Chapter – 3

INTERNATIONAL INSTRUMENTS ON PROTECTION AGAINST CHILD LABOUR

The term ‘child protection’ is referred to protection from violence, exploitation, abuse and neglect\textsuperscript{189a} against children indicated by UNICEF that also covers child labour situation found in many reports, amounting to violations of the child’s right to protection, and in addition ‘being human rights violations forcing these children at risks of shortened lives; poor physical and mental health; educational problem including ‘drop-outs’; poor parenting skill in later life; homelessness, vagrancy and displacement\textsuperscript{189b}, and so on.

In fact as a part to address the challenge, child labour is prohibited under various international instruments, adopted by the United Nations or by the International Labour Organisation.\textsuperscript{189} Some of the important instruments and standards are much focused to worldwide attention.

3:1 The UN instruments:

A. International Bill of Human Rights

The Charter of the United Nations, 1945 was among the basic international instruments by which international protection of human rights and fundamental freedom have been legally recognised more particularly under Articles 13, 55, 56, 62 and 76 with specific functions being mandated. This subsequently led to adoption by the General Assembly and proclaimed on the 10\textsuperscript{th} of December, 1948 the Universal Declaration of Human Rights,

\textsuperscript{189b} ibid
\textsuperscript{189} supra note 45, P-59
1948, that has truly interpreted the UN charter, 1945 of human rights and fundamental freedoms and proclaims, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.\textsuperscript{190}

The Universal Declaration of Human Rights 1948 proclaims two categories of rights. In the first category Civil and Political rights under Articles 3-22, comprise: right to life, liberty and security of persons, freedom from slavery and servitude, freedom from torture or cruelty, inhuman or degrading treatment or punishment, right to recognition as a person before the law and equal protection of law; right to an effective judicial remedy, freedom from arbitrary arrest, detention of exile, right to a fair trial and public hearing by an independent and impartial tribunal, right to be presumed innocent until proved guilty, freedom from arbitrary interference with privacy, family, home or correspondence, freedom of movement and residence, right to own property, freedom of thoughts, conscience and religion, freedom of opinion and expression, right to take part in the govt. of one’s country and to equal access to public service in one’s country.\textsuperscript{190a}

In the second category, the economic, social and cultural rights under Articles 23-27 included: the right to social security, the right to work and free choice of employment, the right to equal pay for equal work, right to form and join trade unions, right to rest and leisure, right to a standard of adequate living for health and well being, right to education, right to participate in the cultural life of the community, right to protection and of the moral and material interests resulting from one’s authorship of scientific, literary and artistic productions.\textsuperscript{190b}

But all these rights contained in the Universal Declaration of Human Rights, 1948 are moral standards because the Declaration \textit{per se} was neither legally binding nor a treaty binding on all member states, however was a

\textsuperscript{190} Rao, Venkateswar, D., Child Rights: A Perspective on International and National Law, 1999, New Delhi, P-132 to 137
\textsuperscript{190a} ibid
\textsuperscript{190b} ibid
benchmark step. So, in order to give legal coverage under international law in 1966, two international Covenants on human rights were adopted; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – both proclaimed and elaborated almost all the rights mentioned in the Universal Declaration of Human Rights. Moreover, an Optional Protocol to the International Covenant on Civil and Political Rights, 1966 also adopted which *inter alia* enables the Human Rights Committee under Art. 28 of the Covenant on Civil and Political Rights, 1966 to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenants.190c

India has ratified both the Covenant on Civil and Political Rights, 1966 and the Covenant on Economic, Civil and Cultural Rights, 1966 on April 10, 1979.191 India is also a signatory to the Universal Declaration of Human Rights, 1948.191aa

The International Covenant on Economic, Social and Cultural Rights, 1966, International Covenant on Civil and Political Rights, 1966 and two Optional Protocols to the International Covenant on Civil and Political Rights, 1966; have given legal validity to the rights proclaimed by the Universal Declaration of Human Rights, 1948. The Declaration and the two Covenants and two Optional Protocols altogether five international instruments are regarded as the International Bill of Rights later came to be known as International Bill of Human Rights – as a milestone in the history of human rights.191ab

