CHAPTER- III

CHILD LABOUR LEGISLATIONS IN
INTERNATIONAL ARENA

The children of a nation are supremely important assets. 1 If there is no proper growth of child today, the future of the country will be in dark. It is thus an obligation of every generation to bring up children who will be the citizens of tomorrow in a proper way. 2 Every society, therefore, must devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they would receive adequate training, education and guidance, so that they may be able to have their rightful place in society when they grow up. 3

It is unfortunate that, nowadays, a large majority of children of the world have to work as child labour. For this, the time which they should have devoted in playing or getting education in schools has to be spent by them in working in different employments. In this way from their childhood they are deprived of their basic human rights. As children they have some rights which are available to all children whether working or non-working. But, as child labour, they have been given some special rights which are necessary to protect their interests in the workplace. In this chapter, an attempt has been made to discuss the rights which are available to them as children and as child labour under various international instruments.
Van Bueren argues that rights of children can be distilled down to four core elements identified as protection, prevention, provision and participation, which she calls 'the four P's'. The initial focus of the activists who worked for the rights of children was on the first three P's, reflecting a conceptualisation of child as essentially weak and dependent, which dominated international instruments from the early part of the twentieth century up to the late 1970's. Later, however, a consensus emerged that in addition to enjoying certain rights associated with their status and their particular needs, children are autonomous beings. The child has been reconceptualised as a participant in the wider society, independent of the family unit and consequently, as a holder of participatory rights not traditionally associated with childhood, including, for example, freedom of association, expression and religion.

The first effort to address the rights of the child on an international level was the Geneva Declaration of 1924, made under the auspices of the League of Nations. The Preamble of the Declaration asserts that 'Mankind owes to the child the best that it has to give'. The Geneva Declaration provides that the child should be given the means which are required for its normal development, both materially and spiritually. The child that is hungry must be fed, the child that is sick must be helped, the child that is backward must be helped, the delinquent child must be reclaimed and the orphan and the waif must be sheltered and succoured. In times of distress he should receive relief first. He must be put in a position to earn a livelihood and must be protected against every form of exploitation. Moreover, the child must be brought up in such a way, so that his talents can be devoted to the service of his fellowmen.
The tone of the Declaration is paternalistic and it is formally rooted in the dominant conceptualisation of the child as vulnerable, powerless and thus in need of special care. Its significance is largely symbolic, but Van Bueren observes that, as it predates the Universal Declaration of Human Rights by 24 years, it debunks the myth that 'rights of children' are a recent phenomenon for international law.

The concern of the United Nations for the rights of child had begun since 1946 when the Temporary Social Commission of the Economic and Social Council insisted that the Geneva Declaration of 1924 should be binding on the people of the world even after the Second World War.

This was followed by the Universal Declaration of Human Rights in 1948. Article 25(2) of the Declaration provides that motherhood and childhood are entitled to special care and assistance and all children whether born in or out of wedlock shall enjoy the same social protection.

The General Assembly of the United Nations established the United Nations International Children's Emergency Fund (UNICEF) on December 11, 1948. The purpose of this Fund was to provide assistance to the children and adolescents of those countries which had been the victims of aggression. It was need-based assistance and provided to the children without discrimination of any kind, such as, of race, creed, national status or political belief. However, on October 6, 1953, the General Assembly decided that the Fund would continue to provide assistance to the children in the developing countries and in those countries which had been devastated by war or other calamities. The name of United Nations International Children's Emergency Fund (UNICEF) was changed and henceforth it is known as the United
Nations International Children’s Fund, but the acronym UNICEF has been retained. The Economic and Social Council supervises and reviews the works of this Fund periodically.

The main function of United Nations International Children’s Fund is to provide assistance to the governments of developing countries in improving the life of children. It acts on the notion that since the children are the means as well as the beneficiaries of the national development, the improvement of the quality of the life of the children would lead to the sustained economic and social progress.

