CHAPTER-IV
CHILD RIGHTS AND INTERNATIONAL FRAMEWORK

We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need could perhaps wait; but the cause of the child cannot. Right now is the time his bones are being formed, his blood being made and his sense being developed. To him, we cannot answer ‘Tomorrow’, His name is ‘Today’.

(Gabriel Mitral)\(^1\)

Both at National and International level great interest is being shown in the matter of welfare of children. Englantyne Jebbs of England was the first person to initiate the international movement for providing the child with a status. The debates, she initiated culminated in Declaration adopted by League of Nations\(^2\) on September 26, 1925.\(^3\) It can be seen as the first International instrument dealing with children’s right. The five principles that was enumerated were:

- The child must be given the means requisite for its normal development, both materially and spiritually.
- The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent must be reclaimed; and the orphan must be sheltered.
- The child must be first to receive relief in the time of distress.

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\(^2\) League of Nations conceived during First World War established in 1919 under the Treaty of Versailles to promote International Co-operation and to achieve peace and security.

The child must be in a position to earn a livelihood and must be protected against every form of exploitation.

The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

This Declaration is important as it highlights the social and economic entitlement of children and establishes internationally the concept of the rights of the child, thereby laying the foundation for setting future international standard in the field of children rights. But unfortunately the declaration could not give effect as the league itself died and in 1944, it was replaced by another international organization, the UN.

4.1. ROLE OF UNITED NATIONS

During second world war, 26 Nations pledged to continue fighting together against the axis powers, United Nation came into existence on 24th October, 1945. The focal object of the organization was maintenance of international peace and security. Later on this organization started working for the rights of Human beings i.e. Human Rights and in 1948 the Universal Declaration on Human Rights was adopted, and this Bible of Rights also specifies rights provided to the child. Article 25(2) specifically provides special care and protection to children which read as:

Article 25(2) of the UDHR provides that Mother and Childhood are entitled to special care and assistance, all children whether born in or out of wedlock shall enjoy special protection.

Article 26 of the UDHR provides for education of children.

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5 On 1st Jan, 1942 U.S. President Franklin D. Roosevelt coined the name United Nations.
4.1.1. Declaration on the Rights of Child, 1959

It was only in fifties of the twentieth century that the separate charter on the rights of the child was declared. It was unanimously adopted by U.N. General Assembly on 20th November, 1959. The preamble describes the principle as enunciating rights and freedom of child which governments should observe by legislative and other measures progressively taken. It re-iterates the pledge that ‘mankind owes to the child the best it has to give’, and it places a specific duty upon voluntary organization and local authorities to strive for the observance of these rights. The declaration provides:\(^7\)

a) The child by reasons of his physical and mental immaturity needs special safeguard and case including appropriate legal protection.

b) The child shall enjoy special benefits of security.

c) The child shall enjoy protection and shall be given opportunities and facilities by law and by all other means to develop in a health and normal manner and in condition of freedom and dignity.

In the enactment of Law for this purpose:

a) The best interest of child shall be of paramount consideration.

b) The General Assembly calls upon local authorities and national Government to recognize these rights and strive for their observance.

c) All children without any exception whatsoever shall be entitled to these rights, without distinction or discrimination on account of national or social origin, poverty, both or status.

There was a remarkable departure from the principles laid down in 1925 Declaration. Whereas, the earlier Declaration specified that ‘children must be the first to receive relief, the 1959 Declaration lays down that children shall be

among the first’ to receive protection and relief and are entitled to ‘special protection’. The Declaration also contains a broad non-discrimination clause.

4.1.2. International Covenant on Civil and Political Rights, 1966 (ICCPR)

Under the ICCPR, 1966\(^8\) which complements the Economic, Social and Cultural covenants, children are implicitly entitled to the benefit from all relevant rights contained in the covenant and in addition there are specific provisions for children. Article 14(1) provides an express exception to the right to a hearing in a public, when it is in the interest of juveniles or where it concerns the guardianship of children. According to Article 14(3) (f) of the covenant the criminal proceeding should take account of juvenile’s age and their desirability of promoting their rehabilitation. Article 10(3) provides an obligation to states parties to separate accused juveniles from accused adults and bring them as speedily as possible for adjudication and accord them treatment according to their age and legal status.

