INTRODUCTION

The importance of the child lies in the fact that the child is the universe. If there was no child, there would be no humanity and there cannot be a universe without humanity. Moral sense of the society compels us to search for a solution to the problems of children. In principle, every child has a right to love and be loved. Children are a “supremely important national asset”. The future well being of a nation depends on how its children grow and develop. “Every society must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they would receive adequate training, education and guidance in order that they may be able to have their rightful place in society when they grew up”.

Justice K. Subba Rao, a former Chief Justice of India observed: “Social justice must begin with children. Unless a tender plant is properly tended and nourished, it has little chance of growing into a strong and useful tree. So, the first priority in the scale of social justice shall be given to the welfare of children”.

I. THE PROBLEM

The general problem with the rights of the child lies in defining, identifying and understanding the issue and its vast scope. The economic and social systems existing in the modern world have been largely responsible for the utter neglect.

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2 Justice P.N. Bhagawati; C.J., and Justice R.S. Pathak in Sheela Barse vs. The Secretary, Children Aid Society, Supreme Court Journal, (1987) 1, p.585, Para II.
and the callous indifference of the families, societies, governments and international organisations towards the issue of the welfare of the children and their rights. The very fact that economic development has preceded the issue of the human rights in general and the child rights in particular, in the contemporary world, explains a lot about the social and economic position and the status of the child. The economic and social factors which have contributed to the poor, degrading and inhuman condition of the children the world over have been enunciated here.

A. The General Situation

Most social problems are predominantly conditioned by economic as well as social factors obtaining in a society.

1. Economic factors

Today, the economic picture is grim due to a set of concurrent economic crises\(^4\): the soaring costs of energy, the slowing rate of growth across the world, the rising graph of unemployment, the danger of the eco-system being pushed out of balance and the relentless upward spiral of prices of even essential goods, the depletion of non-renewable mineral resources and vast disparities standards of living\(^5\). The burden of all these falls unequally between the fortunate few and the

\(^4\) The average per capita income in 40 countries has grown by more than 3 percent each year since 1990, 55 countries have seen decline during the same period and more than 80 countries now have per capita income lower than they had a decade ago. The richest fifth of the world's population enjoys a share of global income that is 74 times that of the poorest fifth. Income inequality has increased in most OECD countries since 1980. An estimated 12% of the people living in the richest countries in the world are affected by poverty; See. UNDP, Human Development Report, 1999, (New York: Oxford University Press, 1999). See also: UNICEF, The State of the World's Children, 2000, (UNICEF: New York, 2000), p. 22.

numerous poor both within individual countries and the world overall. There is also the tendency to shift the burden from the present to the future, visiting the debt of adults on children. In this context, there exists the need for a set of largely complementary strategies to be applied on a global scale, increasing employment, meeting basic needs, reducing inequalities of income and wealth and of status and opportunity, and raising productivity of the poor. For this to happen, economic inputs have to be reinforced by social inputs like education, nutrition, health, water-supply, clean environment, among several others.

2. Social Factors

Expenditure on social factors of development must be considered as an investment in the quality of life of all human beings, right from the earliest childhood. It also represents a choice between deflationary economic policies and dynamic approach to development with human resource as its prime mover. Development has to be defined as consisting of two inter-related aspects: growth to meet material means like food, clothing, health, education, housing, employment, income and change towards access to non-material needs, like

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6 The right to survival, growth and development of millions of children throughout the world are at risk along a continuance of violence that stretches from households, where children are often exposed to or victims of violence and abuse on a routine basis, to international policies, where infants and children as a result of economic sanctions, to the horrors of modern warfare, where millions are killed and millions more survive only to be hunted by their memories: See. The State of World’s Children, 2001: Early childhood, (UNICEF: New York, 2001), pp.31-32.

7 The World Bank estimates that in 1998, 1.2 billion people, including more than half a billion children, live in poverty on less than $ 1 a day. Developing nations owe more than $ 2 trillion to the World Bank, the IMF, other lenders and Industrialized countries: See: UNDP, Human Development Report 2000 ( New York: Oxford University Press, 2000), p. 222.

8 UNICEF, n. 5. p.52.


opportunity for self-reliance, participation, self-determination, security, identity and freedom\textsuperscript{11}.

The case of children vividly illustrates the truth that the process of development does not depend solely on an increasing rate of investment, but hinges mainly on the human factor because the productivity of labour, along with the quality of management and entrepreneurship, is the key to reducing the level of capital-output ratio. In an underdeveloped economy, the number of children is large, the resources for their maintenance is small and the needed resources that are available, limited. As a result, the chances of investment in children are extremely low. Thus a vicious circle tending perpetuate poverty and under-development sets in as a barrier to progress.

The problem then is not only of raising the level of investment but, even more importantly, of making it more productive. The answer lies in allocating more resources for investing in children as the principal means of breaking out of the poverty syndrome. A concurrent approach to the same problem is of course, to reduce the number of children, yet to be born. However, poor families are caught in a trap\textsuperscript{12}. They need many children so that at least some survive to help with the work and provide security to parents in old age. But by having more children, families share fewer assets and resources and less income per person. The only way out of this situation is to have fewer, but more productive children.

In this perspective, because human investment rather than physical and capital accumulation is the essential basis for higher productivity, the truest

\textsuperscript{11} UNICEF, n.5. p.339.
\textsuperscript{12} UNICEF, n.5. p.339.
investment of any community, rich or poor, developed or under-developed, capitalist or socialist, ancient or modern, is the investment in its own children\textsuperscript{13}.

Despite the efforts of the United Nations and the various governments, children continue to suffer Malnutrition, unsanitary conditions, lack of medical care, etc. which have produced an overall increase in infant mortality-rate in underdeveloped countries\textsuperscript{14}, which is five times greater than in developed countries, ranging from 60 to over 200 deaths per 1000 live births. The rate of illiteracy in the developing countries is also staggering high ranging from 60\% to well over 90\%. Out of the world’s approximately 1.5 billion children under 15 years of age (i.e. a third of mankind) 16\% are undernourished, 41\% without access to safe water, 2\% without adequate housing, and 42\% without access to effective medical care\textsuperscript{15}.

Children continue to be sold into slavery in some parts of the world, or working under degrading semi-slavery conditions\textsuperscript{16}. Though child exploitation to some degree exists in most countries\textsuperscript{17}, such exploitation is, extensive and pronounced in underdeveloped countries\textsuperscript{18}, thus most adversely affecting the health and mental development of such children and contributing to illiteracy. In addition to these, child beggary on a large scale is a distressingly common phenomenon in many countries.