On the basis of the five principles of the Geneva Declaration of 1924, the Temporary Social Commission adopted a draft Declaration on the Rights of the Child in 1950. After much deliberation it was adopted by the General Assembly on November 20, 1959. This 1959 Declaration on the Rights of the Child contains ten points. It provides that child shall enjoy all the rights set forth in this Declaration. All children without any exception, shall be entitled to these rights without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whether of himself or of his family. The child shall enjoy special protection and shall be given opportunities and facilities by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in the conditions of freedom and dignity. In the enactment of law for this purpose, the best interests of the child shall be paramount consideration. He shall be entitled from his birth to a name and nationality.
The Declaration also states that the child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health. To this end special care and protection shall be provided both to him and to his mother including adequate pre-natal care. He shall have the right to adequate nutrition and medical services.\textsuperscript{11} The Declaration also provides that the child who is physically, mentally or socially handicapped shall be given special treatment, education and care required by the particular conditions.\textsuperscript{12} For the full and harmonious development of personality, a child needs love and understanding. Wherever possible, therefore, he should grow up in the care and under the responsibility of his parents and in any case, in an atmosphere of affection and a moral and material security. A child of tender years shall not save in exceptional circumstances be separated from his mother. Society and public authorities shall have the duty to extend particular care to children without a family and to those without means to support.\textsuperscript{13}

The Declaration also provides that the child is entitled to receive education, which should be free and compulsory, at least in the elementary stages. Education should be given to him to promote his general culture and to enable him to become a useful member of the society. Importance was also given on providing opportunity for play and recreation to him. Society and public authorities shall endeavour to promote the enjoyment of these rights.\textsuperscript{14} The child in all circumstances shall be the first to receive protection and relief.\textsuperscript{15} He shall be protected against all forms of neglect, cruelty and exploitation. He shall not be subject of traffic of any form.

It states that the child shall not be admitted to employment before the appropriate minimum age. He shall in no case be caused or permitted to engage in
any occupation or employment which would prejudice his health or education or interfere with his physical, mental and moral development.\textsuperscript{16} Moreover, the child shall be protected from practices which may foster racial, religious or any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance and friendship among people.\textsuperscript{17}

The Declaration on the Rights of the Child, 1959 has dealt with the relationship between the parent and the state, the child being the passive beneficiary plays no active role. This Déclaration reflects the political and historical context in which they were conceived.\textsuperscript{18}

The General Assembly of the United Nations adopted two Covenants on 16th December, 1966. These two Covenants are the \textit{International Covenant on Economic, Social and Cultural Rights} and the \textit{International Covenant on Civil and Political Rights}. The Covenants are international legal instruments. This means that member states of the United Nations, when they ratify or accede to Covenant, are accepting the obligation to give the force of law to the rights it proclaims.

Article 10 (3) of the \textit{Covenant on Economic, Social and Cultural Rights}, 1966 provides that special measures of protection and assistance should be taken on behalf of all children and young persons, without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work which are harmful to their morals or health and which are dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below
which the paid employment of child labour should be prohibited and punishable by law.

Article 13 of the Covenant provides that the state parties to the Covenant recognize the right of everyone to education. They agree that education shall be directed to full development of the human personality and the sense of its dignity and shall strengthen human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and further the activities of the United Nations for the maintenance of peace.

The state parties to the Covenant recognize that with a view to achieving the full realization of this right primary education shall be compulsory and available and free to all. Secondary education shall be made generally available and accessible to all, by every appropriate means and in particular by the progressive introduction of the free education. Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means and in particular by the progressive introduction of free education. Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education. The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established and the material conditions of teaching staff shall be continuously improved.
The state, parties to the Covenant undertake to have respect for the liberty of parents and when applicable, legal guardians, to choose for their children, schools other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the state and to ensure the religious and moral educations of their children in conformity with their own convictions.

This Article also states that no part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in Paragraph 1 of this Article and to the requirement to that the education given in such institution shall conform to such minimum standards as may be laid down by the state.