It is also noted that most of the rights recognised in the International Bill of Rights 'either directly or indirectly' deal with children though some to

190c. ibid
a greater extent than others as some provisions are particularly or exclusively relevant to children – in the definitional matrix of internationally proclaimed human rights in general and children’s rights in particular.\textsuperscript{191ac}

It may be noted that the International Covenant on Economic, Social and Cultural Rights, 1966 came into force in January, 1976.\textsuperscript{191ad} This Covenant commits “countries to protect their young from economic exploitation and from employment, which hurt morals, health and normal development, and to age limits below which paid child labour would be prohibited or punishable by law\textsuperscript{191ae}, that provided under Art.10(3)\textsuperscript{191af} provisions relating to free primary education”\textsuperscript{191ag} and Art.10 of this Covenant has also been recognised in the Preamble of the CRC, 1989.\textsuperscript{191ah}

Again, the International Covenant of Civil and Political Rights came into force in March, 1976.\textsuperscript{191ai} This covenant also ‘deals with the prohibition of slavery, servitude and forced labour and the protection of minors’\textsuperscript{191aj} Art.8 of the convention also prohibit slavery and the slave trade\textsuperscript{191ak} and Art.7 prohibited torture or cruel, inhuman or degrading treatment or punishment.\textsuperscript{191al}

\textbf{B. United Nations Declaration of the Rights of the Child, 1959}

The United Nations Declaration of the rights of the Child, 1959 as a basic international instrument on the rights of the child, also incorporates in the preamble to the Geneva Declaration of the Rights of the Child, 1924. This background document of 1924 although did not proclaim or imply assumption of obligation by states as such but viewed as a “statement of

\textsuperscript{191ac} supra note 190
\textsuperscript{191ad} UN System in India: Position Paper on Child Labour, United Nations System’s Operational Activities for Development in India, ILO, 1998, P-18
\textsuperscript{191ae} ibid
\textsuperscript{191ag} supra note 191ad
\textsuperscript{191ah} Convention on the Rights of the Child with Optional Protocols, UNICEF, 2007, P-1
\textsuperscript{191aj} supra note 191ad, P-19
\textsuperscript{191ak} ibid
\textsuperscript{191al} supra note 191aa, P-769
\textsuperscript{191al} ibid, P-764
mankind's obligations towards children”\textsuperscript{191a} and that was adopted by the Assembly of the League Nations in the area of the rights of the child. But it is pointed out that “there is no recognition of a child's autonomy, no understanding of the importance of a child's wishes and feelings, and no appreciation of the value of improvement. The child remains an object of concern, rather than a person with self-determination”.\textsuperscript{191b} Of course the document of 1924 has 'set the stage for the progressive development of international norms in the area of the rights of the child' resulted into a significant basis for international instrument under United Nations Declaration of the Rights of the Child, 1959 affirming an inter-relationship.\textsuperscript{191c}

It took around 35 years before children's right received international recognition again\textsuperscript{191d} and in the Preamble of the United Nations Declaration of the Rights of the Child, 1959 stated “mankind owes to the child the best it has to give”. This document adopted ten principles that includes\textsuperscript{192}: 1. non-discrimination; 2. special protection and opportunities and facilities by law and other means to development physically, mentally, merely, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity; 3. the right to name and nationality; 4. the right to the benefits of social security, adequate nutrition, housing, recreation and medical services; 5. the right of a special-needs child to the treatment, education and care required by his or her particular condition; 6. the need for love and understanding so that the child, wherever possible, grows under the care and responsibility of this parents, and in an atmosphere of affection and moral and material security; 7. entitlement to education, which should be free and compulsory, at least in the elementary stages; 8. to be among the first to receive protections and relief; 9. protection against all forms of

\textsuperscript{191b} Freeman, Michael (ed), Children's Rights: A Comparative Perspective, University College, London, 1999, New Delhi, P-3
\textsuperscript{191c} supra note 190, P-137
\textsuperscript{191d} Ibid, P-132 to 137
\textsuperscript{192} supra note 191b, P-2
neglect, critically and exploitation including that associated with employment;
10. protection from practices which may faster racial, religious and other
forms of discrimination.

