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# Child Labour in Unorganised Sector: An Empirical Research

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## ABSTRACT

*The article aims to explore the scope of the unorganised service sector by delimitation of the sector itself, after an empirical investigation of 41 children in the urban areas of Dehradun, Uttarakhand. As per census 2011, state wise details of working children in age group of 5-14 years shows 28098 children working in Uttarakhand. The data also reflects an increase in the ratio of child labour in the unorganised service sector. The research design is exploratory in nature. It aims to investigate the variables which influence their nature of exploitation in the sector. After a careful and detailed investigation, it aims to provide the gaps in the legislation and processes of the child labour in the unorganised sector.*

**Keywords:** *Unorganised service sector, Child Labour, Legislation, Regulations.*

## I. INTRODUCTION

Child labour is not a new phenomenon<sup>3</sup>. It existed in some or other form in the past, it is there in the present and it will continue to be there in the future, given the ground realities of our country and the legal system that we have in place<sup>4</sup> because children constitute to be the vulnerable group of our society. The concept entails employment of children and the gamut of such employment ranges from mundane to hazardous sectors and consequent prohibition of such employment in dangerous occupations, in places where they may be corrupted by the surroundings, at work which is of such nature as to tax the strength of the child and undermine his health, and for hours so long as to tire a child to the point of exhaustion and sickness<sup>5</sup>. International Labour Organization (ILO) defines the term ‘Child Labour’ as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that firstly is mentally, physically, socially or morally dangerous and harmful to children; and secondly, interferes with their schooling by:

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<sup>3</sup> Zubair Ahmad Khan, *Child Labour in India: An Overview*, 20 ALJ 97, 113 (2012-13).

<sup>4</sup> Thomas Paul, *Child labour – Prohibition v Abolition: Untangling the Constitutional Tangle*, 50 JILI 143,176 (2008).

<sup>5</sup> Ballentine’s Law Dictionary (3d ed. 1969).

depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work”.<sup>6</sup>

Further, there are two perceptions of what constitutes child labour. The first perception identifies child labour as work done by children from poor households outside their home/family for a minimal wage. This viewpoint makes child labour a synonymous term with the exploitation of poor. This is so when children work outside their homes under greedy and exploitative employers. It is apparent that this definition does not consider work done by children within their home/family as being exploitative, and therefore, do not fall in description of child labour. The other view equates all children not going to school with child labourers. This view emanates from the rights-based approach towards development. It considers being out of school as a denial of child’s right to education.<sup>7</sup> While defining term ‘child labour’, there is no global consensus to a definition as the complex nature of this practice involves different interpretations of terms associated with it, for example; ‘child’, ‘work’ and ‘labour’. Few organisations and nations use the terms child labour and child work reciprocally. Also, in many societies, childhood is not defined based on the criterion of age but is defined on other factors<sup>8</sup>. In India, child labour is defined using age as a defining factor along with other factors and completely prohibits employment of children who are under age of 14 years.

However, scholars<sup>9</sup> suggest few elements which are required to be present in an activity performed by children to categorise it as child labour and these are; work by very young children, long hours of work on a regular full-time basis, hazardous working conditions (physically and mentally), no or insufficient access and attendance or progress in school, abusive treatment by the employer, and work in slave-like arrangements (bonded labour).

Having said that, despite of continuous efforts of many countries and United Nations, the statistics on child labour are not capable of appreciation. As per UNICEF data, in poorest countries around one in four children are engaged in child labour<sup>10</sup>. However, the detailed global picture with regard to child labour was presented by International Labour Organisation through its report published in 2013. It says that, in 2012, near about 16.7% children out of children population across the globe are employed (Children in employment) while 10.6%

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<sup>6</sup> *What is child labour*, Ilo.org, <https://www.ilo.org/ipecc/facts/lang--en/index.htm> (Last visited 11 January 2020)

<sup>7</sup> S C Srivastava, ‘*Child Labour – Law and its implementation*’ 18 (Universal Law Publishing, 1<sup>st</sup> Edn., 2017).

<sup>8</sup> Thomas Paul, *supra* note 6.

<sup>9</sup> Anker and Melkas, *Economic Incentives for Children and Families to Eliminate Child Labour*, ILO, 1996.

<sup>10</sup> *Child Labour*, Unicef.in, Available at <https://data.unicef.org/topic/child-protection/child-labour/> (Last visited 29 February 2020)

children constitute to the statistics of child labour and 5.4% children are engaged in hazardous works.<sup>11</sup> Coming to regional distribution of child labour, Sub-Saharan Africa continues to be the region with highest incidence of child labour with more than one in every five children indulged in child labour and the largest absolute number of child labourers is found in Asia and Pacific region.

In India, it is very unfortunate that despite of having constitutional provisions providing prohibition on child labour, it is practiced in every state in India. As per census, the total number of working children between the age group of 5 to 14 years in India were 12.6 million. However as per the survey conducted by NSSO in 2004-2005 there was a decline in the number of children which were estimated at 9.75 million. Again, there was a sharp decline in the number of working children, estimated at 4.98 million as per survey conducted by NSSO in 2009-2010<sup>12</sup>. But 2011 National Census Data shows that the total number of working children in the age group of 5 to 14 years has also declined from 12.6 million to 4.35 million.

Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh and Maharashtra constitute to the list of states employing children as top most employer in India.<sup>13</sup> Uttar Pradesh has highest no of children working (896301 children working) followed by Maharashtra (496916 children working). State wise details of working children in the age group of 5-14 years as per Census 2011, records only Union territories with lowest of children employing rate in India. The lowest number of children working in a Union Territory are 28 in Lakshadweep while in case of U.T., Delhi tops the list with 26473 children working within the age of 5 to 14. The numbers in hilly states are less disturbing as compared to other states like Uttarakhand has only 28098 children working and similarly in Jammu & Kashmir, only 25528 children are working while Assam tops the list for hilly states with 99512 children working.

