CHAPTER - VI
CONCLUSION

Probably no lasting conclusion can be drawn with any degree of finality on an as evolving a subject as monumental as the Child Rights. It is not at all easy to come to grips with an issue, which concerns no less than 1.5 billion children of the world. The present conclusion is therefore rather tentative.

The concept of the Rights of the Child has not had a long history of recognition. Activities in the area of international protection of Children’s Rights date back to the period of the League of Nations, with the adoption of the League Conventions prohibiting traffic in women and children (1921), and slavery and the slave trade (1929). Moreover, the International Labour Organization (ILO) has, beginning with the year 1919, adopted numerous conventions aimed at the abolition of child labour. The Geneva Declaration of 1924, also known as the Declaration of the Rights of the Child, which was adopted by the Assembly of the League of Nations in the name of “Men and Women of all Countries” was an international instrument of great importance for the protection of children. Most of the rights of the Universal Declaration of Human Rights, 1948, relate to children either directly or indirectly though some to a greater extent than others. Several of the provisions are particularly or exclusively relevant to children. The Declaration is thus the definitional matrix of internationally proclaimed human rights, in general and Children’s Rights in particular.
The United Nations General Assembly unanimously adopted the United Nations Declaration of the Rights of the Child, which fully incorporates and builds upon the provisions of the Geneva Declaration of 1924, i.e., eleven years after its proclamation of the Universal Declaration of Human Rights. The linkage between the Universal Declaration of the Human Rights and the Declaration of the Rights of the Child lies in the fact that, for the greater part, the latter amplifies the provisions relevant to children contained in the Universal Declaration. Its provisions are a logical extension of principles articulated in the Universal Declaration.

At the very outset, the study recognises that Child Rights are a part of the human rights. Perceptions of human rights are also reflective of social and class positions in society. The economic backwardness of countries has been used to establish the primacy of economic development over human rights. The argument is in part, that civil and political rights are neither meaningful nor feasible in conditions of want or poverty. Therefore, the first priority of the state must be to promote economic development. It is implied that economic development may well require restrictions on human rights, both to provide a secure political framework in which it can be pursued and to remove obstacles in its way (e.g., through forced movement of people from lands required for development).
The views on human rights of the most oppressed are not articulated, or when articulated, are not heard. They are the worst victims of the denial of human rights, and in desperation they turn to violence or other dramatic challenges to authority.

Since human rights are of universal concern and universal value, the advocacy of human rights is not an encroachment upon national sovereignty. International cooperation and solidarity are a must for the promotion of human rights, as a refutation of claims of national sovereignty over human issues.

The poor state of human rights is because of the international economic order whose reforms through structural changes as well as the adoption of Convention on the Right to Development. There is a much closer connection between domestic oppression and International exploitation, in the collaboration of local, economic and political elites with multinational corporations and agencies. Economic growth must be accompanied by a wide measure of egalitarianism, the protection of the right of the workers, especially child workers, migrant workers and democratic practices at work places. Nor must economic growth be undertaken at the expense of land, customs and autonomy of long settled communities. Unless these and other community concerns are safeguarded in the process of economic growth, development is perverse and adds to the violations of human rights and
dignity which includes children as well because Child Rights are a part of human rights.

It is clear that the human rights conventions fully support the objective of "development" in all its forms. At the same time they do not afford to the government of any State that adheres to them, any pretext for abridging or denying the human rights of the inhabitants of the State, in the purported interests of economic development alone. Since 1945, human rights have become one of the central pillars of the international political and legal order, together with the outlawing of aggressive war, and the equal rights and the self-determination of all peoples.

Few governments are universally popular with their own citizens, but most citizens will accept even an unpopular government, provided they regard it as legitimate. This sense of legitimacy appears to be deeply rooted in humanity, and is found in virtually all the cultures of the world. Today, it is the human rights performance of the government which provides one of the most important criteria for its legitimacy.

The main contribution of the Convention on the Rights of the Child has been the codification of children's rights into one international document and recognising aspirations, mankind has for its children.
Conventions and Declarations make promises and set high aspirations. But they fail to make an impact mainly because they do not deal with the actual forces that create the need for a right in the first instance, i.e., the socio-economic and cultural and political systems. Secondly, there are no implementing provisions and thirdly, where there is a provision for this, it is restricted to making reports and recommendations. The state parties are at large and no responsibility is placed on them for their acts and omissions. Unfortunately today the state has the lion’s share in the violations of human rights and especially in the case of children’s rights. Since states today are unanswerable, so the rights they grant and violate as they please, are no rights at all. The development process which was initiated immediately after independence, inspired by the Indian constitutional objectives, through progressive legislative and supportive measures, has over time failed to bring out perceptible change in the status of the child because of the rapid growth in population, poverty, illiteracy and the absence of a pragmatic approach to resolve these fundamental social problems.