Under the said covenant, the family is recognized as being the natural and fundamental unit of the society and as such is entitled to State Protection\(^9\). The State parties are further obliged to respect the liberty of parents to ensure the religious and moral education of children in accordance with their beliefs and in the event of dissolution of the marriage; provision shall be made for the protection of any children\(^10\). In addition to the protection of child ICCPR incorporates a specific provision on children in Article 24\(^11\) which embodies following:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to

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\(^8\) <http://www.umn.edu/humanrts/instree/b3 ccpr.htm> accessed on 18\(^{th}\) December, 2005.
\(^9\) Article 23, ICCPR, 1966.
\(^10\) Article 18(4) and 24(4), ICCPR, 1966.
\(^11\) Article 24, ICCPR, 1966.
such measures of protection as are required by his status as a minor, on
the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a
name.
3. Every child has the right to acquire a nationality.


The widespread plight of children attracted the attention of United Nations.
In December 1976, the United Nations adopted a resolution which proclaimed
1979 as an International year of the child. In the consequence, the Government
of Poland submitted a draft on the rights of the child for adoption by the UN
General Assembly as a lasting memorial year of the child. After a revised version
and a decade campaigning, the UN General Assembly adopted the Convention
on the Rights of Child\textsuperscript{12} on November 20\textsuperscript{th}, 1976 ratified by 135 nations including
India.

The said convention on the Rights of the child is a United Nations
agreement that spells out the range of rights that children everywhere are entitled
to. It sets basic standards for children’s well being at different stages of their
development. Countries that ratify the convention agree that they be legally
bound by its provisions. They report regularly to an expert Committee on the
Rights of the Child as to steps they have taken to comply with the provisions of
the Convention.

The Convention is the first legally binding code of Child Rights in history.
It brings together in one treaty all the relevant Child Rights issue, rather than
having them scattered among a number of international treaties. The Convention
on the Child Rights contains 54 articles, each of which entails a different type of
right. These can be broken down into four broad categories.

Survival Rights: Cover child's rights to life and the needs that are most basic to existence; these include an adequate living standard, shelter, nutrition and access to medical services.

Developmental Rights: Include those things that children require in order to reach their fullest potential. Examples are right to education, play and leisure, cultural activities, access to information, freedom of thought expression, conscience and religion.

Protection Rights: Require that children be safeguarded against all forms of abuse, neglect and exploitation. They cover issues such as special care for refugee children, torture, abuses in the criminal justice system, involvement in armed conflict, child labour, drug abuse and sexual exploitation.

Participation Rights: Allow children to take an active role in their communities and nations. These encompass the freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully. As their abilities develop, children are to have increasing opportunities to participate in the activities of their society, in preparation for responsible adulthood.

The UN Committee on the Rights of Child has identified a thematic clustering of Child Rights. This clustering is as follows:¹³

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• **Definition of Child**: Article 16 provides that for the purpose of the present convention a child means every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier.\(^{14}\)

• **General measures of implementation** are laid down in Articles 4, 44 of Convention on the Rights of Child. This highlights the need to constantly review the relevance of reservations and the importance of bringing national legislation in conformity with the Convention.\(^{15}\)

• **General principles, Civil Rights and Freedoms**: In this theme Article 2, 3, 6 and 12 of the Convention give the four general principles i.e. non-discrimination, best interests of the child, right to survival and development and respect for the views of the child. Articles 7, 8, 13-17 and 37(a) specify the civil rights and freedom which include the right to a name and nationality, freedom of expression and peaceful assembly, right against torture etc.\(^{16}\)

• **The Rights relating to family environment and basic health** are covered under Article 5, 9-11, 18, 19, 21, 25 and 27 that deal with parental guidance and responsibilities, illicit transfer and non-return, unaccompanied minors and adoption, psychological recovery and re-integration. It also includes articles that address health, standard of living and facilities for treatment and rehabilitation under Articles 6, 18, 23, 24, 26 & 27.\(^{17}\)

\(^{14}\) Ibid.  
\(^{15}\) Ibid.  
\(^{16}\) Ibid.  
\(^{17}\) Ibid.
• The theme on education, leisure and special protection stresses the importance of education including, vocational training and guidance and also protection of refugee children, children in emergencies, children in the juvenile justice system, and children in danger of exploitation. In Article 28, 29 and 31, it is laid down that education should be child friendly. Physical and psychological recovery as well as social integration for children is given under Article 22, 32-36 and 37-40.\textsuperscript{18}

The convention is derived from a core set of human value that recognize the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in world. There are also four general principles laid down in the convention. These four principles are:-

1. **Non Discrimination (Article 2)**: State Parties must ensure that all children within their jurisdiction enjoy their rights. No child should suffer from discrimination. Refugee children, children with disabilities, children of foreign origin or minority group should have the same rights as all others.