C. **Supplementary Convention on the Abolition of slavery, the Slave Trade and the Institutions and Practices Similar to Slavery, 1956**

This convention of 1956\textsuperscript{193} came into force in April/1957.\textsuperscript{193a} This convention 'refers to the debt bondage of children'.\textsuperscript{193b} India has ratified this convention on 23 June, 1960.\textsuperscript{193bb} Article 1 of it requires state parties to take: “all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment” of such institutions or practices. This also provides “an institution or practice” whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.\textsuperscript{193c}

Reports submitted by state parties under Art.8 of the Convention are reviewed by the Working Group of Slavery.\textsuperscript{193d}

It may be noted that earlier to this Convention, under the League of Nations, the International Slavery Convention was adopted on September 25, 1926 that came into force on March 7, 1927 which under Art.1 in Paragraph-1 defined as the status or condition of a person as that over whom any or all of the powers attaching to the right of ownership exercised. Slave trade defined by the convention of 1926 as that of all acts involved in the capture, acquisition or disposal of person with intent to reduce him to slavery, acquisition and sale as slaves or exchange and every act of trade or transport in slaves. In 1953 the Protocol amending the slavery convention transferred to the United Nations and adopted by the General

\textsuperscript{193. supra note 191af, P-59}
\textsuperscript{193a. supra note 191ad, P-19}
\textsuperscript{193b. Ibid}
\textsuperscript{193c. supra note 191af, P-59 to 60}
\textsuperscript{193d. Ibid, P-64}
Assembly on October 23, 1953 which came into force in December, 1953. The Supplementary Convention, 1956 subsequently followed.

D. Convention for the Suppression of the Traffic of Persons and of the Exploitation of Prostitution of Others, 1949

This convention adopted by the UN General Assembly in Dec/1949.194 This convention came into force in July, 1951.194a India ratified the convention in January, 1973.194b As per Article 1 of the convention the state Parties agreed to punish any person who procures or entices or leads away another person for the purpose of prostitution even with the consent of that person and exploit the prostitution of another person even with the consent of that person.194c Under Art.2 of the convention the State Parties also agreed to punish any person who (a) Keeps or manages, or knowing finances or takes parts in the financing of a brothel; (b) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.194d It is also noted that each party to the Convention agreed to take steps to 'repeal or abolish any existing law, regulations or administrative provision by virtue of which persons are engaged in such activities'.194e


The Convention on the Rights of the Child, 1989 (i.e. CRC) was adopted by the General Assembly of the United Nations on the 20th November 1989.195 It is one of the most widely accepted UN instruments ratified by most of the developed as well as developing countries of the world.195a India has ratified CRC on the 11th December 1992.195b The CRC consists of a Preamble and 54 Articles altogether.195c

194. supra note 191aa, P-771
194b. supra note 191aa, P-772
194c. ibid, P-771
194d. ibid
194e. ibid
195. supra note 191ah
195a. supra note 22, P-23
195b. supra note 191ad, P-IV
195c. ibid, P-1 to 20
The convention prescribes standards to be adhered to by all state parties in securing the best interest of the child and outlines the fundamental rights of children, including the right to be protected from economic exploitation and harmful work, form all forms of sexual exploitation and abuse and from physical or mental violence, as well as ensuring that children will not be separated from their families against their will.  

As per the objectives of CRC children's (a) right to survival, (b) right to protection, (c) right to participation and (d) right to development would have to be ensured.

It may be explained that the convention contains:

1. General rights: These encompass the right to life, the prohibition against torture, freedom of expression, thought and religion, the right to information and privacy.

2. Rights requiring protective measures: These include measures to protect children from economic and sexual exploitation, prevent drug abuse and other forms of neglect and abuse.

3. Rights concerning the civil status of children: These include the right to acquire nationality, the right to preserve one's identity, the right to remain with parents (unless either best interests dictate otherwise) and the right to be reunited with their family.