\textsuperscript{13} Ibid.
\textsuperscript{15} Though the situation in the Developing Countries like this, the Developed countries especially USA alone spending on cigarettes about 3,000 times as much as UNICEF’s annual budget of around 300 million dollars. And the World is spending a hundred million dollars a year per capita on weapons of war but spears too little to combat the sufferings of children. See UNICEF, n.5, p.52.
\textsuperscript{17} According to ILO estimates some 250 million children between ages of 5 and 14 work in developing countries and 50 million children between 5 and 11 work in hazardous circumstances; See, ILO, ILO concludes 87\textsuperscript{th} Conference with adoption of new instruments against child labour, World of Work, No.30 July 1999, p.6. also see. UNICEF, n.14, p.24.
\textsuperscript{18} There are more than 250 million exploited children in the world, See. UNICEF, n.16, p.40.
The 1988 Report of the UNICEF, points out that even in modern times, governments are still recruiting children to fight wars, employers are still exploiting the children of the desperately poor for work in the fields and factories, and national and international economic forces are still allowed to inflict permanent mental and physical damage on young children who, no matter what the external circumstances, have a special right to protection for their growing minds and bodies.

Of the world’s 1.5 billion children, four-fifths live in the developing countries, and among them, about 600 million suffer from poverty and hunger. The main reason for this is that the international and the national economic systems work in effect, to their disadvantage. The World Food Council states that 450 million people remain severely undernourished because the 40-60 million tonnes of wheat which they need in a year and which the world can easily spare does not actually reach them.

B. The Situation in India

The Indian problem of child labour is not a result of any single isolated factor. It is a multi-dimensional problem that involves various reasons contributing to it in a variety of ways. Some of the foremost ones responsible for prevalence and perpetuation of child labour are: continued poverty, illiteracy and ignorance of poor parents; inadequate family income; large family; indebtedness;

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21 UNICEF, n. 5. p.52.
22 According to 1991 census some 328.9 million were unlettered and according to the latest estimates of the Planning Commission, some 61 million families or 305 million people lived below the poverty line; Annual Report: National Human Rights Commission, (1996-97), p.45. There are other indicators: almost 30% of India’s population have no access to safe drinking water, 57% have no access to electriciy, 59% do not even have a pucca house to live in; and over 70% have no access to latrines; The Hindustan Times: A Future Past the Present 2000-2001; (Special issue, 2000),p.80.
absence of social security schemes; absence of provision for compulsory
education; stagnation of agriculture resulting in increased landlessness and the
destruction of village economy; presence of a huge informal sector implying the
presence of a huge work force and cheap wage labour especially cheap child
labour; children coming from families having traditional occupation (such as
artisans) which are now on the verge of total ruin; discrimination based on caste
and religion leaving children coming from lower rungs of social hierarchy with
exceedingly limited opportunities (thus the majority of child workers being from
the socially and economically backward classes) and lack of faith of families in
the present day education system which is not cognizant of the structural patterns
existing in the Indian society.

Apart from these reasons, the scenario of social, cultural and moral human
values has also fast changed with the advent of industrialization and urbanization
along with population explosion. Also, the unscrupulous employer looking for
profits with little investment is anxious to lure child labourers as they may do the
same amount of work as that of an adult but cost is lot less, in terms of wages.
Child workers are a great source of profit, for they generate a large surplus value
for the employer. As much as 95 percent of the carpets made in India by children
are exported, bringing in about Rupees 750 crores foreign exchange23.

It is clearly evident from the foregoing discussion, that the problem of
child labour is acute and multi-dimensional, its size vast and its root causes ,
complex and diverse. The Government of India has conceded the existence of
child labour as a “harsh reality”24.

In India there are an estimated 300 million children between 0 to 14 years of age constituting nearly a little over one-third of India’s population\textsuperscript{25}. According to the 1991 Census, there were 150 million children living in rural areas.

India has probably the largest child labour force in the world and it is growing by the day. It is estimated that 100 million children are forced to work in the organised and unorganized sectors. Child labour contributes to over 20 per cent of India’s Gross National Product (GNP)\textsuperscript{26}.

According to the 1981 Census, India has 272 million children between the ages of 0-14, which nearly accounts for 42 percent of the total population\textsuperscript{27}, out of which 97 million are below five years of age. Article 45 of the Constitution of India obligates the state to ensure that all children under 14 years of age are in schools, whereas out of 175 million children (6-14 years), only 42-69 million children are attending schools, and 132.31 million are not in schools\textsuperscript{28}. It can be reasonably concluded that this majority are engaged in some kind of work either as wage labour or supporting their families by looking after their fellow siblings, thereby contributing to the family income.

Estimates about the child labour force in India vary. The Census figures for 1971\textsuperscript{29} and 1981 are 10.7 million and 13.6 million respectively, whereas the National Sample Survey figures for 1983 are 17.36 million. The Operation

\textsuperscript{25} According to 1991 census India’s population was 844 million; now it has been reached more than one billion. The Sunday Times (New Delhi), 25\textsuperscript{th} February, 2001.


\textsuperscript{28} Ibid, p.59.

\textsuperscript{29} For the figure 100 million see Kalpana, “Why should Child Work”, The Hindu, 20\textsuperscript{th} December 1996, p.6. There is another estimate of 60 millions. See The Hindustan Times (New Delhi), 2\textsuperscript{nd} January 1977, p.3 also see V.S.Mani, Human Rights in India: An Overview, Institute for World Congress on Human Rights: Occasional Paper No.4, January 1997, p 19.
Research Group (ORG), Baroda, quotes a figure of 44 million in 1983 and the Balai Data Bank, a Manila based NGO puts the number of working children in India at 111 million. Despite the endemic absence of data, in 1975 the ILO conferred upon India the dubious distinction of harbouring the largest number of child workers in the world. According to the Asian Labour Monitor, every third household in India has a working child\textsuperscript{30}.

A study conducted by the ILO Bureau of Statistics in 1980 placed the count of children in the labour force of the world at 52 million which India is contributing about one third of Asia's child labour and one fourth of the working children in the world\textsuperscript{31}.

The precise estimate of the overall magnitude of child labour in India is admittedly difficult on account of the predominance of the informal and unorganized nature of the labour market. A Report\textsuperscript{32} released on the eve of Children's Day in 1992, said that those children, whose number was unofficially estimated at 44 million, contributed about 23 per cent to the household economy and accounted for six percent of India's total labour force\textsuperscript{33}.

As a result of the structural adjustment policies being presently pursued by the Government of India, the situation for a vast majority of Indian children has worsened\textsuperscript{34}. Increased unemployment, drastic reductions in the social security budget, i.e. health care, education and the public distribution system, are going to have an adverse impact on the lives of millions of children. While some of the

\textsuperscript{30} See Country Report, n.27, p.59.1
\textsuperscript{31} Satya Sundaram, "Plight of Child Labourers", Financial Express (New Delhi), 27\textsuperscript{th} May, 1991.
\textsuperscript{32} Centre of Concern for Child Labour, Child Labour Report (1992), New Delhi.
\textsuperscript{33} UNI, "44 Million Child Labour in India", The Economic Times (New Delhi), 15 November, 1993.
\textsuperscript{34} India's internal debt is 46.7 percent (Rs.9,34,429 Crore) of its GDP external debt is $ 98,231 million (Rs.4,24,849 Crore) in 2000. India paid 77,248 crore as interest in 1998 and 88,000 crore or 48.12 paise of every rupee it earns, it means, the Government on an average borrowed Rs.284 crore everyday in 1999 and Rs.287 crore in 2000; India Today, January 24, 2000; p.47. Consequently the Government of India can just about spend Rs.13,962,89 crore; or 4.91 % of total receipts and 0.69 percent of the GDP on education, housing and health care. See India Today, January 24\textsuperscript{th}, 2000,p.47.
effects of the policies are already evident, the long-term impact of these policies will reveal itself in about five years. It is shocking for any nation that believes in child as its important human resource, to have this high percentage of children as part of its workforce. What is more shocking and disturbing is the fact that a very large proportion of working children belong to factories engaged in work of a hazardous nature which is most dangerous to their health and well being.

