.

151. See Chapter Two, note 139, *supra*.

To keep children below the age of 14 out of employment in fulfilment of the obligation enshrined under Articles 24, 23 and 21.

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To help children below the age of 14 to have education in fulfilment of the obligation enshrined under Articles 21 and 14.

Children of the said age group must be provided with nutritive food, theother basic need which is essential to survive. It also serves as a component of health laying foundation for life. As the parents are not in a position to meet this basic requirement, the state must be obliged to fulfill this requirement and the right correlative to this obligation must be found in Article 21 as an integral part of right to life with human dignity.

Child labour is thus a complex legal problem. It is the problem of basic human rights concerning the most vulnerables. This wields optimum influence over the make-up of the well-being of the society. Hence, it is widely acknowledged that investment in children is the best of all investments being cost-effective. As a natural consequence, in all fairness to children and in the interest of the well-being of the society and in compliance with the true spirit of humanism, all the basic needs of children must be met by the state. In discharge of this responsibility, provision must be made for their protection and welfare emphasisingof nutritive food, health care and education to facilitate a life of basic human dignity guaranteed under Article 21. The appropriate institution for the purpose is the residential school where children below the age of 14 who are otherwise destitutes will be provided with the comfort of being children enjoyingtheir 'childhood' in reality. Children in the residential school will be provided with nutritive food enough to ensure good health. Provision of health care will also be on the top of the agenda and the education will be at their door step. Above all, farewell to employment will be a new path they can tread upon cheerfully.

8.6 CONSTITUTIONAL VALIDITY OF THE POLICY OF PERMISSIVE EMPLOYMENT OF CHILDREN UNDER THE CHILD LABOUR [PROHIBITION AND REGULATION] ACT, 1986

The narration of woeful consequences of employment of children in sequence demonstrates the need for passing a judgment on the validity of the policy of employment engrafted in the Child Labour [Prohibition And Regulation] Act, 1986 which is claimed to be comprehensive in scope. At the outset, it may be pointed out that the consequences of employment of children below the age of 14 are the same whether their employmentis legal or illegal. Where it is illegal, the consequences are only indicative of poor delivery of justice to the vulnerable and poor vindication of Rule of Law. On the contrary, if the employment is legal in certain circumstances as in the case of the Child Labour [Prohibition And Regulation] Act, 1986, such consequences are proof of abuse of process of law envisioned in the scheme of constitutional protection for the weak and meek. The latter is the antithesis of the special protective cover authorised under Article 15[3] of the Constitution. Indeed, the policy of permissive employment is a paradoxical and retrogate step. It is the general policy of the law to protect the weak and in pursuance of which the state has controlled all the activities of the minors including freedom of employment. The factories legislation passed in 1881 offering protection only to children in the first instance is illustrative of this point. This century old policy has been routed in 1986. The rout is most unfortunate as it has legitimised infliction of pain on children through exploitation. And it is opportunistic as well, as exploitation is more pronounced in all sorts of employments. The impugned policy is thus in total disregard of the recognised norms for welfare of children as it does not countenance the educational, developmental and health interests of children. It is diametically opposite to the constitutional philosophy of childhood. Hence the

policy of permissive employment is arbitrary and violative of Article 14 of the Constitution.[152]

152. See *K.Nagaraj* Vs. *State of Andhra Pradesh.* AIR 1985 S.C.551. In this case, the apex court reasoned that if the policy adopted for the time being by the Government or the Legislature is shown to violate recognised norms, it would be possible to say that the policy is arbitrary or irrational and hence violative of Article 14.

CHAPTER NINE

ADMINISTRATIVE FAILURE AND ACCOUNTABILITY

Following the assurance made by the Prime Minister in his Independence Day address on August 15, 1994 from the ramparts of the Red Fort, a Rs.850 crore scheme was launched for being implemented 'intensively' in states and regions where employment of children in hazardous industries is high. The states that were to be covered on a priority basis were Uttar Pradesh, Tamil Nadu, Madhya Pradesh, Andra Pradesh and Gujarat. A National Child Labour Elimination Authority was constituted with the Minister for Labour as its chair person to monitor the implementation of the scheme. Nearly two million children were to be pulled out of employment and rehabilitated under the scheme.[1] In another significant development, the Commission on Labour Standards and International Trade[2] in its draft interim report suggested a "middle path" towards the social clause instead of flatly opposing it. The Commission warned further that linkage of labour standards to international commerce was "an inevitable

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1. *The Hindu*, December 28, 1994, p.14. The recently constituted National Authority for the Elimination of Child Labour (NAECL) has adopted a Plan of Action - "identification, release and rehabilitation of child labour" - to tackle the problem of child labour in the country. The Plan of Action calls for a convergence of services and schemes of the Central and State Governments at the implementation level of the district to handle effectively the identification and rehabilitation of child labour. It also envisages the economic rehabilitation of the family whose children are employed and stricter enforcement of relevant laws. See also *Indian Express*, May 9, 1995, p.11.

2. For details about the appointment of the Commission and its terms of reference, See Chapter Five, note 21, *supra*.

bitter pill" that might have to be swallowed eventually. Also expressing that some of the labour standards are worthy of adherence on their own such as child labour and bonded labour, the commission proposed that India should seek international support to abolish them. It set the tone for creating a Global Social Facility Fund in the ILO or in the alternative, sharing the burden by the proponents of the social clause in scrapping them through bilateral aid.[3] In the context of these developments the question which may again be raised is that are these of any use to children. In the same wave length it can be parried saying that the shadow policy is still wielding clout. For, the state has still been eluding the ground realities of the problem.

It may be stated that the response in the former case is not in direct proportion to the gravity of the problem.[4] It only partakes the character of adhocism to keep the mounting criticism under check. The scheme is not the off shoot of any national policy as seem evident from the details gathering around the scheme. Firstly, even as the scheme aims at rehabilitation of nearly two million children employed, the state is not sure of the exact number of children employed at least in hazardous industries and the exact number to be garnered under the present scheme. In the back drop, the target of two million children works out to be totally unrealistic.[5] Secondly, the impact perspective of the

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3. *The Hindu*, June 3, 1995, p.17.

4. The response is not comprehensive and adequate to meet the perceived high level of threat to the childhood rights.

5. In a written reply to an unstarred question No.2560 on December 23 (Lok Sabha), the government indicated that the information was being collected and would be laid on the table of the House. In reply to another question the government was citing 1981 census to indicate the extent of child labour. See, *The Hindu*, December 28, 1994, p.14.

scheme needs to be looked in the ongoing evaluation. If the main plank of the policy is retention -cum-concession,[6] then it will plainly be unconstitutional as observed earlier. On the contrary, if it is contrived on the plank of withdrawal cum concession,[7] then the legal framework needs to be strengthened in all earnestness. In the latter case, much more is anticipated. Unfortunately, such earnestness is conspicuous by its absence if the way the authority has been created is any indication. The authority so constituted has no statutory support. Eventually, it will certainly be without teeth to make its impact felt. The least respect only it can command is the certainty. As a sequel to absence of necessary feedback from the authorities concerned, it is bound to slip into disuse.[8] In such an event, the earmarking of Rs.850 crore is an avoidable stress on the strained exchanger.

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It may also be relevant to refer to the observation of the Task Force headed by Dr.L.M.Singhvi seeking publication of a white paper explaining the historical background, and the present situation, giving a reliable statistical and other data and projecting its own perceptions and policies in terms of targets, allocations and action plan. See *Indian Express*, February 6, 1990.

6. The children will be retained in employment and they will also be provided with facilities like non-formal education and supplementary nutrition.

7. Children who are withdrawn from employment will be placed in special schools where they will be provided facilities like vocational training, supplementary nutrition etc.

8. It is believed that the national authority emerged from the recommendations submitted by the Task Force headed by Dr.L.M.Singhvi Dr.Singhvi in his report suggested for the establishment of a watch dog panel. He recommended that the panel should be in the nature of a Child Labour Ombudsman or a Child Labour Commission established by the statute and entrusted with the task of investigation, resolution of grievances and disputes and giving authoritative directions to employers and others. It is unfortunate that though the authority is styled on the lines of the report, but the same is not vested with power as suggested by the Task Force. The authority is made to function as a nodal agency. Eventually, it can only be said that the report has only helped the State to invent an authority of national stature suiting its convenience of time and nothing more and nothing less. For details about the suggestions made by the Task Force, see *Indian Express*, February 6, 1990.

People who keep watching the developments will be too willing to believe that the scheme is not intended to relieve the children from their distress but only designed to dispel the impression that the state is not inert. This rather causes concern as the state's insensitivity soars. It galores as the state attempts to push aside the Report of the Commission on Labour Standards and International Trade on the ground of seeking consensus.[9] Appreciably the considered view of the Commission delinked totally the issues of child labour and bonded labour from the rest as they are distinct and separate and form a class of their own.[10] But it is bound to meet its Waterloo as the mindset of the state is totally turned against the social clause in the guise of fighting protectionist strategy of the developed nations. Total burking of the report is already on the way ahead. Further, the stagnation of the proposal for eradication of child labour in carpet industry in Uttar Pradesh, over a period of ten months serves to confirm our apprehension about the relatively high degree of apathy of the state.[11] The fact that there was misrepresentation in this regard before the Chairman of the Human Rights Commission by an official of

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9. In the present day context, 'consensus' is a strategy liberally used either to impose the views of the state on others or used as a delaying tactics instead of rejecting the views of others.

   It is submitted that it is not clear whether the intended consensus is consensus among the members of the commission or consensus among the cross - section of the society. For details see *The Hindu*, June 3, 1995, p.17.

10. *Ibid.*

11. Two key proposals aimed at eradicating child labour from the State of Uttar Pradesh entailing an expenditure of over Rs.50 crores sent to the Ministry of Labour have been lying in cold storage. It was reported that the Labour Commissioner told that arranging such a huge sum of money was a time - consuming process leading to this delay. *The Times of India*, May 29, 1995, p.9.

the State makes the matter still worse.[12] There is another sound alarm from Rohtak in the State of Haryana exposing further the callous tolerance by the state to the violations of factory laws resulting in extinction of twenty-three lives including children in a crude cracker unit blast.[13] In order to thwart any possible outcry against the negligence in the enforcement of laws, the Haryana administration had ordered a probe into the blast implying that the law would take it own course.[14] Thus it is more evidently clear that oft repeated statements by the state are unhelpful for children as they have miserably failed to keep in check the flow of children flocking into sweatshops even though their employment is economically unsound, psychologically and physiologically disastrous and ethically wrong. The consequential impact being the violation of their human rights and fundamental freedoms for years together making curious the enquiry about the relevance of the Rule of Law in India today. Incredibly enough, the state a swallowing the bitter pill in the pretext of fighting poverty.

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12. It was reported that the Labour Commissioner represented before the Human Rights Commission during its meeting in New Delhi that Rs.10 lakhs had been sent to the Uttar Pradesh Government. But the fact remained that not even a single penny was received when this was reported. *The Times of India*, May 29, 1995, p.9.

13. It was reported that the ill-fated unit was functioning without a valid licence under the Factories Act, 1948. Notwithstanding its absence, the District Magistrate issued a licence under the Explosives Act authorising possession of not more than 15 kg. explosives materials at a time. Prosecution was launched in 1983 under the Factories Act for contravention of its provisions. The prosecution ended in imposition of fine. Paradoxically, the unit was found to be continuing its function again without licence under the Factories Act when the same was inspected during October - November 1994. and a case was again registered. It was further reported that the quantity of explosives stored in the premises of the unit was found to be in excess of the sanctioned limit which was held to be one of the reasons for the powerful explosion. See *The Times of India* May 29, 1995, p.9.

14. *Ibid.*

The enquiry now turns on the official tolerance to the employment of children in exploitative conditions, with attendant consequences. Such tolerance which essentially belongs to the realm, of non-exercise of power constitutes administrative practice for which the state is accountable. As observed earlier, there is failure on the part of the state to frame rules for the purpose of regulation in consonance with the object of the law.[15] Scores of administrative power under various legislations have got their tale too to relate. Identification and rehabilitation of bonded labourers still appears to be a distant hope for want of enthusiasm on the part of the state to be the watchdog of the basic human rights of millions of poor sweating out in bondage. Still shameful is the pledging of children by their parents only to keep their soul alive. Besides, instances of exercising the powers of fixing or revising the minimum wage, the power of monitoring through inspection of factories and the like are few and far between. The power of launching prosecution against the defaulters is also seen in the company of its counterpart without violating the intended parity.[16] The laxity of the state is more abominable which has been diligently exploited by the vested interests. This has given enough grounds to pass a word of comment without fear of contradiction that labour laws are honoured more in breach. Paradoxically enforcement of the laws is still not in the neighbourhood of reality to facilitate the enjoyment of rights guaranteed under them. Equally, adjudications made on complaint by the courts of law more particularly by the

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15. See Chapter Seven, note 191, *supra*.

16. The Committee on Child Labour reported that there were practically no prosecutions in most parts of the country of any violation of existing laws pertaining to child labour and that in one of the states it was pointed out with pride that the first prosecution ever launched by them was only in the International Year of the Child. Government of India, Report of the Committee on Child Labour, *op.cit.*, p.39.

apex court have come nowhere near the disposition of socio-economic justice to the poor as they have failed to turn into actions of state. Articles 141 and 144[17] are on the brink of virtual repeal given the scores of violations of law despite the caution made by the court. The map so sketched above is true only of factories and establishments governed by the provisions of law. This leaves one guessing about the factories and establishments out of the bounds of law. Worse still is the condition of employment of workers including children in agriculture.[18] The conclusion is obvious. Children do not constitute better part of the society. They have nobody to turn to as the philosophy of the state intervention has failed to impress upon the agencies of the state and the constitutional directives have been sidelined with impunity.

It is, therefore, no exaggeration to say that the child labour class comes a poor last in their claim on national resources to help their development in a healthy manner. Article 15[3] of the Constitution has only helped the state to enact laws meeting only with little success or no success. The violations of these provisions *sans* condemnation and deterrent action pose a challenge to the sovereignty of the state to legislate on such matters of national importance. The executive which claims to keep a constant vigil on the preservation of the human dignity of the innocent millions has but only helped to consign these laws to flames through their inefficiency and indifference. Laws remain only on paper

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17. Article 141 reads: "The law declared by the Supreme Court shall be binding on all courts within the territory of India"; Article 144 reads: "All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court".

18. It is submitted that most of the labour legislations like Factories Act, 1948 apply only to factories above a certain size and the employment in agriculture and domestic service are generally excluded from the purview of the legislations.

leaving millions of children in the streets begging for alms and working for a pittance. Though these laws in pith and substance have been enacted to protect children, the "real and intended" effect of the state action has been to engineer the perpetuation of child labour, overseen by its agencies throughout to facilitate the sectional interests to fatten their purses through exploitation. In this process, the vitalities of these laws have been devitalised rendering them incapable of securing the rights of the "privileged" class. The protective legislations and the gullible children have thus become hapless victims at the hands of the state. The irony of the tale is that the welfare laws themselves have become as vulnerable as children. Irretrievably, the welfare of children has got pushed to amorphous state. This is the saga of the state inaction.

9.1 ACCOUNTABILITY: THE PRINCIPLE

Law in action ensures participatory democracy. For it is the firm conviction of the courts of law that the participatory democracy is possible only when the law delivers justice.[19] Welfare of the poor and weaker section is and must be the prime concern of the state on the public authority. There is highest public interest in the due observance of the constitutional guarantees. The law in action via rule of law sets the responsibility of the state in this regard. It came to be established in the *PUDR Case*[20] that the state is under an obligation to ensure observance of the labour laws and if the provisions of these laws are violated, the aggrieved are entitled to enforce the obligation of the state. The

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19. *Bandhua Mukti Morcha* Vs. *Union of India and Others*. AIR 1984 S.C. 802 at p.834.

20. *People's Union for Democratic Rights* Vs. *Union of India and Others*. AIR 1982 S.C. 1473.

Supreme Court has ruled emphatically that the state is under a constitutional obligation to see that there is no violation of the fundamental rights of any person particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent exploiting him.[21] Hon'ble Justice P.N.Bhagwati in *Haryana Bonded Labour Case*[22] while issuing a series of directions in respect of rehabilitation of bonded labourers and insurance of welfare measures, sternly warned the Central Government and the State Government of Haryana and observed:

> "We need not state that if any of these directions is not properly carried out by the Central Government or the State of Haryana, we shall take a serious view of the matter, because we firmly believes that it is no use having social welfare laws on the statute book if they are not going to be implemented. We must not be content with the law in books but we must have law in action".[23]

Clinching the principle of law governing the obligation of the state in this respect, the Supreme Court unequivocally held:

> "... the state can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State *shall* be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that state".[24] [Emphasis supplied].

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21. *Ibid.*, pp. 1490-91.

22. *Bandhua Mukti Morcha* Vs. *Union of India and Others*. AIR 1984 SC 802.

23. *Ibid.*, p.834.

24. *Ibid.*, p.812.

Dual responsibility of the state is the plain language of the law. As an employer, it is bound to comply with the provisions of labour legislations and it is to set an example for others to pursue. It is also the responsibility of the state to enforce the law without fail. It is essentially from this responsibility springs accountability. This implies the answerability of the state through its executive for acts of commission and omission. Inherent in the system is the obligation of the state and concomitant accountability. Accountability is a *sine qua non*. In a democratic society, citizenship is really the right to make power accountable. The state is charged with public duty of protecting the rights of its citizens. Public authorities acting in violation of constitutional or statutory provisions either negligently or oppressively are accountable for their behaviour. As public accountability is necessary for healthy growth of society, it would be a service to the society if governmental or quasi-governmental bodies subject themselves to scrutiny. Absence of accountability is a cause for concern especially for the governed as evident from the Report of the Joint Parliamentary Committee.[25] The administrative failure sketched in the report is so devastating that it cannot be brushed aside with ease. For this is the reflex index of the culture of non-accountability being patronised by the top echelons of the state apparatus. Setting its face firmly against such culture, the JPC observed in the draft report: "The irregularities in banking and securities transactions have exposed malfunctioning in the entire apparatus of governance. All this has had a traumatic effect on the nation".[26] It further added: "An unfortunate aspect of the prevailing situation is that a culture of non- accountability has permeated all

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25. A thirty member Committee was constituted to inquire into the securities scam following the exposure in media about the reported misuse of public funds.

26. *The Hindu*, July 26, 1993, p.9.

sections of the Government over the years... the ability of the Government to address itself to such a crisis and then manage it was put to test".[27] Making the executive accountable is a commitment to Rule of Law which the state cannot dither to uphold. This is well exemplified by the fact that while the civil servants enjoy the patronage through payment from the public exchequer, the political executives are showered with privileges at the cost of the public exchequer to facilitate the discharge of public duty without hindrance. Eventually, their holding and continuance in public office must be for public good. Such obeisance to Rule of Law is more wanting especially when the issue of accountability is tagged with the enforcement of fundamental rights of citizens. For, fundamental rights cannot be written down except by the legislature through imposition of restrictions authorised by the Constitution.[28]

9.2 ALLOCATION OF RESPONSIBILITY

Regard for public welfare is the highest law. Every sovereign state is committed to promote the health, peace, morals, education and good order of the people. There is power which is plenary and inherent in the sovereign to ensure things for the promotion of welfare of the people. The exercise of power carries the will of the legislature through expression of laws. And it is the underlying truth of the sovereign power that the will needs to be effectuated through enforcement of laws. Administration of laws thus manifests the second

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27. *Ibid.*

28. Of course, the executive invoking emergency provisions can suspend the fundamental rights except Article 21. It is not, however, too late to suggest that such a rigid course can only be used and not abused. For, such authority is given only to promote public good and anything averse to public good cannot be related to the "use" of authority in proper sense.

limb of the sovereign power fastening liability on the executive wing of the state. The responsibility is absolute and immutable. It is but natural that such responsibility in respect of a particular law exists till it remains on the statute book implying that the executive cannot but implement the same till it is repealed.[29] In the present context of the study, such responsibility exists in respect of labour legislations and the corresponding constitutional obligations intending to secure human rights. As the scheme envisages, major and important areas of labour welfare are occupied by the central legislations fixing substantial responsibility for their implementation on the state governments. Sequentially, the principle of concomitant accountability follows rendering the state governments as entities in law and the ministers and civil servants individually answerable for any lapse.[30]

9.2.1 Responsibility of the State Governments

As said earlier, major legislations on labour are the result of the exercise of the legislative power in the concurrent field. Administration of such laws are entrusted to the State Governments. The relationship in which the Union and State Governments are engaged is governed by the provisions contained in the

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29. It is submitted that there is no middle path whatsoever in this respect. The High Court of Rajasthan dwelling on the issue in *L.K.Koolwal* Vs. *State of Rajasthan and Others.* (AIR 1988 Rajasthan 2 at p.6) observed: "If the Legislature or the State Government feels that the law enacted by them cannot be implemented then the Legislature has liberty to scrap it, but *the law which remains on the statutory book will have to be implemented*, particularly when it relates to primary duty" (Emphasis supplied).

30. The issue of accountability of the civil executive was raised by this researcher in his Public Interest Litigations filed by invoking the epistolary jurisdiction of the Supreme Court. See Chapter Seven, note 168, *supra*. See also Annexure IX, *infra*.

chapter of the Constitution under the caption, "Administrative Relations". Of these provisions, Article 256 and its companion provisions Article 365 and 356 assume significance in the context of the present study.

Article 256 provides that the executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that state, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose. Direction making power is the thrust of this provision. Setting the rationale of this provision in close perspective of the study is necessary as elsewhere as it serves as the driving force to set the tone of law.

An insight into the literature of the said provision would reveal that constitution makers in their wisdom chose to secure execution of many Union laws through the enforcement of the agencies of the states as they were of the view that the classical concept federalism -where the government powers are supposed to be divided into two watertight divisions - was nowhere a functional reality.[31] In consonance with the transformation of "classical federalism" into a dynamic process of co-operative action and shared responsibility between the Federal and State Governments, the framers preferred the co-operative arrangement as it was considered best suited to the social conditions, needs and aspirations of the people.[32] It is cost-effective as well. The state

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31. Government of India, Ministry of Home Affairs, *Report of the Commission on Centre-State Relations, 1988*, p.104.

32. *Ibid.*

administrative apparatus in its day-to-day working remains in close touch with the people and is, therefore, capable of acting with greater efficiency in the local application of the legislative and executive policy of the Nation. Having provided for the execution by the state of the laws made by Parliament, the framers of the constitution cast, expressly, an obligation on the states to secure compliance with them rather than leave it to their goodwill.[33] The contextual use of Article 256 in the scheme of the provisions of the Constitution was also invoked to justify its relevance. It was observed:

> "Having regard to this unified system of administration of justice, it became essential to provide for the obligations and powers enacted in Article 256 and 257 in order to ensure effective compliance with the Union laws and the due execution of the Union Executive Powers".[34]

In addition, ceremonial nod from the courts of law added veritable strength to the shared responsibility of the Union and the State Governments. Explaining threshold of Article 256 the Calcutta High Court, in *Jay Engineering Works Case*[35] held:

> "The authority and the jurisdiction of the State Government to issue administrative directives are limited, firstly by the Constitution and, secondly, by the laws of the land. There is no law which authorises the State Government to issue directives to officers in-charge of maintenance of law and order not to enforce the law of the land upon certain conditions being fulfilled and complied with. The provisions in Article 256 of the Constitution, which require that the executive

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33. *Ibid.*

34. Setalvad, M.O. "Union-State Relations - Tagore Law Lectures" p.88, in Government of India, Report of the Commission on Centre - State Relations. *ibid.*, p.106.

35. *Jay Engineering Works* Vs. *State of West Bengal*. AIR 1968 Col.407.

> power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, are mandatory in nature...".[36]

Functionally, the power is purpose related. The Union is equipped with the direction-making power with the design of easing its responsibility to Parliament in respect of the laws it made. Faithful discharge of such responsibility makes it lawful for the Union to direct the exercise of the executive power of the State Governments in such manner as may be necessary to secure compliance with the laws. Where any direction is given by the Union in the valid exercise of its executive power under Article 256, it becomes mandatory on the part of the State Governments to comply with it. If any exercise of executive power of the State Governments eludes compliance with the directive Under Article 256, Article 365 read with Article 356 will become attracted. Article 365 provides:

> "Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution".

Upon such opinion, it shall be lawful for the President under Article 356 to assume to himself all or any of the functions of that Government of the State and all or any of the powers vested in or exercisable by the Governor or any

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36. *Ibid.*, at p.488.

body or any authority in the State or to empower the Parliament to exercise the powers of the legislature of the State.[37]

The due emphasis by the Supreme Court of securing the fundamental rights of citizens through the exercise of the executive power by the State Governments[38] has thrown wide open the question how essential is the obligation to enforce the law. The received enough of consideration by the Constituent Assembly is tersely borne out by its implicit recognition of the fact that abdication of such an obligation is no less than destructive of Rule of Law.[39] It is in consonance with the supremacy of Rule of Law, the Assembly

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37. Article 356: *Provisions in case of failure of constitutional machinery in State*: (1) If the President on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation -

    (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

    (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

    (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State.

