CHAPTER - III

CHILD LABOUR : WORLD SCENARIO

This chapter deals with the problem of child labor in the world scenario and explain with reference to international conventions. In the earlier chapter we have discussed the concept and definition of child labor.

Millions of child in the world are exploited by the greedy employers. These children are deprived childhood over the years however global consciousness about the seriousness of the problem has been realized.

To obtain a global estimates of the number of child workers it is necessary together this statistics on a nation to nation basis. But many countries do not collect and publish figures on child labour. Even when they do the picture presented is incomplete often ignoring the figures related to unorganized sectors such as domestic services, small industries, and other related organizations. These figures indicates that the children are exploited by the greedy employer globally.

The ILO\(^1\) places the figure of children between the age group of 5-14 years who are engaged in the economic activity at 250 million, the exact numbers cannot be pinpointed at any level, national, regional or global.

Child labour is an endemic global problem. There seems to be almost no part of the world which is not beset by this problem, the only difference being that of magnitude. Child labour first appeared with the development of domestic system (when people became civilized). It was widely practised in England, America and other countries during 16\(^{th}\) to 18\(^{th}\) centuries.\(^2\) During the 1800s the industrial revolution spread all over the Britain. The use of steam
powered machines led to a massive increase in the number of factories. "Many factory workers were children. They worked long hours and were often treated badly by the supervisors or overseers. Sometimes the children started work as young as four or five years old. A young child could not earn much, but even a few pence would be enough to buy food". Children in England also worked in mines as trappers and also on streets. Those days some people felt nothing in child work to help children to protect themselves and parents do also have a right to send children for work. However people such as Lord Shaftesbury and Sir Robert Peel worked hard to persuade the public that it was wrong for children to suffer health problems and to miss out on schooling due to work. The agricultural predominance and the emergence of an era of industrialization entrapped children all over in such occupations which of late caught the attention of various governments of the world.

The lack of enforcement of labour restrictions perpetuates child labour. As most of the children work in the informal sector about which even accurate figures are not available, the enforcement of labour laws becomes difficult. The number of enforcement officials is very low, especially in developing countries where the immediate priority of subsistence takes precedence over anything else. Even many inspectors fail to enforce laws in some countries. Communities in Pakistan and India, the owners of carpet factories that employ children are often the richest people in those countries and hold considerable sway over law enforcement officials, often pressurizing them not to crack down on child labour. Many times inspectors tip off factories before they arrive and even when they don't tip off the factories, inspectors often come up empty handed because children flee as soon as they enter. Many parents in poor countries say they desperately need the money from their
children's. As for the child workers, they are often reluctant to tell inspectors they are working for fear of angering their employers and worsening their family's economic plight. There are also inconsistencies in legislation, which may pose problems. For example in Egypt, Costa Rica, Sri Lanka, Thailand, and India the minimum age for Compulsory education is 14, 15, 15, 15, 14 respectively while as basic minimum work age is 12, 12-15, 14, 12, and 14 respectively giving children access to employment before they have even completed the minimum amount of schooling. This mismatch makes the things confusing and the loopholes in legislation itself cannot guarantee protection of children’s right to compulsory education. On the contrary in many countries there is a gap between minimum schooling and minimum work age leaving the children who have completed compulsory schooling inactive till they can join the labour market. For example when a poor child from Bangladesh finishes the required schooling at 10 years of age, the child is not supposed to work until the age of 14. Such an expectation seems unreasonable. Poverty which is the main cause of child labour cannot allow the poor parents to keep their children idle and the violation of law starts from here in fact on sufficient ground.

According to UNICEF Report 1997, for poor families the small contribution of a child’s income or assistance at home that allows the parents to work can make the difference between hunger and bare sufficiency. A study of nine Latin American countries found that without the income of working children aged 13 to 17, the poverty rate would climb by 10 to 20 percent, the report found, many desperately poor parents pledge their children, sometimes as early as four years of age, to factory owners in exchange for modest loans, sometimes as small as number of working children. Rapid rural-to-urban
migrations is the cause of the increasing rate of child labour in urban areas of developing countries. In 1950, 17 percent of the population of the developing world lived in urban areas. This increased to 32 percent in 1988. By the year 2000 it was estimated that this proportion will increase to 40% and to 57% by the year 2005 (United Nations 1989). Such increases, coupled with worsening economic trends, force children and their families into urban poverty; Children are soon required to work.

3.1 International Labour Organization

Child labour has been an area of special concern for the International Labour Organization (ILO) since its inception in 1919. One of the principle ways by which the ILO has expressed this concern has been through the adoption of international conventions and recommendations regulating the minimum age of admission of children into various kinds of employment. The first of a series of such conventions concerning the minimum age for admission to various industries was adopted at the very first international labour conference established a penal age convention that went beyond the earlier one's which applicable to only limited economic sectors. This was the convention concerning minimum age for admission of employment and come into force on 9 June 1976. International labour organizations convention mainly deals with:

- Minimum age for employment of children
- Medical examination of child
- Maximum number of hours of working
- Prohibition of night work for children
Regarding minimum age for employment conventions adopted by ILO are as following:

- In 1919 the act of minimum age (industry) prohibition of children below 14 years of age in any public or private industrial undertaking other than enterprise in which family members are employees.
- In 1920, the act of minimum age (see) convention (No.7) prohibits employment of children below the age of 14 years in public or private agricultural undertaking, except outside the hours fixed for school attendance.
- In 1921, the act of minimum age (Agriculture) convention (No.18) prohibits the employment of children below 14 years in public and private agricultural undertaking, except outside the hours fixed for school attendance.
- In 1921, the minimum age (Trimmers and Stockers) convention (No. 15) prohibits the employment children below 18 years of age on vessels as trimmers and stockers.
- In 1932, the minimum age (see) convention (No.33) raised the minimum age for employment from 14 to 15 year.
- In 1932, the minimum age for the employment (Non-industrial) convention (No.33) prohibits the employment of children below 14 year of age who are required to attend primary schools.
- In 1937, the minimum age (industry) convention (No.57) raised the minimum age of employment to 15 years from 14 years in industrial activates.
In 1937, the minimum age (non-industrial) convention (No.68) says that children below 13 years of age are not to be employed in no-industrial occupation as shops, offices, hotels, restaurants, place of public entertainments etc.

In 1965, the act of minimum age (underground work) convention (No.123) says that minimum age children shall not be year for working underground mines.

In 1973, the act of minimum age convention (No.123) set the minimum age regarding the medical examination of children.

In 1921 the act of medical examination of children (see) convention (No. 16) suggests the need for medical certificate of fitness by authorized doctor of children below 18 years of age for employment on the vessels.

In 1943, the medical examination of children (see) convention (No.73) asks the requirement of medical certificate of children for the employment at sea.

In 1946, the act of medical examination of young persons (in industry) convention (No.77) says that children below 18 years of age (16 years in India) shall not be admitted to employment in industrial activities without examination of physical fitness in occupation of high health risks the re-examination of fitness at the age of 21 years which, is 19 years in India.

In 1946, the act of medical examination of young persons (non-industrial occupation) convention (No.78) says the children and young
persons below the age of 18 years should not be allowed to work in non-industrial activities unless they have been found medically fit.

- In 1965, the act of medical examination of persons (under ground work) convention (No.124) suggests annual examination of all young persons below the age of 21 to work in underground mines.

- In 1919, the act of night work of young person's industry convention (No.6) says that persons below the age of 18 year are not to be employed during night in any public or private undertaking; further this act was revised in 1948 and defined as 12 consecutive hours of work.

- In 1946, the act of night work of young persons (non-industrial) convention (No.79) prohibits the employment of children below 12 years of age in non-industrial activities during night.

Apart from these conventions, the ILO had adopted certain recommendations and resolutions for the protection of children and young persons. India contends that it has been able to ratify only a few conventions out of 18 (eighteen) till now, because of technical and administrative difficulties. However, the unratified conventions and recommendations have influenced the various labour legislations in our country.

One of the most important tools available to the ILO for improving the legislation and practice of its member states in the fight against child labour is the adoption and supervision of international labour convention, and recommendation. Several international labour standards have been adopted to prohibit child labour in different sectors and under different conditions.

ILO convention of more general applicability such as often and health conventions, also include provision's specific to the working children.
Concern about child labour is also expressed in instrument of the United Nations, most recently the United Nations convention on the rights of the child.

3.2 ILO Conventions on Child Labour

One of the most important tools available to the ILO for improving the legislation and practice of its member States in the fight against child labour is the adoption and supervision of international labor Convention and Recommendations. Several international labor standards have been adopted to prohibited to child labor in different sectors and under different conditions. ILO Conventions of more general applicability, such as safety and health Conventions, also include provisions specific to the work of children. Additionally, serious problems of the exploitation of children through debt bondage and other "contemporary forms of slavery", such as child prostitution, are examined by ILO supervisory bodies in the framework of the ILO's Forced Labor Convention, (No. 29) 1930⁹.

The ILO adopted its first Convention on child labour in 1919, the year of its foundation. The Minimum Age (Industry) Convention, 1919 (No. 5), prohibits the work of children under the age of 14 in industrial establishments. Subsequently, nine sectoral Conventions on the minimum age of admission to employment were adopted applying to industry, agriculture, trimmers and stokers, maritime work, non-industrial employment, fishing and underground work. Numerous other ILO standards contain provisions setting minimum ages for various activities.¹⁰
Table 1. Minimum Ages in Accordance with convention No. 138

<table>
<thead>
<tr>
<th>General minimum age (Article 2)</th>
<th>Light work (Article 7)</th>
<th>Hazardous work (Article 3)</th>
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<tr>
<td>In normal circumstances:</td>
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<tr>
<td>15 years or more (not less than compulsory school age)</td>
<td>13 years</td>
<td>18 Years (16 years conditionally)</td>
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<tr>
<td>Where economy and educational facilities are insufficiently developed:</td>
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<td></td>
</tr>
<tr>
<td>14 years</td>
<td>12 years</td>
<td>18 years (16 years conditionally)</td>
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The most recent and comprehensive ILO instruments on child labour are the minimum age Convention, 1973 (No. 138), and Recommendation (No. 146.) Convention No. 138 is a consolidation of principles that had been gradually established in various earlier instruments and applies to all sectors of economic activity, whether or not the children are employed for wages.

