Chapter One

Introduction

1.1 Objective and Scope of study

Child labour, which is a widespread global phenomenon, is often regarded as a form of child abuse or exploitation of children. Many international bodies such as the United Nations (UN) and the International Labour Organisation (ILO) have included the abolition of child labour on their agenda.

According to a report by the ILO (1996: 7), based on statistics from about 100 countries, it was estimated that in 1995 there were 73 million children between 10 and 14 years of age in the labour force, and that in 1996, in the developing countries alone there were at least 120 million children between the ages 5 and 14 working full time and about 250 million children of the same age category working part-time. The ILO report pointed out that sixty one percent of these children were found in Asia.

Child labour is evidently also a common and widespread phenomenon in Malaysia. The number of children between the ages of 10 and 14 in the work force is 43,000 in the Population Census of 1980 (Department of Statistics, 1983: 568) and is 39,746 in the Population Census of 1991 (Department of Statistics, 1995: 485). Although there is a slight decline in the number of children in the labour force, there is no reason for us to assume that child labour would cease to exist in the near future in Malaysia.
The existence of child labour in certain places such as night markets and factories is evidence that the Children and Young Persons (Employment) Act 1966, which is the law that regulates children's participation in work activities in Malaysia, is ineffective. This study is an attempt to examine why such a law is ineffective. Poor enforcement is an obvious reason for the ineffectiveness of the law. However, the writer believes there could be other more fundamental contributing factors.

Both law and culture are forms of social control. The difference between modern law and culture is that law is backed by official sanction, while culture is enforced solely by social pressure. Sociologists of law have long noticed that culture is an important factor, which influences the effectiveness of law. This is because they are the competing forms of social control. Sometimes, the law of a society may prohibit people from behaving in a certain manner while an established cultural norm sanctions that behaviour. When law is incompatible with an established cultural norm, it is often ineffective in controlling the people's behaviour (see 1.2). The writer believes that the incompatibility between labour law and Malaysian culture could be an important reason why our child labour law is ineffective.

The objectives of this study are:

(i) to examine the influence of social and cultural factors on the practice of child labour, particularly in the Malaysian Chinese community;

(ii) to look into the conditions of child work and their impact on children participating in work activities because they are important for policy making;
(iii) to find ways in which the law can respond to the social and cultural factors that influence the practice of child labour.

To date there has not been any study on the influence of social and cultural factors on the practice of child labour in Malaysia.

This study is only confined to the Chinese community in Malaysia because it is often very difficult to conduct cross cultural study. The study is further limited to a Chinese new village community in the mukim of Cheras, in the district of Hulu Langat, in the state of Selangor, Peninsular Malaysia, in the period between July 1997 and December 1997, so that an in-depth study could be conducted.

The Chinese are chosen for two reasons. First, the Chinese are known to be generally better off economically, therefore it is more likely that the Chinese child workers are not from poor families. Second, as a Chinese it would be easier for the writer to study the Chinese community.

1.2 Law, Chinese Culture and Child Labour: A Theoretical Background

In this section the writer attempts to show the interrelationship between law, culture and child labour. Empirical evidence will later be given to support such an inter-relationship.

1.2.1 Law and Child Labour

Childhood as a distinctive stage of human life is essentially a modern idea. Child labour was seen as a form of social problem only in the nineteenth century (Hall, 1981: 48). Aries argues that the concept of childhood did not exist in
medieval Europe, and that it only came in the nineteenth century (Shipman, 1972: 8). In medieval time children were portrayed as young adults and played a part in adult working and social life. “Apprenticeship started at around seven years, and among the more wealthy, children were sent into other households to learn manners, to serve and to master a trade” (Shipman, 1972: 12). In pre-industrial England apprenticeship and domestic service were the most important means of education. Formal education became an important form of socialisation only in the nineteenth century.

In England, children under nine were prohibited from working in the factory only in 1833 and children were regarded as having rights only in 1889. Education was made compulsory in 1876 for children under ten. The Children and Young Person Act 1933 defined a young person as between 14 and 18 (Shipman, 1972: 12).

Aries continues to argue that the spread of literacy and schooling gave rise to the idea of childhood (Shipman, 1972: 8). He also asserts that attitude is a product of culture as a whole. Therefore, Bekombo (1981: 113) is right to point out that child labour must be understood within individual culture. Hull(1981:47-49) points out that the negative perception of child labour in the West was affected by the working condition of a large number of children in the factories during the Industrial Revolution.

The above idea of childhood is now reflected in many international instruments against child labour. The Declaration of the Rights of the Child 1959 distinguishes “childhood" from “adulthood" and stipulates that Children should be entitled to special protection to ensure their well being. Some of the
specific rights that are granted by the Declaration to children to fulfil this objective include the right to free and compulsory education, the right to opportunity for play and recreation and the right not to engage in "any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development." These provisions are also enshrined in the United Nations' Convention on the Rights of the Child 1989. Article 32 of the Convention recognises the right of the child for protection against economic exploitation and hazardous work, or work that interferes with the child's education, health or physical, mental, spiritual, moral, or social development. The state parties are required to take measures to provide for:

a) Minimum age or minimum ages for admission to employment;
b) Appropriate regulation of hours and conditions of employment;
c) Appropriate penalties or other sanctions to ensure the effective enforcement of Article 32.