4. Rights concerned with development and welfare: Those include the child’s right to a reasonable standard of living, to health and basic services, the right to social security, to education and to leisure.

5. Rights concerning children in special circumstance or 'in especially difficult circumstance': These extend to such children as children with special needs, refuge children and orphans. There are special regulations on adoption, the cultural concerns of minority and indigenous children and rehabilitative care for children suffering on the recruitment of soldiers less

195d. supra note 22, P-24
195f. supra note 191b, P-3 to 4
than 15 years of age.

In certain important provisions of CRC stated\textsuperscript{195g}: Under Art.19(1) that "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, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the case of parent(s), legal guardian(s) or any other person who takes the care of the child"; Art.32 recognises the right of the child to be protected from economic exploitation and any work that is likely to be hazardous, to interface with child's health or physical, mental, spiritual, moral or social development; Art.33 for preventing children in illicit production, and trafficking of drugs; Art.34 requiring protection against all other forms of exploitation prejudicial to any aspects of the child's welfare; Art.28 confirming a child's right to education; and Art.39 provides measures to promote the physical and psychological recovery and social integration of child victims.

According to Art. 1 of the CRC 'a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. Art.4 of the Convention also pledges states to translate all the rights set out in the convention into reality\textsuperscript{195h} and Art.12 requires the state policies to assure the child, capable of forming his or her own views freely in all matters affecting the child with an opportunity to be heard in any judicial and administrative proceeding affecting him or her that is, recognising the child as a full human being, with integrity and personality, and with the ability to participate fully in society.\textsuperscript{195i} Besides, Art.2 provides for 'non-discrimination; Art. 3 on protecting best interest of the child'; Art.6 for protecting 'the right to life, survival and development'; and Art.12 as noted above 'respect for the views of the child'.\textsuperscript{195j}

\textsuperscript{195h} supra note 191b, P-3 to 4
\textsuperscript{195i} ibid
\textsuperscript{195j} supra note 191af, P-148

This Optional Protocol to CRC was adopted in May 2000\textsuperscript{195k} and entered into force on 18 January 2002.\textsuperscript{195L} India has ratified this on 16 August, 2005. This protocol has called for a special emphasis on Article 1,11,21,32 to 36 of CRC among other provisions and also called for elimination of sale, prostitution and pornography of children by adopting holistic approach. State parties are pledged to prohibit the sale, prostitution and pornography of children under Art.1 while in Art.2(b) stated child prostitution means use of child in sexual activities for remuneration or any other form of consideration. It has called for preventing such activities under criminal or penal law under Art.3 while appropriate measures for child victims under Art. 8 and Art.12 stated for ‘providing comprehensive information’ on implementation. This Protocol also complements ILO Convention No.182 on the ‘Prohibition and Immediate Action’ for the Elimination of the Worst Forms of Child Labour.\textsuperscript{195m} Besides, this Protocol also called for criminalisation of such practices.

G. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

This Optional Protocol was adopted in May 2000 and enforced on 12 February, 2002.\textsuperscript{195n} India ratified this protocol on 30 November, 2005.\textsuperscript{195o} This Protocol besides expressing concern over participation of children in both international and non-international armed conflict has also put greatest concern that “the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a state, and recognising the responsibility of these who recruit, train and use children in this regard” and being ‘mindful’ to ‘the economic, social and political root causes of the involvement of children in armed

\textsuperscript{195L}. supra note 191ah, P-21
\textsuperscript{195m}. Ibid, P-22
\textsuperscript{195n}. supra note 195k, P-39
\textsuperscript{195o}. supra note 195g, P-IV,30 to 35
conflicts' and also concern for 'physical and psychological rehabilitation and social reintegration' of such victim children.\textsuperscript{195p}

State parties to ensure 'those who have not obtained the age of 18 years do not take a direct part in hostilities' under Art. 1 and 'not compulsorily recruited' in armed forces, however calls for raising minimum age for voluntary recruitment as set out in Art.38, paragraph 3 of CRC. It has called for 'legal measures necessary to prohibit and criminalise such practices' under Art. 4 against armed groups.\textsuperscript{195q}


The Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the UN General Assembly on 18\textsuperscript{th} December 1979 and came into force on September 3, 1981 which was ratified on 30\textsuperscript{th} June 1993 by India.\textsuperscript{196} It is noted that the Charter of the UN reaffirmed faith 'in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women'.\textsuperscript{196a} This convention obviously covers and applicable to girls under 18 years\textsuperscript{196b} also. Art.6 of CEDAW pledged for the state parties to 'suppress all forms of traffic in women and exploitation of prostitution of women' among others; Art.10(f) called for appropriate measures for the reduction of female student drop-out rates or those have left school prematurely; Art.16(2) attempted to prevent child marriage stating that 'the betrothal and the marriage of a child shall have no legal effect' and legal measures to be taken by state parties 'to specify minimum age for marriage'.\textsuperscript{196c}

It may be also noted\textsuperscript{196d} that the General Assembly of the UN has also adopted at the end of 2000 to strengthen 'this action against the scourge of

\begin{footnotes}
\footnote{195p. ibid, P-30,31}
\footnote{195q. ibid, P-31,32}
\footnote{196. Sharma, Usha, Female Labour in India, 2006, P-45}
\footnote{196a. ibid}
\footnote{196b. supra note 22, P-24}
\footnote{196d. supra note 195k, P-38,64}
\end{footnotes}
exploitation of children’ but have not yet entered into force, include are: The convention against Transnational Organised Crime; The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; and The Protocol Against the Smuggling of Migrants by Land, Sea and Air.

3:2 The ILO instruments:

The ILO has adopted a good number of Conventions and Recommendations in the area of child labour since its inception in 1919 – that could be categorized in some ways such as, relating to age, night work and medical examination of young persons. India has notably ratified and implemented six ILO Conventions relating child labour as are:

- Minimum Age (Industry) Convention, 1991 (No.5);
- Minimum Age (Trimmers and Stokers) Convention, 1921 (No.15);
- Minimum Age (Underground Work) Convention, 1965 (No. 123);
- Night Work of Young Persons (Industry) Convention, 1919 (No.6);
- Night Work of Young Persons (Industry) Convention (Revised), 1948 (No.90);
- Medical Examination of Young Persons (Sea) Convention, 1921 (No.16).

Most significantly among ILO instruments, of recent time are the Worst Forms of Child Labour Convention 1999 (No. 182) and the Recommendation No. 190 (1999) supplementing the Worst Forms of Child Labour Convention. The other important instruments include The Minimum Age Convention, 1973 (No.138) and Minimum Age Recommendation, 1973 (No.146) concerning Minimum Age for Admission to Employment. Some of the highlights are indicated below.

A. Worst Forms of Child Labour Convention, 1999 (No. 182)

This Convention was adopted on June 17, 1999 by the General Conference of the ILO and entered into force on November 19, 2000 and only within a period of two years after adoption, as many as 100 countries in

197b. supra note 36, P-121 to 133
a record rate ratified the convention (No. 182) by September 2001 (including Bangladesh, Pakistan, Sri Lanka etc. with United States and United Kingdom)\textsuperscript{198}, however India has not yet ratified.

Among the important provisions\textsuperscript{198a}; it applies equally to boys and girls under the age of 18 (Art. 2) without flexibility clauses; as distinguished from ILO Convention No. 138, the worst forms of child labour constitutions, viz. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory labour, including forced compulsory recruitment of children for use in armed conflict (Art. 3a); the use, procuring of offering of a child for prostitution, for the production of pornography or for pornographic performances (Art. 3b); the use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs; work by its nature or circumstance, likely to harm the health, safety or morals of children (Art. 3d) that should be determined by the competent national authority after consultation with organizations of employers and workers (Art. 4), in particular with reference to Paragraph 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190) states that about 'hazardous work'; design, implement and monitoring programme of action to eliminate the worst forms of child labour (Art. 5) and on a priority basis (Art. 6); most importantly taking measures by member states ensuring implementation and enforcement including penal and other sanctions, time bound measures to prevent and remove children from Worst Forms of Child Labour for rehabilitation and social integration, access to free basic education, attending special needs of girls and other children at special risk and state to designate competent authority in this regard (Art. 7); and member states to assist one another in giving effect to this convention including support for social and economic development poverty eradication programmes and universal education (Art. 8).