Article 14 of the Covenant provides that each state party to the Covenant which at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge undertakes within two years to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years to be fixed in the plan of the principle of compulsory education free of charge for all.

Similarly the International Covenant on Civil and Political Rights, 1966 also addressed the issue of child rights. Article 24 of this Covenant provides, “every child shall have without any discrimination, as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state”.
It also states that a child shall be registered immediately after birth and shall have a name. His right to acquire a nationality has also been recognised.

The General Assembly on 21st December, 1976, decided to observe the year 1979 as **International Year of the Child.** The first objective was to provide a framework for enhancing the awareness of the special needs of the children on the parts of the decision makers and the public. The other objective was to promote recognition of the fact that programmes for children should be an integral part of Economic and Social Development plans, with a view to achieving, in both long term and short term, sustained activities for the benefit of children, at the national and international level.

The International Year of Child, 1979, was observed as the twentieth anniversary of the adoption of the 1959 Declaration on the Rights of Child. It was marked by activities, at national, regional and international level, for the improvement of the life of the children. The United Nations International Children’s Fund provided the facility for the celebration of the year of children throughout the world with great enthusiasm and awakening on the subject.

A significant development can be said to have taken place with the adoption of the **Convention on the Rights of Child.** It is the most comprehensive international instrument on child rights and thus, pertinent to the issue of child labour. It was adopted by the General Assembly on 20th November, 1989 and it came into force on 2nd September, 1990.

The explicit dual aim of the Convention is to bring together in a single binding instrument the full canon of human rights applicable to children and to assert the right
of children to full equality in the enjoyment of these rights. The range of rights guaranteed by the Convention is sufficiently broad to cover all aspects of the lives of children and the different stages of their development.²⁰

The 1959 Declaration on the Rights of Child contains the general principles regarding the improvement of the conditions of children. As such, it has been adopted by the governments, but it has no binding obligation. The Convention on the Rights of the Child, on the other hand, has the binding obligation and requires the State Parties to comply with the provisions of the Convention.

The Convention on the Rights of the Child consists of 54 Articles and is divided into a Preamble and three parts. Part I (Article 1-41) deals with the rights that a child should have, Part II (Articles 42-45) deals with the question of implementation; and Part III (Articles 46-54) includes a number of final clauses.

The Convention views the child in terms of a gamut of economic, civil, social, political and cultural rights. It constitutes the legal framework for the promotion and protection of all these rights in an integrated manner. It calls for the full and the harmonious development of the personality of the child to fully prepare him or her for an adult life. It obliges any ratifying country to undertake all appropriate measures to help parents and others to fulfil their respective obligations to children under the Convention.

The Preamble of this Convention states that the State Parties to the present Convention have recognized that the child for the full and harmonious development of his or her personality should grow up in a family environment and in an
atmosphere of happiness, love and understanding. He should be brought up in the spirit of the ideals proclaimed in the Charter.

The Convention is applicable on all children. The term 'children' has been defined as persons under the age of 18 years, although the age of majority may be attained earlier under domestic law.\textsuperscript{21}

The rights covered by the Convention include some rights which appear in other human rights treaties. These are rewritten in the Covenant in order to focus specially the perspective of the child. These rights include right to life which is linked to the right to the survival and development of child. Similarly prohibition on torture, cruel, inhuman and degrading treatment and punishment under Article 37(a) incorporates a prohibition on the imposition of life imprisonment without possibility of release and capital punishment on persons below eighteen years of age.

Among the many rights protected under the Convention on the Rights of the Child, there are the rights to survival, right to participation in society, right to develop to full potential, right to the highest attainable standard of health care, right to free compulsory primary education, right to rest and relaxation and right to protection from all forms of sexual exploitation, abuse and illicit trafficking.