38. See Chapters Seven and Eight, *supra*.

39. The Commission on the Centre - State Relations was of the view that Articles 256 and 257 which give power to the Union Executive to issue directions to the State and Article 365 without which there would be no sanction for securing compliance with those directions are vital for ensuring proper and harmonious functioning of Union - State relations in accordance with the Constitution and further provide a technique for ensuring effective governmental co-operation and maintaining the Rule of Law which are fundamental values enshrined in our Constitution. See the Report, Government of India, *Report of the Commission on Centre-State Relations*, *op.cit.*, p.107.

felt it appropriate to lay an obligation in this respect on the shoulders of the State Governments and to ensure its compliance through empowerment of the Union Government to issue directions therefor. The Assembly by declaring that failure to comply with such directives issued under Article 256 shall amount to failure or break-down of the constitutional machinery manifested its intention beyond doubt to hold the State Governments responsible for compliance with the laws. It is the expediency of conforming to the obligations of the like which prevailed with the Assembly to favour the President of India to assume to him all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or any authority or to authorise the Parliament to exercise the powers of the legislature of the State. This is in consequence to the imposition of special responsibility on the Union Government.[40] This provision does not merely obligate the Union Government to protect the State Governments against external aggression or internal aggression; it goes much further and casts on it the duty of seeing that the Government of a State is carried on in accordance with the provisions of the Constitution. As part of its duty, the Union Government should make it a point to see that every State Government honours and observes the Constitution in letter as well as in spirit as the primary thing concerning the nation and the

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40. Our Constitution gives, on the federal principle, plenary authority to the States to make laws and administer the same in the field assigned to them and if the centre is to interfere in the administration of state affairs, it must be, by and under some obligation which the Constitution imposes upon the centre. See, *Constituent Assembly Debates*, Volume ix, p.133. Such an obligation is to be found in Article 355. Article 355: *Duly of the Union to protect States against external aggression and internal disturbance*: It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

Union Government is 'to maintain the Constitution'. In principle, it is designed to maintain in every state the form of responsible government as contemplated by the Constitution.[41] In fulfilment of the duty and the obligation, the President can take over the administration of the State Government manifesting recalcitrance. The President - in effect the Union Cabinet - thus assumes the responsibility instead of the state cabinet.

Though the President of India has to satisfy himself under Article 356 as to whether a particular situation has led the Constitutional machinery of the State Government to break down to assume powers, the Constituent Assembly came out with an instance of such a break down under Article 365.[42] This

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41. This is what Dr.Ambedkar meant when he said that the form of the government prescribed in this Constitution must be maintained. It is the responsible form of the government which is envisaged under the Constitution. It is the duty of the Central Government to protect it (obviously referred in the first part of Article 355) and restore it when there is breakdown of constitutional machinery namely, when any Government or any Legislature of a State does not act in accordance with the principle established by each article in the Constitution. A provision of similar provision existing in the United States Constitution that the United States shall guarantee to every State in this Union a Republican Form of Government (Article IV, Section 4 of the United States Constitution) was quoted by Dr.Ambedkar in his reply to the criticism that Article 355 was new with no precedent. See *Constituent Assembly Debates*, Vol.ix, p.175, 176, 177.

    It is submitted that, that is why Dr.Ambedkar wanted the ordering of elections to the State to be the next to the failure of the warning given by the President. He obviously intended to provide an opportunity to the electors of the State to settle the matters by themselves. But this has been misunderstood by the Supreme Court in the *Assemblies Dissolution case* and hence the resultant modification. See *S.R.Bommai and Others* Vs. *Union of India and Others*. AIR 1994 S.C.1918 at p.1983.

42. Though the Supreme Court in its seminal decision in *Bandhua Mukti Morcha Case*. (AIR 1984 S.C. 802) emphasised the constitutional obligation of the state quoting Article 256 warranting the exercise of the executive power of the state in the manner conducive for ensuring compliance with the laws of the Parliament, it did not bring its mind to bear upon its cognate provisions. The process of interpretation was not carried to its logical end to highlight the administrative liability of the state represented both by the Union of India and State

article emphatically attributes the failure of the State Government to enforce the law in compliance with the direction issued by the Union of India only to the former's inefficiency to discharge the constitutional obligations. For the phrase "in accordance with the provisions of the Constitution" cannot include anything more than the obligations defined within its framework. In broad agreement with the scheme of the Constitution, it is conceivable that any State Government will cease to be responsive if it fails in its obligation to secure the fundamental rights of the weak and vulnerable in particular. It is but natural that the inability of any Government of State to conform to the frame work - defined - obligations may lead to an inference that nothing can meaningfully be carried out by it and,

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Governments. Fortunately, however, the apex court seized the opportunity which arose in the context of the dissolution of the Legislatures of the States to explain the ambit of the administrative power available to the Union Executive in the realm of Article 256.

In *S.R.Bommai and Others* Vs. *Union of India and Others.* (AIR 1994 S.C.1918 at p.1970) expressing a similar view, Justice Sawant (speaking for himself and on behalf of Justice Kuldip Singh) observed: "The failure to comply with or to give effect to the directions given by the Union under any of the provisions of the Constitution, is of course, not the only situation contemplated by the expression "government of the State cannot be carried on in accordance with the provisions of the Constitution". *Article 365 is more in the nature of a deeming provision*...". (Emphasis supplied).

Justice K.Ramasamy in the same case said at p.2034: "*The Constitution itself provides indication in Article 365* that on the failure of the State Government to comply with or to give effect to any directions given by the Union Government in exercise of its executive powers and other provisions of the Constitution it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.... If a direction issued... was failed to be complied with by the state..., it would be another instance envisaged under Article 365. In these or analogous situations the warning envisaged by Dr.Ambedkar need to be given and *failure to comply with the same would be obvious failure of the constitutional machinery*...". (Emphasis supplied).

Justice Jeevan Reddy (speaking for himself and on behalf of Justice S.C. Agrawal) in the above case referred to Article 365 also observed at p.2094: "*The article merely sets out one instance* in which the President may hold that the Government of the State cannot be carried on in accordance with the provisions of the Constitution...". (Emphasis supplied).

therefore, forfeits its right to officiate the administration of the State.[43] The vacuum so caused in the administration of the affairs of the State Government by its inefficiency requires substitution of another agency capable of conforming to those constitutional obligations. In a federal polity of shared responsibility, the Union of India may step in to ensure observance of the constitutional obligations. It is also a constitutional necessity as it holds plenary responsibility in this respect. As a corollary, power must accompany. However, it can not be acceded to in the context of the power sharing arrangement as the State Government enjoys plenary power in the fields assigned to them. Accession without authorisation tantamounts to interference offending the federal principle. In the result, compliance of laws cannot be aspired unless the powers of the State Government as are essential for the purpose are assumed by the Union of India itself. In an apparent manner meeting the eventuality, the Constitution unfolds Article 356 which facilitates the assumption of powers warranted by the faithful execution of the obligation.[44] Therefore what is expected of the Union

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43. Expressing a similar view in the *Assemblies Dissolution Case* Justice Jeevan Reddy said at pp.2061-62: "The power under Article 356(1) can be exercised only where the President is satisfied that "*the Government of the State cannot be* carried on in accordance with the provisions of the Constitution". The title to the Article "failure of constitutional machinery in the States" also throws light upon the nature of the situation contemplated by it. It means a situation where the government of the state - and not one or a few functions of the government - cannot be carried on in accordance with the Constitution. The inability or unfitness aforesaid may arise either on account of the non-performance or mal-performance of one or more functions of the government or on account of abuse or misuse of any of the powers, duties and obligations of the government. *A proclamation under Article 356(1) necessarily contemplates the removal of the government of the state since it is found unable or unfit to carry on the government of the state in accordance with the provisions of the Constitution...*". (Emphasis supplied).

44. Justice Sawant (speaking for himself and on behalf of Justice Kuldip Singh) in *Assemblies Dissolution Case* held at p.1971: "... the object of this Article is to enable the Union to take remedial action consequent upon break-down of the constitutional machinery, so that that governance of the state in accordance with the provisions of the Constitution, is restored", p.1971.

executive is to issue directions to ensure the compliance with the laws and further to assume powers for the purpose under Article 356 in the event of lapse on the part of any State Government to comply with the directions.

Article 365 which was introduced by Dr.Ambedkar just eleven days before the completion of the Constitution[45] met with wide criticism of being unnecessary and more prone to abuse.[46] However, allaying the fears of the criticism, Dr.Ambedkar said:

> "Once there is power given to the Union Government to issue directions to the states that in certain matters they must act in a certain way, it seems to me that not to give the centre the power to take action when there is failure to carry out those directions, is practically negativing the directions which the Constitution proposes to give to the centre. Every right must be followed by a remedy".[47]

In contrast, the exercise of the power under Article 356 for the purpose envisaged under Article 365 was strikingly absent notwithstanding its great good use warranted by flat denial by the State Governments of fundamental rights especially to children for decades. It is a sad reading that its non-use was noted appreciably by the Sarkaria Commission dismissing the criticism against its incorporation as hardly warranted.[48] As we shall see later, this Article i.e.

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45. Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, Bombay, 1985, p.204.

46. *Constituent Assembly Debates*, Vol.xi, pp.506-20.

47. *Ibid.*, p.507.

48. Government of India, *Report of the Commission on Centre-State Relations*, *op.cit.*, p.106.

Article 365 was not put to use not because the occasions for its exercise did not arise but because the Union executive was not daring enough to pinch the salt. It may be noted that while the power under Article 356 was invoked several times for purposes other than the one envisaged under Article 365,[49] it is really strange that the power was not exercised for the purpose under Article 365 even once when too many situations warranting its exercise could be recalled. Perhaps the Union executive might be unwilling of being caught for its inability to conform to the said obligations if power for that purpose was acquired under Article 356 read with Article 365. Eventually, the policy of eluding responsibility alone relieved the centre of the pain of invoking the purpose under Article 365 and not anything else. Under such circumstances, the observation of the Commission that the *difference between the Union and the States hitherto were sorted out by mutual consultation*[50] could only be a piece of exaggeration. [Emphasis supplied]

What is intriguing is that there is indiscriminate use of one provision[51] and reprehensible neglect of another[52] by the centre. They are only indicative of insensitiveness to the aspirations manifested in the enlightened deliberations of the Constituent Assembly. It was in the wishful thinking of the framers of the Constitution that the spirit of nationalism ensured through the constructive co-

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49. Despite the hopes and expectations so emphatically expressed by the framers, in the last 37 years (1950-1987), Article 356 was invoked seventy five times. Government of India, *Report of the Commission on Centre-State Relations*, *ibid.*, p.166,168.

50. *Ibid.*, p.106.

51. Article 356 of the Constitution.

52. Article 365 of the Constitution.

operation between the national and State Governments would render the latter provision redundant. Unfortunately, it was the growing tendency of insensitivity to the constitutional obligations which helped the centre to emerge victorious by not invoking the purpose under Article 365 even once. The claim of the Commission cannot be helpful inasmuch as the centre could not claim the relationship with the State Governments to be normal, especially when it has invoked the power under Article 356 more frequently to destabilise the State Governments. The reason for the difference i.e. the difference between the invoking of the purpose under Article 365 and invoking of other purposes for the exercise of power under Article 356, is not obvious and it cannot be also. But it is not difficult to seek. While the assumption of power under Article 356 read with Article 365 could only be for the purpose mentioned therein, the Centre not only assumed power for purposes other than the one cited under Article 365 but also claimed immunity from disclosure of those purposes under the clout of anonymity in view of the protection envisaged under Article 74 [2] of the Constitution and Section 123 of the Evidence Act.[53] It is quite understandable that it was the convenience rather than the letter and spirit of law which prompted the centre to invoke the power for undisclosed purposes and to discard the disclosed purpose totally. Even though the article was not abused as apprehended, the irony is that the article was not used for fear of detection of abuse by the courts once the purpose was evident.

Article 365 which confers extraordinary powers is a constitutional necessity. It is in the nature of a remedy made available to the centre following

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53. *S.R.Bommai and Others* Vs. *Union of India and Others.* AIR 1994 S.C 1918 at pp.1953-54, 1957, 1973-74, 2027-29, 2046, 2072-73.

its right to issue directions. There is thus the guarantee of right to the centre of intervention in the affairs of the state when the Constitution is violated and the people are denied their human rights. Failure to seek remedy by the centre in appropriate cases may render it accountable to Parliament. A wobbly centre may also find itself embarrassed by legal action at the instance of the aggrieved.[54] Democracy triumphs only when the Rule of Law is vindicated, the spirit of which saw its way into the fabric of constitutionalism. True to such spirit alone, the Constituent Assembly reluctantly favoured the stringent action as a last measure. In the first instance, Dr.Ambedkar desired the President to extend a mere warning to a State that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If it were to fail, he wanted the electorates to be given an opportunity to settle the matter for themselves before the President resorted to assumption of power to himself.[55]

The suggestions howsoever proper may turn inappropriate owing to change of circumstances. Persons then holding high office set examples for others holding moral principles high in the conduct of the affairs of the state. The words were held in high esteem and rights and sentiments of people were respected without deviance. Moral authority excelled in honour of commitments.

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54. Where a private citizen whose interests or rights are jeopardised or affected by the failure of the State Government to discharge the obligation imposed upon it by Article 256 can seek relief from courts requiring the State Government to exercise its executive power to ensure compliance with the laws made by the Parliament and existing laws. See *Jay Engineering Works* Vs. *State of West Bengal*. AIR 1968 Cal.407; *Deputy Accountant General* Vs. *State of Kerala*. AIR 1976 Ker.158; *Bandhua Mukti Morcha* Vs. *Union of India and Others*. AIR 1984 S.C.802. Further, courts may also require the Union Executive to state the steps it took to secure compliance with the laws in view of the obligation imposed under Article 256. (The title to Article 256 speaks about obligation of States and the Union).

55. *Constituent Assembly Debates*, Vol.ix, p.177.

Administration of warning was also perceived as the most democratic way of effecting corrective approach in the manner of administration of the erring state. Hence, it carried conviction. But, today contra reflects making the suggestion wholly incomprehensible. The second suggestion has also become another casualty to the changing time. Elections to the Assembly of the State is also stoutly opposed holding that, if held frequently, they would be an avoidable brunt to be borne by the public exchequer. Such objection may also be there for other reasons. Firstly, the election scenario is presently dominated only by narrow considerations than by broad consensus on vital issues. Hence, the opportunity for settlement, which Dr.Ambedkar had in view, will be of no use. Also, elections will be unnecessary when the issue concerns only a segment of the population of the state. For, the failure of obligations even in respect of a section of the population of the state may be sufficient to invoke the power under Article 356. Left alone is the assumption of power by the President Under Article 356. As everyone is familiar, this power has been surreptitiously invoked more frequently giving rise to raging controversy in and outside the Parliament. If all these are taken together, it will be found that the system so developed in our country subsequent to the adoption of the Constitution has rendered the first two suggestions totally ineffective and the third one the most controversial. It is painful to note that while the ills are galore, remedies have fallen sick and lost the grace. Hence the need for viable alternatives.

The Union executive is responsible both within and outside the nation for promotion and protection of human rights of children. It cannot be complacent when the State Governments fail to implement the laws securing those rights to children as the centre has entrusted to them the responsibility of implementing the laws. Notwithstanding the entrustment, responsibility always rests with the

executive of the Union as the author of the laws. Such responsibility stretches further to the extent of making the State Governments as responsible as they are to be under the provisions of the Constitution. Commensurate with the responsibility, the Union executive enjoys power under the Constitution. As the powers are remedial in nature to effect corrective approach in the manner of administration of affairs of the state, they need to be applied when the constitutional responsibility demands. Power abuse is as true as legal restraint. Hence, the Constituent Assembly exhorting restraint sounded a word of caution. It emphasised due care and caution in the exercise of power and recourse to the same as a measure of last resort. Till date, this is also a favoured view.[56] However, in an attempt to pre-empt such a harsh decision, as seen earlier, the Assembly insisted upon a warning being administered to an erring state. As such warnings are not likely to cut much ice with the State Governments in view of the changed style of functioning over the past four decades, such warnings could be accompanied by sanctions involving cuts in the grants or aids to such State Governments. This is in apparent consonance with the current thinking of the Central Government.[57] The same may vigorously be pursued by the centre

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56. *S.R.Bommai and Others* Vs. *Union of India and Others*. AIR 1994 S.C 1918 at p.1943, 1983, 2045.

57. The Union Government envisages a key role to panchayats in the implementation of various developmental schemes for which funds are earmarked by it in the union budget. Under the Constitution (73rd Amendment) Act, 1992, the State Governments must hold the panchayat elections within a year of the enactment of the legislation for the purpose by the state. In the case of the State of Tamil Nadu it ended on April 23, 1995. Following the failure of the State Government to announce elections to the local bodies, the Ministry of Rural Development withheld in December 1994 the last installment of the financial year 1993-94 to the tune of Rs.114 crores due for the developmental projects in Tamil Nadu. It also decided to withhold the entire amount of Rs.350 crores for the next financial year. See, Parsai, Gargi, No.Rolls, no funds, *The Hindu*, February 26, 1995, p.9; The former Prime Minister, Mr.P.V.Narasimha Rao, warned the State Governments against delaying holding of local bodies' elections. He observed that those states which had not held the elections yet were violating the Constitution to that extent. *The Hindu*, September 1, 1995, p.1.

to make the erring State Governments amenable to directives more likely without the necessity of taking recourse to Article 365 and 356. Financial sanction also looks more prudent as the State Governments are inviting destablisation wantonly only to earn sympathy and regain the faith of the electorates which they have lost owing to unpopular policies and inefficient administration.

9.2.2 Individual Responsibility of Ministers

The doctrine of ministerial responsibility expresses the conventional relationship of ministers to Parliament and of ministers *inter se*. These relationships imply obligations owed by ministers to Parliament and to each other.[58] This conventional responsibility was earlier preceded by legal responsibility of individual ministers for advice given by them to the sovereign which was supported by the sanction of impeachment. Individual ministers were then considered rather to share in this collective responsibility of individual ministers for advice given by them to the sovereign which was supported by the sanction of impeachment. Individual ministers were then considered rather to share in this collective responsibility than to bear an independent responsibility to Parliament.[59] But drawing support from conventions, Dicey in his celebrated

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58. Turpin, Colin, Ministerial Responsibility: Myth or Reality? in Jowell Jeffrey and Oliver Dawn (ed), *The Changing Constitution*, Second Edition, Oxford University, 1989, p.53.

59. See Earl Grey, Parliamentary Government, (1864), pp.4-5, 51, 101-3, 300; S.Low, The Governance of England (1904), p.138 ('the responsibility of ministers is not individual, but collective'). cf. A.H. Birch, Representative and Responsible Government (1964), p.139, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *ibid.*, p.54.

book 'Law of the Constitution' firmed up the basis of ministerial responsibility which embraced both the Ministry as a whole and individual ministers. Dicey also laid the liability to loss of office as the kernel of the doctrine.[60] He stretched the other features of the doctrine of ministerial responsibility as well. Collective ministerial responsibility was held to imply agreement upon policies and unanimity of advice to the Crown, and also an obligation to explain to Parliament the principles upon which the government was to be carried on.[61] The individual responsibility of the ministers was considered to extend to all official acts and to relieve subordinates of public blame for their errors.[62] But the same has been the subject of controversy as doubts have been expressed about the validity of those conventions. Nevertheless, the doctrine of ministerial responsibility has not been displaced by any other theory or principle as the explanation of the relationship between ministers of the Crown and Parliament in our constitutional system, and it is still relied upon as justifying the characterization of that system as one of 'responsible government'.[63] The notion of 'responsible government' implies both acceptance of responsibility for

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60. See A.V.Dicey, The Law of the Constitution (1885), pp.329 364, 374-5, 382-3; Sir W. Anson, The Law and Custom of the Constitution, Part II (1892), pp.112-13, in Turpin, Colin, Ministerial Responsibility? Myth or Reality? *Ibid.*

61. Anson, Law and Custom, p.113; A. Todd, Parliamentary Government in England, vol.ii, new edition, (1892), pp.116-19, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

62. Todd, Parliamentary Government, i, p.170, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

63. Ministerial responsibility is a pervasive theme in the Report of the Royal Commission on Financial Management and Accountability (Minister of Supply and Services, Canada 1979), where it is said to be 'fundamental to responsible government'. (p.179), in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*, pp.54-55.

things done and 'responsiveness' to influence, persuasion, and pressure for modifications of policy.[64]

In discharge of obligations both collectively and individually, it is demanded of ministers that they should answer or account and for that purpose to meet Parliament and provide information about their policies.[65] In essence, it requires the giving of reasons and explanations for action irrespective of the fact whether or not expenditure was involved. This is called as 'explanatory accountability'.[66] Implicit in the requirement to answer is an obligation to submit to scrutiny by Parliament. The latter comprehends opportunities for Parliament to question, challenge, probe, and criticise.[67] "A Government that is compelled to explain itself under cross-examination will do its best to avoid the grounds of complaint. Nothing makes responsible so sure", says H.J.Laski.[68] Though this obligation is considered to be essential to 'responsible government', it is not fundamental to, and in direct consequence of, the same. Essentially, it addresses to still a fundamental obligation of redressing grievances.

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64. cf Birch, Representative and Responsible Government, pp.17-18, and See Gilbert, 'The Framework of Administrative Responsibility' (1959) 21 Journal of Politics 373, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *ibid.*, p.56.

65. G.Marshell and G.C. Modie, Some Problems of the Constitution, 5th edition (1971), p.62, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*, p.57.

66. This expression is taken from G.Marshall, 'Police Accountability Revisited', in D.Butler and A.H. Halsey (eds), Policy and Politics: Essays in Honour of Norman Chester (1978), pp.51-65, at pp.61-2, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

67. Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

68. Parliamentary Government in England, in Turpin, Colin. Ministerial Responsibility: Myth or Reality? *Ibid.*

It is in pursuance of this traditional obligation, ministers are put to an obligation to answer and submit to scrutiny. Hence the latter is ancillary to the former. This traditional obligation being remedial in nature envisages action for revealed errors or defects of policy or administration, whether by compensating individuals, reversing or modifying policies or decisions, disciplining civil servants, or altering departmental procedures.[69] Styled as 'amendatory accountability', this presupposes an acknowledgment by ministers that they 'bear responsibility' to Parliament for what is shown to have gone wrong, whether or not they accept personal blame for the failure.[70] These obligations may be imperfect as they seek force from conventions, practices, and procedures which are vulnerable to changes suiting political interests of the day.[71] Nonetheless, they can not be challenged as lacking substance. Nor can they be flouted with impunity.[72] For these obligations continue to be on the move constantly keeping pace with the changing needs of time. And it is the revealing substance of these obligations which has made them still relevant. Eventually they have become guiding spirit in the endeavour of ensuring responsible government.

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69. cf. R.Klein, 'Accountability in the National Health Service' (1971) Political Quarterly 363 at 365, taking 'accountability' to include both 'the acceptance of the responsibility publicly to explain and justify policies' and 'a willingness to admit to and remedy errors', in Turpin, Colin, Ministerial responsibility: Myth or Reality? *Ibid.*

70. Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

71. cf. R.Rose, Politics in England, 4th edition (1985), p.148: 'Today the norms of the political culture constitute the chief political limitation upon the actions of politicians...'. See S.Beer, Modern British Politics, 2nd edition (1982), p.389, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

72. Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

In the present day context, the convention of ministerial responsibility attribute to the whole Ministry responsibility for all official acts performed by individual members or in their names. Jennings wrote that 'proposals made by a minister, whether or not they have been approved by the cabinet, are the proposals of the Government',[73] and that 'the decisions of Ministers are taken on behalf of the cabinet', such that 'the policy of the Government...permeates the whole administration and the cabinet accepts collective responsibility for it'.[74] This principle of collective responsibility of ministers formally explains the relations between government and Parliament. When ministers speak in their official capacity it is understood that they speak for the government.[75] If criticism is directed against a decision or policy originating wholly within, or associated primarily with, a particular department, the convention is normally observed that the government will not repudiate the decision or policy as having been reached on the departmental minister's sole responsibility.[76] In this respect collective responsibility provides a shield for the individual minister and it is only rarely the same is withdrawn so as to leave the minister no alternative

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73. Cabinet Government. Third edition (1969), p.497; See also pp.284, 288. in Turpin, Colin. Ministerial Responsibility: Myth or Reality? *Ibid.*, p.58.

74. Jennings, The Queen's Government (1954), p.122; See also the Report of the Committee on Departmental Records (1954) Cmd. 9163, para.188: 'a Minister shares his responsibility for the conduct of his Department with his colleagues as a whole...", in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

75. 988 HC Deb., 10 July 1980, col.768, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

76. Cf. the Prime Minister's expression of 'complete confidence' in the Home Secretary, Mr.Whitelaw after his immigration rules were disapproved by the House of Commons: 34 HC Deb., 16 December 1982, col.477, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

except to resign.[77] But this is not to undermine the individual responsibility of ministers. Indeed, it coexists with the overreaching collective responsibility, and in much of the everyday business of Parliament, ministers are answering for their own departments. This is more so when many important policy decisions are being taken by ministers themselves as a result of proliferation of powers vested in them following the growth in the scale and complexity of modern government.[78] There is acceleration of individual responsibility of ministers underlying a clear awareness of separate departmental responsibilities.[79] Incidentally, a minister's responsibility extends to all the functions, powers, and duties entrusted to him. In other words, it extends to the whole activity of the department. As Herbert Morrison observed:

> "It is a firm parliamentary rule and tradition that a Minister is accountable to Parliament for anything he or his department does or for anything he has powers to do, whether he does it or not. That is to say, if the action or possible action is within the field of ministerial

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77. A famous instance was the resignation of Sir Samuel Hoare as Foreign Secretary in 1935. Cf. the resignation of Mr. Fairbairn as Solicitor - General for Scotland in circumstances in which his ministerial colleagues felt unable to defend his actions: The Times, 22 January 1982, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

78. See H. Daalder, Cabinet Reform in Britain 1914-1963 (1964), p.259; B.Headey, British Cabinet Ministers (1974), p.60, and works there cited; D.Ellis, 'Collective Ministerial Responsibility and Collective. Solidarity' (1980) Public Law 367 at 370-1. A former Home Secretary writes that very much Home Office work is done 'without any inter-departmental or inter-ministerial consultation': Roy Jenkins, 'On Being a Minister', in V.Herman and J.E. Alt (eds), Cabinet Studies: A Reader (1975), pp.210-20, at p.210, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*, p.59.