With similar conviction, the International Labour Organisation (ILO) is committed to abolish child labour and promote compulsory education worldwide. However, ILO recognises that this will only be possible in the long run. Therefore, in the short term ILO is aiming at protecting children at work from work hazards (Bequele, 1986: 14).

1.2.2 Chinese Culture and Child Labour

Studies conducted in India (Dube, 1981) and Africa (Schildkrout, 1981) have shown that child labour has a unique place in these cultures. This may also be the
case with the Chinese, as the Chinese have a set of values that acknowledge mutual responsibilities between children and adults that may encourage the practice of child labour. Therefore, child labour may also have a unique place in Chinese culture.

It may be enlightening to consider several aspects of Chinese culture, which emphasise diligence, frugality, achievement, monetary wealth and education.

The Chinese is said to possess strong work ethic, which emphasises diligence and frugality (Wu, 1995: 167-200; 侯家驹, 1993). Therefore, the concepts of "leisure" and "play" for children are of minimal importance, if not rejected in the Chinese culture. In fact there is a saying in Chinese that "play causes one to lose aspiration" (玩物丧志). The emphasis on "diligence" and "frugality" is often related to the belief in continuity of the family. Hung-chao Tai (1994: 11) observes that "most Chinese work diligently and live frugally for the sake of their families".

Diligence and frugality lead to accumulation of capital and the success of family enterprises, which is the dominant form of Chinese economic activity (Hung-chao Tai, 1994: 11). On the other hand, personal achievement is valued as a glory to the ancestors (Wu Ming Chu, 1995). This attitude shows the central importance of family in the Chinese culture. In turn, this shows the importance of the concept of Xiao (孝), which means filial piety. Xiao does not only regulate the relationship between the parents and the children. It is in fact the foundation of the Chinese society. Xiao places obligation on the children toward parents and ancestors. In turn, parents are responsible to produce children who would glorify the ancestors. Therefore, traditionally the Chinese never thought in individualistic terms. The
notion of children having rights is alien to the traditional Chinese culture. One writer even went to the extent of saying that the difference between Chinese and western culture is in the word "Xiao" (何子煌, 1983: 32). Therefore, Xiao (filial piety) is the ultimate concern for the Chinese (Sim Sock Hoon, 1984; 何子煌, 1983). In other words, in Chinese culture "Obligation" is much more important than "Rights".

The Chinese also place great importance on education. However, we need to qualify this value with the class structure and social mobility in Chinese community.

A historical account of the class structure and social mobility in the Chinese community in Singapore and Malaya during 1800 to 1911 by the prominent Chinese historian Yen Ching-Hwang (1995, 3-32) shows how Chinese' attitudes toward education and material wealth are interrelated. He classified the Chinese community into three classes, Shang (商), Shih (士) (educated elite) and Kung (工). The shang class consisted of traders, shopkeepers, exporters and importers, plantation owners, property owners, financiers and tin-mining proprietors. The shih class consisted of clerks from foreign and Chinese firms, junior government officers, interpreters, schoolteachers and professionals. The Kung class consisted of artisans, shop assistants, plantation workers, mining workers and rickshaw pullers. Generally, the shang class occupied the top social stratum, with the shih class barely below them, and followed by the kung class.

The most interesting feature of this class system is in its mobility between classes. As Yen Ching-Hwang(1995: 5) states:
"The main characteristic of the overseas Chinese class system was its fluidity. There was no legal barrier to social mobility, nor was there a competitive examination system that people had to go through before higher status could be acquired. Wealth was the main determinant of social mobility; those who possessed it moved up the apex of the class hierarchy, and those who lost it descended even to the bottom ... In particular, movement from the upper Kung class to the lower shang class was most frequent, because it was relatively easy for an artisan to change his status to become a shopkeeper. This fluidity had thus affected the shape of the classes in the overseas Chinese community.

...When the [Chinese] were overseas and congregated into a community, they naturally saw the new society structured hierarchically. They measured and graded other people according to the possession of wealth in a hierarchical order, and paid respect to those who possessed higher social status. In the process of grading other people, one could not help knowing his own status in that class hierarchy. This strong status consciousness provided an incentive for the overseas Chinese to acquire wealth and symbols of status."

The above account shows that the Chinese are obsessed with the acquisition of wealth and a higher social status. Acquisition of wealth is the main objective of life for most Chinese, because it is the way towards obtaining a higher social status, which is "glorifying to the ancestors".

If it is material wealth that is valued then the Chinese will not hesitate to stop their children from school and send them to work, when it is clear that better opportunities are outside the education system. On the other hand, they may also be happy to let their children have some business experience as early as possible, so that they can have a good alternative in business if they fail to achieve in education.

Therefore, child work may be positively regarded as a good alternative to formal education, when a child’s performance in education is poor. On the other hand, child work can also be considered as a good form of moral education to cultivate diligence and Xiao.
The existence of child labour is often mistakenly associated with poverty. As Swepton points out, behind the ILO policy is a belief that the root cause of child labour are economic factors and lack of effective legislation. Swepton (1986: 19) proclaims:

"Why, then, does it persist, and what is being done about it? The answer to the first question is simple: in most cases it persists because of poverty, which force families to send their children out to work or compels the children themselves to work in order to survive."

The above analysis may not be totally accurate. Besides economic factors there may be other social and cultural factors that contribute to the existence of child labour.

