CHAPTER-4

LEGISLATIVE EFFORTS TO ABOLISH THE BEGAR SYSTEM IN INDIA

Man works in order to survive so "survival of the fittest" has been the law of nature-this is the cause for the origin of "Bonded labour". Exploitation of men by men or one group of people by another had been and in the present era is the common feature and not only in the Indian Society but also seen in all societies of the world where economic inequalities exists. Exploitation and forced labour are twins because where exploitation exists forced labour will flourish in one form or another. Labour is very precious, it should be utilized in right direction. It is that plinth upon which the future of a country dearth ahead. The aspirations of a nation come true when every citizen is allowed to incorporate maximum output of his or her labour and desired way for the nation's advertisements. The evils of bondage and chain of bondage sets back to the nation gradually to pass into the darks of oblivion. Thus, bonded labour is a form of forced labour analogous to slavery. If slavery is uncivilized the civilized form of slavery is bonded labour.

Our freedom fighters fought against the British and their atrocities to establish a new social order free from injustice. The struggle for freedom was not only to demolish the foreign rule but it was also to build an egalitarian society to secure life of quality to the people with right to
equality. The prevailing conditions before independence in this country were pathetic and miserable. People suffered with poverty, bonded labour, ignorance and illiteracy, want of food and shelter. Every basic human freedoms were not available. The plight of the women was that of a subjugated inferior being. These conditions motivated and made the people firm to fight for freedom so that the country could be free from the British rule and the people of this country could live life of dignity with peace and happiness. With great courage and supreme sacrifice people of India fought a long and untiring battle finally securing freedom on 15th August, 1947. Political freedom fighter, leaders of India in their struggle for freedom faced cruel resistance and harassment whenever and wherever they raised their voice for equality and freedom. Pandit Nehru said: "The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over".95

We can see in these words the great dream of Gandhiji and vision of Pandit Nehru to work for the common man specially oppressed class of the society. It is a matter of common experience that the prevailing conditions in a society and historical background mainly shape the constitution of a country. At the time when we attained freedom and the constitution was being drafted the prevailing and social, economic and political state of affairs in which the people lived had impact in framing the constitution. It took 2 years 11 months and 18 days to finalize the draft constitution. The

constitution is a mirror in which nation's culture, ethos, standard of moral and ethical values reflects. There can be no better index of the ideas and aspirations of a nation that its constitution. Constitution framers of India were primarily reformist and secondarily constitutionalists therefore, the agenda of social reform to provide socio-economic justice to all was there prime-concern and for that, large number of provisions have been impelled in the body of new constitution after freedom. Justice- social, economic and political shall be provided to all throughout the territory of India by the state. Constitution is made in the name of millions and for the millions and not for the millionaires. However, dignity of the individual embodied in the preamble, is a myth to a bonded or contract labour. It is preamble solemnly declares establishments of a Sovereign, Socialist. Secular and Democratic Republic, promoting among its citizens, justice-social, economic and political. The constitution of human document directs every organ of the state to strive for the fullest development of the personality of every individual. The constitution makers were equally anxious that there should be a surety where citizens will enjoy the various freedoms, without which there can be no dignity of individual, therefore they inscribed in the constitution certain basic rights. These basic rights are known as human- rights. The dignity, equality, freedom and liberty are the main ideas of the human rights and these rights are protected by various Articles of the Indian constitution specially Articles under Part III, IV & IVA of the constitution. Social justice can be described as the corner stone of the constitution. Social justice is not only an article of faith but also a constitutionally enjoyed obligations. Even the preamble of the
constitution also provides for securing to all its citizens justice, liberty, equality and dignity of individual. The promise of establishment of socio-economic and political justice has been established in the fundamental rights and directive principles of state policy enshrined in Part III and Part IV of the constitution. In other words, the preamble, the fundamental rights and the directive principles of state policy are all part of the same constitutional scheme and aim at the establishment of a free and a just social order based on the rule of law. The aim is for betterment of the individual as an integral component of society. Our founding fathers did a commendable and remarkable job. The founding fathers were fully aware of the prevailing rampant exploitation of human bonded adult and child labours in almost all walks of life, which in turn amounts to grave violation of the human rights and in order-to check this particular evil practice and afford protection to the men, women and children, they have enacted special provisions in the constitution.

The constitution of India as supreme law of the land has provided the concept of socio-economic justice in the working of welfare government in free India. The welfare state has to function on three points to achieve the ends of Government namely:-

- Rejection of present social structure and socio-status quo.
- A smooth and rapid "transition from a state of serfdom to one of freedom".
- Socio economic justice envisages remaking of material conditions.
The freedom fighters building an egalitarian society had pronounced the concept of welfare state. *Mahatma Gandhi* desired to wipe out every tear from every eye. With its target, the great framers of the constitution boldly and strongly felt that the necessary constitution provisions must be made in the constitution to enable the people to receive high priority for basic needs of survival for life, from this motive, the constitution was designed to bring happiness to the maximum extent of the public at large. The constitution's Part IV envisaging a society in which opportunities have been given for the pursuit of happiness without any discrimination of religion, race, caste, sex place of birth and residence etc. and there is equal opportunity to everyone and there is no concentration of power or wealth in the hands of few to the detriment class of the society. The promises what have promised in the various provisions of the constitution, have turned into reality. The Part III of the constitution, Fundamental Rights to the people includes basic human rights. It is needless to state however well thought and well drafted a constitution is, it by itself will not serve the purpose; ultimately it is the people who work under a constitution and their way of life, consistent with the spirit of constitution, that matters a lot. In this regard it is useful to quote the words of *wisdom and warning of Joseph Story*.

"The Structure has been erected by architects of consummate skill and fidelity: its foundations are solid: its compartments are beautiful as well as useful; its arrangement; are full of wisdom and order; and its defenses are impregnable from without... . It may, nevertheless perish in
During the British rule, the fundamental rights and welfare of Indian subjects were not of much concern. At the time of freedom struggle the core desire of the people to secure a life of quality coupled with right to equality came to the front. Equality is a fundamental pillar of democracy being an important foremost ingredient of modern system of social values. "Right to equality" is one of the most imperative and fundamental rights in a democratic system. Art 13(2) of the constitution of India declares that the state shall not make any law either to take away or abridge fundamental rights which include socio-economic rights guaranteed under Part III of the constitution and if any law is made in contravention to that extent it shall be void. Quality, sustenance and success of democracy depend on political freedom, economic equality and social justice; political freedom shall be at peril and it may become meaningless without economic equality and social justice.

The constitution of India is not only a pragmatic result of the struggle for freedom but it also reflects the aspirations and hope of the people. It was a pious wish of our founding fathers to give quality of life to their successors. Hence, the constitution cannot, shall not and has not remained a dormant instrument. The constitution is seen as a living document to address the exigencies of contemporary life. The need for enforcing socio-economic right is well pronounced in our constitution

96. See Supra (1) at P. 2.
having regard to ignorance of the masses regarding the right that they are entitled under the constitution and also because of financial inabilities of a large section of them to take, legal recourse in case of isolations.

In the preamble of the Indian constitution, the cherished goals have been indicated which aspires for justice- social, economic and political: liberty of the thought, expression, belief; freedom of worship; equality of status and opportunity and to promote fraternity assuring the dignity of the individual.

In a democratic society, life of a person as a whole include equality in all the aspects, social, economic, culture and political. Pandit Jawaharlal Nehru said:-

"Every man and women must have, the opportunity to develop to the best of his or her ability".

Jai Prakash Narain's ideas of "total revolution" were nothing but complete socio economic transformation of society that all the Indians could lead a life of equality and brotherhood. Almost all written constitutions of democratic states guarantee the opportunity to the individual to develop his potentialities to the maximum of his capacity. In our constitution such opportunities are provided even in the form of fundamental rights, which are enforceable by the courts of law.

Without having economic equality, the success of democratic set up cannot he assured or sustained. Mere removal of social distinction of
castes, religions and race is not enough. With the basis of economic security abiding peace not only in a particular country but all over the world is possible. For the overall sided development of human personality economic equality, security is necessary. The following words of President Roosevelt of the United States, during the deliberations of framing the United Nations charter may be recalled:

"We have come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men. People who are out of a job are the stuff out of which dictators are made. In our day these economic truths have become accepted as self evident."

The principle of social justice are distributive and not aggregative. Aggregative principle refers only to the total amount of goods enjoyed by a particular group as a whole while the principle that the each member of the group should enjoy an equal amount of happiness is distributive. Yet it has to determine what kind of distributive principles they are. The most plain to have social justice is "SUUMCUIQUE" to each his duty. The social justice is affair of state is that where each individual has to enjoy each benefit, facility, and burdens which are due to him.

The corollary of social justice may also drawn from "the Principle of proportion". The principle of proportion allows us to deal not only with cases in which dues are identical but with cases in which dues are different and yet can be expressed as qualities of all same attribute. Thus, it may be
expressed in the form "to each according to his rights". Social justice is not only of what to do, or what ought not to do or is not only right to do or wrong to do but which some individual person can claim from us as his moral inalienable right. In order to do it into practice, it is necessary to known what each man's right and liberties are. Rights and liberties are generally derived from publicly acknowledged rules, established practices or past transaction. It does not depend on a person's current behaviour or other individual qualities. For this reason it is appropriate to describe this conception of justice of "CONSERVATIVE". 97

It is not only the important matter of social justice to protect the interest of individual's but it does not exhaust the concept of justice. With Sidwick point of view, the distribution of rights can itself be assessed from the point of view of justice. Then principle of social justice is the principle of deserts (Deserves). It means "man ought to be rewarded according their deserts or deserves. The another formula of social justice is expressed" a man due here being taken to mean his deserts or deserves. There is no hard or fast principle of social justice as desert. It depends entirely what is within a man's control, that is one his effort and choice he makes. The principle of desert always depends on the action and the personal qualities of the person said to be deserving. David Miller says that "desert denotes a relationship between individual and his conducts and modes of treatment which are liked or disliked. Therefore, a man's desert may be measured by his moral virtue his productive efforts, his capacities and so on. Raphael

97. Dr. Sundararamaya "Social Justice : An Analysis P-6 paper presented, (unpublished) at UGC workshop, on Modern Legal Theory and Techniques of Research with special reference to "Reservation Policy" held at Department Andhra University, Waltair-1986".
advocate that the criterion of need is so more central to the ideal justice than the notion of desert. He says that everyone must receive goods and according to his needs. Social justice is nothing but the needs to each his due. The concept of need must be distinguished from the concept of desert for when we speak of a man deserving something we have in mind some favourable attribute which we think ought to being a benefit whereas when we speak of him needing something, we are thinking of a lack or deficiency of his part.

'Rights' and 'Deserts' and "Right" & "needs" are contingently in conflict, since we may strive for a social order in which each man has a right to that (and only that) which he deserves, or to that (and only that) which he needs only, when perfectly just societies could be created then the conflict between conservative and ideal justice would vanish. Until then actual distribution of rights would correspond to the ideal distribution. On the other hand, "desert" & "needs" must conflict because no society can distribute its goods both according to desert and according to needs. The only thing that state can do is distribute part of its goods according to desert and part according to needs. Social justice is like an omnibus which includes everything including economic and political justice.

100. See Ibid, P. 19.
Sir C.K. Allen in his “Aspects of Justice” observed in regard social justice that, we hear much today of "social justice". I am not sure that those who use the term most glibly know very clearly what they mean by it. Some mean distribution or redistribution of wealth: some interpret it as “equality of opportunity” a misleading term. Since opportunity can never be equal among human beings who unequal capacity to grasp it, many. I suspect, mean simply that it is unjust that anybody should be more fortunate then themselves and the more intelligent that it is just – I would rather say benevolent – that every effort should be made at least to mitigate the asperities of natural human inequality and that no obstacle should be offered, but rather help afforded, to practicable opportunities of self improvement.\textsuperscript{102} In Sridharan Motor Service Attur V/s Industrial Tribunal, Madras and others, J. Krishna Iyer observed that “Concept of social justice have varied with age and time. What would have appeared to be indubitable social justice to a Norman or Saxon in the days of William the Conqueror will not be recognized as such in England today. What may appear to be in controvertible social justice to a resident of Quebec may wear a different aspect to a resident of a Peking. If it could be possible for confucius, Manu. Hammurabi and Soloman to meet together at a conference table, it is doubtful whether they would be able to evolve agreed formula as to what constitutes social justice”.\textsuperscript{103}

Social justice term itself is very vague and indeterminate expression and no clear cut definition can be laid down which will cover all

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\item 103. LLJ, 1959 (1) Mad., P. 380.
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situations. The concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundations.\textsuperscript{104} On the other hand. C.J. Chhagla in rejecting the argument that the court should not import its own notions of social justice in interpreting the statutory provisions in \textit{Prakash Cotton Mills Vs State of Bombay} \textsuperscript{105} felt that though difficult to define social justice was in the words of Holmes J., an inarticulate major premise "\textit{which was personal and individual to every court and every judge depending on the judge's outlook on life and society. It is said that social justice is not a blind or an irrational dogma.}\textsuperscript{106} It seeks to do justice, to all the citizens of the state.\textsuperscript{107}

\section*{4.1. Origin and Development of the Concept of Social-Justice :}

Modern jurists trace the origin of the social justice from the time of the formation of the International Labour Organization after the close of World War-I. Initially, it was a doctrine of social philosophy and then entered into state craft and gradually captured the constitutional field. The 1688's England revolution achieved the Bill of rights (1689). In 1776's American War of Independence and the French Revolution with its success in the Declaration of rights of man (1789) and the Russian Revolution of 1917 with its resurgence from the despotism of Czars, were political in their operation and consequences yet all of them were inspired by larger social causes.

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\item \textsuperscript{104} As per Bhagawati,J., in Muir Mills Limited Vs. Suti Mazdoor Union, AIR 1955, SC 170 at P-175.
\item \textsuperscript{105} 1959, Bombay, L.R. 830, at P-844.
\item \textsuperscript{106} See Gajandragadkar P.B., "Law, Liberty and Social justice", Ed. 1965, P-80.
\item \textsuperscript{107} Ibid.
\end{itemize}
Every society has have basically two classes the privileged and unprivileged. Dr. Chaturvedi rightly observes that, "It was through the vehicle of revolutions that this social concept became a political settlement. The constitution being changed, the revolutionary minds thought it wiser to secure this concept a place of pride and permanence by engrafting some of its vital features in the draft of their respective constitution. The concept which was originally a social exhortation thus, culminated into a legal document".108

The observations of the Beveridge Committee Report, 1941 on the nuances of "welfare idealism" calling for a relentless struggle against giant evils of poverty, disease, ignorance, squalor and idleness, exercised tremendous influence on nations which were in a spirit of crusade fighting imperialism for attaining, freedom and independence.109 After this report, social security, was put forward as general programme of social policy.110 The Beveridge Report observed, "It is one part only of an attack upon five giants evils": upon the physical want with which it is directly concerned, upon disease which often causes that want and brings many other troubles in its train, upon ignorance which no democracy can afford among its citizens upon the squalor which arises through haphazard distribution of industry and population and upon the idleness which destroys wealth and corrupts men, whether they will fed or not when they are idle.111

Particularly in the Third World Countries with an ultimate aim of achieving social justice "welfare idealism" principle recognized into a large number of constitutions, covering a wide range of socio-economic demands of people.

In Anglo-Saxon countries rule of law, equality before law, existence of an impartial and independence judiciary, protection of minorities and backward or weaker sections of the society includes women, children and bonded labourers are regarded as a supporting pillars on which rests edifice of social justice.

The philosophy of Karl Marx was associated with material conditions of life and Marx dedicated his life in the discovery of objective laws governing the development of society. In the preface of a contribution to the critique of Political Economy, Marx observed; "My investigation led to the result that legal relations as well as forms of society are to be grasped neither from the so called general development of human kind but rather have their roots in the material conditions of life".112

This Marx philosophy of objective law is based on the doctrine of equality which consists in the equal rights of all members of society to equal proceed of labour. It is an objective meaning of the concept of Marx of equality. Whereas in the non-communist countries set an equal general standard to the entire society which consists of different people who in fact are not equal with one another. That is why in the capitalist countries

112. Ibid, P - 473.
the doctrine of equal right is really a violation of equality and consequently to the justice.\textsuperscript{113} Justice demands that every person who has contributed as much labour to the joint stock as another is entitled to receive an equal share in the social product after the necessary deduction. When all members of society became equal partners in both social production and consumption the classes will disappear. Where there were no classes there is no exploitation.\textsuperscript{114}

*Lenin* considers that the step has degenerated and has become an instrument for exploitation of the oppressed classes and he regards state as an antagonism.

According to *Lenin*—"*State was the product and manifestation of irreconcilability of class antagonism. The state emerged when class antagonism could not be objectively reconciled. The distortion which had crept into Marxism was that the state was regarded as an organ of conciliation of the classes. Lenin re-interpreted Marx and according to him state could neither rise nor maintain itself if it were possible to reconcile classes. Marx had thought of the state as an organ of oppression the state degenerated into an instrument of oppression"*\textsuperscript{115}

Thus, the law becomes an instrument of oppression in the hands of dominant classes to suppress proletariat in order to perpetuate the

\textsuperscript{113} Ibid, P-473.
dominance. In the theory of communism the need of state and law arises only during transition period of transformation from the present state to the communist society. It is assumed that dictatorship of the proletariat is a must during the transition period to protect the interest of the society. According to Yudin the ideal of social justice will be achieved when the transition from "each according to his labour stage to' each according to his needs is reached".

According to communists the policy and the applications of principles of social justice shall be determined by the party politbureau and the courts are required to act with the zeal of ideological adherent in order to achieve the object.

The communists view in its political manifestation has six characteristics:-

i) A sharp distinction has been drawn between the ownership of the means of production, which is wholly in the state and ownership of consumer goods which is open to individual;

ii) In the sphere of the production all economic business relationship are essentially transactions between state organs, either subsidized organs or autonomous bodies known as State Trusts;

iii) Relationship between state and individual that is between a State Trust and its employees;

117. Ibid.
118. Ibid.
iv) Recognition of provide right over consumer goods to a restricted extent, resale being subject to strict scrutiny;

v) Regulation of relations and disputes between various parties being entrusted to tribunals which are impartial and independent; and

vi) Strict enforcement of legislation.¹¹⁹

In communist countries the judiciary is a committed one - a position which is contrary to the position and function of Judiciary into Anglo - Saxon countries. Mr. E.M. Fernando C.J., Supreme Court of Philippines who delivered the keynote address on the occasion of the Third International Conference of Common Wealth Chief Justice stated that "Social justice is neither communism but the humanization of laws and equalization of social and economic forces by the state so that justice in its rational and objectively secular conception may at least be approximated"¹²⁰

The chief justice also observed that in modern times the role of the judge under a constitution containing provisions aimed at achieving social justice including one for judicial review of the constitutionality of legislation and executive action is far from minimal, and what matters under the functional standpoint is not the possession of power of judicial review but its exercise.¹²¹

¹²¹. Ibid.
But in the 21st century, the concept of social justice has gone beyond what the ancients could possibly have contemplated. It now takes the form of old age pensions, minimum wages, financial help to BPL (Below Poverty Line), disability insurance, compulsory education to all child below the age of 14 years, special positive legislations or steps in favour of women and children, reservation to weaker sections of the society, including backward, Scheduled Castes and Scheduled Tribes, equitable distribution of land and scarce resources, equalization of employment opportunities and many other things.

