CHAPTER - III
THE UN CONVENTION ON THE RIGHTS OF THE CHILD-1989

I. INTRODUCTION

It has already been emphasized that children's rights are an integral part of human rights. The Universal Declaration of Human Rights, adopted in 1948, lays down the minimum, common standards of achievements and the Declaration of the Rights of Child, 1959\(^1\) is a common standard of achievement in the field of children's rights. The International Covenants\(^2\), adopted in 1966, together with certain other texts are seen as the necessary binding instruments on which the effective promotion and defence of human rights, including children's rights, can take place. It is logical that the defence of children's rights can be founded on an equally consistent and recognizable body of law. It was against this background that Poland launched its proposal for a separate convention on the rights of the child on the eve of the International Year of the Child in 1979. The proposal states that an international treaty be drafted which would put into legally binding language in the principles set forth in the 1959 Declaration of the Rights of the Child\(^3\). The general objective of proclaiming 1979 as the International Year of the Child\(^4\) was to create a worldwide consciousness towards promoting the well being of children, drawing attention to their special needs and encouraging national action on behalf of children, particularly for the least privileged and those who work. In 1978 the Polish Government submitted a draft 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. But in 1979, at the request of the UN 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 a basic working document. The Working Group established by the U.N.

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Commission in 1979 was expected to draft the Convention by the "Target 1989". The Working Group also met for the first time in 1979. In 1981, the Polish Government revised its original proposal and it became the working document for the Group. The initiative thus provided an opportunity and impetus to define more clearly and harmonize human rights standards for children, to fill the many gaps identified in the present provision and to set the results of this in-depth re-assessment exercise within the context of a single, binding instrument.

During 1979-87 the Working Group met for one week per year, generally in the week preceding the opening of the UN Commission on Human Rights, i.e., end of January. In 1983, an informal ad hoc group composed of International Non Governmental Organisations (INGOs) was established to prepare joint INGO proposals and to submit them to the UN Working Group. During 1983-87 the INGOs met twice a year for prepare their participation in the UN working group and submitted joint proposals. By March 1988, the Preamble and 51 Articles were adopted, many of which had their origin in the INGOs proposals. In 1988 the Group met for two weeks and the first reading of the Draft Convention was completed. In November 1988, a West-African seminar on the Draft Convention was held in Senegal, which adopted the "Declaration on Dakar" stressing the need to take into account the cultural values of Africa in the proposed Convention. The Latin American nations also held a meeting in support of the Convention at Buenos Aires in September-October 1988. A seminar was also held in Alexandria in November 1988, which pointed out that provisions on the religious freedom and adoption of the child were incompatible with legal systems of many countries and the concern of these countries should be taken into account. The Portuguese-speaking nations met in Lisbon in September 1988, under the auspices of UNICEF to study the Draft Convention. A group of eminent persons met in New Delhi under the auspices of India International Centre on

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10 Ibid.
May 7, July 30 and 31, 1988 and suggested various changes to make the Convention more effective.

A number of international organizations are empowered to address various aspects of child development such as WHO and UNICEF that are committed to reducing infant and child mortality in the developing countries by providing resources and expertise at the national level to compliment those of the governments. The ILO, ECOSOC, UNHCR, UNESCO, INTERPOL etc. have been active in addressing specific areas of child maltreatment, child exploitation and politically motivated violation of children's rights. However, the inadequacy of the existing arrangement within the UN system for monitoring the circumstances of children and the absence of standards in individual countries defeat the number of significant steps taken in the field of children's rights.

Much of the impetus for confronting child maltreatment and abuse of children's rights comes from the non-governmental sector, which suffers less constraints, than inter-governmental agencies. Several thousand national groups and non-governmental organizations have been formed to deal with specific forms of abuse. A large number of such International Non-Governmental Organizations have been consulted in the drafting of the UN Convention on the Rights of the Child and several ideas suggested by them have

11 Protection against traditional practices, (i.e. female circumcision), and against sexual exploitation, protection of rights of indigenous children, standards for the administration of school discipline and rehabilitation for victims of various types of abuse and exploitation. See also Jo Boyden and Andy Hudson, Children: Rights and Responsibilities (London: Minority Rights Group, 1985) p.9.


been taken up for consideration\textsuperscript{14}. The doctrine of \textit{Parens Patriae} legitimises State intervention on behalf of the children for their protection\textsuperscript{15}.

It was expected that the Convention would apply the principles of the Declaration of the Rights of the Child in specific instances and would be legally binding on signatory states. The Convention was to be far more far-reaching than all other previous declarations and covenants concerning children's rights. The most serious difficulty confronting the Draft Convention was the wide variation of attitudes, ideologies and social and cultural conditions of the member states of the United Nations. Some observers even argued that such a Convention could only have application within a single geo-political area. In any case, legislative measures should only be seen as an adjunct to other activities, which were often far more effective, such as advocacy, representation, welfare services, aid-funded programmes, and support for non-governmental initiatives and the protection of abuse was preferred to remedial action. Further, the prevention of abuse was preferred to remedial action.

From the outset there were those who argued against the drafting of a separate treaty protecting the rights of children. Most of the objections were supported by the assertion that children were already protected by existing human rights treaties and that it was unnecessary, repetitive and harmful to the human rights treaty-making process to encourage the proliferation of a series of special constituency treaties. Counter-arguments asserted that existing treaties were too general to protect adequately the special needs of children. The final product of the Working Group would appear to justify the claims of those supporting such a treaty\textsuperscript{16}. In the early drafting stages of the Convention, some questioned whether it was feasible to define universal rights for children, given the diversity of nation's socio-economic, religious and cultural perceptions of childhood and the child's role in the family and society at large. But the Working Group of the Convention, took the view that although methods of upbringing, socialization and

\textsuperscript{14} Supra.n.13.
\textsuperscript{15} Ibid, p.10.
opportunity varied greatly from one country to another, concern to protect a broad range of children’s rights was shared by all people\textsuperscript{17}. It is submitted that the reactions of all communities and nations were essentially the same when children were subjected to torture, separated from their families, deprived of food or proper medical care or maimed in armed conflicts. The Convention therefore represents a consensus.

II. SUBSTANTIVE RIGHTS

DEFINITIONAL PROBLEMS

Logically, the description of the children's rights must be preceded by the definition of the key terms used therein. Article 1 defines a “Child” as all human beings under the age of 18 years, unless national law grants majority at an earlier age\textsuperscript{18}. The proposal from Malta and Senegal that the childhood starts from the stage of conception itself and not just from birth only\textsuperscript{19} was not considered for adoption. The definition of the child as it stands makes no mention of the unborn child in the same way, as it does not include the unborn from the protection intended for the child. This is a serious flaw in the Convention. The massive scale of abortions for the convenience of the parents and/or the state has made the womb of the mother the most unsafe place on earth\textsuperscript{20}. Millions of surgical murders take place in the womb where the unborn is unprotected and has no

\textsuperscript{17} The Rights of the Child-World Summit for Children, Sep. 1990, p.2.
\textsuperscript{19} Economic and Social Council, n.18, pp.15-16.
\textsuperscript{20} According to the 2001 census of India, the Sex ratio in the 0-6 age group has declined sharply from 945 females per 1000 males in 1991 to 927 in 2001. This is because of flourishing underground profit making industry of sex determination tests, seducing the typically Indian male centric mindset towards organised female feticide. Amniocentesis or other pre-natal imaging tests to identify the sex of the unborn child is illegal in India, but which does not deter the quacks and unscrupulous doctors as long as the parents are willing to pay huge sums to abort the female foetus, The Hindustan Times (New Delhi), 7th May, 2001, p.10.
One fails to understand the sanctity of the born child versus the unborn in any way for special protection.

The only definition offered in the Convention is that of the Child. There are many other terms, like “standard of living”, “social security”, “best interests of the child”, “right to life”, “parental responsibility”, “discrimination”, “appropriate measures”, “highest attainable standard of health”, and “the maximum extent of the available resources”, that should have been defined for a greater binding effect on the state parties. The terms like “appropriate measures”, “highest attainable standard of health”, and “the maximum extent of available resources” are vague. They would mean different things to different state parties according to their convenience. They should have been made very specific since today the custodians and the persons ultimately responsible for violations of the rights are the same entities. It would have been safer to define exactly what these terms mean and what is expected of the state parties to the Convention. Since there exists a great divide in the priorities accorded to human rights according to the ideological religious or cultural leanings of the respective governments, the safety of the children’s rights should have been in sharply defined terms rather than couched in general terms. While the socialist regimes emphasize the socio-economic and cultural rights, the capitalist regimes tend to stress on the political and civil rights. Both are important for human development. However to allow differing ideological regimes to grant dominance to certain rights over others will not be in the interests of the child’s overall development.