However, this data does not picturise the actual magnitude of problem because many of children are engaged in hazardous activities like rag picking, prostitution and calculating the number of children working in such a sector, i.e. unorganised sector, is not possible. Conditions of work are drastic in unorganised sector, in some jobs, while sometimes they are more

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<sup>11</sup> International Labour Organisation, *Marking progress against child labour - Global estimates and trends 2000-2012*, (2013).

<sup>12</sup> *National Sample Survey Organisation Estimate of Child Labour in Major Indian States, 2004-05 (Age group 5-14) And NSSO (66th round of Survey) on Child Labour in Major Indian States, 2009-10*, Ministry of Labour & Employment, Govt. of India. Available at <https://labour.gov.in/childlabour/national-sample-survey-organisation-data-child-labour>

<sup>13</sup> *State wise details of working children in the age group of 5-14 years as per Census 2001 and Census 2011*, Ministry of Labour & Employment, Govt. of India. Available at <https://labour.gov.in/sites/default/files/Census-2001&2011.pdf>

hazardous in organised sectors.

Child labour exists in homes or industries or a factory. At the primary level, child labour can be seen as domestic labour, where the children do domestic chores which is a help to the adults of the family. In this category, female child contributes more than the male child as 67.1% of all child domestic workers are girl<sup>14</sup>. Since, children engage in domestic works, they are being restored from the education and physical and mental growth. This is due to the ignorance and negligence of their parents and it may be because of disability of adults in their respective family.

In Rural areas, children, majorly boys<sup>15</sup> take themselves into account to help their families in agricultural work without getting any payment. In some cases, many children are given as bonded labours to money lender or big landlords or the owners of the industries so that the debts of their parents can be paid.

Many children are engaged in labour who work independently<sup>16</sup> whether it is rural area or urban area. Such labourers do not support the work of their adults and even they work independently to earn for themselves, known as wage child labours. Such kind of labour can be caused because of illiteracy, poverty or displacement. Many studies<sup>17</sup> proved that the extreme forms of poverty can be the reason to foster the children to do labour. Wage child labour can be found in organised and unorganised sectors. Children are involved from heavy work industries to small scale industries and from males to females. Male child labour is more in number than female. Female child labour in comparison with the male child labour is more prone to less employment terms<sup>18</sup>, less economic wages<sup>19</sup> and social platforms<sup>20</sup>. Male child labour has the very reach to non-domestic usage earning chances. In contrast to male child labour, female child labour is not much visible in large number especially in the rural areas. Problem of sexual exploitation

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<sup>14</sup> *Child labour and domestic work*, Ilo.org, <https://www.ilo.org/ipecc/areas/Childdomesticlabour/lang--en/index.htm> (Last visited 29 February 2020)

<sup>15</sup> Yacouba Diallo, Alex Etienne and Farhad Mehran, *Global child labour trends 2008 to 2012*, ILO, 2013. “*Child labour distribution by economic sector and sex (percentage), in between 5-17-year-old children, shows that employment in agriculture comprises of 60.7 for boys versus 39.3 per cent for girls.*”

<sup>16</sup> *Child Labour and exploitation*, Unicef.in, <https://unicef.in/Whatwedo/21/Child-Labour> (Last visited 28 February 2020)

<sup>17</sup> Richard Anker, *The Economics of Child Labour: A Framework for Measurement*, 139 Int'l Lab. Rev. 257 (2000); and Ranjit Sil, *Child Labour: A Critical Legal Analysis*, 8 Indian J.L. & Just. 10 (2017).

<sup>18</sup> International Labour Organisation, *Global estimates of child labour: Results and trends, 2012-2016*, (2017). “*There are 23 million more boys than girls in child labour and 17 million more boys than girls in hazardous work*”.

<sup>19</sup> *Gender and child labour in agriculture*, Ilo.org, [https://www.ilo.org/ipecc/areas/Agriculture/WCMS\\_172261/lang--en/index.htm](https://www.ilo.org/ipecc/areas/Agriculture/WCMS_172261/lang--en/index.htm) (last visited 28 February 2020); “*A higher percentage of girl child labourers are unpaid; and in the situation that child labourers are paid, girls are often paid less than boys for doing the same job.*”

<sup>20</sup> International Labour Organisation, *Global estimates of child labour: Results and trends, 2012-2016*, (2017).

is more rampant on female child labours<sup>21</sup>.

The phenomenal increase in urban child labour can be traced due to displacement of families from one place to another, unemployment of the adults in family. To cope up with the urban societies and lifestyles, it's hard to live a life with less wages or earnings of a single member of the family that leads to children to engage themselves in child labour. Rural child labour work with their parents and their small earnings are also given to their parents. Rural child labour is more dependent on their parents than urban child labour. The main reason to involve the children by their parents in agricultural fields in the unaffordability to manage other labourers to work in their fields. Rural child labour more engaged in unorganised sector than the urban child labour. Child labourers in rural areas have lower socio-economic status than the urban child labour.

On the basis of existence of labour, child labour can be categorised in organised and unorganised sector. The organised sector is regulated with a seemingly robust legislative scheme where the employees are covered by the rules and regulations whereas in the unorganised sector, the range of employment is so diverse economically and socially, that the aspects of the informal or casual nature of employment, ignorance of the people, etc are difficult to capture. In the unorganised sectors like in agricultural work, embroidery, rag-picking, beedi-rolling, in mining and stone quarrying, and tea gardens etc., children are massively engaged in labour as in poorest countries around one in four children are engaged in child labour<sup>22</sup>. Children can be easily seen at roads and streets selling fruits, vegetables and other different items.