At last "the ramification of social justice in developed and developing societies depend on their historical character, their social composition and the challenges in the economic and social development. The structure of any society is essentially human and therefore, the progress depends upon the ability of the society and the determination of men who steer the helm of affairs to contribute to the development of men."[122]

Anglo-Saxon as well as communist, the aim of the system has to achieve social justice, though the means adopted are vastly different in nature. Both the systems regard the welfare of common man and promise social justice, though the term social justice remained undefined. The welfare of society requires that though individual right may be reasonably restricted but there should be neither exploits nor exploited in order to

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122. See Kaushal Jagan Nath, "Social Justice and Its Challenges", C and MLJ, Vol... 20, No. 102, P - 11 (Address by the author, the then Union Minister of Law Justice and Company Affairs, on the occasion of the Third International Conference of Common Wealth Chief Justices on 5th March, 1984 at New Delhi.)
achieve social justice. The well being of the society depends on the Co-
ordination and re-conciliation between individual rights and demands and
needs of society.¹²³ Simply defined "Social justice" is a balance between
social rights and social control."¹²⁴

_Roscue Pound has_ classified social interests under six heads, which
the law should take into account in order to achieve the goal of social
justice:-

i) Social interest in general security, e.g. peace, public health, security of
acquisition etc.

ii) Social interest in security of social Institutions, e.g. that is marriage,
religions institutions etc.

iii) Social interest in general morals e.g. that is gambling, drinking,
immoral traffic bonded labour etc.

iv) Social interest in conservation of social resources, e.g. that is food,
minerals etc.

v) Social interest in general progress, e.g. freedom of trade,
encouragement of research.

¹²³ Dr. Singh Bakshish, "The Supreme court of India as an Instrument of Social Justice", Ed.
1976, P-73.
vi) Social interest in individual rights e.g. wages, conditions of work etc.\textsuperscript{125}

In addition to these, \textit{Dean Roscue Pound} gave eight jural postulates initially in 1919, he gave first five jural postulates to which he himself added three more in 1942 in order to ensure social justice. They are :-

\begin{enumerate}
\item that no wanton aggression by others;
\item that parties with whom transactions are entered will act in good-faith;
\item that there will be no hindrance in the enjoyment of his acquisitions and creations;
\item that the person will not be exposed to undue risks and that others will act with due care and cautions;
\item that dangerous things kept by others shall he cautiously and carefully kept within its bounds;
\item that employee has a right to employment;
\item that society will share the misfortunes which befall on individual; and
\item that proper compensation to worker for necessary human wear and tear in an industrialized society.\textsuperscript{126}
\end{enumerate}

Due to the progress and changes in the

\textsuperscript{125} Dr. Singh Bakshish, "The Supreme Court of India as an Instrument of Social Justice", Ed. 1976, P-70.
\textsuperscript{126} Ibid.
society even these postulates needs additions. Social justice concerns the distribution of benefits and burdens through the society.127

If social justice is to be achieved, social obligations and social consciousness must be reflected in individual action. Social justice concerns the distribution of benefits and burdens throughout the society. Utilitarian propound the theory of "greatest happiness to greatest numbers" as the key to the meaning of social justice.128 It is also the view of the H.L.A. Hart that the sphere of justice is not the same as that of sphere of equality.129 In all the theories emphasis is on individuals because a want though mental in its origin had a material base in its satisfaction. To allow each the fullest opportunity to accumulate the means of production and control its distribution was one time believed to be the greatest good of greatest number. The old principle of the absolute freedom of contract and the doctrine of laissez-faire have yielded place to new principles of social welfare and common good in the whole of the eighteenth and part of the nineteenth centuries. A welfare state is rightly another name for a just state and the just state be best described as a just order of society.130 In a welfare state there are two aspects of social justice. The first one is that everyone has equal rights to basic equality compatible with similar liberty to others; and the second one is that social and economic inequalities are to

129. Ibid.
be adjusted in such a way that they are both reasonably expected to everyone's advantage and attached to positions and offices open to all.\textsuperscript{131} So, social justice is designed to undo the injustice of unequal birth and opportunity, to make it possible that wealth should be distributed as equally as possible and to provide that men shall have the material things of life in as equal measure as may be. Difference between man and man will exist and the equality which is the aim of social justice cannot be a mathematical or a perfect equality, but what is aim at is that at least a minimum of the material things of life should be guaranteed to each man: given such a start he may work out his life and his destiny as he might,\textsuperscript{132} that is bread for all before jam for some.\textsuperscript{133} Bhagwati. C.J., says "Social justice is that justice which is not confined to a fortunate few but take within its compass large millions of people who are living a life of want at destination, which penetrates and destroys inequalities of race, sex, power, position of wealth and which brings about equitable distribution of the social, material and political resources of the community.\textsuperscript{134}

Thus, social justice as the name indicate must conform to justice in all its social aspects. Conceived generally social justice includes economic and political justice.\textsuperscript{135}

The constitution reflects the socio-economic philosophy of a true-welfare state. It seeks to entrench social and economic rights of the people,
which is evident from justiciable fundamental rights and non-justiciable
directive principles of state policy.

The state shall strive to promote the welfare of the people by
securing and protecting as effectively as it may a social order in which
justice, social economic and political shall inform all the institutions of the
national life, it shall also strive to minimize inequalities in income amongst
individuals and various groups of people. It shall strive towards securing
adequate means of livelihood to the citizens, ensure that the operation of
economic system does not result in the concentration of wealth and that
there is equal pay for equal work for both men and women. The state shall
within its economic capacity, make provisions for securing right to work,
to education and to public assistance in case of unemployment, old age,
sickness and disablement. It shall take steps to secure participations of
workers in the management of undertakings and establishments. It shall
endeavour to provide easily childhood care and education for all children
until the age of six years. The state shall provide free legal aid to ensure
that opportunities for securing justice are not denied to any citizen by
reason of economic or other disabilities. It shall promote with special care
the educational and economic interests of the weaker sections of the
people. It shall also regard the raising of level of nutrition and standard of
living of its people and the improvement of public health as among its
primary duties.

Referring to the aspect of the Social justice, Subba Rao, C.J. observed.
"The Rule of Law under the constitution has a glorious content. It embodies the modern concept of law evolved over the centuries...... It enjoins to bring about a social order in which justice, social, economic and political shall inform all the institutions of national life. It directs 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."\(^\text{136}\)

Granville Austin thinks of Indian constitution when he describes it as embodying the essence of social justice, He says:-

"The Indian constitution is first and foremost, a social, document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievements."\(^\text{137}\) This means that our nation life is to be based on justice to all citizens, social, economic and political as its keynote.\(^\text{138}\)

4.2. Constitutional Efforts towards Extinction of Bonded Labour System:

The framers of our constitution were fully aware of the prevailing rampant exploitation of human bonded adult and child labours in almost all works of life, which in turn amounts to grave violation of human rights. The practice of bonded labour is not only an ugly and shameful feature but is also an affront to basic human dignity. It constitutes gross and revolting

\(^{136}\) Golak Nath Vs State of Punjab, AIR 1967, SC 1643 atp.
\(^{137}\) Austin Granville, "The Indian constitution : cornerstone of a Nation", Ed. 1972, P-50.
violation of constitutional values. In order to check this particular monstrous evil practice and to afford protection to the men women and children they have enacted special provisions in the constitution.

The "Equality before law" lays down that "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Equality requires absence of discrimination. The constitution of India ensures social and economic equality and distribution of justice to the people and the bonded labour system is against this philosophy and spirit. The root cause of the existence of the system is glaring social and economic inequalities prevailing in the society. The system of bonded labour is against the principle of equality under Art-14. Equality before law means, equality of basic human rights, economic-equality, equality of opportunity or equality of consideration for all person, but the bonded labour system is contrary to the growth of humanity at equal footing. The bonded victims of inequality are deprived of every right in this unequal society and are entitled for equal treatment under Art-14.

Article-15 which deals with non-discrimination contains a special provision for protective discrimination for children, women and for socially and educationally backward classes of citizens, Scheduled Castes and Scheduled Tribes apart from its general provisions. "The state shall, not discriminate against any citizen on grounds of religion, race, caste, sex.

139. Art 14 of the Indian Constitution.
place of birth or any of them". "Nothing in this Article shall prevent the state from making any special provision for women and children". "Nothing in this Article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for Scheduled castes and the Scheduled Tribes".

Article-19(1)(d) of the Indian constitution defines about the right to move freely throughout the territory of India. The right of freedom of movement is the most valuable and cherished right of human being. Bonded labourer's freedom of movement is restricted due to physical, economic, social and psychological forces. Sometimes he cannot leave the premise of his master because of apprehension of assault. Personal liberty consists in the power of locomotion of changing direction or moving one's person to whatever place one's own inclination may desire. Subba Rao141 was the view that the rights under Article-19(1)(d) is not mere freedom to move without physical obstruction and observed that "movement means a movement in a free country, where he can do whatever he likes, can speak whatever he wants, can meet people of his own choice without any apprehension, subject of course - to the law of social control".

Article -21 is a protective anchor, which deals with protection of life and personal liberty, specifies that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The system of bonded labour forced to the labour for doing work against his

desires which attracts violation of his personal liberty. Through constitutional amendment Article 21A\textsuperscript{142} is added to provide education to the children from 6 to 14 years age as their Fundamental right.

\begin{quote}
"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."\textsuperscript{143}
\end{quote}

\begin{quote}
"Nothing in this Article shall prevent the state from imposing compulsory service for public purposes and imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them".
\end{quote}

Article-23 guarantees a right against exploitation to the citizens of India. It is a fundamental right not to be compelled to work without wages. Exploitation which means the improper utilization of services of other persons for one's own ends, is opposed to the dignity of the individual to which the preamble of our constitution refers.\textsuperscript{144} Article-23(1) Prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of Article 23(1) shall be an offence punishable in accordance with Law. "Traffic in human beings" means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes. Though slavery is not mentioned expressly in Article 23 it is included in

\begin{footnotesize}
\textsuperscript{142} The Constitution (86th Amendment) Act, 2002.
\textsuperscript{143} Art 23 of the Indian Constitution.
\end{footnotesize}
the expression "traffic in human beings". Under Article 23 of the constitution, parliament is authorized to make laws for punishing acts prohibited by this Article. This Article Protects the individual not only against the state but also against private citizens. It imposes a positive obligation on the state to take steps to abolish evils of "Traffic in human beings" and beggar and other similar form of forced labour wherever they are found. This Article prohibits the system of "Bonded Labour" because it is a form of forced-labour within the meaning of this Article is available to both citizens and non-citizens. Clause (2) of Article-23 is only an exception to the general rule. The word "beggar" has not been defined in the constitution. The term "beggar" in an Indian term and has a varying local connotation, as regards the kind of labour exacted by force. The common understanding to interpret these words to mean slavery as it was practiced in olden countries and until recent time even in so called civilized countries of Europe and America. Traffic in human beings is not confined only to slavery or slave trade, but it also includes traffic in women and children for immoral purposes.

Article 24 provides that,

"No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment"

146. See Raj Bahadur Legal Remembrance AIR-1953 Cal. 522 Also see Duber Vs. Union of India AIR - 1952, Cal. 1496.
This above provision is certainly in the interest of the public health and safety of the life of children. Does it mean that children below the age of 14 years are allowed in employment other than factories, mines and other hazardous employment which is not prohibited. It's a question to consideration. There are certain specified Articles under the Indian constitution that are optimistic in rendering security to both the adult and child bonded labourers. Children are assets of the nation. That is why Article-39, of the constitution imposes upon the state an obligation 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. In pursuance to the above duty the employment of children Act, 1938, the children (Pledging of Labour) Act, 1933, have been permitted. The employment of children Act, 1938, prohibits employment of children below 14 years of age in the railways and other means of transport. Many other new legislations have been made. The Indian Factories Act and Mines Act, 1952, the Merchant Shipping Act, 1958, the Motor Transport Workers, Act, 1951, the Plantation Labour Act, 1951, the Bidi and Cigar workers (Condition of Employment) Act 1966 and the Apprentices Act, 1961, prohibited employment of child below a certain age. The most important of all efforts is the child labour (Prohibition and Regulations) Act, 1986.

However, Article 24 does not prohibit their employment in any innocent or harmless job or work. But the practical enforcement believes the expectations of the law makers despite the hope aroused of some
improvement of the lot of bonded-child workers. The enactment of the child labour Act has not activated either the State Government or the Central Government to any sort of purposive action. The enactment is ineffective in protecting children force from exploitation.

Article 38 says that,

"The State shall strive to promote the welfare of the people, by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the nation life".  

"The State shall, in particular, strive to minimize the inequalities in states, facilities and opportunities not only amongst individuals but also amongst group of people, residing in different areas or engaged in different vocations".

Article 38(1) reaffirms what has already been said in the preamble according to which the function of the republic is to secure to all its citizens social, economic and political justice. Article 38(2) has been inserted by the 44th Amendment Act-1978. The new clause aims at equality in all spheres of life. It would enable the state to have a national policy on wages and eliminate inequalities in various spheres of life.

Article 39, lays down certain principles of policy to be followed by the state. The Article states: "The state shall in particular, divert its policy towards securing" –

(a) that the citizens, men and women equally have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the observation economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is a equal pay for equal work for the both men and women;

(e) that the health and strength of the workers, men and women and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation to unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 39(a) says that it shall be obligation of the state to direct its policy towards securing its citizens right to adequate means of livelihood. In case of bonded labourers the obligation of state under Article 39 (a) can only be meaningful if they are provided adequate means of living. It cannot be arranged without providing them right to work. Article 39(e) & 39(f) and Article 42 are most useful principles to bonded labourers. Article
39(e) deals about the health and strength of labourers or workers of men & women and children. They should not engaged against their strength and skill anywhere.

Clause (f) of Article 39 was modified by the constitution (42nd amendment) Act, 1976 with a view to emphasize the constructive role of the state with regard to children. The changes made by this amendment do not change the content and the spirit of unamended clause (f). The object intended to be achieved by the amendment could have been fulfilled even under the unamended clause (f) of Art 39.

The expression "material sources of the community" under Article 39(b) covers the lands and held by private owners also. Such private land can be acquired by government by public purpose such as for developing, constructing house buildings and providing public amenities like shopping complexes, parks, roads, drains, playgrounds etc.

Pursuant to Article-39(d), Parliament has enacted the Equal Remuneration Act, 1976. The directive contained in Article-39(d) and the Act passed there to can be judicially enforceable by the court. The doctrine of equal pay for equal work is not a fundamental right is certainly a constitution goal applicable equally to persons employed on a daily wage basis. Therefore, doctrine of equal pay for equal work capable for enforcement through constitution remedies under Article-32 of the constitution. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work.
Article-38 & 39; embody the jurisprudential doctrine of "distributive justice", our constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice in the sphere of law making connotes inter alia, the removal of economic inequalities rectifying the injustice resulting from dealing and transactions between unequal in Society. Article -39(A) specifies equal justice and legal aid. It reads "The State shall secure that the operations of the legal system promotes justice on the basis of equal opportunities and shall in particular provide legal aid by suitable legislations or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

Article - 39(A) directs the state to ensure that the operations of legal system promote justice, on a basis of equal opportunities and shall in particular provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This Article was added to the constitution pursuant to the new policy of the government to provide legal aid to economically backward classes of people includes SC's, ST's, OBC's including bonded labourers etc.

"Legal aid" and "Speedy trial" have now been held to the fundamental rights under Article-21 of the constitution available to all prisoners and enforceable by the court. The State is under a duty to provide a lawyer to a poor person bonded labourers etc and it must pay to the lawyer his fee as fixed by the court. In order to achieve the objectives
in Article-39(A) the state must encourage and support the participation of voluntary organization or social action groups in operating the legal aid programme. The legal aid programme which is meant to bring social justice to the weaker mass of people cannot remain confined to the traditional or legislation oriented programme but it must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic approach. The voluntary organizations must be involved and supported for implementing legal aid programme and they should be free from Government control.

Article-41 directs for right to work to education and to public assistance in certain cases as under;

"The State shall when the limits of its economic capacity and development make effective provisions for securing the right to work, to education and to public assistance in case of unemployment old age sickness and disablement and in other cases of undeserved want".

Right to work under Article-41 is not an absolute right but it is subject to economic capacity of state.

Article-42 lays down the provision for just and human condition for work and maternity relief. The Article reads:-

"The State shall make provisions for securing just and human conditions of work and for maternity relief".
Article-43 is vital in stating provision in respect of living wage, etc. for workers:

"The state shall endeavour to secure by suitable legislation or economic organization or in any other way to all workers agricultural industrial or otherwise work in living wage conditions of work assuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas".

Article - 43 refers to a "living wage" and "not minimum wage". The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing provisions for education of children protection against ill health requirements of essential social needs misfortunes including old age. Therefore, bonded labourers should have system to provide living wage.

Article - 45 adds a new dimensions of rendering literacy to the new generation. It lays down that:

"The State shall endeavour to provide within a period of ten years from the commencement of this constitution free and compulsory education for all children until they complete the age of fourteen years".

Under Article-45 the state to make provision within 10 years for free and compulsory education for all children until they complete the age of 14 years. The object is to abolish illiteracy absolutely from the country.
Article-46 ventures for promotion of education and economic interests of scheduled castes, scheduled tribes and other weaker Sections. This Article states:-

"The state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the scheduled castes and the scheduled tribes and shall protect them from social injustice and all forms of exploitation".

Article-46 enjoins the state to promote with special care the education and economic interest of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and from all forms of exploitation.

Article-47 deals level of nutrition, standard of living and improve public health. This states:-

"The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the state shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health".

Article-47 imposes duty upon the state to raise the level of nutrition and the standard of living and improvement of public health of bonded labourers. In particular, the state should bring about prohibition of the
consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

As an apex document, constitution has enunciated myriad Articles to stamp out the menace absolutely as well as ensure welfare of labour group of the society. State cannot shirk from its responsibility towards labourers who belongs to weaker section of the community and is unable to wage a legal battle against strong and powerful opponent who is exploiting him. The agenda of the social reform to provide socio-economic justice to all is the prime concern of the constitution. Without abolition of the menace of bonded labour system from the society, the target of welfare state and socio-economic justice would be meaningless in free India. With the honest implementation of above stated Articles the pernicious practice of bonded labour system can be abolished in toto. It should be the profound aim of all the organs of the government to create congenial atmosphere (socio-economic and political) towards the abolition of bonded labour system in India. All sorts of preferential treatment should be provided to the weaker sections of the society to abolish the practice of bonded labour system. It is high time to reconsider on the causes of continuation of this menace to eradicate it for achieving the ends of welfare state in India.

During the consideration of Article-17 of the Draft constitution, which corresponds to Article-23 of the constitution. *Raj Bahadur* observed.149

149. C.A.D. 809, See also the views of J.J. Krishnamachar, Id, at 810-11.
"Begar like Slavery has a dark and dismal history behind it. As a man coming from India States, I know what this beggar, this extortion of forced labour has meant to the downtrodden find dumb people of Indian states. If the whole story of the beggar is written, it will be replete with human misery, human suffering, blood and tears".

4.3. Parliamentary Legislations:

The concept of laissez faire gave birth to labour exploitation and victimization at the hands of resourceful employers, because labour being weaker class. With the concept of laissez faire two classes with conflicting interests came into existence they are regarded as the exploiters and the exploited. However, with the passage of time and with the concept of welfare state the whole system has undergone tremendous change. After the Second World War, the concept of laissez faire was dethroned and the concept of welfare state has taken its place.

Bonded labourers are quite popular in various occupations as for example in agriculture industry, at the construction sites, stone quarries, plantations, carpet industry, hotel industry and in other business establishments. After independence, the spread of ideals of social progress and human betterment forced the government to enact labour laws for the welfare of the society to serve the ocean of humanity. It appears that though the constitution was enacted as for back in 26th January 1950 which guarantees socio-economic rights and promise of socio-economic justice

151. Ibid.
are well indicated in the various Articles of the constitution of Part III & IV. Austin aptly stated that "both fundamental rights" and "Directive principles" constitute "conscience of the constitution". Socio-economic rights and socio-economic justice provides sustenance to the rule of law. It is embodied in the form of directive principles in Part-IV of the constitution is most dynamic, flexible and revolutionary concept aimed at removing inequalities among all the citizens, directive principles cannot be judicially enforced, yet they have their importance in providing guidelines to the central and the State Governments in formulating progressive policies to bring social and economic justice to the common man.