The Convention obliges ratifying States to fix a minimum age for admission to employment or work and undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention was not intended as a static instrument prescribing a fixed minimum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to attain the objectives.¹¹
Recommendation No. 146, which supplements Convention No. 138, provides the broad framework and essential policy measures for both the prevention of child labour and its elimination.

Fixing the minimum age for admission to employment or work remains a basic obligation of ratifying States within the framework of national policy. But rather than speak of one minimum age, it is more appropriate to speak of various minimum ages depending on the type of employment or work (see table …).

Convention No. 138 sets a higher minimum age of 18 for hazardous work, “which by its nature of the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons”. Because this provision refers to work “likely” to jeopardize the safety, health or morals of young persons and not only work which is recognized as having that effect, it is necessary to examine both the nature of the work and the circumstances in which it is carried out. Certain types of activities which are not in themselves hazardous may become so in certain circumstances, and the competent authorities are to take this into account.12

The convention also provides that the types of employment or work concerned shall be determined by national laws or regulations or by the competent authority, leaving it to the individual countries to determine the content or these activities. Whatever the method chosen, it is necessary that a determination most be held with the organizations of employers and workers concerned, if they exist in the country.
It is obligatory for all countries to set a minimum age for employment according to the rules of ILO written in Convention 138 (C. 138). The stipulated age for employment should not be below the age for finishing compulsory schooling, that is not below the age of 15. Developing countries are allowed to set the minimum age at 14 years in accordance with their socio-economic circumstances.$^{13}$

C-138 has also made provisions for flexibility for certain countries, setting the minimum age of 12 and 13 for their children – but only for partaking in light work. Light work can be defined as children’s participation in only those economic activities which do not damage their health and development or interfere with their education. Yes, work that does not obstruct with a child’s education is considered light work and allowed from age 12 under the International Labour Organization (ILO Convention 138). It is because of this that many children employed in part time work like learning craft or other skills of a hereditary nature are not called child labours. The same work translates into child labour if a child is thrown into weaving carpets, working into factories or some other employment to earn money to sustain self, or augment his family’s income – without being given school education and allowed opportunities for normal social interactions. A child working part time (3-4 hours) to learn and earn for self and parents after school, is not considered ‘child labour’. $^{14}$

In addition, Convention No. 138 contains provisions intended to make it flexible concerning economic sectors or activities covered. It permits the exclusion of limited categories of employment or work which raise special
and substantial problems or application, though these are not further defined. During the preparatory work, however, reference was made to employment in family undertakings, domestic service in private households and some types of work carried out without the employer's supervision, for example, home work. These exclusions were foreseen mainly because of the practical difficulties of enforcing laws in the categories in question, not because of the absence of possible exploitation or abuse in these situations.

The Convention also gives a developing country the possibility of limiting initially the scope of its application by specifying the branches of activity or types of undertakings to which the Convention will apply. It non the less requires that the following seven sectors be covered: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings (excluding family and small-scale holdings mainly producing for local consumption and not regularly employing hired workers).

The Convention requires the competent authority to take all necessary measures, including the provision of appropriate penalties, to ensure the effective enforcement of the provisions of the Convention. Penalties, here, mean these to be defined in national legislation for violations of national law giving effect to the Convention.

**Forced labor convention (No 29) 1930**

Another ILO Convention that is crucial in protecting children against some of the worst forms of exploitation is the Forced Labour Convention. 1930 (No. 29), which aims at suppressing the use of forced or compulsory labour -
defined as “work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. This Conventions is one of the fundamental Conventions of the ILO and one of the most widely ratified. Since it applies to everyone, whatever age, it protects children from forced or compulsory labour and is applicable to some of the most intolerable forms of child labour, such as children in bondage their exploitation in prostitution and pornography. Indeed, the Committee of Experts and the Conference Committee on the Application of Standards have been dealing extensively with the problem of the forced or compulsory labour of children in relation to the application of the convention by several member states.\[15\]

In 1994 the Committee of experts expressed its grave concern about forced child labour, and particularly the exploitation of children for prostitution and pornography. It has stated on several occasions that forced labour exploitation of children is one of the worst forms of forced labour, which must be fought energetically and punished severely on occasions that forced labour exploitation of children is one of the worst forms of forced labour, which must be fought energetically and punished severely. The committee has called for action not only by the States in which such exploitation of children occurs, but also by other countries to assist in the eradication of these practices, especially exploitation by tourists and visitors from outside. The United Nations Working Group on Contemporary Forms of Slavery too has come to classify the sale and sexual exploitation of children as contemporary forms of slavery, and the ILO’s Committee of Experts observed in 1995 that nature of child labour often brings it within the meaning of forced or compulsory labour. Countries which have
not ratified child labour Conventions but have ratified forced labour
Conventions are therefore being held accountable under the latter.¹⁶

In view of this, it might seem that new instruments would overlap
with the forced labour convention. But a new Convention which explicitly
covered forced child labour would in no way reduce the importance of
Convention No. 29, nor the obligations of States which have ratified it. A new
Convention would add specificity and focus on the worst forms and most
hazardous types of child labour, including slavery, servitude, forced labour,
bonded labour and serfdom, and on the measures to be taken to eradicate them.
The principles of application established by ILO supervisory bodies concerning
forced child labour under Convention No. 29 would also be relevant to the new
Convention. The practice of the supervisory bodies in the case of Conventions
covering the same subject is to examine the matter under the most recent or
more specific instrument.