The Indian society’s failure with children is intertwined with its larger ethos of discrimination, injustice and its own brand of racism. The children who get the least are those who need most. The children of the poor have the least protection of the laws, and are most vulnerable to bad treatment. They have a right to make claims, and adults must be responsive to these claims. The latter can no longer
assume it is only at their pleasure that children are permitted to make claims. Only then can a truly just society be established.

In the absence of a strong trade union movement in colonial India, labour laws were primarily responses to various conventions of the International Labour Organisation. After Independence, child labour legislation evolved in response to public pressure in particular situations. Indeed it was a fire in Sivakasi, Tamil Nadu, in 1983, which gave the impetus for reviewing the regulation of children’s work in hazardous occupations. The Child Labour (Regulation and Prohibition) Act, 1986, replaced half a century old law on the same subject. However as of today, there is no legislation entirely devoted specifically to children’s work.

Most of the laws pertaining to children’s work were enacted within the first two decades of Independence, but did little to check exploitation, even in the most visible conditions. Child labour for economic reasons or for sheer survival has been a social evil, which the Indian society and government have failed to keep in check, let alone eliminate it. Underneath the impressive veneer and national pride about our 5000-year-old civilizational legacy lies a history of systematic violations of basic civil, and human rights of large sections of our population.

The problem of human rights, and of Child Rights in India in situations of mass poverty, is basically one of redistribution, access and needs. Economic development must at least mean that, people will be given the right to be and
remain human. Total and continuing destitution and impoverishment exposes people to a loss of their humanity. There is a steadily growing emphasis on a conception of development which meets basic needs viz., food, shelter, clothing, health and education. Any process of growth that does not lead to their fulfillment or even worse disrupts them, is a travesty of the idea of development of human rights, particularly Child Rights. Human rights therefore cannot be divorced from justice.

That is why the Constitution of India has taken an integrated view of justice. It speaks of justice—social, economic and political. There has not been any notable progress made in the development of human rights in India, in spite of the various constitutional safeguards and when even the Supreme Court has increasingly sought to merge the Directive Principles of State Policy, unenforceable in a court of law, with the fundamental rights which are forceable in courts, in the fields of education, environment and health. Directive Principles make it the “primary duty” of the State to raise nutrition levels and public health. In no society that takes human rights seriously should there be allowed a state of affairs where human beings become sub-human.

All the seven sets of fundamental rights in India are available to children with as much authority and accessibility as that with adult citizens. There is a growing body of case law, which developed the application of these rights to
children and have expanded their scope in order to make them meaningful to children. This was accomplished by the Indian Judiciary using the technique of harmonious construction of Part-III (Fundamental Rights) and Part-IV (Directive Principles of State Policy) of the Constitution side by side with India’s treaty obligations and obligations under the U.N. Convention on the Rights of the Child, 1989. In this regard, the performance of the Indian judiciary stands out as a signal contribution to the implementation of human rights generally and that of Child Rights in particular.

Despite the inherent limitations of the judicial process (i.e., it cannot legislate, it has to wait for a case to be brought before it for adjudication, it has to decide on facts and law as presented by the parties etc.), the Courts have taken Child Rights and principles governing them very seriously and have gone to the farthest limits to give every child, particularly the neglected and the delinquent, an opportunity to enjoy the minimum guarantees of law.

Children have an access to justice through Public Interest Litigation (PIL). It is through the High Court and the Supreme Court that judicial remedies and procedural standards have been evolved and accountability established on the issues of human rights and Child Rights, in addition to an activist response in granting appropriate reliefs and reminding governments of their constitutional obligations towards children. Through a series of decisions mainly rendered during
the last 10 to 15 years, the judiciary has succeeded to a large extent in bringing Child Rights to the mainstream of human rights discourse and in extracting greater accountability from governmental agencies for the protection of Child Rights.