\textsuperscript{198. ibid, P- 21,72,121}

\textsuperscript{198a. ibid, P-20,21,34,72,79,121 to 123}
Importantly enough at the outset, Art. 1 provides each ratifying member to take 'immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as matter of urgency'.

**B. Worst Forms of Child Labour Recommendation, 1999 (No. 190)**

This Recommendation of ILO supplements the Worst Forms of Child Labour Convention, 1999 (No. 182). 199

Paragraph 3 of this recommendation states about 'hazardous work' and for the purpose of Art.3(d) of ILO convention No.182 includes 199a: work which exposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools or carrying heavy loads; work in an unhealthy environment like, exposure to hazardous substance, agents or processes, or to temperatures, noise levels or vibrations damaging to health; work under difficult conditions like, work for long hours, night work, and unreasonable confinement to the premises of the employer.

Paragraph 2 of this Recommendation (No. 190) with particular reference to Art.6 of the ILO convention (No.182) for 'programme of action' *inter alia* should remarkably be aimed to: prevent the engagement of children and remove from worst forms; protect from reprisals and providing their rehabilitation and social integration; identifying communities where children are at special risk with special attention to younger children, girl child, hidden work situations and children with special vulnerabilities and risks; and sensitizing concerned groups, mobilizing public opinion. 199b

Paragraph 4 besides protecting health, safety and morals recommended also laws or regulations for specific instruction of vocational training for children from the age of 16 years.

Paragraph 5 to 16, *inter alia* also attract that: all forms of slavery, child prostitution or use for illicit activities as criminal offences (paragraph-12);

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199. ibid, P-86
199a. ibid, P-34,79
199b. ibid, P-34,42
criminal penalties (paragraph-13) for violation of Art. 3(d) of the Convention (No.182); as a matter of urgency to ensure enforcement, to provide criminal, civil or administrative remedies (paragraph-14); for sensitizing, trainings of officials and concerned civil society, monitoring and publicity to 'best practices', complaint procedures, educational infrastructure and training of teachers, job creations and vocational trainings of parents and guardians sensitizing for elimination of child labour (paragraph-15); enhanced co-operation and assistance among members (paragraph-16), monitor, co-ordinate for implementation (paragraph-7,8); ensuring competent authority, determining those involved under national laws and members to co-operate in prosecuting those responsible (paragraph-9,10,11) while others also included information and data for communication with ILO on regular basis (paragraph-5,6 & 7).\textsuperscript{199c}

C. Minimum Age Convention, 1973 (No.138)

This Convention was adopted on June 26, 1973 by the ILO with a view to achieving the total abolition of child labour stated in the Preamble and covers minimum ages below, which no child should, required to work.\textsuperscript{200} India has not yet ratified.\textsuperscript{200a}

Certain notable provisions indicated\textsuperscript{200b} are: undertaking national policy for effective abolition of child labour and raise minimum ages consistent with fullest physical and mental development of young persons (Art.1); minimum ages should not be less than the age of completion of compulsory schooling and not less than 15 years (Art. 2.1 and 2.3); in work by nature of circumstances likely to jeopardize health, safety or morals, not less than 18 years (Articles 3.1 and 3.3); age could be lower in certain circumstances for a country 'whose economy and educational facilities are insufficiently developed' initially to a minimum age of 14 years (Art.2.4) but to be indicated