1.2.3 Effectiveness of Law in Cultural Context

The writer believes that Bequele and Myers (1995:87) are not wrong to point out that law is an important instrument to protect children from work hazard or even eliminating child labour. However, as pointed out by Rodgers and Bullock (1972:181) with regard to civil rights in the United States the "mere passing of a law and the development of machinery to institute and enforce that law does not guarantee that meaningful change will occur".

One important prerequisite of an effective law that regulates a practice that is approved by an established culture is that it must respond correctly to the established culture (Cotterell, 1984:64; Podgorecki, 1974:253). The legislature must be able to use some elements in the culture to formulate the intended social idea and
the law that enforces the idea. Thus, law becomes, in Bohannan's (1994: 795) theory, a "double institutionalisation" of the existing culture.¹ The law should be able to achieve its intended ends, without offensively interfering in established culture.

There are clear examples of costly failures in the attempt to use law to alter established culture. The most well known example is perhaps the United States' attempt to prohibit the manufacture, transportation and sale of alcoholic liquor in the 1920s and early 1930s. Although more than 750,000 people were arrested and severe punishments were imposed, and more than $205,000,000 worth of property was seized, yet the law had very little effect on the alcohol consumption of Americans. The law was repealed as a result of massive protest, especially when "respectable citizens" were put in jail under the law (Cotterrell, 1984: 59-60). In another example, the United States' Supreme Court tried to prohibit polygamy among the Mormons in 1896. The church leaders announced that God too had prohibited polygamy. Many Mormons were arrested for polygamy. Yet polygamy survives among the Mormons. (朱景文, 1994: 153)

The conflict between culture and law is especially apparent when a foreign law is received. The British experience in India is a very telling example. The colonial government tried to enforce the local culture, i.e. Hindu and Islamic law, in court, following common law procedure. The result was total chaos in the Indian legal system. Some anthropologists point out that culture is a living phenomenon.

¹ The present writer is aware of the limitation of Bohannan's theory. However, the present writer finds his idea useful in solving the problem facing us.
Once a cultural norm is enforced in court, it becomes static. Therefore it is manipulated (朱景文, 1994: 154).

Therefore, the more successfully the law responds to the culture the less resistance the law will face and hence the more effective will the law be.

Child labour law in Malaysia did not grow out of the local culture. Rather it is a product of foreign influence, i.e. international pressure. Therefore, careful study of its compatibility with the local culture is necessary if it is to be effective in achieving its noble purpose of protecting the welfare of children.

1.3 Methodology

This study is exploratory in nature because this is the first attempt to study child labour and child labour law in the context of Malaysian culture. For this reason the writer adopts an anthropological perspective and bases his work on a Chinese community. This is a small scale study which does not claim to be representative of the Malaysian Chinese but it can throw light on their culture and its implication to child labour. Thus, the writer is very cautious to generalise its findings.

Since there are very few studies of child labour in Malaysia, this study will rely mainly on primary data. Besides, as explained by George (1992) official data on child labour is also very limited. However, attempt is made to discover some useful secondary data from published sources. This secondary data is mainly used to provide a background to empirical data and to supplement the empirical findings.

Primary data was collected through participant observation, questionnaires and interviews. Participant observation, was conducted throughout the period of
fieldwork on children and the community's activities. The writer participated as much as possible in the local activities.

From July 1997 to December 1997 the writer lived in Balakong New Village, a semi-rural community in Selangor, about thirty minutes drive from Kuala Lumpur, to conduct the fieldwork. Balakong New Village was chosen as the place to conduct fieldwork for two reasons. Firstly, it is a developing Chinese new village. The Chinese in the new villages are not so "modernised" as compared to those living in the city. Therefore, it is more likely that they still practice some traditional Chinese culture. Secondly, there are ample opportunities for the children in Balakong New Village to work, as Balakong is undergoing rapid development and is also close to Kuala Lumpur.

In the early stage of the fieldwork various activities in various settings were observed to discover the types of work children do and their work places. With the co-operation of the school authority of Balakong Primary School, a survey was conducted in the school. The survey uncovered that 24 out of the total 500 students were doing some part-time work. These children were interviewed in school and asked to fill a questionnaire. Academic performances of these children were examined by looking into their report books, to determine whether working affected their performances.

The members of the local Lutheran church were the writer's initial key informants. They introduced the writer to various people. One of the church members, Mr Gan Yun Chong, who is a former child worker and junior gangster
chief, introduced the writer to the current chief of Hung Household, who is his cousin. Mr Gan also accompanied the writer to interview many teenage gangsters, who are also child workers. Association with the Hung Household made it difficult for the writer to interview teenagers belonging to a rival gang in the village, the Wah Kee. However, the writer managed to interview some of the Wah Kee boys with the help of one of the Wah Kee boys, whom the writer managed to befriend. Later, the writer also made the acquaintance of the president of the Association of Secondary School Students, an organisation initiated by the branch of the political party MCA (Malaysian Chinese Association), and some of his friends. With their help a name list of all (225 children in total) children and young persons in Balakong New Village, between the ages 13 and 16, was produced. A list of 45 children and young persons who have already dropped out of school was also produced by asking some of the teenagers to identify them. The President of the Association of Secondary School Students then helped and accompanied the writer to look for, and interview these dropouts. The writer only managed to interview 28 of these school dropouts. They were also asked to fill a questionnaire. Beside these school dropouts, another 29 part-time child workers were also interviewed and asked to fill in a questionnaire each. Some part-time child workers also refused to co-operate.