“Appropriate measures” is a tricky term since it can mean many things. “Appropriate” to what? To the needs of the children? To the importance of the children in the political set-up? To the category of children involved? To the class to which the children concurred belong? To the interests of the officials involved? Who decides what is appropriates? This flaccidity clearly shows that the same things can have varying interpretations, all of which may not be conducive to the promotion of children’s rights.

21 Recognising the ill effect of the surgical murders, the Supreme Court of India has directed the central government as well as the various state governments authorities to launch a vigorous media campaign against female foeticide and the practice of pre natal sex determinations. The Hindustan Times (New Delhi), 5th may,2001,p.1.

22 Economic and Social Council, n.18, p.86.
Another term, “living standards”, also offers difficulties. Living standards do not exist in a vacuum. They are a part of the socio-economic status of the population concerned. In a country like India with varying levels of poverty and affluence, whose standard of living is to be offered to the child? The elite and the middle classes have their standards while the poor have theirs. There are millions who cannot find a square meal in a day while some others throw away food since they cannot consume all that is available. Hundreds of people die of starvation while there are some others who go for operations to remove the excess fat in their bodies. All these categories have a standard of living: which one is to be offered to the children? The Convention is silent on this.

In the same manner the term “available resources” also suffers from ambiguity. How to determine “availability”? We may find governments that cut down welfare expenses on the plea that there is a resources crunch, at the same time, raising defence expenditure. The same governments may also import certain goods at the cost of their foreign exchange to meet the needs of their elite consumers. One question will be whether to read “priority” in the place of “availability” since the latter is subjective and determined by a government that has varying priorities. The above-mentioned example emphasises the dangers that are bound to weaken the implementation of the rights due to lack of clarity of the important terms.

III. SOCIAL RIGHTS

To start with, the Convention provides that state parties are to respect the responsibilities/rights/duties of parents and guardians or others who are responsible to provide appropriate guidance to the child in the exercise of the rights recognized in this Convention (Article 5). Then it proceeds to deal with parental responsibilities towards

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23 World Bank Estimates in 1998: 1.1 billion people world wide have no access to clean water, 2.3 billion adults worldwide, does not have access to a decent latrine and 1.2 billion people, including more than half a billion children, lived in poverty or less than $1 a day.

24 Due to poverty, there is a common practice in India, to sell their children for a meager amount to feed families. The Hindustan Times (New Delhi), 18th February, 2001, p.13. 2000 tribal children died in between 2000 to April 2001 in 5 tribal districts of Maharashtra due to malnutrition. This is not only in Maharastra, but also everywhere in India. In these circumstances, how can we determine a living standard?
their children. States are to ensure recognition of the principle that parents/guardians have the primary responsibility for the up-bringing and development of their child. The responsibility of states is to render appropriate assistance to parents/guardians in this regard and to ensure the development of institutions/facilities/services etc., for the care of children. For the kids of the working parents the day care facilities are to be provided. The delegate of the USA found it strange to create responsibilities for private individuals in an international convention, which after all creates obligations only for the ratifying states\(^{25}\). The primary responsibilities of the parents for the up-bringing of the children, has been recognized and the role assigned to the state is only to assist the parents in their task\(^{26}\). However, a reference to teachers who play an active role in the development of the child is missing in this context. One could also doubt whether this article imposes a duty on parents or protects their prerogatives from any interference by others\(^{27}\).

State parties have the responsibilities to take appropriate legislative/administrative/social/educational measures to protect the child from all forms of violence, abuse, neglect, and exploitation while in the care of parents\(^{28}\). Such measures should include establishment of social programmes to provide support for the child and those who have the care of the child. There is also a need for the prevention, identification, reporting and investigation of such abuses and neglect\(^{29}\). In this process the appropriate judicial involvement is also required. Sociologists today question the absolute nature of parents' rights and highlight the child abuse and child neglect in respect of the basic needs of the child like food, health, shelter, clothing and the incapacity of many to fulfill their parental responsibilities\(^{30}\). Moreover, the instances of children's abuses by their parents are not unknown. It is of vital importance that children are brought up as rational human beings. What are the "appropriate measures" which the state can take without encroaching upon the traditional parental privileges? This is also important for India, which has a solid

\(^{25}\) Economic and Social Council, n.18, p.31.
\(^{26}\) Art. 18
\(^{27}\) R.P. Dhokalia, Suggestions/Comments, Reports of the India International Centre Group on the Rights of the Child, 1988, p.35.
\(^{28}\) Art. 19.
\(^{29}\) Article 19(2).
\(^{30}\) Ibid.
bias against the female child. From female foeticide and female infanticide to child marriage and Sati, we have a big litany of maltreatment and offences against the female child. However, the Convention's provision is vague in the sense that it does not specify as to who is to function as the watchdog against parental and related abuse and exploitation of the children. Quite probably, the state in its position as parens patriae.

Article 20 of the Convention makes a provision for the protection of children without families. When a child is temporarily or permanently deprived of his/her family environment, it is to be provided with special protection and assistance by the state. Alternative care is to be ensured according to national laws. When considering solutions, due regard shall be paid to the child's ethnic/religious/cultural background. Another group of children who deserve similar protection are of those who run away from their homes. Such children should be treated as displaced children who have migrated and are thus deprived of their family environment.

There is also the provision for adoption of children (Article 21). State parties who recognise/permit adoption shall ensure that adoption of a child is authorized by competent authorities, in accordance with law and with the informed consent of the persons concerned with the child. The inter-country adoption may be considered as alternative means of childcare if the child cannot be suitably placed in the country of origin. Though the Convention's provision for adoption is largely based on the provisions of the 1986 UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, the Venezuelan delegate was not satisfied with the Article as provided in the Draft. The Working Group on Contemporary Forms of Slavery, which was

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31 R.P. Dhokalia, n.27, p.36.
33 The representative of Venezuela expressed the view that inter-country adoption should be treated as an extreme and exceptional measure and not as an "alternative means of child care", as it was put down in subparagraph (b). She stated that it would appear that this paragraph confuses two legal institutions, foster placement and adoption. She also disagreed with some other provisions contained in subparagraphs (c) and (d). In her opinion, the provision relating to "improper financial gain" in subparagraph (d) implied that a "proper" financial gain resulting from inter-country adoption was permissible. The representative of Venezuela felt that the present text of this article opened the door to trafficking in children and suggested that
established, by the Sub-Commission of Prevention of Discrimination and Protection of Minorities has reports which recall the existence of a market for and traffic in children for adoption, especially inter-country adoption in many parts of the world. Therefore Venezuelan delegation wanted to make inter-country adoption as the last option, which could be permitted only when the country of origin is unable to provide any suitable manner of care. In this case, state parties are to ensure (a) that the child enjoys all safeguards and standards equivalent in case of national adoption and (b) that his placement will not result in any improper financial gain to those involved in it. Appropriate bilateral and multilateral agreements are to be concluded to ensure that this placement is carried out by competent authorities or organs of the states concerned

Article 21 may open up floodgates for trafficking in children. Today we hear of the Third World children being imported into the industrialized countries for the sale of their organs for surgical transplantation. In the name of adoption, children are also sold into domestic slavery in the affluent nations. The right of a child who is a destitute is not taken care of in this Article or elsewhere in the Convention.

Under Article 22 of the Convention, state parties are under an obligation to provide special care and assistance to refugee children. They are also to cooperate with organizations, which provides such protection and care. This provision is important for the war-torn nations of Africa, Central America, Middle East and Asia. It also requires the collection of information so that unaccompanied children can be reunited with their families. States are to co-operate with the UN and other organizations for this purpose.

Handicapped children are guaranteed the right to special care and training designed to help them to achieve greater possible self-reliance and leading to a full and active life in society. State parties have an obligation to extend assistance in accordance with their

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34 Economic and Social Council, n.18. p.59.
36 Tara Ali Bing, n.31, p.41.
available resources to such children and those responsible for their care\textsuperscript{37}. This assistance is to be free taking into account the financial resources of the parents. It should be designed to ensure the child’s education, training, healthcare, rehabilitation services, employment preparation etc. International co-operation in the collection, exchange and dissemination of, and access to, information is to be developed. The needs of the developing countries in this regard shall merit special consideration\textsuperscript{38}.