79. Cf. the insistence of a Deputy Under - Secretary of State at the Home Office that 'the responsibility for actions, decisions on policies, remains and must remain with the department or ministry charged with responsibility for that action': Fifth Report from the Home Affairs Committee, Vol.(ii) (Evidence) (1980-1) HC 424-II, Q.221 (See also Q.204), in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*, p.60.

> power or competence the Minister is answerable to Parliament".[80]

While it is true that officials who actually make decisions in government departments should be properly accountable for them, it does not imply that ministers should be relieved of all responsibility to Parliament for official acts that they have not personally authorised. Minister is still rightly obliged to account in the 'explanatory' and 'amendatory' senses referred above.[81] Besides, management of affairs of the department also adds to the responsibility of the minister in charge of the same as the efficient management cannot be overlooked.[82] In its broad sense, the term 'responsibility' thus sweeps policy and administration. A former head of the Home Civil Service [Sir Ian Bancroft] may be quoted as having said:

> "The Minister in charge of a department is ...responsible, and accountable to Parliament, for the effectiveness of his department's policies and the efficient and economical use of the resources allocated to it. It is part of that responsibility to ensure that his department has the system, procedures, organisation and staffing necessary to promote efficient management".[83]

There is therefore every justification for criticising ministers for errors that result from deficiencies in the department's administrative system, or for decisions that would have been brought to ministerial attention.[84]

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80. Lord Morrison, Government and Parliament, Third Edition (1964). p.265, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

81. Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

82. *Ibid.*

83. Third Report from the Treasury and Civil Service Committee, Vol.II (Evidence) (1981-2) HC 236-II, Memorandum (p.174) Annex A, Para.1, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

84. Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

Though the theory of ministerial responsibility foresees 'the answerability' to Parliament, submitting to its scrutiny and giving a full account of the actions of the government, and 'accepting responsibility' for failures of policy and for errors committed by themselves or their subordinates, but in the perspective of reality, it speaks with variance. The governments undoubtedly give formal acknowledgment to the principle and accept its practical demands including the submission by ministers to parliamentary practices and procedures designed to assure accountability,[85] but not always willingly submit to the demands of either explanatory or amendatory accountability.[86] The enforcement of accountability failing compliance is assiduously earmarked in all fairness to Rule of Law. Again the disquieting feature that is stunning everyone is that the enforcement of accountability depends mainly upon the government's respect for arrangementsand procedures which are part of the system within which it must itself operate, and which will serve its turn in due time when it reverts to opposition.[87] It used often to be asserted that a minister was obliged to resign, even though not expressly censured by the House, for any significant failure of policy or serious mismanagement or default in his department.[88] While no binding convention in such broad terms either exists or is shown to have ever

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85. *Ibid.*, p.69.

86. 'We must draw attention to the fact that while the Government has stressed the importance of ministerial accountability, in practice Ministers have not always fulfilled their obligations': First Report from the Liaison Committee (1986-7) HC 100, para 8, in Turpin, Colin, Ministerial Responsibility: Myth or Reality?, *Ibid.*, p.74.

87. Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

88. *Ibid.*, p.75.

existed,[89] the modern and more realistic note was sounded by Mr.Whitelaw, the Home Secretary, in informing the House of Commons of the results of an inquiry into the escape of prisoners from Brixton prison: "In the circumstances, the governor, **Mr.Selby**, must himself accept, and very properly does accept, the primary responsibility".[90] But the consequence is slated to be with a difference when there is failure of high-level 'ministerial' policy, or if the minister himself directed or approved the impugned action. The zone of responsibility is such cases is sure to make strides but, however, without any allowance for resignation, as has been poignantly referred to by **Mr.Finer**, various political and personal factors are at work behind the issue. Resignation is at best relative to the circumstances making it virtually difficult to specify the kind or degree of fault to be visited with the loss of office. Nevertheless, it is quite conceivable that such eventualities may prove to be fatal to the minister in charge of the department, if the battle line is drawn with precision following mounting pressure on the Parliament.[91] This hope turned into reality by the force of events of 1982 and is indeed worthy of reference. Public and Parliamentary criticism of the Foreign and Commonwealth Office for what seen as an inept appraisal of Argentinian intentions before the invasion of the Falkland Islands was followed by the resignation of Lord Carrington, the Secretary of State, Mr.Humphrey

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89. S.E.Finer, 'The Individual Responsibility of Ministers' (1956) 34 Public Administration, in Turpin, Colin, Ministerial Responsibility: Myth or Reality?, *Ibid.*, p.76.

90. 998 HC Deb., 2 February 1981, col.20. Cf. Sir John Hunt in evidence to the Expenditure Committee, "The concept that because somebody whom the Minister has never heard of, has made a mistake, means that the Minister should resign, is out of date, and rightly so', Eleventh Report, Vol.ii (Evidence) (1976-7) HC 535-II, Q 1855, in Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

91. Turpin, Colin, Ministerial Responsibility: Myth or Reality? *Ibid.*

Atkins, who as Lord Privy Seal had answered for the Foreign Office in the House of Commons, and Mr.Richard Luce, the Minister of State who had conducted the negotiations with Argentina on the Falkland Islands question.[92] The resignation of Lord Carrington is formally taken, like that of Sir Thomas Dugdale in 1954, as an acknowledgment of ministerial responsibility to Parliament in its classical sense. The Secretary of State quit expressly saying that he had been responsible for the conduct of policy which had proved to be wrong, and which had led to strong criticism in Parliament. It is worthy of mention that he quit the office despite attempts by the Prime Minister to dissuade him from doing so.[93] In contrast, Mr.Whitelaw, the Home Secretary and a minister of high standing in the government survived the onslaught thrice during 1982-83.[94] Even in cases of serious personal default or misadjustment by a minister in the performance of his functions or in his relations with Parliament, the picture looks rather dismal. Resignation is only more likely but by no means inevitable consequence of such circumstances.[95] Even as the reaffirmation of the 'pure' version of ministerial responsibility insist that the entire responsibility rests with the Secretary of State, it is always manipulated by political circumstances. But however rare and unpredictable in occurrence, it is still the highlight of the constitutional practice.[96]

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92. *Ibid.*

93. *Ibid.*, pp.76-77.

94. *Ibid.*

95. *Ibid.*

96. *Ibid.*, p.79.

Our Constitution too is founded on the principle of the responsibility of Ministers to Parliament and the Legislative Assembly of the State.[97] The responsibility is collective. But, individual ministers do and have to accept responsibility for what the administration does as it is the essence of parliamentary democracy that each Minister is responsible for the conduct of his department and for every act done in his department. No minister can ever argue that he is not responsible for his bureaucracy. If that proposition is accepted, it is said, the entire edifice of parliamentary democracy collapses.[98] This principle has been called in practical application on few occasions and more appropriately in the recent past.

In 1993, the report of the Joint Parliamentary Committee probing securities scam brought to fore the issue of accountability of ministers triggering the resignation of the former Finance Minister of the Union, Dr.Manmohan Singh.[99] The Report which was presented to Parliament on the 21st December 1993 laid bare the complex nature of irregularities and the extent of collusion among banks, brokers and other which resulted in the illegal siphoning of funds for speculative use.[100] Pronouncing a definite value judgment on the scam by holding it to be a deliberate and criminal misuse of public funds, the JPC observed:

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97. Article 75(3) and Article 164(3) of the Constitution.

98. Dhavan, Rajeev, 'Sheer Hypocrisy: The so-called resignation of Manmohan Singh and after', *Indian Express*, January 6, 1994, p.8.

99. Baruah, Amit, 'The JPC Fall-out', *The Hindu*, December 26, 1993, p.7.

100. *The Hindu*, December 21, 1994, p.14.

> "The latest irregularities in the securities and banking transactions are manifestations of the chronic disorder since they involved not only the banks but also the stock market, financial institutions, Public Sector Undertakings, the Central Bank of the country and even the Ministry of Finance and other economic Ministries in varying degrees".[101]

The Committee further observed:

> "The most unfortunate aspect has been the emergence of a culture of non-accountability which permeated all sections of the Government and banking system over the years. The State of the country's system of governance, the persistence of non-adherence to rules, regulations and guidelines, the alarming decay over time in the banking system has been fully exposed".[102]

It also painfully noted:

> "These grave and numerous irregularities persisted for so long that eventually it was not the observance of regulations but their breach that came to be regarded and defined as 'market practice'. Through all these years the ability of the authorities concerned to effectively address themselves to the problems has been tested and found wanting".[103]

Closely on the heels of the deplorable grave irregularities, the Committee concluded saying:

> "What is more apparent is the systematic and deliberate abuse of the system by certain unscrupulous elements. It is abundantly clear that the scam was the failure to check irregularities in the banking system and also liberalisation without adequate safeguards. There is also some evidence of collusion of big industrial houses playing an important role".[104]

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101. *The Hindu*, December 23, 1993, p.6.

102. *Ibid.*

103. *Ibid.*

104. *Ibid.*

Precisely because all systems and procedures came under scathing attack in the report of the JPC, it became imperative to fix accountability.

Failures in the banking system and particularly in the sphere of transactions relating to government securities were attributed by the JPC to serious inadequacies in supervision and accountability. The first concerns the functionaries entrusted with the task of supervision, and here the Committee concluded that there was a break down of the supervisory mechanism at all levels and places.[105] Secondly, in the context of functional aspect concerning the banks, brokers, Public sector undertakings and ministries, the Committee was of the view that accountability was largely absent, punishment for the wrong committed was only rare and an ethos of non-implementation prevailed all around.[106] Here, "the responsibility and accountability of the Minister of Finance to Parliament cannot be denied",[107] said the Committee. In reply to the accusation before the probe Committee the former Finance Minister termed the scam as a system failure and pleaded that he could not be held responsible for "administrative failures or management deficiencies in the case of particular banks and financial institutions as it would not be humanly possible for the

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105. *The Hindu* (Editorial), December 23, 1993, p.12; *The Hindu*, July 26, 1993, p.9.

106. *The Hindu*, July 26, 1993, p.9; *The Hindu*, December 23, 1993, p.6.

107. The Committee made this observation in the context of its finding that the Ministry of Finance failed to:
(a) anticipate the problem;
(b) respond to it purposefully when it first surfaced;
(c) manage adequately thereafter the consequence of it;
(d) apply the needed correctives with dispatch; and(e) punish the guilty in time and resolutely.

See *Mainstream* (Editorial) Vol.xxxii(7), January 1, 1994, p.3.

Finance Minister to personally supervise the working of all the entities".[108] This did not find favour with the JPC.[109] It held that the distinction the sought to make between his direct responsibility *vis-a-vis* revenue and expenditure matters and his lesser responsibility *vis-a-vis* actual practice in the financial system could not be sustained since that would go against the grain of "the Constitutional jurisprudence under which the Parliamentary system works".[110] Two other serving ministers of the Union were also indicted by the JPC. Mr.B.Shankaranand, who was the former Minister for Petroleum in the Union Cabinet during the period covered by the probe, sanctioned a sequence of highly dubious investments of huge sum of money collected as oil cess to finance projects in the petroleum sector. As the former Petroleum Minister, he also acted as the Chairman of the Oil Industry Development Board and in the latter capacity, he sanctioned investments of money belonging to the Board. The JPC in the context of grave irregularities was constrained to observe that Mr.Shankaranand did not discharge his responsibilities in consonance with the high office held by him.[111] The other then serving minister to have attracted the JPC's ire was Mr.Rameshwar Thakur. It was inaction on the part of Mr.Thakur which invited indictment from the Committee. Mr.Thakur, as the

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108. Swaminathan, S., 'JPC Report Revisited', *The Hindu*, August 3, 1994, p.14.

109. The Committee was of the view that while the Finance Minister on several occasions made apparent his concern for unfettering the animal spirits of Indian entrepreneurship, the concurrent tightening up of strategic checks was notably absent and hence it could give little credence to the contention of the Minister. See Muralidhar, Sukumar, 'JPC Report and after': Questions of accountability', *Frontline*, January 14, 1994, p.9.

110. *Frontline* (Editorial), January 14, 1994, p.15.

111. Muralidhar, Sukumar, 'JPC Report and after' *Frontline*, January 14, 1994, p.13.

former Minister of State for Revenue in April, 1992 which period was covered by the probe, had failed to initiate prompt action on a file sent to him by the investigation wing of the Central Board of Direct Taxes. The file dealt at length with income-tax violations by the prime accused in the scam, Mr.Harshad Mehta and the minimal action of forwarding the file to the then Finance Minister was taken by Mr.Thakur only after the scam broke.[112] All the three former ministers charged were guilty of errors of commission and omission. The former Finance Minister failed to be alert to the institutional and market practices which resulted in the scam of this type and scale. The Ministry of Finance badly let the system down by failing in the task of anticipating and thwarting crises and regulating, supervising and controlling behaviour in the financial system. Mr.Shankaranand was guilty of error of commission in sanctioning the questionable investments of huge sum of money. Mr.Thakur was also guilty of error of omission. The former Finance Minister offered to quit owning responsibility. The rest who refused to quit were dropped later after a long drawn battle.

Dr.Manmohan Singh, the former Minister of Finance of the Union, while replying to the special debate on the report in the Lok Sabha during December 1993 refused to plead guilty of the charges both in his personal capacity as the Finance Minister and in his official capacity as the head of the Ministry of Finance.[113] Affirming his earlier stand before the the probe panel, the former Finance Minister later in August 1994 asserted saying:

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112. *Ibid.*, p.5.

113. *The Hindu*, December 31, 1993, p.6.

> "The Action Taken Report has thus given both the recommendations/observations of the JPC and the response of the Ministry/Minister Concerned. Constructive responsibility always rests with the Government and we have never disowned that responsibility".[114]

The theory of constructive responsibility advocated by the state is totally inconceivable. Such a view was based on two things namely, the system failure which was suggested to be the cause of the scam[115] and the doctrine of actual fault regarded as essential to impute aminister in charge of a department.[116] Firstly, the presumption of system failure as the cause of the scam is a fallacious one as there was reference in the report to numerous instances where rules, instructions, circulars and even statutory provisions had been violated by individuals with impunity and without remorse. It was largely management and human failure.[117] Secondly, the doctrine of actual fault was purely imaginary and invented as a measure of crisis management for the purpose of containing the damage caused by the multi - crore scam to the Union Government. The cabinet system of government which is at work in India makes the minister totally responsible for every action of his department. All that has to be proved here is a failure. To demand anything more is nothing but mere fabrication of Rule of Law.[118] It may be helpful to recapitulate that in 1954 Mr.Lal Bahadur

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114. *The Hindu*, August 6, 1994, p.15.

115. Mr.P.Chidambaram, the former Minister of State for Commerce, stoutly defended the former Finance Minister, Dr.Manmohan Singh saying that the multi-crore scam was the result of a 'systems failure' and further said that "ministerial constructive responsibility" should not be mistaken as a "trigger for witch-hunt". See *The Hindu*, December 12, 1993, p.7.

116. Dhavan, Rajeev, 'Sheer Hypocrisy', *Indian Express*, January 6, 1994, p.8.

117. Vajpeyi, S.C., 'After the JPC Report: Need for action plan to restore credibility of system', *Indian Express*, January 7, 1994, p.8.

118. Dhavan, Rajeev, 'Sheer Hypocrisy', *Indian Express*, January 6, 1994, p.8.

Shastri, the then Union Minister for Railways, laid down office not on the basis of the doctrine of actual fault but because of failure in the administration. Mr.Shastri quit office following a serious train accident owing to the negligence of a pointsman. It was observed that Mr.Shastri perhaps resigned in order, as Mackintosh says about Sir Thomas Dugdale, "to give his officials a jolt".[119] Blind reliance upon the principle of active fault will not only be outrageous but will also be a mockery of the principle of parliamentary accountability. This is in substance borne out in a characteristic way in the following words by Mr.Rajeev Dhavan. He observed

> "The amazing sequitur of this doctrine [doctrine of active fault] that no minister will ever resign until it is proved beyond doubt that the minister was at fault. A country may fail at war, poverty and death may stalk a famine area, accidents may occur, there may [sic] a breakdown of the system, the police may indulge in a mass rape and kill innocent people, a scam may shake the entire financial structure of a nation, but-according to this theory - the minister is not politically responsible. He need not resign [which means accept responsibility] because he was not personally involved. This immunity granted to ministers means that the most indolent or clever minister who takes no interest in administration or who covers his tracks so well that his personal involvement is simply invisible, comes up trumps".[120]

Reference to the observation of Shri G.B. Pant, the then Home Minister of the Union, may also profitably be made to emphasise the principle that the acceptance of the responsibility must be the rule and the shelving of it can only be an exception to the rule. He observed:

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119. Khanna, H.R., 'Accountability and resignation', *The Hindu*, January 18, 1994, p.12.

120. Dhavan, Rajeev, 'Sheer Hypocrisy', *Indian Express*, January 6, 1994, p.8.

> "But I would like it to be generally a rule that except where a minister can be shown to be altogether free from blame and not at all responsible for any or omission which is open to objection or criticism, he should assume responsibility. I think in this matter a little strictness would be better than leniency".[121]

Such a view only but not otherwise will be in true compliance with the spirit of true democratic polity. While desiring India to be constituted into a Sovereign democratic State, the framers of the Constitution in their wisdom and sagacity felt the parliamentary executive to be appropriate to make the power holders accountable to the people as all the power and authority of the organs of government were designed to be derived from the people only. Dr.Ambedkar in the course of his speech delivered on November 4, 1948 while introducing the Draft Constitution made an exhaustive and authoritative statement, *inter alia*, about the general character of the executive. He said:

> "... A democratic executive must satisfy two conditions : (i) it must be a stable executive, and (ii) it must be a responsible executive. Unfortunately, it has not been possible so far to devise a system which can ensure both in equal degrees. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability.... The American executive is a non-Parliamentary executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary executive which means that is dependent upon a majority in Parliament. Being a non-Parliament executive the Congress of the United States cannot dismiss the executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament.
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> Looking at it from the point of view of responsibility, a non-Parliamentary executive, being independent of Parliament, tend to be less responsible to the legislature, while a Parliamentary executive, being more

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121. Vajpeyi. S.C., 'After the JPC Report', *Indian Express*, January 7, 1994, p.8.

> dependent upon a majority in Parliament, becomes more responsible. The parliamentary system differs from a non-parliamentary system inasmuch as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, ... the assessment of the responsibility of the executive is periodic. It takes place once in two years. It is done by the electorate. In England, where the parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by Members of Parliament, through questions, resolutions, no-confidence motions, adjournment motions and debates on Addresses. Periodic assessment is done by the electorate at the time of the election which may take place every five years or earlier. *The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The draft Constitution in recommending the Parliamentary system of Government has preferred more responsibility to more stability*".[122] [Emphasis supplied]

It is discernible from the emphasis that the framers of the Constitution desired the freedoms and rights of the governed be secured more effectively and for that reason alone it accorded supremacy to responsibility. Such an accent to the principle of accountability renders the claim of actual fault totally unsustainable and an antithesis to true representative democracy. Even for the sake of argument, the doctrine of actual fault is considered relevant, the same was more prominent in the case of both Mr.Shankaranand and Mr.Thakur thus leaving no room for complacency in its adherence.

In the case of child labour, the policy failure is conspicuous as millions of children employed have got their experience to relate. Prohibition and

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122. Khanna, H.R., *Making of India's Constitution*, Eastern Book Company, Lucknow, 1981, pp.67-69.

regulation laws concerning employment of children have been torn to pieces. Constitutional guarantees of freedom from exploitation and ensuring their survival with human dignity have been dithering and the directive of ensuring education for all children below the age of 14 has been limping. All these are because of flooding of children into factories and they are as old as our Constitution. International pressure on the Indian carpet manufacturers to stop employment of children as a condition for import of the same and various decisions of the supreme court on the issues of child labour, bonded labour and payment of wages lesser than the one fixed under the minimum wage law are broadly indicative of the violations of labour legislations unflinchingly pointing to the failure of the policy of prohibiting and regulating the employment of children. Besides, no other material than the very admissions of the state on various occasions are sufficient to justify the flak. Catchy advertisements are on the spree to evoke sympathy.[123] But they are conclusive proof of the state apathy. But no minister either at the centre or in any state government has ever resigned owning responsibility and paradoxically, this is so inspite of the fact that the number of children trooping into the factories has been swelling day by day. None has courage to put his conscience over his office. While bemoaning such lapses, the ministers contend that children deserve better deal. They may be true. But what is utterly forgotten is that they deserve better deal not as a matter of grace or charity but as a matter of right guaranteed under the Constitution. What is to be understood is that what has failed is not a small and insignificant policy so that it can be revised at the earliest available opportunity

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123. Having desired to enlist public support as part of campaign against child labour, the Government of India has released advertisements through Ministry of Labour bringing out with prominence the ill-effects of child labour.

without much loss of face. There is failure of constitutional guarantees, constitutional directives, human rights and to cap it all, there is failure of childhood. The state need not be reminded of the same as it is already craving that children be given a chance to have but one childhood.[124] Implicit in this appeal is its informed knowledge that the lost childhood is irreplaceable. When there is so much about the impact of child labour, there is not even whisper about the responsibility of the ministers. They are public servants of the state charged with the responsibility of discharging the constitutional obligations in letter and spirit.[125] When the State Government as the collective entity could be held responsible for failure in the discharge of the constitutional obligations, why shall not a minister who is part of such collective entity be held responsible for the flak. What is intriguing is that even the opposition parties which leave no stone unturned to demand the sacking of the scam-tainted ministers have not sought even once the resignation of a minister in the union or any state government. Lack of vision on their part too is palpable. What they too have failed to discern is that the money lost due to scam could be replaced either through recovery from the assets of the accused frozen under the law or through fresh levy of taxes but not the values of the human being especially precious childhood. Ironically, it is only a case of deriving authority from the governed to deprive them of their values and rights with impunity.

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124. The advertisements issued by the Ministry of Labour, Government of India, carry an appeal to the society which reads: "Let us give them a chance; they have but one childhood".

125. No minister of the Union or of a State can enter upon his office without being administered the oath of office whereby he undertakes to bear true faith and allegiance to the Constitution of India as by law established, to uphold the sovereignty and integrity of India, to faithfully and conscientiously discharge his duties as a Minister and to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will. [Article 75(4) and Article 164(3)].

It is in this context of the emerging trend of disowning responsibility, the decisions of the Supreme Court sentencing to imprisonment Mr.Kalyan Singh, the former Chief Minister of the State of Uttar Pradesh[126] and Mr.J.Vasudevan, an IAS officer and Principal Secretary, Housing and Urban Development, Government of Karnataka,[127] need to be examined very carefully. Both of them were sentenced to imprisonment for contempt of court. In its hard-hitting decision, the Supreme Court while sentencing Mr.Kalyan Singh to a token imprisonment of one day and a fine of Rs.2000, observed:

> "That it is necessary to say that in a Government of laws and not of men the executive branch of Government bears a grave responsibility for upholding and obeying judicial orders".[128]

The court also in support of its view quoted Dicey as having said:

> "... In England the idea of legal equality, or of the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages for acts done in their official character but in excess of their lawful authority. A colonial governor, a Secretary of State, a military officer, and all subordinates though carrying out the commands of their superiors, are as responsible for any act which the law does not authorise as is any private and unofficial person".[129]

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126. *Mohd. Aslam Alias Buhure, Acchan Rizvi* Vs. *Union of India and Others*. (1994) 6 SCC 442.

127. *J. Vasudevan* Vs. *T.R.Dhananjaya*. 1995 [5] Scale 245.

128. *Mohd.Aslam* Vs. *Union of India and Others*.(1994) 6 SCC 442 at p.449.

129. *Ibid.*, p.450.

The *Vasudevan Case*[130] has got a different message to convey. The Supreme Court was consistent throughout in its urge for upholding the majesty of law and it is indeed remarkable that it did not relent inspite of several applications made seeking clemency.[131] It was also upright in its endeavour to mean business and to reject the status of the contemnor as of no concern to it.[132] Though the decision sent a shock wave to the utter surprise of the civil executive, the message it sought to convey is simple. Striking new strides the Supreme Court manifested the principle of accountability with a difference underlying the fact that it will not always be safe and sure for the civil executive to act on the premise that the political boss will always be correct. In a way, it was apparently intended to clip the wings of the executive branch of the government. As the Supreme Court was in a fix, it had no other alternative except to view the flouting of its own orders very seriously so that no authority would dare to violate it with ease in future.[133] The principle of accountability which is assiduously invoked and applied in these decisions makes the latter relevant to our discussion even if they pertain to contempt of court. The impact of these decisions may be used without any reservation whatsoever to influence the conduct of the political executive in the realm of the obligations arising out of the employment of children in total disregard of constitutional and statutory

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130. *J. Vasudevan* Vs. *T.R.Dhananjaya*. 1995 [5] Scale 245.