Child labour is very common, and perhaps the oldest in carpet making. About 3 million children below the age of 14 years are working in the carpet industry. The Carpet and Weaving Industry of Uttar Pradesh has acquired notoriety in engaging child labour. Match and Fireworks Industry in Sivakasi has the second highest number of about 55,000 working children. The children work from 7A.M. to 6P.M. with a short break in between. The wages are determined on the basis of piece-rate. Though the Supreme Court of India in public interest litigation directed the employers to provide safeguards for safety of children employed in factories, the employers have taken to sidestep the court directions. Thus the children no longer work in cloistered factories, but they do from their homes, on contract.

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35 At the Independence India’s population was around 360 million, it is now more than 100 millions. In 1970 some 16% of the population was below the poverty line, now it has risen to 37% of the current population. These problems have a multiplier effect on all other social and economic problems. See V.S. Mani, n. 29. p.13. In the Central Government only more than five lakes posts are vacant, under which more than 60% posts are reserved for Scheduled Castes and Scheduled Tribes. But the government doesn’t want to fill these posts because the IMF and World Banks dictating the Central Government to reduce the staff. In the 2000-2001 budget, Finance Minister directed the all Central Ministries not to fill the 15% of retiring posts. If these posts are not filled, automatically unemployment will rise. If unemployment will rise then automatically number of families will comes under the poverty line.

36 The number of children working in hazardous occupations is about 2 million. See Satyan Mohapatra, “Allegations of Child Labour Refuted”, The Hindustan Times, 6th November 1996, p. 11. see also V.S. Mani, n .29. p.19

37 See V.S. Mani, n. 29. p.19.

In the Glass Bangle Industry there are about 50,000 working children between 5-14 years of age in Firozabad district of Uttar Pradesh, who work on the curving of bangle tubes under temperatures varying from 800-1600 Celsius. Factories function only overnight where children work for 10 to 12 hours for a meager amount of rupees five to seven\textsuperscript{39}.

About 45,000 children are employed in Zari-making in Lucknow, in the State of Uttar Pradesh, in the age group of 8-15 years. The precious stone polishing industry of Jaipur employs about 10,000 children, all of who work in slums\textsuperscript{40}.

About 7000-10000 children work in lock industries in Aligarh. They are engaged in hand pressing, electroplating, spray-polishing, packing etc., suffer from bronchitis, lung-cancer etc., working with poisonous chemicals for unduly long hours\textsuperscript{41}.

Child labour is also common in other informal sectors including restaurants, roadside hotels, domestic servants, car parking, rag picking, repair-shops, coolies, hawkers etc. These sectors of employment are mostly unregulated by laws and the children toil completely to the whims and fancies of their employers, who extract work under duress for 6 to 7 days a week without giving the children any proper wages or the remunerations. The working conditions are pitiable: many work in horrifying conditions. Most of the child employees belong to weaker sections of society, and never ever have an opportunity to enjoy even the minimum level of childcare. Economic development has substantially

neglected the human factor, which is the ultimate beneficiary as well as the main objective of development

II. LEGAL SETTING

A. INTERNATIONAL LAW

The concept of Rights of the Child has only been recognized quite recently. Prior to the Nineteenth Century the child was the human property, chattel of the parents, with the latter enjoying an absolute right to the child services and earnings and had full control over the child’s person and property. International law for the first time recognized the importance of the rights of the child in 1924. The Geneva Declaration, 1924, and following it the United Nations Declaration of the Rights of the Child, 1959, have proclaimed the child to be the most privileged ward of humanity, when they stated that: “Mankind owes to the child, the best it has to give”. Legal evolution brought substantial improvements in the area of Children’s Rights.

At the international level, concern in the field of Children’s Rights began to be shown, when the League of Nations adopted conventions prohibiting traffic in Women and Children in 1921, and Slavery and the Slave Trade in 1926. The International Labour Organization (ILO), has since 1919, adopted several conventions and declarations aimed at the abolition of child labour, through a legal


network of protection for working children with regard to conditions and terms of employment\textsuperscript{46}. 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\textsuperscript{47}, remains the greatest instrument of international significance for the protection of children.

1. \textit{League Covenant}

"In order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and scrupulous respect for all treaty obligations in the dealing of organized people with one another, the High Contracting Parties agree to this Covenant of the League of Nations" \textsuperscript{48}.

Article 23 of the covenant says that the Members of the League will endeavour to secure and maintain fair and humane conditions of labour for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extended, and for that purpose will establish and maintain the necessary international organizations\textsuperscript{49}. It further says that

\textsuperscript{46} For a summary listing of these instruments, See. Report of the Secretary General, \textit{The Exploitation of Child Labour}, U.N. Doc. E/CN.4 Sub. 2/433 (1979) at pp.3-8. The Programmes of the ILO focus their attention on five issues; (i) prohibition on child labour, (ii) protecting child labour at work, (iii) attacking the basic causes of child labour, (iv) helping children to adopt to future work and, (v) protecting the children of working mothers.


\textsuperscript{48} Covenant of the League of Nations Adopted by the Peace Conference at Plenary Session, April 28 1919, see. \textit{American Journal of International Law}, Vol. 13 (Supplement), 1919, pp.128-140.

\textsuperscript{49} Art.23 (a).
league will supervise the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs. It also states that the League will endeavour to take steps in matters of international concern for the prevention and control of diseases. The Members of League also agreed to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of diseases and the mitigation of suffering throughout the world. One of the biggest contributions of the League of Nations in the field of child rights, was the Declaration of the Rights of the Child in 1924, in addition to the Convention Prohibiting Traffic in Women and Children in 1921, and Slavery and Slave Trade in 1926.

2. International Labour Organisation

The most striking feature in the constitution of the ILO is that as an organization it comprises not only the representation of the Member States, but also of the workers and employers. This tripartite partnership has made the organization one of the most representative and democratic in the real sense of the term. Besides this, as pointed out by Jenks, "No less radical and unprecedented an innovation was the obligation to submit Conventions adopted by the ILO Conference by a two-thirds majority for parliamentary consideration, irrespective of the attitude towards the convention of the representatives of the Government concerned." The ILO standards, conventions and recommendations were designed to improve working and living conditions of the workers and employees, to safeguard human rights such as freedom of association and to encourage job

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50 Art. 23 (c).
51 Art. 23 (f).
52 Art. 25.
53 Arts. 2 and 6. For Convention see. AJIL, 1924 (Supp), Vol. 18, pp. 130-137.
creation. It has done commendable work to achieve social justice for the workers. In the field of international legislation, International Labour Code is a significant achievement.