However, the one sphere in which the judiciary has failed is in its responsibilities towards children. This is in respect of procedural justice under the Juvenile Justice Act, 1986. The charge of inordinate delay in disposal of cases is indeed a fact in many court proceedings. Unimaginative disposition of juvenile delinquents and lack of infrastructural support, have made the whole system counter-productive, authoritarian and inimical to Child Rights.

It is imperative that the judiciary bestows greater attention to juvenile courts, its personnel, its procedures and infrastructural facilities available to it. Perhaps the system of public participation provided for by law is required the most in the juvenile justice area, than in any other field and attitudes and approaches of the judiciary will have to change to attract this necessary input in dealing with children in conflict with the laws.

Today, the demands of the Convention, the occasional directions from the Supreme Court and frequent media coverage on the plight of children are compelling government agencies to correct their record by means of fresh legislative amendments and collective action.
Taking into consideration the plight of children and the prevalence of child labour, there exists a direct correlation between enrolment in schools and the prevalence of child labour. Based on the data gathered from the Indian experience, it is clear that Indian government policy has not tackled the problem of child labour effectively. Small scale industries are legally permitted to use child labour directly. There is no statutory protection for children in factories that employ less than ten people. The government support for small scale sector promotes the employment of children in unregulated hazardous work.

The prospects for change in the status of children in contemporary India would depend on the initiations of four institutions, namely, the media involved in public education of the state of affairs, the non-governmental organizations lobbying for policy changes, the legal profession and the judiciary, and the international organizations committed to welfare of children.

The difficulties especially for children in accessing justice and the delay involved in the judicial process further aggravate the situation and result in non-enforcement, little noticed or challenged. The notion that children have equal value in law as adults is a notion which has not yet been internationalized by either social policy or public administration. Herein lies the basic problem in the implementation of Child Rights. The result is disastrous for the civil rights and freedoms of the children involved and the well-being of the young citizens of the
country. The personnel of the system, the police, the judges, the probation officers, the case workers, the voluntary agencies etc. do not have proper orientation, training or level of commitment required to make a difference in the quality of justice administered to children.

With regard to child labour, the apathy and inability of the state machinery in tackling the problems are quite apparent. This discourages the enforcement machinery from taking up further prosecution and encourages the employer. An effective approach to eliminate and prevent child labour is by way of imparting compulsory primary education to all children below 14 years. The NGOs must be actively associated in the policy formulation, implementation of legislative Acts, government programmes and monitoring of situation of working children by regular interaction.

In today's economic scenario there is an alarming emphasis on development, almost at any cost. In this steam-rolling process many human beings are marginalised and are treated necessary only as regards their economic input. As objects and subjects of development they are ignored. The child labourers in India form one such core group.

The UN Declaration of the Human Right to Development, 1986, emphasises on people centered development, i.e., the interests of those who are poor and less advantaged must be the key concern of development. The people must be active
participants in developmental activities. It is this, which has to be borne in mind in dealing with approaches to welfare of child labourers and gradual abolition of child labour.

Penalties presently provided under the various legislations prove counterproductive. It has absolutely no deterrent effect. The employer would rather pay the occasional negligible fine than forego child labourers with all their benefits.

Studies reveal that most of the child labourers come from regions which are economically backward and drought prone. Also, a child’s income is a critical input to the family’s survival. Not surprisingly then, every third household in India has a working child.

All attempts to make primary education compulsory would have to be addressed within the socio-economic complexities of India. Making education compulsory alone will not necessarily result in the elimination of child labour.

It is evident that imposition of compulsory primary education would result in families dependent on children’s income, becoming economically unviable. Education must provide for opportunities to develop technically in artisan craft and diversify the opportunities before them. The educational system should also facilitate multipoint exits for those children, who would like to pursue alternate specialisation and professions. However any attempt towards formulating a policy of compulsory education must include a nutritional component i.e., high quality of
nutrition must be offered to the children via the mid-day meal scheme along with qualitative schooling.

Minimum social security that covers basic needs of food, shelter, clothing and health, is a necessary prerequisite in the present day context of the situation of the child. The basic needs of children are well known – safe water, nutritious food, primary health care, clean environment, basic education, and loving care. These in turn need maternal as well as child care, local production storage and consumption of more and better quality foods, education of the mother, simple technologies to lighten her daily tasks and so on. In so far as families cannot help themselves, the community and then the governments have to be responsible for child development. In the field of basic needs of children, the response of governments to reduced resources due to adverse economic factors should take into account its social impact on children, particularly from low income groups, in order to ensure that basic services for them, (including food, nutrition, water, health care and learning opportunities) do not fall below the essential minimum. Uniquely, the development of children embraces a spectrum of basic needs and therefore of basic services. To be effective these have to be concurrently available to the same child.