Being engaged in child labour, children are lacking basic entitlements and amenities and their physical and mental growth is being hampered. They come in close contact with harmful chemicals, products, handling dangerous machines and bulky equipment and other similar hazards and consequently are prone to serious health hazards like difficulty in breathing, burns, disability of muscles, fibrosis and biogenesis, nasal problems, asthma. Also, there is a noticeable increase in the chances of becoming a drug addict and children are, at times, made to more dangerous labour like to clean under the moving parts of machines, to hold sewers etc. Children do labour in small scale industries, with machinery, tools and equipment created for the purpose of adult workers use. This can increase the vulnerability of children with respect

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<sup>21</sup> International Labour Organisation, *Ending child labour in domestic work and protecting young workers from abusive working conditions*, (2013).

<sup>22</sup> *Child labour*, Unicef.org, <https://data.unicef.org/topic/child-protection/child-labour/> (Last visited 11 January 2019)

to safety.

### **(A) Objectives and significance of study**

Child Labour is global phenomenon but, in any condition, not good for health of human present and future as its consequences results in child abuse, and thus it becomes a serious concern to our society. There exists plethora of literature presenting the types, consequences and possible solution to end the child labour employed in organised sectors. However there exist less studies which presents the scenario in relation with child labour engaged in unorganised sectors, specifically with respect to petty self-employed children engaged in very small-scale economic activities.

Furthermore, authors have tried to study the very subject and the condition of children working in unorganised sectors of Dehradun after questioning forty-one children and analysing the various laws and studies available on the said subject. Thus, the objective of the instant study is to examine the Indian legislation available on Child Labour and to find and suggest an effective solution to control and eliminate this practice. Also, it is intended to examine socio-economic condition of child labour in unorganised sector in Dehradun and to trace factors responsible for children to undertake economic activity.

### **(B) Hypothesis**

The study's hypothesis is that child labour is more prevalent in India's unorganised sector, and that insufficient legal rules and poor enforcement have led to its prevalence.

### **(C) Research Methods**

The authors have gathered data from various sources i.e. Primary & Secondary sources of data collection. The former includes information gathered as a result of interview and later includes various scholarly articles, government reports and legislation available on subject. The children were randomly selected for interviews and were extensively questioned on various aspect of their lives. However, authors have to confined the research within the forty-one children only due to some practical problems.

### **(D) Literature Review**

Several scholars, researchers, planners and technocrats have examined subject of Child Labour from various perspectives as no single technique can capture its complexities because of it being a multifaceted social occurrence. *Dr. Shilpa Jain and Sahitya Broka*<sup>23</sup> (2018), in their

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<sup>23</sup> Dr. Shilpa Jain and Sahitya Broka, 'Rethinking Child Labour: A Multidimensional Human Rights Problem', PL (HR) 104, 108 (2018).

study emphasises that it is highly necessary to make an impact on the roots of child labour through various methods and analyses the 2016 amendment in Indian child labour legislation. They tried to explore the laws prohibiting the child labour in India through a human rights approach to child labour.

Further, *M.S. Ramanujam and K.L. Rawal*<sup>24</sup> (2010), have shown the distribution of all forms of employment in organised and unorganised sectors of India. As most of the legislation backed welfare measures largely covers the organised workers only, the study helps in understanding the unfortunate situation of unorganised workers and their conditions despite of initiatives taken by Government. Their study also picturises the limitations of these initiatives. In addition, the problem of Child labour is more deeply analysed by *ILO*<sup>25</sup> (2013) through its report which focuses on presenting the fourth round of child labour estimates for 2012 as well as identifying trends from 2000 to 2012 depicting the newest estimates and trends revealing real advances which have been made in the fight against child labour in pursuance of eliminating the worst forms of child labour by 2016, a target set by ILO in 2006. The report presents a dynamic global picture of the trends from 2000 to 2012. It concludes with recommendations for the future. Also, *UNICEF*<sup>26</sup> (2019) articles an introduction with child labour as a subject which ultimately spreads light on various aspects of child labour including distribution of child labour on geographical and gender parameters. Also, the said article presents the available data source on child labour and claimed that, '*In the world's poorest countries, slightly more than 1 in 4 children are engaged in child labour*'.

*NCEUS*<sup>27</sup> (2009), in its overarching report provides a perspective and strategy for expanding employment in India. Set up by the government of India, the goal of the commission was to review the status of unorganized sector in India, including the nature of enterprises, their size, spread and scope, and magnitude of employment. The report takes an aggregative perspective of what the commission calls the central problem of the challenge of employment, namely, deficit in its quantity and quality. With an examination of the issue of labour market reforms in India, the report offers numerous suggestions and concrete recommendations towards attaining the objective of maximizing employment and ensuring inclusive growth.

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<sup>24</sup> M.S. Ramanujam and K.L. Rawal, 'Unorganized Workers' Welfare: Imperatives & Initiatives', 46 IJIR 16, 31 (2010).

<sup>25</sup> International Labour Organisation, 'Marking progress against child labour - Global estimates and trends' 2000-2012, (2013).

<sup>26</sup> Child labour, Unicef.org, <https://data.unicef.org/topic/child-protection/child-labour/> (Last visited 11 January 2019)

<sup>27</sup> National Commission on Enterprises in the Unorganised Sector (2009), 'The Challenge of Employment in India: An Informal Economy Perspective', Government of India, Academic Foundation, New Delhi.

Francis Lund & Smitha Srinivas<sup>28</sup>(1999), provides an overview of the need for social protection of women workers in the informal sector. Sketches some innovative approaches to social protection that have been undertaken by governments, community-based organizations and other non-governmental bodies; identifies gaps and priorities for future research, development programme and policy. The study was a good source for knowing the situation of workers in unorganised sectors in relation to the instant article. And Ashok Agarwal<sup>29</sup> relates his study to children working in *zari* factories enlightening the importance of prohibition on child labour which is, eventually in India, a loosely implemented as the laws dealing child labour and juvenile justice suffers from various lacunae.