Various people, including parents, school teachers, community leaders, and employers of children were interviewed with regard to their attitudes towards and

---

2 He was in charge of the teenage gangsters in the Hung Household gang (also known as gang 360 or 21). He was answerable to an older chief. Now, he is a committed Christian. However, he is still respected by members of the Hung Household, many of whom were once under his protection.

3 Hung Household and Wah Kee are the two major gangs in Balakong New Village, and also in Malaysia.
opinions about objectives in life, education, child rearing and child work. Parents of both working and non-working children were interviewed to determine family background of the working and non-working children. All together 38 parents of working children and 22 parents of non-working children were interviewed and asked to fill a questionnaire. Two teachers were interviewed to gather information about the behaviour of the children in school. One of them has taught for more than 15 years in the local primary school. The second teacher is the discipline teacher of the secondary school where most of the children in Balakong New Village attend. In addition the writer also interviewed two local MCA leaders, one of whom is the chief of the village, and thirty villagers chosen at random to find out their opinions on and attitudes towards child labour. No opposition party leader was interviewed, as there was no active opposition party in the village. At the supra-community level the State Assemblyman, Mr Ho Hee Lee, was also interviewed to find out his opinion on and attitude towards child labour. Only two employers of child workers were willing to be interviewed.

To secure co-operation all interviews were conducted in the presence of a local villager.

The selection of the parents of non-working children was based on two criteria. Parents of children, between the ages of 15 and 16, who were not working were interviewed because majority of the children in this age group were engaged in some form of work activity. Parents of younger non-working children who have a reputation of being good students among their peers were also interviewed, as the
parents' backgrounds and attitudes may be factors of these children's outstanding performance.

Children's work and other related activities were observed in their natural setting. Sometime, informal interviews with those who participated in these activities or those who have some inside knowledge about these activities were conducted. However, observation of children at work is difficult to conduct as the majority of them were not working in the village, and they were unwilling to tell exactly where they work. Although the writer managed to observe some of the children who work in the village, long observation was avoided as the villagers were very suspicious. The writer did not want to offend them as this could cause problems, as it was pointed out earlier that most of the teenage child workers were gangsters. The writer was also very cautious of taking photographs. Therefore, some of the photographs were taken without the knowledge of the child workers.

1.4 Problems Encountered

On the whole the writer managed to have very good rapport with various people. However, there were some minor problems. The most common was meeting and interviewing the child workers themselves. Some of them may have migrated to another town, although they are in the list of dropouts. Many of these dropouts seldom stay home, so the writer had to catch them at the right time and at the right place. Nevertheless, some of these dropouts were inaccessible. Some of them refused to co-operate half way through the interview. This made in-depth interview very difficult, as the writer had to make the interview quick and short so that they
would not lose interest. This made it impossible to obtain some important details. Many of their parents too refused to be interviewed. Some who had agreed to an interview did not give accurate information. Very often the writer had to verify the information given with other members of the local community.

Some members of the public were unwilling to speak their mind. Both the parents of child workers and members of the public were probably affected by a misconception that any form of child labour is illegal.

1.5 Concepts and Definitions

Legal definitions of important concepts are stated below.

1.5.1 Children and Young Persons

So far we have used the word “children” very loosely. Section 1A(1) of the Children and Young Persons (Employment) Act 1966 defines a child as “any person who has not completed his fourteenth year of age or of such age as the Yang di-Pertuan Agong may by notification in the Gazette prescribe”. A young person is defined as “any person who, not being a child, has not completed his sixteenth year of age”. These definitions deviate from the common definition of children. From the 17th century onwards, the age of majority was set at 21 by English Common Law. In Malaysia the age of majority is set at 18 under the Age of Majority Act 1971. However, this study has accepted the age of majority set by the Children and Young Persons (Employment) Act 1966, i.e. 17. This is to recognise that this unusual definition of age of majority may be a result of the influence of the
recommendation of the International Labour Organisation to set the minimum age to enter into employment at 15 or at the age when the child completes his compulsory education. Children or rather young persons in Malaysia complete their lower secondary education at 16 or 17, depending on what type of primary school they attend.

1.5.2 Child labour

Perhaps it is also useful to take note of some commonly accepted definitions of child labour. The Director General of the International Labour Organisation (ILO), Francis Blanchard (1986: 1) defines child labour as follows:

"[Child labour is] not a teenager working for a few hours to earn additional pocket money; not children helping on family farms; not youngsters doing household chores. But children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from opportunities that could open up for them a better future. Child labour of this kind is the object of national and international concern."

The writer accepts Blanchard's definition in principle. However, children and young persons engaged in work activities directly related to their parents' occupation are also interviewed in this study. This is done because the writer recognises that the situation in Malaysia may not be as clear and obvious as Blanchard puts it. In many cases, the children or young persons' activities fall into the grey area. It is difficult to determine whether they should be considered as child labour or not without close examination.
This study tries to show family work can be as harmful as non-family work. Furthermore, family work is a very broad concept in the context of the Chinese culture, as the Chinese have a very complex family system. Traditionally, the Chinese lived in a corporate family, called the jia (家). Its members consisted of people related by descent, marriage, or adoption. “The corporate nature of the jia can be seen in the fact that each member belongs to one and only one jia, the property of the jia belongs to the members in common, and the income of all jia members is pooled to meet family need” (Sorensen, 1993: 95-96). The corporate nature of the Chinese jia is now largely reduced and modern day Chinese in Malaysia rarely live in this type of corporate family. However, the concept “jia" and the obligations it entails are still very much a part of the Chinese culture. One writer accurately emphasises that jia is in fact the foundation of Chinese ethic (金耀基, 1994: 32) Another writer observes that even after a corporate family is separated and its members now belong to different households they often maintain very close ties financially, socially and emotionally( 崔贵强, 1994: 67). When one member of the jia is in need and if another member is in a position to help but refuses to do so, he will be strongly criticised in the Chinese community. On the other hand, membership of the jia is more difficult to determine, as it can be extended to various kin, which often the Chinese themselves find difficult to determine. Therefore, it is rather easy to claim that a child is fulfilling a family obligation when he works for a relative.