The social context as well as the development experience of India suggests the need for a massive redirection of public resources for human, especially child,
development. There is an unfortunate tendency to regard child wellbeing as a social service and not as an economic input in a key area of progress.

It has been established that investment in children can be more attractive, even by the narrow economic measure of the rate of return, than physical investments like factories or the cost intensive human development investments. Development policy needs therefore to be imbued, with a child oriented approach. Development efforts ought to lead at least to fulfilling the basic needs of children.

Water and sanitation are inputs for child development, that no less crucial than nutrition, health care and education. The extent of deprivation of a simple resource like clean water is staggering. Around a third of India’s villages do not have access to it. Sanitation in the towns is partial and in the rural areas it is the exception. It would be wise to make national development, children-oriented and it would be practical to approach child development from the angle of community-based basic services.

Of the world’s 1.5 billion children, four-fifths live in the developing countries. Among them, about 600 million suffer from poverty and hunger. The main reason for this is that the international and national economic systems work, in effect, to their disadvantage.

The core of the study reveals that, to a great extent, the Rights of the Child Convention reiterates and elaborates what is already contained in the
Constitution of India. In India, the Supreme Court has liberalized the rule of “locus standi” which led to the birth of public interest litigation, which has undeniably come to the rescue of the cause of children who are in most need of it. NGOs, social organisations and right thinking citizens have used it to enforce implementation of Child Rights in India.

The Non-Governmental Organisations (NGOs) are playing a crucial role in protecting the Rights of the Child only with the activist and active help of the Indian judiciary.

The National Human Rights Commission though established in 1993, has not done much work for children. The few cases it has taken up have been lacking in follow-up action and failure to enforce the implementation of its decisions. Indeed, it has not actively pursued its access to the Supreme Court to ventilate the Rights of the Child.

As far as the relationship between International law and the Indian law is concerned, the Constitution empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or any other body. Generally, Indian courts have held that an international treaty, to which India is a party, has to be implemented. Compared with the number of treaties to which India is a party, the
number of treaties which have been incorporated into Indian law, either fully or partially, is relatively small.

As a matter of course, the Municipal Courts do not follow the same principles of interpretation of treaties, as those followed by the international tribunals or institutions. Indian Courts, in this respect are under a constitutional duty to adopt internationally accepted principles of interpretation of treaties. But they are generally not called upon to interpret treaties directly; they interpret treaties incorporated into Indian law by legislation. With regard to Child Rights the Indian judiciary has consistently helped children and has given justice based on the concerned public interest litigation. Except in the area of juvenile justice, the judiciary has become the staunchest supporter and promoter of Child Rights in India. On the other hand, the executive and legislature have been woefully lacking in doing their part of Child Rights. Politics has been largely responsible for the miserable plight of the majority of children in India.

With India’s ratification of the Convention on the Rights of the Child on 11th December, 1992, more than 90 percent of the world’s children became “protected” by this Convention which became the first human rights treaty in history to be universally ratified. However certain gaps clearly exist between the UN Convention and the Indian Law.
The Convention recognises the rights of a child, only after it is born and is silent on the subject of the unborn child. Whereas in India, the right of the child has been recognised even before its birth and the Indian law has specifically dealt with the subject of the unborn child and has accorded it privilege and rights on par with those exclusive to born child. According to Section 20 of the Hindu Succession Act, 1956, “A child who was in the womb at the time of the death of an intestate (not having made a will before death) and who is subsequently born alive, shall have the same right to inherit to intestate as if he or she had been born before the death of the intestate and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate”.

Under Section 99 of the Indian Succession Act, 1925 (construction of terms) in a will, “all words expressive of relationship apply to a child in the womb who is afterwards born alive”. Likewise gifts and transfers of property in favour of the unborn child are also valid.

The Convention does not recognise the right of the mother of an unborn child to claim the maintenance on behalf of her unborn child. But in India, under Section 125 of the Code of Criminal Procedure 1973, the mother of the unborn child can claim for maintenance. The Law of Maintenance imposes a duty, inter alia on parents, to maintain their dependent children. While there are different personal laws for different communities in India, containing provisions for maintenance, the
Code of Criminal Procedure is a secular piece of legislation, which is applicable to everyone irrespective of community or religion.