131. Firstly, an application from Mr.J.Vasudevan for remission of sentence imposed on him on charge of contempt was dismissed on September 8, 1995. Another application from the State of Karnataka seeking remission was dismissed on September 14, 1995. Thirdly and lastly, the Supreme Court dismissed on September 27, 1995 a writ petition from Mr.J.Vasudevan against the orders convicting and sentencing him.

132. *J. Vasudevan* Vs. *T.R.Dhananjaya*. 1995 [5] Scale 245.

133. *Ibid*.

directives. Though the chance of drawing comfort from the nature of proceedings is more likely, it will not be easy to sustain for the simple reason that by no logic a dividing line can be drawn to keep apart the violation of an order made by the court from the violation of any law made by the legislature. Accelerating the process of contempt proceedings against Mr.Kalyan Singh and the State of Uttar Pradesh, the Supreme Court recorded a finding saying:

> "Apart from a glib suggestion that any attempt to prevent the work would have created a violent situation endangering the safety of the "Ram Janma Bhoomi - Babri Masjid structure" itself, nothing is indicated as to what was sought to be done at all to prevent constructional material coming in. There is no mention in any of the affidavits of any of the officers as to what reasonable measures the Government took to prevent the inflow of constructional material such as large quantities of cement, mortar, sand, constructional equipment, water - tankers etc. that were necessary for the work. The report of the Expert Committee has indicated that constructional machinery was indispensable having regard to the nature and magnitude of the work carried out. While it is understandable that the prevention of the gathering of Sadhus might have created some resentment, it is ununderstandable why large quantities of building materials were allowed to be brought on the land unless it be - and that must be the reasonable presumption - that the Government itself was not too anxious to prevent it. *It is not merely positive acts of violation but also surreptitious and indirect aids to circumvention and violation of the orders that are equally impermissible. If reasonable steps are not taken to prevent the violation of the orders of the court, Government cannot be heard to say that violation of the orders were at the instance of others. The presumption is that the Government intended not to take such preventive steps*".[134] (Emphasis supplied)

What is unequivocally expressed by the court is that if the state fails to discharge its duty to prevent any mischief either by positive acts of violation or

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134. *Mohd. Aslam* Vs. *Union of India and Others*. (1994) 6 SCC 442 at pp.452-53.

by surreptitious and indirect aids, the state and its executive are liable. In the case of executive, whether civil or political, they will be held liable in personal as well as official capacity.

9.2.3 Responsibility of the Civil Servants

As a mark of honour to democracy and Rule of Law, the state and its agencies are never intended to be the violators of legislations or abettors of such violations by others. It is the fundamental duty of the state to promote public good in the best interests of the citizens for whose benefit the state exists. Equally, it is also the responsibility of the state to extend its protective arm when the interests of the subjects are in distress. Much less the state and its agencies are not free to trample upon the rights of subjects. An unequivocal commitment to Rule of Law commands the state to respect every individual as a human being and his interest profusely touching his life and dignity. Apparently guided by this consideration, the judiciary is on throes of expanding the reach of the rights and freedoms underlying the spirit of human dignity. The march of law thus marks the beginning of the road to the destiny of ensuring maximum happiness for the maximum number. This astute of Rule of Law will lose all its vitality and vigour if the legislations especially welfare legislations are allowed to be violated with impunity and more regretfully, if the violations of laws by the state go unnoticed. It is always easier said than vindicated that legislations are vehicles of justice and with this objective alone, they are made as the ruffled legislations will have no worth to stake. And it will be total ignominy that such laws are ruffled by the arms of the state i.e., the author of the same laws. This is more akin to the case of a mother choking the life of her child. It will not be an exaggeration and out of context to state that the labour legislations bore the

brunt of indifference to a larger extent of the central government and all the state governments without any exception. Of course, each state government is upstaging the other in the matter of adding insult. The indifference which has come to stay is more abominable reflecting the insensitivity and irresponsibility of the state. As everyone is aware, under these laws the state carries duties to discharge and powers to exercise. In the state apparatus, this sort of responsibility is fastened to the shoulders of the civil servants. This allocative principle of responsibility was eloquently brought out by the Supreme Court in *Tulsiram Patel Case*[135] with emphasis on the veritable force underlying the principle. The court said:

> "Ministers frame policies and Legislatures enact laws and lay down the mode in which such policies are to be carried out and the objects of the legislation achieved. In many cases, in a Welfare State such as ours, such policies and statutes are intended to bring about socio-economic reforms and the uplift of the poor and disadvantaged classes. From the nature of things the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is, therefore, vitally interested in the efficiency and integrity of such services. Government servants are after all paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes. Those who are paid by the public and are charged with public administration for public good must, therefore, in their turn bring to the discharge of their duties a sense of responsibility. The efficiency of public administration does not depend only upon the top echelons of these services. It depends as much upon all the other members of such services, even on those in the most subordinate posts... For a service to run efficiently there must, therefore, be a collective sense of responsibility...".[136]

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135. *Union of India and Another* Vs. *Tulsiram Patel*. (1985) 3 SCC 398.

136. *Ibid.*, p.442.

The court proceeded further to examine the counter claims of the public interest concerning the civil service. While it accepted the necessity of ensuring the security of employment of civil servants, it also dwelt upon the other aspect of the public interest necessiating the weeding out of undesirables on the ground of inefficiency, dishonesty, corruption and security of the nation. Recognising honesty, integrity and efficiency of the civil servants as the life line of public interest and public good, the Supreme Court tilted the scale in favour of the latter aspect of the public interest. Thus absolutely giving an edge to the principle of accountability, the court upheld the doctrine of pleasure envisaged under Article 310 of the Constitution on the ground of public policy. Good governance is thus actuated by the principle of accountability which itself is concomitant to public interest.[137]

As has been observed earlier in general terms, in the realm of prohibition and regulation of child labour also the state is saddled with responsibilities. Included in the catalogue are the statutory duties of securing compliance with the provisions of statutes like the Child Labour (Prohibition And Regulation) Act, 1986, the Factories Act, 1948, the Contract Labour (Abolition and Regulation) Act, 1970, etc., of identifying, releasing and rehabilitating bonded labour, and of fixing and revising the minimum wages in the scheduled employments and enforcing the same. At the cost of repetition it may be reiterated that the provisions of these statutes in their letter and spirit carry constitutional impact in as much as rights under Articles 21,23 and 24 are very much involved. While the existence of responsibilities of such nature is beyond doubt, the acceptance of the same by the state is somewhat scanty as seen from its incompatible

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137. *Ibid.*, p.443.

conduct. The state always feels elated when the question is one of imposing responsibilities on the subjects. But it invariably bungles when the circumstances necessitate the assumption of responsibility.

It is not uncommon in countries like United Kingdom to enact statutes with provisions making the Secretary of State or any other authority responsible for the implementation of the provisions of the Act.[138] But in Indian statutes, especially statutes affording protection to the weak and the weakest, such provisions are conspicuous by their absence. An instance of this can be exemplified by referring to the provisions of the Minimum Wages Act, 1948. When section 12[139] of the Act says that it shall be the responsibility of the employer governed by the law to pay what is fixed under the Act, there is nothing in the Act providing in the same vein that it shall be the duty of the state, not necessarily the Minister, to implement the provisions of the Act. The gap is

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138. In part I of the Health and Safety at Work etc. Act, 1974, there is a chapter on enforcement ten provisions. Section 18 of the Act makes the Health and Safety Executive responsible to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent that some other authority or class of authorities is made responsible for their enforcement. See Wallington, Peter (ed), *Butterworths Employment Law Handbook*, Fifth Edition, Butterworths, London, 1990, p.781; In United States, the Occupational Safety and Health Administration has been created within the Labour Department with far reaching competence in the domain of setting and enforcement of standards; The Spanish Law of 1962 and Ordinance of 1971 vest the responsibilities for occupational safety and health in the Ministry of Labour and its agency, the General Inspectorate of Labour (Article 20). See International Association of Legal Science, *International Encyclopedia of Comparative Law*, Tubingen and Martinus Nijhoff Publishers, Vol.xv, London, 1983, pp.56-57.

139. Section 12(1) reads: "Where in respect of any scheduled employment a notification under section 5 is in force, the employer *shall* pay to every employee engaged in a scheduled employment under him, wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorised within such time and subject to such conditions as may be prescribed. [Emphasis supplied].

vital and counts much as it is more likely to reflect in its perception on values as expected of a civilised society. The fact that it will be too late in the day to suggest that there is no such responsibility or such responsibility can very well be inferred from the scheme of the provisions of the Act, is not the bone of contention here. The staggering question is that why does the state feel shy of assuming responsibility for the implementation of the provisions in plain language and set an example. Another instance may also be cited to drive home the point that the state does not want to be at the receiving end. A bill making education compulsory for all children below the age of 14 passed by the Legislative Assembly of Tamil Nadu and pending with the President for assent seeks to place responsibility on the parents of those children to send them to school established and maintained by the state. This provision is, however, made subject to an exception. The proviso states that such liability will not be there if there is no school existing within a specified distance from the residence of the child.[140] The implication of this provision is quite obvious. If there is no school already existing in any locality, the State Government of Tamil Nadu cannot be compelled to establish and maintain a school in such locality to facilitate the children of the said locality to have education. On the other-hand, where there is a school existing, parents cannot avoid sending their children.[141] What is implicit is that it will always be open to the state to refuse to accept responsibility of whatever nature but it will not be open to the subjects to refuse without undertaking risk envisaged under the law.

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140. Nagasaila D. and Suresh V., Shifting the blame, *The Hindu*, (Sunday Magazine), June 12, 1994, p.iv.

141. *Ibid.*

These instances are not quoted out of context. Rather they furnish adequate proof indicating the mindset of the state in so far as the acceptance of responsibility is concerned. This only marks the beginning of the culture of non-accountability. Adapting itself to such culture, the state is always inclined to resist any assertion of responsibility by the citizens as it does not like taking challenges from its own subjects. It displays its intolerance to such assertion in its own characteristic way. Literature is abundant with mute responses depicting such intolerance before the Supreme Court and various High Courts on the issue of responsibility. The Supreme Court even once chided the State Government of Haryana for adopting an indifferent attitude by raising preliminary objections to the maintainability of the writ petition.[142] Paradoxically, it is only when the court of law firmly sets its foot, the state bows but with much reluctance. Even that does not help much the deprived as the

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142. In *Asiad Labour Case*, the respondents raised preliminary objections against the maintainability of the writ petition urging that the petitioner had no *locus standi* to maintain the petition and that if at all it could lie, it could lie only against the contractors because the workmen whose rights were said to have been violated were employees of the contractors. Further, it was urged that no writ petition under Article 32 of the Constitution could lie against the respondents for the alleged violations of the rights of the workmen under the various labour laws and the remedy, if any, was only under the provisions of those laws. But the same was overruled by the court. See *People's Union for Democratic Rights and Others* Vs. *Union of India and Others*. AIR 1982 S.C. 1473 at p.1482. Again, the State of Haryana stuck to the refrain of denying responsibility by opposing the maintainability of the petition under Article 32. The Supreme Court manifesting deep distress over the attitude of the State observed: "This contention is, in our opinion, futile and it is indeed surprising that the State Government should have raised it in answer to the writ petition. We can appreciate the anxiety of the mine lessees to resist the writ petition on any ground available to them, be it hypertechnical or even frivolous, *but we find it incomprehensible that the State Government should urge such a preliminary objection with a view to stifling at the threshold an enquiry by the court as to whether the workmen are living in bondage and under inhuman conditions*" (Emphasis supplied). See *Bandhua Mukti Morcha* Vs. *Union of India and Others* AIR. 1982 S.C.802 at p.811.

state does not view it seriously.[143] The conduct of the state eventually strays. The reason is not strange. The state accepts responsibility in the litigations not because of its realisation that such responsibility always exists but because it will be futile to persist in its denial. This is precisely what had happened in many of the labour matters taken to the Supreme Court by way of public interest litigation. Regrettably, the disposal of those writ petitions resulted only in the termination of proceedings with directions but nothing more and any other view than this will totally be perverse. In support of the above view, it may be stated in the first instance that the issues involved in those petitions were not peculiar in nature so that the conduct or the response of the state had to be confined only to the facts of the case. On perusal it may be found that the issues like the implementation of the provisions of the contract labour law, bonded labour law, minimum wage law, Article 24 of the Constitution and the like involved therein are general in nature so that the attitude of the state expressed through its conduct in respect of such issues occurring in any part of the country can squarely be related to the outcome of such proceedings. It is thus conceivable that those decisions are not distinguishable on facts and therefore they are relevant. Secondly, factually speaking there has been no marked improvement in the manner of implementation of the provisions of these statutes. Nor can it

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143. For e.g., the Supreme Court in its order dated October 31, 1990, directed the State of Tamil Nadu to ensure non-employment of children in fire works factories, shorter hours of work, education and recreation for the employed children, payment of minimum wages, medical facilities and insurance for children. A Supreme Court panel consisting of Mr.R.K.Jain, Ms.Indira Jaising and Mr.K.C.Dua reportedly told the court that most of its directions were being violated. The Committee found children working in the manufacturing process and even those employed for packing were doing it either in the premises of manufacture or in close proximity to such premises. It also found scant respect being paid to the apex court's direction of providing children with nutritive diet. It further found the directions on minimum wages for children, medical facilities and insurance for the children. See *Indian Express*, November 20, 1991, p.9; *Indian Express*, November 25, 1991, p.4.

be said that the judgments influenced the conditions of life of at least those workers represented by the petitioners. This is sufficient to pass the judgment that the state is not invariably serious about responsibility. As the responsibility itself is not taken seriously, its discharge is also equally not viewed seriously and therefore it is not even in the neighbourhood of reality. However, it does not mean that the state can always enjoy the best of both worlds. It may at times be pushed to the brink forcing it to retrace its steps. It is though deplorable that the state does not discharge responsibility on its own, it is welcome that at least the courts force it using coercive power of contempt. The *Vasudevan Case*[144] is illuminating on this count. In striking contrast to its general tendency, the state will gear up its machinery to meet the contigency of its own creation if it is given to understand that the court would mean business and the consequences would be disastrous if it is not responsive any more. The power of contempt is thus proved to be a driving force in the matter of enforcement of accountability. Justice may wink a while, but will see at last.

The above instances leave no doubt in any manner about the attitude of the state and its agencies towards the policy of accountability. The message is simple but loud and clear. It only conveys that the powerholders do not want to render them accountable in any manner whatsoever even though they possess and wield enormous power affecting the rights of the citizens. Nevertheless, the policy of law is to make powerholders accountable as trustee. The policy area of accountability is thus no more *res integra*.

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144. *J.Vasudevan* Vs. *T.R.Dhananjaya*. 1995 [5] Scale 245.

The operational area of accountability of the state under the labour welfare legislations is far wide. The state is the biggest employer in the country. It carries on trade, it manufactures products and provides services essential to the community. As a welfare state, it also undertakes various projects. In all the activities, it employs men and women in millions. The state holds not only the strategic areas of law and order, defence and administration of justice but it also undertakes economic and other welfare activities. The very idea underlying the undertaking by the state of economic activities is to secure the substitution of public authorities in the place of private employers to obviate the motive of profit-making and exploitation of workers as far as possible. While the levy of taxes make up the absence of capital and consequential profit motive, the state which is vehemently pleading for the protection of workers cannot be heard of exploiting them.

The state is thus expected to be a model employer setting an example for others to follow. As a welfare state, it is supposed to be the caretaker of the interests of the vulnerable. India is a developing country afflicted by the problems of poverty and unemployment. The chances of exploitation of workers are fairly high as the trade unions are yet poorly developed. In order to obviate the chances of exploitation of workers, several legislations have been enacted touching upon the various issues concerning the employment. It is needless to point out at this stage that the master-servant relationship between the employer and the worker arises out of the contract of service and the terms and conditions of such contract are the conditions of service subject to which he is employed. In normal circumstances and as a general rule, such terms and conditions of the contract are matters between the parties to the contract namely the employer and the workman. This is obviously intended by the principles underlying the

freedom of contract. But it is not so in the case of workmen employed in factories and other establishments in developing countries like India where chances of exploitation are abundant. As the workers remain unorganised, their bargaining power is poor. Consequently, the resultant terms of the contract of service are not likely to be fair to them. Hence there is a case for state intervention. The Minimum Wages Act, 1948, for example, aims at making provision for the statutory fixation of minimum rates of wages in a number of industries wherein the sweated labour is most prevalent or where there is a big chance of exploitation of labour.[145] The consequential impact is no less than a restraint on the freedom of contract so far as wage settlement in the scheduled employments is concerned. The law has thus removed the wage settlement from the realm of employer-employee negotiation and entrusted the same to the government at least in the case of specified employments. Similarly, the Payment of Wages Act, 1936 is an Act for protection of wages earned by theworkers. It addresses to the abuses of delayed payment of wages and indiscriminate imposing of fines in industries.[146] The Act was passed following the Report of the Royal Commission on Labour which held that the absence of statutory regulation and strong and powerful trade union were the reasons for such abuses.[147] Distress arising from inequality of bargaining strength furnished the basis for the policy of protection. It received further impetus with the recognition by the court later at the basis for intervention as well. The

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145. Chopra, D.S. and Apte, S.A., *The Minimum Wages Act, 1948*, Eastern Law House, Calcutta, 1973, p.12.

146. Srivastava, K.D., *Commentaries on Payment of Wages Act, 1936*, Fourth Edition, Eastern Book Company, Lucknow, 1990, p.14.

147. *Ibid.*

Supreme Court was fortunately provided with an excellent opportunity in *Asiad Labour Case*[148] to present a vivid picture of the possible outcome of poor bargaining power possessed by the majority of the Indian workmen. In another landmark judgment the Supreme Court proceeding on the presumption of inequality of bargaining power struck down a provision in the Service, Discipline and Appeal Rules, 1979 of the Central Inland Water Transport Corporation Limited as void under section 23 of the Indian Contract Act, 1872, as being opposed to public policy and also *ultra vires* Article 14 of the Constitution as being arbitrary.[149] Quashing the provision as null and void, Justice Madon speaking for the court said:

> "...Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining is the result of the great disparity in the economic strength of the

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148. *People's Union for Democratic Rights and Others* Vs. *Union of India and Others*. AIR 1982 S.C.1473. In this case, the Supreme Court liberally construed Article 23 to include compulsion arising from economic necessity as well.

149. *Central Inland Water Transport Corporation* Vs. *Brojo Nath Ganguly*. [1986] 3 SCC 156. The provision that was involved in this case was Rule 9(i) of the Service, Discipline and Appeal Rules, 1979. It provided for the right of the Corporation to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice.

> contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods on services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair , unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal...".[150]

Thus the policy of the law is to protect the weak, the children, women and men, and make the hierarchy of the protective cover with children and women classified as the most vulnerable entitling for special protection. The scope of protection is deep and pervasive and it is guaranteed by law. It touches upon invariably every aspect of the contract of employment leaving scope only for securing optimum level of protection since what is provided by the law is only the minimum. As the protection is placed on the statutory footing, the workers are given rights thereto. They have got right to seek minimum wage fixed under the law, to seek payment of wages without delay and deductions, to seek bonus and gratuity, to seek payment of compensation and other benefits in the event of contingencies envisaged under the laws concerned and other facilities provided with a view to ensure safety, health and welfare of the workers. Women and children have more to claim besides the above. The laws of protection if perceived as a whole singularly point towards the philosophy of

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150. *Ibid.*, p.216.

material and physical well-being of workers as their aim is to make life free from hazards and injury. Moreover, the content of these laws is such that it coincides with the new tally of the components of quality of life evolved later by the Supreme Court in tune with the expanding horizon of human rights. Explaining the spirit of Article 21 of the Constitution, the Supreme Court in the *Haryana Bonded Labour Case*[151] held:

> "This right to live with human dignity enshrined in Article 21 derives its life breadth from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity...".[152]

Emphasis is thus not only on freedom from exploitation. Rather the constitutional spirit of life with human dignity underscores wholesome personhood. Besides endorsing the above philosophy, the legislations are also oriented towards securing economic and social justice in the broader perspective of ensuring *defacto* equality.

In the backdrop of the policy thrust, the workers enjoy statutory rights in the place of contractual rights. The correlative statutory duties are laid on the

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151. AIR 1982 S.C.802.

152. *Ibid.*, pp.811-812.

employers, both public and private. Given the relevance of these legislations to the constitutional directives, the employers are obliged to comply with the provisions of the laws scrupulously and it will not be difficult to guess that any employer treading on the path of violation will be inviting consequences. In this respect law does not make any distinction between the private and the public employer in the sense that the state can enjoy immunity. It cannot be also as it will be totally unpalatable to even think of such concession especially the state having authored such laws, it cannot seek licence to bypass them.

Another significant responsibility that is laid at the door step of the state is the execution of laws. This responsibility unlike the earlier one is multifold. It commences with the responsibility of framing rules, regulations, etc. under the legislations in order to bring the latter into force making the employers amenable to statutory responsibilities envisaged thereunder. This is the first step in the enforcement of the legislations. Secondly, the state is also vested with administrative powers like fixing or revising the minimum wages, appointment of committees or authorities etc. for the purpose of co-ordinating the policy of the 'egislations. Finally, there also exists responsibility of supervising the compliance by the employers with the provisions of the legislations. The nature of the responsibility indicated herein manifests its significance which formally explains the fact that this responsibility is imposed on the state as a sovereign. Thus it is quite understandable and convincing that the state is under 'dual' responsibility. Firstly, there is responsibility to comply with the provisions of the labour welfare legislations as an employer and secondly, there is responsibility to enforce the laws as a sovereign. Both the responsibilities fall on the executive branch of the state and the rest of this

chapter proceeds to discuss the accountability of the civil servants for their failure in the task.

At times legislature enacts laws with a direction to the executive to bring them into force as and when the circumstances warrant. Such laws carry the legislative policy leaving the matters like the date of enforcement and the manner of execution to the wisdom of the executive as they are better equipped.[153] Situations of such type require the executive to act as expeditiously as possible to bring the law to life. It will be more so when the law in question addresses to abuses which are rampant as in the case of child labour and there is imperative necessity to arrest such a trend without any loss of time. Such laws cannot brook delay as once the legislature decides to put such a law on the statute book, the executive cannot be heard saying that the time is not ripe for enforcement. Nor can it be said that there is no need to intervene through such legislation. Similarly, it is not also uncommon for the legislature to delegate powers to the executive to frame rules necessary for carrying out thepolicy of the law effectively.[154] Again delay and that too undue delay on the part of the executive may turn the policy 'ineffectual' thus rendering

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153. See Section 1 (3) of the Child Labour (Prohibition And Regulation) Act, 1986. It says: "The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different states and for different classes of establishments.

154. See Section 13 of the Child Labour (Prohibition And Regulation) Act, 1986. *Section 13*: *Health and Safety*: (1) The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments; Clause (2) enumerates matters affecting health and safety of children in respect of which rules may be framed.

it incapable of reaching the targeted beneficiaries. On both the counts, the Central and State Governments have miserably failed eventually bringing the law to a near total extinction.[155] For the employers, it is a blessing in disguise. For, when the law was enacted the state advocated the theory of employment with dignity even for children through regulation of their conditions of service. Unfortunately, the children continue to be exploited even after the lapse of a decade since the passage of the law. The state of affairs looks more distressing than ever as the law has become an exercise in futility and the state has become an abettor of such abuses. Failure of the state to exercise the power entails blatant denial of rights to which the children would have otherwise entitled.

It is a sad spectacle that the state has totally lost sight of the fact that the contractual freedom in the sphere of employment has been given a short shrift only to help the state to occupy the field for the purpose of evolving model standards and impressing upon its agencies the need for adherence of such standards. Fortunately, the advent of public interest litigation has given a new twist to the culture of non-accountability permeating the structure of the state apparatus from top to bottom in the observance and enforcement of labour legislations. The enthusiasm unequivocally displayed by the activist judges of the Supreme Court and various High Courts made it possible for public minded individuals and organisations to array in their petitions impleading the Central and State Governments as the chief perpetrators of human rights violations. The deplorable conditions in which hundreds of workers (workers covered by the

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155. See Chapter Seven, notes 187-191, *supra*.

writ petitions alone) were reported to have been sulking evoked adequate sympathy but not resentment in the minds of the judges as was visible from the restraint with which the court acted. Even with such utmost restraint, the Supreme Court was able to make the state to accept its responsibility and further to work at least in certain cases in the direction of obliging the legislative intent.[156] Misconstruing such a passionate appeal to the wisdom of the state as a sign of weakness on the part of the Supreme Court, the state has failed to reciprocate promptly and adequately in the later years. The spirit of accountability has failed to percolate down to the lowest rank of the civil service to keep everyone in the grip of fear that inaction even on their part would render them accountable. In the midst of such acquaintance, the *Vasudevan Case*[157] is an healthy precedent as it is likely to inject into the public administration the constitutional culture of accountability.