This study also shows that sometime the harm of a particular work does not depend on the length of time children spend on the work. The harm may simply take
another form other than physical harm or the harm may be indirect, in the sense that it does not come from the nature of the work. Therefore, in this study child labour is defined as "children or young persons engaging in economically productive work; whether they work for a family member or not ".

1.6 Legal Typology of Child Work

The Children and Young Persons (Employment) Act 1966 does not systematically define and distinguish child labour and different types of child work. However, by examining some of the provisions of the Act, we can see these definitions clearly. Section 2(1) prohibits "employment" of children and young person except in "employments" permitted by the Act. Section 1A(1) defines employment as "employment in any labour exercised by way of a trade or for the purposes of gain, whether the gain be to a child, young person or to any other person ". Section 1A(1) also defines an employer as "any person who has entered into a contract of service to employ any child or young person and includes the agent, manager or factor (sic) of such first mentioned person ". Therefore, a distinction is made between child work done under an employment contract and that which is not done under an employment contract. Only child work under an employment contract is regulated by the law, because Section 2(1) provides that no child or young person can engage in any "employment" other than those permitted by the Act. Work done under an employment contract and work without an employment contract are subsequently defined.
1.6.1 Work done under an employment contract

One way to further define various forms of work done by children under an employment contract is by distinguishing work done within a domestic setting (Section 2 (3)(b) of the Children and Young Persons (Employment) Act 1966) and work done outside the domestic setting. Children may be employed as domestic servants to help with housework normally done by the mistress of the house. This includes cleaning, cooking, looking after children and so on. According to Bequele and Myers (1989: 11) child domestic work can be particularly hazardous, since it is remote from public scrutiny.

Outside the domestic setting children can be engaged in mainly three sectors. Children can be employed in an "industrial undertaking" (Section 2(3)(d)). However, the Act does not define "industrial undertaking". Yet, this needs to be further defined by distinguishing formal and informal industry. "Formal Industrial Undertaking" refers to factories with proper licensing and management system. "Informal Industrial Undertaking" refers to small-scale industry like motor repair shops, handicraft production, food production, and so on. It is commonly believed that child labour does not exist in formal industry, however, this is not true (See Chapter Two for more details).

Secondly, children can also be found working in "agricultural undertakings". Section 1A(1) defines "agricultural undertakings" as "any work in which any person is employed under a contract of service for the purposes of agriculture or horticulture, the tending of domestic animals and poultry or the collection of the produce of any plants or trees, but does not include any work
performed in forest " . These could be work done in an estate, a farm or any other plantation. According to studies done in Malaysia, this could be the most hazardous form of work done by children. (Jomo, Zaini, Ramasamy & Suppiah, 1992)

Thirdly, children may be employed in the commercial sector. This includes shops, shopping complexes, super markets and so on.

Finally, children can be found in petty businesses, such as eating stalls and in the hawking trade. Clammer (1994: 169) points out that petty businesses are a very popular form of economic activity in Asia. Although it is called " petty business " , it may not be " petty " at all. Sometimes, the income of these petty traders could be more than that of a white-collar worker.

1.6.2 Work without an employment contract

Typically children help their parents at home, in family businesses and production undertakings. It is often assumed that these children are not paid, as it is often referred to as " unpaid family work " . However, this may be inaccurate.

There can also be situations where children are not employed as such, but are working as independent contractors. One example of this is when one contracts a child to do a certain job and the child is paid on a piece rate basis or a lump sum.

This typology is used as a guide in chapter two to classify the types of work done by children.
1.7 Significance of Study

The United Nations and the International Labour Organisation regard child labour as a serious social problem. They are constantly devising programmes and conventions aimed at abolishing child labour for the international community to adopt. In Malaysia, our present regulations in the Children and Young Persons (Employment) Act 1966, and other policy instruments do not seem to be able to meet the problem adequately as evidenced by the large number of children engaged in work activities. However, to date there are only a few studies on the subject in Malaysia.

One of the reasons for the failure of the present socio-legal policies is the lack of understanding of the nature of the problem in the Malaysian society, in particular the Malaysian Chinese society. Child labour is often believed to be a result of poverty. No study has yet been conducted to examine the influence of culture on the existence of child labour. This study is the first attempt to study child labour and child labour law in the Malaysian cultural context.

1.8 Studies on Child Labour in Malaysia: A Review

Literature dealing with child labour overseas is extensive. However in Malaysia there is a dearth of literature on the subject. Current literature on the subject in Malaysia consists of a few journal articles and conference papers, and a Masters Degree thesis. These studies are from different perspectives, i.e. economics, medical, sociological and legal. However, none of these studies adopt an anthropological perspective.
Because these studies are often overlapping, we will review the literature according to specific topics. Before we do so it is important to note that not all researchers in Malaysia define what they mean by "child labour".