Most of the Articles of the Convention can be grouped under three basic categories, namely rights of provision (encompassing survival and development rights), rights of protection and participation rights. But some Articles refer to a combination of these rights because other rights provide the underpinning for that right formulated in a particular Article. Articles 28 and 29 on education and Article 21 on adoption, for instance, contain aspects which also interface with other rights.\textsuperscript{22}
The cluster of Articles on the right to survival and development in the Convention on the Rights of the Child has been described as Provision Rights, thus linking the right of survival to the important right of development.23

Article 3(1) provides that in all actions concerning children undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child should be primary consideration. A state party should take measures relating to the economic, social and cultural rights, to the maximum extent of their available resources.

By Article 6(1), inherent right to life of every child has been recognized by the state parties, but Clause 2 of the same Article states that the state parties should ensure survival and development of the child 'to the maximum extent possible'. Article 7 of the Convention refers to right of a child to a name from birth, right to acquire a nationality and right to be cared for by the parents. State parties are to ensure these rights in accordance with their national laws.24 Though the parents and legal guardians have the primary responsibility for the upbringing and development of the child, but the Convention emphasizes that the state has an overriding responsibility in this regard.25 Article 18(2) provides that state parties should render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities.

The Convention also has made provision for the rights of children with regard to health and nutrition. Article 24(1) states that state parties recognize the right of the child to the enjoyment of the highest attainable standard of health. Importance has also been given on taking appropriate measure by the state parties to diminish infant
and child mortality, to ensure the provision of necessary medical assistance and health care, to combat disease and malnutrition, to ensure appropriate pre-natal and post-natal health care for mothers and to develop preventive health care.\textsuperscript{26}

State parties also have recognized the right to education of the children. To achieve this right they should make primary education compulsory and free to all, encourage the development of different forms of secondary education, make higher education accessible to all and take measures to encourage regular attendance at schools and reduction of drop out rates.\textsuperscript{27} The education of the child shall be directed to the development of the personality of the child, talents and mental and physical abilities to their fullest potential and the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations.\textsuperscript{28}

Article 23 states that state parties must recognize the right of a disable child to enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate active participation of the child in the community. Non-discrimination guaranteed by Article 2 applies to these children.

The Convention has specific Articles relating to the cultural rights of children in general, children displaced from their family environment and those who belong to minority groups within national boundaries. The state party has to respect the identity of a child and it has the duty to realise the rights in regard to education. It also has to promote respect of the cultural identity of the child, language and values, as well as the right to family privacy.\textsuperscript{29} However, Article 30, which refers exclusively to children of minority groups, is articulated in much stronger language. Such a child
shall not be denied a right to enjoy his or her own culture, to profess or practise his or her own religion or to use his or her own language. Article 17 requires state parties to encourage the mass media to have regard for the linguistic needs of those children.

The provision rights of the child may be considered to be the most important aspect of the rights guaranteed by the Convention in the context of developing countries. If these are realized with greater commitment and the capacity of the family to care and nurture fostered, there would be less need to commit resources to provide protection from exploitation in prostitution and employment or in conditions of street and urban poverty.

There are some other rights, conferred on the children by the Convention on the Rights of the Child, which can be grouped under the category of protection rights. Though the Convention has recognized the right of a child to an identity and personal autonomy, the family cannot escape from its responsibility of care and upbringing of the child. So, under the Convention the family as well as the state has some special obligation in protecting the child.

The right of the child to survival, development, protection and participation are identified with the interests of the family in the child, on the assumption that the family will fulfil its responsibilities to the children. Nevertheless, the concept of ‘protection’ permits state intervention to safeguard a child in circumstances where the family is dysfunctional or is not fulfilling its responsibilities. The state is also empowered to protect the child from non-familial abuse and exploitation. This concept of state intervention is the very source of the protection rights.
Article 19 (1) of the Convention provides that state parties should 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 exploitation. The state should provide special protection and assistance to a child who is temporarily or permanently deprived of his or her family environment.33

Under Article 36, it is the obligation of the state parties to protect the child against all other forms of exploitation prejudicial to any aspects of the welfare of the child. Article 37 (1) states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