S C Srivastava<sup>30</sup> (2017), through his book, aids researchers in enhancing the understanding of the subject along with other literature containing the detail analysis of Indian laws on child labour in pursuance of ILOs' project aiming the possible end to the practice of child labour.

### **(E) Scope of Study**

The scope of study is been confined to unorganised child workers in Dehradun district and due to some practical problems, only forty-one children were questioned. The authors have mainly focused on Indian Legislation for analysis of whole scenario depicting the child labour situation in India while considering only few international principles or definitions proposed by various international organisations. Also, the findings and suggestions thereon are subject to the responses given by the children and author's own viewpoints.

## **II. LEGISLATIVE FRAMEWORK FOR PROHIBITION AND REGULATION OF CHILD LABOUR**

The Constitution of India<sup>31</sup> provided special status to children and therefore, it has allowed the state for making special provisions for women and children in pursuance of international instruments like ILO Convention 138 and 182, and United Nations Convention on the Rights of the Children. It has granted such a special status to children by making an exception (Art. 15(3)) to our equality clause (Art. 14). To protect and safeguard the interest of child with regard to child labour, Indian Constitution contains other proactive provisions also, which are Art. 23 (Prohibition of traffic in human beings and forced labour), Art. 24 (Prohibition of employment

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<sup>28</sup> Francis Lund & Smitha Srinivas (1999), "Learning from Experience: A Gendered Approach to Social Protection for Workers in the In-formal Sector", Workshop on Social Protection for Women in the Informal Sector (mimeo), ILO, Geneva, (1999).

<sup>29</sup> Ashok Agarwal, Recycling of Child Labour: A Result of Defective Laws, PL October (Jour) 13 (2005).

<sup>30</sup> S C Srivastava, Child Labour – Law and its implementation 07 (LexisNexis India, Gurgaon, 1st edition, 2017).

<sup>31</sup> THE CONSTITUTION OF INDIA, 1950.

of children in factories, etc), Art. 39 clause 'f' (Certain principles of policy to be followed by the State), Art. 45 (Provision for free and compulsory education for children). And the most important provision is Art. 21-A, which makes right to free and compulsory education of every child in between the age group of 6-14 years, a fundamental right enforceable against the State. Also, Article 21 of the Constitution of India violates when children are made to work and tasks allocated to them results in endangering their health<sup>32</sup>. Among all the aforementioned provisions, Art 23 provides a prohibition of forced labour in Indian society by making the act which contravenes this very idea of prohibiting child labour, an offence punishable in accordance with law. However, while drafting this provision, constitution framers had before them Art. 4 of Universal declaration of Human rights. Art 4 of UDHR provides a prohibition only of slavery and slave trade and to curb the issue of child labour in India, constitution framers had to reach to content much wider in scope than the scope of said provision. So, they departed from the language of Art 4 and banned 'traffic in human beings which is an expression of much larger amplitude than "slave trade" and they also interdicted "beggar and others forms of forced labour.'" However, despite of a huge attempt made by the framers to include major forms of child labour within the ambit of Article 23, there is a question still existing i.e. whether the very spirit of the Constitution of India prohibits or abolishes the evil practice of child labour? There are two approaches<sup>33</sup> with respect to this question. First, and foremost, approach answers this question in the most positive manner in which it could have been answered and argues that child labour is completely outlawed by the Constitution of India and as such it should be abolished by the enactment of an appropriate law; and the other approach answers the said question that it only regulates the child labour or employment of children in factories and mines and other hazardous industries and it does not prohibit all kinds of employment.<sup>34</sup> The latter opinion suggests that this evil practice cannot be abolished due to some reasons and when there is compulsion to work for a child due to social or economic or cultural reasons, state has to interfere and look at whether the child is engaged in hazardous activity or not. Also, there is separate view of judiciary on the aforementioned issue and it was delivered in *People's Union for Democratic Rights v Union of India*<sup>35</sup> as Hon'ble Justice P.N. Bhagwati had provided Art 23 a new direction and held that it prohibits not only labour or service which a person is forced to provide, not only because of use of legal or physical force but also because of force resulting from economic compulsion. Nonetheless, our legislature has different opinion with regard to

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<sup>32</sup> Dr. Shilpa Jain and Sahitya Broka, *supra* note 25.

<sup>33</sup> Thomas Paul, *supra* note 10.

<sup>34</sup> *Id.*

<sup>35</sup> *People's Union for Democratic Rights v Union of India*, (1982) 2 LLJ 454 (SC), [Asiad case].

said question, which allows a child (adolescent) to work. Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 regulates the practice of child labour and prohibits any kind of employment of children who are under age of 14 years, simultaneously allowing adolescents to work while ensuring that they are not engaged in hazardous activity.

In India, prohibition and regulation of child labour revolves around Child Labour (Prohibition and Regulation) Act, 1986. In 2016, the said Act was amended and renamed as The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 with an intention to provide for more rigid framework as to curb the whole practice of child labour and to link the age of child with age defined in Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) to bring it in conformity with ILO Convention 138. The salient features of amended Act clearly depict the aforementioned idea of legislature as the Act provides for prohibition of employment of children, one; below fourteen years of age in all occupations and processes except where the child helps his family after his school, and secondly; above fourteen years of age but not have completed eighteen years of age in hazardous occupations and processes proposed by the Schedule. The Act differentiates between children of two age groups as in former case it is a child who has not completed fourteen years of age or such age as may be specified in RTE Act, 2009, whichever is more; while in later case the child is categorised as an adolescent by the Act itself.