Enforcement of the laws falls in the third leg of the responsibility imposed on the state as a sovereign. Effective monitoring of factories and other establishments is the consequential need of such responsibility. It commences with the scrutiny of the place of the factory or establishment and approval of plans and specifications before they are permitted to carry on the activity.[158] The plans and specifications are required to be submitted for the consideration

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156. For e.g., in *Mukesh Advani Case*, it was after much persuasion, the Supreme Court could succeed in securing the issuance of notification under Section 5 of the Minimum Wages Act of 1948 for fixation of minimum wages.

157. *J.Vasudevan* Vs. *T.R.Dhananjaya*. 1995 [5] Scale 245.

158. Section 6 of the Factories Act, for e.g., insists upon, submission of plans and specifications for approval by the State Government, licensing and registration of factories.

of the authorities for being satisfied with the arrangements proposed to make the work life of the operatives free from hazards and injury. Such monitoring also carries within its sweep under the appointment of task personnel known as inspectors.[159] The inspectors work under the administrative control of the Inspectorate of Factories. The inspectors appointed under various labour legislations are charged with the responsibility of making unscheduled visits to the factories and other establishments governed by the law for the purpose of satisfying themselves with the compliance by the employers with the provisions of the law and for that purpose they are vested with administrative and legal powers.[160] It is needless to emphasise the fact that the control over the activity of the employer is assumed for public good as it is not merely enough to have a legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid to such legislation. A similar sentiment was echoed by the Supreme Court in the *Asiad Labour Case*[161] while appointing its own officers obviously bringing out the nexus between the system of inspection and enforcement of laws. The Supreme Court held:

> "...in any event the provisions of these various laws enacted for the benefit of the workmen were strictly observed and implemented by the contractors, we by our order dated 11th May, 1982 appointed three Ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of ascertaining whether the provisions of these

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159. See Section 17 of the Child Labour (Prohibition And Regulation) Act, 1986; Section 8 of the Factories Act, 1948 etc.

160. This refers to the power of the Inspector of Factories to inspect the factories for ensuring compliance with the provisions of the law and to initiate legal action in the event of failure.

161. *People's Union for Democratic Rights and Others* Vs. *Union of India and Others.* AIR 1982 S.C.1473.

> labour laws were being carried out and the workers were receiving the benefits and amenities provided for them under these beneficent statutes or whether there were any violations of these provisions being committed by the contractors so that on the basis of the reports of the three Ombudsmen, this court could give further direction in the matter if found necessary".[162]

Sounding a word of caution, the apex court proceeded to observe:

> "We may add that whenever any construction work is being carried out either departmentally or through contractors, the government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed and they should not wait for any complaint to be received from the workmen in regard to non-observance of any such provisions before proceeding to take action against the erring officers or contractors but they should institute an effective system of periodic inspections coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and workmen are not denied the rights and benefits to which they are entitled under such provisions and if any such violations are found, immediate action should be taken against defaulting officers or contractors. That is the least which a government or a governmental authority or a public sector corporation is expected to do in a social welfare state".[163]

Unfortunately, inspections are few and far between. It may not be an exaggeration to say that inspections are undertaken as a token of service but not in consonance with the responsibility. An indication to that effect was made

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162. *Ibid.*, p.1491-92.

163. *Ibid.*

available to the Supreme Court in *Labourers Working on Salal Hydro-Electric Project* Vs. *State of Jammu and Kashmir.*[164] Reiterating a similar view, the court held:

> "These complaints have to be remedied by the Central Government by taking appropriate action and the only way in which this can be done is by carrying out periodically detailed inspections and insisting that every payment of wages must be made by the "piece-wagers" or sub-contractors in the presence of the authorised representative of the National Hydro-Electric Power Corporation or of the Central Government. The Central Government has averred in its affidavit in reply that its officers are regularly carrying out inspections and it has given various dates on which such inspections were carried out during the year 1982. The particulars of inspection given by the Central Government would show that during a period of 12 months, only four inspections were carried out in case of three contractors, two inspections in case of one contractor and one inspection each in case of three other contractors. We find it difficult to accept that these inspections carried out by the officers of the Central Government were adequate. It is necessary to carry out more frequent inspections and such inspections have to be detailed and thorough, for then only it will be possible to ensure scrupulous observance of the labour laws enacted for the benefit of workmen. We would therefore direct the Central Government to tighten up its enforcement machinery ar d to ensure that thorough and careful inspections are carried out by fairly senior officers at short intervals with a view to investigating whether the labour laws are being properly observed...".[165]

The poor show of the inspection system has rendered the control over the activity of the employer skeletal and ineffective and it goes without saying

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164. [1983] 2 SCC 181.

165. *Ibid.*, pp.193-94.

that it has been responsible for large scale violations of labour laws resulting in industrial accidents including the Bhopal catastrophe.[166] Hence, it is clamoured that it is this branch of law which is being visited with breaches more frequently on large scale than any other branch of law. The low key operation of the system by the Inspectorate of Factories may be either due to the fervent plea of impracticability of monitoring of all the industrial establishments in view of the resource constraint or to the perception of the authorities that inspection is only optional. It may be stated that the former is untenable and the latter is ridiculous.

Firstly,the plea of financial constraint or administrative inconvenience can only be specious if it is advanced to by pass the responsibility of implementing the provisions of the legislations involving the protection and promotion of human rights.[167] The second plea of optional inspection is only a pretence to avoid responsibility and this they do so by seeking shelter under the language of the statute.[168] The apparent excuse the authorities seek to advance is not well

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166. A US trade union in its 20-page report noted that the Bhopal gas disaster was not due to lax Indian industrial laws but due to inadequate enforcement of regulations by the American company. It also noted that the regulations in effect in Bhopal were no different from those in the US and that the same could have occurred in the United States as well. It also blamed the Indian authorities for their failure to enforce health and safety standards at the Bhopal plant adequately. *Indian Express*, August 1, 1995.

167. *Dr.B.L.Wadebra* Vs. *Union of India and Others*. [1996] 2 SCC 594.

168. For e.g., See Section 45(2) of the Employees' State Insurance Act, 1948 which reads: Any Inspector appointed by the Corporation under Sub-Section (1) [hereinafter referred to as Inspector] ...*may*, for the purpose of enquiring into the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with - (b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in-charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons....

founded as indicated below. In the first instance, it is appropriate to state that the construction of the language of the statute is always a matter for the consideration of the court and hence it is beyond their purview. Secondly, their perception of the contextual meaning of the expression 'may' is totally irreconcilable to the view subscribed by the Supreme Court. The court in a similar circumstance interpreted the expression 'may' as 'shall' implying that it shall be mandatory on the part of the authorities to act.[169] In the result, exercising the power of inspection only rarely in view of the misplaced construction of the language amounts to failure on the part of the Inspectorate of Factories to sub-serve the public interest. That is not the end of the matter. There is another part of the story which is more reprehensible if the mindset of the authorities empowered to inspect is any indication. It may not be out of context to say that the administrative power of inspection is prone to abuse. For the inspectors are not discreet in the execution of what they observe as optimal. Public power of inspection is at times abused for personal ends taking advantage of the inclination of the employers to avoid by hook or crook the obligations having financial impact. Employers who are impressed by the theory of discretionare tempted to shelve money to avoid inspections by the authorities. Besides, legal norms are used as levers to coerce employers into making payment to inspectors in return for ignoring violations. Payment for result sounds well as cost-effective for the employers motivated by the private law of profit. Public power thus serves as a potential source of making unaccountable

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169. *Keshav Chandra Joshi and Others* Vs. *Union of India and Others.* 1990 Lab.I.C.216 (S.C.). In this case, Justice K.Ramasamy speaking for the court said at p.226: "...The word 'may' consult the Commission, has been used in the context of discharge of statutory duty. The Governor is obligated to consult the Public Service Commission. Therefore, the word 'may' must be construed as to mean 'shall' and it is mandatory on the part of the Governor to consult the Public Service Commission...".

money. Such a conduct on the part of the officials is inimical to public interest, is the least that can be said.[170]

The system of inspection is deficient as a result of human failure. The officials have not been enforcing the provisions of the legislations and the rules framed thereunder effectively. They have either failed to be alert or have connived with the violators for obvious reasons. As the incidence of abuse of power is fairly wide, the attitude of this sort raises the larger issue of accountability of the officials. The report of the decisions of the Supreme Court in various cases is conclusive proof of rampant violations of labour legislations and that such violations were the result of inadequate inspection of factories.[171] As otherwise, such violations could not have gone unnoticed and also the evidence pointing to the rebuttal is conspicuous by its absence. As noted earlier, the U.S. trade union in its report made out the case of large scale violations of labour legislations as the reason for the gas leak tragedy in the plant of Union Carbide in Bhopal in 1984. It also held the Inspectorate of Factories of the State of Madhya Pradesh responsible for the lapse to monitor the plant very closely to ensure compliance.[172] We can also rest assured that adequate inspection of factories which have been thriving only on the bonded

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170. The phenomenal growth of corruption to public life and administration substantiates the above view. The *hawala* episode and the fodder scam in Bihar are instances of intervention by the court in public interest. Also, the Supreme Court directed the CBI to investigate serious allegations of payment of Rs.1.65 crores to highly placed persons in Karnataka for the purpose of influencing them in the granting of permission to start a dental college. *The Hindu*, October 29, 1995, p.6.

171. *Labourers Working on salal Hydro - Electric Project* Vs. *State of Jammu and Kashmir*. [1983] 2 Sec.181 at p.194.

172. Note 169, *supra*.

labour of the adults and children could have helped the release of the victims even much before the matter was taken to the courts of law. Also a report on the release of bonded child labour in the North-Arcot District of Tamil Nadu may be a clinching evidence on this point. The state administration was euphorious over the release of bonded children after vigorous inspection of the factories manufacturing matches.[173] It is noteworthy that the employers were charged under the provisions of the Bonded Labour [Abolition] Act, 1976 for the first time in the last seventeen years since it was brought on the statute book.[174] It will not be difficult to explain the gap. The reason is not that the bonded child labour were not existing earlier; nor were the authorities unaware of it. But it is only now the authorities of the area have decisively come out of slumber. Any challenge to the above view cannot be sustained as the state owes a lot of explanation in this context. Firstly, the Report of the Committee on Child Labour found the number of prosecutions on child labour violations very low even though it was convinced about the rampant abuses of child labour in different parts of the country.[175] The number of prosecutions was less because the violations were either suppressed or ignored. The inference that can be drawn adversely against the state is that when the Committee could have found evidence of employment of children after inspection of factories before reporting

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173. It was claimed that the action was initiated under the Chief Minister's 15 point programme and 17 children were rescued from bondage. *The Hindu*, September 10, 1995, p.3.

174. *Ibid.*

175. Though the Committee itself during spot inspections noticed children of very tender age working in certain factories in total disregard of the statutory provisions, there were practically no prosecutions in most parts of the country. It was also pointed in one of the states that the first prosecution ever launched by them was only in the International year of the Child. See *Report of the Committee on Child Labour*, *op.cit.*, p.39.

about its abuse, how the same could have eluded the Inspectorate of Factories had they been alert. Secondly, the withholding of the reports of the Haribhaskar Committee and the Harbans Singh Committee will be difficult to explain,especially when the security of nation is not involved. Such hiding is only pointing to the design of the state to shield the culpability of the officers assigned with the task of enforcing the labour legislations.

Indifference of the authorities or their connivance is visibly present with all its manifestations. It encourages violation of the laws. The state cannot dismiss those violations as of no significance as such violations are ultimately taking away the vitalities of the rights of the workmen. It is quite obvious that if the rights cannot prove their relevance to the needy as intended, then the law themselves manifesting such rights will cease to be worthy of retention. Hence, it shall be the responsibility of the sate to ensure the compliance of the provisions of the laws so long as they are retained on the statute book. At the same time, it cannot scrap the laws to have the escape route as India is pleading with the cause of human rights all the time everywhere. Inevitably, the statutes must be retained and the responsibility for their enforcement must be owned and discharged. Indisputably, the executive branch of the government upon whose shoulders the responsibility in this behalf rests, is only blessed with the Hobson's choice of implementing the provisions of the laws. Last it may have to bear the brunt as accountability is the consequential imperative of the Rule of Law.[176]

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176. See note 30, *supra*.

Rule of Law is a desideratum and in a bid to reactivitate the same, the Supreme Court liberalised the rule of *locus standi*. Increasing insensitivity of the authorities to the rights of the citizens, especially the meek and the weak, accompanied by the act or omission of the state or a public authority causing legal injury and the relative absence of the individual who has suffered the legal wrong to move the court by reason of poverty and other socially and economically disadvantaged position made, the apex court to adopt innovative strategies providing access to justice.[177] The court was also impelled by the fact that if breach of public duty were allowed to go unredressed, it would, besides promoting disrespect for Rule of Law, open the door for corruption and inefficiency as there would be no check on the exercise of public, except what is feebly provided by the political machinery.[178] It is also disgusting to note that the new social collective rights and interests created for the benefit of the deprived sections of the community would be made meaningless and ineffectual.[179] Besides casting aside the casualties for the purpose of throwing open the portals of justice, the court also wished to refine the measure of relief in the interest of justice as it felt bound to do so in view of its task of keeping every organ of the state within the limits of the law and thereby making the rule of law meaningful and effective.[180]

First of such an occasion arose when an application was filed under Article 32 of the Constitution seeking release of the petitioner and compensation

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177. *S.P.Gupta and Others* Vs. *Union of India and Others*. AIR 1982 S.C. 149 at p.189.

178. *Ibid.*, pp.191-92.

179. *Ibid.*

180. *Ibid.*, p.197.

on the ground of unlawful detention for over fourteen years.[181] No sooner than the application was filed, the petitioner was released and the respondent, the State of Bihar, pleaded with the court for dismissal of the application as it became infructous.[182] But the court chose to assail the claim of the respondent -state and proceeding further to consider the claim for compensation for illegal detention after acquittal made fourteen years back, it said:

> "... We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government.... The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree of damages would have to be passed in that suit.... In these circumstances, the refusal of this court to pass an order of compensation in favour of the petitioner will be doing more lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content, if the power of this court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the state as a shield ...it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the

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181. *Rudul Sah* Vs. *State of Bihar and Another.* AIR 1983 S.C. 1086.

182. *Ibid.*

> damage done by its officers to the petitioner's rights. It may have recourse against those officers".[183]

The court awarded a sum Rs. 30,000 holding that the petitioner would be entitled to bring a suit for recovery of appropriate damages from the state and its erring officials.[184]

In another instance, on a writ petition filed for production of two persons following their mysterious disappearance from the Twenty-first Sikh Regiment, the apex court directed the Union of India and the Secretary, Ministry of Home Affairs to pay as a measure of exemplary costs Rs.1 lakh to each of the two spouses in view of the torture, the agony and the mental oppression through which they had to pass.[185] The court deprecating the attempt to thwart responsibility in this regard directed the Superintendent of Police of the region to treat the writ of mandamus issued by it as information of a cognizable offence and tocommence investigation to track the culprits.[186] In *Bhim Singh Case*,[187] the Supreme Court coming down heavily on the high-handedness of the police officers of the State of Jammu and Kashmir in preventing the petitioner from attending the session of the Legislative Assembly said:

> "... We do not wish to use stronger words to condemn the authoritarian acts of the police. If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can wonder what may

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183. *Ibid.*, p.1089.

184. *Ibid.*

185. *Sebastian M.Hongray* Vs. *Union of India*. [1984] 3 SCC 81 at p.85.

186. *Ibid.*, pp.85-86.

187. *Bhim Singh, M.L.A.* Vs. *State of Jammu and Kashmir*. [1985] 4 SCC 677.

> happen to lesser mortals. Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct...".[188]

The court also chided the Executive Magistrate and the Sub-Judge for having aided the police officers in theirdesign either by colluding with them or by their casual attitude.[189] Holding that the mischief or malice and the invasion of the rights might not be washed away or wished away by his being set free, the court directed the State of Jammu and Kashmir to pay to the petitioner a sum of Rs. 50,000.[190] In another public interest litigation filed by the People's Union for Democratic Rights alleging killing by police of the State of Bihar of twenty-one persons including children by opening fire on the mob gathered for holding a meeting without any provocation, the Supreme Court directed the State Government to pay compensation of Rs.25,000 for every case of death and Rs. 5000 for every injured person without prejudice to their claim for adequate compensation before the appropriate forum.[191] In *M.C. Mehta and Another* Vs. *Union of India and Others*,[192] the Supreme Court by way of explanation reaffirming its earlier stand that its power under Article 32 is remedial in scope held:

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188. *Ibid.*, p.685.

189. *Ibid.*, p.684.

190. *Ibid.*, p.686. However, there was no reference to the recovery of the said amount from the guilt officers.

191. *People's Union for Democratic Rights* Vs. *State of Bihar and Others*. [1987] 1 SCC 265.

192. [1987] 1 SCC 395.

> "The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and *ex facie* [emphasis already provided glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged person to require the person or persons affected by such infringement to initiate and pursue action in the civil courts... If we make a fact analysis of the cases where compensation has been awarded by this court, we will find that in all cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation".[193]

Again the apex court was constrained to award compensation of Rs 50,000 to the family of the deceased Ram Swaroop who was beaten to death by the police. It was alleged in the petition field by the PUDR that the police took the deceased and nine others to the station for doing some work. They were all beaten up when they demanded wages for the work and the said Ram Swaroop succumbed to the injuries. Another was stripped of her clothes. While affirming that the payment of compensation in pursuance of its order was to be without prejudice to any lawful action for compensation, the court directed for recovery of the amount from the officers found guilty.[194] Again it was the tum of the

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193. *Ibid.*, pp. 408-09.

194. *People's Union for Democratic Rights* Vs. *Police Commissioner, Delhi Police Headquarters and Another.* [1989] 4 SCC 730 at pp. 730-31.

Delhi Administration to bear the brunt of paying compensation of Rs.75,000 for the act of its officers causing the death of a boy by beating.[195] In another matter, the apex court ordered for an inquiry into the conduct of an escort party for having humiliated the petitioners by handcuffing them of offending decency and in utter violation of the principle underlying Article 21 of the Constitution.[196] Similarly, the State of Maharashtra was directed to pay to the respondent compensation of Rs.10,000 for the act of its police officers in handcuffing the respondent and taking him through streets in a procession.[197]

Review of the decisions involving payment of compensation for the public wrong committed by the officers of the state was undertaken extensively by the supreme court in *NilaBati Behera Case*[198] so as to examine in depth the principle of accountability. Reiterating the principle that upholding a claim in public law for compensation for contravention of human rights and fundamental rights was a constitutional necessity and 'distinct from, and in addition to, the remedy in private law for damages for the tort', Justice Verma held:

> "The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the

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195. *Saheli, A Women's Resources Centre and Others* Vs. *Commissioner of Police, Delhi Police Headquarters and Others.* (1990) 1 SCC 422.

196. *Sunil Gupta and Others* Vs. *State of Madhya Pradesh and Others.* [1990] 3 SCC 119 at pp.129-30.

197. *State of Maharashtra and Others* Vs. *Ravikant S.Patil.* [1991] 2 SEC 373.

198. *Nilabati Behera alias Lalita Behera* Vs. *State of Orissa and Others.* (1993) 2 SCC 746.

> contravention made by the state or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Article 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Article 32 and 226 of the Constitution, for contravention of fundamental rights".[199]

In a separate but concurring judgment, Justice Dr.Anand holding that the duty of care on the part of the state was strict and it was responsible for the deprivation of life of a person in the police custody without the authority of law observed:

> "Therefore, when the court moulds the relief by granting "compensation" in proceedings..., it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the state which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in a broader sense of providing relief by an order making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law...".[200]

In conformity with such reasoning the court made an order of monetary amends as commending appropriate in favour of the petitioner for the custodial death of her son. Accordingly, the court directed the State Government of Orissa to pay a sum of Rs 1.50 lakhs to the petitioner and a sum of Rs. 10,000 by way of costs to the Supreme Court Legal Aid Committee.[201] The State of Kerala was

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199. *Ibid.*, pp.762-63.

200. *Ibid.*, pp.768-69.

201. *Ibid.*, p.770.

then pushed to the receiving end due to the high-handedness and arbitrary actions of the police officers of the state. Failure of the state machinery to accede to the request of the petitioner to get his grievance of destruction of his press by the Superintendent of Police properly investigated, made the apex court to intervene and pass orders to that effect. As the indifference of the officers of the state in executing the orders of the court was writ large, the visibly irritated bench of the court passed an order of recompense even at the stage of inquiry directing the state to pay by way of costs tentatively fixed at Rs.10,000.[202] A compensation of Rs.six lakhs was awarded to the wife of the deceased army officer who died in mysterious circumstances.[203] The court drawing anadverse inference from the facts and circumstances held that the death was *prima facie* traceable to the act of criminal omissions and Commissions on the part of the authorities of the military service.[204] Besides, it desired the matter to be investigated personally by the chief of the Army staff in an attempt to fix responsibility for the death.[205] The Supreme Court also intervened as of necessity on the basis of the report of the District Judge of Bareilly indicting the police in no uncertain terms for having detained a married woman on the pretext of her being a victim of abduction and rape.[206]

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202. *Maniyeri Madhavan* Vs. *Inspector of Police, Cannanore. 1993.* Supp.[2] SCC 501 at p.505.

203. *Charanjit Kaur* Vs. *Union of India and Others.* [1991] 2 SCC 1.

204. *Ibid.*, p.8.

205. *Ibid.*

206. *Arvind Singh Bagga* Vs. *State of Uttar Pradesh and Others.* [1994] 6 SCC 565. The Supreme Court earlier by its order directed for an enquiry by the District Judge.

Expressing strong displeasure and disapproval of the conduct of the police officers, the court directed the State of Uttar Pradesh to pay compensation to the persons who were illegally detainedbesides giving liberty to recover the amount of compensation from the police officers who were indicted. It further directed the state to initiate prosecution against those officers.[207] Police excesses again came to be re-enacted in the State of Madhya Pradesh and this time it was unleashed against the adivasis and the members of the petitioner organisation.[208] The shock and anguish expressed by the court over the incidence indicated how least the agencies of the state were sensitive to the growing concems of human values. Moving one step ahead the apex court persuaded itself to take on file the issue of contempt against the officers of the state for having acted in violation of the law declared by it. Besides, it directed the premier investigation agency to prosecute the officers responsible for such lapses in accordance with the provisions of law.[209] The principle of accountability received a shot in the arm with the unique reassertion by the Supreme Court of its earlier decisions involving the same in *N.Nagendra Rao and Co.* Vs. *State of A.P.*[210] Reaffirming the commitment of the state to Rule of Law, the apex court made a special reference to those seminal decisions in the context of the larger issue of suability of the state and its officers in damages for abuse of power. Emphasising the shift from state irresponsibility to state responsibility, the apex court firmly ruled that the accountability of the state

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207. *Ibid.*, p.568.

208. *Khedat Mazdoor Chetna Sangh* Vs. *State of Madhya Pradesh and Others.* [1994] 6 SCC 260.

209. *Ibid.*, p. 271.

210. [1994] 6 SCC 205.

for the violation of the constitutional rights constituted a class of its own admitting no exception whatsoever.[211] Affirming its earlier decision in *Nilabati Behera Case*,[212] the court specifically held sovereign immunity inadmissible as a defence. Failure of the authorities in their responsibility to ensure the life and safety of the prisoner in jail also resulted in payment of compensation in *Kewal Pati* Vs. *State of U.P. and Others*.[213] Again the violation of the law declared earlier by the Supreme Court became the subject matter of complaint in *Citizens For Democracy Case*.[214] Holding that the law declared by it in *Shukla Case*[215] and *Batra Case*[216] is a mandate under Articles 141 and 144 of the Constitution and that all concerned are bound to obey the same, the apex court administered stern warning against any complacency. It went on to say:

> "We are constrained to say that the guidelines laid down by this court and the directions issued repeatedly regarding handcuffing of under-trails and convicts are not being followed by the police, jail authorities and even by the subordinate judiciary. We make it clear that the law laid down by this court in the above said two judgments and the directions issued by us are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law".[217]

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211. *Ibid.*, p.226.

212. *Nilabati Behera* Vs. *State of Orissa and Others*. [1993] 2 SCC 746.

213. [1995] 3 SCC 600.

214. *Citizens For Democracy* Vs. *State of Assam*. [1995] 3 SCC 743.

215. *Premshankar Shukla* Vs. *Delhi Administration*. [1980] 3 SCC 526.

216. *Sunil Batra* Vs. *Delhi Administration*. [1978] 4 SCC 494.

217. *Citizens For Democracy* Vs. *State of Assam*. [1995] 3 SCC 743 at p.745.

Paradoxically, the coercive power of the court to punish for contempt had continued to have it sway sequentially without hindrance only highlighting the chronic default of the authorities one after another to uphold the rule of law. Administration of warning to one agency is not enough for persuading the other agencies to fall in line. Rather they prefer to be warned individually. It is alike convicts receiving punishments from the courts individually. Indulgence hitherto shown by the courts to the public authorities have bolstered them even to file before the apex court false statement in sworn affidavits suppressing material facts of illegal detention.[218] As the heavy price for such indulgence, the apex court had to inevitably sentence the respondent - police officers to imprisonment.[219] The wide criticism by the apex court frequently, of blatant abuse of human rights by the police officers of the state, let alone the sense of their commitment, did not make any dent in its endeavour of making Rule of Law a reality, and may not be a sterile observation if the way the authorities nurture their non-tolerance to such values, is any indication. The extravagant touch the dimension of such abuse has received is ample proof of such apprehension. The abuse has touched a new peak with the use of sovereign power for abduction and elimination of seven persons by the police party led by the Deputy Superintendent of Police of the State of Punjab to wreck private vengeance.[220] Moved by such a new but agonising experience the court directed the State of Punjab to pay to the legal representatives of each of the said seven persons the amount of Rs.1.50 lakhs.[221] It also directed the state

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218. *Dhananjay Sharma* Vs. *State of Haryana and Others*. [1995] 3 SCC 757.