In an era of globalization, privatization, liberalization and modernization, whose main focus, theme and goal of all those must lead to humanization. Humanize the globe so that everywhere the human rights are respected and obeyed touching the lives of the people particularly of all those, the bonded labourers, hungry, the excluded, the destitute, voiceless the persecuted, the sick, the suffering, the disabled, less fortunate and the unfortunate. Every human being, without any discrimination is entitled to enjoy basic human rights as are recognized in Part III of the constitution. The fundamental rights (Part 3rd) and directive principles (Part 4th) reflect the socio economic philosophy of a true welfare state. It seeks to entrench socio and economic rights of the people.

The constitution under Part-IV, directs every state that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and
political, shall inform all the institutions of the national life. State shall also strive to minimize inequalities in income among all individuals and various groups of people. State shall strive towards securing adequate means the livelihood to the citizens ensure that the operation of economic system does not result in the concentration of wealth and that there is a equal pay for equal work for both men and women.

The State shall within its economic capacity make provision for securing right to work to education and to public assistance in case of unemployment, old age, sickness and disablement. It shall take steps to secure participation of workers of the management in undertaking and establishments. It shall endeavour to provide early childhood care and education for all children until the age of six years. The state shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. It shall promote with special care the educational and economic interest of the weaker sections of the people. It shall also regard the raising of level of nutrition and standard of living of its people and the improvement of public health as among its primary duties.

Since 26th January, 1950 different provisions of the constitution stipulate that it is the foremost fundamental right of every one in this country to live like a human being, which includes protection of the health and strength of labourers, workers, men, women, and children and must have opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity, educational facilities, creative
facilities, just and human conditions of work and maternity relief. Various legislations affecting appalling condition of bondage and slaves have been passed from time to time, before and after the independence to provide dignity, liberty, equality, freedom, relief and better condition of work to those exploited class of people i.e. bonded labourers so that they may live a life of human being.

Notable legislations and their provisions are analyzed to make the problem crystal clear as under:

1) The Minimum wages Act. 1948,

4.3.1. The Minimum Wages Act, 1948:

The directive principles of State policy embodied in Article 43 of the constitution also enjoin on the state to endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or in other business establishment living wage condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunity.
Many persons provide labour or service to another against receipts of remuneration which is less than minimum wages, he is acting under the force of some compulsion which derives him to work though he is paid less than what he is entitled under the law-to receive.

There can be no doubt and indeed this is not disputed that the Minimum Wages Act, 1948 is the most beneficial and most helpful for the bonded labours, if labour extract the service taken against the less than minimum wages amounts the forced labour and violates Act, 1948 provides ample safe guards for minimum wages. It is the duty of the Government to fix minimum rates of wages. Provision for advisory Board has been made for fixation and revision of minimum wages, wages have to be paid in cash but in certain circumstances it may also be paid in kind, without any deduction. The Government has to fix the number of hours of work which shall constitute a normal working day inclusive of one or more intervals. Where an employee, wage as not less than the minimum rate, provisions for the appointment of inspectors and commissioner is also there to enable labourers to get minimum wages. Rules provide for the publicity to the minimum wages so that the labourers become aware about the rates of wages. It has been provided that notices containing the minimum rates of wages shall be fixed together with the extracts of the

152. Minimum Wages Act 1948, S-3(1).  
153. Id. S-8.  
154. Id. S-11.  
155. Id. S-11(2)  
156. Id. S-12  
157. Id. S-13(1)  
158. Id. S-20  
159. Id. S-20.  
Act. The rules made there under shall be displayed in English and in languages understood by the majority of the worker at the main entrance to the establishment. Extra wages for overtime has to be given to the labourers. When worker work for more than 9 hours in any day or for more than 48 hours in a week he shall be respect for overtime work be entitled to one and half times the ordinary rate of wages in case of employment-in agriculture and in case of any other scheduled employment at double the ordinary rate of wages.

So the object of this Act is to prevent exploitation of the forced labourers. But till now, the low payment of wages, is also effects the phenomenon of bondage which is below the minimum wages as fixed by the Government. Due to low payment they are unable to pay his debt and comes into the trap of bondage.

4.3.2. The Mines Act, 1952:

The Mines Act, 1952 in its chapters v, vi and vii stipulate certain benefits for the workmen. These chapters (v, vi, vii) of Mines Act, 1952 are intended to secure to the workman just and human conditions of work ensuring decent standard of life with basic human dignity. By this Act of 1952, the essential rights and benefits conformed on the workmen are relating to their health and safety which includes provisions for drinking water (Section 19), proper conservancy facilities (Section 20), medical appliances (Section 21) which includes first aid boxes, properly equipped and readily available first aid rooms, hospital or dispensaries, etc.

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(Section21). It is also specified under Sec-22(1) of Mines Act, 1952 that inspectors are employed to prohibit owners, agents or managers of mines to employ workers in such occupation, which is dangerous to human life. In this Mines Act, 1952 provisions have also been made to give full wage to such prohibited workers with an alternative employment (Section-25). Section 23, 25 and 26 speak about the proper notice of accidents and diseases have to be given and causes have to be investigated for the workers. Section 24 & 25 provide proper relief and treatment has also to be provided to the workman or labourers. Provisions for weekly day of rest and six days week (Section 28), compensatory days of rest in case workman is deprived of weekly rest has been made (Section 29). Section 30 & 31 of Mines Act. 1952 also direct that no adult worker should be allowed to work more than 48 hours in a week. In case of night shift, the worker has to be given 24 hours rest when the shift ends (Section 32). Extra wages are to be given for overtime work (Sec-33). Maximum hours for work have been fixed at ten including overtime (Sec-35). Sections 43, 45 & 46 prohibit employment of children and women in hazardous works. Section 18 of the Mines Act, 1952 enshrines that the provisions of Mines Act and Mines Rules, 1955 rest on the owner agent and the manager of every stone quarry and stone crusher.

4.3.3. The Contract Labour (Regulation And Abolition) Act, 1970:

This Act was made for solving the force labour problems. This legislation is considered to be made for the dignity, equality, liberty and freedom of the bonded labourers.
This Act through its many provisions trying to rescue the bonded labourers and to secure their life as a human being.

The system of employment of contract labour is a universal phenomenon, it prevails in various parts of our country and the vast multitude of unorganized labour is its major constituent.

No doubt the system is efficient and economical from the point of view of the employer. It is however exploitative in nature and then the unorganized contract labour spends their life like a bonded labour, this system should be abolished whenever possible and practicable and that in case the system could be abolished altogether the working conditions of the contract labour should be regulated so as to ensure payment of the wages and provisions of essential amenities.

The contract labour Act applies to every establishment in which 20 or more workmen are employed or where employed on any day of the preceding twelve months as a contract labour and to every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen. Under this Act in Section 16, 17, 18 (a), 18(b) & 18(c) have been imposed duty on every contractor to provide canteens, rest rooms, wholesome drinking water, latrines and urinals, washing facilities, first aid facilities etc. Section 21 of this Act is made responsible every contractor for payment of wages to each worker employed by him as a contract labour and such are to be disbursed in the presence of a representative daily
authorized by the principal employer. The contract labour rules\textsuperscript{162} particularizes the detail of the welfare and other facilities such as drinking water and urinals \textsuperscript{163} washing facilities,\textsuperscript{164} first aid facilities,\textsuperscript{165} rest rooms,\textsuperscript{166} canteens,\textsuperscript{167} dinning halls,\textsuperscript{168} furniture and utensils,\textsuperscript{169} food stuff on no profit no loss basis,\textsuperscript{170} timely payment of wages,\textsuperscript{171} etc. This legislation also carries some peculiar provisions for creches\textsuperscript{172} which provides the construction and maintenance of crèches within so matters of every establishment.\textsuperscript{173} The creches should not be situated in close proximity to the obnoxious fumes, dust and ours in which excessively noisy processes are carried on.\textsuperscript{174} The creche building should be constructed of heat resistant materials and should be rain proof\textsuperscript{175} and the accommodation should be on a scale of at least 20 sq.ft. of floor area for child.\textsuperscript{176} There should be a shady open air play ground suitable fenced for older children.\textsuperscript{177} There should be cool and wholesome drinking water available for the children and the staff of the creche.\textsuperscript{178} Children below 2 years of age should be fed without least $\frac{1}{2}$ point of pure milk per child per day.\textsuperscript{179}

\textsuperscript{162} Contract Labour (Regulation and Abolition) Central Rules, 1981. Hereinafter referred as Contract Labour rules.

\textsuperscript{163} S-51.

\textsuperscript{164} S-57.

\textsuperscript{165} S-40(1) and 58.

\textsuperscript{166} S-41.

\textsuperscript{167} S-42.

\textsuperscript{168} S - 44.

\textsuperscript{169} S - 45.

\textsuperscript{170} S - 47.

\textsuperscript{171} S - 63 - 73.

\textsuperscript{172} Contract Labour (Regulation and Abolition) Central Rules, 1971, Construction and Maintenance of Creches.

\textsuperscript{173} S-1.

\textsuperscript{174} Ibid.

\textsuperscript{175} S - 2.

\textsuperscript{176} S-3(1).

\textsuperscript{177} Id. S - 3 (ii).

\textsuperscript{178} Id. S - 4 (i).

\textsuperscript{179} Ibid.
Children below 2 years of age should be given wholesome refreshment.\textsuperscript{180} Convenient and suitable arrangements should be made for working mothers to feed their children below 2 years of age during the intervals.\textsuperscript{181} There shall be a kitchen attached to the creche with utensils facilities and other facilities for boiling milk and preparing refreshment, etc.\textsuperscript{182} There should be a suitable bathroom adjoining to the creche.\textsuperscript{183} The creche should also have proper equipment,\textsuperscript{184} staff,\textsuperscript{185} medical facilities\textsuperscript{186} and the working hours of creche should correspond to the working hours of the mothers.\textsuperscript{187} Central Government has prohibited the employment of contract Labour in chromites, Magnetite, Gypsum and Mica Mines in the country. The various welfare and other facilities directed to be provided to the contract labourers by various provisions of the contract Labour Act and Rules, has to be provided by Thekedars, Jamadars and the contractors, in case of their default, the principal employer would be liable to provide the rights and benefits conferred by these provisions to the contract labourers.\textsuperscript{188}

4.3.4. \textit{The Equal Remuneration Act, 1976}:

Under the Equal Remuneration Act, bonded labourers are entitled for the payment of equal remuneration in comparison to free labourers. Articles 38(d) of the constitution envisages that the state shall direct its policy, among other things towards securing that there is equal pay for

\textsuperscript{180} Ibid.
\textsuperscript{181} Id.S-4(ii).
\textsuperscript{182} Id.S-4(iii).
\textsuperscript{183} Id.S-4(v).
\textsuperscript{184} Id. S - 5.
\textsuperscript{185} Id. S- 6.
\textsuperscript{186} Id. S-5.
\textsuperscript{187} Id. S-7.
\textsuperscript{188} See Bandhu Mukti Morchd V/s Union of India, AIR (1984) SCC at 201.
equal work for all. This Act also ensure that no discrimination is made against recruitment. Ideally speaking, in constitutional forms, the state furthers equal opportunity to all through social economic reform, irrespective of caste, creed, religion. To give effect to these constitutional provisions, this Act was passed.

Under this Act duty of employer is to pay equal remuneration to men and women workers for same work or work for a similar nature.

Every employer shall maintain registers and other documents in relation to the workers employed by him. The appropriate Government may, by notification appoint inspector for the purpose of making an investigation as to the compliance of this Act by the employer. So all these provisions of this Act help to remove the pathetic conditions of the forced labourers.

4.3.5. Bonded Labour System (Abolition) Act, 1976: This Act has been enacted with a view to ensure basic human dignity to liberate the bonded labourers from any obligation to render bonded labour, forced labour and any failure in implementing the provisions of this legislation would be clearest violation of Article-21 apart from Article-23 of the Indian constitution.

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189. The Equal Remuneration Act, S - 5.
190. Id-S-4.
191. Id-S-8.
192. Id-S-9.
194. Id. S-4(2) (b).
Although, various Act were passed over the years by various state legislatures banning the forced labour and debt mortgage, they were not effective due to lack of uniformity and the universality. The ineffective and un-uniform legislations could not help the bonded labourers and some more specific legislation for entire country was required, therefore founding fathers enacted Articles-23 in the Indian constitution, but even this could not serve the purpose. To curve the evil, immediate steps were required. The labour Minister *Shri Raghunath Reddy*, while piloting the bonded labour system (Abolition) Bill 1976 in Lok Sabha, explained the policy behind the Bill. He said that the system of a bondage based on feudal exploitation perpetuated for ages. The bonded human has no access to any commodity or capital market. The cases to be a free economic agent. He is reduced to an appendage of feudal property, the debt dehumanized him. He lives like a sub-human, he lives like a thing. The system, therefore not only dispossess the labourers but also divests him of his human essence. They used to be punished by land-lords, they were whipped, and they are not only treated as slaves but treated worse than animals. He also said that the ultimate goal of the Bill is to bring back the bonded labourers in the mainstream of the national life and to extricate them from their economic squalor and moral pallor and to restore him from thraldom to freedom.\(^{195}\) Later, the bonded labour system (Abolition) Bill was passed by both the houses of parliament and received the assent of the president on February 9, 1976 and the Act came into force on the 25\(^{th}\) day of October 1976. The Bonded Labour Act has liberated the bonded labourers from any

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obligation to render bonded labour and forced labour. The binding of any custom, tradition of any contract render bonded labour has been removed, and the payment of the bonded debt has been prohibited. The Bonded Labour Act also contains provision to enable labourers to live a life of human being. District Magistrates of every district have been made duty bound to promote the welfare of freed bonded labourers, and to provide economic rehabilitation. The suits and proceedings of the recovery of bonded debt have been barred. The decree or order for the recovery of bonded debt has been made ineffective. The attachment of any movable property for the recovery of bonded debt has been vacated and the property has been restored to the bonded labourer. The mortgaged property has been freed and the bonded labourers have been made absolute owner of their homestead and other residential premises. Provisions been made to punish the persons, violating the Act. The Act provides for the emancipation of bonded labourers through vigilance committees. It is obligatory in each district and sub-division.

Section 13(1) of the Bonded Labour System (Abolition) Act, 1976 states that every state government shall by notification in the Official Gazette, constitute such member of vigilance committees in each district

197. Id. S-5.
198. Id. S-6(f).
199. Id. S-11.
200. Id. S-14(b).
201. Id. S-8(2).
202. Id. S-6(3).
203. Id. S-6(4).
204. Id. S-7(1).
205. Id. S-8(1) & (2).
206. Id. Ss -9(2), (3), 16,17, 18 & 19.
207. Id. S-13(1).
and each sub-division as it may think fit. Each vigilance committee, constituted for a district shall consist of the following members, namely—
(a) The District Magistrate or a person nominated by him who shall be the chairman: (b) three persons belonging to the Scheduled Castes or Scheduled Tribes and residing in the district, to be nominated by District Magistrate; (c) two social workers, residing in the district to be maintained by the District Magistrate, (d) not more than three, persons to represent the official or non-official agencies in the district connected with rural development, to be nominated by the State Government; (e) One person to represent the financial and credit institutions in the district to be nominated by the District Magistrate.

Each vigilance committee constituted for a Sub-division shall consist of the following members namely: (a) the Sub-division Magistrate or a person nominated by him who shall be the chairman; (b) three persons belonging to the Scheduled Castes or Scheduled Tribes and residing in the sub-division, to be nominated by Sub-divisional Magistrate; (c) two social workers, residing in the Sub-division, to be nominated by the Sub-divisional Magistrate; (d) not more than three persons to represent the official or non-official agencies in the Sub-division connected with rural development, to be nominated by the District Magistrate; (e) One person to represent the financial and credit institutions in the Sub-division to be nominated by the Sub-divisional Magistrate; (f) one official specified under Section 10 and functioning in the Sub-division. The Vigilance Committee's only motive is not to emancipate but also to rehabilitate through various social security measures of the bonded labourers. Section
13(1) enunciates to obligatory for every State Government to constitute vigilance committees in each district and Sub-division. The word "shall" in Section 13(1) makes it obligatory for the States Governments constitute vigilance committees in each District and in each Sub-division but at the same time, the last word of Section 13(1) "as it may think fit" makes the provision directory and the State Government may say that they did not think fit to constitute a vigilance committee in particular District or Sub-division. It has been realized number of times that the state governments are not showing much interest in this regard. The Supreme Court has observed the apathy of the State Government in Bandhu Mukti Morcha\(^\text{208}\) as under-

"It is a matter of regard that though Section 13 provides for constitution of a vigilance committee in each District and each Sub-division of a District. The Government of a Haryana, for some reason or other did not constitute any vigilance committee until it's attention was drawn to this requirement of the law by this court."\(^\text{209}\)

Practically, the State Governments are also shirking by denying the feet of existence of bonded labourers from their responsibility to form or set-up the vigilance committees. As Justice Bhagwati has opined:

"It may be, that according to the Government of Haryana there were not at any time any bonded labourers within it's territory....."\(^\text{210}\)

\(^{208}\). Bandhu Mukti Morcha V/s Union of India, AIR 1984, 3SCC 204.  
\(^{209}\). Ibid.  
\(^{210}\). Ibid, P - 205.
This apathy of the State Government can be well illustrated by the following direction of Justice Bhagwati which he gave to the Government of Haryana in Bandhu Mukti Morcha case:-

"The Government of Haryana will without any delay at any rate within six weeks from today, constitute vigilance committee in each subdivision of a district in a compliance with the requirements of Section 13 of the Bonded Labour System (Abolitions Act, 1976 keeping in view the guide-lines given by us in this judgment".211

The Section 13(3)(a) of the Act provides that the Districts Magistrate or a person nominated by him shall be the chairman of district vigilance committee and the Sub-divisional Magistrate shall be the chairman of Sub-divisional vigilance committee. The District Magistrates and Sub-Divisional Magistrates have been chairman of the respective committees because they are law enforcing authorities212 and can go into action with all the powers at their disposal. The statement of Sri Raghunath Reddy, Minister of Labour, while piloting the Bill in the Lok-Sabha highlighting the importance of these officers with his words as under:

".....the District Magistrate, can go into action......with all the powers which a District Magistrate can exercise, otherwise any other committee can be optional committee without capacity to exercise any power......Because those problems may arise every day and District

211. Ibid at 219.
212. R.S.D. Vol. XCIV, No. 6, 12th January 1976, Para 143 & 144.
Magistrate and Sub-Divisional Magistrate would be the proper authorities, to deal with."  

The whole responsibility of the constitution and functioning of the vigilance committees have been left of the District Magistrates, who have multifarious duties to attend. Even if they are anxious to help in eradicating the voice of bonded labour system, they would not find time to make any personal inquiry or investigation but they would have to rely on their sub-ordinate officers such as tehsildars, patwaries etc. and at many places, the patwaries and tehsildars being either in sympathy with the exploiting class or lacking in serious commitment or indifferent to the misery and suffering of the poor and downtrodden, the task of identification, release and rehabilitation through the official machinery would be a very difficult achievement.  