The said Act as amended in 2016 structures the penal policy in a different way as compared to its earlier counterpart. The Act criminalises child labour by imposing strict sanctions to defaulters and simultaneously it shows leniency while punishing the parents/ guardians of child. This dichotomous approach should be resolved harmoniously. Section 14 prescribes for imprisonment of minimum six months which can be extended to two years or fine not less than twenty thousand can be levied or both, whether there is an employment of child or adolescents as provided in section 3 and 3A respectively. However, continuation of such an offence would entail an imprisonment of minimum one year which can be extended up to three years can be awarded. While parents/guardian are liable to be punished either when they permit; such child for commercial purposes in contravention of the provisions of section 3 or such adolescent to work in contravention of the provisions of section 3A but they are provided immunity if they are first time offenders under both aforementioned provisions of proposed legislation but if they are repetitive offenders, they shall be liable to be punished with a fine which may extend to ten thousand rupees.

The intention behind induction of Section 14A is novel: it provides an overriding effect, i.e., the offences under the proposed legislation shall be cognizable notwithstanding anything

contained in the Code of Criminal Procedure, 1973. District magistrate may be conferred with such powers and duties to ensure the proper execution of the provisions of the Act under section 17A. Further, the Act makes child labour a compoundable offence and provides for creating Rehabilitation Fund and also for rehabilitation of children.

The Standard Operating Procedure (SOP)<sup>36</sup> allows the authorities to accept a complaint with regard to child labour through various platforms like complaint corner at PENCIL portal, Police station, District task force under DM, State labour department/ Labour inspector, District nodal officer and through Child help line at 1098. After verifying the complaint, all agencies will forward the complaint to police which will ultimately initiate the process. Similar procedures with respect to rescue, pre rescue, post rescue and rehabilitation etc are provided through the SOP, thus helping in effective implementation of provisions of said Act. Despite of having such robust regulatory framework, the reality does not synchronise with the normativity. The lacunae in execution of laws dealing with child labour are responsible for unabated continuance and further growth of child labour. These lacunae actually work for the perpetuation of the child labour system rather than towards its complete abolition<sup>37</sup>. Provisions of Child and Adolescents Labour Act reveals that they prohibit the engagement of children in certain employments and regulates the conditions of children in certain others. Against the backdrop of the conceptual framework and regulatory scheme, the article analyses the conditions of child labour in the city of Dehradun.

### **III. CHILD LABOUR IN UNORGANISED SECTORS OF DEHRADUN**

Unorganised workers consist of people working in the unorganized sector or households, excluding regular workers with social security benefits provided by the employers and the workers in the formal sector without any employment and social security benefits provided by the employers.<sup>38</sup> Unorganised workers comprises of unpaid family workers, subsistence workers in agriculture sector (i.e. the landless and the marginal farmers), regulated but casual wage workers like construction workers, workers engaged on sub contracts on piece rate basis, domestic servants working even on part time basis with many employers on any single day, own account workers (petty self-employed and the owner workers), unregulated wage workers like the full-time apprentices in shops and service establishments, and full-time assistants to street vendors. Children in unorganised sector constitute the neglected and vulnerable segments

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<sup>36</sup> Standard Operating Procedure (SOP) for Enforcement of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Ministry of Labour and Employment, Government of India, September 2017.

<sup>37</sup> Ashok Agarwal, supra note 29.

<sup>38</sup> M.S. Ramanujam and K.L. Rawal, supra note 24.

of workers because of unavailability of formal work arrangements, uncertain and fluctuating wages, no regulated work schedule and workers being subject to uncertain working hours, uncertain about work and place of work, no secure employment and legal protection, and not organised, voiceless and vulnerable to exploitation. The problem of child labour becomes more severe because of activities in which child is engaged, in unorganised sector, usually escape attention of the government machinery for enforcing labour laws and regulations and, thus, these children have no access to social security.

As per census 2011, the total population of Uttarakhand is 1.01 Crores while the population of its capital city Dehradun is 16.97 lakhs. Out of aforementioned population, state government, in its report on progress over issue of child labour<sup>39</sup>, has recognised only 230 children as labourer in Dehradun in between the 2001 to 2013. However, this report considers the data provided by non-governmental organisation and recognises 95 children as labourer. Along with these numbers, the said report mentions details related to NCLP i.e. 1072 children are engaged in hazardous activities within Dehradun. This clearly questions the authenticity and integrity of report as the concerned authority lacks with the precise number of children working in Dehradun. Also, the report is silent on the data about the classification of sectors which employ child labour actively as well as passively. The other problem manifests in itself, i.e., the identification of such child labourers because the nature of unorganised sector does not allow any organisation to collect the precise data about the number of children employed in such sectors. In the given context, the article explores and investigates the conditions of practice of child labour in unorganised sectors of Dehradun after collating and analysing the stories (found after interviewing the selected types of child labourers) of child workers. Children working in unorganised sector are generally found at tea stalls, as waiters in restaurants (*dhaba's*), in repairing centres, as beggars, as petty self-employed person etc. Simple random sampling method was employed to gather the data about 41 children, who were questioned on the given parameters<sup>40</sup> to prove /disprove the legislation/execution dichotomy which this study entails.

#### **(A) Scenario on the basis of Age and Gender**

41 children were questioned<sup>41</sup> and it was observed that two children of age group of 5 to 10 (both inclusive) are engaged in Child labour. However, the picture is completely opposite with the category of children falling within the age group of 11 to 14 and 15 to 18 (both inclusive)

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<sup>39</sup> [http://labour.uk.gov.in/files/Pdf/Child\\_Labour.pdf](http://labour.uk.gov.in/files/Pdf/Child_Labour.pdf) (last visited 11 January 2020).

<sup>40</sup> Children were questioned based on parameters like Age, Gender, Residence, Schooling, Type of work, Facilities provided by employer, Nature of jobs, Earnings, Reason behind their involvement in such jobs.