\textsuperscript{199c} ibid, P-34,86 to 88
\textsuperscript{200} ibid, P-71,124
\textsuperscript{200a} supra note 197, P-65
\textsuperscript{200b} Eliminating the Worst Forms of Child Labour, A Practical Guide to ILO Convention No.182, Handbook for Parliamentarians, No.3, ILO-IPU, 2002, P-124 to 127; and also Sharma, Usha, Child Labour in India, 2006, P-61 to 63
in report and when to renounce; in hazardous work may be lowered on condition of protected health, safety and morals to 16 years (Art.3.3) on receiving trainings, however does not apply to schools or such other training institutions or in undertaking for those at 14 years of age under conditions prescribed by authority (Art.6); permitted 'light work' under national laws and regulations between 13 to 15 years of age (however 12 to 14 years for states having specified a general minimum age of 14 years) which is 'not likely harmful to their health and development' and not prejudices school attendance or training (Art.7); exception to be permitted in individual case in artistic performances (Art.8); exclusion in limited categories of work where 'special and substantial problems of application arise' after consultation provided danger to health, safety and morals must not be involved (Art.4).

Most importantly Art.9 of this Convention provides, necessary measures including 'appropriate penalties' for effective enforcement; define the persons responsible for compliance; and 'registers or other documents kept and made available by the employer' regarding almost every detail of workers employed at less than 18 years.200c

**D. Minimum Age Recommendation, 1973 (No. 146)**

This Recommendation was adopted by the General Conference of the ILO on June 26, 1973 and supplements the Minimum Wage convention, 1973 stated in 'the Preambular part'.201

Under this document201a Chapter 1 provides for the national policy with measures for 'physical and mental growth for children and young persons. At same level fixed minimum age for all sectors of economic activity including plantations and agriculture under chapter II. In Chapter III raising of minimum age for hazardous employment or work for those below 18 years and appropriate minimum ages where not so fixed. In Chapter IV for those below 18 years, satisfactory standard under paragraph 12 and special

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200c. supra note 195k, P-127 (in Article 9)
201. ibid, P-130 to 133
attention under paragraph 13 like fair remuneration, equal pay, limitation of hours of work, rest, holidays, social security schemes, safety and health, appropriate instruction and supervision to be maintained.

But most importantly, chapter V of this Recommendation provides for 'enforcement for effective implementations, strengthening labour inspection and services and training 'to detect abuses in the employment or work of children and young persons and to correct such abuses' (Paragraph 14.1.a) among others; special attention to hazardous work or employment taking account of compulsory training and education of working children or young persons (Paragraph 15); special attention to birth registration and certificates, register and documents duly certified on employed children and young persons (Paragraph 16.a.b) and "children and young persons working in the streets, in outside stalls, in public places, in itinerant occupations or in other circumstances which make the checking of employees' records impracticable should be issued licenses and other documents indicating their eligibility for such work" (Paragraph 16.c).\textsuperscript{201b}

**E. Forced Labour Convention, 1930 (No.29)**

This Convention was adopted by the General Conference of the ILO on the 20\textsuperscript{th} day of June, 1930.\textsuperscript{202} India has also ratified this Convention.\textsuperscript{202a}

Under Article 1, the ratifying states undertake to suppress the use of forced or compulsory labour in all its forms. Article 2(1) of it stated the 'term forced or compulsory labour' shall mean all work or service which is extracted by any person under the menace of and penalty and for which the said person has not offered voluntarily, with certain exceptions to governmental action. Article 4(1) stated that the 'competent authority' shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations. Article 11(1) strongly prohibits forced or compulsory labour against those less than 18 years including pupils of schools (Art.11.1.b), among others.

\textsuperscript{201b} supra note 195k, P-133
\textsuperscript{202} http://www.filocarb.org.tt/projects/cariblex/index.shtml
\textsuperscript{202a} http://labour.nic.in/welcome.html
## List of International Labour Organisation Conventions Ratified by India