219. *Ibid.*, p.778.

220. *Inder Singh* Vs. *State of Punjab*. [1995] 3 SCC 702.

221. *Ibid.*, p.706.

to fix responsibility on the officers concerned and recover the said amount which was taxpayers' money.[222] Similar instances are also found in the decisions of the Supreme Court in *Mrs.Sudha Rasheed and Others* Vs. *Union of India and Others*,[223] *Ajit Singh* Vs. *State of Delhi and Others*,[224] *Yogesh K.Bhatia* Vs. *State of Uttar Pradesh*,[225] *Jagir Singh and Others* Vs. *State of Uttar Pradesh and Another*,[226] *Durga Prasad Tomar* Vs. *State of Uttar Pradesh and Others*[227] and *Smt.Ranjeet Kaur* Vs. *State of Punjab and Others*[228] indicating and vindicating the thrust of accountability.

Seen above is a series of decisions broadly indicating a trend of police excesses resulting in violation of human rights and fundamental freedoms and the mindset of the judiciary directing payment of compensation and inquiry into the conduct of the officers involved for fixing responsibility. The decisions to follow are equally instructive as they tend to indicate the sweep of the principle of accountability embracing the other sphere of administration as well, thus leaving no one in doubt that the police officers are not chosen indiscriminately for that purpose. The decision in *State of Rajasthan and Another* Vs. *Jaimal*[229] is quite illustrative on this point. The apex court in this case

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222. *Ibid.*

223. 1995 [1] Scale 77.

224. 1995 [1] Scale 208.

225. 1995 [1] Scale 213.

226. 1995 [1] Scale 653.

227. 1995 [1] Scale 756.

228. 1995 [2] Scale 373.

229. 1991 Supp.[2] SCC 286.

dismissed the special leave petition filed by the state as barred by time holding the state blameworthy and responsible for the resultant pejorative effect on public interest.[230] The court under considerable pain observed that the least that was expected of the officers who were paid sumptuously out of public funds to act with utmost care, diligence and dispatch when they deal with matters involving substantial stakes for the government.[231] It went on to say that when appeal by the state were lost for default on account of inaction of the officers it was the public interest that suffered the most and owning of responsibility by the government without appropriate enquiry into the cause of the delay would render it responsible for the consequences. The court ultimately refused relief as the government failed to seek condonation on the ground of prejudice to the public interest likely to ensure from the acts and omissions of the officials after proving its bonafides through sustained action against the officials responsible for the episode.[232] In striking contrast, the enthusiasm evinced by the officers in protracting the litigation over a period of twenty years with an ultimate aim of denying to the poor litigant her legitimate claim of reinstatement with back wages invited the flak from the highest court.[233] The obstinacy which the authorities displayed in not only approaching the apex court after a long drawn battle but also placing the blame of inordinate delay on adjudicating process made no secret of the absence of qualms in the public authorities for wasting

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230. *Ibid.*, p.287.

231. *Ibid.*, pp.286-87.

232. *Ibid.*

233. *Central Co-operative Consumer's Store Ltd.* Vs. *Labour Court, Himachal Pradesh and Another.* [1993] 3 SCC 214.

the public fund in fruitless litigations.[234] The court which observed that such obstinacy was too familiar with the public authorities had only this to say:

> "Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before one or the other authority. ...Working life of opposite - party has been lost in this tortious and painful litigation of more than twenty years. That for such thoughtless acts of its officers the petitioner - society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite-party that amount cannot be a proper recompense. We, therefore, dismiss the petition... We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite-party from the personal salary of the officers of the society who have been responsible for the endless litigation including the officer who was responsible for terminating the services of the opposite-party".[235]

With similar emphasis on public accountability, the Supreme Court dismissed with an exemplary costs of Rs.5000 the special leave petition filed vexatiously and irresponsibly by the state against the order of the Administrative Tribunal setting aside the order of stopping of crossing the efficiency bar as arbitrary.[236] The court further directed the Chief Secretary of the Government of Maharashtra to recover the cost from the personal pay of the officer concerned and send it to the account of the Supreme Court Legal Aid Committee.[237] Casual interference with the exercise of freedom of thought and expression and freedom to carry on trade or business by making a cryptic order confiscating the

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234. *Ibid.*, p.215.

235. *Ibid.*, p.216.

236. *State of Maharashtra* Vs. *Uttam Rao Rayala Nikam.* [1994] 2 SCC 116.

237. *Ibid.*, p.117.

writings of Mao Zedong served as the basis of intervention by the court with a difference.[238] Invoking its famous decision in *Maneka Gandhi*,[239] the Supreme Court held the exercise of power as capricious and arbitrary and directed the respondent to pay to the petitioner the substantial costs of Rs. 10,000 besides restoring the seized books.[240] *Krishan Yadav Case*[241] is another instance unequivocally reinforcing the fabric of accountability. In this case, the apex court while quashing the selection of 96 Taxation Inspectors, ordered for prosecution of the respondents and for payment of cost of Rs.10,000 by each of the respondents as a measure of compensation to the appellants.[242]

The spirit of Rule of Law kindled and re-kindled in *Rudul Sah*[243] and in subsequent decisions has left behind finer traces of the principle of accountability. Having risen to the challenges of time, the principle has gained impetus. The activist judiciary has held this as the torch bearer of the constitutional government serving the interests of the citizens. For, at the heart of the sovereign democratic stays the responsible government. The state will have to be people oriented as otherwise to that extent it can be taken as proof that it is undemocratic. Even as irresponsibility of the state demands an

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238. *Gajanan Visheshwar Birjur* Vs. *Union of India and Another*. [1994] 5 SCC 550.

239. *Maneka Gandhi* Vs. *Union of India and Others*. AIR 1978 S.C. 547.

240. *Gajanan Visheshwar Birjur* Vs. *Union of India and Another*. [1994] 5 SCC 550 at pp.555-57.

241. *Krishan Yadav* Vs. *State of Haryana and Others*. [1994] 4 SCC 165.

242. *Ibid.*, pp.176-77.

243. AIR 1983 S.C. 1086.

emphatic look, the Rule of Law readily assuages. It is a mechanism of sort which equips the citizens to fight the mighty state. Operating as a balance wheel, it keeps a salutary check on the functioning of the government vindicating the law and replenishing it from strength to strength. Steering clearly the visage of Rule of Law, the Supreme Court with stirring conscience observed:

> "The administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted both by this court and English Courts that the state is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees".[244]

The courtfurther holding that public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour, proceeded to observe:

> "The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell and Co. Ltd.* Vs. *Broome* [(1972) A.C.102] on the principle that, 'an award of exemplary damages can serve a useful purpose in vindicating the strength of law."[245]

Gleaning over the profoundest impact the award of damages is bound to spell, the court said:

> "Wade in his book Administrative Law has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices

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244. *Lucknow Development Authority* Vs. *M.K.Gupta.* [1994] 1 SCC 243 at p.258.

245. *Ibid.*, p.262.

> which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which, apart, from other factors succeeded in keeping salutary check on the functioning in the government or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires actions resulting in injury or loss to a citizen by awarding damages against them".[246]

Holding aloftthe flag of accountability is a tribute to Rule of Law. Administrative trait of eluding responsibility is abominable. It is an antithesis to the Rule of Law. With the focus of the human being as the center of development and consequential change of socio-economic outlook, there is complete change in the character of power. With the new orientation, power needs to be responsive and must be destined to effectuate the expansive reach of human rights and fundamental freedoms. Such orientation will be more aggressive when the power is inclusive of affirmative actions intended to offset *defacto* inequality of the weak especially children in our case. Inspite of such visible and persuasive constitutional command, the authorities have been totally indifferent throughout, setting at naught the human rights and fundamental freedoms of millions of children. For such conduct, they are accountable as any other case and the same can and must be enforced as indicated in the cantena of decisions of the Supreme Court. Paradoxically, fortune has not descended on the poor millions. The voiceless have drawn flak from the Supreme Court which is indeed pathetic and strange. For in no case of labour violations adjudicated by the Supreme Court a similar treatment has been meted out to the officers at fault. Regrettably, even the issue of child labour has not been dealt

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246. *Ibid.*, pp.262-63.

with adequately facilitating the fixation of responsibility on the officers of the state.[247]

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247. Firstly, even though in *Asiad Case*, the employment of children below the age of 14 in construction industry was held to be hazardous, in *Salal Hydro-Electric Project Case I*, it came to be established that children were still engaged in such activity. The same was not only adverted to highlighting the violation of the order of the apex court involving contempt but was also rationalised on the ground of poverty. Fortunately, though there was reference to the need to provide education for all children but the same was not considered in the light of the true intent of the provisions envisaged in Articles 45 and 39(e) and (f) of the Constitution. With the result, the apex court fell into error in holding that prohibition of employment was confined only to factory, mine and hazardous occupations.

Secondly, though the Supreme Court was convinced in *M.C.Mehta Case* that the employment in match and fireworks industries was hazardous and further that education was essential for the building of the nation, it did not set its foot firmly. Rather it exhorted the State of Tamil Nadu to secure their employment in innocuous activities in the benign hope of feeding the children. Appropriate attention the court failed to bestow on the issue is more evident from the fact that its orders were flouted with impunity. The apex court did not leave indelible ink through its decision is indeed a sad spectacle. In consonance with the settled principle of law, the apex court should have exhaustively considered the relevant provisions and upon such construction, it should have rendered its verdict on the issue. Such exercise was evidently absent in all the situations referred elsewhere thus rendering its intervention devoid of any significance. The invincible challenge to the rights of children is also equally attributable to the missing zeal of the apex court in the application of the principle of accountability to the above cases despite the experience it gained in the light of its own decisions in *Asiad Labour Case*, *Salal Hydro-Electric Project Case*, *Haryana Bonded Labour Case*, *Neeraja Choudhary Case*, *Mukesh Advani Case*, *Sivasamy Case and Sanjit Roy Case*. For violations of the directions of the apex court in *Mehta Case*, see note 144, *supra*.

For details regarding the two public interest litigations on child labour filed by this researcher also, see *supra*, Chapter Six, note 132.

CHAPTER TEN

CONCLUSION AND SUGGESTIONS

Childhood is a time of discovery as the world and all it contains are new to children. It is a time of excitement and anticipation. It is a time of dreams and fantasies. And it is a time of receiving love and appreciation. Paradoxically, a picture of contrast is a common experience in India as a vast majority of children who are starved of basic needs of nutrition, health and education are made to work at an early age in exploitative conditions. The specter of child labour is a glaring anomaly in a country graciously adorning human rights. It has assumed scary visage as the employment of children in adverse scenario points to the blatant denial of joys of childhood. Its persistence is an affront to our conscience as the deprivation of childhood makes their right to be human blunt. It is a picture of contrast in the sense that it is the indication of the missing reconciliation between the shocking profile of the millions of children employed and the inspiring concern for human values. It is this contrast which has been assiduously highlighted in Chapter One to assert that child labour cannot be looked upon as a mere economic problem but must be treated as one involving the higher values of human rights of children.[1] And this changed outlook has been drafted into that chapter to underscore the accountability of the state for its failure to preserve the ethics of childhood.

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1. Chapter One, pp.12-32, *supra*.

In an exposition of the problem involving human rights abuse, Chapters from Two to Five of this study have shot into focus the human rights jurisprudence with special reference to the rights of children. Children have a particular identity as children and they also have a universal identity as human beings. It is in this context, Chapter Two in the first instance has dwelt at length on the human rights and fundamental freedoms of mankind with focus on the right to life.[2] It has emphasised the consensus reached over the well-being of men and women, more particularly the evolution of standards of human rights through Conventions, underscoring the intrinsic values of man and his inherent dignity. That chapter, also in consonance with broad agreement on public welfare underlying the fact that the man's worth is the state's worth, has traversed the path of accountability of the state in the context of massive poverty and disease.[3] Sequentially, that chapter has traced the wider obligation of the state under the instruments to ensure to all access to survival requirements ultimately emphasising survival with human dignity as an integral part of the right to life.[4]

The concern for mankind expressed unequivocally and transcending the globe will be real and moving and not mere rhetoric and ritual if and only when it begins with children, as, to quote the words of Nehru, the human being counts much more as a child than as a grown up. In this backdrop, Chapter Three has discussed the rights of children as enumerated in the international instruments.[5]

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2. Chapter Two, pp.52-70, *supra*.

3. Chapter Two, pp.70-76, *supra*.

4. Chapter Two, pp.76-81, *supra*.

5. Chapter Three, pp.91-106, *supra*.

It has drawn closer today's needs of children and tomorrow's potentials of mankind to emphasise the theme of "child first". In the process of enumeration, that chapter has emphasised the survival of children, in the foremost, and their growth and development, the next significant in the logical pursuit, as the stratagem for the emancipation of mankind. Obviously, the impulse is that the investment in the nascent generation is the investment for better. The obverse is not less obvious and predictably, it cannot be lost sight of. Eventually traced out are the twin obligations of the state of ensuring survival and development of children and of protecting them against economic exploitation. The rights correlative to such obligations are the right to health, right to nutritive food, right to education and the right against exploitation.

The first three of these rights namely right to health, right to nutritive food and right to education are dealt with in Chapter Four.[6] Explaining the scope and content in details, that chapter has brought out in the first instance the functional relationship between health and nutritive food with vehement touch on their mutual reinforcement. Further, it has taken through the consensus of the international community on the right to food and further on the obligation of the state to take steps oriented towards the realisation of the said right and to devote all available resources for the same.[7] Finally, the positive effects of education have been sketched in that chapter to impress upon its significance in the development of human capital.[8]

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6. Chapter Four, pp.109-61, *supra*.

7. Chapter Four, pp.128-45, *supra*.

8. Chapter Four, pp.146-61, *supra*.

Right against exploitation is dealt with in Chapter Five of this study.[9] This essentially relates to the realm of employment of children at an early age in adverse conditions. The underlying emphasis of that chapter has been on the continuance of the growth and development of children without postponement and deprivation until they become complete in all respects ensuring the wholesome personhood. That chapter, while urging that the employment of children at an early age be treated with contempt when the positive effects of work are missing, has emphasised that actions interdicting child labour becomes imperative. Reiterating the firmer commitment to promotion of the human rights of children, that chapter has further drafted into the study, the ILO's dual policy of progressive elimination of child labour and pursuit of transitive measures pending such elimination to ensure proper protection of children while at work. For the same, an extensive reference to the international labour standards laid down in the Conventions and Recommendations of the ILO has been made.[10]

Further, evaluation of the provisions of the Constitution and other statutes on the employment of children set against the international standards has also been undertaken in Chapter Six in a bid to reinforce the theme of protective childhood.[11] In the process of such evaluation, social justice through equality of opportunity under Article 14 and full evolution and expression of personality of human beings through Article 21 have been duly emphasised in the light of the decisions of the Supreme Court in *Mullain's Case*,[12] *Bandhua*

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9. Chapter Five, pp.162-201, *supra*.

10. Chapter Five, pp.179-201, *supra*.

11. Chapter Six, pp.202-55, *supra*.

12. AIR 1981 S.C.746.

Mukti Morcha Case,[13] *Olga Tellis Case*,[14] *Delhi Development Horticulture Employee's Union Case*,[15] *Mohini Jain Case*[16] and *Unnikrishnan Case*.[17] The mandatory resolution of Article 23 with the new impetus it has acquired through liberal construction of its language has also been referred to.[18] In the realm of childhood protection, the articulation in the Constitution of the harmonious blending of anti-child labour bias under Article 24 and wholesome development of children under Article 39(e) and (f) and Article 45 has also been emphasised.[19] With disappointment, it has also found missing the matching obeisance to such reverence as apparent from the total blunt of Dr.Ambedkar's vision of ensuring education for all children below the age of 14.[20]

Chapter Sevenof this study has diagonised the problem of child labour in India and presented its scale and severity. The problem has been discussed with all its ramifications in the particular context of various occupations, the children are forced to visit frequently.[21] That chapter, after taking through various studies made in this behalf, has affirmed the following:

(i) Children are held in bondage,

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13. AIR 1984 S.C.802.

14. AIR 1986 S.C.180.

15. [1992] 4 SCC 99.

16. [1992] 3 SCC 666.

17. AIR 1993 S.C.2178.

18. Chapter Six, pp.233-37, *supra*.

19. Chapter Six, pp.237-40, *supra*.

20. Chapter Six, pp.241-42, *supra*.

21. Chapter Seven, pp.256-87, *supra*.

(ii) Children below the age of 14 are employed in various occupations which are either hazardous or harmful to their physical, mental or moral development;

(iii)Children are made to work for long hours of work in deplorable conditions;

(iv) Working environment is poor by any standard or norm and is detrimental to the health of child workers;

(v) Apprenticeship or vocational training given to children in the occupations covered is exploitative ;

(vi) Children are paid lesser wages;

(vii)There is no semblance of social security schemes being applied to child workers.[22]

Closely on the heels of these startling revelations, Chapter Seven has further undertaken critical evaluation of Indian labour standards and their administration.[23] The set back the commitment received in India with the failure of ratification of the Conventions of the ILO has also drawn rapt attention in that chapter. It has been concluded that the trail of consequences of non-ratification are simple and of no significance and the misplaced hope of avoiding the obligations of the Conventions under the pretext of non-ratification could at best be ambitious as the Constitution as well is the fountain head of such obligations.[24] Even as the state owes an explanation for prescription of

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22. Chapter Seven, p.293, *supra*.

23. Chapter Seven, pp.294-319, *supra*.

24. Chapter Seven, pp.296-301, *supra*.

standards lower than the minimum prescribed at the international level, it is equally found that even such standards have not been strictly enforced. It is this laxity which is the accelerating force behind the perpetuation of child labour. As the reports spanning through the evil have indicated, the clandestine employment of children prevailed so long as the state was able to wrap the evil under the carpet and later, it gave a new twist with only a change of strategy.[25] The strategy was the shift from clandestine to legitimization. The theme of legitimacy was rationalised on the ground of poverty as a strategy for achieving eradication of child labour ultimately by enforcing minimum wages, shorter working hours, leave compensation, non-formal education etc., as the employer would soon discover that child labour is not cheap and would be obliged to substitute adult labour. However, humanising the work life is only a promise to the detriment of children as the Act of 1986 enacted as a part of the new strategy is nearingcompletion of a decade of existence but nowhere near the fulfilment of the mission.

Response of the state to the problem of child labour is evaluated in Chapter Eight. A closer scrutiny of circumstances in which the child-labour intensive centres thrive has indicated the tacit acquiescence by the state in the exploitation of children by the vested interests.[26] Poverty is only a pretext for exploitation and even if it be real in isolated instances, child labour can not be encouraged. Hence, the new twist is no better and it is only a retrogate step as the employers continue to gain and grab. While the employment of children is

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25. Chapter Seven, pp.310-19, *supra*.

26. Chapter Eight, pp.320-40, *supra*.

totally devoid of positive contents of helping children and their families to feed their stomachs full, hide their nakedness and fight their sickness, it swears to wipe out the essentials which are necessary to ensure 'childhood' in the early phase and 'full personhood' at the later stage in true compliance with the spirit of Constitution. The parameters of the law as traced in that chapter in the light of various decisions of the Supreme court are so well sketched that the facts on hand fit well into them establishing beyond doubt the violation of the constitutional rights of the children so employed as stated below.

Firstly, where children are held in bondage, Articles 21 and are violated;

Secondly, where the activity in which children employed is hazardous, Article 24 is violated;

Thirdly, where the employment is unsuitable to children both by virtue of age and physical incapacity and consequently harmful to their physical, mental and moral development, it is violative of Article 21;

Fourthly, where minimum wage fixed under the Minimum Wages Act, 1948 is not paid, it is violative of Articles 14 and 23;

Fifthly, where social security legislations are not enforced, Article 21 is violated;

Sixthly, where children by virtue of employment are denied their education and development, Articles 14 and 21 are violated and

Seventhly, where children are deprived of their health, Article 21 is violated.[27]

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27. Chapter Eight, pp.370-83, *supra*.

Driving home the point of inaction on the part of the state, that chapter has stressed that the best way to go about restoring human dignity in the life of millions of people, especially children, is to ensure effective enforcement of laws on the pain of making the state and its officers accountable. As the problem is one involving human rights of children, that chapter has also suggested provision of basic needs essential to preserve human dignity through an appropriate institution namely residential school.[28]

With the enquiry being set on the relevance of the Rule of Law in the context of human rights abuse, Chapter Ninehas turned to the sustenance of the principle of accountability. Referring to the views of the Supreme Court as expressed in *Asiad Labour Case*,[29] and *Haryana Bonded Labour Case*[30] that there is highest public interest in the observance of the constitutional guarantees, that chapter has asserted the answerability of the state for its acts of commission and omission.[31] Firstly, through a complete reading of Articles256, 365 and 356 of the Constitution in the light of the considered view, that chapter has borne out that due observance of laws is a constitutional necessity. Though the failure of this constitutional responsibility is beyond dispute in many cases including child labour, the corrective power intended to be used by the Central Government under Article 365 read with Article 356 has not been invoked even once though it has been invoked frequently for other reasons. An apt use of this power in appropriate cases is quite essential to

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28. Chapter Eight, pp.384-86, *supra*.

29. AIR 1982 S.C.1473.

30. AIR 1984 S.C.804.

31. Chapter Nine, pp.396-99, *supra*.

put the Rule of Law back on the wheels with all its pervasiveness. However, heeding to the advice for exercise of power as a measure of last resort, administration of warning to the erring State Government has to be resorted to. For ensuring greater authority for such warning, it has been suggested in that chapter that directives issued under Article 256 may, on their non-compliance, be followed by cuts in the grants to the State Government concerned before the exercise of power under Article 356.[32] Secondly, accountability of the Council of Ministers has also been discussed in detail with available indication of its acceptance in principle but without application in reality.[33] In the last leg of that chapter, the accountability of the civil servants has been examined in the context of their failure to energise the wheels of administration in the best interests of the children. The path-breaking judgments of the Supreme Court in the last ten years are more revealing of its urge for the sustenance of the Rule of Law. The decisions of the apex court in *Rudul Sah*,[34] *Sebastian M. Hongray*,[35] *Bhim Singh*,[36] *People's Union for Democratic Rights*,[37] *Delhi Police Commissioner's Case*,[38] *Saheli*,[39] *Sunil Gupta*,[40] *Ravikant S.Patil*,[41]

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32. Chapter Nine, pp.400-15, *supra*.

33. Chapter Nine, pp.415-39, *supra*.

34. AIR 1983 S.C.1086.

35. [1984] 3 SCC 81.

36. [1985] 4 SCC 677.

37. [1987] 1 SCC 265.

38. [1989] 4 SCC 730.

39. [1990] 1 SCC 422.

40. [1990] 3 SCC 119.

41. [1992] 2 SCC 373.

Nilabati Behra,[42] *Maniyeri Madhavan*,[43] *Charanjit Kaur*,[44] *Arvind Singh Bagga*,[45] *Khedat Mazdoor Chetna Sangh*,[46] *Kewal Pati*,[47] *Citizens For Democracy*,[48] *Dhananjay Sharma*[49] and *Inder Singh*[50] are broadly indicative of a trend of police excesses resulting in the violation of human rights and fundamental freedoms and the mindset of the judiciary directing payment of compensation and inquiry into the conduct of the officers involved for fixing responsibility.[51] The decisions of the Supreme Court in *Jaimal*,[52] *Central Co-operative Consumers' Stores Ltd.*,[53] *Uttam Rao Rayala Nikam*,[54] *Visheshwar Birjur*[55] and *Lucknow Development Authority*[56] are equally instructive as they tend to indicate the sweep of the principle of accountability embracing the other

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42. [1993] 2 SCC 746.

43. 1993 Supp.[2] SCC 501.

44. [1991] 2 SCC 1.

45. [1994] 6 SCC 565.

46. [1994] 6 SCC 260.

47. [1995] 3 SCC 600.

48. [1995] 3 SCC 743.

49. [1995] 3 SCC 757.

50. [1995] 3 SCC 702.

51. Chapter Nine, pp.464-75, *supra.*

52. 1991 Supp.[2] SCC.286.

53. [1993] 3 SCC 214.

54. [1994] 2 SCC.116.

55. [1994] 5 SCC.550.

56. [1994] 1 SCC.243.

spheres of administration as well.[57] As similar urge is more necessary and overdue, it has been suggested that a special body be established with all powers for cognisance of human rights abuse of children.

It is proposed to conclude this study with a brief summary of the inferences drawn from the foregoing chapters along with a few suggestions emerging out of those inferences.