Health and health services also receive attention under the Convention. It seeks to ensure the child to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation\textsuperscript{39}. State parties are obligated to take appropriate measures to reduce infant and child mortality, to provide necessary medical assistance, and to emphasize primary health care\textsuperscript{40}. They are also made responsible to combat disease and malnutrition, to provide adequate nutritious food and clean drinking water, and to prevent the environmental pollution. Appropriate pre-and post-natal health care is to be provided to mothers\textsuperscript{41}. Steps are to be taken to inform parents and children in the basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene, environmental, sanitation, etc. State parties are to develop preventive healthcare, guidance for parents and family planning education and services. Traditional practices that are prejudicial to children are to be abolished. International co-operation is to be promoted and particular account is to be taken, on the needs of the developing countries. Since mothers are an integral part of the childcare, provisions are made in this Article for the care of expectant and young mothers. One thing missing here is the immunization of infants and children, which can prevent thousands of preventable deaths and deformities in children. Attention is also paid to the right of the child who is placed by state for reasons of care, protection or treatment to have all aspects of that placement to be evaluated regularly. Children are also

\textsuperscript{37} Though thousands of tones of food grains rotting or spoiling out of FCI godowns, or left to be ravaged by rates and cockroaches, while fresh stocks of post harvested wheat and rice have no takers, even then Government of India doesn’t want to supply the food grains to the malnutrated lands in the country, causing though of malnutrition deaths in the country, \textit{The Hindustan Times} (New Delhi), 16th April,2001p1.
\textsuperscript{38} Economic and Social Council, n.18, p.67.
\textsuperscript{39} Art.24
\textsuperscript{40} Art.24(2)(a) (b) (c) (d) (e) (f).
\textsuperscript{41} P.K. Umashankar, n.26,p.52.
to benefit from the social security in accordance with the national law\textsuperscript{42}. Indeed these benefits are subject to the resources of the state concerned and that of the parents/guardians of the child as the Drafting Body accepted the suggestion of the Indian delegate to this effect\textsuperscript{43}.

The child also has a right to a standard of living, adequate for the physical, mental, spiritual, moral and social development\textsuperscript{44}. The primary responsibility to secure this is that of the parents/guardians and subject to their financial capabilities\textsuperscript{45}. States are to take appropriate measures within their national conditions and means to assist parents/guardians to implement this right and to provide with material assistance and support programmes, particularly with regard to nutrition, clothing and housing\textsuperscript{46}. They are also to take steps to recover maintenance for the child from parents/guardians whether within the state or abroad.

The Convention contains an important provision on education\textsuperscript{47}. State parties are obliged to achieve this goal progressively and on the basis of equal opportunity for this purpose\textsuperscript{48}. They have to make primary education free and compulsory to all. They have to develop general and vocational training in secondary training, which should be accessible to every child. If necessary, states are required to introduce free education and financial assistance in case of need. They are also to adopt measures to encourage regular attendance of children with the dignity of the child. The aim of education is to develop the child’s personality and talents and to prepare him for active life as an adult. The right of individuals and others to establish educational institutions is subject to these provisions as

\textsuperscript{42} Art. 26.
\textsuperscript{43} Economic and Social Council, n.18, p.77.
\textsuperscript{44} Art. 27.
\textsuperscript{45} Art. 27(2)
\textsuperscript{46} Art. 27(3); See also: UNICEF; Vasudha Dagamwar, “Human Rights and the girl Child”., (UNICEF, India country office, New Delhi, 1994),pp.62-65.
\textsuperscript{47} Art .28.
\textsuperscript{48} Sheer Bureaucratic indifference has made mockery of a welfare scheme that could have brought cheers to perhaps the most helpless members of the Indian society, the girl child. The “SAARC Decade for Girl Child”, implemented in the 1990s, has left the Indian adolescent girl (11-17years age group) in a poorer conditions than ever before. The Adolescent Girl (AG) scheme is to be implemented in 2000 selected integrated child development services (ICDS) projecting by the end of the Ninth Plan Period, but the AG’s scheme has not been implemented even the ‘SAARC Decade’ is over, The Hindustan Times (New Delhi) 7\textsuperscript{th} May, 2001,p.7.
well as national laws regarding the same. International cooperation is to be promoted and encouraged in matters relating to education and the needs of developing countries are to receive special attention. How will the developing countries implement this right when they are facing scarcity of resources? The Convention does not provide for funding of fee and compulsory education, where such financing is necessary.

The rights of the children of minorities and indigenous peoples who have their own culture and who practice their own religion and language are also guaranteed. Many had difficulty with this provision since it introduces the concept of “national minorities” into the International Convention and also introduces differential treatment on the basis of minority and indigenous status. Children are also granted the rights to leisure, play and participation in cultural and artistic activities.

IV ECONOMIC RIGHTS

State parties recognize the rights of the child need to be protected from economic exploitation and from performing any work that is hazardous, or that which interferes with the child’s health or physical, mental, spiritual, moral or social development. They are to take administrative, legislative, social and educational measures to ensure the implementation of this right. To this end state parties are to stipulate (a) minimum age(s) for admission to employment, and (b) appropriate penalties and other sanctions to ensure the effective enforcement of this right. The delegation of India pointed out that its government fully supported the right of the child to be protected from economic exploitation or performance of any work that was hazardous or which interfered with the child’s education. However, given the present state of economic development and social

49 Art. 30.
50 Economic and Social Council; n.18. p.88.
51 Art. 31.
52 Art. 32.
53 Art. 32 (2).
54 Economic and Social Council: n.18, p.90.
conditions existing in India, children were often required to work even at the cost of their education. Such a situation also exists in many other Third World countries.

Children are also to be protected from the illicit use of narcotic drugs and psychotropic substances and prevent the use of children in the illicit production and trafficking of such substances. The golden triangle of Asia for drugs and Latin America are notorious for the enforced slavery of children to work in the godowns of drug mafias. These countries are to take special steps.

Another area in which the child gets exploited and abused is sex trade. The Convention makes a provision to protect the child from all forms of sexual exploitation and sexual abuse. State parties are to take appropriate national, bilateral and multinational measures to prevent inducement, coercion to engage children in unlawful sexual activity, using them for prostitution and pornographic performance and materials. This will be quite a difficult task for many a state parties since sex trade is practised as a part of their tourism industry to attract foreign visitors. Children of pre-puberty age are induced and coerced into the business and usually the state prefers to keep its eyes averted. Poverty and maltreatment of the poor have to be controlled to prevent the sexual exploitation of children. State parties are to take measures – national, bilateral and multinational – to prevent the abduction, sale or traffic in children. After providing for the

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55 A number of starvation deaths were happening every year in India, how they send their children to schools with out financial support. The Government of India enacted the Child Labour Act in 1986 and followed this up with the National Policy on Child Labour in 1987. The National Policy on Child Labour aims to focus the programmes of the Government for creating socio-economic conditions in which the compulsion to send children to work diminishes and children are encouraged to attend schools rather than take up wage employment. A number of specific programmes are being undertaken in India in areas of child labour concentration towards this aim.


59 Not only female child but also young boys are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence. See 172nd Report of the Law Commission on ‘Review of Rape Laws’, Ministry of Law, Justice & Company Affairs, Government of India (July 2000) p.19.

prevention of exploitation of children in child labour, illicit use of children in drug business, sexual exploitation, abduction, sale or traffic in children. Children shall be protected from all other forms of exploitation that are not covered by any other provisions. One should not fail to understand that all exploitation largely arises out of the socio-economic destitution of the children. These rights are basically the rights offered to the children of the poor sections of a society. The Convention does not address the basic issues of poverty. That part is left to the discretion of state parties.

V. CIVIL RIGHTS

Every child has the Right to Life\(^{61}\) and Identity\(^{62}\). The state parties are to ensure the survival and development of the child to the maximum extent possible\(^ {63}\). However this right to life is available to child after it is born, not available at the pre-natal stage. In India, we have the ghastly practice of aborting the female foetus after sex-determination tests\(^{64}\). This is a sensitive issue especially today since many a modern state legally tolerates or permits abortions either on the ground of population control or under the pretext of the fundamental rights of the pregnant women to have or not to have the child. Insisting on the recognition of the pre-natal rights of the child would have bogged down the drafting and adoption of the Convention for many more years to come. However the victory for a speedy acceptance of the Convention was a defeat for morality and ethics.

The female foeticide and infanticide in India and abortions on demand in the industrialized nations are the very negation of the principles of the Convention. Rights of the born child and the unborn child are in a manner same as the rights of the child and those of the adults, they are the foundation of the latter. There is no need for these categories of rights to be mutually exclusive. There was also a suggestion to replace the term "survival” with the term “health growth”. However the WHO opposed it and many other delegations including that of India, since the word “survival” has a special meaning.