2. **Best Interests of the Child (Article 3)**: When the authorities of a State take decisions which affect children, the best interests of the children must be the primary consideration. The principle relates to decisions by courts of law, administrative authorities legislative bodies and both public and private social welfare institutions.

3. **The Right to Life Survival and Development (Article 6)**: The term development in this context should be interpreted in a broad sense, adding a qualitative dimension not only physical health but also mental, emotional, cognitive, social and cultural development.

\textsuperscript{18} Ibid.
4. The view of the Child (Article 12): Children have the right to be heard and to have their views taken seriously, including any judicial or administrative proceedings affecting them\textsuperscript{19}.

The Convention thus constitutes a radical departure from previous practices where the rights of the child were found scattered and lacking global consensus. The convention for the first time incorporates all rights into one single comprehensive document whose provisions are meant to be applied globally. It appears that children by virtue of the fact that they are humans are entitled to the rights enjoyed by the adults.

4.1.4. Regional Instruments for the protection of Child Rights

Recognizing that the each region had its own peculiar concerns, the Council of Europe, the Organization of American States (OAS) and Organization of African Unity (OAU) has adopted provisions for the protection of Child Rights in their respective instruments.

Subsequently, the rights of child has also been reaffirmed in the World Conference on Education for All at Jomtien Declaration in March 1990; World Summit on the children in the Autumn of 1990, SAARC Conference on children in 1991 and 1992. In 1998 in an annual Summit of SAARC celebrating the 50\textsuperscript{th} Anniversary year of the UN Universal Declaration on Human Rights, Amnesty International said “South Asian Governments should mark this anniversary by taking concrete actions to improve the lives of the regions children, rather than making another round of unfulfilled promises.\textsuperscript{20} They further added that child’s rights should be placed at the counter of their agenda; if they are really committed to do a better future for the region.

\textsuperscript{19} Ibid, p.20.
4.2. ROLE OF ILO

Born from the chaos of global War, tempered by nearly a century of turbulent change, the International Labour Organization (ILO) is built on the constitutional principle that universal and lasting peace can be established only if it is based on social justice. The ILO came into existence on 11 April, 1919 after First World War, following the treaty of Versailles. In recognition of its work it was awarded Noble Peace Prize in 1969.

The ILO is a unique among all the UN Organizations due to its tripartite structure; that is both the employees and the workers representatives – the social partners of the economy have an equal voice with those of governments in shaping its policies and programmes. The ILO encourages tripartism within the member States too, by promoting social dialogue that involves trade unions and the employees in the formulation and, where appropriate, in implementation of the national policy on social and economic affairs. There are currently 175 members states of ILO. A Governing Body comprising 28 government members 14 workers, and 14 employees members guides the work of ILO. The International Labour Conference meets annually and provides the forum for discussion of world’s labour and social problems. The ILO’s technical cooperation is focused on four major areas which correspond to its strategic objectives:

- Promote and realize fundamental principles and rights at work.
- Create greater opportunities for women and men to secure decent employment.
- Enhance the coverage and effectiveness of social protection for all.
- Strengthen tripartism and social dialogue.