Ratification of Relevant Conventions on Child Labour:

There is than a wide range of Conventions that bear on the problem
of forced and hazardous child labour. The great majority of the ILO’s member
States (133 out of 173) have ratified at least one of the 11 ILO Conventions
concerning the minimum age of admission to employment or work and thus
have made a formal commitment to undertake measures concerning some
aspects of child labour or child labour in certain branches of activity. The date,
49 countries have ratified Convention No. 138, a fairly high score compared to
that of the other conventions adopted between 1970 and 1974. But only 21
developing countries have ratified Convention No. 138, and these do not
include any in Asia where over half of all working children are found. Convention No. 138 is one of the fundamental Conventions of the ILO. It remains a key instrument of a coherent strategy against child labour at the national level. None the less, it is the Office's experience that an obstacle to ratification has been that some member States view the text as too complex and too difficult to apply it in detail. The Office intends to take more vigorous action to promote ratification by providing technical advisory services and a better explanation of the provisions of this instrument and the possibilities of applying its flexibility clauses. But it is generally thought that ratification would still be difficult for many countries and that there is a need for a new instrument focusing on extreme forms of child labour and one which will complement Convention No. 138.17

3.3 Convention on the Rights of the Child

The problem of child labour has been of global concern in the recent past. Although the engagement of children for work within and outside household has a very ancient history but the rights of children as human beings and their potential role as future country men has caught the attention of social activists and various governments of the world. At international level, ILO is a premier organization meant to ensure the safeguard of rights of workers throughout the world. This organization deals with employment and broader labour issues on tripartite basis.

The international legal environment on child rights owes much to the developments that have taken place in Western legal systems in the perception of children in Western Societies, and in human rights jurisprudence. Thought some Asian and African countries ensured that the Convention, the dominant
influence of Western countries ensured that concepts familiar to their legal systems found their way into different articles of the Convention. The Convention also derived inspiration from the Universal Declaration of Human Rights and other international covenants, which are post-war international instruments, reflect the influence of English, French or North American jurisprudence.\(^7\)

Critics of the universality of international human rights standards or norms refer to the origin and content of these standards in international law as a clear indication that they are in fact Euro centric. Human rights standards, including norms on child rights, are then considered to be isolationist and individualistic, ignoring the dynamics of an individual's role within the family and community. The Euro centric nature of the early initiative has thus encouraged a perception that affording protection for human rights in general and child rights in particular is alien to the traditions of developing countries in Africa and Asia and has little or no relevance in these regions. These perceptions have stimulated efforts to draft regional documents on children's rights. Thus African Charter on the Rights and Welfare of the Child (1990) has been drafted with the intention of reflecting commitments on child rights that are relevant for African children.\(^8\)

The view that recognition of human rights in international law is Euro centric fails to focus adequately on the historical developments in the area of individual rights and the family, and legal developments that have taken place through the centuries in Europe and in regions like Asia and Africa. It tends to ignore the reality that there is a core value base in the written laws of these regions, which are derived from indigenous traditions as well as from received
colonial legal traditions. Whatever, the limitations on effective enforcement, these laws have impacted to some degree on judicial development, public policies and social practices. It is also important to recognize that cross-cultural influences have impacted on law, social practices and religion in Europe and in developing countries because of early trade links and colonialism. The interactions between the civilizations of Greece and Rome, the Islamic world and China, and the Indian subcontinent and other countries in Asia are part of recorded history.

Convention on the rights of the child is a comprehensive set of international standards and measures intended to protect and promote the well being of children in society. The convention recognizes the exceptional vulnerability of children, and proclaims that childhood is entitled to special care and assistance.

The instruments on child labour and women's work adopted by the International Labour Organization give the perception of international concern with children's rights. The ILO pioneered the establishment of international standards on women's work and child labour through a series of conventions and recommendations. ILO's concern with regulating child labour commenced with convention on Night Work (1919). The convention on the rights of child provides for the first time on international framework for determining the substantive content of child rights and adult responsibilities and is a concrete pronouncement that can be incorporated into domestic legal systems. The concept of a child as 'a person' entitled to important rights under the constitutions has been recognized in important cases in the United States Supreme Court.
It is guided by the principle of a “First Call for Children” a principle that the essential needs of children should be give highest priority in the allocation of resources at all times. It obligates the State to respect and ensure that children get a fair and equitable deal in society. It emphasizes that importance of the family and the need to create and environment that is conducive to the healthy growth and development of children. It advocates concerted public action by all individuals and agencies government as well as non-governmental local, national, regional, and international to promote the rights of the child.

The convention is a means of empowering children and creating an environment in which all children are able to live securely and realize their full potential in life. The convention draws attention to four sets of civil, political, social, economic and cultural rights of every child. These are:

THE RIGHT TO SURVIVAL: It includes the right to life, to highest attainable standard of health, nutrition and adequate standards of living. It also includes the right to a name and a nationality.

THE RIGHT TO PROTECTION: It includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment, and neglect including the right to special protection in situations of emergency and armed conflicts.