\(^{61}\) Article 6.
\(^{62}\) Article 8.
\(^{63}\) Article 6.
\(^{64}\) CEHAT vs Union of India, *Judgment Today*, May, S 2001. The case has been brought before the court by the way of Public Interest Litigation against the practice of pre-natal sex determination and female foeticide.
within the UN context. "Survival" includes growth monitoring, oral rehydration and disease control, breast-feeding, immunization, child spacing, food, and female literacy etc. Whereas the term "growth" represents only a part of the concept of "survival". The acceptance of the former in place of the latter would have been a retrogressive step.

Every child has a right to a name and nationality. He/she should be registered immediately after birth and, as far as possible, has a right to know and be cared for by his/her parents. State parties are to ensure this right is in accordance with their national laws and other relevant international obligations, especially where the child otherwise would be stateless. During the discussion in the Commission, Egypt, on behalf of the Islamic countries, suggested the recognition of every child's right to know and belong to his/her parents for the sake of psychological stability, which also has equal importance along with the child's physical and mental growth. Egypt also proposed that state parties to the Convention should grant their nationality either by jus sanguinis or jus soli. The whole exercise was aimed at reducing statelessness of the children. The Egyptian proposal was subsequently accepted with certain modifications.

It is also provided that all actions concerning children undertaken by public/private social welfare institutions, court of law, administrative and legislative bodies shall have the best interests of the child as "a" primary consideration. The initial text had provided for "the" primary consideration for all actions. However, the delegations felt that interests of justice and society at large, sometimes can be greater than the interests of the child. State parties are also to ensure for the child such protection and care as necessary for its well being, considering the rights and duties of its parents/guardians, and take all appropriate legislative and administrative measures for this purpose. They are also under an obligation to ensure that all those responsible for the welfare of the child shall maintain these standards, which are to be supervised by the competent authority. The Indian delegate was

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65 Economic and Social Council, n.18, p.17.
66 Economic and Social Council, n.18, p.18.
67 Article 7.
68 Economic and Social Council, n.18, pp.18-21
69 Ibid., pp.18-19.
70 Economic and Social Council, n.18, pp.22-23.
of the opinion that it was enough to supervise institutions run by voluntary organizations, without imposing unnecessary bureaucratic requirement. The ILO representative called for appropriate training and qualification of the officials and personnel who are responsible for the protection of the child.

The child is entitled to non-discrimination on the basis of his/her parents/guardians, race, colour, sex, religion or other status etc. State parties are to ensure that all rights set forth in this Convention are guaranteed to the child and that he/she is protected against all forms of discrimination or punishment on the basis of his/her parent's/guardians' activities/beliefs or status. The Indian delegate has expressed his reservation on the use of "ensure" instead of "extend". This provision made in (Art.2) is important for India where the society is stratified on the basis of caste, class and religion. The children of the Scheduled Castes/Tribes, religious/ethnic minorities, and those of the rural illiterate and landless labourers are entitled for protection against discrimination.

Every child also has a right to live with his/her parents unless it is incompatible with his best interests. The child has a right to keep contact with his parents. The right to

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71 Ibid. p.25.
72 Ibid. p.25.
73 Article 2.
74 Economic and Social Council, n.18, p.29.
75 Scheduled Caste, Scheduled Tribes, Backward Classes, Other Backward Classes and Forward Castes: Scheduled Caste community people were treated as untouchables, downtrodden for a long time in India, even after independence, the practice of Untouchability is prevailed in some parts of the country. According to 1991 Census SCs/STs population was 24.56 percent in the total population of India. The vast majority (81.28 of SCs/STs lives in rural areas. See also Advocacy Update, Journal of National Centre of Advocacy Studies, No.15 (January-March, 2001), p.3
76 On the educational front, the SCs/STs lag far behind the general population of India: The General literacy rate in 1991 was 52.21 percent, while the literacy among SCs/STs was only 37.41 percent. Nearly one third of SCs/STs children in the age group of 6-11 years do not get an opportunity to enroll in the primary schools. Of those who enroll, 78.88 percent of these children's drop out by the secondary stages. This is because these children's are engaged either as child labourers, rag pickers, wage earners, or domestic workers. See National Commission for SCs and STs, Annual Report, 1993-94, p.57. Also see Report of the Ministry of Human Resource Development 1995. Every hour two dalits are assaulted, every day three dalit women raped, every day, two dalits are murdered and every day two dalit houses are burnt down. See Report of the National Crime Record Bureau, Ministry of Home Affairs, Government of India, 1995, p.260.
family re-union is covered by the Convention. The illicit transfer and non-return of a child living abroad by a parent of a third party are to be prevented.

Children are also granted the rights to freedom of thought, expression, conscience and religion\textsuperscript{77}. They may also form associations and assemble peacefully\textsuperscript{78}. A child who is able to form his/her own views shall receive due weightage in accordance with the child’s age and maturity. For this purpose he/she is entitled to an opportunity to be heard in judicial and administrative proceedings affecting the child, either directly or through a representative\textsuperscript{79}. The restrictions on this can be placed only in accordance with the law and only if justified in the interests of national security, public safety, public order, protection of public health, of morals or the protection of the rights and freedoms of others\textsuperscript{80}. Children also have a right of access to the mass media and a right to seek information that is consistent with the child’s moral, social and spiritual well-being and physical and mental health\textsuperscript{81}.

\section{VI. JUVENILE JUSTICE}

With regard to the administration of juvenile justice and penal procedure, state parties are to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment\textsuperscript{82}. The capital punishment and life imprisonment without the possibility of release shall not be imposed for offences committed by a person below the age of 18 years\textsuperscript{83}. No child is to be deprived of his/her liberty unlawfully. Arrest, detention or imprisonment of a child shall be according to law and shall be used only as the last resort and for the shortest appropriate duration\textsuperscript{84}. Every child thus deprived of his liberty shall be treated with dignity and shall be separated from the adult convicts\textsuperscript{85}. They

\textsuperscript{77} Article 14.
\textsuperscript{78} Article 15.
\textsuperscript{79} Article 12.
\textsuperscript{80} Article 14.
\textsuperscript{81} Article 13.
\textsuperscript{82} Article 37.
\textsuperscript{83} Article 37.
\textsuperscript{84} Article 37(b).
\textsuperscript{85} Article 37(c).
also have a right to a prompt access to appropriate legal assistance and to challenge the legality of their arrest before a competent authority. The Convention provides for the rights of a child, who is accused of having infringed a penal law, to be treated with dignity and with due consideration for his/her age and the desirability of promoting the child’s reintegration and constructive role in society. He/she is to receive the protection of the due process of law procedures, once accused of a crime. State parties are to promote the establishment of laws, procedures, authorities and institutions for the special application of juvenile crime, and to establish a minimum age below which children have no mental capacity to form mens rea or to infringe the penal law. Appropriate and desirable, measures should be taken to deal with such children without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected. Alternatives to institutional care such as guidance and supervision, counselling and probation, foster care etc. shall be available to ensure that children are dealt with in an appropriate manner of their well being.

All these provisions for juvenile justice are to be appreciated. They cover all possible aspects of penal procedures once a juvenile is accused of an offence to his/her trial, sentence, probation, institutional care etc. All this calls for the establishment of a juvenile justice system for the special benefit of the children.

VII. PROTECTION OF CHILDREN IN ARMED CONFLICT

The provision for the protection of children in situations of armed conflicts is also made in the Convention. State parties have an obligation to respect the rules of

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86 Article 37(d).
87 Article 40(1).
88 Article 40(a).
89 War is traumatic, at the very least disrupting daily lives and usual routines. In the past decade about 2 million children were slaughtered, 6 millions were seriously injured or permanently disabled and 12 million were left homeless. It estimated that between 80 per cent and 90 per cent of people who die or injured in conflicts are civilians, mostly children and their mothers. See. Stockholm International Peace Research Institute, Major Armed Conflicts, SIPRI Year Book 2000:Armaments, Disarmaments and International Security, (SIPRI, Oxford University Press: 2000)
The issue of ‘children and armed conflict’ had been placed high on the political agenda, particular in the Security Council’s Resolution\textsuperscript{93}, which had affirmed that the fate of the Rights of the Child on the involvement of children in armed conflict.\textsuperscript{90} Consensus on the age limit to take part in armed hostilities was hard to come by and it was agreed that all feasible measures should be taken to prevent children below 15 years taking direct part in hostilities. In fact this provision undermines the existing law as reflected in the Geneva Protocol II of 1977 which forbids the recruitment of children below 15 years to take part in armed hostilities, whereas the Convention provides only for measures to be taken not to recruit them as far as feasible. All feasible measures are to be taken to protect and care for the children who are affected by armed conflicts.\textsuperscript{92}

\textsuperscript{90} Article 38. Current international standards in this regard are found in the Geneva Convention (1949), the earlier Hague Convention and the Geneva Protocols of 1925 and 1977.