The District vigilance committee shall consist of nine members and Sub-Divisional vigilance committee shall consist of ten members except chairman. Both the committees shall consist of three persons each belonging to Scheduled Castes and Scheduled Tribes. Due to the majority of bonded labourers are from Scheduled Castes and Scheduled Tribes, the three members of the lower castes in both the committees may feel much involved for their causes. Section 13(2)(c) & 13(3)(c) of this Act provides of nominating two workers. The Bonded Labour System (Abolition) Act, 1976's Section 13(2)(e) & 13(3)(c) presumes itself that with the help of social workers of non-political social

215. Bonded Labour System (Abolition) Act-1976, S - 13 (2) (b) and 13 (3) (b).
action groups and voluntary organization may rehabilitate and emancipate the bonded labourers. These two sections of this Act are considered as appropriate and right step from the Central Government to identify and release bonded labourers. There are fortunately in our country a large number of such dedicated social action groups-young men and women inspired by idealism and moved by a passionate and burning zeal to help their fellow beings-whose services can be utilized for identification, release and rehabilitation of bonded labourers.\textsuperscript{216} In Neeraja Choudhury Case Bhagwati J. is trying to highlight the significance of social action groups as under.

"The social action groups may appear to be Unorthodox and Unconventional and their actions may be marked by a sense of military, but they alone will be able to deliver the goods and it is high time that the State Government should start their assistance instead of looking at them and distrusting them."\textsuperscript{217}

It has been clear that only though the active share of the voluntary and social action groups, an identification problem can be met. By P. Sivaswamy Vs State of Andhra Pradesh,\textsuperscript{218} Ranghanath Mishra J. forces for the need of social action groups in the following words:-

".........It is only through the active involvement of voluntary agencies and social action groups that the problem of identification of

\textsuperscript{216} R.S.D. Vol. XCIV, No. 6, 12th January 1976, Para 252.
\textsuperscript{217} R.S.D. Vol. XCIV, No. 6, 12th January 1976, Para 252.
\textsuperscript{218} AIR 1988 SC 1863.
banded labour can be solved".219 Honorable Supreme Court of India is also
trying by one case Legal Research and Another Vs State of Kerala220 that
voluntary organizations and Social Action Groups must be encouraged and
supported by the state in identification and helping of the bonded
labourers. The encouragement and supply by the State Government to
social action groups and voluntary organizations should be done carefully
and cautiously otherwise the possibility of abuse of such encouragement or
support cannot be ruled out. Amongst the numbers of social groups and
voluntary organizations, it is the moral as well as the legal duty of the
Central and State Government in the identification of the voluntary groups
and social action groups who are really bonafidely interested to help the
downtrodden sections of society including bonded labourers.221 Sections
13(2)(d) and 13(3)(d) provides for the nomination of three persons to the
vigilance committees to represent the agencies connected with rural
development. The reasons for having persons from rural development
agencies in vigilance committees may be stated as follows:- About 80% of
total population in India lives in more than 5.5lakhs villages222 of this rural
population nearly 70% of the inhabitants are engaged in agriculture and
other village industries.223

219. Ibid.
220. AIR 1986, SC 2195.
221. Prakash S.S., Bonded Labour and Social Justice, (Deep and Deep publications New Delhi
1990), Ed. 1990, P. 86.
222. Paranjape N.V., Role of Law in Rural Welfare and Community Development Programmes
through Khadi and Gramdyogs (Paper presented before All India Summer Institute on Law
Relating to Rural Development and Planning) 14th February to 16th March, 1983, Law
School, B.H.V. Varanasi, P-I.
223. Ibid.
The maximum of bonded labourers have been engaged in agricultural sector that is why is essential to include persons in the vigilance committees who are engaged in the work of rural development, because they may be able to emancipate bonded labourers working in rural sectors. For the rural development the main agencies are I.R.D.P. (Integrated Rural Development Programme), N.R.E.P. (National Rural Employment Programme) and R.L.E.G.P. (Rural Landless Employment Guarantee Programme) and the District Rural Development agency, Integrated Rural Development programme. I.R.D.P. was initiated in 1978-1979 in 2300 Blocks and was extended to the 5000 and odd development Blocks in the country w.e.f. 2nd October 1980. Integrated Rural Employment Programme's main motives to ensure assistance to families below the poverty lines including bonded labourers. The National Rural Employment Programme (N.R.E.P.) was started in October 1980. It replaced the food for work programme and became the part of Sixth Five Year Plan from 1st April 1981. It is being implemented as centrally sponsored scheme on 50:50 sharing basis between the Centre and the State. The main objective of the programme is the generation of employment, to benefit poverty groups, strengthen rural economic and social infrastructure, improvement in the overall quality of life in the rural areas, special attention to SC/ST and landless labourers, construction of houses specially for SC/ST, social forestry works such as fuel, wood and fodder plantation on the land owned by SC/ST, minor irrigation wells, group wells, bore wells to SC/ST holdings. Drinking water wells, construction of link roads, Harijans chaupals, sanitation facilities, social water conservation works, minor
irrigation works, flood protection drainage and water lodging works etc. Payment of water will be made partly in cash and partly in food grain, washes to be notified. It is a peculiar feature of the programme that no contractor, middlemen or intermediary allowed for execution of work. The rural landless Employment Guarantee Programme has been enunciated w.e.f. 15th August 1983. The objective is to improve and expand employment opportunities for rural landless with a view to provide guarantee of employment at least one member of every rural landless labourer's family, up to 100 days in a year. Creation of durable assets of strengthening the rural infrastructure. Works to be undertaken are construction of rural link roads, field channels, land development and reclamation of waste land or degraded land with special improvement in hill and desert areas. Social forestry, soil and water conservation, it would be regarded as positive approach to express clearly that these aforesaid agencies came into existence after 1976 but the legislatures haven't intended to be included those persons who are directly or indirectly related with the vigilance committees. Bonded Labour System (Abolition) Act, 1976 mentions in Section 13(2)(d) & 13(3)(d) as follows "three persons to represent the official or non-official agencies in the district Sub-divisional connected with rural development" with these section it has become definite that it is wide enough to include any present or future official or non-official agencies. Therefore, the concerned persons of above agencies can be included positively in the vigilance committees. The main thrust of the government, nowadays is on the non-official agencies. It has been stated in the 7th Plan that serious efforts will be made to involve voluntary agencies.
& 13(3)(e) enunciates for an inclusion of one person to represent the financial and credit institutions in the district and Sub-division. For immediate financial assistance to have one member from financial or credit institution will help them in getting them loans, etc. to start their independent vocation. The members of financial and credit institutions will feel a sense of moral involvement in helping bonded labourers financially. It is provided under Section 13(3)(i) of the Act that one officer who has specified under Section 10 and carry on his duty in the Sub-division shall be appointed to the Sub-divisional vigilance committee. The members appointment procedure is absent in case of District Vigilance Committee of the Act. The reason of such appointment may be to make Sub Divisional Vigilance Committee under the direct supervision of District Magistrate. Practically District Magistrates have specified one officer in the rank of Additional District Magistrate or Sub-divisional Magistrate and has conferred powers and imposed duties to rehabilitate the bonded labourers. Those officer has to he appointed to the Sub-divisional vigilance committees. From the Section 13 of the Bonded Labour System (abolition) Act, 1976, it has been clear that both the vigilance committees have been given in the hands of District Magistrates. Section 13(2)(a) of the Act says about the District Magistrate to be the chairman in the District Vigilance Committee. Section 13(2)(d) of the Act specifically expresses that District Magistrate has to nominate six members out of nine and rest three are nominated by the State Government, on his recommendation.

The four members of Sub-divisional Committee are to be nominated by the District Magistrate (Section 13(3)(d) & Section 10) himself and six
members, by Sub divisional Magistrate (Section 13(3)(b), (c) & (e)) working under his thumb.

From all these Sections of the Act of the vigilance committee, it is also clear that District Magistrate has been projected as superman or Krish in the Act. But practically District Magistrate is a busy officer (body) engaged in different administrative works including law and order problems and hardly gets time to look after the vigilance committee. It is also established fact that no District Magistrate on this earth can perform all the assignments properly, assigned to him under the Act.

The vigilance committee's main function shall have to advice the District Magistrate or any officer authorized by him as to the action taken, to ensure that the provisions of the Act or any rule made there under are properly implemented to section 14(l)(a) grant for the economic and social rehabilitation of freed bonded labourers (Section 14(l)(b)), to co-ordinate the functions of rural banks and co-operative societies with a view to canalizing adequate to credit to the freed bonded labourer (Section 14(l)(c)), to keep an eye on the number of offences of which cognizance has been taken under the Act (Section 14(l)(d)), to make a survey as to whether there are any offence of which cognizance out to be taken under the Act (Section 14(1)(e)), and to defend any suit instituted against a free bonded labourer or a member of his family or any other person dependent on him for the recovery of the whole or part of any bonded debt or any other debt which is claimed by such person to be bonded debt (Section 14(1)(e)). A vigilance committee may authorize one of its member to defend a suit against a free
bonded labourer and the member so authorized agent of the freed bonded labourer (Section 14(2)). The intention is to have a vigilance committee at the district level and the Sub-divisional level. For the execution of the provisions of Act is concerned, it is the District Committee and Sub divisional committee which can go immediately into action. Since the District Magistrate is made the chairman of the committee, he can go into in any action what a District Magistrate has possessed in form powers. Henceforth, the District Magistrate is made responsible at the District level and Sub-divisional Magistrate at the Sub divisional level. Normally these problems arise in day to day life and occasional meetings of a committee will not solve them. It may arise everyday and sometimes even every hour and therefore, the District Magistrate and Sub-divisional Magistrate would be proper authority to deal with them. Inspite of all these efforts, these committees could not fulfill the aspirations of the legislatures. The maximum committees have been defunct and are not as effective as required. Since the inception of committees, no regular meetings are held by the committees are not provided adequate and proper guidance and no effective steps are taken to ensure the decision taken. The vigilance committees as they exist today are not effective. The prime motive of establishment of vigilance committee is to identify bonded

226. Twenty Point Programme Committee headed by the Chief Minister was constituted at state level in Bihar. Similarly in Utter Pradesh a Sub-committee of cabinet with labour Minister as convener and the Minister of Public Works Department and Harijan and Social Welfare as a member was constituted in 1976 to give affectivity to the vigilance committee and to look after the rehabilitation programme of bonded labourers but it ceased to function since 1977, See Evaluation of centrally sponsored scheme for Rehabilitation of Bonded Labourers (Final Report), Programme Evaluation organization Government of India, New Delhi, March 1984, P-17.
227. Ibid.
labourer and to free and to rehabilitate them but the performance of the vigilance committees are dismal but the state governments do not take much interest in release and rehabilitation of bonded labourers. Among the various functions, the main functions of the vigilance committees are to implement the law and to provide economic and social rehabilitation of the forced bonded labourers, by ensuring credit from the banks, co-operative societies and by defending suits instituted against freed bonded labourers. Today, when, to consider about the role of vigilance committees, the experience shows that either the vigilance committees have been formed or the performance have not been very much satisfactory and the provision has been reduced to a provision on paper only. Only provision is there. There does not seem to be a will (desire) behind it. In this Act it is seen that the District Magistrate is all in all in the vigilance committee. In Section 14(1)(a) of the Act, it has been clear that the function of each vigilance committee shall be to advice the District Magistrate which includes that the District Magistrate will advice himself to implement the provisions of the Act within duties and responsibilities of the District Magistrate. No prudent person can be suggested to have a whole responsibility to the District Magistrate in the vigilance committees. At the same footing District Magistrate also enjoys position by which he can do a lot of help to bonded labourers and then his physical presence also becomes necessary in the vigilance committee. In Section 13(2)(a) & 13(3)(a), it is a suggestion that a committed and dedicated social worker should be made Chairman and District Magistrate and Sub-divisional

Magistrate should be made Secretary at the District and Sub divisional vigilance committees level. Under Section 13(2)(e) & 13(3)(c) there is no guideline for nomination of two social workers at the District and Subdivisional vigilance committees. It may have the over night a person belonging ruling party becomes social workers. As a suggestion in these Sections (Section 13(2)(c) and 13(3)(e) there should be an amendment to make sufficient specification to remove the subjectivity. Under Section 14 of the Act. it has become duty bound to the vigilance committee to ensure economic and social rehabilitation to provide credit, to pursue eases instituted for and against bonded labourers. On the other hand the Section 11 provides "the District Magistrate....and the officer specified by him as far as practicable try to promote the welfare of freed bonded labourers......." from the interpretation of the Section 11 it clears that Section 11 makes weak of vigilance-committees and the District Magistrate can very well say, that he tried his level best to emancipate bonded labourers but it was not so practically possible to execute the welfare of the bonded labourers in the given situation. The District Magistrate cannot be held responsible to rehabilitate the bonded labourers in the existing provision. It is suggested that to make the vigilance committees effective "as far as practicable, try" should be ousted from the specific section of the Act. The Bonded Labour System (Abolition) Act, 1976, sections 13(2)(d) & 13(3)(d) say that there shall be vigilance committees at the District and Subdivisional levels consisting of officials dealing with development project and non-official concerned with the development without effecting monitoring body at state and central level, it is no doubts that these
committees will not be of much avail in the control of the bonded labour practice problem effectively. Therefore, Section 13 of the Act should be amended and to include central and state vigilance committee.

4.3.5.1. Model for Central Vigilance Committee:

1) Central vigilance committee shall consist of following members namely:-

a) A member of Lok-Sabha, belonging to Scheduled Castes or Scheduled Tribes, who shall be the Chairman,

b) One dedicated reputed and committed social worker, who shall be the Vice Chairman,

c) Labour Secretary, Government of India who shall be ex-officio Secretary to the Committee,

d) Two members of the Parliament belonging to Scheduled Castes or Scheduled Tribes shall be appointed as members,

e) Commissioner of Scheduled Castes and Scheduled Tribes will be ex-officio member of the committee,

f) Two social workers, having a reputation of doing social service shall be nominated as members,

g) All the aforesaid members of the central vigilance committee must perform their duties honestly with bonafide intention towards the emancipation and rehabilitation of bonded labourers.
2) The Chairman, Vice-Chairman and the members of the Committee shall be appointed or nominated by Labour Minister Government of India.

4.3.5.2. Model for State Vigilance Committee:

1) The State vigilance committee shall consist of the following members namely:-

a) An M.L.A., belonging to Scheduled Castes or Scheduled Tribes who shall be the Chairman,

b) One dedicated reputed and committed social worker, who shall be the Vice-Chairman,

c) State Labour Secretary, who shall be ex-officio Secretary to the Committee,

d) Two M.L.A.'s belonging to Scheduled Caste or Scheduled Tribes,

e) Director of State Harijan and Social Welfare who shall be the ex-officio member of the committee,

f) Two social workers, having a reputation of doing social service shall be nominated as members,

g) All the aforesaid members of the state vigilance committee must execute their duty with bonafide will and intention towards the emancipation and rehabilitation of the bonded labourers.
2) The Chairman, Vice-Chairman and the members shall be appointed or nominated by State Labour Minister.

If the administrative authority or officer belong from upper Scheduled Caste or upper Scheduled Tribe or lower Scheduled Caste or lower Scheduled Tribe have much concern and feeling for the poor and downtrodden. But in case of an officer of upper strata, they do not have much feeling for the poor and the downtrodden. Therefore, the officers who are posted at different levels in the vigilance committees should be properly trained. Those officers must have a sense of involvement with the misery and suffering of the poor and they may carry out their job with total dedication to the cause of removal of poverty and in a manner which may inspire the confidence of the weaker sections of the community including bonded labourers. Every officer working in the vigilance committee should be made fully conscious of his responsibility and should be imbued with a sense of purpose and dedication. It is also essential that there should be constant check and supervision over the activities of such officers. It will not be out of place to mention here, the suggestion given by Justice Bhagwati in Bandhu Mukti Morcha Case regarding the Governmental officers as under:–

"We have fortunately in our country a large number of socially committed officers who inspired by idealism, with their enthusiasm undiminished minds untrammelled and hearts unpolluted by all kinds of pressure are prepared to brave opposition and sometimes even danger, in

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231. Ibid.
order to help the deprived and vulnerable sections of the community. Such officers must be encouraged of the community. Such officers must be encouraged and their efforts appreciated so that they may become examplary models for officers to follow".232

Therefore, the vigilance committees have become inactive and ineffective. They don't execute their programmes according to the manner and schedule ascertained in the Act.

In the form of suggestion, the author to convey that District and Sub-divisional vigilance committees should be reorganized and activated with full affirmative spirit and their meetings should be conducted as per the direction inscribed in the Act. The vigilance committee name should be changed into vigilance and implementation committee. The vigilance and implementation committee should proceed and activate in such a manner that to ensure the fullest and overall development of the poor, downtrodden strata of the society specially bonded labourers.

4.3.5.3. The Bonded Labour system (Abolition) Act, 1976 has the following salient features:

1) The primary and unique feature is the abolition of bonded labour, which the very title of the enactment signifies, it renders every covenant or custom or the like relating to bonded labour wholly ineffective and void. Similarly, it extinguished the liability of every bonded labourer to repay the debt.

232. Ibid.
2) Any attachment made prior to this Act vacated as such the possession of the property is restored to the bonded labourer. Provided if such restoration not made within 30 days from the commencement of this Act the aggrieved has a right to apply to the concerned authority, whose order shall be deemed to be an order passed by the civil court enforceable for execution in the court of the lowest pecuniary jurisdiction. The same is the case with the mortgaged or other encumbrance property, which shall be reverted to the possession of the bonded labourer. Even though Section 25 of the Act expressly bars the jurisdiction of the Civil Court, the aggrieved party can apply to the Civil Court for mesne profits in case of there was any delay in the restoration of property in question.

3) The Act expressly declares that the freed bonded labourer shall not be evicted from any homestead or other residential premises under which he sheltered prior to its commencement and if so evicted, it is the duty of executive magistrate in charge of the sub-division within which the residence is situated to see that it is restored to the bonded labour.

4) It specifically confers power upon the State Government to prescribe the powers and duties of the District Magistrate who in turn shall specify to the concerned officers subordinate to him, for seeking proper implementation or enforcement of the provisions of the Act in order to promote the welfare of the freed bonded labourers.
5) It further imposes an obligation of the State Government to provide for the constitution of the vigilance committees by an official Gazette Notification in each state. District and Sub-division whose composition shall be in accordance with Section 13. The District Magistrate or a person nominated by him shall be the chairman of the vigilance committee.

6) The vigilance committee shall carry on those functions mentioned under Section-14. It shall provide rehabilitation of the freed bonded labourers under Section-14(2) the vigilance committee is empowered to authorize one of its members, who shall in such cases be deemed to be an authorized agent to defend the suit against a freed bonded labourer. It shall also conduct survey and keep a watchful eye. Hence, the functions discharged by the vigilance committee are of utmost importance.

7) The Act made provisions for punishment under various heads. The normal punishment prescribed is imprisonment for a term, which may extend to Rs.2,000. But in cases where there is failure or omission in restoration of possession of property then penalty is either imprisonment for a term which may extend to 1 year or with fine which may extend to Rs.1,000 or with both.

8) This Act makes every offence under bonded labour system a cognizable and bailable which shall be tried by Executive Magistrate,
who shall be conferred with the power of either a Judicial Magistrate of 1st class and 2nd class.

On July 1st, 1975, our late Prime Minister Smt. Indira Gandhi in her package 20-point Economic Programme announced. "The practice of bonded labour is barbarous and will be abolished. All contracts and other arrangements under which services of such bonded labour are now secured will be declared illegal".233

4.3.5.4. The objectives of the Bonded Labour System (Abolition) Act, 1976 are as under:

1. The trust of the Act is against the continuance of any form of forced labour.234

2. The Act was enacted with a view to preventing the economic and physical exploitation of the weaker section in the community for matters connected there with or incidental thereto.

3. This was made under the guiding principles of Directive Principles with the amalgamated influence of Fundamental Rights and to assure the dignity of the individual, which is heralded in the Preamble of the constitution.