THE RIGHT TO DEVELOPMENT: It includes the right of education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.
THE RIGHT TO PARTICIPATION: It includes respect for the views of the child freedom of expression, access to appropriate information and freedom of thought, conscience and religion.

The Right to Survival:

The convention places primary emphasize on the right of every child to avoid escapable to lead a healthy life. Following are the important Articles included under right to survival:

- **ARTICLE 6**: States parties recognize that every child has the inherent right to life. States parties shall ensure to the maximum extent possible the survival and development of the child.

- **ARTICLE 24**: States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilitate for the treatment of illness and rehabilitation of health. State parties shall strive to ensure that no child is depriving of his or her right of access to such health care services.

State Parties shall pursue full implementation of this right and in particular, shall take appropriate measures:

- To diminish infant and child mortality;
- To ensure the provision of necessary medical assistance and health care;
- To combat disease and malnutrition, including within the framework of primary health care, through inter alia, the application of readily available technology and through the provision of adequate nutrition's;
• To develop preventive foods and clean drinking water, taking into consideration the damage and risks of environmental pollution;

• To ensure appropriate pre-natal and post-natal health care for mother;

• To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition the advantages of breast feeding, hygiene and environmental sanitation and the prevention of accidents; health case guidance for parents and family planning education and services.

States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

States parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization for the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

THE RIGHT TO PROTECTION:

The following are the main Article include under the right to protection:

• **ARTICLE 2**: States parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind irrespective of the child’s or his or her parent's or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other stats.
States parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians of family members.

- **ARTICLE 19**: State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, negligent treatment, maltreatment or guardians or any other person who has the case of the child.

  Such protective measures should as appropriate, include effective procedures for the establishment of social program to provide necessary support for the child and for those who have the case of the child, as well as for other forms of prevention and for identification, reporting, referral investigation, treatment and follow up instances of child maltreatment described here to fore and as appropriate for judicial involvement.

- **ARTICLE 30**: In those States in which ethnic, religions or linguistic minorities or person of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language.

- **ARTICLE 32**: States parties recognize the right of the child to be protected from economic exploitation and from 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.

States parties shall take legislative, administrative social and educational measure to ensure the implementation of the present Article. To this end having regard to the relevant provision of other international instruments, States parties shall in particular:

- Provide for a minimum age or minimum ages for admission to employment;
- Provide for appropriate regulation of the hours and conditions of employment;
- Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

- **ARTICLE 33**: States parties shall take all appropriate measures, including legislative, administrative, social and educational measure, to protect children from the illicit use of narcotic drugs and psychotropic substance as defined in the relevant international treaties ad to prevent the use of children in the illicit production and trafficking of such substances.

- **ARTICLE 34**: States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purpose, States parties shall in particular take all appropriate national bilateral and multilateral measure to prevent:

  - The inducement of coercion of a child to engage in any unlawful sexual activity;
➢ The exploitative use of children in prostitution or other unlawful sexual practices.

➢ The exploitative use of children in pornographic performance and materials.

- **ARTICLE 35**: States parties shall take all appropriate national, bilateral and multilateral measure to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

- **ARTICLE 36**: States parties shall protect the child against all other forms of exploitation prejudicial to any aspect of the children's welfare.

- **ARTICLE 37**: States parties shall ensue that:

  ➢ No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

  ➢ No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

  ➢ Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her
family through correspondence and visits, save in exceptional circumstances;

➢ Every child deprived of his or her liberty shall have right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

• **ARTICLE 38:** States parties undertake to respect and to ensure for rules of international humanitarian law applicable to them in armed conflicts, which are relevant to the child. States parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not takes a direct part in hostilities.

States parties shall refrain from recruiting any person who has not attained the age of fifteen years into, the armed forces. In recruiting among those people who have not attained the age of eighteen years, states parties shall endeavor to give priority to those who are oldest. In accordance with their obligations under international humanitarian law to protect the civilian population in assumed conflicts, states parties shall take all feasible measures to ensure protection and care of children armed conflict.

• **ARTICLE 39:** States parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of any form of; neglect exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shell take place in any
environment, which fosters the health, self-respect and dignity of the child.

- **ARTICLE 40:** States parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child’s re-integration and the child’s assuming role in society.

**Right to Development**

The following are the important Articles included under the right to development:

- **ARTICLE 28:** States parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  
  ➢ Male primary education compulsory and available free to all;
  
  ➢ Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance is case of need;
  
  ➢ Make higher education accessible to all on the basis of capacity by every appropriate;
➢ Make an educational and vocational information and guidance available and accessible to all children;

➢ Take measures to encourage regular attendance at school and the reduction of dropout rates.

States parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and inconformity with the present convention.

States parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

• **ARTICLE 29**: States parties agree that

➢ The education of the child shall be directed to;

➢ The development to the child's personality, talents and mental and physical abilities to their fullest potential;

➢ The development of respect for human rights and fundamental freedoms and for principles enshrined in the charter of the United Nations;

➢ The development of the respect for the child's parents, his or her own cultural identity, language and value, for the national values of the country form which he or she may originate, and for civilizations different from his or her own;
➢ The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of races, and friendship among all people, ethnic, national and religions groups and persons of indigenous origin;

➢ The development of respect for the natural environment.

No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individual and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth paragraph 1 of the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the state.