The ILO Conventions have played a sheet anchor role in dealing with the problems of children. The protection of the child against exploitation in employment is one of the major concerns of these Conventions. Out of the 19 conventions of the ILO dealing with children; ten of them deal with the minimum age for employment of children, five with medical examination of children to decide their fitness for employment and three with prohibition of night work for children and one with the total prohibition of worst forms of child labour. In short, the major objective of these Conventions was to provide certain norms and standards for the well being of the working children.


Save the Children International Union (SCIU) was founded in 1920. In 1923, the SCIU promulgated the Declaration of Geneva, which was later adopted by the League of Nations in 1924. Among the children's rights recognized in

60 Worst Forms of Child Labour Convention, 1999.
62 Ibid.
the Declaration were the right to emotional and physical well-being, the right to a family, the right to aid in time of war or national disaster, the right to an education or training and the right to recognition of their places and responsibilities in the human family.

4. *UN Charter.*

The Charter of the United Nations represents a significant advancement in so far as faith in and respect for human rights is concerned. The Preamble of the U.N. Charter begins with the words, “We the people of the United Nations” and to say the least, these words are neither superfluous nor have crept in the Preamble accidentally. The framers of the Charter were really serious and did not rest content with the using of these words in the Preamble but went on to give content to these words in numerous provisions concerning human rights, elimination of colonialism, non-self-governing territories, economic and social co-operation, etc. In this context, the opening words of the Uncharter, “We the people of United Nations” are very meaningful. They show the objectives, which the framers of the Charter wanted to achieve. After having made this significant innovation in the Charter, the Preamble further reaffirms its “faith in fundamental human rights, in the dignity and worth of the human persons and in the equal rights of men and women”.

Article 1(3) provides that it is one of the purposes of the U.N. “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms *for all*.” Thus the article puts
the promotion of respect for human rights on the same level as the maintenance of international peace and security as a purpose of the U.N.\textsuperscript{63}

Under Article 13(1) (b), it is the responsibility of the General Assembly to initiate studies and make recommendations for the purpose of "promoting international co-operation in the economic, social, cultural, education and health fields, and assisting in the realization of human rights and fundamental freedom for all". The additional responsibilities, functions and powers of the General Assembly with respect to aforementioned matters are set forth in Chapters IX and X of the Charter.\textsuperscript{64}

Article 55 (c) charges the U.N. with the duty to promote "universal respect for, and observance of, human rights and fundamental freedoms for all". Article 56 under which "All Members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55" further strengthens this provision. Article 56 is stronger and involves the members; and the political and judicial organs of the U.N. who have interpreted this provision as a whole to constitute legal obligations\textsuperscript{65}. Thus Article 55 and 56 bind member States to observe and respect human rights.\textsuperscript{66} This view finds support from the interpretation of these provisions given by the World Court.\textsuperscript{67} The Charter of the UN has empowered the Economic and Social Council to make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedom for all.\textsuperscript{68}

\begin{footnotesize}

\textsuperscript{64} Article 13(2) (2): Chapter IX deals "International Economic Co-operation" and Chapter X entitled "The Economic and Social Council" contains provisions relating to function and power of the ECOSOC.

\textsuperscript{65} See. The Advisory opinion on Namibia: \textit{I.C.J. Reports} (1971), at pp.56-57.


\textsuperscript{68} Article62-3
\end{footnotesize}
imposes upon the Economic Council the responsibility to "set up commission in
economic and social field for the promotion of human rights, and such other
commissions as may be required in respect of the performance of its functions."69

5. **Universal Declaration of Human Rights, 1948.**

Universal Declaration of Human Rights70 consists of a Preamble and 30
Articles covering both civil and political rights and economic, social and cultural
rights. The Preamble refers to "faith in fundamental human rights, in the dignity
and worth of the human persons and in the equal rights of men and women"
which the people of the U.N. have reaffirmed in the Charter of the U.N. and their
determination "to promote social progress and better standards of life in larger
freedom". It also refers to the pledge taken by the Member States "to achieve, in
coopération with the U.N., the promotion of universal respect for and
observance of human rights and fundamental freedoms". Through the Preamble,
The General Assembly proclaimed the Universal Declaration of Human Rights "as a common standard of achievement for all people and all nations, to this end,
that every individual and every organ of society, keeping this Declaration
constantly in mind, shall strive by teaching and education to promote respect for
these rights and freedoms and by progressive measures, national and
international, to secure their universal and effective recognition and observance,
both among the people of Member States themselves and among the peoples of
territories under their jurisdiction". The provisions of the Declaration may be
classified into four categories: General (Articles 1 and 2); Civil and Political
Rights (Articles 3 to 21); Economic, Social and Cultural Rights (articles 22 to 27);
and Concluding Articles (Arts.28 to 30).

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69 Article 68.
70 G.A.Res.217(III), U.N.Doc.A/810 (1948), pp.71-77; hereinafter to be referred as "the Declaration".
Article I of the Declaration provides that all human beings are born free and equal in dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2 provides that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. No distinction shall be made on the basis of the political, jurisdiction or international status of the country to which a person belongs.

Civil and Political rights include rights such as Right to life and liberty\(^1\); Prohibition of slavery and slave trade\(^2\); Prohibition of torture and inhuman treatment\(^3\); Rights to equality before law and legal remedies\(^4\); Right to freedom of movement to leave any country and to return to one's country\(^5\); Right to seek asylum\(^6\); Right to nationality\(^7\); Right to own property\(^8\); Right to freedom of thought, conscience and religion\(^9\); Right to freedom of opinion and expression\(^10\) and Right to freedom of peaceful assembly and association\(^11\).

Economic, Social and Cultural Rights include: the Right to social security\(^12\); Right to work, free choice of employment etc.\(^13\); Right to education\(^14\) and Right to enjoy arts and to share in scientific advancement, etc.\(^15\)

\(^1\) Art.3
\(^2\) Art.4
\(^3\) Art.5
\(^4\) Arts. 6,7,8,9,10 and 11.
\(^5\) Art.13
\(^6\) Art.14
\(^7\) Art.15
\(^8\) Art.17
\(^9\) Art.18
\(^10\) Art.19
\(^11\) Arst.20 and 21
\(^12\) Art.22
\(^13\) Art.23
\(^14\) Art.26
\(^15\) Art.27.
The provisions of the Universal Declaration of Human Rights were transferred into international conventional law in the international covenants adopted by the General Assembly on 16\textsuperscript{th} December, 1966. Besides this, a considerable number of other international conventions were prepared and put into effect after 1948 to implement the rights proclaimed in the Declaration. The texts of the preambles of those conventions often specifically refer to the Declaration or reproduce the relevant provisions thereof. Some of those conventions are of a world-wide character; and others are of a regional or bilateral character.