In India, the ILO services and activities have focused on strengthening the capacity of the trade unions and employers to address the issues emerging from the economic reforms- industrial restructuring, social security systems and reforms

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21 For details see <http://www.ilo.org> accessed on 10th December, 2005.
in industrial relations. ILO has also sought to support workers education and
training activities in the fields of collective bargaining, occupational safety, health
and environment, leadership training, contract labour, international labour
standards, women’s participation in trade unions and organizing the unorganized
in the informal or rural sector. The ILO’s mission today is to promote decent work
for all in the global economy – in conditions of freedom, equality, security and
human dignity. It does through permanent contact with workers, employees and
governments, helping forge new and innovative employment, labour market and
training policies. Concern for the social costs of globalization increases the need
for better international co-ordination of macroeconomics policies to diminish its
harmful consequences. The ILO believe that the observance of fundamental
principles and rights at work are the cornerstone for any socially sustainable
economic development process. ILO has adopted some of the important
conventions and recommendations concerning child labour which both prohibit
the employment of children and set basic standards and conditions under which
children above certain age may be permitted to work in different sectors of
employment.

4.2.1. Conventions adopted by ILO

Minimum Age (Industry) Conventions, 1919 (No.5)22 and
Minimum Age (Industry) Convention, (Revised) 1937 (No.59)23

Convention No.5 of 1919 prohibits the employment of children under the
age of 14 years in 'Industrial Undertaking', other than an undertaking in which the
members of the same family are employed. The term 'Industrial undertaking'
includes mines, quarries, manufacturing industries, construction, maintenance,
repairs, transport of passengers or goods by road or rail or inland waterway.

India has already ratified this Convention and prohibition of employment of Children below 14 years has been statutorily implemented through the Factories Act, 1948.24

The above Convention was, however, revised in 1937 by Convention No.59, raising the minimum age for employment, of children in industrial undertaking from 14 to 15 years. The revised Convention also imposed a restriction on employment of children below 15 years of age even in industrial undertaking in which only members of the employer’s family are employed provided that such employment is dangerous to the life, health and morals of the children employed. It has also been provided that medical certificate shall be necessary for such children employed in mines etc.

Though some relaxation's have been made for India, yet it has not been able to ratify this Convention so far, obviously because the Factories Act, 1948 still prescribes 14 years as the minimum age for employment of children in factories.

Minimum Age (Non-Industrial Employment) Convention, 1932 (No.33), and Minimum Age (Non-Industrial Employment) Convention (Revised), No.60 of 1937 raised the minimum age for admission to employment in non-industrial employment from 14 to 15 years. Special provisions have been made for India. The Revised Convention provides that children under 13 years of age are not to be employed in non-industrial occupations such as shops, office, hotels or restaurants, places of public entertainment’s. However, national laws may permit the appearance of children below the age of 13 years in the interest of art, science or education. Further persons under 17 years of age shall not be employed in non-industrial employment’s which involve danger to life, health or morals.

24 Section 67 of Factories Act, 1948 provides: Prohibition of Employment of Young Children – No child who has not completed his fourteenth year shall be required or allowed to work in any factory.
India has not so far ratified any of the Conventions. The minimum age prescribed by the different state enactments for employment of children varies from 12 to 14 years. Further there is no provision in these statutes with regard to the minimum age for hazardous employment.\(^{25}\)

Minimum Age (Sea) Convention, 1920 (No.7)\(^{26}\) and
Minimum Age (Sea) Convention (Revised), 1936 (No.58)\(^{27}\)

The Convention No.7 of 1920 prohibits the employment of children under the age of 14 years on vessels (ships and boats engaged in maritime navigation), other than vessels upon which only members of the same family are employed. However, on revision of the Convention in 1936, the minimum age for admission to employment was raised from 14 to 15 years. However, national laws may provide for the issue in respect of age permitting them to be employed in cases which an educational or other appropriate authority is satisfied, after having due regard to the health and physical condition of the child, that such employment will be beneficial to him.

India has not ratified these Conventions. As a sizable number of Indian Seamen are employed on foreign ships, mostly British, ratification by India would not be of advantage to a large majority of Indian seamen until the United Kingdom also agrees to ratify.

Minimum Age (Trimmers and Stokers) Convention, 1921 (No.15)\(^{28}\)

\(^{25}\) Shops and Commercial Establishment Act, 1969. Minimum age of employment is 12 years in Bihar, Gujarat, J&K, Madhya Pradesh, Karnataka, Orissa, Rajasthan, Tripura, Uttar Pradesh, West Bengal, Goa, Daman & Div & Manipur. Minimum age is 14 years in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Tamil Nadu, Kerala, Punjab, Delhi, Chandigarh, Pondichery and Megalaya. Minimum age of employment is 15 years in Maharashtra. For details see Chapter-V.