\textsuperscript{91} Economic and Social Council, n.18, pp.111-112. The US, the lone dissenter, took the procedural position that this Working Group was not the proper form in which to alter the existing standards of International Humanitarian Law, UN.Doc.E/CN.4/1989/48 (1989).

\textsuperscript{92} Article 38(4).

\textsuperscript{93} The Security Council, Recalling the statements of its President of 29 June 1998 (S/PRST/1998/18), 12 February 1999 (S/PRST/1999/6) and 8 July 1999 (S/PRST/1999/21), Noting recent efforts to bring to an end the use of children as soldiers in violation of international law, in International Labour Organization Convention No.182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour which prohibits forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflict, and in the Rome Statute of the International Criminal Court in which conscripting or enlisting children under the age of fifteen into national armed forces or using them to participate actively in hostilities is characterized as a war crime, 1. Expresses its grave concern at the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development; 2. Strongly condemns the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals, and calls on all parties concerned to put an end to such practices; 3. Calls upon all parties concerned to comply strictly with their obligations under international law, in particular the Geneva Conventions of 12 August 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977 and the United Nations Convention on the Rights of the Child of 1989, and stresses the responsibility of all States to bring an end to impunity and their obligation to prosecute those responsible for grave breaches of the Geneva Conventions of 12 August 1949; 4. Expresses its support for the ongoing work of the Special Representative of the Secretary-General for Children and Armed Conflict, the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR), other parts of the United Nations system and other relevant international organizations dealing with children affected by armed conflict, and requests the Secretary-General to continue to develop coordination and coherence among them; 5. Welcomes and encourages efforts by all relevant actors at the national and international level to develop more coherent and effective approaches to the issue of children and armed conflict; 6. Supports the work of the open-ended inter-sessional working group of the Commission on Human Rights on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and expresses the hope that it will make further progress with a view to finalizing its work; 7. Urges all parties to armed conflicts to ensure that the protection, welfare and rights of children are taken into account during peace negotiations and throughout the process of consolidating peace in the aftermath of conflict; 8. Calls upon all parties to armed conflicts to undertake feasible measures during armed conflicts to minimize the harm suffered by children, such as "days of tranquility" to allow the delivery of basic necessary services, and further calls upon all parties to armed conflicts to promote, implement and respect such measures; 9. Urges all parties to armed conflicts to abide by concrete commitments made to ensure the protection of children in situations of armed conflict; 10. Urges all parties to armed conflicts to take special measures to protect children, in particular girls, from rape and other forms of sexual abuse and gender-based violence in situations of armed conflict and to take into account the special needs of the girl child throughout armed conflicts and their aftermath, including in the delivery of humanitarian assistance; 11. Calls upon all parties to armed conflicts to ensure the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to all children affected by armed conflict; 12. Underscores the importance of the safety, security and freedom of movement of United Nations and associated personnel to the alleviation of the impact of armed conflict on children, and urges all parties to armed conflicts to respect fully the status of United Nations and associated personnel; 13. Urges States and all
of children affected by conflict was a peace and security concern which constitutes a legitimate preoccupation for the Security Council. The resolution calls the Secretary General to submit a report on 'children and armed conflict'. A significant development during the reporting period was the adoption of resolution 1314 (2000) by the Security Council on 11th August, 2000. The resolution emphasizes the responsibility of all countries to exclude from amnesty arrestments anyone responsible for grave crimes against children. It calls for measures against the illicit trade in natural resources such as diamonds, which fuel war machines and contribute to the massive victimization of children. The resolution pays particular attention to regional organizations; it encourages increased regional and cross-border initiatives on child soldiers and illicit traffic in small arms, as well as the systematic development of child protection policies and programmes. It also calls for the strengthening of capabilities of national institutions and civil society for the protection of children.

relevant parts of the United Nations system to intensify their efforts to ensure an end to the recruitment and use of children in armed conflict in violation of international law through political and other efforts, including promotion of the availability of alternatives for children to their participation in armed conflict; 14. Recognizes the deleterious impact of the proliferation of arms, in particular small arms, on the security of civilians, including refugees and other vulnerable populations, particularly children, and, in this regard, recalls resolution 1209 (1998) of 19 November 1998 which, inter alia, stresses the importance of all Member States, and in particular States involved in manufacturing and marketing of weapons, restricting arms transfers which could provoke or prolong armed conflicts or aggravate existing tensions or armed conflicts, and which urges international collaboration in combating illegal arms flows; 15. Urges States and the United Nations system to facilitate the disarmament, demobilization, rehabilitation and reintegration of children used as soldiers in violation of international law, and calls upon, in particular, the Special Representative of the Secretary-General for Children and Armed Conflict, UNICEF, the UNHCR and other relevant agencies of the United Nations system to intensify their efforts in this regard; 16. Undertakes, when taking action aimed at promoting peace and security, to give special attention to the protection, welfare and rights of children, and requests the Secretary-General to include in his reports recommendations in this regard; 17. Reaffirms its readiness when dealing with situations of armed conflict: (a) to continue to support the provision of humanitarian assistance to civilian populations in distress, taking into account the particular needs of children including, inter alia, the provision and rehabilitation of medical and educational services to respond to the needs of children, the rehabilitation of children who have been maimed or psychologically traumatized, and child-focused mine clearance and mine-awareness programmes; (b) to continue to support the protection of displaced children including their resettlement by UNHCR and others as appropriate; and (c) whenever adopting measures under Article 41 of the Charter of the United Nations, to give consideration to their impact on children, in order to consider appropriate humanitarian exemptions; 18. Reaffirms also its readiness to consider appropriate responses whenever buildings or sites which usually have a significant presence of children are specifically targeted in situations of armed conflict, in violation of international law; 19. Requests the Secretary-General to ensure that personnel involved in United Nations peacemaking, peacekeeping and peace-building activities have appropriate training on the protection, rights and welfare of children, and urges States and relevant international and regional organizations to ensure that appropriate training is included in their programmes for personnel involved in similar activities; 20. Requests the Secretary-General to submit to the Council by 31 July 2000 a report on the implementation of this resolution, consulting all relevant parts of the United Nations system and taking into account other relevant work, Security Council Resolution 1261 of 28th August, 1999. UN Doc. S/RES/1261(1999).

94 Resolution 1261 28th August, 1999. In pursuance of the this resolution the Secretary General Sh.Kofi Annan issued the first-ever report to the Security Council addressing the many aspects of the problems of children affected by armed conflict. In the report, he emphasizes "the question of children and armed conflict is an integral part of the United Nations core responsibilities for the maintenance of international peace and security, for the advancement of human rights and for sustainable human development." See. UN Doc HR/4490 of 21st July 2000
The General Assembly has been in the forefront of the United Nations work to ensure the rights, protection and well being of all children, including those affected by war. Last September, heads of State and Governments adopted the Millennium Declaration, which highlights the individual and collective responsibility of world leaders to ensure that children can live free from oppression and injustice, as well as free from the fear of violence. The Declaration calls for providing assistance and protection to children and all civilians who suffer from the consequences of armed conflicts97.

State parties are also under an obligation to provide for measures to be taken for the physical and psychological recovery and social reintegration of the child victims of social neglect, exploitation, abuse, torture etc.98 It is also provided that if any standards set in national law or other international instruments are higher than those of this Convention, then the higher standards will be applicable99.

VIII. A CRITIQUE ON THE CONVENTION

At present numerous provisions found in various international instruments protect the rights and needs of the children. They are scattered and disorganized. Therefore, there is a need to consolidate them by way of preparing a document giving a comprehensive catalogue of the children's rights. The Convention catalogue is very limited. Moreover, these rights are still emerging and, and to a large degree, they remain undefined due to uncertain status of children at domestic as well as international level, and particularly in the developing countries due to their total dependence on the parents.