The right of the child, to be protected from economic exploitation and from performing any work that is likely to be hazardous or which may interfere with the education of the child or which may be harmful to his or her health or physical, mental, spiritual, moral or social development, has been recognized by the state parties. They will take legislative, administrative, social and educational measures to ensure the implementation of Article 32.34 Appropriate measures should also be taken to protect children from illicit use of narcotic drugs and psychotropic substances.35

The concept of right of a child to be treated as a ‘person’ or an ‘individual’ is crucial to the recognition of his or her identity and capacity to exercise the rights recognized by the Convention with regard to survival, development and protection. It is this linkage with personality and identity that gives participation rights a special dimension and makes them vital for the realization of all the rights of children.36
Article 12 (1) provides that state parties should assure to the child who is capable of forming his or her own views, the right to express these views freely. The child shall have the right to freedom of expression. The state parties should respect the right of the child to freedom of thought, conscience and religion. The right of the child to freedom of assembly has been recognized. Moreover, the child cannot be subjected to arbitrary or unlawful interference with his or her privacy.

The Convention on the Rights of the Child makes provision for the effective implementation of various measures. Under Article 42, it is the responsibility of state parties to make the principles and provisions of the Convention widely known to adults and children alike. For the purpose of assuming the progress made by the state parties in achieving the realization of the obligation undertaken in the Convention, there is the provision for the establishment of a committee on the rights of the child. State parties are to submit to the committee through the Secretary General of the United Nations, reports on the measures adopted by them, which give effect to the rights and on the progress made in this respect. For the effective implementation of the Convention, the committee may invite the specialized agencies, the United Nations International Children’s Fund and other competent bodies to provide expert advice on the implementation of the Convention.

The Convention on the Rights of the Child was ratified by India on 11th December 1992, but it opined that some rights of the child pertaining to the economic, social and cultural rights could only be progressively implemented in the developing countries subject to the extent of available resources and within the framework of international co-operation. Moreover, it is not practical to immediately
prescribe the minimum age 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 the national legislation and relevant international instrument to which it is a state party.

However, under the Indian legal system, it is for the Supreme Court to decide how much of these rights are essential for the right to life and personal liberty under Article 21 of the Constitution and to that extent the Declaration is ineffective within the country. Further trafficking in human beings and forced labour are prohibited under Article 23 of the Constitution.

World Summit for children was held in 1990 at the Head Quarters of the United Nations. World Declaration on Survival, Protection and Development of Children was adopted in this Summit.

The World Declaration provides that children are entitled to joy and peace, playing, learning and growing necessary for their harmonious development. A ten-point programme for the rights of children and improvement in their lives was laid down. Programmes included here were programme promoting earlier ratification and implementation of the Convention on the Rights of the Child, programme for enhancing health and sanitation of children, programme for promoting the role and status of women and responsible family planning, programme attaining optional growth and development in childhood, programme for enhancement of role of family in upbringing of child, programme reducing illiteracy and promoting education opportunities for all children, programme for providing protection during armed
conflict, programme for amelioration of plight of children during armed conflict, programme to protect environment and programme for worldwide removal of poverty.

The plan action for implementing the World Declaration on the Survival, Protection and Development of children of 1990 was adopted by the World Summit for children along with the World Declaration aforesaid. In this plan, guidelines for the national government, international organisations, bilateral aid agencies, non-governmental organizations and all other sectors of society of human beings have been laid down for formulating their action plan for the implementation of the World Declaration. The Plan of Action aforesaid has insisted upon concerned actions at national as well as international level for the achievement of the major goals for survival, protection and development of children. The goal must be adopted according to the specific conditions of each country for making them technically valid, logically feasible and financially realistic. The efforts must be made to arouse broad public support and political commitment essential for achievement of goal.