<sup>41</sup> Ibid.

as twenty and nineteen children of out of whole sample are working in respective category. (Refer table 1.1)

Age group	No. of children	No. of female children	No. of male children	No. of children going to school
5 to 10	2	0	2	1
11 to 14	20	2	18	6
15 to 18	19	7	12	5
<b>Total</b>	<b>41</b>	<b>9</b>	<b>32</b>	<b>12</b>

**Table 1.1** - Age group and gender of children working in unorganised sectors of Dehradun

**(B) Scenario on the basis of Types of work, Schooling, Hours of work, PayScale or Earnings & conditions and surroundings of work**

This section tries to analyse the information gathered on nature of work after taking into consideration various aspects of work like types of work, schooling, Hours of work, PayScale or Earnings and, Conditions and surroundings of work. Major work profiles recognised out of sample are of House maids, Balloon sellers, Raggickers, workers on shops (including repairing centre) and restaurants, and miscellaneous works.

**House maids** – The gender analysis of sample shows that all female members of sample data are working in this profile. Also, there are two different job accomplishment methods recognised under research.

Age Group (yr.)	No. of girl child working	School going girl child	Children working in shifts		
			Single shift	Double shift	Full day
5 - 10	-	-	-	-	-
11 - 14	2	1	1	1	-
15 - 18	7	1	1	2	4

**Table 1.2** – Analysis of information gathered on house maids.

Few domestic workers were doing full time job; in one shift while few were doing the job in two shifts and the rest were completing work under one shift only but they were not full-time domestic helpers. These shifts can be of even half an hour in which one has to only cook or can be of a full day in which at least eight to nine hours has to be given. Both job accomplishment methods differ with respect to period of job and earnings from job. Obviously, if one gets a little bare time between two shifts of job, she can groom herself. Further, only two out of nine girls are from age group of 11 to 14 years and rest all are from age group of 15 to 18. Only one child, from each group, goes to school and one out of them falls under third category of work accomplishment while the other one completes her work in two shifts i.e. pre-school shift and post-school shift. (Refer table 1.2)

Generally, a domestic work done by a child exposes him/her to some hazards like sexual abuse, abusive and derogatory treatment from employer including verbal or physical violence etc. Also, long and tiring working days impacts badly on health of child. As mostly the living conditions of these children and their families are not good, it compels them to work on lower wages for the amount of work that they are completing. The earnings vary from Rs. 700 to 4000 depending on the no. of shifts, hours of work or type of work, for example – cooking, dusting or both etc.

**Ragpickers** – This work profile is one among the worst form of child labour in which very less hygiene maintaining factor is recorded. It could also be possible that a labour carrying on work of rag picking have very less knowledge of diseases which can spread due to solid waste. As they are petty self-employed persons and because of the nature of this work, they do not get any type of facilities. Despite of having great role in waste management, they lack in having proper safety measures like gloves and other cleaning apparatus. The earning out of this profile is not of much help and is very nominal in amount. A child ragpicker can earn maximum eighty to ninety rupees in a day after working for four to five hours a day at least or one can earn minimum thirty rupees per day. The sample contained four children working with this profile out of whom 2 children go to school, one was of 10 years while the other was of 12 years and only one child was from age group of 15 to 18 years.

**Balloon Seller** – In Vasant Vihar (an area in Dehradun), a person works to pay his family's debt as a balloon seller. His work place is in front of Vikas Mall. When people come out of mall after watching movies or having some snacks in restaurant, his work begins and he starts to persuade people to buy one or two balloons with a minimum cost of twenty rupees per balloon. I have found five children working as a balloon seller in Dehradun out of which only two go to school, both are of fourteen years old and other sells balloons full time (at least eight

to nine hours). Moreover, all balloon sellers are from age group of 11 to 14 years. It is seen under this study that the child who goes to school works for minimum four hours. Long and tiring workdays impacts on their childhood very adversely but their family's dependency on them does not allow them to get rid of this job. However, their earnings are not so high which can cause a great financial loss to family's earnings as they can maximum earn 180 rupees per day or minimum of 100 rupees per day. As they are petty self-employed children, this amount does not depict the final profit which they are actually earning from the job due to requirements of jobs like purchasing raw material.

**Workers in market area** – This work profile tries to analyse the information gathered for children who are working in market area and are not petty self-employed person. Overall analysis of this work profile shows that thirteen children out of whole sample are engaged in such types of jobs, for example, working on restaurants, repairing centres, hawker stalls, works as waiter. It is seen that children within the age group of 15 to 18 are mostly engaged in this work profile. Generally, the Pay Scale for labour of this category depends and vary with job nature. Sometimes, children engaged in these jobs are not aware of working conditions and they unknowingly engages in hazardous activities like frying 'aaloo tikkies' on a hawker stall is hazardous for a child as hot oil droplets can cause him injuries in eyes or on other body parts. Study<sup>42</sup> shows that a helper gets four thousand per month after working for the greatest number of hours among children working on repairing centre. Further, it is seen that an experienced worker of 17 years gets six thousand rupees and an experienced worker of 15 years gets fifty-five hundred rupees. These children do not go to school and work for full time. There are only two children who are regularly going to school within the aforementioned age group. Both of them works at least 6 hours a day but huge difference is seen in earnings of both as one who works on restaurant earns five thousand while the other earns only two thousand. Moreover, the children who do not go to school and works on shops averagely earns about five thousand per month after working for nine hours on each day. This phenomenon changes with regard to children who do not go to school in other two age groups as they have to work for at least eleven hours (average working hours) in category.

Age Group	Work type	No of Children	Average work hours per day	Average PayScale per month
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<sup>42</sup> The empirical research was conducted in Dehradun and 'study' refers to analysis of individual profiles of children prepared after questioning them. Also see, foot note 33.