The Convention prohibits the employment of young persons under 18 years of age as Trimmers or Stokers on vessels engaged in maritime navigation. But an exception has been made with regard to India by lowering the minimum age from 18 to 15 years if found physically fit after medical examination. India has ratified this Convention and its provisions have been fully implemented through the Merchant Shipping Act, 1958.29

Minimum Age (Fishermen) Convention, 1959 (No.112)30

The Convention provides that children under the age of 15 years shall not be employed on fishing vessels (ships and boats engaged in salt water). However, such children may occasionally take part in the activities on board fishing vessels during school holidays for noncommercial purposes. Further, it has also been provided that the national laws may permit children of not less than 14 years of age to be employed in cases in which educational or appropriate authority is satisfied, having due regard to the health and physical condition and the benefits to the child from employment, that such employment will be beneficial to the child. India has neither ratified this Convention so far nor enacted any law to regulate employment of children on fishing vessels.

Minimum Age (Agriculture) Convention, 1921 (No.10)31

The Convention provides that children under the age of 14 years shall not be employed or work in any public or private agricultural undertakings, save outside the hours fixed for school attendance. If they are employed outside school hours, the employment shall not be such as to prejudice their attendance at schools. The children may however be employed for purposes of practical vocational instructions subject to certain restrictions. Similarly, the prohibition of employment of children in agriculture does not apply if they work in technical schools approved and supervised by public authority.

29 Section 109 & 110 of Merchant Shipping Act, 1958.
31 <http://www.ilo.org/ilolex/cgi-lex/convde.pl7C010> accessed on 20th December, 2005.
The Convention has not so far been ratified by India, obviously keeping in view the difficulties in implementing its provisions effectively over vast unorganized agriculture activities.

Minimum Age (Underground Work) Convention, 1965 (No.123)\textsuperscript{32}

Though the Minimum Age (Industry) Convention (Revised) 1937 (No.59) prohibits employment of children under the age of 15 years, which applies to mines as well as the Convention No.123 of 1965 prescribes 16 years of age for employment of children underground in mines. India has not only ratified the Convention but also incorporated its provisions in the Mines Act, 1952.\textsuperscript{33}

Minimum Age Convention, 1973 (No.138)\textsuperscript{34}

This is a general Convention fixing the minimum age for employment, which will gradually replace the existing Conventions on the subject limited to particular economic sectors. The idea is to achieve total abolition of child labour. It calls for the pursuit of a national policy designed to ensure the effective abolition of child labour and for raising 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 minimum age provided under the Convention is not to be less than the age of completion of compulsory schooling and, in any case, not less than 15 years. Developing countries may, however, initially fix the minimum age at 14 years. In the case of work, which is likely to jeopardize the health, safety or morals of young persons, it has been stipulated that the minimum age should not be less than 18 years. The Convention is applicable, as a minimum to mining, quarrying, manufacturing units, construction, plantation, and other agricultural undertaking producing for commercial purpose.

\textsuperscript{32} <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C123> accessed on 20\textsuperscript{th} December, 2004.
\textsuperscript{33} Section 11 of Mines Act, 1952.
\textsuperscript{34} <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138> accessed on 20\textsuperscript{th} December, 2004.
India has not yet ratified the Convention. The present Indian laws do not conform to the standards laid down by the Convention in several respects. Firstly, there is no law fixing any minimum age for employment in agriculture. Even in case of plantations the age fixed is 12 years.\(^{35}\) Secondly, though the Child Labour (Prohibition & Regulation Act, 1986 deals with employment of children in hazardous employment, yet the minimum age fixed is lower than that laid down in the Convention. Thirdly, the Factories Act, 1948 fixes the minimum age of employment at 14\(^{36}\) whereas the Convention fixes it at 15. Fourthly, in case of non-industrial employment the various state enactments have fixed the minimum age varying from 12 to 14 years and therefore, our laws are deficit in that respect also.

### 4.2.2. Recommendations of ILO

**Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No.41)\(^{37}\)**

This Recommendation lays down a higher standard than the two Conventions on the subject. It envisages that so long as the children are required to attend school, their employment should be restricted as far as possible. Even for employment of children in light work outside school hours, the consent of the parents or guardian should be obtained and there should be a medical certificate of fitness for employment.