The provisions of the covenant on civil and political rights is devoted to the traditional civil and political rights set forth in the Universal Declaration on Human Rights. The covenant thus protects the right to life\textsuperscript{86}; prohibits torture or cruel, inhuman or degrading treatment or punishment\textsuperscript{87}; prohibits slavery, the slave trade and forced labour\textsuperscript{88}; prohibits arbitrary arrest or detention\textsuperscript{89}; provides that all persons deprived of their liberty shall be treated with humanity\textsuperscript{90}; and that no person shall be imprisoned merely for inability to fulfill a contractual obligation\textsuperscript{91}. The Convention also asserts the right to liberty of movement and the freedom to leave any country, including one's own and states that no one shall be deprived of the right to enter his own country\textsuperscript{92}; sets limitations on the expulsion of aliens lawfully, in the territory of a State party\textsuperscript{93}; provides for equality before the courts and tribunals and for guarantees in civil and criminal

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\textsuperscript{86} Art. 6  
\textsuperscript{87} Art. 7  
\textsuperscript{88} Art. 8  
\textsuperscript{89} Art. 9  
\textsuperscript{90} Art. 10  
\textsuperscript{91} Art. 11  
\textsuperscript{92} Art. 12  
\textsuperscript{93} Art. 13
procedures$^{94}$; prohibits retroactive criminal legislation$^{95}$; stipulates the right of everyone to recognition everywhere as a person before the law$^{96}$; and prohibits arbitrary or unlawful interference with privacy, family, home or correspondence and unlawful attacks on honour and reputation$^{97}$.

The covenant requires states parties to prohibit by law any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence$^{98}$. It recognizes the right of peaceful assembly and the right to freedom of association$^{99}$; calls on State parties to take steps “to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution”$^{100}$; provides that every child shall have the right to protection by his family, society and the state$^{101}$. It also states that all persons are equal before the law and are entitled to its equal protection$^{102}$. The relevant provisions will be discussed in the fourth chapter of this thesis.


In this Covenant, States parties recognize the right of family, mothers, children and young persons to protection and assistance; and the right of free consent to marriage$^{103}$. This covenant also recognizes the right of everyone to an adequate standard of living$^{104}$; to the highest standard of physical and mental
health\textsuperscript{105}; and to participation in cultural life and to the enjoyment of the benefits of scientific progress\textsuperscript{106}. Some rights are set out in considerable detail, for example, for making available free compulsory primary education. State parties undertake, implementation within a reasonable number of years to be fixed in plan of compulsory education free of charges for all\textsuperscript{107}. In Articles 10 to 23 of the Economic Covenant, the State parties have undertaken to submit reports on the measures that they have adopted and the progress made in achieving the observance of the rights incorporated and recognized in the covenant.

8. \textit{UN Declaration of the Rights of the Child, 1959.}

In 1959, the United Nations gave official recognition to the human rights of children by adopting the Declaration of the Rights of the Child\textsuperscript{108}. It set out ten principles inspired by and expanding on the rights put forth in the 1924 Declaration. For the first time, it addressed the question of discrimination and

\textsuperscript{105} Art. 12
\textsuperscript{106} Art. 15
\textsuperscript{107} Arts. 13 and 14
\textsuperscript{108} On 20\textsuperscript{th} November, 1959, the General Assembly of the UN unanimously adopted a Declaration of the Rights of the Child consisting of a preamble and 10 principles. The first draft of the Declaration was prepared in 1950 by the Economic and Social Council’s Commission. The Council forwarded the draft for comment to the Commission on Human Rights in a view of its close relationship with the UDHR which was adopted by the General Assembly on 10\textsuperscript{th} December, 1948. The Commission on Human Rights discussed the draft declaration in 1957 and in 1959. After consulting Governments and Non-Governmental Organizations, it decided, in 1959, to present its comments to the Economic and Social Council in the form of a revised text. On 30\textsuperscript{th} July 1959, the Council decided, by resolution 728 C (XXVIII), to transmit to the General Assembly the relevant chapter of the report of the 1959 (15\textsuperscript{th}) session of the Commission on Human Rights, together with the records of the Council’s discussions. The draft Declaration as revised by the Commission on Human Rights was extensively discussed at the Assembly’s 14\textsuperscript{th} session in the Assembly’s Third (Social, Humanitarian and Cultural) Committee.

Two main questions were discussed in connection with the preamble and also in connection with the principles of the Declaration: (1) should the Declaration state, in positive terms, the needs of the unborn child for special protection; and (2) to what extent should the role of the State vis-à-vis the child be emphasized. One paragraph of the Commission’s text affirmed that ‘the child needs special safeguards, including special legal protection, by reason of his physical and mental immaturity’. Italy proposed a phrase to make it clear that the child required special safeguards and care, including legal protection, ‘from the moment of his conception.’ In support of this proposal, which was favoured by several representatives, it was maintained that the right of the child were inherent from before birth and that every child had a right to be born and a right to life. Several countries where abortion was permitted opposed this proposal. See. Year Book of the UN, 1959, p. 153. sec. 14 U.N. GAOR Supp. (No.16), U.N. Doc. A/4059 (1959).
specially provided that every child should enjoy all the rights set out in the declaration, without discrimination on grounds of race, colour, sex or creed\textsuperscript{109}. It provides that every child should be given facilities to develop physically, mentally, morally, spiritually and socially\textsuperscript{110}, and that the best interests of the child should be paramount\textsuperscript{111}. This introduces an important principle, which has subsequently been developed. The Declaration proceeds to set out particular rights, such as health care and education\textsuperscript{112}, social security\textsuperscript{113}, nationality\textsuperscript{114} and protection from cruelty and exploitation\textsuperscript{115}, recreation and appropriate treatment for the handicapped\textsuperscript{116}. Though the Declaration contains 10 articles, but it has produced more than ten volumes of literature on child right and it contains the International policy of the United Nations on the growth and development of the child.


The Convention comprises a set of international standards and measures intended for the protection and promotion of the well-being of children in the society\textsuperscript{117}. The Convention provides for four sets of civil, political, social, economic and cultural rights of every child.