1.8.1 The Harm of Child Labour

There are two papers that deal with the risk factors of child labour. Sinniah and Rajeswari (1993), give a general opinion from their experience as medical practitioners, of the occupational diseases that child labourers, in both agricultural and manufacturing sectors, are likely to suffer. They also show the effects of work on child labourers’ growth and development. These include the lack of necessary recreation, poor nutritional intake, easy contact with diseases, and disturbance to their educational development. They then go on to point out a few "high risk" forms of child labour, among them are child prostitution, bonded child labour, begging and drug peddling. The writers claim that it is common among child labourers to have certain psychological traits. Child labourers tend to be more matured. Since they are more independent, they are more disobedient. The worrying consequences of that are that access to cash may lead the children into unhealthy activities like gambling, drinking, and more serious problems like drug addiction and sexual vices. Although, Sinniah and Rajeswari do not produce any empirical evidence to support their claims, other studies have to some extent shown that their opinions are valid.

Mahathenvan (1992) made some important discoveries when he examined a group of two hundred and ten working children. Forty of them were Malays (21%),
126 of them Chinese (59.5%) and 44 of them Indians (21%). Although this sample is not representative of Malaysian population in terms of ethnic composition, since it is taken from many parts of Malaysia and across different industries, it is a good indication of children’s work condition, in terms of geographical area and industry. He discovered that generally child labourers have a much lower health status than other children. The percentage of them being hospitalised is higher than non-working children. The difference is between 81(38.5%) of the working children and 13(6.2%) of the non-working children. The frequency for individual working children to be hospitalised is also higher than the non-working children. Twenty-six (12.3%) of the working children had one admission to hospital, 23(10.9%) had two admissions, while 32(15.2%) had three admissions. This is compared to 12(93.7%) of the non-working children had only one admission and 1(0.5%) had two admissions. This means that in general working children require more medical care than non-working children. The writer also claims that the nutritional status of working children is also lower than that of non-working children, and that they are shorter and underweight as compared to non-working children.

Mahathenvan also found the working environment of children unsatisfactory. He discovered that 20% of the sites are too hot, 40% too noisy, and 30% had inadequate lighting.

Mahathenvan also discovered that sixty three percent of these children were subjected to ten hours or more of work, but were lowly paid (72% were paid below RM 60 per month). The majority of them (62%) were only given half a day off in a
week. Other studies also show similar results. In short, the present law that regulates child work is widely violated.

Child labour may also affect children’s education. According to George (1992) about 20% of children enrolled in standard one in 1980 drop out of school by 1988 i.e. before they reach the age of sixteen years. She makes an assumption that these school drop-outs are working. If this is so then the effect of child labour on school dropping out rate must be taken seriously as access to education is a fundamental right guaranteed by the Universal Declaration of Human Rights. Besides, education is an important instrument to help members of the lower social class to move up the social ladder. However, she offers no indication as to whether children drop out of school to work full-time, or that part-time child work cause children to drop out of school. The writer suspects either way is true. In any case this is difficult to determine. Both studies by George (1992) and Jomo and others (1992) show that the majority of child labourer’s parents are lowly educated. Moreover, Jomo and others (1992) also show that a very low percentage (4%) of estate children complete secondary school, while a great majority of them (78%) drop out of primary school of whom many become child labourers.

In short, the previous studies show that child labour is harmful but the extent of the harm is uncertain.

1.8.2 The Present Law and Its Enforcement

There are very few papers that deal with the law regulating child labour in Malaysia and the few available are descriptive in nature. They only describe the
provisions of the present law and its enforcement mechanism. Phillips (1979) provides a useful overview of the present law, the development of the law and its comparison with other common law jurisdictions. There are a few papers that comment on the ineffectiveness of the enforcement of the present law. However, no alternative effective legal measures have been recommended, except some "fine tuning" to the present law. In fact, many are sceptical about the suitability of using legal measures to control child labour. One such writer, Yaqin (1996:160) states:

"The state policy of non-interference with child labour seems to be founded on the assumption that child work has been traditionally a part of the country's social and economic patterns of life and any law imposing a total ban would not only be difficult to enforce, in its letter and spirit, but would also aggravate the problems of such families as have under (sic) stress of poverty to send their children to work. What a law could do was to regulate the existing patterns of child work so as to remove from the situation the possibilities of abuse and exploitation."

In fact, an official of the Labour Ministry gave the same reason against a total prohibition of child labour in an interview (Jomo, et al., 1992). The writer believes that there are a few issues that need to be considered before one can support this opinion. Firstly, we have to investigate the main cause of child labour whether it is due to poverty or culture. If the cause of child labour is poverty, the issue is whether prohibiting child labour will aggravate the problems of the poor families. This argument may not be as good as it looks, as Rodgers and Standing (1981) argue that the existence of child labour in the labour market tends to bring down the overall wage level. Therefore, child labour can only marginally improve the income level of the family. If this is a valid point then prohibiting child labour will only create problems for the family in the short run. In the long run the absence of child labour
will bring up the overall wage level. If the cause of child labour is culture, then the issue is whether a prohibition will be effective. This is a widely discussed question. Nineteenth-century sociologists of law were more negative about the possibility of using law to change culture. Now, both sociologists of law and modern legislators are more ambitious. Law is now perceived as a more independent institution, which acts upon society, and is able to regulate social behaviour freely (Cotterrell, 1984, pp.48-72).