233. Prime Minister's broadcast to the Nation, July 1st, 1975, See, Dr. Surendra Singh, "Towards Emancipation and Rehabilitation of Bonded labour in India", ILJ Vol. XVII Aug. 1976, No. 8, P. 1491 at P. 1496. Further, in August 1986, abolition of bonded labour has been withdrawn from the new 20-point Economic Programme by the Prime Minister Rajiv Gandhi, probably as super fluous and so not necessary any longer.

234. Bandhu Mukti Morcha Vs Union of India, AIR 1984 SC 802 at P. 826.
4. The open objectives of the Act is identification release and rehabilitation of bonded labourers which are fundamental necessities for the liberty and freedom of individual.

5. This Act is also a part of the labour welfare legislation to protect the labour community and to assist them in march towards the attainment of economic and social welfare which is assured by and for the people of India.

In addition to the enactment of the Bonded Labour System (Abolition) Act, 1976 following guidelines have been issued by the centre to the states for the speedy implementation of the law and early rehabilitation of the bonded labourers.

1. Finalization of the court cases at the earliest on a summary trial basis.

2. Allotment to vacant land falling surplus under the schemes meant for landless labourers.

3. Provision of loan facility for buying varied kinds of agricultural inputs to cultivate the land allotted to them.

4. Priority to the employment of freed bonded workers in various project of public works, irrigation and other departments.

5. Sanction of immediate financial relief to emancipated bonded labourers pending allotment of surplus land and for this authority to be given to the District Magistrates to spend at least Rs.1,000 per family.
(6) Immediate beginning of the time bound programme for the rehabilitation of freed bonded labourers in the integrated Tribal Development Projects and the Tribal Sub plan.

(7) Inclusion of separate programme for those freed bonded labourers who reside outside by the tribal sub-plan area.

In *Neerja Choudhury Vs State of M.P.* 235 it was also made clear in the Bonded Labour System (Abolition) Act, 1976 that failure of any action on that part of the State Government in implementing the provisions of this legislation would amount to be the clear violation of Article-21 apart from Article-23 of the constitution. The various provisions of *Bonded Labour System (Abolition) Act, 1976* have been rightly held that it was the obligation of the State Government to ensure total eradication of the bonded labour system. But it still continues to disfigure the social and economic field in the country. The philosophy of its total abolition remained merely on papers than in practice. 236 The enactment miserably failed to remove the shameful scar from the Indian social scene due to lack of proper identifications of the bonded labourers, ignorance of their rights and entitlements and obstruction by vested interests. The vested interests have all resources (education, wealth, legal advice and political power) at their command. The intended beneficiaries of legislation are poor, illiterate and ignorant.

4.3.6. **Inter-State Migrant Workmen** :

*(Regulation of Employment and Condition of Service) Act, 1979*

The other legislation, which has come to liberate the bonded labourers is the Inter-State Migrant workmen Act which intends to provide certain welfare measures to be obtained both by the contractors and the government the proper upliftment of the workers. Section 8(1) of this Act, enunciates that contractors must have license for engaging or recruiting bonded labourers, which may contain such conditions including in particular the terms and the conditions of the government or other arrangement under, which the workmen will be recruited the remuneration payable hours of work, fixation of wages and other essential amenities. Certain doubts and obligations have been imposed on the contractors, which include inter alia the duty to issue to every inter-state migrant workman of pass book containing various particulars regarding recruitment and employment of the workman, as also to pay the workman the return fare from the place of employment to the place of residence in the home state, when he ceases to be employed.\(^\text{237}\) Wage rates, holidays, hours of work and other conditions of service of an inter-state migrant workman have also been laid down, which provides among other things that in no case shall an inter state migrant workman be paid less than the wages fixed under the Minimum Wages Act, the wages shall be paid in cash.\(^\text{238}\) The displacement allowance shall be paid to the labourer by the contractor at the time of recruitment, which shall not be refundable but

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237. *Inter-State Migrant workman Act, 1979, Section 12(b).*
238. *Id. S-13.*
shall be in addition to the wages or other amount payable to him.\textsuperscript{239} Provisions for journey allowance of a sum not less than the fare from the place of residence in his state to the place of work in the other state, both for outward and return journeys, is also made.\textsuperscript{240} Such workmen also be entitled to the payment of wages during the period of such journeys as if they were on duty.\textsuperscript{241} Every contractor employing inter state migrant workmen in connection with the work of an establishment has to provide to various other facilities, such as to ensure regular payment of wages.\textsuperscript{242} Ensure equal pay for equal work irrespective of sex,\textsuperscript{243} to ensure suitable conditions of work\textsuperscript{244} to provide and maintain suitable residential accommodation to such workmen during the period of their employment,\textsuperscript{245} to provide and prescribe medical facilities to the workmen free of charges,\textsuperscript{246} to provide such protective clothing to the workmen as may be prescribed\textsuperscript{247} and in case of fatal accident or serious bodily injury to any such workman to report to the specified authorities of both the state and also the next kin of the workman.\textsuperscript{248} Various other facilities have also been provided under rules.\textsuperscript{249} These facilities include medical,\textsuperscript{250} protective clothing,\textsuperscript{251} drinking water, latrines, urinals and washing facilities.\textsuperscript{252} rest

\begin{itemize}
\item \textsuperscript{239} Id. S-14(2).
\item \textsuperscript{240} Id. S-15.
\item \textsuperscript{241} Ibid.
\item \textsuperscript{242} Id.S-16(a).
\item \textsuperscript{243} Id. S- 16(b).
\item \textsuperscript{244} Id. S-16(c).
\item \textsuperscript{245} Id. S - 16(d).
\item \textsuperscript{246} Id. S - 16(e).
\item \textsuperscript{247} Id. S - 16(f).
\item \textsuperscript{248} Id. S - 16(g).
\item \textsuperscript{249} Inter-State Migrant workman (Regulation and employment and Conditions of Service) Central Rules 1980.
\item \textsuperscript{250} Ibid, Rule 37.
\item \textsuperscript{251} Id. 38
\item \textsuperscript{252} Id. 39.
\end{itemize}
rooms,\textsuperscript{253} contains creche\textsuperscript{254} and residential accommodation.\textsuperscript{255} The obligation to provide these facilities to inter state workman is not confined only to the contractor, because the Act provides that if any allowance or facility is not provided, the principle employer shall be liable to pay allowances and to provide the facilities.\textsuperscript{256} With the motive of effectively the provision for imprisonment and fine has also been provided for contraveners.\textsuperscript{257} In addition to the rights and benefits conferred upon the bonded labourers under the Inter-State Migrant workmen Act and Rules, they are also entitled to the benefit of the provisions contained in the workmen's compensation Act, 1923. The State Insurance Act. 1948, the Employees Provident funds and Miscellaneous Provisions Act, 1952 and The Maternity Benefit Act, 1961.

4.4. Efforts by State Legislatures

The feudalistic based bonded labour system perpetuated for ages. This pernicious system, not only dehumanize the labourers but also creates an environment where they will not be feel themselves as a human of the society. Normally they live in a very appalling conditions and not as a human being. Where the bonded labourers resided and what they have are unwholesome and unhealthy for their life and for also kindered relatives.

Many legislations have been formulating and effecting for the bondage and slaves from time to time, before and after the independence
to provide relief and better conditions of work to the poor and needy labourers.

1) For the first time under the British rule, Bengal regulation Act No. XI of 1806 bonded slavery in India in strict sense but forced labour practice continued. 258

2) The next important effort towards the abolition of slavery made by the Slavery Abolition Act, 1843. 259 This Act was extended to the states ruled by the native kings. The slaves were legally freed but in practice their bondage continued, as they had to depend upon their masters for the satisfaction of their essential needs. This Act could not make dent into agricestic slavery deeply fortified by social and economic customs practiced in the country. 260

3) The Indian Penal Code (I.P.C.) Act No. XLV of 1860, not only banned slavery and forced labour, but also made it punishable under it's various sections, such as buying or disposing of any person as a slave (Section 370). Section 370 of the I.P.C.1860 provides, “whoever

258. Though the slavery was abolished but at the same time forced labour was legalized by Bengal Regulation XI of 1806, Act No. VI of 1825. Forced Labour was also permitted by Section 1, 2 and 6 of Madras compulsory Labour Act- 1858 (workmen's Breach of contract Act 1859) made the breach of contract for service, after receiving an advance, a criminal offence punishable with imprisonment. Section 200 of the Civil Procedure Code 1859 made provisions for the execution of degree by attachment of property by imprisonment of the party against whom the decree is made. Assam Plantation Act of 1863 gave power to the employer to arrest and impose corporal punishment on workers who tried to leave the plantations before the expiry of their contract period. The Criminal Tribes Act 1924 made provisions for extracting forced labour from low castemen. Under the one or other pretext by the high castemen and property holders. Forced labour was also permitted by Kondals Law Regulation 1936, the Augui Laws Regulation 1936, the Orissa Compulsory Labour Act 1948 and the Northern India Canal and Drainage Act 1973 (S. 65.)

259. Act No. 1843.

260. The Act to provide for the breach of contract of slavery was repealed in part in 1874 and altogether in 1925. Section 200 of civil procedure code was also amended in 1879, so that the contract of slavery could not be enforced.
imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detain against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also he liable to fine". Section 371 of the I.P.C.-1860 prohibits habitual dealings in slaves. It (S-371) provides "whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life or with imprisonment of either description for a term not exceeding ten years and shall also be liable in fine". Where as Section 374 of the I.P.C. 1860 prohibits unlawful compulsory labour. It (Section 374) provides "whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both".

4) In the beginning of the 20th century the State Governments took notice of the evil and started to legislate to curb the inhuman practice of bondage.

i. The Bihar and Orissa Kamiuti Agreement Act, 1920261 is one of the early attempts to check the wide spread evil in the region. It was having provisions to rationalize money lending Section-3 of the Act provided agreement enforceable for one year only and after the expiry of one year the obligation of the Kamiuti, with respect to payment of the debt and performance of the labour had been duly

261. Act No. 5 of 1920.
performed, it reduced an agreement void:— (a) If the agreement was not duly stamped, (b) If the counter part had not been delivered to the Kaimuti, (c) If the period exceeded one year, (d) If it did not provide for the extinguishments of the liability after one year and (e) If it did not provide for fair and equitable remuneration. The Act also rendered an agreement void on the death of either execution or the Kamia and the liability under the agreement was unforceable against the heir of the deceased.262 It remained a dead letter due to apathy on the part of execution machinery.

Another legislation of Bihar Province, the Bihar Money Lender’s Act, 1938,263 regulated money lending transactions and granted relief to the debtors. The Act was general in character and was applied with certain amendments in the scheduled areas of Bihar.

The next vital legal step was taken by the Bihar legislature in 1974, when two bold legislations were passed to emancipate the bonded labourers from the clutches of the moneylenders. These important legislations are:—

a) The Bihar Scheduled Castes, Scheduled Tribes, Backward classes and Denotified Tribes Debt relief Act, 1974.

b) The Bihar Moneylender’s Act, 1974.

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ii. The Madras Province desired to abolish the evil practice of Gothi System by *Madras Debt Bondage Abolition Regulation Act, 1940*. The evil practice of Gothi System was rampantly prevalent in the agencies areas inhibited by the tribal. Section-3 of this Act declared future Gothi agreements void. The Act also laid down that a future labour government would be absolutely void. Section-4 of this Act laid down if the following conditions are satisfied a labour agreement becomes wholly void:

(a) If the fully terms of the agreement are not expressed in writing or if a copy of the agreement is not tiled before the Agency Divisional Officer.

(b) If the advance with the interest is not a fair and equitable remuneration.

(c) If the period during which the labour is to be performed exceeds one year.

(d) Where provision is to be made for interest, if the interest provided is not simple interest at a rate not exceeding six and one fourth percent per annum.

Section-8 of this Act stipulates that the agreement was also void on the death of the labourer.

The different feature of this enactment as contracted with the Bihar legislations need notice. Seetion-9 of this Act enunciates a penalty for
obtaining labour in pursuance of void agreement namely, a fine of Rupees two fifty or in default, six month's imprisonment. The Act rendered the labour contract void if a copy of it was not filed before the agency divisional officer. It was fine step by Madras legislature to curve the pernicious practice of Gothi System in the province of Madras.

iii. In 1975, the Andhra Pradesh Government issued an ordinance banning the bonded labour practice in the state with effect from 28th August 1975.

iv. The Karnataka Government issued the Karnataka Bonded Labour System (Abolition) ordinance which came into force on 20th October 1975.

v. The Kerala Government enacted the Bonded Labour System (Abolition) Act, 1975 and abolished the bonded labour prevalent in the various districts of Kerala.

vi. The Madhya Pradesh Government issued an ordinance prohibiting bonded labour system as "Madhya Pradesh Abaidh Shram Pratishedh" Adhyadesh 1975, it was issued on 25th September 1975, which came into effect from 22nd October 1975.

vii. Maharashtra Government also issued Maharashtra Debt Relief ordinance in 1975, which was later converted into Act, also prohibited the bonded labour system.264

viii. The Government of Orissa promulgated far back in 1948 the Orissa Debt Bondage Abolition, Regulation Act, 1948 to regulate and abolish bonded labour system. Orissa Debt Bondage Abolition Regulation Act, 1948's Section 2(a), 8, 9 & 11 specially provided for abolition of forced labour in the state. But it was not implemented, not rules were framed under the Regulation. It remained a dead letter.265

ix. Far backing 1951, Rajasthan Government had formulated three main legislation to regulate and abolish Sagari Labour in Rajasthan. The first effort by Rajasthan Government was Rajasthan Scheduled Area Act, 1951, then The Minimum Wages Act, 1951 and the Rajasthan Agricultural Relief Act, 1951, stipulated provisions to regulate Sagari labour in Rajasthan. The above stated legislations were the minor endeavour about the abolition of Sagari System in Rajasthan. But the concrete serious effort was made in 1961 by enunciating Rajasthan Sagari System Abolition Act, 1961. The Sagari System was abolished from the date of commencement of the Act.266 Section-4 of this Act states that if any person advancing loan on Sagari and compelling the debtor to render service in fulfillment of the loan was made liable for punishment for a term exceeding upto one year. Section 5 of this Act provided that where a debtor or any member of his family is engaged as a servant, it shall be presumed that the loan was advanced on Sagari System by the

266. See Rajasthan Sagari System Abolition Act - 1961, Section - 3.
master unless it is satisfactorily proved that such engagement was altogether independent of the advance or the loan. *Rajasthan Sagari System Abolition Act, 1961* can be said as progressive piece of legislation in comparison to the Bonded Labour System (Abolition) Act, 1976, because the element of presumption of loan is absent in Section 2(g) of the later Act. The weakness of Rajasthan in *Sagari System Abolition Act, 1961* can be pointed out in its implementation. The Report of the Commissioner for Scheduled Caste and Scheduled Tribes 1963-1964 (para 20, 21) pointed out that it was in force for two years, but no case was reported in spite of the fact that the system was widely prevalent. In 1975 Rajasthan Government passed an ordinance as Bonded Labour Prohibition Ordinance, 1975 against this evil system.

x. The State Government of Uttar Pradesh passed the *U.P. Scheduled Castes Scheduled Tribes debt relief Act, 1947* to ensure relief to scheduled caste and scheduled tribes from the debts. The peculiar feature of this legislation was limited to only few segments of the society, with a motive to cover the evil of bondage in its broader perspective. The Uttar Pradesh Government promulgated the Uttar Pradesh prohibition of Bonded Labour Ordinance, 1975. Later on this ordinance was replaced by Uttar Pradesh prohibition of Bonded Labour Act, 1975 on 22nd July 1975.

xi. The Government of West Bengal enacted Rural Indebtedness Relief Act, 1975, with positive strong will for the eradication of bonded
labourers throughout the state. The Lacadives, Minicoy and Aminidivi Island Revenue and Tenancy Act, 1965 was also passed for the Lacadives, Minicoy and Aminidivi Island.

For banning the forced labour and debt bondage in toto various Acts were passed over the years by various state legislatures. Besides these Assam, Punjab, Tripura, Tamil Nadu, and Gujarat States also made laws against this pernicious system.267

These enactments however, could not solve the problem. Thus a uniform law to deal with this system is highly needed.

The enactment, miserably failed to remove the shameful scar from the Indian social system due to lack of proper identification of the entitlements and obstruction by vested interests. The vested interests have all resources (education, wealth, legal advice and political power) at their command. The intended beneficiaries of legislation are poor, illiterate and ignorant.

4.5. The Child bonded labour legislations in India:

Gabriel Mistral of child labour, Nobel prize winning poet has rightly highlighted :-

"We are quietly of many errors and many faults, but our worst crime, is abandoning the children, neglecting the fountain of life. Many of

the things we need can wait. The child cannot. Right now is the time his bones are being formed, his bloods is being made and his sense being developed. To him we cannot answer "tomorrow", his name is "today".\textsuperscript{268}

In support of the above statement. Honourable Mr. Justice Subba Rao who has rightly observed that 'Social Justice must begin with children, unless tender plant is properly tended and nourished, it has little chance to growing into a strong and useful tree. So first priority in the scale of social justice shall be given to the welfare of children.\textsuperscript{269} The problem of child labour has been examined quite seriously and painstakingly right from ancient India today. Child labour specially in under developed and developing countries is quite high and abnormal. Independence, Liberty, Fundamental Rights have become meaningless to them.

It is reality and it lies in the fact that the child still has not been given proper attention and is being exploited by the people who achieve their selfish ends. Children are recognized as a supremely important national assets and the future well being of the nation must be protected by the damaging effects of excessive exposure to heat- cold and rain. In context of the above view, a social welfare team has rightly stated \textit{"The important of child welfare, services lies in the consideration that the personality of man is built up in the formative years, and the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stage."} The proper attention, training, guidance towards children be ensured. It will indeed be a deficiency of the society

\textsuperscript{268.} Quoted by Krishna Iyer V.R. in "Law and Life" Ed. 1979, P - 8.
and the Government of the day if the child is not properly cared. Every
society must be therefore devote full attention to ensure that children are
properly cared for and brought in a proper atmosphere where they would
receive adequate training, education and guidance in order that they may
be able to have their rightful place in society when they grew up.\textsuperscript{270} They
need special care and protection because of their tender age, physique and
mental facilities. Today's children have to tomorrow's citizens who will
hold the country banner high and maintain the prestige of the nation.
Therefore, children must have social, economical and educational based
congenial atmosphere where they will develop their personality in the
fullest extent.

India has the largest number of the world's working children out of
which all most ninety percent are bonded labourers. So the national child
labour Advisory Board recognized that eradication of child labour from
hazardous occupations and regulation of the working conditions of
children in non-hazardous challenge. While welcoming the initiatives
taken by the Ministry of labour in the area of legislation, the national child
labour policy and a project based plan of action, the Board called upon the
government to implement the child labour policy on the time bound basis.
Numerous Act, rules, and regulations have been aptly and \textit{dexterously}
taken into consideration for dealing with the child labour policy. No time
bound programme has yet been taken up. Thus, the gap widens between
what has been professed in the following legislative statutes and what is

\textsuperscript{270} Bhagwati P.N.J., Pathak R.S.J., in Sheela Barse \textit{V/s} Secretary Children Aid Society, Supreme
Court Journal, (1987) 1, P - 585, Para II.
being practiced unto the child labour, but on the whole on the present "all roads lead to combat and drive out this evil from the society".

The first initiation in the form of statute precisely on child labour was enacted in 1850. In the child labour welfare legislation Apprentices Act (XIX of 1850) was the prima facie bold step which provided legal protection to child in various occupations.