10.1 FROM THE BRINK OF EXTINCTION TO LIFE

The human development profile in India is stagnating with the massive employment of children in deplorable conditions. The daunting task of survival stares at the faces of the millions of children. They are alien to the spirit of manhood as the human rights and fundamental freedoms have turned hostile. The state cannot look upon the spectacle silently as children constitute the foundation of the nation. Holistic rearing of children is inextricably linked to the destiny of the nation as that alone can turn children into its real assets. Otherwise liability will only be thriving as the deprived and disabled cannot be counted as citizens but only as subjects. If the numbers of the disabled soar, the state is not worth the name. For one of the basic duties of the king, as incorporated in Rajadharma of ancient India, was to protect every individual in every respect and ensure his happiness. Kautilya in the Arthashastra laid down thus:

> "In the happiness of his subjects, lies the happiness of the Ruler; in their welfare, his welfare; whatever

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57. Chapter Nine, pp.475-81, *supra.*

> pleases him the ruler shall not consider as good but whatever pleases his subjects, the Ruler shall consider as good"[58]

In a fitting tribute to the revered childhood of the voiceless, Dr.Shankar Dayal Sharma, the President of India, exhorted saying that "neither tradition nor economic necessity can justify child labour".[59]

10.1.1 Plea of Poverty: A Strategy of Contradiction

Painfully, it is sacrilegious that the state strikes a disconcordant note whispering that child employment ensures survival. There is no gainsaying that survival is ensured as there will be failure of emancipation in the logical pursuit. Survival through employment only routs childhood and makes the extinction from dignified existence complete with all perfections. In defence, the state rationalises the theme of employment of children through poverty. Hence, there is the policy of permissive employment of children regardless of the age. Even though poverty is the cause of child labour, any allowance of the same as the complete answer to the problem must be guarded against. For, it is also the consequence of child labour. Such mutual reinforcement between poverty and child labour puts the defence of the state in great straits. The sceptism lies in the fact that the faint plea of poverty is not the outcome drawn from the comparison of the two from the impact perspective. What is essential is the assessment of the impact of poverty on child labour and vice versa and their evaluation in the broader perspective of social development.

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58. Badrinath, Chaturvedi, The Dharmic Law: Institutional Protection of Rights. *The Times of India*, May 6, 1995, p.12.

59. *Indian Express*, September 6, 1994, p.11.

As the premier thrust of social development aims at eradication of poverty, efforts shall be made discreetly through policies and programmes of action to keep at bay the factors working unison in the perpetuation of the evil. This is the reiterated view of sealing off all the points which are conducive for the proliferation of poverty. The underlying vehemence is on the uprooting of the evil from its rock-bottom. Ofcourse, India's commitment to the poor is clear and loud as emerging from the strong sentiments expressed to assist people living in poverty especially in the World Summit on Social Development and eighth SAARC Summit, both held during 1995. The anti-poverty schemes like Jawahar Rozgar Yojana, Integrated Rural Development Programme and National Social Assistance Scheme are significant point to this direction. However, they can only be rhetoric as they lack conviction. Lack of cohesion among the schemes, overwhelming political compulsions behind, and the absence of statutory support, to such schemes are broadly suggestive of such apprehension. Incredibly enough, the problem of poverty is not addressed from all vulnerable quarters as it ought to be. Poverty prone child labour syndrome is one such quarter which has been receiving a raw deal both politically and legally. The cumulative effect of the adult idlers, the depressed general wage level and the swelling labour force predominantly with unskilled workers will have strident impact on the development of the economy. This will only strengthen the ramparts of poverty rather than causing erosion. Likewise, child labour intensity sounds strange as the same is opposed to the familiar means of production like adult labour or capital. As the strange means of production is a vice dictated by the vested interests, it is not likely that such interests will hasten the technological development to augment the production. Thus, the availability of abundant cheap labour is a major irritant in the threshold of economic development. In this backdrop, child labour can not be encouraged as there will

not be real social and economic progress so long as the evil persists. If the permissive policy of employment is tolerated on the pretext of poverty, it can only be a design to ensure thriving of child labour as eradication of poverty can never be realised.

10.1.2 Comprehensive Ban on Child Labour

The policy of prohibition of employment of children below the age of 14 is imperative by all means as an ally to wholesome personhood and a basic postulate of human resources development. In consonance with such policy, there is need for a comprehensive ban, through a statute of the Parliament, of employment of children below the age of 14 in all activities including family undertakings.[60] Any objection to such law on the ground of administrative difficulties in its enforcement in non-industrial employments like agriculture, domesticservice etc. is beyond cognisance by reason of the grace of human rights. Such plea can as well be a misplaced apprehension in as much as such a law is to be in the stead of the compulsory education law to carry through the prospects of children.

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60. The law should also provide for revocation of the licence of any industry employing children below the age of 14 applying the principle that if any such industry cannot survive without child labour, it has no right to exist. For an analogous view, see *M.C.Mehta* Vs. *Union of India* [1987] 4 SCC 463. The apex court in this case held at p.478: "Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure".

10.1.3 Free and Compulsory Education

Education is a social right which is visualised as the underlying spirit of the all round development of children. Free and compulsory education for all children upto the age of 14 is also a fundamental right under Article 21. Invocation of Article 21 as the reservoir of such a right is quite reflective of the intent of the framers of the Constitution which has failed hitherto to inspire the wisdom of the state to make Article 45 relevant in the lives of millions of children. Obviously, the dichotomy between Part III and Part IV of the Constitution cannot be a plaything anymore. Also, the claim of non-formal education by the state as permissive can only be specious as the same is totally incompatible to the spirit of human dignity. Besides, such stance also amounts to endorsement of child labour. As the matter stands, provision of education for all children below the age of 14 is a constitutional necessity involving responsibility of the state. The latter corresponds to the obligation, in the first instance, of enacting a compulsory education law accompanied by ban on employment of children below the age of 14. The existence and enforcement of such a law with accelerating force on the principle of accountability is a prudent step in the enforcement of child labour laws. Enforcement of compulsory education law, though by no means simple, is relatively easier than the enforcement of child labour laws and factory laws.[61] Also, the vice of corruption will not be at the arm's length as the parents will either be less willing or able to bribe the officials charged with the responsibility of enforcing compulsory education law than employers surge to bribe the factory inspectors.[62] Secondly, the state is under the obligation of providing and

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61. Weiner, Myron, *The Child and The State in India*, *op.cit.*, p.121.

62. *Ibid.*

maintaining necessary infrastructure for the enjoyment of the right. While the right cannot be washed away by the resource constraint and administrative inconvenience, resources, however, emerge as vital as the soul for the body. In the wake of the positive contents of the obligation emnating from Article 21, higher outlay is not only necessary and important but also to be secured. The state cannot hold the purse strings in the pretext of appropriation to the detriment as such outlay is as good as a charge on the consolidated fund. Hence, the promise of outlay of 6% Gross Domestic Product in the budget from the next Five Year Plan is not a charity. Also, the Central Government cannot go back on the promised allocation of 6% Gross Domestic Product as it has been pushing through the reforms urging that its withdrawal from its direct involvement in areas like trade, industry and finance following the entry of private sector, would enable it to ensure its increased presence in the social sector.[63] It is also noteworthy that the apportionment of the outlay must be rationalised tilting the scale in favour of education for children upto the age of 14. Resource mobilisation may also be stepped up through a Fund,

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63. The then Prime Minister of India, Mr.P.V.Narasimha Rao, in his meeting with the senior executives of U.S. companies during his visit to U.S. in 1994, was categorical in his observation that if more funds were coming for infrastructure development from the private sector, additional funds could be made available for education. Explaining its rationale, he observed that the economic liberalisation programme had a "human face" and it was people who was mattered. See *The Hindu*, May 20, 1994; Also, the then Union Finance Minister of India, Dr.Manmohan Singh, participating in a Seminar on "Privatisation in Practice" asserted that the role of the government had been "redefined" rather than "reduced" in the process of economic reforms which were under way in the country. The government, he said, could not abdicate its responsibility to play an active role in economic and social development and was increasing its programmes to provide health care and education for the poor. He further said that as the govemment was withdrawing from its direct involvement in areas such as trade, industry and finance, it was increasing its presence in areas like rural development, provision of economic and social infrastructure in rural areas, environmental protection and development of backward regions. See *The Hindu*, May 31, 1995, p.1.

contributions to which can be secured by providing appropriate relief to the corporate sector under the tax laws and through encouragement of patron scheme prevalent in the State of Tamil Nadu.[64]

10.1.4 Residential School

As said earlier, child labour is the problem of human rights involving the most vulnerables. The answer to the problem lies in simply ensuring human dignity to children which can be assured if they are provided with basic necessaries of life - health, education and food - and exploitation - free life. The same is comparable favourably with the unanimous and unequivocalstress on the basic minimum services like health, education, etc. to the poor and sizable investment in the social sector. In all fairness to children and in the interest of the well-being of the society and in compliance with the true spirit of humanism, the basic needs of the children must be met by the state and they must be protected against economic exploitation. The appropriate institution for the purpose is the residential school where children below the age of 14 who are otherwise destitutes would be provided with the comfort of being children enjoying their 'childhood' in reality. Children in the residential school would be provided with nutritive food enough to ensure good health. Provision of health care would also be on the top of agenda and the education would be at their door step. Above all, farewell to employment would be a new path they could

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64. The State Government of Tamil Nadu introduced this scheme in June 1993 offering to recognise socially conscious citizens who help schools financially. This plan complements the "School Improvement Conferences" which encourage the community to donate in kind. Several infrastructural requirements are met this way. See *The Hindu*, August 5, 1994, p.5.

tread upon cheerfully. This is in consonance with the strategy of ILO suggesting a broader approach through suitable alternatives.[65] Such schools may be established and maintained at least in child-labour intensive areas.

The theme of residential school is not new to the state as it appears from its exercise of running special schools.[66] These special schools are part of the ongoing National Child Labour Programme assisted by the ILO. The programme introduced in Sivakasi in April 1986 initially provided for the establishment of non-formal education centres. Later, the same was modified in tune with the Child Labour (Prohibition And Regulation) Act of 1986 and the National Policy on Child Labour evolved in 1987. The modified scheme also provided for the establishment of special schools in child labour- intense centres to accommodate children removed from employment, with facilities like vocational training, stipend, free clothes and nutritious meals. The components of special school with emphasis on rehabilitation are in no way different from the components of basic needs underlying the theme of development with quality and equality. It is submitted that this researcher suggested in his written submissions made to the Haribhaskar Committee for the establishment of such

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65. ILO is suggesting of a broader approach envisaging national plans of action with suitable alternatives like schools and vocational training facilities. See Break cycle which obliges kids to work: ILO, *Indian Express*, June 26, 1996, p.10.

66. Such schools are being established under an ambitious Rs.850 crore programme to rehabilitate children removed from hazardous employments. A total of 132 districts have been identified in 13 states with very high incidence of child labour engaged in hazardous occupation. These schools are intended to provide vocational training. Recently, the *Rajya Sabha* was informed that as many as 75,000 children engaged in hazardous industries have been rehabilitated by putting them in special schools. See *The Hindu*, September 3, 1996, p.15; See also, Chapter Eight, p.386, *supra*.

schools with the designation of residential schools.[67] Compatibility of the theme of providing basic needs to children is all the more convincing from the sequence of events and obvious induction of the theme only with a difference in the name. The introduction of mid-day meal scheme for school going children also adds strength to the theme of basic needs underlying the residential school. Deflection of enrollment and retention is sought to be neutralised through provision of nutritive meals with the budgetary support.[68]

10.1.5 Public Accountability

Accountability of the state as an employer and as a sovereign is hardly in dispute. Equally, failure to honour such principle in letter and spirit is beyond doubt. Fortunately, the Supreme Court, for its part, has made great strides resurrecting the principle. The *Kalyan Singh Case*[69] and the *Vasudevan Case*[70] are the surrogates of the Rule of Law. The message of public

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67. The submissions were made in the meeting of the Committee held on November 9, 1984 pursuant to the direction of the Supreme Court in the writ petition of this researcher.

68. The battle against illiteracy received a shot in the arm with the launching on August 15, 1995, of the first centrally - sponsored mid-day meal scheme for children of primary schools. The scheme which was launched with budgetary support under the National Programme of Nutritional Support to Primary Education was aimed at popularising the primary education programme and check the drop-out rate. The then Prime Minister, Mr.P.V.Narasimha Rao, while launching this scheme made out a strong case for literacy and appealed for support in preventing the country from achieving the dubious distinction of being a nation with the largest number of illiterates in the world. It is noteworthy that the scheme has already been in vogue in Gujarat, Tamil Nadu, Kerala, Haryana, Orissa, Jammu and Kashmir, Madhya Pradesh and Pondicherry. The centrally sponsored scheme is intended to cover all the six lakh primary schools within three years of launching. See *The Hindu*, August 16, 1995, p.14.

69. [1994] 6 SCC 442.

70. [1995] 5 Scale 245.

accountability is a siege laid to the soft state. The same with little more precision can be employed as a lever to tame the state in the employment front. In a bid avoiding re-enactment of *Asiad*,[71] *Bandhua Mukti Morcha*,[72] *Mukesh Advani*,[73] *Salal Project*[74] and the like, the rule of presumptive legality of the state action may be disregarded to shift the burden of proving that the authorities have discharged their constitutional and statutory obligations adequately.[75] Also to vindicate the public good and to provide sustenance to the Rule of Law, the employer-state may be ordered to pay compensation[76] to the aggrieved with a further direction to recover the same from the officers

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71. AIR 1982 S.C. 1473.

72. AIR 1982 S.C.802.

73. AIR 1985 S.C.1363.

74. [1983] 2 SCC 181.

75. The efficacy of constitutional directives does not lie in grandiloquent enactments, but in their effective enforcement. Lethargy and supine indifference on the part of the civil executive is writ large as evident from *Asiad*, *Mukesh Advani*, *Bandhua Mukti Morcha*, *Salal Project* thus exposing the authority of the Constitutional courts to ridicule. This calls for stricter enforcement of accountability. For this purpose, when *prima facie* violation of any well established principle involving, for example, equal pay for equal work, employment of children in prohibited activities, releasing and rehabilitation of the bonded labourers, failure of minimum wage law either due to non-fixation and non-revision of the minimum wage or non-payment of the same etc., is shown to exist, the aggrieved person may be allowed by the courts to present a contempt application along with the original application facilitating shifting of burden to the appropriate authorities to prove that they have discharged their obligations under the law concerned both in letter and spirit. Such a shift will also ensure speedy disposal of cases as well, as the authorities will not be tempted to raise any frivolous or vexatious objections to the maintainability of the original application.

76. In an apparent drive against illegal employment of children, the Supreme Court in a public interest litigation filed by Mr.M.C.Mehta, directed the Labour Commissioner of Delhi to issue notice to all industries found employing child labour to show cause against payment of compensation to the aggrieved children. Earlier, the court was taken through a report filed by the Labour Commissioner revealing that as many as 1302 children were found employed illegally during the course of an extensive survey. See *Indian Express*, July 26, 1996, p.6.

responsible for omission or commission. The same thrust may also be invoked against the state in the capacity of sovereign as well for dereliction of duty. It may be stated incidentally that this researcher raised successively the plea of accountability of the state in his two public interest litigations, but, unfortunately, the same had failed to receive adequate consideration by the apex court. Nearly a decade later, the said plea gained the force of law with vengeance in the grip of reality that 'the higher authority' theory might not always bring cheer. Reiterating the said principle, violation of law arising out of dereliction of duty may also be offset through award of appropriate compensation. For the satisfactory discharge of such directions without much strain on the public exchequer, the state may insure its liability. Rule of recovery of the compensation from the guilty officers must necessarily follow on the lines indicated by the Supreme Court in the *Lucknow Development Authority Case*.[77]

A recent judgment of the High Court of Allahabad is also worthy of reference in this context. Strongly condemning the unusual belligerence of the state shown towards the demands of the people of Uttarakhand, the Court ordered payment of damages as reparation to be made by the Central and the State Governments for constitutional wrongs.[78] Sivakasi and other child labour - intense centres present an invincible similarity to the Uttarakhand episode demanding reparation on the same lines. State compensation equivalent to the strength of children employed is not only legitimate but also necessary to make things better for them.

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77. [1994] 1 SCC 243.

78. *The Hindu*, February 10, 1996, p.13.

10.1.6 Child Labour Ombudsman

The National Human Rights Commission, (Commission established under the Protection of Human Rights Act of 1993) though presently investigates child rights abuse,[79] the response it provides is scanty and not directly proportional to the scale and severity of the problem, as it is predominantly concerned about human rights abuse by police and armed forces. Hence, a forum with same stature may be a catalyst for exclusive dispensation of justice as the rampant child rights abuse demands intervention with all pervasiveness. The same shall be established under the Act of the Parliament suggested earlier (Law imposing a comprehensive ban on child labour) at the national level and shall be charged with the responsibility of promoting the welfare of children and towards this end, it shall ensure the policy of ban on employment of children below the age of 14. It shall act as the designated authority under the Act which shall comprise the Executive and the Judicial Committee. The Executive of the designated authority shall be made responsible through a specific provision for the implementation of the provisions of the Act. It shall have powers necessary for the purpose of investigating and reporting on the employment of children in contravention of the provisions of the Act. It shall also have powers to constitute an Executive in all or any of the

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79. For e.g., the National Human rights Commission, following an investigation, struck a serious note of the high incidence of tuberculosis among the children working in the glass industry of Firozabad district in Uttar Pradesh and suggested a detailed survey be taken. The concern of the Commission expressed in its observation pointing to the absence of will in curbing the practice is noteworthy. See *The Hindu*, June 4, 1996, p.16; Also, following the intervention of the Commission, seven children from Orissa, who were allegedly working as bonded labourers in the National Capital, were released. See *The Times of India*, May 1, 1995, p.1; The Commission in its full meeting held recently expressed concern over the growing menace of child prostitution and child labour in the country and resolved to work with the co-operation of all concerned agencies for cutting off the supply of children into these areas. See *The Hindu*, July 27, 1996, p.17.

States with the officers drawn from the respective states. The officers of the Executive of the State shall function under the superintendence and control of the National Executive. A child labour inspectorate shall function as the task force under the Act. It shall be under the control of the Executive. The Judicial Committee of the designated authority shall have powers to receive complaints against the violation of the provisions of the Act and adjudicate upon them. For that purpose, it shall be vested with all the powers exercisable by the Supreme Court under the Constitution including the power under Article 32. It shall also be vested with the power to award compensation and to punish for contempt. A complaint in respect of violation of any of the provisions of the Act may be filed by the Executive of the designated authority or by the aggrieved or by any person. The Executive of the designated authority shall submit annually a report on the working of the law to the President who shall cause it to be laid on the tables of the Parliament.

Mr.F.S.Nariman, the Chairman of the Committee constituted by the Central Government for the purpose of suggesting measures for amelioration of the conditions of employed children recommended, *inter alia*, the constitution of a National Ombudsman for Children or Watchdog Committee to oversee the implementation of the provisions of the child labour law.[80] Also, the Central

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80. An eleven point action plan, suggesting among other things creation of a Child Labour Ombudsman or a Child Labour Commission, was recommended by the Task Force appointed under the Chairmanship of the Jurist, Dr.L.M.Singhvi. The Task Force desired that the proposed Commission should be entrusted with the powers of *suo motu* investigation, resolution of grievances and disputes and giving authoritative direction to the employers and others. It also suggested that the Commission be asked to submit an annual report to Parliament and State Legislatures. It further recommended the setting up of a Standing Committee of Parliament on Child Labour and a similar panel in State Legislatures as "a monitoring mechanism and an institutional catalyst". See *The Hindu*, February 6, 1990; see also Nair, Ravindran, G., Need for a Child Labour Commission, *Indian Express*, April 24, 1994, p.8.

Government has recently constituted a National Authority for Elimination of Child Labour with the Minister in charge of the Labour Ministry as its Chairperson.[81] The latter might be the outcome of the recommendation made by Mr.F.S.Nariman. As stated earlier, any authority of such nature without statutory teeth can not make much impact. Also, the emphasis on the body of such special stature is more persuasive than of constitutional necessity. Though no rationale distinction could be made between human rights violations arising from custodial death and bonded labour, yet the apex court while setting free the bonded labourers, declined to award compensation for the violation of their rights advising them to seek the same from the appropriate forum namely the civil court.[82] It might have declined the relief as the same would have involved evaluation of evidence which the writ court would not ordinarily undertake. It is from the impact perspective of human rights and fundamental freedoms that the vesting in the said body of powers exercisable by the Supreme Court looks sound. More essentially, the compensation - making directive is desired to be the magnificent drive against the gross abuse of human rights of children.

10.1.7 Role of the Trade Unions and Voluntary Organisations

Awareness building exercise is also essential to make the drive against child labour successful. Involving the society especially, the parents in the evolution of consensus through such awareness is an offshoot of the societal

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81. Chapter Nine, p.389, *supra*.

82. *The Times of India*, May 30, 1995, p.4.

responsibility, to ensure the well being of children. Vindication of such responsibility through appropriate initiative rests with the state. For the same, the state must set the tone firmly as the real concern of the state expressed both in words and actions without any variance is the sheet anchor of such consensus. It is needless to emphasise that campaign with conviction alone can sustain the message to accelerate the venture against the evil. On the contrary, the acquiescence turned casual attitude of the state has been so far the major irritant in the threshold of familiarising the anti-child labour bias among the public. Hence, the wobbly tongue of the state needs mending a lot. The will which must be set in motion, must be reflected in the enforcement of poverty alleviation and social security schemes with more transparency and accountability, and in the pursuit of prudent employment policy with thrust on adult idlers. A similar show on the front of the implementation of the child labour law, compulsory education law and other cognate statutes like the Minimum Wages, Act 1948, the Bonded Labour (Abolition) Act 1976, the Contract Labour (Regulation and Abolition) Act 1970, must also be demonstrated without exception. With such gesture from the state, the initiative is sure to take off with the association of society through trade unions and voluntary organisations.

The association of the trade union as the front organisation of the working class is both necessary and important and for its part, it cannot have any reservation in this respect. Though the organisational responsibility of the trade union movement towards child labour is beyond retraction, it is unfortunate that they have not gone far enough in this regard. They have not adequately or effectively conscientised to be able to exert any recognisable influence over the government in moving decisively towards the abolition of child labour within an agreed time-frame. The reason that children are alien to the movement is

beyond comprehension as their employment constitutes unfair labour practice both in ethics and law. Besides, in the interests of the working class itself, it is to be condemned for its undesirable impact. However, two major trade unions, Centre of Indian Trade Unions (CITU) and Indian National Trade Union Congress (INTUC), breaking with the past, have reconciled themselves to the cause of the elimination of child labour through motivation of their members to oppose employment of children in factories and participate in the education and rehabilitation programme of the liberated child workers. If the realignment and change in strategy is for the better, working children may hope to get back their childhood.[83]

In the realm of social and legal protection, the voluntary organisation have got an important role to play through their advocacy for the prevention of child labour and exposure of child abuses. Emerging as pressure groups, the organisations can influence the policy formulation and secure improvement in laws and their implementation. Absorption of the organisational support into the woven fabric of the legal axis of protection of childhood is sure to hasten the drive against child labour.

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83. See *The Hindu*, July 6, 1995, p.5; *The Hindu*, January 9, 1995, p.5.

ANNEXURE I

EXCERPTS FROM THE UNITED NATIONS CHARTER

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

(a) higher standards of living, full employment, and conditions of economic and social progress and development;

(b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

ANNEXURE II

EXCERPTS FROM THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all forms.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

ANNEXURE III

EXCERPTS FROM THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, 1966

Article 6

1. The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions to work, which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no consideration other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 11

1. The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve method of production, conservation and distribution of food by making full use of technical and scientific knowledge, by dis-seminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure a equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

ANNEXURE IV

EXCERPTS FROM THE DECLARATION OF THE RIGHTS OF CHILD, 1959

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organisations, local authorities and national governments to recognise these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles :

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion. political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health, to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal can. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security: a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance, that responsibility lies in the first place with his parents.

The child shall have full opportunity fir play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or

employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

ANNEXURE V

EXCERPTS FROM THE CONVENTION ON THE RIGHTS OF THE CHILD, 1989

THE STATES PARTIES TO THE PRESENT CONVENTION

Preamble

Considering that, in accordance with principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the people of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognising that the United Nations has, in the Universal Declaration of Human rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 6

1. States Parties recognise that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. The best interest of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children or working parents have the right to benefit from childcare services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence , injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and as appropriate, for judicial involvement.

Article 24

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a). To diminish infant and child mortality: (b). To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c). To combat disease and malnutrition, including within the framework of primary health care, through. inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks

of environmental pollution; (d). To ensure appropriate pre-natal health care for mothers; (e). To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents; (f). To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present Article. In this regard, particular account shall be taken of the needs of developing countries.

Article 26

1. States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral an l social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international

agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a). Make primary education compulsory and available free to all; (b). Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c). Make higher education accessible to all on the basis of capacity by every appropriate means; (d). Make educational and vocational information and guidance available and accessible to all children; (e). Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. State Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to: (a). The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b). The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c). The development of respect for the child's parents, his or her own cultural identity, language and value, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different form his or her own; (d). The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e). The development of respect for the natural environment.

2. No part of the present Article or Article 28 shall be constructed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subjects always to the observance of the principles set forth in paragraph 1

of the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the state.

Article 31

1. States Parties recognise the right of the 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.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing and work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, and moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a). Provide for a minimum age or minimum ages for admission to employment; (b). Provides for appropriate regulation of the hours and conditions of employment; (c). Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

Article 36

State Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

ANNEXURE VI

EXCERPTS FROM THE INSTRUMENTS OF THE ILO

(A). THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION

Preamble

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the workers against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provisions for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

(B). MINIMUM AGE (INDUSTRY) CONVENTION, 1919

Article 1

1. For the purpose of this Convention, the term "industrial under-taking" includes particularly; (a) mines, quarries and other works for the extraction of minerals from the earth; (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity and motive power of any kind; (c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway,

tramway, harbour, dock, pier, canal, inland water-way, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or tele-phonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure; (d) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.