The Convention does not recognise that a person, committing an act of causing the death of an unborn child, is liable to severe punishment. But in India, it is recognised under Section 316 of the Indian Penal Code, according to which even in the instances where if the post-mortem report shows that the child is developed sufficiently to have an identity as a child, it is referred as a 'person' for the purposes of Section 304-A of the Indian Penal Code viz., causing death by negligence.

The Convention does not recognise the aspect of damages for injuries caused to the child before its birth. In India as well as in Canada, wherein the right of the unborn child to damages for pre-natal injuries was conceded.

Suggestions:

1. The respective Governments should take steps to control the growth of the population by strictly implementing family planning programmes including vasectomy and tubectomy operations. Serve punishment should be imposed especially on those persons responsible for promoting and implementing family planning programmes for negligence and failure to promote their duties satisfactorily.
2. Persons having more than three children should be barred from contesting in elections.

3. The Government/Public Sector Undertaking Private Sector employees having more than three children must be made ineligible for the various Government incentives or subsidies.

4. Stringent punishment should be imposed on those who are in responsible positions and are not promoting and implementing the Welfare Programmes of the child.

5. Award if necessary in the extreme cases, capital punishment to the persons perpetrating the abuse and violation child rights.

6. The governments should allocate at least five to ten per cent of their GDP for the development of the children through various child welfare programmes.

7. An exclusive fund, Children's Welfare Fund, should be set up and both central and state governments should take steps to divert 1-2 percent of the Net Profits of Public Sector Undertakings, and Private Sector Companies, as a contribution for the development of the children, to this fund.

8. The government should impose sanctions against the large industries, including MNCs for not willing to adopt surrounding villages for development.

9. The respective state governments should provide ration to the children particularly in the tribal as well as remote areas on free of cost.
10. Both the Central and State governments should constitute a special committee to look into the Welfare Programmes of the children as well as the implementation of the child rights. A Child Rights Implementation Committee should be constituted which include should one Judge of the Supreme Court of India, one representative from the Bar Council of India, one representative from the bureaucracy, one representative from the NGOs and two eminent teachers from the academia, as its members. The Committee thus constituted should be vested with large scale powers to take action against the erring public or industries for violating and abusing the rights of the child. The Committee should be empowered to take the exemplary action, of cancelling or suspending the licenses of the companies/industries/MNCs involved in violating child rights to demonstrate its commitment to children’s welfare.

11. The government servants especially those involved in the protection and promotion of child rights should be dismissed from their respective services and legally prosecuted for aiding and abetting, perpetrators of child rights abuse and violations.

12. The Government should take steps to provide Free and Compulsory Education to the children upto the age of 14 years.
13. The Government should direct both the Government and Private hospitals to provide free Medical Treatment to the children, especially those who belong to the depressed classes and who are in need of it.

14. The Central as well as the State governments should promote the various family welfare planning programmes and measures by offering some genuine and attractive incentives to the weaker sections of the people.

While the United Nations Convention on the Rights of the Child is a tremendous step forward in the direction of recognition of the problems which the particular legal and economic status of the child may cause, it still does not address some of the issues which involve children or some of the situations which continue to put children at risk, namely juvenile justice (including capital punishment), the rights of child, the forced relocation of children and right of the child to be protected from medical or scientific experimentation. The Convention should also have provided for an International Ombudsman for children’s rights, akin at least to the UN High Commissioner for Human Rights. Areas which continue to be hotly discussed include the rights of the unborn, the right to freedom of religion of the child and adoption, and the role of children in war. Also the issue of the ‘locus standi’ the individual children, vis-à-vis the Committee on the Rights of the Child or the Human Rights Committee, needs to be examined. Can the domestic practice of recognizing “the next friend” be transplanted on to the international plane?
The study hopes that, as affirmed by the Declaration of the World Summit for Children, 1990, and enshrined in the Convention on the Rights of the Child, 1989, nations will always abide by the principle of “first call for children” for their survival, protection and development giving the highest priority in times of adversity as well as in times of beneficence, in times of war as well as in times of peace. The inspiring words of the First Declaration of the Rights of the Child “Mankind owes the child the best it has to give” (1924), should serve as the beacon light for the governments, NGOs, international organizations and the like for acting, pursing, promoting and protecting the rights of the Children across the world at all costs.