4.5.1. The Apprentice Act (XIX of 1850):

This Act was passed apparently for enabling the children, especially orphans and poor children brought up by public charity. The learning of trades crafts and employments, by which when they came to full age they might gain a livelihood. Any child above 10 but under 18 years of age might be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment for such term as was set forth in the contract of apprenticeship not exceeding 7 years, but not beyond his age of 21 years and in case of female till her marriage. Any Magistrate or justice of peace might act with all the powers of the guardian under the Act on behalf on any orphan or poor child convicted before him or any other Magistrate or Vagrancies or any petty offence. Similarly, the authorities of a public charity might bind an orphan or poor child brought up by that charity as his or her guardian. The Act provided for assigning of apprentice to some master and the behaviors of the master and apprentice were to be regulated by the provisions of the Act. While the master and his agent had power to chastise the apprentice moderately for misbehavior, the Magistrate could also entertain a complaint by the apprentice against the
master of course, a complaint by the master against the apprentice was also entertainable. The Magistrate might cancel the contract for any misconduct of the apprentice.

Incidentally, it may be noted that the Apprentice Act 1961 (52 of 1961) was passed for enabling a person to undergo apprenticeship training in any designated trade in pursuance of a contract. The 1961 Act repealed 1850 Act.

Under 1961 Act if the apprentice is the minor, all contract are to be entered into by his guardians on the minor's behalf vide Section 4. Under Section 3 a person shall not be qualified for being engaged as an apprentice unless he (a) is not less than fourteen years of age, and (b) satisfies the standard of education and physical fitness prescribed for the trade concerned.

The main object of the Apprentice Act, 1961 is to provide for the regulation and control of training of apprentice of trades and for matters committed therewith. The Act extends to the whole of India (Section-2) and provides for the regulation and control of training of apprentice in trade and for matters connected therewith (Preamble). Under the Act, an apprentice has been defined "as person who is under going apprenticeship training is a designated trade in the pursuance of control of apprenticeship". The Act provides no person shall be qualified for engaged as an apprentice or to undergo apprenticeship training in any designated trade unless he is at least 14 years of age and satisfies such standards of
education and physical fitness as may be prescribed (Section-3). If he is a minor, his guardians required to enter into a contract of apprenticeship with the employer (Section-4 (a)) and it shall be registered with the apprenticeship Advisor (Section-4(b)). Initially the Act was enforced in 12 industries but in order to meet the growing and changing demands of all skilled workers in other industries the coverage of the Act has been extended to 195 industries. The central Government has also specified 56 designated trades for the purpose of the Act.

Contravention of the provision of the Act or rules is an offence punishable with imprisonment up to six months and or fine. But no court shall take cognizance of any offence except on a complaint in writing by the Apprenticeship Advisor. The period of the limitation for presentation of such complaint is six month from the date of commission of the alleged offence.

4.5.2. The Indian Factories Act (XV of 1881):

There was no state regulation of the factory labourers prior to 1881. The Indian factories Act, 1881 made applicable to manufacturing establishments using mechanical power and employing 100 or more persons, plantation industries being exempted. The Act prohibited the employment of children under 7 years of age and prescribed the minimum and maximum ages for employment at 9 and 14 respectively. Their working hours were limited to 7 hours a day with an interval of rest for half an hour and weekly holiday. First international labour conference was held in Berlin on 1890. The Government of India appointed a commission
on September 25, 1890 and mainly on its recommendations a new Act that is Indian factories Act (XV of 1891) came into force in January 1, 1892. This Act made slight improvement upon its predecessor. It applied to all factories employing 50 persons and using power. The lower and upper age limit of children were fixed at 9 and 14 respectively and their hours of work were limited to 7 hours a day with rest of interval of 1/2 an hour. For women the Act prescribed 11 hours a day with rest of 1/2 hours. It also restricted the employment of women and children. For men, the interval for rest was 1/2 an hours with one holiday in every week. Indian factories Act (XII of 1911) regulated the hours of work of seasonal factories working for less than four month a year. This Act limited the hours of work for adult male work to 12 a day and of children to six a day in textile factories, with a rest of interval of 1/2 an hour. The Act also made provisions regarding health and safety and effective inspection.

4.5.3. The Indian Factories Act (II of 1922):

This Amending Act included the industries undertakings using mechanical power and employing 20 or more persons. The hours of work for all adult workers both male and female were fixed at 11 hours a day and 60 hours a week. The period of one hour rest for work exceeding 6 hours and an weekly holiday were allowed to all workers. It provided that no worker should go without a holiday for more than ten days at a stretch. Minimum age of children was raised to 12. A child was defined as a person under 15 years of age. Their working hours were limited to 6 a day the employment of women and children under 18 in certain dangerous process
was prohibited. Overtime wages were to be calculated cannot less than 1 1/4\textsuperscript{th} times the normal rate.

After some minor amendments in 1926 and 1931 a new factories Act was enacted in 1934 (Act 25 of 1934). It consolidated the replacing all previous legislations on factories. It made a classification of factories into non seasonal (perennial) and seasonal. The provisions of health and safety were made more definite and the powers of the inspectors were enlarged. According to this Act, the hours of work of children (persons between the age of 12 and 15 years) were reduced to six to five day in both seasonal and non seasonal factory. Double employment was prohibited, and adolescent workers, that is (i.e.) young persons between the age of 15 to 17 years were not to be employed as adults unless they had been medically certified to be fit to work as adults.

Acting under powers vested under S-33(4) of this Act, the Government of India notified prohibition of the employment of the women children and adolescent in hazardous occupations, vide Notification No.L-3050 dated 18-3-37 and L-3050(1) to L-3050(6) March, 1937. Part, PP.,627-630 and 776-778.

The factories Act, 1934 was amended later on various occasions. The 1945 amendment applied to all non seasonal factories coming under the scope of the factories Act provided for 10 consecutive days of annual holidays with pay for adults and 14 days for children (persons between the ages of 12 and 15) the qualifying period being one years of continuous
service. During holidays the workers were entitled to wages at the average daily rate during three months preceding its commencement.

4.5.4. The children (Pledging labour) Act, 1933:

The royal commission of Labour found evidence in such widely separated areas as Amritsar, Ahmedabad and Madras of the practice of pledging child labour that is the taking of advances by parents or guardians on agreements written or oral pledging the labour of their children. In some cases the children so pledged were subjected to particularly unsatisfactory working conditions.

The commission considered that the state would be justified in adopting strong measures to eradicate the evil and on its recommendation of children (Pledging Labour) Act was passed in 1933.

The main motive of this Act is to eradicate the evil arising from the pledging of young children by their parents employers in lieu of loans or advances. The Acts extended the whole of India except Jammu and Kashmir but after September 1, 1971, it has been extended to the Jammu and Kashmir also Section 1(2). The Act declares an agreement oral or written, to pledge the labour of children whereby the parents or guardians of the child, in return of any payment or benefit to be received, under takes to cause or allow the service of a child to be utilized in any employment to be void (Section-3). “However an agreement made without detriment in a child and not made in consideration of any benefit other than reasonable wages to be paid for the child's service and terminable at
more than a week notice is not to be an illegal agreement (Sec-2). If person who knowingly enters into an agreement with the parents or guardian of a child whereby such parents or guardian pledge the labour of child or an employer who knowingly employs such a child liable to a fine up to Rs.200; if parent or a guardian who knowingly pledges the labour of his child is liable to be punished with a fine which may extend upto Rs.50 (See-4). Section 2 of this Act, defines the terms "child" as, a person who has not completed the age of 15 years.

4.5.5. **The Employment of Children Act, 1938**

The Act was passed to combat the evil of child labour in workshops. It is applied to the whole of India. To prevent employment of children in hazardous employment and certain categories of unhealthy occupations, the Act prohibits the employment of children below 15 years of age in any occupation connected with the transport of passengers, goods or, mail by railway, or a port authority within the limits of a port (Section-3) with the exception of children employed as apprentice or trainees, no child between the age of 15-17 can be employed or permitted to work in those occupations unless he is allowed to rest interval period of rest is to includes at least 7 such consecutive hours between 10.A.M. and 7A.M. as may be prescribed by the appropriate Government [Section-3 (2)].

The Act also prohibits the employment of children below the age of 14 in workshop connected with bidi making, carpet weaving: cement manufacture including bagging of cement, cloth printing, dyeing and weaving, manufacture of matches, explosives and fire works, mica cutting
and splitting, shellac manufacture, shop manufacture tanning and wool cleaning Sec-3(3). Those provisions, however do not apply to workshops where the work is done by the occupier with the aid of his family only or to any school established, aided or recognized by any state government. The state governments are empowered to extend the scope of this provision of the Act to any other employment also (Sec 3-4). In exercise of this power the government of Madras has extended the Act the children working as cleaners in workshop attached to motor transport companies. The government of Uttar Pradesh has also extended this provision of the Act to brassware and glass bangle industries. The penalty for the breach of the Act is imprisonment upto one month or fine up to Rs.500 or both (Sec-4). The Act also required the Railway and port authorities to maintain registers showing names, date of birth, rest intervals, etc. of children under 17(See 3-E). It is however imperative to mention here that this Act has been repealed to the extent it is in consistent with the child labour (Prohibition and Regulation) Act 1986.

4.5.6. The Factories Act, 1948 :

The Act extends to the whole of India except the state of Jammu and Kashmir [See 1(2)]. Its applied to establishments employing 10 or more workers with power or 20 or more workers without power [Sec 2(m)]. A child under the Act, is defined as a person who has not completed the 15 years of age [Sec 2(c)]. "A young person" is defined as either a child or an adolescent [Sec 2(d)]- who has completed his 15 years but not 14 years (Sec 2(b)). Thus "young person" may be divided into three categories.
(i) those who are under 14 years, they are totally prohibited by this Act from entering into employment in factory (Sec-67)

In *Walker V/s Martindale*\textsuperscript{271} it was held that the prohibition is absolute and not restricted to employment is one of manufacturing processes, thus a child employed as a sweeper to clean the floor of a factory is in contravention of the provisions of the section, even though he is not employed in any of the manufacturing processes.

The following employment are also prohibited by the court: -

(a) Shorting of groundnuts in a courtyard near the machinery room for decorticating, *(Ramanathan V/s K.E.)*\textsuperscript{272}

(b) To employ the children under 7 years in plating straw in a work room, the benefit of which goes to the mother, was held liable to penalty- *(Beedon V/s Parrot)*\textsuperscript{273}

(c) Oiling a part of machinery of the spinning mill by a young person during meal time, though done without orders and for worker own amusement was held in *Prior V/s Slaith wait spinning co*\textsuperscript{274} violation of law making the occupier liable to fine.

(ii) Person who are between 14-15 years they can be employed under the following restrictions provided under Section 68, 69.

\textsuperscript{271} (1916) 85 J.L.K.B. 1543.
\textsuperscript{272} See AIR 1927 Mad. 435.
\textsuperscript{273} See (1871) L.R.Q. 718.
\textsuperscript{274} See (1898), I.O.B., 881.
(a) Such person's should have a certificate of fitness issued by a surgeon and should carry a token of such certificate.\footnote{275}

(b) The certifying surgeon should follow the procedure laid down in Section 69.

(c) They should not work at night, that is twelve consecutive hours including the period from 10 P.M. to 6 A.M.\footnote{276}

(d) They should not work more than four and half hours a day.\footnote{277}

(e) The period of the work is to be limited, to two shifts.\footnote{278}

(f) The shift should not over lap.\footnote{279}

(g) Each child has to be employed in one relay.\footnote{280}

(h) The spread over is not to exceed five hours and should also not change except once in 30 days.\footnote{281}

(i) They should not be employed in two separate factories on the same day.\footnote{282}

(j) The employer should display a notice regarding the period of work for such children.\footnote{283}

\footnotesize{\begin{itemize}
\item \footnote{275}{See Factories Act, 1948 Sec 68.}
\item \footnote{276}{Section 71 (1)(6).}
\item \footnote{277}{Section 71(1) (a).}
\item \footnote{278}{Section 7 (2).}
\item \footnote{279}{Ibid.}
\item \footnote{280}{Ibid.}
\item \footnote{281}{Ibid.}
\item \footnote{282}{Section 71 (4).}
\item \footnote{283}{Section 72.}
\end{itemize}}
(k) The manager of the factory should maintain a register in respect of such child workers.\(^{284}\)

(l) No such child is employed except in accordance with the notice of period of work displayed at the entries against his name in register of child workers.\(^{285}\)

Section 75 empowers the inspectors to require any such persons for re-examination by surgeon and he may prohibit the employment till the examination is made.

**Persons between 15 and 18**: They are employed as adults if they possess a certificate of physical fitness issued by the certifying surgeon and also carry a token of such certificate.\(^{286}\) The Adolescents under 17 are not allowed to work at night.\(^{287}\) The object of this statutory restriction over the employment of young person is to prevent exploitation of young labourers and to provide for their safety. This was the view expressed by Chief Justice Narashima, Orissa High court in Jhunjhunwalla V.B.K Patnaik,\(^{288}\) where the occupier of a glass factory was severally punished for employing 14 adolescent in blowing section of the factory, which is a hazardous occupation, without a certificate of fitness required under section 68 & 69 of the factories Act. In Macintosh V/s first Brook Book co.\(^{289}\) it was observed that it was the duty of the employer to ascertain by reasonable means that

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\(^{284}\) Section 73.

\(^{285}\) Section 74.

\(^{286}\) The Factories Act, 1948 Sec-68.

\(^{287}\) Ibid. Section 70.

\(^{288}\) See II, L.L.J., Orissa 551 (1964).

\(^{289}\) See (1904) 34 C.L.J., 370.
the applicant was of requisite age and merely the statement of child about his age should not be treated as correct. The Act also prohibits the employment of children to any part of the factory for pressing cotton in which a cotton opener is at work, except where the feed end of a cotton opener is in a room separated from the delivery end.\(^{290}\) The state government is employed by this Act to make rules prescribing the maximum weights which may be lifted by adolescents and children.\(^{291}\) Besides a weekly day of rest every child workers who has worked for a period of 240 days or more in a factory during a calendar year is entitled during the subsequent year of leave with wages at the rate of one for every 15 days of work as against 20 days in the case of an adults worker.\(^{292}\) Rest, shelters, canteens, etc are also to be provided to all workers including children.\(^{293}\) By 1948 Act, it was tried to implement as many of the provisions of I.L.O. code of industrial stygian as they were practicable under Indian conditions. The provision relating to periodical medical examination of young persons was made. It abolished the distinction between seasonal and non seasonal factories. The entire Act consolidated the law relating to labour in factories.

4.5.7. Plantation Legislation & the Plantation Labour Act, 1951:

*Plantation legislation grew with cultivation of tea in Assam and Doars owing to scarcity of workers in those regions, they were being*

\(^{290}\) The Factories Act, 1948 Sec - 27.
\(^{291}\) Ibid Section 34 (2).
\(^{292}\) Ibid Section 79.
\(^{293}\) Ibid Chapter 5.
brought from other parts of the country. Understandably early legislations were pro-planters. To name of few-

(i) The workman's Breach of contract Act, 1859 (VII of 1859);

(ii) The employment and work's man (Disputes) Act, 1860 (IX of 1860);

(iii) Indian Penal code 1860 (cf.ss.490 and 492);

(iv) The Assam labour and Emigration Act 1901 (VI of 1901);

(v) The Madras Planters Act, 1903 (provided with penal measures to protect the planters from loss of advances to the workers);

(vi) The Jalpaiguri labour Act, 1926 (provided with penal measures like the Madras Planters Act).

Most of the above legislations were put to an end in course of time. On the basis of recommendations of the Royal commission on Labour, The Tea Districts Emigrant Labour Act was passed in 1932 (XXII of 1932) for (i) Free movement of labour and (ii) greater security for labourers. Under this Act children under 16 could not be migrated to tea plantation areas unless accompanied by parent or a guardian. Curiously enough, this Act did not contain any provision regulating wages, hours of work accommodation, sanitation water supply etc. for less educational, facilities, recreation etc. as the title suggested, it was substantially a statute on emigration. Finally the plantation labour Act, 1951 (LXIL of 1951) come into being after considerable deliberation. The Act over the instance all tea, coffee, rubber, cinchona, cord Amory plantation and areas 10.117
hectares or more in which 30 or more persons are employed \(^{294}\) or employed on any day of the preceding 12 month. Further the state government is however empowered to extend all or any of the provisions of this Act to any land used or intended to be used for growing and plantation even if it measures less than 10.117 hectares and the number of persons employed there is less than thirty, provided that land which measured less than 10.117 hectares or in which measured less than thirty persons are employed immediately before the commencement of the Act would not be covered.

The Act prohibits the employment of children under 12 years.\(^{295}\) An adolescent between 18 years cannot be employed for work unless he is certified fit for work by a surgeon.\(^{296}\) Such certificate is valid only for one year\(^{297}\) use of a false certificate of fitness is punishable by imprisonment which may extend to one month, or with fine or both.\(^{298}\) This Act is however, more comprehensive in the sense that this Act alone makes the provision for education as a responsibility of the employer and so is for the housing and medical and recreational facilities.\(^{299}\) Perhaps the legislators were moved to make all these Provisions in this Act because of the fact that plantation labour is commonly known as family labour" as against individual "child labour".

\(^{294}\) See The Plantation Labour Act, 1951 Section 4 (a).
\(^{295}\) Ibid Section 24.
\(^{296}\) Ibid Section 26.
\(^{297}\) Ibid Section 27 (2).
\(^{298}\) Ibid Section 34.
\(^{299}\) Ibid Section 5, 6, 7.
Adequate penal measures were provided for non-observance of such provisions made under the Act and rules frame there under.

Paradoxically, many of such legal measures could not be translated into action because of the slump of tea industry which started towards the end of the year 1951. As a result, the Act was enforced only on April 1, 1954. The Plantation Labour Act was amended by Act No. 42 of 1953, Act No. 34 of 1960, Act No. 53 of 1961, Act No. 58 of 1981, and Act No. 61 of 1986. Under the 1986 amendment, the "adult" would mean a person who has completed eighteenth years as an "adolescent" would mean when he completed 14th year but not 18th year and 'child' would mean when he has not completed his 4th year.

4.5.8. Mining legislations:

Indian mines Act (8 of 1901) was passed in 1901, the chief inspector was granted power to prohibit employment of children as also women in mines where the conditions were dangerous to their health and safety. This Act was replaced by the Indian mines Act, 1923 (4 of 1923), in which the definition of "child" was amended to mean a person under the age of 13 years. Under this Act, no child would be employed in a mine or to be present in any part of a mine which was below the ground or in any open excavation in which any mining operation was being carried on. By 1935 amendment of the Indian Mines Act, the minimum age for the employment of children in mines was raised from 13 to 15 years. In adolescent (that is between 15 to 17) could he employed under ground only when he had been duly certified by a qualified medical practitioner.
In order to update the mine legislation at par with the factories Act, the mines Act was re-enacted in 1952 that is *The Mines Act, 1952.*

This Act also extends to the whole of India (Sec 1(2)) and includes all excavations where any operation for the purpose of searching for or obtaining minerals is carried out (Sec (2-1)). This Act also defines child as a person who has not completed his 15 years (See 2 (e)). This Act not only prohibits the employment of children in mines, but also prohibits the presence of children in any part of a mine which is below ground or in any open cast working in which any mining operation is being carried on (Sec 45(i)). Even an adolescent is not allowed to work in part of a mine which is below ground, unless he has completed his 16th year and has a medical certificate of fitness for work (See 40 (i)). A certificate is valid only for 12 months (Sec 41(i)).