International Labour Organisation was set up as a part of the Treaty of Versailles after the first World War. Its guiding principle of social justice militated against the child labour. Starting from the Preamble to the Constitution of the International Labour Organisation, the concern for protecting children from the effects of premature work was reflected in many Conventions adopted by it against the child labour. In the Preamble, it is stated, *inter alia*, that “conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that peace and harmony of the world are imperilled” and that
“an improvement of those conditions is urgently required” in many domains including the protection of children and young persons. In the Declaration of Philadelphia, the International Labour Conference, meeting in 1944 recognised the solemn obligation of the International Labour Organisation to further among the nations of the world, programmes which, among other things, would achieve provision for child welfare. The aims and objects of the organisation were reformulated at this 26th session of the Conference. It was, for the first time, clearly recognized that labour is not a commodity and that freedom of expression and of association are essential to sustained progress. It was also recognized for the first time that all human beings, irrespective of race, religion or sex have the right to preserve both their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equal opportunity and this must constitute the central aim of national and international policy.

International Labour Organisation adopted its first Convention on child labour in 1919. It was the Minimum Age (Industry) Convention (No. 5) of 1919. This Convention established 14 years as the minimum age for children in industrial employment. It was followed by a series of similar Conventions specifying a minimum age and regulating conditions of work in specific economic sectors and activities. These include nine sectoral Conventions on minimum age of admission to employment applying to sea (1920), agriculture (1921), trimmers and stokers (1921), non-industrial employment (1932), fishermen (1859), underground work (1965) as well as revised minimum age Conventions applying to sea (1936), industry (1937) and non-industrial employment (1937). Thus between 1919 and 1965, ten
Conventions on this subject were adopted. Finally in 1973, the Convention concerning Minimum Age for Admission to Employment (No. 138), together with the corresponding Recommendation (No. 146) was adopted. Convention No. 138 replaced all the previous relevant Conventions. Its purpose was to establish minimum standards valid for all sectors of economic activity.47

The Convention No.138 is the most comprehensive instrument of International Labour Organisation on child labour. It lays down that with a view to ensuring the effective abolition child labour, the minimum age for admission to employment should be raised to a level consistent with the fullest physical and mental development of young persons. This basic minimum age should not be less than the minimum age for completion of compulsory schooling and in any case not less than 15 years unlike earlier Conventions which presented different minimum ages for different kinds of work. The Convention, however, gives a relaxation to those member states, whose economy and educational facilities are insufficiently developed. These states may fix a lower minimum age of 14 years. In any case, any member state which has ratified the Convention can subsequently notify the International Labour Organisation that the minimum age originally laid down has been revised. Moreover, a member state whose economic and administrative facilities are insufficiently developed may initially limit the scope of application of the Convention and similarly may extend that scope at a later date.

However, the provisions of the Convention must be applicable as a minimum to mining and quarrying; manufacturing, construction, electricity, gas and water, sanitary services, transport, storage and communication and plantations and other
agricultural undertakings mainly producing for commercial purposes, but excluding family and small scale holdings producing for local consumption and not regularly employing hired workers. The Convention further provides that national laws or regulations may permit the employment or work of persons of 13 to 15 years of age in light work, on condition that such work is not likely to be harmful to their health or development, nor to prejudice their attendance at school or their participation in vocational orientation or training programmes. These two conditions also apply to works, which are generally carried out by persons who are at least 15 years of age, but who have not yet completed their compulsory schooling. However, a member state which in line with the provisions mentioned above, has fixed the minimum age for admission to employment in general at 14 years, may, as long as it continues to avail itself of these provisions, permit young people of 12-14 years to undertake light work and young persons who are at least 14 years of age, but have not yet completed their compulsory schooling to undertake work in general, still in the light of the provisions that were mentioned above in relation to young people of 13-15 and 15 years respectively.