\textsuperscript{109} Principle 1
\textsuperscript{110} Principle 2
\textsuperscript{111} last phrase of the Principle 2
\textsuperscript{112} Principle 7
\textsuperscript{113} Principle 4
\textsuperscript{114} Principle 3
\textsuperscript{115} Principle 9
\textsuperscript{116} Principle 5
\textsuperscript{117} The Geneva Declaration of 1924 was revised and amplified in 1948 and the resulting text formed the basis for the ten point Declaration on the Rights of the Child unanimously adopted by the UN General Assembly in 1959. In 1978, Poland submitted a draft text to the Commission on Human Rights for a UN Convention on the Rights of the Child, with a view to its adoption in 1979, the International Year of the Child. In 1979, at the request of the General Assembly an open-ended working group was set up in Geneva by the Commission on Human Rights to draft a convention using the Polish text as basis. From 1979 to 1987 the working group met for one week per year, generally the week proceeding the opening of the annual session of the Commission. This Convention was to be one of the most comprehensive international instruments since the Universal Declaration of Human Rights. See. U.N.Doc.A/44/736 (1989). For early history of the Convention on the Rights of the Child, see. C.P.Cohen, "The Human Rights of Children,"
These are:

i. The Right to Protection,
   It includes freedom from all forms of exploitation, abuse, inhuman, or
degrading treatment, and neglect including the right to special
protection in situations of emergency and armed conflicts\textsuperscript{118}.

ii. The Right to Development.
   It includes the right to education, support for early childhood
development and care, social security, and the rights to leisure,
recreation and cultural activities\textsuperscript{119}.

iii. The Right to Participation
   It includes respect for the views of the child, freedom of expression,
access to appropriate information, and freedom of thought, conscience
and religion\textsuperscript{120}.

iv. The Right to Survival
   It includes the right to life, the highest attainable standard of health,
nutrition, and adequate standards of living. It also includes the right to a
name and a nationality\textsuperscript{121}.

\textsuperscript{119} Ibid, p.1.
\textsuperscript{120} Ibid, p.2.
\textsuperscript{121} Ibid, p.1
The Convention provides the legal basis for initiating action to ensure the Rights of Children in society. The Convention is derived from a core set of human values and ethical premises that recognize the inherent dignity and the equal and inalienable rights of all members of the human family as the foundations of freedom, justice and peace in the world. Accordingly, the Convention stated that rights shall be extended to all children without discrimination of any kind while drawing particular attention to the fact that there are, in all countries of the world, children living in exceptionally difficult circumstances. Article 18 of the United Nations Convention on the Rights of the Child 1989, recognizes the rights of the child to,

i. be protected from economic exploitation and performing any work that is likely to be hazardous; or

ii. interfere with his education; or

iii. be harmful to the child’s health or physical, mental, spiritual, moral or social development. The International Labour Organization is also opposed to child labour in situations where children are disadvantaged educationally and socially where they work in conditions that are exploitative to their health.

Our society’s failure with children is intertwined with its larger issues of discrimination, injustice and racism. The children who get the least of benefits are those who need them most. The children of the poor have the least protection of the laws, the poorest of services, and the most vulnerable to bad treatment. It is clear that any effort on behalf of children must take account of this intertwining of the economic, the political and the human factors, influencing Child Rights. The
struggle for the welfare of children and the rights of the youth must, engage the larger issues of equity in our whole society\textsuperscript{122}.

Children have a right to make just claims, and adults must be responsive to these claims. This conception of a just society, if widely accepted, would lead to a change in attitude on the part of adults. In according rights to children, it makes adults more accountable to children. They can no longer assume it is only at their pleasure that children are permitted to make claims\textsuperscript{123}.


Optional Protocols to the Convention on the Rights Of the Child, 1989 deal with on the involvement of the children in armed conflict and the sale of the children, child prostitution and child pornography\textsuperscript{124}. The protocol raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children\textsuperscript{125}. The Protocol sets the age limit for direct participation in hostilities and compulsory recruitment at 18 years\textsuperscript{126}, and prohibits insurgents armed groups “under any circumstances” from recruiting persons under 18 years or using them in hostilities\textsuperscript{127}.

\textsuperscript{122} Beatrice Gross and Ronald Gross, \textit{The Children's Rights Movement/Overcoming the oppression of Young People }, (New York, 1977), p.6
\textsuperscript{125} Art. 1. of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Art.1 says State Parties shall take feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct participation.
\textsuperscript{126} Art.2.
\textsuperscript{127} Art.4.
Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000, stipulates that state party should undertake appropriate methods in order to guarantee the protection of the children from the sale, prostitution, pornography, economic exploitation and performing any work that is likely to be hazardous or to interfere with the child’s education or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

Both the Protocols do not exclude any criminal jurisdiction exercised in accordance with the international law. The Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts. Overall, the Protocols represent a clear improvement of existing international law, although the texts also contains evident weaknesses.

These treaties and declarations constitute the core of modern international law of child rights. The role of the declarations of course depends upon one’s perception of customary law. The predominant view is that if the principles contained in these are based on consensus of states, they may be regarded as part of international customary law.

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128 Art. 1  
129 Art. 3  
130 Art. 4(4) of the Optional Protocol on sale of children, child prostitution and child pornography.  
B. INDIAN LAW

The universal instruments on human rights and children’s rights have influenced national legislation. The Indian Constitution has a few provisions that lay down guidelines for the states on how to treat its children and young persons. They mainly relate to education, employment growth and development of children. Indian legislation on the child related matters is quite advanced and is in conformity with the international standards.

(i) Concept of “rights” of the child (written jurisprudence of rights of beneficiaries, although not directly enforceable by them).

(ii) Statutory provisions.

After independence, the Indian State has become fully conscious of its responsibility towards children. Consequently, this consciousness and concern is reflected in some of the principles enshrined in the Indian Constitution for protecting and promoting the rights and well-being of children. India’s abiding interest in the welfare of children is an expression of the country’s commitment to the welfare of its children- a commitment enshrined in the Preamble and various other articles of the Constitution. Thus:

Article 15(3) enables the State to make special provisions.

Article 23 prohibits the traffic in human beings and forced labour in all its forms.

Article 24 prohibits employment of children below the age of 14 years in hazardous jobs.
Article 37(e) makes it a duty of the state to prevent the children from entering into jobs unsuited to their age.

Article 39(f) recommends the protection of childhood against exploitation and moral and material abandonment.

Article 45 directs the state to provide free and compulsory education to all children up to 14 years of age, within the time limit of 10 years. Eight years of education to all children in the age group of 6-14 has been envisaged as Universal Elementary Education (UEE) and reiterated in the Five Years Plans.

Apart from the above Articles, Article 21, the core of all fundamental rights in the Indian Constitution which is also available to the children.132

Apart from the constitutional obligations, the states as well as the Central Government have enacted various laws, which place restrictions on the employment of child labour.133 Yet none of these pieces of legislation could prohibit employment of children. Even laws like Minimum Wages Act, 1948, Migrant Labour Act, Contract Labour (Abolition and Prevention) Act and the Employment Guarantee schemes of the government have not helped to eliminate child labour or keep it in check.

The Indian Government recognized child labour as a “necessary evil”, a concomitant of poverty which cannot be done away unless poverty itself is eradicated from society. Thus the government in its continuing efforts to find out

132 Art: 21, No person shall be deprived of his life or personal liberty except according to procedure established by law”. See Sheela Berse v Union of India, AIR 1986 SC 1773. In this case the court said child offenders are entitled to speedy trial.

some suitable remedy to eliminate the engagement of children at least in certain areas of employment, enacted another Act by the Parliament in the year 1986, namely the Child Labour (Prohibition and Regulation) Act, 1986. This was the step towards concretising the labour conditions of the child work force repealing thereby the Employment of Children Act, 1938.