• **ARTICLE 31**: States parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

States parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural artistic, recreational and leisure activity.

**THE RIGHT TO PARTICIPATION**:

The following are the important Articles included under the right to participation:

States parties shall assure to the child who is capable of forming his or her own view the right to express those view freely in all matters affecting the child the view of child being given due weight in accordance with the age and
maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

- **ARTICLE 13:** The child shall have right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally in writing or in print, in the form of art or through any other media of the child's choice.

The exercise of this right may by subject to certain restrictions, but these shall only be such as are provided by law and are necessary, for respect of the rights of reputation of others; or for the protection of national security or of public order (order public), or of public health or morals.

- **ARTICLE 14:** States parties shall respect the rights and duties of the parents and, when applicable, Legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. Freedom to manifest one's religion or beliefs be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order health or morals, or the fundamental rights and freedom of others.

- **ARTICLES 15:** States parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the democratic society in the interest of national security or public safety, public health or morals or the protection of the rights and freedoms of others.
• **ARTICLE 16:** No child shall be subjected to arbitrary or unlawful attacks on his or her honor and reputation. The child has the right to the protection of the law against such interference or attacks.

• **ARTICLE 17:** States parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material form a diversity of national and international sources, especially this aimed at the promotion of his or her social, Spiritual and moral well being and physical and mental health. To end, states parties shall:

  ➢ Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;

  ➢ Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

  ➢ Encourage the production and dissemination of children's book;

  ➢ Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

  ➢ Encourage the development of appropriate guideline for the protection of the child from information and material injurious to his or her will being, bearing in minds the provisions of Articles 13 and 18.
The foregoing discussion regarding the legal framework on child labour has given the detailed analysis of laws and enactments in India is in fact will remain incomplete without looking into the National and International Committees and Commissions regarding child labour. For this, a detailed discussion is required.

3.4 Human Rights Convention

In May 2000, two optional protocols to the CRC (Child Rights Commission) were adopted. The optional protocol to the convention on the rights of child on the sale of children, child prostitution and child pornography entered into force on 18 January 2002. It emphasizes the need “to strengthen international co-operation by multilateral, regional, and bilateral arrangements for the prevention, detention, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism”.

The optional protocol to the convention of the rights of the child on the involvement of children in armed conflict entered into force on 12 February 2002. It requires ratifying states to “take their Armed Forces who have not attained the age of 18 years do not take a direct part in hostilities and establishes a ban on compulsory recruitment below 18 years”. It calls upon ratifying States “to co-operate in the implementation of the present protocol, including through technical co-operation and financial assistance” for rehabilitation and social reintegration of farmer child soldiers.

The convention covers the whole range of human rights. Traditionally, these have been classified as Civil and Political on the one hand and economic social and cultural on the other. Although reference is made
through this classification in article 4 of this treaty, the substantive articles themselves are not explicitly divided in this way. In deed, the whole thrust of convention is to emphasize the inter-connected and mutually re-enforcing nature of all rights in insuring what UNICEF terms the “survival and development of children”. In this respect it can be more useful to describe the range of rights covered by the convention as the three “Ps” provision, protection and participation. Thus, essentially children have the right to be provided with certain things and services, ranging from a name and nationality to health care and education. They have the right to be protected from certain acts such as torture, exploitation, arbitrary detention and unwarranted removal from parental case. And children have the right to do things and to have their say, in other words to participate both in decision affecting their lives and in society as a whole.

In bringing together all these rights in a single cohesive text, the convention sets out to three basic things:

To reaffirm, with regard to children, rights already afforded to human beings in general through other treaties. Some of these rights, such as protection from torture and non-controversial in terms of their applicability to children; other like freedom of expression, freedom of assembly, freedom of religion and the right to social security, gave rise to heated debate during the drafting process as to whether or no, and under what conditions, children could and should be the explicit beneficiaries. Consequently reaffirmation was by no means a superfluous exercise, but a very necessary means of underlining the fact that children are human beings too.
• To upgrade certain basic human rights in order to take account of the special needs and vulnerability of children. An obvious example there is that of acceptable condition of employment, where standard must be lighter for children and young people than for adults. Another is the condition under which children may be deprived of their liberty.

• To establish standards in areas that are pertinent only, or more specifically, to children. Safeguarding the children's interest in adoption proceedings, access to primary education, prevention of and protection from intrafamilial abuse and neglect, as well as the recovery of maintenance payments are among the children-specific issues addressed by the convention.

The convention contains three major substantive innovations. Firstly, it introduces "participation" right for children, which were notably absent from previous declarations. Linked with, this is the explicit recognition of the need to ensure that children themselves are informed about their rights. Secondly, the convention takes up questions never previously dealt with in an international instrument. The right to rehabilitation of children who have suffered various forms of cruelty and exploitation, for example, the obligation of government to take measures to abolish traditional practices harmful to children health. Thirdly, it includes principles and standards that have so far figured only in non-binding texts, notably those relating to adoption and juvenile justice.

The convention introduces the significant conceptual elements with important substantive ramifications:
• The "best interest of the child" (Article 3) becomes the compulsory criterion "for all actions concerning children", necessarily in conjuration with all pertinent rights set out else where in the convention;

• The principle that the parents (or other responsible for the child) should provide guidance to their child in exercising his or her rights, in accordance with the child's "evolving capacities" (Article 5).