<b>5 to 10</b>	Waiter	1	11 hr.	3000
<b>15 to 18</b>	<ul style="list-style-type: none"> <li>• Repairing centres</li> <li>• Shops</li> </ul>	3	9 hr	3167
		3	9.5 hr.	5267
		Total - 6		
<b>11 to 14</b>	<ul style="list-style-type: none"> <li>• Juice Centre</li> <li>• Shops</li> </ul>	1	11 hr.	4000
		2	10 hr.	4600
		Total - 3		

**Table 1.3** -Work Analysis for children who do not go to school.

<b>Age Group</b>	<b>Work type</b>	<b>No of Children</b>	<b>Average work hours per day</b>	<b>Average PayScale per month</b>
<b>5 to 10</b>	-	-	-	-
<b>15 to 18</b>	<ul style="list-style-type: none"> <li>• Restaurants</li> <li>• Shops</li> </ul>	1	6 hr.	5000
		1	7 hr.	2000
		Total - 2		
<b>11 to 14</b>	<ul style="list-style-type: none"> <li>• Works on hawker stall (Frying 'Aaloo Tikkies')</li> </ul>	1	4 hr.	2500

**Table 1.4** -Work Analysis for children who go to school.

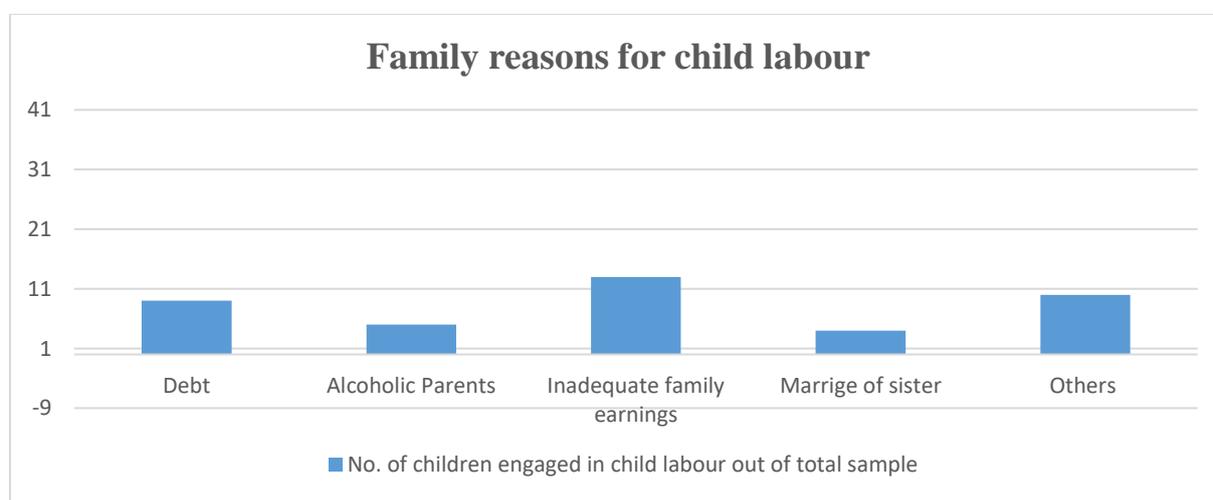
**Miscellaneous Works** – Children were found doing few other types of works also, who are categorised as miscellaneous. These works vary from begging to installing balloons for decoration of party halls and running self-owned hawker stalls. Work hours like all other jobs depends on schooling of children heavily, but anyhow a child has to work at least for 4 to 5 hours a day. Each type of work categorised under this head has its own negative impact on child, for instance, working on a construction site is very risky as chemicals present in cement

can dilute with the blood of a child and can bring a lot of health hazards to him. Also, lack of safety measures like helmets and lack of insurance cover, categorises this work as hazardous for a child. Moreover, the nature of jobs is found to be tedious, tough and uncertain for child. Children, specially beggars or sellers on road, are usually afraid of Police. Sometimes, they are hungry and have to work simultaneously. They are engaged in these petty jobs without having knowledge of that particular job. After all these disastrous working conditions, children earn very less i.e. Rs. 100 or 150 (less at times). Total ten children were found engaged with these types of work profiles and only three children go to school.

### (C) Scenario on the basis of family background

It is a very common phenomenon that people work to earn livelihood or to help an earning person in family or for bringing up family's financial conditions. But the question is that why people at such a young age are engaged in job? This question is very easy to answer. There are several factors which encourages them to work. unemployment, large families, poverty and lack of parental education. Also, need for cheap labour in market is growing day by day as industries are increasing at a high pace which is a contributory factor in creating a demand for child labour. The triggers/ reason of child labour may be classified as primary and secondary. Primary triggers include absence of schemes for family allowances, large- sized family, absence of strict implementation of compulsory education, etc. and secondary triggers comprise of inadequate income of adult workers, low standard of livings, etc. Unemployment and underemployment of adult workers and even the seasonal employment of adult workers force children to indulge and work as child labour.

Most of the reasons are originated or associated with family of child. Findings suggest that inadequate family earnings is the prominent factor behind working of children while others are debt, alcoholic parents, marriage of sister, inadequate family earnings etc. (Refer graph 1.1)



#### IV. CONCLUSION

Child labour is a global phenomenon and India is one of the nations who is fighting with it since independence. This can be easily proved via numbers as two hundred and eighteen million children are in employment, between the age of five to seventeen years <sup>43</sup>and in India, as per census 2011, these figures are close to two and fifty-nine million.

Despite of having various legislations dealing with issues related to children, India as a society has lacked to improve the conditions of its children. Child labour, being the specific concern of this study with respect to; Child and Adolescent Labour Act and constitutional provisions, has to been seen as a specific issue in unorganised sector as the condition in aforementioned sector is drastic. Children are working for more than five hours without breaks after attending school. This condition worsened with the acknowledgement of the fact that a child, not attending school, has to work for eleven hours on an average. After working for long hours in inadequate and non-suitable working conditions (sometimes, hazardous), a child earns only a nominal amount which vary from eighty to two hundred rupees. I found the working conditions of children pathetic as children engaged in various occupations has a fear of revealing their actual age as this can lead to a complaint of his/her employer and ultimately, will impact his job. Further, they do not talk about themselves with others as this again fears them of complaining. At times, working child was not happy with the type of work he was doing, but anyhow he was completing his task. Further, the job becomes even tougher for children when they even do not have basic amenities like chair or sitting area and have to work by standing for long hours. Also, findings of this study suggest that the prominent reason of child labour is inadequate family earnings. In most no of cases, family member or parents suggest them to work.