As regards work which is likely to jeopardise the health, safety or morals of young persons, the Convention lays down that the minimum age for admission to any type of employment or work of this kind shall not be less than 18 years; however, notwithstanding this provision, member states may fix this age at 16 years, on condition that that health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the branch of activity concerned.
In order to make it easier to apply the principles laid down in Convention No. 138, Recommendation No. 146 advocates, *inter alia*, a firm national commitment to full employment and the progressive extension of other economic and social measures to alleviate poverty. Then it will be unnecessary to have recourse to child labour. It also advocates the development and progressive extension of social security and other family welfare measures, including allowances to children; the development and progressive extension of adequate facilities for education and vocational orientation and training; the adoption of special measures as regards children and young persons who do not have families or who do not live with their own families and also of migrant children and young persons; and the introduction of compulsory full-time attendance at school or participation in vocational orientation or training programmes, at least until the age of admission to employment laid down in Convention No. 138. The Recommendation also proposes that member states should take as their objective the progressive raising of the minimum age to 16 years for admission to employment.  

India had ratified some of the earlier Minimum Age Conventions, like Convention No. 5, 15 and 123. It has not, however, ratified Convention No. 138. The principal difficulty in ratifying Convention No. 138 is that in India, child labour is not prohibited in all occupations and sectors of employment. Major sectors of economic activity, such as agriculture, transport, storage and communication, household industry and domestic service among others are excluded from any requirement of a minimum age for admission to employment. All or most of these sectors will have to
be brought within the purview of the child labour legislation of the country before Convention No. 138 can be ratified.49

Another obstacle in ratifying the Convention is the absence of an omnibus provision fixing a minimum age of entry to employment. This is because labour figures in the concurrent list of distribution of powers in the Constitution, empowering both the central and state governments to enact laws relating to it, which has been responsible for a plethora of laws relating to a host of subjects including child labour and the age of entry to employment. The central laws on the subject are: Factories Act, 1948, Mines Act, 1952, Plantation Labour Act, 1951, Motor Transport Workers Act, 1961 and the Merchant Shipping Act, 1958.50

The Minimum Age Convention, 1973, is strengthened by adoption of the Worst Forms of Child Labour Convention, 1999 (No. 182). It calls for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour which include slavery and similar practices, forced recruitment for use in armed conflict, prostitution and pornography, any illicit activity, as well as work which is likely to harm the health, safety and morals of children.

As the world has awakened to the abuses of child labour, the movement against it has evolved into a global cause virtually unprecedented in its pace and intensity. It is a movement which transcends political boundaries, languages, cultures and spiritual traditions. So, every segment of civil society like governments, employers, trade unions, non governmental organisations and religious organisations should join together, so that child labour can be abolished all over the world.
NOTES AND REFERENCES


2. Bhagwati, P.N. and R.S. Pathak, JJ. in Sheela Barse vs. The Secretary, Children's Aid Society, AIR 1986 SC 1773.

3. Ibid.


5. Ibid., p. 61


7. Ibid., p. 9.


10. Ibid., Principle 3.

11. Ibid., Principle 4.

12. Ibid., Principle 5.


15. Ibid., Principle 8.

17. Ibid., Principle 10.

18. Supra, Note 4, pp. 4-6.


20. Supra, Note 4, p. 64.


23. Ibid., 178.

24. Supra, Note 21, Article 7(2).

25. Ibid., Article 18(1).

26. Ibid., Article 24(2).

27. Ibid., Article 28(1).

28. Ibid, Article 29(1).

29. Ibid., Articles 8, 29(1) (c) and 16.

30. Supra., Note 22, p. 228.


32. Ibid., p. 252.

33. Supra, Note 21, Article 20(1).

34. Ibid., Article 32(2).

35. Ibid., Article 33.

36. Supra, Note 22, p. 310.

37. Supra, Note 21, Article 13(1).
38. Ibid., Article 14(1).
39. Ibid., Article 15(1).
40. Ibid., Article 16(1).
41. Ibid., Article 43.
43. Ibid.
45. Ibid., pp. 24-25.
48. Ibid., p. 15.
49. Supra, Note 42, p. 244.
50. Supra, Note 46, p. 190.