However, in light of the wide violations discovered by previous studies, there is a reasonable consensus that the Children and Young Persons (Employment) Act 1966 is not effective in controlling child labour. In fact, the liaison officer of the Labour Department admitted that the routine inspections are not effective at all. As the employers are informed before the inspection, they can get ready for it (Mohamud, 1986). The Director of Labour, Abdul Rahim (1993: 11-19), gave the following reasons for the ineffectiveness of the law and its enforcement:

1. Difficult to check on family-run establishments.
2. Child labour happen in remote areas.
3. Difficult to establish a contract of employment.
4. Lack of enforcement officers to enforce the law.
5. Difficult to talk to children to establish an employment contract.
6. Difficult to establish the age of a child or young person.
7. Children are not good witnesses.
As to the difficulty in establishing the age of the child or young person, it is difficult to see how the Director of Labour can consider this a valid point to make since we have proper registration of births in west Malaysia.

The Director of Labour however, has pointed out the following drawbacks in the present law. Firstly, the requirement of an employment contract places great limitation to the coverage of the law. This places many children outside the protection of the law. Secondly, the present enforcement mechanism, by way of inspections can only be effective in enforcing the law in urban areas and in the formal sectors. Besides, it is very expensive to maintain a big enforcement team.

The problem of child labour in Malaysia may not be as serious as in many developing countries. However, as the Director-General of the International Labour Organisation put it, "There is a particular urgent need to focus on those groups of child workers who are especially vulnerable to abuse and exploitation" (Doek, 1986:7) Furthermore, there is also an urgent need to abolish work that prevent children from receiving proper education(Doek, 1986).

1.8.3 Causes of Child Labour

Almost all authors claim that poverty is the root cause of child labour in Malaysia. To some extent, child labour may be caused by poverty. However, to depict poverty as the root cause is questionable. While many studies show that child labour is widespread in poorer sections of Malaysian society, they do not explain why it is widespread in these sections. Poverty may seem to be an obvious explanation, but it can be misleading. Tray (1983:452) analysed the 1976 Malaysian
Family Life Survey to find that while "the common story of poor families putting children to work in order to make ends meet appears not hold [sic] for Malaysia: family income affect neither child labour force participation nor work hours for either age group ".

In fact many researchers do not analyse the evidence produced in their own studies, which question the validity of the allegation that poverty is the root cause of child labour in Malaysia. Take for example, George’s (1992) study, which is the most comprehensive study so far. She collected data in both urban and rural areas. In the urban areas, places in which child labour was believed to exist were visited and children were interviewed. Sixty-three children were interviewed and so were their parents if they were present at the sites. She admits that in the urban areas, working hours of the paid child labourer in fact increased with the household income. However, she qualifies this trend with the fact that majority of the paid child labourers are from relatively low income family and work around eight to twelve hours. As a whole her finding show a mixed effect of income on hours of work done by children in her study. The rural area studied was Sabak Bernam in Selangor. This area was chosen mainly on the basis that the Education Department identified this area as having serious problems of absenteeism. Fifty children from thirty households and some of their parents were interviewed. Of the fifty children twelve were not working. In her analysis, she also admits that in the rural areas household income is not a factor determining the working hours of children. More importantly, she found that twelve among the fifty children did not work, while thirty-eight children worked. The non-working children were all from poor families.
Six of them were from families with household income between 350-450 ringgit per month, another four of them were from families with household income between 500-650 ringgit per month, and the remaining two were from families with household income only between 200-300 ringgit per month. This shows that poverty does not necessarily cause child labour. Obviously, a combination of factors cause child labour. This makes the problem much more complicated.

However Chan (1992) argues that the household income must be analysed together with the household size. While Mary George did survey the households' size, she did not analyse them together with income.

In conclusion, more qualitative data is needed to find out the "real" cause of child labour. Cultural factors are more probably the main cause of child labour in Malaysia. To verify this proposition, child labour must be studied in the light of parental expectations on children, public perception on child work and the usual activities of children in their families.

1.9 Balakong: A Brief

The location of the study, Balakong New Village, is situated in the mukim of Cheras in the Hulu Langat district of Selangor Darul Ehsan, the most prosperous state in Malaysia (see Maps 1 & 2). As shown in Map 3, Balakong is situated in the vicinity of Kuala Lumpur and of the newly developed government administrative centre, Putra Jaya and the Multimedia Super Corridor, Cyber Jaya and other industrial areas such as Petaling Jaya, Sepang and Shah Alam. Balakong New Village is in fact situated within a very strategic and prosperous area. This makes it
a potential area for development. In fact in the 1980s the government had declared Balakong to be an industrial area.

The name Balakong comes from the name of the river Balak, in the village. Kong is the Hakka pronunciation of the Chinese word "port" (港, Kang in Mandarin). This word is often used to name a settlement near a river mouth (Wong, 1992: 6; Nyce, 1973: 27). The initial residents were moved to Balakong New Village in 1950, during the emergency period from the nearby villages by the British colonial government to prevent them from getting into contact with the Malayan Communist (Nan Yang Siang Pao, 14th Oct 1992). When the British government moved the initial residents to Balakong New Village they were given title to their houses. Some of them had also applied for and were given two acres of freehold land each for agricultural purposes. Most of the initial residents plant vegetables and breed chicken and duck for subsistence. Now, the lands given to them have been mostly developed into factory bases. Therefore, most of the residents in Balakong New Village own houses and valuable lands.