The present situation of children working in various sectors can be improved through a collective effort of society and state. Various individuals and state agencies are responsible for the current situation in different manners. Inspector, medical officer, surveyors, witnesses, government, courts, legal provisions, lawyers, trade unions, NGO's and welfare organisations are responsible for poor rate of conviction for crime of child labour. The present central scheme for prohibition and regulation of child labour has various lacunae which is undoubtedly supporting the increment of child labour. Parliament should try to improve the current scheme of Child and Adolescents labour Act.

It is allowed for a child that he/she can help his family or family enterprise, which is other than

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<sup>43</sup> International Labour Organisation, *Global estimates of child labour: Results and trends, 2012-2016*, (2017).

any hazardous occupations or processes forth in the schedule, after his school hours or during vacation. The said provision provides permission to prohibited activities and processes as the current definition of term 'family' is too wide which can allow employers to engage children in activities in the name of 'family enterprises'. The said exception provided by legislature removes legal sanction to exploit children in various industries where activities and processes are outsourced to home-based units. And the aforementioned provision lacks in stating the hours of work up to which a child can help his family or family enterprises. This can be accepted as allowance to impact the post schooling developmental process of a child which includes homework, playing and etc. Also, the current legislative scheme suggests only few hazardous occupations i.e. mining, explosives and thirdly, other occupations mentioned in Factories Act, 1948 while the previous counterpart Act had a list of eighty-three hazardous occupations.

Apart from central government's efforts, state governments have to play its role very effectively in fighting with this social evil. State government can use its various departments to coordinate and prepare effective plans specially focused on child labour under the scheme proposed by central government. The said government while preparing such plans, can use different indicators to select areas which have large number of child labour ratio and areas which can potentially hire children on mass scale. Further, the focus on such areas is necessary because children generally changes their work place i.e. district, state and city. While preparing such plans the government can use indicators like local conditions and socio-economic dimensions that preserves this practice.

## **V. SUGGESTIONS**

- Children working in unorganised sector are more vulnerable than compared to organised sectors as the organised sector and working conditions in it can be regulated by the state while it is equally important with respect to other sector but lack of inappropriate data collection methods makes it highly impossible for state to regulate different aspects of unorganised sector. In this small empirical survey, children were seen working for long hours. State can amend the Child and Adolescents Labour Act and prescribe the minimum number of hours up to which a child can work in case of helping the family or working in family enterprises.
- The current framework categorises rescued children as firstly, whose verification is approved and secondly, whose verification is not approved. Rehabilitation of children rescued is possible when their home verification is not approved. In relation to first category, the said

framework treats foreigners and nationals equally. Nationals whose home verification is approved, they should be sent back to their respective district and they can be trained there for at least six months. This can help them in restarting their lives in more positive manner instead just providing their custody to their parents. However, a smaller number of district nodal officers makes it difficult to achieve.

- In every five years, state machinery should conduct assessment of number of children engaged in child labour and also has to revise its current scheme, because it is seen that appropriate number of cases are not reported in country. Only 97 cases were reported in State of Uttarakhand between 2014 to 2018.

- The present governmental machinery needs to regulate child labour more effectively as it fails in recording the precise data related to child labour. Thus, it has to develop mechanism to record precise number of child labour employed including those who killed in such occupations in various parts of the country during the last ten years and the current year, year-wise and State-wise.

- All this could be achieved through providing a permission/licence, based on a particular criterion, to a child who is willing to work so that the said information can help state in ensuring betterment of child. Furthermore, state can impose present criminal liability provided under the said Act to punish employer or can provide cure to the reasons behind engagement of children in any activity or process when he is working without licence, irrespective of the sector in which he is working.

- Furthermore, the regulation of various aspects of child labour in said sector is very difficult but it is equally easy for various occupations or types of works like domestic help, waitering, working on repairing shops etc. The children were found working for long hours and earning very less. This is one of the crucial finding which depicts the degree of exploitation of children in unorganised sector but an attempt to provide for welfare legislations which regulates the wages for these children through enactment of a central scheme can help these children. Again, this can be achieved, for example, with the help of one of the state agencies like municipal corporation via verification of information of these children which can help needful agencies in quickly responding to exploitation of them. This can also help in reducing cases of sexual exploitation of child labourers as verification will contain employer details too.

- The state had tried to enact the new scheme of Child and Adolescents Labour Act in consonance with Right to Education Act. However, it allows children, who are been categorised as ‘adolescents’ by the Act, to work full time and has not created a schooling as compulsion for them. This can further deteriorate their future.

At present, the whole administration of the said Act and NCLP is kept under observation of District Magistrates who is already overburdened and hence he may not be able to find a separate time for looking after the better implementation of Child labour laws. Therefore, based on the same reasoning, Lok Sabha Standing Committee on Labour recommended that Vigilance and Monitoring Committees headed by local MPs may be constituted to review the implementation of not only child labour laws but also, all the labour acts in area every three months. Also, providing for stricter penalties for employer can be helpful in curing this social evil. And if the higher quantum of punishment can be decided, after taking cognizance of fact that a girl child was employed, can give a deterrent to society<sup>44</sup>. Moreover, punishment in form of imprisonment for at least 2 hours to parents/ guardians of victim child should be given so that a stricter caution remains in offender's mind instead of providing them absolute immunity from punishment for first time offenders.

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<sup>44</sup> S C Srivastava, '*Child Labour – Law and its implementation*' 33 (Universal Law Publishing, 1<sup>st</sup> Edn., 2017).