The Act also says that adolescent allowed to be employed in any mine except between 6A.M. and 6P.M. This Act also includes:

i) All bearing, bore holes and oil well;

ii) All shafts, in or adjacent to any belonging to mine, whether in the course of being sink or not;

iii) All levels and inclined planes in the course of being driven;

iv) All converse or aerial railway provided for the bringing into or removal from mines of minerals or articles or for the removal of refuse there from;
v) All edits, levels, planes, machinery, works, railways, tramways and riding;

vi) In or adjacent to any belonging to a mine;

vii) All workshop situated within the prescient of a mine and under the same management and used solely for purposes connected with that mine or a number of mines under the same management;

viii) All power stations for supplying solely for the purpose of working the mines or a number of mines under the same management;

ix) Any premise exclusively occupied by the owner of the mines and for the time being used for depositing refused from a mine or in which any operation in connection with such refuse is being carried on; and

x) Unless exempted by the central government by notification in official gazette, any premises or part there of in or adjacent to a belonging to a mine, on which any process ancillary to getting, dressing or preparation for sale of minerals\textsuperscript{300} or of coke is carried on.

Mines Act was amended by the Act No 62 of 1950 (w.e.f. 16.1-1960) and then substantially by the Act No. 42 1983 (w.e.f.31-5-1984). Present position is that under Sec 40 no person below 18 years of age can be allowed to work in any mine or any part there off only trainees and apprentice, not below 16 years of age, may be entertained after prior approval of the chief inspector or Inspector, contravention of this

\textsuperscript{300} See, The Indian Labour Year Book (1974), P - 175.
provision is a penal offence, vide No. 5.68. A person below 18 years of age cannot even be allowed to be present in any part of a mine, vide s-45.

4.5.9. The Merchant Act, 1958:

The Merchant shipping Act, 1958 prohibits the employment of children in any capacity, who are below 15 years of age, on sea going ships. This Act applied to ship registered in India. It also prohibits the employment of young persons under 15 as trimmers and stokers except under certain specific conditions. Such persons, if employed are required to produce a certificate of fitness. Further the Act empowers the government to make necessary rules regarding employment of young persons as and when the occasion demands.

4.5.10. The Motors Transport Workers Act, 1961 (27 of 1961), as amended in 1986:

The Act was passed to regulate the condition of service of transport workers. It applies to the whole of India (Sec 14). It covers even Motor Transport under taking employing 5 or more transport workers. In such Act a "child" means a person who has not completed his 14 years and "adolescent" means a person who has completed his 14 years but not has completed his 18 years. The state governments are authorized to apply all or any of the provisions of this Act to any motor transport under taking employing less than 5 workers (Section 1(4)). This Act also prohibits the employment of children under 15 in any capacity in the motor transport undertaking (Sec 21). The adolescents are prohibited to work unless a
certificate of fitness is granted (Sec 22), which is valid only for 12 months (Sec 23-2). An adolescent can work only for 6 hours including a rest interval of half an hour and between 10 A.M. and 6 P.M only Chapter IV of this Act regulate the employment of young persons that is the children and the adolescent. This Act provide for penalty and procedure for prosecution for violation of such statutory provisions.

4.5.11. Bidi and Cigar Works (Conditions of Employment) Act, 1966:

It was noticed that sizeable number of child workers being engaged in the bidi and cigar manufacturing units and also in motor transport concerns were being forced to work under most unhealthy and unhygienic conditions. The bidi and cigar workers (Condition of Employment) Act, 1966 (32 of 1966) was enacted for regulating the conditions of their service, it also extends to whole of India [Sec 1(2)]. The Act provides that no child should be required or allowed to work in any industrial premises [Sec 24(b)]. The Act defines the child as a person who has not completed his 14 years of age [Sec 2(b)]. The employment of young persons between 7P.M. to 6A.M. (Sec 25).

The administrator of Act rests with the state who appoint chief Inspector or Inspectors for the purpose. The Act provides the penalties for breach which may be imprisonment upto three months or a fine upto Rs.500 or both (Sec 32), See 16, 15, 8, 9 are the provisions providing for canteen, first aid cleaning and ventilation under the Act. Ten years thereafter that is in 1976 the beedi workers welfare access Act and Beedi welfare Fund Act were passed.
4.5.12. **Contract Labour (Regulations and Abolition) Act -1970**:

The Act also extends to the whole of India [Sec 1(2)]. The Act applied to establishments and contractors employing 20 or more workers [Sec 1(4)]. It is not applied to establishment in which work only of an intermittent or casual nature is performed [See 1(5)(4)]. There are no specific provisions under the Act pertaining to employment of children.

4.5.13. **Shops and commercial Establishments Act, 1969**:

Provisions relating to minimum age also exists in different state shops and commercial establishments Acts. These Act applied to shops, commercial establishments, restaurants and hotels and places of amusement and notified urban areas to which the factories Act does not apply. Further, the state governments are empowered to extend the coverage of the Act in any establishment. The minimum age of employment in shops and commercial establishments in 12 years in Bihar, Gujarat, Jammu and Kashmir, Madhya Pradesh, Karnataka, Orissa, Rajasthan, Tripura, Uttar Pradesh, West Bengal, Goa, Daman and Diu and Manipur and 14 years in Andhra Pradesh, Assam. Haryana, Himachal Pradesh, Kerala, Tamil Nadu, Punjab, Delhi, Chandigarh, Pondicherry and Meghelaya. The minimum age of employment is 15 years in Maharashtra. There is no separate shops commercial establishments Act in Andaman & Nicobar, Arunachal Pradesh, Dadra and Nagar Haveli, Lakhadweep, Nagaland and Sikkim.301

4.5.14. The Child Labour (Prohibition and Regulation) Act, 1986:

The Act states right in the beginning that its aim is to prohibit the engagement of children in certain employment and to regulate the condition of works of children in certain other employments. According to this Act, the employment of children Act, 1938 is repealed. All rules made in this Act will be in addition to the provisions of the factories Act, 1948, the plantations labour Act, 1951 and mines Act, 1952:

i) According to this Act "child" means a person who has not completed his 14 years of age.(2 ii).

ii) Again, family units and raining centres are not included in the purview of the Act.

iii) The Act provides for the setting up of "child Labour Technical Advisory Committee" for the purpose of addition of occupations and processes to the schedule. A notice of at least three months will be given by the central government before adding any occupation or process to the schedule (See 5).

iv) The Act clearly lays down that no child will be allowed to work for more than six hours per day (Sec 7 (3)) will be rest period of one after three hours of work. Once a week he will be given a holiday (Sec-8).

v) No child will be allowed to work between 7P.M. and 8A.M (See 7-(4)). No over time will be permitted (Sec 7(4)).
vi) The Act clearly states that the government can make rules for the health and safety of children who are permitted to work in any establishment, [Sec 13 (1)]. These rules can provide for matters such as cleanliness [See 13 (a)]. Ventilation [Sec 13 (c)], dust and fumes [Sec 13 (d)], lighting [Sec 13(f)], drinking water [Sec 13 (g)], and sanitary facilities etc. But there is no mention on medical facilities.

vii) The penalty for violation of the Act will range from three months to one year of imprisonment with a fine of Rs.10,000 to Rs.20,000 (See 14).

viii) If a person found a guilty he will be liable for punishment under the clauses given in Sec 14(1&2) and not under any of the provisions of the Act.

ix) Any person police officer or any inspector can file a complaint of an offence under this Act in any court of the competent Jurisdiction Sec 16(1).

x) Part "B" of the schedule has added one more process into existed list and that is "building and construction industry". All other provisions are similar to the ones already existing in the Act of 1938 (Part B (ii)).

The government proposes to bring an amendment to the Child Labour (Prohibition Regulation) Act. 1986, to make it more effective.\(^\text{302}\)

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The above stated bonded and child Labour welfare enactments miserably failed to remove the shameful, social scene due to lack of adequate enforcement machinery, lack of political will, deliberate attempts of employers to flout the legal provisions, the lack of consciousness within the minds of parents themselves who obtain false age and medical certificate to enable their children to work, lack of proper identification of the bonded labourers, ignorance of their rights and entitlements and obstruction by vested interests. The vested interests have all resources (education, wealth, legal advice and political power) at their command. The intended beneficiaries of legislation are poor illiterate and ignorant.

On 01.06.2005 close to 400 children working in the Madanpura area of Central Mumbai were rescued. Again on 06.06.2005 about 30 working children were rescued from Najafgarh area of Delhi. On 10.06,2005, the Maharashtra Labour Department raided gold-plating workshops at Bhuleshwar and rescued 82 children, As in the past these children were repatriated to their home towns/villages. Unfortunately, these children were again seen working with the same employers or new employers either at the same locations or at new locations. This is nothing but recycling of child labour. Rescue operations are a welcome step but lose their importance and purpose the moment the rescued child is recycled into labour.

There are number of Zari factories situated in the narrow streets of Zafarabad in East Delhi, where an average about 25- 30 children in the age of group of 4 -14 years working in each such factory in the most inhuman
conditions. Through a definite information, in the very area there are around five hundred Zari factories in which not less five thousand children are working. It is estimated that in our country there are about 10 crore children engaged in labour. In the national capital Delhi alone, there are about 14-15 lakh such children, a third of whom are from other places. These are children who have been forced to engage themselves in one or the other work and are totally denied educational opportunities.

While a number of laws deal with child labour and juvenile justice, the lacunae in these laws are responsible for the unabated continuance and further growth of child labour. They work actually for the perpetuation of the child labour system rather than towards its complete abolition. A careful examination of the child labour (Prohibition and Regulation) Act, 1986 reveals that this Act prohibits the engagement of the children in certain employments and regulates the conditions of children in certain others. Significantly, this Act neither prohibits completely all forms of child labour nor does it lay down any provision for educational opportunities to the rescued child labour, which are guaranteed under Article-21A of the Indian constitution.

The Juvenile Justice (care and protection of children) Act, 2000 speaks of providing care and protection to children in need. But as far as child labour is concerned, it only provides for repatriation of such children to their parents and nothing more, what happens after or not the rescued child goes back to work, is none of its concern. Moreover, it is silent on
ensuring educational opportunities to such children thus, smoothing the way for recycling rescued child labourers.

The Bonded Labour System (Abolition) Act, 1976 provides for the abolition of bonded labour with a view to preventing the economic and physical exploitation of the weaker sections of people. However, it does not at all address the rehabilitation of bonded child labour. Similarly, the Beedi and Cigar workers (Conditions of Employment) Act, 1966, the factories Act, 1948 and the Motor Transport workers Act, 1961 prohibit employment of children in the establishments covered by the Acts, but do not deal with the rehabilitation with the child labour. On the other hand, certain laws even permit the employment of children such as the Apprentices Act, 1961, which permits children to enter into any occupation as apprentices, and the Plantation Labour Act, 1951 which expressly permits children to work plantations.

*The picture that emerges as under:*

*Firstly,* there is no complete prohibition of all forms of children labour;

*Secondly,* no law provides for rehabilitation of child labour in a manner that prevents the recycling of child labour; and

*Thirdly,* none of the existing laws provide for any educational opportunities for the rescued children,

The present laws dealing with child labour are therefore, defective. It may not be far-fetched to conduct that the phenomenon of recycling of
child labour and the continued prevalence and growth of child labour are, but the end result of all these so called welfare legislations enacted for and in the name of the child.

From the surveys and studies it have been shown that the only way to eradicate child labour is to provide to every child, good quality educational opportunities. Such opportunities are required at even nook and corner of the country. The state is constitutionally obliged to provide educational such opportunities to each and every child and slowly it is visible from the policies taken by the Central and State Governments towards the fulfillment of above stated objects. At the high time the government took steps to transform the existing situations, including the laws.303

Children under 18 constitute 42% of India's population. In a recent study it was quoted that on an average, between 2000 & 2005, of every 100 rupees spent by the Union Government only three paisa was spent on child protection, while the share of child health was forty paisa followed by child development (45 paisa) and elementary education (1 rupees 50 paisa). It is noted that the persistence of significant deficits in development of children in India is one of the failures of the growth process witnessed over the last one and the half decades. Any strategy for removing disparities, bridging, divides, and ensuring of well being of our people thus, must begin by respecting the rights, of our child population. It is

increasingly being recognized that rights based development of children must be at the centre of planning.

Over the years India's strategic focus on children in the country has evolved from welfare to development to a right based approach. The fifth plan saw a shift in focus from child welfare to child development. The ninth plan viewed child development not merely as a desirable societal investment for the nation's feature but also as the right to every child to achieve his/her full developmental potential. Some landmark inter-ministerial and inter-sectoral steps towards child development were taken during the Tenth Plan period. The Sarva Siksha Abhiyan (SSA) was launched to increase enrolment of children in schools and to ensure that every child has access to quality education. Coverage under the Integrated Child Development Services Scheme (ICDSS) increased and National Programme for Adolescent Girls was initiated. The XIth Plan is Committed to survival, protection and all round development of all children of all ages, communities and economic groups. Recently the National Commission for Protection of Child Rights (NCPCR) has been notified. India has committed to meeting the Millennium Development Goals (MDG) and is a signatory to any international conventions including the convention on the Rights of the child.
4.6. **Right to Education** :

The draft Bill (Right to Education Bill, 2008) provides for the state to construct, a neighbourhood school for every child in the country within three years from the date of the commencement of the Act.\(^{304}\)

Way back in 1937, seventy years ago, *Mahatma Gandhiji* had raised his voice in favour of universal education. His demand was met with the response that the costs would be difficult to meet as incredibly the response one gets today. He did not give up, but outlined a method for "education to go hand in hand with earning" which was his blueprint for *nai talim*. The imperative that social and economic advancement must go hand in hand with political freedom was expressed by the other stalwart of the freedom movement *Babha Saheb Ambedkar* just when free India was to adopt its constitution as under:

"*In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall by reason of our economic structure, continue to deny the principle, of one man value. How long shall we continue to live this life of contradiction?*"

*Mahatma Gandhiji* ruefully commented that if India was not prepared to invest in universal education then the goal may be 100 years distant, a prophecy that could well come true, since we are still talking of

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\(^{304}\) See *Yojna* (A Development Monthly) Right to Education Bill 2008 by Vinod Raina, is an educationist. Hw was also the member of CABE (Central Board of Education in Committee) that prepared the August 2005 draft, and a member of the working group of MHRD that drafted the February 2008 version of the Bill November 2008, P. 5.
education as a fundamental 62 years after independence Gandhiji 100 time span might therefore, be the answer to the question that Babhasaheb posed; how long? It is interesting that the last education commission under the British, the Sergeant Commission has in 1945 envisaged a forty year time span for universal education that is by 1985. The constitution shied away from making education a fundamental right, but made the Article-45 of the Directive Principles, calling on the state "endeavour to provide free and compulsory education to all children upto age 14" the only time bound Article, directing the state to accomplish the task in 10 years that is by 1960. The Right to Education Bill, 2008, is meant precisely so fulfill the purpose of universal education but the question is, in spite of the government's declared intentions, will it be introduced in the forthcoming session of Parliament or not? It did make it for the consideration of the Union Cabinet at it meeting on August 9, 2008, but since it was referred to a group of Ministers for further consideration at that meeting. Its introduction seems to be a tough affair.

The 86th Amendments of constitution that made education a fundamental right was passed in the year 2002. The new Article 21A, which was inserted as part of the 86th Amendment say that "The State shall provide free and compulsory education to all children between the ages 6 & 14 through law that it may determine". The operation of the right is therefore, contingent on the law that the State must bring in, and its absence the 86th Amendment has in fact not in been notified till now. Which is somewhat unfortunate since prior to the 86th Amendment, the right actually did exist through a Supreme Court ruling. In the famous,
Unnikrishnan judgment of 1993, the court had ruled that read together Article-21 (right to life) and Article-45 of the Directive Principles establishes that the right to education exists and would not be hindered by the economic capacity of the state till age 14; the economic capacity would be a factor only after age 14. The 86th Amendment not only removes the 0-6 age group from the right contingent on a law that the state shall determine.

However, the vital question is: How long will the Parliament deny the children of India the right that the 86th Amendment gave them: by delaying further the passing of an appropriate legislation? 305

4.6.1. Right to Education (Child Rights):

Is the issue really one of children's Right to Education? or is it, as ought to be our duty to provide assured availability and access to educational facility to every Indian child, repeal even child before they come to the age when they become aware of and assert their 'Right' to education. By then, it may be too late for many of the children partake of education, our duty to provide them education begins and extends from cradle to the classroom.306 Such a duty was intact enjoined upon us in resolute terms by the framers of the constitution in January 1950. The constitution laid down a set of Directive Principles of State Policy. Article 37 the provisions contained in this Part shall not be enforceable by any court but the principles therein laid down are nevertheless

305. Ibid at P. 678.
306. Ibid at P. 9.
fundamental in the governance of the country and it shall be the duty of
the state to apply these principles in making laws. The galaxy of Directive
Principles include Article 45 "the state shall endeavour to provide, within a
period of ten years from the commencement with this constitution, for
free and compulsory education for all children until they complete the age
of fourteen years".

4.6.2. Need for National Commitment:

The National Commission for Protection of Child Rights (NCPCR) has been setup by an Act of Parliament in December 2005 to stand by
children, give a call that "children come first". The child is defined as
children in the 18 year's age group. The mandate of NCPCR is to ensure
that all laws, policies, programmes, and administrative mechanisms are in
consonance with child rights perspectives. Thus protecting children's right
is not a charity act but one of taking a correct stand on behalf of children
and their rights and ensuring that the state meets its obligations to protect
children and their rights. Indeed in a sense NCPCR is the legitimate space
provided by state for children and all those who vouch for children both in
the government and in the civil society.

Considering the precarious conditions under which most of our
children live in, there is a need to recommit ourselves to the constitution
obligation towards our children made nearly six decades ago. The
constitution clearly provided for a commitment to free and compulsory
education for all children upto 14 years of age in the Directive Principles
of State Policy. This was to be accomplished within ten years of that is by
1961. It had included as a fundamental right in Article 23(1) "Prohibition of traffic in human beings and other forms of forced labour" and stipulated that "any contravention of this provision shall be an offence punishable in accordance with law. And at the same time in Article 24 it provided that, no child below the age of 14 years shall be employed to work in any factory or in mine or engaged in any hazardous employment". It shall directed that .......the tender age of children are not abused and that they are not forced by economic necessity to render vocations unsuited to their age and strength (Article 39e). The highest form of support for children was envisaged in the visionary provision that stated in Article 39f that children shall be given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and Youth shall be protected against moral and material abandonment. While the national commitment has been clearly enshrined in the constitution of India, in signing the U.N. convention on Child Rights in 1992, our country joined hand to the global commitment to all our children. It is also good to trace some of the important policy statement of our country which have been approved by the parliament and revisit them. Our country formulated its first child policy in the National Policy on children, 1974 in which it laid emphasis on a comprehensive health and nutrition for children and expectant mothers, a time bound programme for provision of free and compulsory education with focus on girls and pre-school education, abolition of child labour and suitable education for those unable to come out of work, focus on SCs. STc physically and mentally challenged children and so on. It mentioned the responsibility of state and community
and stated that adequate resources would be made available for these programmes and wherever necessary there would be changes in the legislation. Many of these issues were reiterated in the National Charter for children in 2003. Some of the new issues it added were with regard to child labour where it mentioned, "The state shall move towards a total ban of all forms of child labour". "The State shall take serious measures to ensure that the practice of child marriage is totally abolished and that 'all matters and procedures relating to children viz. judicial administrative, educational or social should be child' friendly. Subsequently the National Plan of Action in 2005 that was published was more nuanced and had a rights based perspective ensuring that health, nutrition, education, water, sanitation and environment are guaranteed even as it laid an emphasis on children in difficult circumstances and also girl children and their access to education as against abuse, child marriage trafficking and loss of dignity. The rights based approach in the National Plan also emphasized the need for measurable indicators.\textsuperscript{307}

4.6.3. Right to Survival, Nutrition & Health:

The convention on the Rights of the Child (CRC) states that every convention on the right to life and the state has an obligation to ensure child's survival and his wholesome development.