As already noted, while Article 1 of the Convention defines a child, it is silent about the unborn child100. Even when the survival and development of the child101 is

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98 Article 39.
99 Article 41.
100 It is established medically that an unborn child beyond a certain stage of gestation has life and body of its own. Though not independent of mother's nor having any existence of its own, but by symbolic fiction, a
guaranteed, the child in pre-natal stage does not receive a mention. It may be a sensitive issue for many a modern state and advocate of liberties. But it is a contradiction in terms of children's rights that an unborn child can be treated as organic waste and be gotten rid for the convenience of the mother/parents or of the state, but a child after his/her birth has an inherent right to life and development. Under Article 24 of the Convention, expectant mothers are to receive appropriate health care, but the Convention fails to make a provision to regulate abortion.

Article 6, which provides that states shall ensure, to the maximum extent possible the survival and development of the child, should also have an enabling clause as to how it plans to achieve this. A suggestion will be to add: “and for this purpose they shall ensure an economic and social system that subserves the best interests of the child”.

Article 4 obliges the state parties to undertake all measures for the implementation of the rights recognized in this Convention. It would be logical that the states should also provide for special measures to deal with all criminal offences against children and the violations of their rights under the Convention and other relevant laws on child welfare and protection. In most countries, a single uniform hierarchy of specialized tribunals or courts is lacking to deal solely with the violations of the rights of the child and with alleged juvenile delinquencies. The juvenile courts may deal with the child offenders but the perpetrator of a crime against children is dealt with by ordinary criminal courts. Most

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101 A child's prospects for survival and development depend on where she or he is born. The well being of children is profoundly affected by countries external debts, as monies used to repay loans are unavailable for the health, education and other basic social services.


103 In India, as per the 1991 census report, 135 million people had yet to gain access to primary health care; 80 percent of all pregnant women aged between 15-49 suffered from anemia.

104 Women and children, more often than others, are the target of a wave of rage and aggression that is on the rise across continents due to a complex set of economic, political, social and cultural reasons.
countries do have courts specifically for women\textsuperscript{105}. There is no reason why this should not be done for an even, more vulnerable section of our society, i.e. children\textsuperscript{106}.

Articles 13, 14, 15 and 16 refer to certain freedoms relating to expression, belief, religion etc. However, not many children have the right to choose their own religion\textsuperscript{107}. The existing reality is that the child automatically succeeds to its faith of the parents. In view of the rival claims of various religions, parents, their church and the state-theocratic or secular-in respect of religious and the value-or inner education, the question arises as to how to ensure the true freedom of religion to a child\textsuperscript{108}. As far as the freedom of expression is concerned, it makes no difference since no legal system grants any value to a minor's thoughts or expressions.

Articles 10, 20 and 21 provide for the right of a child to a family. However, the right of a destitute child is not taken care of here\textsuperscript{109}. There is however, a mention of the authorities that are to facilitate the adoption or placing processes.

Article 24, which provides for a standard of health, makes a serious omission in respect of immunization. Simple and low cost medicines can prevent thousands of infant and child death and deformities, if immunization is done in time\textsuperscript{110}. One of the major issues relating to the child health in India is the support for the mother. The problem arises with respect to the marriages of the minors\textsuperscript{111}. There is sufficient evidence to show that marriages of women below the age of 20 constitute health risk. This is perhaps responsible

\textsuperscript{105}Family Courts in India.
\textsuperscript{107}Violence against Dalits ranged from denial of entry into a temple to physical violence, setting Dalit houses on fire, sexual violence including rape of Dalit women and girls, forceful eviction of the Dalits from their lawfully owned land. Though the Dualist has no freedom to choose their own religion, the choice of a child to choose their own religion is a far cry in India.
\textsuperscript{108}R.P. Dhokalia, n.27, p.36.
\textsuperscript{109}Tara Ali Bing, n.32, p.42.
\textsuperscript{111}Approximately 15 million girls aged 15-19 give birth every year, accounting for more than 10 per cent of all babies born worldwide. The rise of death from pregnancy related causes is four times higher in this age group than women older than 20., see. UNICEF, The State of the World Children 2001, (UNICEF, New York, 2001), p.70.
for poor health of the mother and the child and its adverse consequences\textsuperscript{112}. Hence raising the age of marriage of women would be one aspect of ensuring mother and child health and survival. The right against the child marriage is missing in the Convention. The expectant mother also requires attention. She requires to be provided with nutritious food and appropriate medical attention ensuring that the growth of the child is normal. Pre-natal care is also essential\textsuperscript{113}. It should be possible to diagnose high-risk cases and to provide for proper services. The services for proper delivery of the child are also essential particularly in rural areas. Pre-natal, neo-natal and post-natal cases are very crucial. Thus, a reference to the rights of the expectant mother would have made the above article complete\textsuperscript{114}.

Article 27 recognizes the right of every child to a standard of life. However, the responsibility to secure this has been conveniently placed on the shoulders of the parents/guardians. It is illogical. The parents and guardians who have the means to provide this standard will do so and there is no need for the state to ensure this. The problem is with others who do not have the requisite financial capacities or with children with no parents or guardians. In India with a population of more than 400 million people living below the poverty line, this is an unrealistic responsibility placed on the poor parents\textsuperscript{115}. The help of the state becomes an imperative and the provision of nutrition and food should be the responsibility of the state. However, in the Third World countries, the right of a child to food and nutrition has to be understood within the constraints of its family's economic position\textsuperscript{116}. The food security requirement is very important for the

\begin{itemize}
  \item \textsuperscript{112} There are two areas where women's rights directly affect children are in health and education: Infants deaths are significantly related to the poor nutrition and health of their mothers prior to and during pregnancy and soon after the post partum period. Improved prenatal care for mothers save both women’s and children’s live; The State of the World Children: Early Childhood; 2001; (UNICEF, New York; 2001), p.24.
  \item \textsuperscript{113} UNICEF; n. 111. p.24.
  \item \textsuperscript{114} P.K. Umashankar, in Suggestions/Comments, Report of the India International Centre Group on the Rights of the Child, 1988, p.89
  \item \textsuperscript{115} In India thousands of children was dying every year due to malnutrition and a number of children are selling to feed their families. Some 250 million children in the developing countries work, many hazardous and exploitive labour. Their most basic rights, their health and even their lives are jeopardy. See. UNICEF, The State of the World Children2000, ( UNICEF,New York, 2000), p.74.
  \item \textsuperscript{116} The World Bank estimates that in 1998, 1.2 billion people, including more than half a billion children, lived in poverty or less than $ 1 a day. See.UNICEF,The State of the World Children 2000 ,(UNICEF,New York,2000),p.22.
\end{itemize}
family to guarantee the kind of right, which the parents are obliged to provide. The socio-economic position of the family is directly relevant in the implementation of this right of the child.

Article 28 deals with the right to education. Hard facts show that universal elementary education will not be accomplished in this century merely by legal pronouncements\textsuperscript{117}. Most of the countries have no means and or political will to promote universal education\textsuperscript{118}. The socio-economic and political ideologies of the ruling classes have a lot to do with the eventual achievement of the right. If the UN Agencies like UNICEF and UNESCO could earmark a certain percentage of their annual budgets to help the Third World countries to promote universal elementary education, this right stands some chance of success at least in the 21st century\textsuperscript{119}.

Article 32 provides for the effective ban of child labour. Prohibiting the child to perform any work that will interfere with his education would mean in effect that no child could work since it will some way interfere with his/her studies. But how many countries have banned all child labour? Most countries have neither the will nor the resources or both to enforce a ban on all forms of child labour.\textsuperscript{120} This is an unrealistic provision. The economic exploitation of the child is a result of the large-scale economic inequality that exists in most of the countries and the Convention does not make any contributions to grapple with the root causes of child labour. Only if the parents earn enough to support their family, the child can be protected from being exploited in the labour market. The Convention leaves out the question of equitable socio-economic order, in which no child needs to work to earn for itself and for its family.

\textsuperscript{117} Although primary school enrolment rates have increased globally since 1980, more than 130 million children of school age in the developing world are still growing up without access to basic education. Girls representing rarely 60 per cent of the children out of school. See UNICEF. The State of the World Children 2001, (UNICEF, New York, 2001), P.72.

\textsuperscript{118} Though the "SAARC Decade of Girl Child: implemented during the 1990s, has left the Indian adolescent girl (11-17 years age group) in a poorer condition than ever before since the sheer Bureaucratic indifference has made mockery of a welfare scheme of the adolescent girl.

\textsuperscript{119} The period 1995-2004 was designated by the UN as the UN Decade for Human Rights Education.