2. The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

Article 2

Children under the age of fourteen years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.

Article 3

The provisions of Article 2 shall not apply to work done by children in technical schools, provided that such work is approved and supervised by public authority.

Article 4

In order to facilitate the enforcement of the provisions of this Convention, every employer in an industrial undertaking shall be required to keep a register of all persons under the age of sixteen years employed by him, and of the dates of their births.

(C). MINIMUM AGE (SEA) CONVENTION, 1920

Article 1

For the purpose of this Convention, the term "vessel" includes all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned; it excludes ships of war.

Article 2

Children under the age of fourteen years shall not be employed or work on vessels, other than vessels upon which only members of the same family are employed.

Article 3

The provisions of Article 2 shall not apply to work done by children on school-ships or training-ships, provided that such work is approved and supervised by public authority.

Article 4

In order to facilitate the enforcement of the provisions of this Convention, every shipmaster shall be required to keep a register of all persons under the age of sixteen years employed on board his vessel, or a list of them in the articles of agreement, and of the dates of their births.

(D). MINIMUM AGE [AGRICULTURE] CONVENTION, 1921

Article 1

Children under the age of fourteen years may not be employed or work in any public or private agricultural undertaking, or in any branch thereof, save outside the hours fixed for school attendance. If they are employed outside the hours of school attendance, the employment shall not be such as to prejudice their attendance at school.

Article 2

For purposes of practical vocational instruction the periods and the hours of school attendance may be so arranged as to permit the employment of children on light agricultural work and in particular on light work connected with the harvest, provided that such employment shall not reduce the total annual period of school attendance to less than eight months.

Article 3

The provisions of Article 1 shall not apply to work done by children in technical schools, provided that such work is approved and supervised by public authority.

(E). MINIMUM AGE (TRIMMERS AND STOKERS) CONVENTION, 1921

Article 1

For the purpose of this Convention, the term "vessel" includes all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned; it excludes ships of war.

Article 2

Young persons under the age of eighteen years shall not be employed or work on vessels as trimmers or stokers.

Article 3

The provisions of Article 2 shall not apply (a) to work done by young persons on school-ships or training-ships, provided that such work is approved and supervised by public authority; (b) to the employment of young persons on vessels mainly propelled by other means than steam; (c) to young persons of not less than 16 years of age, who, if found physically fit after medical examination, may be employed as trimmers or stokers on vessels exclusively engaged in the coastal trade of India and of Japan, subject to regulations made after consultation with the most representative organisations of employers and workers in this countries.

Article 4

When a trimmer or stoker is required in a port where young persons of less than 18 years of age only are available, such young persons may be employed and in that case it shall be necessary to engaged to young persons in place of the trimmer or stoker required. Such a young person shall be at least 16 years of age.

Article 5

In order to facilitate the enforcement of the provisions of this Convention, every ship master shall be required to keep a register of all persons under the age of 18 years employed on board his vessel, or a list of them in the articles of agreement, and of the dates of their birth.

(F). MINIMUM AGE [NON-INDUSTRIAL EMPLOYMENT] CONVENTION, 1932

Article 1

1. This Convention shall apply to any employment not dealt with in the following Conventions adopted by the International Labour Conference at its First, Second and Third Sessions respectively: Convention fixing the minimum age for admission of children to industrial employment (Washington, 1919); Convention fixing the minimum age for convention concerning the age for admission of children to employment in agriculture (Geneva, 1921); admission of children to employment at sea (Genoa, 1920); The competent authority in each country shall, after consultation with the principal organisations of employers and workers concerned, define the line of division

which separates the employments covered by this Convention from those dealt with in the three aforesaid Conventions.

2. This Convention shall not apply to; (a) employment in sea-fishing; (b) work done in technical and professional schools, provided that such work is essentially of an educative character, is not intended for commercial profit, and is restricted, approved and supervised by public authority.

3. It shall be open to the competent authority in each country to exempt from the application of this Convention; (a) employment in establishments in which only members of the employer's family are employed, except employment which is harmful, prejudicial or dangerous within the meaning of Articles 3 and 5 of this Convention; (b) domestic work in the family performed by members of that family.

Article 2

Children under fourteen years of age, or children over fourteen years who are still required by national laws or regulations to attend primary school, shall not be employed in any employment to which this Convention applies except as hereinafter otherwise provided.

Article 3

1. Children over twelve years of age may, outside the hours fixed for school attendance, be employed on light work; (a) which is not harmful to their health or normal development; (b) which is not such as to prejudice their attendance at school or their capacity to benefit from the instruction there given; and (c) the duration of which does not exceed two hours per day on either school days or holidays, the total number of hours spent at school and on light work in no case to exceed seven per day.

2. Light work shall be prohibited; (a) on Sundays and legal public holidays: (b) during the night, that is to say during a period of at least twelve consecutive hours comprising the interval between 8 p.m. and 8 a.m.

3. After the principal organisations of employers and workers concerned have been consulted, national laws or regulations shall; (a) specify what forms of employment may be considered to be light work for the purpose of this Article; (b) prescribe the preliminary conditions to be complied with as safeguards before children may be employed in light work and (4) Subject to the provisions of subparagraph (a) of paragraph (1) above, (a) national laws or regulations may determine work to be allowed and the number of hours per day to be worked during the holiday time of children referred to in Article 2 who are over fourteen years of age; (b) in countries where no

provision exists relating to compulsory school attendance, the time spent on light work shall not exceed four and a half hours per day.

Article 4

1. In the interests of art, science or education, national laws or regulations may, by permits granted in individual cases, allow exceptions to the provisions of Articles 2 and 3 of this Convention in order to enable children to appear in any public entertainment or as actors or supernumeraries in the making of cinematographic films;

2. Provided that; (a) no such exception shall be allowed in respect of employment which is dangerous within the meaning of Article 5, such as employment in circuses, variety shows or cabarets; (b) strict safeguards shall be prescribed for the health, physical development and morals of the children, for ensuring kind treatment of them, adequate rest, and the continuation of their education; (c) children to whom permits are granted in accordance with this Article shall not be employed after midnight.

Article 5

A higher age or ages than those referred to in Article 2 of this Convention shall be fixed by national laws or regulations for admission of young persons and adolescents to any employment which, by its nature, or the circumstances in which it is to be carried on, is dangerous to the life, health or morals of the persons employed in it.

Article 6

A higher age or ages than those referred to in Article 2 of this Convention shall be fixed by national laws or regulations for admission of young persons and adolescents to employment for purposes of intinerant trading in the streets or .n places to which the public have access, to regular employment at stalls outside shops or to employment in itinerant occupations, in cases where the conditions of such employment require that a higher age should be fixed.

Article 7

In order to ensure the due enforcement of the provisions of this Convention, national laws or regulations shall; (a) provide for an adequate system of public inspection and supervision; (b) provide suitable means for facilitating the identification and supervision of persons under a specified age engaged in the employments and occupations covered by Article 6; (c) provide penalties for breaches of the laws or regulations by which effect is given to the provisions of this Convention.

(G). MINIMUM AGE (SEA) CONVENTION (REVISED), 1936

Article 1

For the purpose of this Convention, the term "vessel" includes all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned; it excludes ships of war.

Article 2

1. Children under the age of 15 years shall not be employed or work on vessels, other than vessels upon which only members of the same family or employed.

2. Provided that national laws or regulations may provide for the issue in respect of children of not less than 14 years of age of certificates permitting then to be employed in cases in which an educational or other appropriate authority designated by such laws or regulations is satisfied, after having due regard to the health and physical condition of the child and to the prospective as well as to the immediate benefit to the child of employment proposed, that such employment will be beneficial to the child.

Article 3

The provisions of Article 2 shall not apply to work done by children on school-ships or training-ships, provided that such work is approved and supervised by public authority.

Article 4

In order to facilitate the enforcement of the provisions of this Conventions, every shipmaster shall be required to keep a register of all persons under the age of 16 years employed on board his vessel, or a list of them in the articles of the agreement, and of the dates of their birth.

(H). MINIMUM AGE [INDUSTRY] CONVENTION [REVISED], 1937

Article 1

1. For the purpose of this Convention, the term "industrial undertaking" includes particularly; (a) mines, quarries, and other works for the extraction of minerals from the earth; (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation,

and transmission of electricity and motive power of any kind; (c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland water-way, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, waterwork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure; (d) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.

2. The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

Article 2

1. Children under the age of fifteen years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof.

2. Provided that, except in the case of employments which, by their nature or the circumstances in which they are carried on, are dangerous to the life, health or morals of the persons employed therein, national laws or regulations may permit such children to be employed in undertakings in which only members of the employer's family are employed.

Article 3

The provisions of this Convention shall not apply to work done by children in technical schools, provided that such work is approved and supervised by public authority.

Article 4

In order to facilitate the enforcement of the provisions of this Convention, every employer in an industrial undertaking shall be required to keep a register of all persons under the age of eighteen years employed by him, and of the dates of their births.

Article 5

1. In respect of employments which, by their nature or the circumstances in which they are carried on, are dangerous to the life, health or morals of the persons employed therein, national laws shall either; (a) prescribe a higher age or ages than fifteen years for the admission thereto of young persons or adolescents; or (b) empower an appropriate authority to prescribe a higher age or ages than fifteen years for the admission thereto of young persons or adolescents.

2. The annual reports to be submitted under article 22 of the Constitution of the International Labour Organisation shall include full information concerning the age or ages prescribed by national laws in pursuance of subparagraph (a) of the preceding paragraph or concerning the action taken by the appropriate authority in exercise of the powers conferred upon it in pursuance of sub-paragraph (b) of the preceding paragraph, as the case may be.

(I). MINIMUM AGE (NON-INDUSTRIAL EMPLOYMENT) CONVENTION (REVISED) 1937

Article 1

1. This Convention applies to any employment not dealt with in the Convention concerning the age for the admission of children to employment in agriculture (Geneva, 1921), the Minimum Age (Sea) Convention (Revised), 1936, or the Minimum Age (Industry) Convention (Revised), 1937.

2. The competent authority in each country shall, after consultation with the principal organisations of employers and workers concerned, define the line of division which separates the employments covered by this Convention from those dealt with in the three aforesaid Conventions.

3. This Convention does not apply to; (a) employment in sea-fishing; (b) work done in technical and professional schools, provided that such work is essentially of an educative character, is not intended for commercial profit, and is restricted, approved and supervised by public authority.

4. It shall be open to the competent authority in each country to exempt from the application of this Convention; (a) employment in establishments in which only members of the employer's family are employed, except employment which is harmful, prejudicial or dangerous within the meaning of Article 3 and 5 of this Convention; (b) domestic work in the family performed by members of that family.

Article 2

Children under fifteen years of age, or children over fifteen years who are still required by national laws or regulations to attend primary school, shall not be employed in any employment to which this Convention applies except as hereinafter otherwise provided.

Article 3

1. Children over thirteen years of age may, outside the hours fixed for school attendance, be employed on light work which; (a) is not harmful to their health or normal

development; and (b) is not such as to prejudice their attendance at school or capacity to benefit from the instruction there given.

2. No child under fourteen years of age shall; (a) be employed on light work for more than two hours per day whether that day be a school day or a holiday; or (b) spend at school and on light work a total number of hours exceeding seven per day.

3. National laws or regulations shall prescribe the number of hours per day during which children over fourteen years of age may be employed on light work.

4. Light work shall be prohibited (a) on Sundays and legal public holidays; and (b) during the night.

5. For the purpose of the preceding paragraph the term "night" means; (a) in the case of children under fourteen years of age, a period of at least twelve consecutive hours comprising the interval between 8 p.m. and 8 a.m.; (b) in the case of children over fourteen years of age, a period which shall be prescribed by national laws or regulations but the duration of which shall not, except in the case of tropical countries where a compensatory rest is accorded during the day, be less than twelve hours.

6. After the principal organisations of employers and workers concerned have been consulted, national laws or regulations shall; (a) specify what forms of employment may be considered to be light work for the purpose of this Article; and (b) prescribe the preliminary conditions to be complied with as safeguards before children may be employed on light work.

7. Subject to the provisions of subparagraph (a) of paragraph 1 above; (a) national laws or regulations may determine work to be allowed and the number of hours per day to be worked during the holiday time of children referred to in Article 2 who are over fourteen years of age; (b) in countries where no provision exists relating to compulsory school attendance, the time spent on light work shall not exceed four and a half hours per day.

Article 4

1. In the interests of art, science or education, national laws or regulations may, by permits granted in individual cases, allow exceptions to the provisions of Articles 2 and 3 of this Convention in order to enable children to appear in any public entertainment or as actors or supernumeries in the making of cinematographic films.

2. Provided that; (a) no such exception shall be allowed in respect of employment which is dangerous within the meaning of Article 5, such as employment in circuses, variety shows or cabarets; (b) strict safeguards shall be prescribed for the health, physical development and morals of the children, for ensuring kind treatment of

them, adequate rest, and the continuation of their education; and (c) children to whom permits are granted in accordance with this Article shall not be employed after midnight.

Article 5

A higher age or ages than those referred to in Article 2 of this Convention shall be fixed by national laws or regulations for admission of young persons and adolescents to any employment which, by its nature, or the circumstances in which it is to be carried on, is dangerous to the life, health or morals of the persons employed in it.

Article 6

A higher age or ages than those referred to in Article 2 of this Convention shall be fixed by national laws or regulations for admission of young persons and adolescents to employment for purposes of itinerant trading in the streets or in places to which the public have access, to regular employment at stalls outside shops or to employment in itinerant occupations, in cases where the conditions of such employment require that a higher age should be fixed.

Article 7

In order to ensure the due enforcement of the provisions of this Convention, national laws and regulations shall; (a) provide for an adequate system of public inspection and supervision; (b) require every employer to keep a register of the names and dates of birth of all persons under the age of eighteen years employed by him in any employment to which this Convention applies other than an employment to which Article 6 applies; (c) provide suitable means for facilitating the identification and supervision of persons under a specified age engaged in the employments and occupations covered by Article 6; and (d) provide penalties for breaches of the laws or regulations by which effect is given to the provisions of this Convention.

Article 8

There shall be included in the annual reports to be submitted under article 22 of the Constitution of the International Labour Organisation full information concerning all laws and regulations by which effect is given to the provisions of this Convention, including; (a) a list of the forms of employment which national laws or regulations specify to be light work for the purpose of Article 3; (b) a list of the forms of employment for which, in accordance with Articles 5 and 6, national laws or regulations have fixed ages for admission higher than those laid down in Article 2; and (c) full information concerning

the circumstances in which exceptions to the provisions of Articles 2 and 3 are permitted in accordance with the provisions of Article 4.

(J). MINIMUM AGE (FISHERMEN) CONVENTION, 1959

Article 1

1. For the purpose of this Convention the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters. (2) This Convention shall not apply to fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation.

Article 2

1. Children under the age of 15 years shall not be employed or work on fishing vessels.

2. Provided that such children may occasionally take part in the activities on board fishing vessels during school holidays, subject to the conditions that the activities in which they are engaged (a) are not harmful to the health or normal development; (b) are not such as to prejudice their attendance at school; and (c) are not intended for commercial profit.

3. Provided further that national laws or regulations may provide for the issue in respect of children of not less than 14 years of age of certificates permitting them to be employed in cases in which an educational or other appropriate authority designated by such laws or regulations is satisfied, after having due regard to the health and physical condition of the child and to the prospective as well as to the immediate benefit to the child of the employment proposed, that such employment will be beneficial to the child.

Article 3

Young persons under the age of 18 years shall not be employed or work on coal-burning fishing vessels as trimmers or stokers.

Article 4

The provisions of Articles 2 and 3 shall not apply to work done by children on school-ships or training-ships, provided that such work is approved and supervised by public authority.

(K). MINIMUM AGE (UNDERGROUND WORK) CONVENTION, 1965*Article 1*

1. For the purpose of this Convention, the term "mine" means any undertaking, whether public or private, for the extraction of any substance from under the surface of the the earth by means involving the employment of persons underground.

2. The provisions of this Convention concerning employment or work underground in mines include employment or work underground in quarries.

Article 2

1. Persons under a specified minimum age shall not be employed or work underground in mines.

2. Each Member which ratifies this Convention shall specify the minimum age in a declaration appended to its ratification.

3. The minimum age shall in no case be less than 16 years.

Article 3

Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a further declaration, that it specifies a minimum age higher than that specified at the time of ratification.

Article 4

1. All necessary measures, including the provision of appropriate penalties. shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. Each Member which ratifies this Convention undertakes either to maintain an appropriate inspection service for the purpose of supervising the application of the provisions of the Convention or to satisfy itself that appropriate inspection is carried out.

3. National laws or regulations shall define the persons responsible for compliance with the provisions of this Convention.

4. The employer shall keep, and make available to inspectors, records indicating, in respect of persons who are employed or work underground and who are less than two years older than the specified minimum age; (a) the date of birth, duly certified wherever possible; and (b) the date at which the person was employed or worked underground in the undertaking for the first time.

5. The employer shall make available to the workers' representatives, at their request, lists of the persons who are employed or work underground and who are less

than two years older than the specified minimum age; such lists shall contain the dates of birth of such persons and the dates at which they were employed or worked underground in the undertaking for the first time.

Article 5

The determination of the minimum age to be specified in pursuance of Articles 2 and 3 of this Convention shall be made after consultation with the most representative organisations of employers and workers concerned.

(L). MINIMUM AGE CONVENTION, 1973 CONVENTION 138

Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and no means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the Constitution of the International

Labour Organisation a statement: (a) that its reason for doing so subsists; or (b) that it renounces its right to avail itself of the provisions in question as from a stated date.

Article 3

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.

3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 4

1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, employment or work in respect of which special and substantial problems of application arise.

2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusions, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given to the Convention in respect of such categories.

3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.

2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.

3. The provisions of the Convention shall be applicable as a minimum to the following; mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purpose, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

4. Any Member which has limited the scope of application of this Convention in pursuance of this Article: (a) shall indicate in its reports under article 22 of the Constitution of the International Labour Organisation the general position as regards the employment of work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention; (b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour office.

Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of: (a) a course of education or training for which a school or training institution is primarily responsible; (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is: (a) not likely to be harmful to their health or development;and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Article 8

1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Article 9

1. All necessary measures, including the provision of appropriate penalties, sh ıll be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

Article 10

1. This Convention revises, on the terms set forth in this Article, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention,1920, the

Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age(Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965.

ANNEXURE VII

LETTER FROM THE HARIBHASKAR COMMITTEE

LABOUR DEPARTMENT

From

Thiru M.Arumugham, B.Com., DSW.,
Joint Commissioner of Labour (Conciliation)
and Convenor/Member of Child Labour Committee,
Madras-6.

To

Thiru K.Chandrasekaran,
100, Villianur Road,
Pavalakkaran Chavady,
Pondicherry.

B2.25606/84 dt.15-9-1984

Sir,

Sub: CHILD LABOUR - Committee on Child Labour to review the present conditions of Child Labour and to suggest remedial measures to overcome their difficulties meeting from 25th to 27th September, 1984 at Sivakasi - Regarding.

- oOo -

You may be aware that the Supreme Court has referred to this Committee to examine and report on the various points raised by you in your writ petitions before the Supreme Court in No.WP.8778/83.

The Committee proposes to visit Sivakasi for a study in the matter during 25th to 27th September, 1984. I request you to appear before the Committee at 3.00 P.M. on Thursday, the 27th September, 1984 and present your views/representations to the Committee for its examination.

The meeting will be held at Sivakasi Industrial Charities Kalyana Mandapam, 43/1, Srivilliputhur Road, Sivakasi.

for Joint Commissioner of Labour
(Conciliation).

ANNEXURE VIII

RESOLUTION OF THE INTERNATIONAL LABOUR CONFERENCE (1975) AND THE FOLLOW-UP ACTION ADAPTED BY INDIA[☆]

Measures necessary to strengthen the effort for the protection of children as envisaged under the Resolution adopted by the ILC, 1979.

(a) To implement the provisions of the Minimum Age Convention, 1973, and where they have not already done so, to ratify this Convention as early as practicable.

(b) To ensure in particular full recognition of the principle that any work undertaken by children who have not completed their compulsory education shall not be such as would prejudice their education or development.

(c) To apply the Minimum Age Recommendation, 1973 and the Minimum Age [underground Work] Recommendation, 1965.

(d) To report in detail in 1980 under the procedure of article 19 of the Constitution on the progress reached in the implementation of the Minimum Age Convention and Recommendation, 1973.

(e) Pending elimination of child labour, to take all necessary social and legislative action for the progressive elimination of child labour and during the transitional period until the elimination of child labour, to regulate and humanise it and to give particular attention to the implementation of special standards of children relating to medical examination, night work, underground work, working hours, weekly rest, paid annual leave and certain types of hazardous and dangerous work in a number of ILO instruments.

(f) To make every effort to extend the provisions of appropriate educational facilities, in order fully to apply compulsory education and to introduce it where it does not exist and, where education is compulsory, to make it effective.

(g) To ensure that appropriate protective labour legislation applies to all children at work in the sectors of activity in which they are employed.

(h) To ensure that special attention is given to the provision of fair remuneration and to its protection for the benefit of the child.

☆ Note 174 Chapter Seven.

(i) to strengthen, where appropriate, labour inspection and to undertake all other measures conducive to the elimination of child labour.

Measures undertaken by India in fulfilment of the commitment under the said resolution of which India was the co-sponsor.

(a) India has not ratified this Convention so far.

(b) Compulsory education is not provided any where in India. School enrollments are poor in places where the high incidence of child labour is reported. Official reports themselves confirm that employment of children is detrimental to their health and development.

(c) Any such claim can only be dubious as the incidence of child labour in exploitative conditions continues to pour in without any break.

(d) In view of the above, any assertion of progress in this front can only be ambitious.

(e) Humanising the work life is only a promise to the detriment of children made by the Child Labour [Prohibition And Regulation] Act of 1986 [enacted as a part of this strategy] as the same is nearing completion of a decade of existence but nowhere near the fulfilment of the mission.

(f) Of late, India talks about education for all obviously intending literacy. It does not speak compulsory education. A sea of difference exists between literacy and education. India must either be unaware of the difference or pretending to be unaware of it.

(g) No legislation for this purpose is of universal Coverage.

(h) It is commonly known that children are working for pittance and this is confirmed more than once.

(i) Labour inspection system is far from satisfactory and this has invited criticism even from the Judiciary.

ANNEXURE IX

LETTER TO THE SUPREME COURT

K.CHANDRASEKARAN
100, Villianur Road
Pavalakkaran Chavady
Pondicherry.

18-02-1983
Pondicherry.

To

The Honourable Justice Bhagwati
Supreme Court of India.

Your Lordship,

I would like to bring to your Lordship's notice the following facts for sympathetic consideration and necessary action. I am obliged to inform you, that the poor children of Ramanathapuram District of Tamil Nadu are made to work for nearly 15 hours a day. Sivakasi, a town in Ramanathapuram District, is known for match industries. The people of this town are driven to fetch some work in the match industries for their children, irrespective of their age, because of their economic backwardness and the vested interests of this town have exploited the situation all these years and filled their coffers. The children who have crossed the minimum age prescribed by the statute are put to work beyond 4½ hours a day with impunity and they are not even paid the statutory minimum. Even adult workers are put to work in places which do not conform to the safety standards prescribed by the Factors Act. Surprisingly the State has only remained a silent spectator without looking forward to seek the compliance of law and to bring the culprits to the book. I am enclosing herewith a publication expressing the author's concern over the deplorable conditions of the poor children which, I feel, would enable your Lordship to appreciate the need of the hour. It is disheartening to note that how callous the Inspectorate of Factories have been all these days in discharge of their duties and how they have connived with the wholesale violation of labour laws. At this juncture I am reminded of this Hon'ble Court's decision emphasising the duty of the Central and the State Governments to enforce the laws which seek to promote human dignity and welfare of the citizens.

The state having failed to fulfill its obligation, my humble submission to your Lordship is that the time is ripe for the interference of this Hon'ble Court, as the saviour of the human dignity and inviolable fundamental rights, with the determined hand to enforce the laws at any cost. Further, I submit that this Hon'ble Court may be pleased to

think on the lines of giving directions to the State of Tamil Nadu seeking its explanation as to why the Inspectorate of Factories who have consistently failed to discharge their duties should not be compulsorily discharged in the interest of public?

Hence it is prayed that this Hon'ble Court may be pleased to convert this letter into a writ petition and pass necessary orders in the interest of Justice.

Thanking you,

Yours Sincerely,

K.CHANDRASEKARAN

Encl: Indian Express Publication,
Article by SMITHU KOTHARI
on 14-02-83.

INDEX OF CASES

INDEX OF STATUTES

ABBREVIATIONS

CAB - Central Advisory Board

CBI - Central Bureau of Investigation

CLTAC - Child Labour Technical Advisory Committee

CRC - Convention on the Rights of the Child

ILO - International Labour Organisation

JPC - Joint Parliamentary Committee

NCL - National Commission on Labour

NCLP - National Child Labour Programme

NREP - National Rural Employment Programme

PIL - Public Interest Litigation

RLEGP - Rural Landless Employment Guarantee Programme

WTO - World Trade Organisation

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