The committee on rights of the child identified the following articles as "general principles" that are basic to implementation of all rights contained in the convention:

Article - 2 on non-discrimination

Article - 3 on the best interest of child

Article - 6 on the right to life, survival and development

Article - 12 on respect for the views of the child

Although the conventions are progressive over all, not every aspect comes up to expectations, of course, let alone to hopes. The pact that the prohibition on participation in hostilities covers only children under the age of 15 has been particularly widely criticized in both governmental and non-governmental circles. As a result, in 1993 the committee on the right of the child successfully called for the establishment of working group to draw up an optional protocol to the convention dealing inter-alia with the upgrading of this standard. The working group began this exercise in October 1994. Many NGO's have also contested the restricted rights on choice of religion afforded by the by the provisions of this convention in comparison with those ostensibly granted to all human beings by the international covenant on civil and political
rights. And several individual NGO's are dissatisfied with the way certain of their specific concerns are dealt with, or with the fact that certain issues are not explicitly dealt with at all e.g. protection from medical examination and the right to pre-school education.

Nonetheless, whilst probably no organization or government would say that is completely happy with the fact, it is indisputable that the convention recognizes substantially more and better rights for children than those that existed previously.

**MONITORING AND IMPLEMENTATION:**

With in just five years of its adoption, the convention has been satisfied by almost 90 percent of the world governments. Such a level of adherence to a treaty in such a short period is unprecedented in the history of international human rights. This together with a degree of public awareness about the convention that is probably also unequalled in relation to other international treaties has led to very high expectations as to its effects in practice. Under the implementation mechanism provisions in the convention itself, a committee on the rights of the child composed of ten “independent” experts elected by state parties i.e. those that have satisfied monitors states compliance with their obligations on the basis of five yearly reports they provide as well as other information made available by reliable sources. The committee “monitoring” functions however is balanced by its clear desire to set the implementation of the convention in a non-confrontational framework of constitutive dialogue and international solidarity. This approach responds to two realities: firstly, that monitoring by the committee has a limited direct effect as such, because of the absence of sanctions that can be applied; secondly; that most countries would have little or no chance of complying with
appropriate technical and other assistance. As a result ratification by a wide range of countries has been facilitated and maximum potential impact of the convention has there by seen greatly assisted.

This “official” implementation procedure itself provides for some degree of involvement on the part of Non-Governmental organizations (NGOs). To some extent this is a reflection of the fact that, during the drafting of the convention, recognized international NGO's were offered and took full advantage of the possibility of making an active constitution to the formulation of text. In addition, and of their own accord, they under took a concerted effort to promote awareness of the need for a convention in this sphere. In order to carry out these tasks, most of them become involved in an NGO group, coordinating their efforts and they’re by making fullest use of their combined experience. Once the convention had been completed and had entered into force, this NGO group reconvened with a view to ensuring that NGO input into implementation is equally constructive and effective. The NGO group is now a privileged partner of the committee. Certainly, the committee relies significantly on NGO especially ‘National Organizations’ and the ‘National Coalitions’ that are farming in a growing number of countries-not only to provide additional information to that contained in state reports, but also to disseminate and make age of the conclusions and recommendations that the committee prepares after reviewing those reports.

UN Committees for Monitoring Major Human Right Treaties

The child, right from and international part of the human rights, which has its umbrella, stretched in the universal declaration of human rights adopted in 1948.
A number of existing human rights bodies is already making contributions in their own areas of competence to ensure realizations of the rights of the child. Apart from the commission on human rights, and its sub commissions on prevention of discrimination and protection of minorities, there are several other committees, which are working for human rights.\textsuperscript{21} These are:

- Human rights committee;
- Committee on economic, social and cultural rights;
- Committee on civil and political rights;
- Committee on elimination of racial discrimination;
- Committee on elimination of discrimination against women;
- Working groups on contemporary forms slavery (which deals with many aspects of the exploitation and mistreatment of children) and

- Committee on rights of the children.

3.5 Declaration of the Rights of the Child

International recognition of the rights of children began with the league of nation adoption of the Geneva Declaration of the Rights of the child in 1924. The Declaration stated that “mankinds owes to the child the best that it has to give”.

In 1948, however, the U.N. General Assembly adopted and proclaimed a code commonly, known as “Universal Declaration of the Human rights” which called on member states to pledge themselves to achieve, inter alia and promote “special protective care and assistance” to children. The General Assembly adopted and proclaimed the Declaration on the rights of the
child on 20th November 1959 which aims that the child may have a happy childhood and enjoy for his own good and for the good of the society, the rights and freedom here in set-forth. The preamble of the Declaration expresses concern of the international community for child welfare. The child by reason of his physical and mental immaturity, needs special safeguards and care. It is also called upon parents, upon men and women as individuals and upon voluntary organisations, local authorities and national governments to recognise children rights and strive for their observance by legislative and other measures. These rights which the general Assembly of U.Ns Called upon to the recognised and implemented by the National Governments are contained in following Ten principles of the Declaration. According to the declaration the child is entitled to:

1. The enjoyments of the rights mentioned without any exception whatever, regardless of race, colour, sex, religion or nationality.
2. Special protection, opportunities and facilities to enable them to develop in a health and normal manner, in freedom and dignity.
3. A name and nationality.
4. Social security including adequate nutrition, housing, recreating and medical services.
5. Special treatment, education and care of handicapped.
6. Love and understanding and the atmosphere of affection security, in the care and under the responsibility of their parents whenever possible.
7. Free education and recreation and equal opportunity to develop their individual abilities.
8. Prompt protection and relief in times of disaster.