\textsuperscript{120} According to the ILO estimates, there are 52 million working children in the world, of these approximately 29 million are from South Asia, 10 million from Africa, 9 million from East Asia and 3 million from Latin America and one million will originate from developed countries. Children are often forced to work due to economic needs and social conditions.
There is another contradiction. Article 31 provides for the right to leisure, recreation etc. and Article 27 a standard of living. If leisure, recreation and a standard of living are fundamental, then the child should not be working at all, leave alone working in hazardous occupations. All child labour is exploitative and it interferes with the normal growth and development of the child in one or other manner. If one clause prohibits child labour, then another clause cannot provide for its regulation. In case, if it contemplates non-exploitative and non-hazardous child labour, then a minimum age should be provided by the Convention itself and this responsibility should not be left to state parties\textsuperscript{121}. There is an implicit admission of the inability of state parties to prevent the child labour. Since the child has a right to free and compulsory primary education, the minimum age should be at least 14 years before a child can be employed in non-exploitative and non-hazardous labour\textsuperscript{122}.

Article 40 provides for certain steps to be ensured by the state parties for the administration of juvenile justice. One provision requires a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. This minimum age should be prescribed by the Convention itself. Article 4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice provides that “in those legal systems recognizing the concept of the age of criminal responsibility for Juveniles, the beginning of that age shall not be fixed at too low an age, bearing in mind that fact of emotional, mental and intellectual maturity”. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility becomes meaningless. All efforts should be made to agree on a reasonable low age limit applicable universally. It should be remembered that many states do not have special legislations for children\textsuperscript{123}. Even in India, it is only since October 1987, that the children came under the

\textsuperscript{121} Nandana Reddy, in Suggestions/Comments, Report of the India International Centre Group on the Rights of the Child, 1988, p.70
\textsuperscript{122} Though the National Human Rights Commission recommended prohibiting the employment of child in the government services by amending the CCS (Conduct) Rules, the Government of India has not responded in proper way.
protection of special legislation of the Juvenile Justice Act, 1987. Eleven or Twelve is the age by which the child learns the ways of the world. Therefore the lowest age should be fixed at twelve.

In a multi civilisational world and pluralistic societies of today, the single catalogue approach of codifying human rights in general and children's rights in particular is full of pitfalls. It may bring about a revolution of aspirations, expectations, ideals and needs, but not expeditious fulfillment of all these. Any vagueness, lack of comprehensive planning, dilutions of established rights and absence of effective implementation machinery may have harmful ramifications. Moreover, lack of consensus may result in more vagueness. A categorical prescription without a consensus may entail a risk of non-acceptance of the Convention. A sine qua non for redressing the prevalent inequities, which already adversely affect the welfare of children, is to establish the appropriate standards of the overall protection of the child from the parents, the family and the community of which it is a part. Its rights, whatever the state of recognition, continue to be disregarded frequently because of its general fragility and propensity to succumb to the crises of poverty, hunger, diseases and his exposure to irreversible emotional and physiological traumas. In this context the attempts of the United Nations system deserve serious appreciation.

In the final analysis, the substantive rights embodied in the Convention relate to the rights of the child to survival, development, health, education, standard of living, and protection from exploitation, abuse, neglect, etc. The parents/guardians have the primary responsibility to ensure the child with provision of these rights. State parties are only to assist to parents/guardians in securing these rights. State parties have a tendency to remain on paper, since children do not have the voice to make themselves heard and assert themselves against parental and state powers. If the primary responsibility is to remain with the parents/guardians to secure these rights to children, there is a danger that the implementation of the Convention may remain a dream forever. There must be a legal

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124 1.1 billion people worldwide, lacks access to clean water, 2.3 billion adults worldwide, does not have access to a decent latrine. See, UNICEF, The State of the World Children 2001 (UNICEF, New York, 2001), p.31. If the parents have no food to eat, how they will care for their children.
obligation on state parties to assist the parents/guardians in this task in concrete terms and not in general terms such as, "as far as feasible", or "within the resources available". If the parents had the resources for the care of the children, there was no need for a Convention to guarantee these rights to the children. Sporadic abuse and neglect apart, most parents do care for their children and provide them with the best in life. The difficulty is at the resources level. If the parents live under the starvation line and barely survive, how can they guarantee these rights to their children? "As far as feasible" is what the states do now and it has been found grossly inadequate. State Parties should be made primary guarantor of these rights and not just monitors of performance by the parents/guardians. Basically the Convention should plan special emphasis on the rights of the economically and socially disadvantaged child. There is no provision in the Convention regarding the concrete economic steps to be taken by the states in order to ensure these rights to children.

An examination of the various articles of the Convention shows that in principle there should be no objection for their adoption as they have been drafted with a large measure of consensus. The preamble and the articles relate to various aspects of child development. However one thing is not clear: where is the money for all this going to come from? The Convention nowhere makes an obligation on state parties that at least so much of their national budget should be earmarked for implementing the aspirations expressed in the Convention. The conditional riders – "as far as feasible", "in accordance to the available resources" and "in accordance with national and social conditions" weaken the provisions since these clauses leave states free to implement the Convention provisions in a half-hearted manner or as they like. The Convention should have a definite provision stipulating a minimum percentage of the annual national budget, in proportion to its child population, to be earmarked for child development. This is necessary, against the usual tendency of the governments to slash the budget for health care and education to find the extra money to meet any unforeseen resource crunch.
IX. THE IMPLEMENTATION MEASURES

As in any international conventions, implementation is the weakest part of the Convention on the Rights of the Child.

Article 43 of the Convention provides that for the purpose of examining the progress made by states and the realization of the obligations undertaken in the Convention, there shall be a Committee on the Rights of the Child. It shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention: The members of the Committee shall be elected by state parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the Legal Systems. The procedure of election and terms of the office are also laid down in the Convention. High moral standing and competence of candidates apart, one should remember that an election to any UN Body involves a lot of politics. More than the best interests of the child, it is the national prestige that finds priority in such elections. 125

Article 44 provides that the state parties shall submit to the Committee through the Secretary General of the UN reports on the measures they have adopted to give effect to the rights and the progress made on the implementation of these rights. State parties shall also make their reports widely available to the public in their own countries. The first report of a State party shall be made within two years after it becomes a party to the Convention and thereafter every five years. Such reports shall indicate facts and difficulties in implementation and provide sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention. The Committee should thus submit a report to the General Assembly through the ECOSOC once in every two years on its activities.

Article 45 provides that for the effective implementation of the Convention and to encourage international co-operation, the Committee may invite specialized agencies, UN

125 Economic and Social Council, n. 18, p. 121.
organs and the UNICEF to be represented at the consideration of implementation of such provisions as fall within their respective mandates. Expert advice is to be invited from them concerning the implementation of these rights. These agencies are also to submit reports to the Committee on the implementation of rights in areas falling within the scope of their activities. The Committee shall also transmit to the specialized agencies requests of state parties for technical advice and assistance, along with the Committee’s observations. The Committee may also ask for further clarifications from state parties and recommend that studies be undertaken on special issues relating to the rights of the child. Meanwhile, state parties are to make the principles and provisions of this Convention widely known to adults and children alike in their respective countries.

One of the main drawbacks of the Convention is that nowhere does it hold states responsible for failure to implement the children’s rights they have accepted as a matter of obligation. Since there are no concrete steps laid down for the states to implement and ensure the rights of children, there will be criticism that the children rights were not implemented. “Appropriate measures” in Articles 2, 18, 22, 27, 28, 33 and 39 is a vague expression on which no such state responsibility can be fixed.

The Convention should also provide for the Committee on the Rights of the Child to call upon state parties to appear before it and defend their position in matters of implementation, non-implementation and violation of the rights guaranteed in the Convention. For this purpose, the Committee should be empowered to conduct its own studies on the implementation of the provisions of the Convention by a state party and not just to depend on the progress reports submitted by that state.

Another provision that will give some teeth to the Convention could be a right of the children or their parents or voluntary associations to lodge complaints with the Committee on the implementation, non-implementation and violations of the rights by

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126 Optional Protocol to the International Covenant on Civil and Political Rights, 1966 also provides for similar reporting procedure. Art.1 states that a State Party to the Protocol recognises the competence of the Human Rights Committee to receive and consider Communications from individuals subject to its jurisdiction who can claim to be victims of a violation by that State Party of any of the rights set forth in the
the state parties. This will ensure the accountability of states for their performance, and compel them to act at least in the interest of their international prestige. The Committee should be empowered to call upon a state to answer the specific allegations made by its citizens. In order to make the Committee members free from national pressures and to enable them to function impartially, the General Assembly voted to pay expenses of the Committee members from the UN general budget.127

X. CURRENT STATUS OF THE CONVENTION

The Convention came into force on 2nd September, 1990. India became a party to the Convention on 11th December, 1992. As on 15.07.2001 there were 192 state parties to the Convention.