III PROBLEM OF IMPLEMENTATION

A. IMPLEMENTATION AT THE INTERNATIONAL LEVEL

Implementation is at two levels: international and national. At the international level, implementation is pursued through international organizations such as the United Nations, Committee on the Rights of the Child, International Labour Organization, UNICEF, WHO, UNESCO, etc. But all these Organisations implement the provisions of the international norms or policies only where the States co-operate with them. For example UNESCO and UNICEF have suspended their programmes in the Taliban ruled Afghanistan because the Taliban regime is not co-operating with them and they had banned the education for women and girl child in their state. So the implementation of the international policies and norms is not an easy task. At the national level, the ultimate responsibility for implementation of human rights falls on the state and its legislative, executive and judicial machinery. The implementation of international obligations, commitments or norms cannot normally be implemented in the domestic arena unless or otherwise it is incorporated into the domestic law.
B. INCORPORATION OF INTERNATIONAL LAW INTO NATIONAL LAW

In the Constitution of India, which came into force on 26 January, 1950, Article 253, empowers 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 decisions made at any international conference, association or other bodies.

The executive power of the Union under Article 73 in the matter of entering into, and implementing of treaties is derived from the legislative power incorporated in Article 246 and 253, read with entry 14 of list 1134. As Article 73 makes it clear, the extension of the executive power there under is “subject to provisions of the Constitution itself”. The following classes of treaties require Constitutional Amendment or other parliamentary legislation to be internally enforceable:

a. Treaties involving cession of territory135.

b. Treaties whose implementation require addition to or alteration of, the existing law136.

c. Human Rights Covenants and other instruments137.

India has quite an impressive record of participation in international conferences held to adopt treaties. Not all the treaties to which India is a party are dependent upon the intervention of Parliament or Judiciary for their enforcement; they are self-executing in the sense that they are operative within the country,

136 Ibid, p.137.
137 Ibid, p.139.
without any further legislative or judicial action. 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 small.

Article 51 (c) of the Indian Constitution, is designed to serve the courts as a guide to interpretation of international agreements. It provides that the State shall endeavour to “foster respect of international law and treaty obligations in the dealing of organized peoples with one another”. Thus, there exists a constitutional imperative that the interpretation of treaties confirms to the objective of fostering respect for international law\(^\text{138}\).

As a matter of course, the Municipal Courts do not follow the same principles of interpretation of treaties as those followed by international tribunals or institutions. Nor do the Municipal Courts of one State follow the same approach as the one followed by the Municipal Courts of another State. Although uniform interpretation is highly desirable, in practice it is not easy to achieve. Except where substantive national laws come in their way, national courts should do their bit to ensure that the State stands by its international obligations in the sense in which these obligations are understood in the international sphere. It is well established that the interpretation of a treaty is a question of international law. By virtue of the commandment of Article 51© Indian Courts are under a constitutional duty to adopt the internationally accepted principles of interpretation of treaties\(^\text{139}\).

There is a broad distinction between the interpretation and application of treaties\(^\text{140}\). Interpretation is the process of making the meaning of the treaty clear.

\(^{138}\) Ibid, p.156.

\(^{139}\) Ibid, p.157.

It determines the legal character and effects of the treaty. Application is the process that comes in when the meaning of the treaty is clear. It determines the consequences of the interpretation of the treaty in a concrete case.

C. IMPLEMENTATION OF NATIONAL LAW

The principles of statutory interpretation adopted by courts also apply to treaty implementing statues. Prior to the commencement of the Constitution, there were only a handful of judgments which dealt with statutory interpretation and international law. According to recognized rules of construction of statutes the legislature is presumed not to enact anything contrary to international law or common law of the realm. The Supreme Court has also held that the words of a treaty are to be understood in the context of International Law rather than Municipal Laws of the parties to the treaty.

The Indian courts have not generally, evolved any principles of interpretation, which are special in respect of treaties or treaty implementing statues. The Supreme Court declared that the Directive Principles of State Policy enshrined in Art.51 constitutes an integral part and should "serve the courts as a code of interpretation". The Vienna Convention on the Law of Treaties, 1969, embodies in its Articles, principles of treaty interpretation which are universally recognized. The Indian courts are under a constitutional duty to apply these principles of interpretation when interpreting treaties and treaty implementing statues.

The Indian Judiciary was able to promote the jurisprudence of Child Rights through the provision in Part IV of the Indian Constitution under Articles 39(e),

142 Articles 31 and 32. See also P.C.Rao, n.134, p.157.
(f), 42, 45, and 47. Taking into consideration the relative performance record of the three wings of the Indian Government in the matter of securing Child Rights, the Indian Judiciary has accorded Child-Rights and principles governing them, the top most priority and has given every child, the neglected as well as the delinquent, an opportunity to enjoy the minimum guarantees of law.

The Supreme Court has unfailingly and consistently helped many children get access to justice through Public Interest Litigation\textsuperscript{143}. Whenever the issues relating to Child-Rights have been referred to the High Courts and the Supreme Court, there has always been a positive and activist response in granting appropriate relief and in reminding governments of their Constitutional obligations towards the children\textsuperscript{144}.

Judicial activism in the matter of juvenile justice has been particularly pronounced in four areas viz., children in custodial institutions, children offered in adoption, child labour and educational rights. Through a series of judgments 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 government agencies for the protection of Child Rights.

On the other hand, the legislative bodies viz., the Union Parliament and State Assemblies have been woefully lacking in bringing forward appropriate legislation to support the status and welfare of children. There are thirteen major


\textsuperscript{144} The Supreme Court ordered banning of child labour in each of the industries and setting up of a corpus fund ('child labour rehabilitation-cum-welfare fund') with a contribution of Rs.25,000/- by each employer for each child employed in his hazardous industry as well as with a penalty sum of Rs.20,000/- as compensation for violation of law. It asked the state (both the Union and State) to ensure that an adult member of each working child’s family got a job in place of the child, or, if this was not possible, Rs. 5000/- be paid into the fund for each child and from this an appropriate sum be paid to the child’s family per month for education of the child. family per month. See M.C. Mehta v UOI, AIR 1996 SC.
Legislative acts, concerning children, which have been passed over the years. All these will be the subject of the study.

IV. DEFINING "CHILD"

Since there exists divergencies worldwide (and even within a country) in the definition of a child, it is important to indicate these divergencies. Law, whether national or international, defines its subjects or objects differently for different purposes. Thus it offers a diversity of definitions each for a particular purpose.

The primary definition of “Child” is the immediate progeny of human parents. In its commonly understood meaning, “Child” or “Children” refers to parentage and embraces only the first generation of offspring. It has also been said that primary meaning of the word “Child” is an infant and that the next allowable use in meaning is one of tender years, young person, and a youth.