9. Prompt protection and relief in times of disaster.

10. Protection from any form of racial, religious or other discrimination and an upbringing in a spirit of peace universal brotherhood. 

The Declaration contains the international policy of the UNO on the growth and development of children and the connected responsibilities and its contains 10 Articles adopting 10 values of human right as internationally accepted policy norms and guidelines.

The year 1979 designated the International year of the child, was the 20th anniversary of that declaration of the above principles. Since their formulation much has been accomplished much more remains to be done to ensure every child in the world has the opportunities to enjoy his or her human rights to a free, healthy, secure and enjoyable childhood.

The UN Declaration proclaims general principles of the child welfare and thus stresses the rights of children in all the countries of the world. In many developing countries today, the social reality of the children mirrors historic practices and policies on such practice in child labour. Although children below age 15 are not usually considered part of the work force, large number of them in the developing world do work while ILO statistics indicate a total of 52 million children under 15 in the world work force, this probably an under-estimate.

The declaration proclaims that the child's entitled to free and compulsory Elementary Education which will promote his general culture and
enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment and his sense of moral and social responsibility.²⁵

It further says that child shall in no case be caused or permitted to engage in any occupation or employment child prejudice his health or education or interfere with his physical, mental, or moral development.²⁶ Despite this declaration nearly all countries have laws or regulations relating to child labour, where the vast majority of them are employed - is usually less satisfactory then industry. In the present context and the state of our social and economic structure, child labour laws are to be regarded as a grand example of “Symbole legislation”.²⁷

A great hadway had been made in the year 1989, which marked the 30th Anniversary of the 1959 Declaration of the Rights of the Child and the 10th Anniversary of the international year of the child, when on 20th November the general Assembly adopted an international convention on the rights of child, which was termed by the general Assembly President Joseph N. Garba as a binding piece of international legislation. The convention needs to be ratified by 20 countries-before it comes into force. Prior to being placed before the Assembly the draft of the convention was approved by the Economic and Social Council and the Commission on the Human Rights during their sessions in 1989. The preamble to the convention states that a child “needs special safeguards and care including appropriate legal protection before as well as after birth”.

Some of the main points of the convention are:

1. The convention defines a child as every human being below the age of 18 years.
2. Every child has the inherent right to life to a name to acquire a nationality and “as far as possible, the right know and be cared for by his or her parents”.

3. Children shall have the right to freedom of expression, thought, conscience and religion, association and peaceful assembly, education, rest and leisure, social security, the highest attainable standard of health and a standard of living adequate for his or her physical, mental spiritual, moral and social development.

4. Children shall not be separated form their parents against their will. States parties will respect the irresponsibilities, rights and duties of parents, deal with family reunification “in a positive humane and expeditious manner”, and combat and illicit transfer non-return of children abroad.

5. Children shall be protected from economic exploitation and from hazardous work, drug use and trafficking, sexual exploitation and sexual abuse, and all other forms of exploitation prejudicial to any aspects of the child welfare.

6. A minority of indigenous child shall not be denied the right to his or her own culture, religion or language.

7. A mentally or physically disabled child should enjoy a full and decent life.

8. A child who is capable of forming his or her own view should have the right to express those views freely in all matters affecting the child, including any judicial and administrative proceedings.
9. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Capital punishment or life imprisonment shall not be enforced for offences committed by persons under 18 years.

10. State parties will establish “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”.

11. State parties shall take “all feasible measures” so that children under 15 “do not take direct part in hostilities” and “shall refrain from recruiting” them into their armed forces.

12. The best interest of the child shall be "the paramount consideration" for adoption.\(^{28}\)

May for its provisions are reflected in the year 2000 goals for improving the well-being of children agreed on at the 1990 world summit for children. Subsequently it has also been affirmed in the world conference on Education for all at Jomtien in March 1990; and SAARC conference on children in 1991 and 1992. It is to be noticed that SAARC countries have resolved the elimination of child labour progressively and in the accelerate manner.\(^{29}\)

This act brought to fruition of 65 year push for formal international legal recognition of the human rights of children. The UN convention on the Right of the child, not only protects the child's and Political rights, but extends protection to child's economic, social cultural and humanitarian rights. The convention his become part of international law with its ratification by over 30 countries. Children the beneficiaries of the convention, may not know the
significance of the events, nor are they going to lobby with governments for the honest implementation of their obligations under the new law. It is now for the social workers, the media and the voluntary organisations to play an active role in mounting pressure of public opinion of the governments to give children a better deal according to the spirit of the convention and the needs of the children everywhere.
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10. Child Labour Targeting the intolerable international Labour office,

11. Ibid.

12. Ibid.


14. Ibid.

15. Ibid.

16. Ibid.

17. Ibid.


23. In 1979, ILO fixed the minimum age as the international year of the working child.


25. Art. VII (1) of the UN Declaration of the Rights of the Child.