Initially, Balakong New Village was a small new village with a population of about 1,000 and surrounded by mostly jungle. Later this jungle was mostly developed into small rubber plantations. Since the government declared Balakong to be an industrial area in the 1980s, and allowed agricultural land to be converted into industrial land, most of the plantations have now been developed into industrial and housing estates. The value of land in Balakong has also increased tremendously. A piece of agricultural land that was worth about two hundred thousand ringgit can
now be sold for nearly two million ringgit. This has made many people in Balakong New Village millionaires (Nan Yang Siang Pao, 11th Oct 1996).

The development has also attracted many people to live in this area. The population of Balakong New Village was about 5,000 in 1992 (Nan Yang Siang Pao, 14th Oct 1992). While according to the Selangor Population Census of 1991 (Department of Statistics, 1995:6) the population of Hulu Langat district was 413,900. An official estimate of the population of Balakong is not available, but a local newspaper reported that the population of Balakong in 1997 was about 20,000 (Harian Metro, 28th Oct 1997). From a largely undeveloped area, with only a small community living in the midst of jungle, Balakong has now become a busy industrial and commercial centre.

Balakong New Village now has much of the necessary infrastructure. Besides basic infrastructure like electricity and water supply, Balakong New Village also has a primary school; a clinic; a church; several Chinese temples; a wet market; an assembly hall; a field and provision shops, restaurants and eating stalls. About 500 students attend the primary school. Almost all the children in Balakong New Village attend this school. What is most lacking is a police station. The nearest police station is in Cheras 11th Mile (Name of the place), which is about 15 minutes away by car. This has affected the security in the village.

Prior to industrial development, most of the residents in Balakong New Village were rubber-tappers. Now, as almost all the rubber plantations have been converted into factories, many of the residents are construction and factory workers (Nan Yang Siang Pao, 11th Oct 1996).
Map 1

Selangor

Source: Direktorat Pemetaan Negeri Malaysia.

Map 2

Location of Balakong New Village in Balakong

Source: Bahagian Perancangan Bandar dan Desa,
Majlis Daerah Hulu Langat, Kajang, Selangor.
Map 3

Balakong In Relation to other Developed Areas In Klang Valley

Source: Majlis Daerah Hulu Langat
Balakong New Village is presently surrounded by seven industrial parks i.e. Tamin Jaya Industrial Park, Teras Balakong Industrial Park, Selesa Industrial Park, Kampong Baru Balakong Industrial Park, Sungai Lama Balakong Industrial Area, Sungai Balak Industrial Area and Belakang Balakong industrial area. The first three of these are legal, developed by licensed developers and the last four are illegal. There are also houses that have been converted into illegal factories inside Balakong New Village itself. The existence of these factories has brought many economic benefits as well as problems to the residents of the village.

Many job opportunities have been created for the residents and work vacancies are available right at their doorsteps. In fact, many of them are the owners of the land on which these factories are built or the owners of the factories as well. The increase in the number of factories and factory workers has caused hawking to flourish.

However, these factories have also brought problems to the village. Most significant is the problem posed by foreign workers. In fact, there are so many foreign workers from Bangladesh that this place has been nicknamed by some as "Banglakong". It is believed that around 12,000 of the 20,000 residents of Balakong are foreign workers (Harian Metro, 28th Oct 1997). The large presence of foreign workers threatens the security of the village. There have been a number of robberies committed by foreign workers in this otherwise relatively peaceful community. The villagers are of the opinion that this problem is due to the lack of a police station in Balakong as alluded to earlier. Other problems faced by the villagers include floods, damaged roads and traffic congestion.
The writer believes that the increase in the number of factories has also caused more children to work (see Chapter Three).

The areas around Balakong New Village are rather urban now. However, according to Mr Hoh Hee Lee⁴, State Assemblymen for Balakong, the people in Balakong New Village are still rural in attitude. What he means is that these people are still self-contained, lack the drive to improve themselves and their village. Often, they rely on the government to solve their problems, although they can actually do much by themselves. In other words, they are not highly ambitious people. They just live their lives day by day. The reason for this attitude could be due to their low educational level, as not many residents of Balakong New Village have received more than lower secondary education.

There is only one political organisation in the village that is the local Malaysian Chinese Association (MCA) branch. There are some supporters and members of the Democratic Action Party (DAP) in the village but they are only active during the general election period. The MCA branch has a service centre in the village, the State Assemblyman comes in every Monday to help those who need his assistance.

⁴ Personal interview on 16th Nov 1997.
There is a Secondary School Students Association initiated by the MCA to encourage healthy activities among the teenagers. However, this effort is largely a failure as its activities often fail to attract the teenagers. Activities organised by the local Lutheran church are more successful, as they attract a rather large number of teenagers to participate. However, although the church is as old as the village, it is rather marginalised, as Christianity is viewed as a foreign religion. At present the church has about fifty members. There are a few Chinese temples in the village, of which the "Stone King" (石古大王) is the most important. The temple is also as old as the village. The Stone King is a local deity only found in Balakong New Village. There is a big rock at the back of the village which looks like a human face. The initial residents believed that the rock is the guarding deity of the village, so they built the temple for the rock. On normal days there are not many worshipers in this temple, however the annual dinner to celebrate the birth of the deity is often attended by a big crowd.