Latest UN Report says that China and India hold the key to the Asia and Pacific region achieving the Millennium Development Goals in child

\textsuperscript{307} See Yojana (A Development Monthly), Need for National Commitment by Santha Sinha (is a Magsaysay Award Winner and Chairperson National Commission Protecting of Child Right (NCPCR) Nov, 2008, P-13, 14, 15.
survival. China, India, and Pakistan globally account for half of all deaths of children under five. These countries are advised to setup spending on public health systems and lower income disparities to ensure child survival rates are sustained.

High infant mortality and morbidity rates speak volumes about poor nutrition health and hygiene conditions Indian children live in. The adds against a child surviving just being born is high: 63 infants per every 1,000 of those born alive die before the age of one. The reason for this high rate of infant mortality is closely tied up with the equally high rate of maternal deaths. For those infants who do survive the prevalence of early childhood illnesses poses a serious threat to their growth and development. More than two million children are known to die every year from preventable infections including measles, and tetanus. General lack of awareness and hygiene make simple to manage diseases like diarrhea, pneumonia, respiratory infections, acute and pose bigger problems. The challenges are high as children are not properly assessed and treated by local health care providers and also because their parents are poorly informed and advised. At first basic health facilities—diagnostic supports such as radiology and laboratory services are minimal or non-existent and drugs and equipment are often scarce. Limited supplies and equipment, combined with unavailability of suitably qualified and equipped professionals to manage the diseases at the initial stages further complicate clinical procedures. In addition the problem of malnutrition and lack of micro nutrients in their regular food: several affect a child's capacity to learn and grow making child survival a fantasy that make hard to realize in India, it is estimated
that one is every three of the world's malnourished children lives here and about 50% of all childhood deaths in India are attributable to malnutrition.

Since malnutrition is now being treated as the cause of resultant hunger deaths, it is essential to redefine right to nutrition in accordance with the fundamental right to life given by the constitution. It is worth mentioning here that 16% of population under the age of six is protected by just one government scheme called Integrated Child Development Scheme (ICDS); being taken care of primarily by Anganwadi workers and only 0.88% of total budget is spent for them annually. The problem is further aggravated because the government's misconception that malnutrition of 1st & 2nd grade level is not a serious problem; worsening children's health gradually and bringing them within the fold of 3rd & 4th level of malnutrition the extreme critical level.

Child rights to education, care, leisure and recreation are steps towards holistic development of the child. The heartening figures show that the absolute number of non-literates has dropped for the first time and gross enrolment in government run-primary schools has increased considerable from over 19 million in the 1950s to 114 million by 2001.

In a country where almost 17% of billion plus population are children in age group (0-6) and one-fifth Indians are adolescent: Government's initiative towards universalization of primary education is commendable. Sarva Sikshha Abhiyan that is being implemented in partnership with state government to cover the entire country and
addresses the needs of 192 million children in 1.1 million habitations making children's education up to the age of 14 years, free of cost, has facilitated schooling of the majority of children from rural areas and urban slums who were previously wither out attending schools or were school drop outs due to various reasons.

Though easy access to Primary education has increased enrolment rates in schools significantly a cause for celebration, poor quality of education due to lack of qualified teachers, lack of infrastructure, lack of basic educational tools/facilities etc. are matters of great concern.

The family's poor economic status that forces parents to make children work and earn to contribute to family income, rather than avail educational facilities beyond primary level of education thus in the process, adds on to the child labour in the country. Yet inaccessible higher education due to lesser number of existing higher education centres; high financial investments; social implications child marriage, girl child's safety etc; too obvious gender gap visible in higher and professional education, need immediate attention of child rights activists.

There are persisting problems; poor outcome achievement; chronic imbalances in access to service and opportunities; unequal distribution of development benefits high risk of neglect and lack of protection: fragmented and sectionalized service outreach to address cross-sectoral needs; and low levels of investments and attention.
Every year, UNICEF publishes The "State of the World's Children" the most comprehensive report on the world's youngest citizens which examines the global realities of child survival and the prospects for meeting the health related Millennium Development Goals (MDGs) the target set by the world community for eradicating poverty, reducing child and maternal mortality, combating disease, ensuring environmental sustainability and providing access to affordable medicines in developing countries. Challenges in child survival for China and India dominate the region's population, receives considerable attention. The reports makes it clear that global attainment of the health related MDGs will depend, in no small party, on India's achievements in improving health, nutrition, water and sanitation, education and child protection, gender equality and women's empowerment in the coming years. The report goes on to add that the indicators selected are telling evidence of failures and priorities off the countries following in South Asia Region.

India's acceptance of the UN Declaration of Human Rights (UNDHR) the UN Declaration and subsequently the convention on the Rights of the Child (CRC), the UN Covenants civil political, social, cultural and economic rights and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) places further obligation on the state to honour the provisions of these International Agenda.

With India's ratification of the UN, CRC and subsequently of the optional protocol on the sales of children, child prostitution and child photography, many child protection options have become obligations. The
governments notified intent to access the optional protocol of the involvement of children in armed conflict adds one more. This must carry implications for the eleventh plan and any other national commitment affecting the child in India as must the concluding observations made by the UN Committee on the rights of the child on India's performance in implementing the convention. Indeed, it is worth noting, that the UN Committee on the Rights of Child (UNCRC) has to date find India's performance below par on most aspects of child protection and has recommended more sincere and conscious national action. The declared commitment to child rights that India has adopted as one of the seven countries of the South Asian Association for Regional Co-operation (SAARC) underlines its acceptance of the obligation to accord priority attention to and ensure due investment in the rights of the child.

Commitment changes in public attitudes, governments and policies and international commitments have put children of the top of the international Agenda in 1990's. Starting from the international Year of the child in 1979, the two movements for children's right which resulted in the 1989 international convention of the Rights of the child now rectified by 187 countries, and the child survival campaign, which calumniated in the 1990 World Summit for children.

4.6.4. Emerging Issues :-

Ten Successive Five Year Plan have neither allocated nor utilized an adequate share of available National Resources to meet the needs of the children or to realize their rights, as a result, the status and condition of
children even today remains in secure. The plans reviewed and assessed offers and opportunity to re-examine the challenges facing their sector.

Children are still not a priority on the development agenda. Therefore, there is a need to recognize the situation of children as human development indicator.

➢ Considering that childhood has now been extended to 18 years, a clear 42% of India’s young children are to be served by both developmental and protective measures.

➢ Investing in children and mothers is one of the surest ways for a country to set its course towards a better future.

➢ Whether the concern for the children is likely to last in the context of major National and International Commitments.

➢ It is clear that meeting the above goals will require political will, resources and sound strategies on an unprecedented scale.

➢ Children who are living without family support and are beyond government’s reach, have protection needs. Programmes must evolve to offer them dignity and choices, not just charity.

➢ Initiatives for children are dispersed between departments and ministries. There is a lack of inter-sectoral, inter departmental, convergence which hampers the successful delivery and monitoring of services for children.
4.6.5. **Priority Concern**: 

The approach paper to the Eleventh Plan emphasizes that children and their development are central to the eleventh plan. The plan will strive to create a protective environment which will ensure every child's right to survival participation and development.

Based on the unfinished agenda from the tenth Plan, the analysis of the status of children and the existing policies and programme gaps, the eleventh plan categorically says that "Development of the children is at the centre of the Eleventh Plan". The Eleventh Plan aims at recognizing the situation of the children as the best Human Development Indicator and make it the key indicators for the Five Year Plans, across all sectors. The strategy being suggested for this Plan:

- The present hostile environment increases the vulnerability of the child and therefore reduction of such threats by establishing child impact as a core indicator of Eleventh Plan interventions, with special emphasis on the status of the girl child.

- Creation of protective environment for children through implementation of child friendly protection services and schemes that addresses the survival, development and protection needs for the children.

- Identification of the most vulnerable and marginalized children with special focus on the girl child.
Ensure effective implementation of laws and policies by personnel trained to work with children.

Develop specific interventions to address malnutrition, neonatal and infant mortality.

Recognizing the early childhood education for implementation through ICDS & SSA.

Ensure better outcome, adequate and appropriate budget allocation and proper utilization, Implement "Child Budgeting" as an important policy and to take stock of development investments for children and identify gaps in resource investments and utilization.

Critical Areas/Groups for the Eleventh Plan Addressed are:

As per census 2001, the country has sixty million children in the age group of 3 – 6 years. The 86th Amendment of the constitution, making education for children in the 6-14 age groups a fundamental right, the below sixes were left out. It is this group which is faced with under nutrition and malnutrition.

The eleventh Plan’s emphasis on gender equality and "Arresting the decline in the child sex ratio, Nutrition Programme for adolescent girl. Kishore Shakati Yojana, Balika Samriddhi Yojana", are the current schemes catering to the child. Though the schemes are definitely not health and family welfare oriented issues, they require to be treated and viewed as protection issues.
4.6.6. Child Labour:

Child trafficking, sexual exploitation are problems that the society is increasingly being confronted with. The Eleventh Plan proposes to ensure that this vulnerable groups is protected from further abuse. Children affected by HIV/AIDS, children in conflict with law, children in distressed circumstances children with disabilities are going to be addressed and treated as Critical Target Groups (CTG).

Through an Act of Parliament, the Government of NCT Delhi has setup Delhi Commission for Protection of Child Rights (DCPCR). The commission is meant to protect and fulfill the various rights for children enumerated under UN's convention on Rights of Child (UNCRC) for their survival, protection, development and participation. The creation of Delhi commission for protection of child Rights by the Delhi Government is a historic and pioneering initiatives. The children who are reported to be extremely deprived, marginalized and poor who suffer multiple forms of abuse and exploitation. A large number of whom are legally defined as "Children a Need of Care and Protection" under Juvenile Justice Act, 2000. The commission is committed to convert these children into "Supreme Assets", which they are actually meant to be.

The interventions and programmes recommended for the 11th Plan period should include improving the reach and quality of existing programmes and formulating new schemes to address either to unaddressed areas and issues based on National Policy for children, 1974. National Charter for children, 2004, which makes special mention of the

The Eleventh Plan marks a big step forward in the area of Child Rights Framework that view children as agents and not recipients. It recognizes and acknowledges multiple discriminations wherein the children as trapped in. This acceptance of the situation of the children can alone safeguard their rights and ensure better outcomes for children.\textsuperscript{308}


This Act of 2005 provides for the enhancement of livelihood security of the household in rural areas of the country by providing at least hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matter connected therewith or incidental thereto.

Recent social audit of the National Rural Employment Guarantee Act (NREGA) indicates that the programme can have a positive impact on the social and economic well being of rural labourers and their families. In particular, it holds the powerful prospect of bringing major changes in the lives of women. This is especially true in a state like Tamil Nadu, where women constitute an overwhelming proportion (more than 80 percent) of NREGA workers.

\textsuperscript{308} See Yojana (A Development Monthly) Need for National Commitment by Santha Sinha (is a Magsaysay award winner and chairperson, National Commission Protecting of Child Rights (NCPCR) November 2008, P -13,14,15.
At the same time, however the significant challenges frustrate this transformative promise of NREGA, one of them is the issue of childcare which is easily overlooked. To examine this aspect, a survey of creche facilities and children practice of working women was conducted in the Viluppuram district (Tamil Nadu) in July 2007, on the sidelines of a social audit of the NREGA. The finding indicate that childcare is the significant problem for many of them. This is particularly true for mothers of children below the age of three years. However, this Act can pave the way to minimize bonded labours in rural areas of the country by providing livelihood to them.

Some of the following reasons may be included for the failure of the implementation of socio-economic legislation, abolishing bonded labour system:-

(a) **Lack of Awareness of Legislation** : An example may be given from Bihar. The Bihar Legislation of 1920 implicitly assumed that a "Kamiauti" (bonded labour) would be aware of the fact that the bonded labour agreement would be valid for a period of one year only and a son would not be victim of deceased father's agreement. But the son/family would not retreat being unaware of the legislation. It is a highly questionable assumption. Similar situation remained with Bonded Labour System (Abolition) Act 1976.

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30.8a. Survey of 104 women with atleast one child below the age of six years, who are working at NREGA worksite in Viruppan district. The survey was conducted on July 29-31, 2009. See Yojna (A development monthly) "Right to be safe", 2008.
(b) Lack of facilities for legal, aid and advice: - Barriers of illiteracy and lack of communication may be the causes, those hinder the proper implementation of welfare provisions under the various Articles of the Indian Constitution. Because those statues are frame in a language not known to the poor or if known, those are in a style unintelligible to them. In particular, the provisions relating to compulsory registration of money lenders and protection given to the debtors under money lenders are ineffective because of the lack of awareness indifference and incapacity of the debtors to avail themselves of the provisions.

(c) Lack of Administrative and political will: - The indifferent attitude of administrators, towards the reforms meant for bonded labourers, are the other barriers in this way. The government orders are not properly implemented by them. The non-official committees which are expected to supervise the implementation of socio-economic legislation are mostly dominated by the vested interests. Any how if cases are instituted, instances are not unknown when they had been withdrawn. A leading daily had occasion to point out in its editorial: -

"Mr. Hardev Joshi minister in Rajasthan, for instances, cynically withdraw cases pending in the courts against as many as 576 big farmers for keeping Sagris". 309

(d) Social and Economic dependence of the weaker Section: - In many cases if cannot be denied seriously that a bonded labour is in a position

309. The Time of India (Delhi) dated 12th November 1977. See also "Bonded Labour Invisible to the official eyes, Economic and Political weekly, Vol. XI, No. 45 (1976), 1754 Col. 2.
to regain his freedom by running away from his master. But what prevents the Serf, from adopting this method, is the serial and economic dependence on his master. In simple words the bondage is attractive because of the economic security it offers. He would, thus, like to choose the slams of bonded labour on nominal wages throughout the year instead to choose the status of a casual labour with long spells of unemployment and under employment. The master is normally his banker for his financial needs which are often for unproductive purposes like marriage, funerals, festivals and sickness in the family. Unless this serial and financial dependence is eliminated, the exploitation in heart in the bonded labour system cannot rooted out. The Report \textsuperscript{310} revealed that the habit of drinking was mainly responsible for incidence of bonded labour which many states tried to curb, but failed. It may be submitted that the region/area in which the labour class is working should be declared dry one to protect the health and wealth of these citizens/workers.

(e) Lack of proper rehabilitation of identified and released bonded labour:—

Very little attention is paid towards identification and release of bonded labourers. Even if they are released/freed, there is complete neglect of rehabilitation programme for them, with the result they go from slavery back to starvation. The observations made by the highest court portray that the state administration, so far are clearly indicative of indifferences and inadequacy in securing identification, release and rehabilitation of bonded labourers in the state. The authorities not

\textsuperscript{310}. Neerja Chaudhary \textit{v/s} State of MR AIR 1984 SC 1099 at 1102.
only remain silent spectators to the atrocities but also give patronage to those quality Zamindars and contractors. Even today these unfortunate citizens of society continue to be in exiles of civilization. Annual Report of 1991-92 reveals that 2,55,608 bonded labourers were identified and released (position on 31.3.1991) and out of them, 2,22,935 were rehabilitated. Thus when many of them who were not provided with alternative source of living, had to agree to the terms and conditions of the masters where were worse than previous ones, it is because of vigilance committees provided under the Bonded Labour System (Abolition) Act, 1976 and not even constituted, these have become defunct. There are very few officers who really feel for the poor and are determined with a sense of dedication to help them. Such officers are ever read to check exploitation of bonded labourers and restore freedom and social justice to them. Despite the sincerity of the officers the unresolved problem of rehabilitation and fear psychosis. Keep them in bondage. After release when they face the starving conditions in the world they are left with no option but to go back to their masters.

(f) **Failure of Land Reforms**: Those were introduced to reduce economic inequalities in rural areas. But the landlords frustrated the effectiveness of reforms by transferring their land in the names of their bonded labour, though in fact, they themselves remained the owners.

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(g) **Unequal Abnormal Indian Society** :- In our status conscious society, people do not tolerate rights and privilege on equal footing due to class and caste interest. Indian socialism in practical terms turned out to be pernicious programme for the distribution of public largess to the not so poor, and the real beneficiary new percolated to the needy one for whom they are meant as they are most unorganized.

(h) **Planning Process: Bonded labour Ignored** :- In the area of Industrial development, production and means of communication progress through the five year plans is forgone conclusion. Also considerable amount of finances is made available in Five year plans to remove poverty and to fulfill the basic needs of every member of the society. No plan is directly and seriously liked with the abolition of bonded labour system. It is true, the nation has many equally urgent problems to tackle with, but there is no disagreement that this problem of bonded labour has to be attended fairly and squarely.

There are excellent provisions in the constitution to provide life of quality and dignity to every citizen and to make life of common man happy and peaceful but in reality even after 59 years of adopting the constitution the government have not been able to reach the goal set in the constitution fully to meet the hopes and aspirations the people. India has definitely made progress in the frontier areas of science and technology, education, manufacturing, trade and commerce so much so that the country has emerged as a strong nation capable of standing on its own strength. In food production, the country is self sufficient but in
relation to common man many promises remain unfulfilled. Large number of people yet remain below the poverty line. Many do not have even basic needs required to live appropriately. Having strong political will and dedicated executive with true concern and commitment to improve the living standard of common man in the country so as to make them the partners in the democratic set-up, is imperative and urgent need of the hour. The number of persons with sterling character, sense of service and sacrifice, love for motherland and concern for the fellow beings has been gradually reduces in comparison to people who participated in the freedom struggle. It is unfortunate that the three elements namely caste, corruption and crime become cancerous to the health of the country. People facing mans problems. There are good people in all walks of life and there are large number of people of good but their voices must be louder. Today, there is a need of more and more people of competency with character and concern to participate in the governance of the country. The same constitution can be worked well depending on the character of the people, if good men do not come forward in public life, bad men jump to occupy the vacant chairs, which shall not be in the interest of the society rather it would be disastrous. So long the people with competency, character and real concern for the common man do not come forward and occupy various positions provided under the constitution to discharge the respective functions in the interest of the people of the country, the plight of the common man may not improve much. The country has made progress in all fields. If only caste consideration, corruption and crime are eliminated from public life the progress and all round development in the
country within the available resources would be much more within a short period and the quality of the life of the common man would be much better. In this process, largest good to the largest people can be done so that all, and more so, a common man in the country can feel himself happy and proud citizen.

Late Mr. N.A. Palkhivala in Bhai Parimanand Memorial. Lecture delivered on November 27, 1979 at New Delhi on "The Future of Democracy in India", cautioned that "The great French thinker, Montesquieu, said in the eighteenth century:

A tyranny of a prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy. A bad government is the inevitable consequence of an indifferent electorate. Politics will never be cleaner and our economic future will never be brighter, until and unless our citizens are willing to give of themselves to the land which gave them birth.

It should be hoped that the youth of this country will bear in mind the above words of Mr. Palkhivala and also take proper lessons and derive inspiration from the lives of those who made sacrifices and served selflessly so that they can make dream of Mahatma Gandhi of wiping out even tears from every eyes in this country a reality.

The Bonded Labour System remains usual till 2008 with different form and nomenclature. As an apex document constitution has emancipated through various Articles to stamp out this menace by means
of social reform to provide socio-economic justice to all. Without eradicating this evil of bonded-labour system from the society, the target of welfare state and socio-economic justice would be meaningless in free India. With the honest implementation of above stated Articles, bonded labour and child labour welfare legislations, the pernicious practice of bonded labour system can be minimized and abolished. It should be the profound aim of all the organs of the government (Legislative, Executive and judiciary) to create congenial atmosphere (Socio-economic and political) towards the abolition of bonded-labour system in India. All sorts of preferential treatment should be provided to the weaker sections of the society to abolish the practice of bonded-labour system. It is high time to reconsider on the causes of continuation of this evil and to eradicate it for achieving the ends of welfare State in India.