**Minimum Age (Family Undertakings), Recommendations, 1937 (No.52)\(^{38}\)**

The Recommendation requires that member-states should extend their legislation on minimum age for the admission of children to industrial work, to those also who are employed in family undertakings.\(^{39}\)

\(^{35}\) Section 24, The Plantation Labour Act, 1951.

\(^{36}\) Section 67, The Factories Act, 1948.


\(^{39}\) Proviso to Section 3 of The Child Labour (Prohibition and Regulation) Act, 1986 provides that prohibition of employment is not applicable where process is carried on by an occupier with the
Minimum Age (Coal Mines) Recommendations, 1953 (No.96)\(^{40}\)

The Recommendations; embodies the principles that young persons under the age of 16 years should not be employed underground in coal-mines.

Minimum Age (Underground Work) Recommendation, 1965 (No.124)\(^{41}\)

The Recommendation requires that where the minimum age for admission to employment underground in mines is less than 16 years, steps should be taken as speedily as possible to raise it to that level. Further it should be progressively raised, with a view to attain a minimum age of 18 years.

Minimum Age Recommendation, 1973 (No.146)\(^{42}\)

Besides emphasizing the measure required to be adopted for overall development of child labour, it recommends that the minimum age should be fixed at the same level for all sectors of economic activity. Member-states should progressively raise the minimum age of employment to 16 years and where it is still below 15 years to raise it to the level. Where it is not possible to fix a minimum age for all employment in agriculture and other related activities in rural areas. It should at least be fixed for plantations and other commercial crops. For hazardous employment immediate steps should be taken to raise the minimum age to 18 years.

Unicef\(^{43}\) -UK has created a series of leaflets aimed at helping British Businesses discourage child labour in countries-where they invest. The leaflets, entitled ‘Basic facts for business’, deal with child labour in 10 specific countries. They are designed to inform the companies about how children become part of aid of his family or school established by or recognized or receiving assistance from Government. Therefore, the Act itself legalizes the employment in family undertakings.


\(^{43}\) Unicef – United Nations Children’s Emergency Fund – an organization created in 1946 to provide massive emergency relief to the destitute of the young victims of 2\(^{nd}\) World War. It also provides assistance to the flood and cyclone victims in India and Pakistan.
the workforce, the size of the problem, the legal situation in each country and practical steps that companies can take to end child labour. The countries covered are India Bangladesh, United Kingdom, Brazil, Nepal, Thailand, EL Salvador, Pakistan, Costa Rica and Tanzania. The President of the Confederation of British Industry (CBI), Sir Colin Marshal said that "British industry has a responsibility to the world's children to make sure the products we sell are not in any way exploiting children or denying them their rights".

The Optional Protocol on the involvement of children in the armed conflicts raises the age of recruitment to armed forces from 15 to 18. The optional protocol on the sale of children, child prostitution and pornography focuses on the criminalisation of these violations of children's rights, while emphasizing the need for increased public awareness and international co-operation in efforts to combat them. The recognition and implementation of children's rights are the bedrock measures of our progress as a civilization. The United States became one of the first countries to sign United Nations two key protocols that strengthen global standards for the protection of children. The signing of the protocols by the, former US President Clinton, was warmly welcomed by UN officials involved in efforts to protect children. Welcoming the US leadership in signing the key optional protocols to the convention on the rights of the child on protecting children against prostitution and involvement in armed conflict. Carol Bellamy Executive Director of UNICEF and Louise Frechettee, Deputy Secretary-General of UN say that the move would undoubtedly inspire other countries to add their names to these instruments.

4.2.3. Worst forms of Child Labour Convention, 1999

Recently, adopted Convention No.182 and an accompanying Recommendation No.190 calls upon the governments to ban and take

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immediate steps for the elimination of the worst forms of Child Labour. Members State of the ILO, on 17th June, 1999 took a decisive step towards saving million of children around the world from the worst forms of hazardous and exploitative work. The new convention, which will apply to all children under the age of 18, calls for countries to prohibit and eliminate the worst forms of child labour as matter of urgency. For the first time, the treaty defines, what constitutes exploitative practices-such as slavery, debt bondage and child prostitution- include a ban on forced recruitment of child soldier.