While becoming parties to the Convention, a number of states have made reservations/declarations in respect of the applications of the Conventions. India has made the following reservations/declarations128:

"While fully subscribing to the objectives and purposes of the Convention, realizing that certain rights of the child, namely, those pertaining to the economic, social and cultural rights can only be

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Covenant. This method of implementation is available only to the individuals who are subject to the jurisdiction of the state Parties who have ratified the covenant. Art.2 says that before communicating with the Committee, the individual concerned must have exhausted all domestic remedies. An anonymous communication or one which the committee considers to be an abuse of the right of petition or to be incompatible with the covenant provisions is inadmissible. The Protocol also provides that no communication shall be considered by the Committee unless it has ascertained that the matter is not being investigated under another international investigatory or settlement procedure. Meetings to closed session the Committee will consider individual communication "in the light of all written information made available to it by the individual and by the state Party concerned". The Committee is to forward its views to the State Party concerned and to the individual and will provide the General Assembly annually with a summary of its activities under the protocol.


progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation, recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India, the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party”.

About 400 million people in India are below the poverty line and about 1/3 rd of people who are below the poverty line are on the threshold of starvation deaths. The recently reported starvation deaths in the Weavers and Farmers families in the State of Andhra Pradesh and the 2000 child deaths in the tribal districts of Maharastra, the never-ending starvation deaths in State of Orissa, Bihar and Rajasthan; and the sale of children to feed their families in some parts of the country, amply illustrates the inhuman lives of the people who are struggling for their livelihood and basic needs. The Supreme Court of India has also recognised the problem of child labour in the Salal Hydro Project vs State of Jammu & Kashmir\textsuperscript{129} case and stated that “the child labour is an economic problem. Poor parents seek to augment their meagre income through employment of children. So, a total prohibition of child labour in any form may not be socially feasible in the prevailing socio-economic environment. Article 24 of the Indian Constitution therefore puts only practical restrictions on child labour. The Court further observed that so long as there is poverty and destitution in this country, it would

\textsuperscript{129} AIR, 1987 S.C. p.117.
be difficult to eradicate child labour. Since, the definition of child in India varies with the purposes (i.e. still born and up to 21 years) and the economic situation in India is grim, and the accumulating enormous burden of the external debts, and the dependence on the external borrowings to repay previous debts, the rapid growth of population, and the resource crunch in the health, education, social service sectors, and the failure of the public distribution system, may have led the Indian government to express reservations in their declaration in respect of the applications of the Convention.


Today, in as many as 50 countries around the world, children are suffering in the midst of armed conflict and its aftermath. In the decade from 1986 to 1996, armed conflicts killed more than 2 million children, injured or disabled more than 6 million children, and left more than 1 million children orphaned. At present moment, there are over 22 million children who have been displaced by war within and outside their countries. Increasingly children are specifically targeted, recruited as combatants or abducted to serve as sexual slaves. The number of children combatants under the Age of 18 is estimated at 300,000. Each month, some 800 children are killed or maimed by landmines. The harrowing statistics cannot describe the damage done to individual children who have endured the horror of war¹³⁰.

¹³⁰ Report of the Special Representative of the Secretary-General for Children and Armed Conflict, UN Doc. A/55/442.
Today's Civil Wars, fought over power and resources, are exploiting, mining and killing more children than ever. The vast majority of victims, up to 90 per cent are civilians, mostly children and women\textsuperscript{131}. This is soldier-on civilian violence on an unprecedented scale. Uprooted from their homes and communities, children are left without adequate food, shelter, education and health care. Crops, schools, health clinics and sanitation systems are degraded or destroyed, fuelling high level of malnutrition or disease. Displaced adolescents are at increased risk of sexual abuse, sexually transmitted disease, mental health problems, violence and substance abuse, and are particularly vulnerable to recruitment into armed forces or groups. During and after war, thousands of children, especially girls, are made targets of sexual abuse and rape, which takes a tremendous physical and emotional toll\textsuperscript{132}.

The protocol\textsuperscript{133} sets the age limit for direct participation in hostilities\textsuperscript{134} and compulsory recruitment at 18\textsuperscript{135} and prohibits insurgent armed groups "under any circumstances" from recruiting persons under 18 years or using them in hostilities\textsuperscript{136}.

\textsuperscript{131} Ibid, p.4.
\textsuperscript{132} Ibid.
\textsuperscript{133} For the Text, UN Doc.A/RES/54/263; Development of an Optional Protocol: A number of states have for several years sought to develop an Optional Protocol to the CRC that would raise the minimum age for participation in hostilities and for recruitment to 18 years. In line with a 1995 resolution of the Council of Delegates, the ICRC has supported this initiative and participates in the drafting process. It has made its view known in international forums (through statements at the UN Commission of Human Rights and General Assembly) and participated actively in the UN Working Group established to draft the Optional Protocol. Given that the Working Group has worked by consensus in order to adopt the text, and that there was absence of such because a handful of states opposed the adoption of the 18-years minimum age, there was almost no progress in the Working Group in previous years. To overcome the stalemate, several NGOs started a campaign aimed at generating enough political pressure to have the Optional Protocol developed outside the UN working group (this strategy was largely inspired by the Land Mines Campaign). The ICRC was not a formal member of the NGO coalition, but supported its work by participating in regional conferences organized by the Coalition, and more generally by sharing its legal expertise and operational experience. In January 2000, the UN Working Group finally met for substantive negotiations, and successfully concluded the drafting of an agreed text (the compromise position taken by States which previously had opposed consensus may have been motivated by concerns that the NGO campaign might eventually succeed). The agreed text has been adopted by the General Assembly in May 2000.
\textsuperscript{134} See Menchevich, Elias, "The Rights of the Child Under Islamic Law:
Overall, the Optional Protocol represents a clear improvement of existing international law, although the text also contains evident weaknesses. Of particular importance are the following:

1. “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”. (Article 1). In the opinion of the ICRC the obligation imposed on States to prevent participation in hostilities should have been made more absolute, and should also have covered indirect participation, which may often be equally dangerous for the children involved.137

2. “States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces” (Article 2). This provision is in itself positive, but is considerably weakened by the following provision, which permits voluntary recruitment below the age of 18 years (it imposes the obligation on States to “raise the minimum age in years” for voluntary recruitment from the present age limit set to recruitment. It is to be hoped that the Committee on the Rights of the Child will compensate for the weaknesses of the text by a strict interpretation, including by emphasizing that all the relevant provisions of the Convention apply simultaneously.138

3. “Armed groups, distinct from the armed forces of a State, should not under any circumstances, recruit or use in hostilities persons under the age of 18 years”. (Article 4, paragraph 1). The ICRC welcomes the fact that the issue of non-state actors has been included in the Optional Protocol, but regrets that the provision imposes a moral, as opposed to a legal obligation. Although Article 4

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134 Article 1.
135 Article 2.
136 Article 4.
137 http://www.icrc.org/ihl.
138 Ibid.
also provides for criminal repression under domestic law, this is likely to be of limited effect, because those who take up arms against the lawful Government of a country already expose themselves to the most severe penalties of domestic law, and because the capacity of a Government to enforce its laws is often very limited in situations of non-international armed conflicts. Third, it is uncertain whether non-state actors will feel bound by a norm which is different from that imposed on States, and thus whether it will be respected. 139


The protocol 140 stipulates that state party should undertake appropriate methods in order to guarantee the protection of the child 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.

The protocol defines sale of children as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration" 141. The child prostitution means "the use of a child in sexual activities for remuneration or any other form of consideration" 142. The child pornography means "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes" 143.

139 Ibid.
141 Article 2 (a).
142 Article 2 (b).
143 Article 2 (c).
Offences, committed domestically or transnationally or on an individual or organized by way of sale of children, or by offering, delivering or accepting, a child for the purpose of (i) Sexual exploitation of the child; (ii) transfer of organs of the child for profit; (iii) engagement of the child in forced labour and improperly inducing consent, as an intermediary for the adoption of a child in violation of applicable international legal instruments on adoptions. Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography are punishable. The Convention also provides facility to investigate in connection with criminal offences committed against child, extradition proceedings to bring an extraditor to the offence where he has committed to punish according to their national laws as well as International Law.

144 Article 3.
145 Article 3 (c).