Black’s *Law Dictionary* defines the term “Child” as Progeny: Offspring of parentage. Commonly it implies one who had not attained the age of fourteen years, though the meaning now varies in different “statutes”. The *Shorter Oxford Dictionary* defines ‘person’ in two ways: ‘an individual human being or a man,
woman or child’. The *Webster’s New World Dictionary* defines a child as *inter alia* ‘an unborn offspring’. The American Bar Association’s Standards Relations to Rights to Minors proposes that, “all persons who have attained the age of eighteen years should be regarded as adults for all legal purposes”. According to the United Nations Convention on the Rights of the “Child”: (1989) “……a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”\(^\text{148}\). In India too, the definition of the child varies with the purpose. The census of India treats persons below the age of fourteen as “children”. According to the Indian Constitution, “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment\(^\text{149}\).

*Some of the definitions as provided under the Indian Law are the following.*

| 1. Juvenile Law: Juvenile Justice Act, 1986: Section 2(h) | A juvenile is a child who has not completed the age of 16 years in case of boy or the age of 18 years in case of girl. |
| 2. Family Law: Child Marriage Restraint Act, 1926: Section 2(a) | Child means a person who, if a male, has not completed 21 years of age and, if a female, has not completed 18 years of age. |
| 3. Labour Law: | A person is qualified to be engaged as an apprentice only if |

\(^{148}\) Article 1, the Convention on the Rights of the Child, drafted by the UN Commission on Human Rights, and adopted by the General Assembly of the United Nations on 20 November 1989. As quoted in the UNICEF India Background Paper, the right to be a child, March 1994, New Delhi, India.

\(^{149}\) Art.23, the Indian Constitution, 1950.
<table>
<thead>
<tr>
<th>Act</th>
<th>Section</th>
<th>Description</th>
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<tr>
<td>Apprentices Act, 1961: Section 3</td>
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<td>He is not less than fourteen years of age, and satisfied such standards of education and physical fitness as may be prescribed.</td>
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<tr>
<td>Factories Act, 1948: Section 67</td>
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<td>A child below 14 years of age is not allowed to work in any factory. An adolescent between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. A child between 14 to 18 years of age cannot be employed for more than four and a half hours.</td>
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<tr>
<td>Mines Act, 1952: Section 2(e)</td>
<td></td>
<td>No person below 15 years of age shall be allowed to work in any mine or part thereof.</td>
</tr>
<tr>
<td>Child Labour (Prohibition and Regulation) Act, 1986: Section 2(ii)</td>
<td></td>
<td>Child means a person who has not completed his fourteen-year of age.</td>
</tr>
<tr>
<td>Army Headquarters Regulations</td>
<td></td>
<td>The age of recruitment in the Army is from 16 to 25 years. Persons, who are recruited at the age of 16 years, undergo Basic Military Training for up to two and a half years from the date of enrolment and are then inducted into regular service.</td>
</tr>
<tr>
<td>Indian Contract Act, 1872</td>
<td></td>
<td>A Person below the age of 18 years has no capacity to enter into a contract.</td>
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<tr>
<td>Indian Constitution</td>
<td></td>
<td>Article 45 of the Constitution states that the State shall endeavor to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children till they complete the age of fourteen years.</td>
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<td>Beedi and Cigar</td>
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<td>Child means a person who has not completed 14 years of age.</td>
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<td>Workers(Conditions of Employment), 1966: Section 2(b)</td>
<td>11. Minimum Wages Act, 1948: Section 2(c)</td>
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<td>age.</td>
<td>A child means a person who has not completed his 15 years of his age.</td>
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<td>Child means a person who has not completed his 15th year.</td>
<td>Child means a person who has not completed his 15th year.</td>
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<td>13. Plantations’ Labour Act, 1951: Section 2(c)</td>
<td>13. Plantations’ Labour Act, 1951: Section 2(c)</td>
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<td>Child means a person who has not completed his 15th year.</td>
<td>Child means a person who has not completed his 15th year.</td>
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<td>14. The Maternity Benefit Act, 1961 Section 3(b)</td>
<td>14. The Maternity Benefit Act, 1961 Section 3(b)</td>
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<tr>
<td>Child includes a still born child.</td>
<td>Child includes a still born child.</td>
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<tr>
<td>15. The Orphanage and Other Charitable Homes (Supervision and Control) Act, 1960. Section 2(c)</td>
<td>15. The Orphanage and Other Charitable Homes (Supervision and Control) Act, 1960. Section 2(c)</td>
<td></td>
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<tr>
<td>Child means a boy or a girl who has not completed the age of 18 years.</td>
<td>Child means a boy or a girl who has not completed the age of 18 years.</td>
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V. PLAN OF ANALYSIS

The current study of the Rights of the Child under International Law and Indian law encompasses the subject of the rights of the child as dealt by the League of Nations and the United Nations and an evaluation of the Indian Law against such international developments.
It is essentially a study of children in society, their present status in the world today in general and in the Indian society, in particular. It involves an analysis of relationships between the international law and the Municipal law and their individual outlooks on Rights of the Child, including similarities as well as dissimilarities.

The study specifically addresses in the link between Judiciary, Executive and the Legislature in India in their political aspects, viz. use of power, legal framework, authority, implementation and their judicial competence in respect of both Municipal as well as International legal contexts, but mainly revealed through judicial action in India. It is also concerned with the Public Interest Litigation in India on the rights of the child, the role of the Non-Governmental Organizations (NGOs) and the role of National Human Rights Commission in the propagation of Child Rights. The study seeks to highlight the International Law and Indian Judiciary’s achievements alongside their shortcomings; prospects for improvement in the plight of the children and the urgent need to bridge the gulf between the Conventions and Statutes and their actual implementation and the extent of relief and success they have provided to the children of the world.

Chapter One; the current chapter, is the introduction to the Rights of Child under International Law and the Indian Law identifying the problems and implementation of these rights viewed through the normative framework of the international legal instruments.

Chapter Two is a study of the Development International Law on the rights of the child. It deals with the development of the International Law on the child rights; a historical perspective on child rights from the pre-united nations era to the present day, UN, ILO, WHO, UNESCO, UNICEF and SAARC and the rights of the child.
Chapter Three deals with the UN Convention on the Rights of the Child, 1989, in details, critic and optional protocols to the convention.

Chapter Four highlights the linkages between International Law and Municipal Law and examines the Indian Law on the rights of the child against the postulates of the UN Convention on the rights of the child by examining the Law in India on the rights of the child, and some of the legal issues relating to the children's rights in India. Further, the roles of the National Human Rights Commission (NHRC) and the Non-Governmental Organisations (NGOs) in safeguarding children's rights are also addressed.

Chapter Five is a discussion on the role of the Indian judiciary in implementing the International Law norms in Indian courts on the rights of the child. This also includes a study of the Constitutional provisions for implementation of the Indian Law; the judicial pronouncements to the protection and promotion of the children's rights,

Chapter Six embodies the conclusion based on the entire study. The study underscores that the rights of the child are of paramount significance to today's governments and international affairs, and that highest priority must be accorded to the children and their problems which are most immediate as the children are in urgent need of care and compassion, in the world today.