Article 1 of the convention provides that each member who ratifies this convention shall take immediate measures to secure the prohibition and elimination of worst forms of child labour as a matter of urgency. For the purpose of this convention, the term ‘worst form of child labour’ comprises:

a) All forms of slavery & practices similar to slavery, such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour including forced or compulsory recruitment of children for use in armed conflict;

b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking or drugs as defined in the relevant international treaties;

d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Three other new international instruments were adopted dealing specifically with some of the issues defined as among the worst forms of child labour, namely:

• The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (OPAC).  

The rapid rate of ratification of these instruments, adding to international legal protection in this area, can be welcomed, although they have not yet attained the levels of ratification of Convention No.182.52

The ILO took an important initiative to curb the violation of Child Rights i.e. International Programme on the Elimination of Child Labour (IPEC) in 1992. India was among the first countries to participate in the programme. ILO-IPEC goes beyond trying to promote development by providing adequate educational alternative for children and access to decent work, sufficient income and security for their parents. The programme pays special attention to priority target groups, including the girl child hidden work situations such as in sex trade and domestic services and other intolerable form of child labour. In India, the IPEC programme has been responding to national partners. Since its inception in 1992, as many as 154 projects have been implemented. These include rehabilitation of about 10,000/- child labour in different industries and sectors across the country, awareness rising capacity building and research53. The programme has also been working with voluntary organization and other civil societies group and institutions. IPEC has been working with the Employees Organization such as Council of Indian Employees and PUCCI as also with autonomous institution, like

52 Ibid.
Central Board of Workers Education, National Labour Institute and the Maharashtra Institute of Labour Studies, to help them to eliminate child labour.

IPEC is now focusing on projects in certain areas of high concentration of child labour. Under an integrated area specific approach to be implemented through the National Child Labour Projects (NCLPs) run by the Government in different states. The ILO believes that the progressive elimination of child labour is possible through a change in attitudes on child labour. Poverty is no doubt major cause of child labour but education should be used as an instrument for reducing poverty through human capital development and skills. A unique initiative has been taken by ILO-IPEC by implementing an action programme with the help of Ruchika School Social Service Society, Bhubneshwar for the children who works on the platforms of Railway Stations.54

The UN System is committed to reduce and eventually eliminate child labour in India. For this the UN-Inter-Agency Working Group on Child Labour (IA WG-CL) was formed in September, 1998 which comprises of UNDP, ILO, UNESCO, WFP, UNIFEM and WHO. It is chaired and convened by ILO.

Keeping in view the strategies outlined in the UN position paper on child labour, the IA WG-CL proposes to take following activities ahead:

- Identify areas for collaboration between the UN agencies in current and planned programmes that have bearing on child labour with special focus on the girl child and children in hazardous occupations.
- Prepare a booklet on the work already being done by the various UN agencies that have an impact on child labour.
- Prepare a map indicating areas of work on UN agencies on child labour.
- Launch UN IAWG-CL Home Page.

54 Ibid.
• Sensitize the staff in UN agencies in the country on the child labour issues.
• Media advocacy and awareness raising on the ILO Convention No.182 on the worst forms of child labour, prioritize UN's work to eliminate worst form of child labour.
• Disseminate information and generate public awareness on child labour, particularly on the days like UN Day (October 24th), Children’s Day (November 14th), November 19th (Day of coming into force of ILO Convention N:o.182) and November 20th (UN CRC Day).55

However, the harsh reality is that in India, ratification of International Labour Standards has been effective more as a ‘status symbol’ and for upholding the country’s image abroad rather than for sincere implementation and compliance in practice. The ratification of UN Convention on the Rights of the Child by the Government of India is merely “a window dressing”, says Swami Agnivesh,56 a social reformist, whereas the Constitution provides that state shall endeavor to foster respect for international law and treaty obligation in dealing with organized people, with one another.57 The apex Court in cases such as Mayan Bhai Ishwarlal Patel v. Union of India58 and Vishaka v. State of Rajasthan59 has re-iterated the principle that in the absence of domestic law the contents of international convention and covenants are relevant for the purpose of interpretation of fundamental rights.

55 Ibid.
57 Article 51(c), the Constitution of India, 1950.
58 AIR 1969 SC 783.