<table>
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<td>3</td>
<td>No.4 Night Work (Women) Convention, 1919</td>
<td>14.07.1921</td>
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<td>4</td>
<td>No.5 Minimum Age (Industry) Convention, 1919</td>
<td>09.09.1955</td>
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<td>5</td>
<td>No.6 Night Work of Young Persons (Industry) Convention, 1919</td>
<td>14.07.1921</td>
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<td>6</td>
<td>No.11 Right of Association (Agriculture) Convention, 1921</td>
<td>11.05.1923</td>
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<td>No.14 Weekly Rest (Industry) Convention, 1921</td>
<td>11.05.1923</td>
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<td>8</td>
<td>No.15 Minimum Age (Trimmers and Stokers) Convention, 1921</td>
<td>20.11.1922</td>
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<td>No.16 Medical Examination of Young Persons (Sea) Convention, 1921</td>
<td>20.11.1922</td>
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<td>10</td>
<td>No.18 Workmen's Compensation (Occupational Diseases) Convention, 1925</td>
<td>30.09.1927</td>
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<td>11</td>
<td>No.19 Equality of Treatment (Accident Compensation) Convention, 1925</td>
<td>30.09.1927</td>
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<td>No.21 Inspection of Emigrants Convention, 1926</td>
<td>14.01.1928</td>
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<td>No.22 Seamen's Articles of Agreement Convention, 1926</td>
<td>31.10.1932</td>
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<td>14</td>
<td>No.26 Minimum Wage-Fixing Machinery, Convention, 1928</td>
<td>10.01.1955</td>
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<td>15</td>
<td>No.27 Marking of Weight (Packages Transported by Vessels) Convention, 1929</td>
<td>07.09.1931</td>
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<td>No.29 Forced Labour Convention, 1930</td>
<td>30.11.1954</td>
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<td>17</td>
<td>No.32 Protection Against Accidents (Dockers) Convention (Revised), 1932</td>
<td>10.02.1947</td>
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<td>No.41 Night Work (Women) Convention (Revised), 1934</td>
<td>22.11.1935</td>
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<td>No.42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934</td>
<td>13.01.1964</td>
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<td>No.45 Underground Work (Women) Convention, 1935</td>
<td>25.03.1938</td>
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<td>21</td>
<td>No.80 Final Articles Revision Convention, 1945</td>
<td>17.11.1947</td>
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<td>No.81 Labour Inspection Convention, 1947</td>
<td>07.04.1949</td>
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<td>No.88 Employment Services Convention, 1948</td>
<td>24.06.1959</td>
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<td>No.89 Night Work (Women) Convention (Revised), 1948</td>
<td>27.02.1950</td>
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<td>No.90 Night Work of Young Persons (Industry) (Revised), 1948</td>
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<td>26</td>
<td>No.100 Equal Remuneration Convention, 1951</td>
<td>25.09.1958</td>
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<td>27</td>
<td>No.107 Indigenous and Tribal Population Convention, 1957</td>
<td>29.09.1958</td>
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<td>No.111 Discrimination (Employment &amp; Occupation) Convention, 1958</td>
<td>03.06.1960</td>
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<td>No.116 Final Articles Revision Convention, 1961</td>
<td>21.06.1962</td>
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<td>No.118 Equality of Treatment (Social Security) Convention, 1962</td>
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<td>No.123 Minimum Age (Underground Work) Convention, 1965</td>
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<td>No.115 Radiation Protection Convention, 1960</td>
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<td>No.141 Rural Workers' Organisation Convention, 1975</td>
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<td>No.144 Tripartite Consultation (International Labour Standards) Convention, 1976</td>
<td>27.02.1978</td>
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<td>No.136 Benzene Convention, 1971</td>
<td>11.06.1991</td>
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<td>No.160 Labour Statistics Convention, 1985</td>
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<td>No.147 Merchant Shipping (Minimum Standards), 1976</td>
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<td>38</td>
<td>No.122 Employment Policy Convention 1964</td>
<td>17.11.1998</td>
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<td>39</td>
<td>No.105 Abolition of Forced Labour, 1957</td>
<td>18.05.2000</td>
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<td>40</td>
<td>No.108 Seafarers' Identity Documents Convention, 1958</td>
<td>07.01.2005</td>
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<td>41</td>
<td>No.174 Prevention of Major Industrial Accidents</td>
<td>06.06.2008</td>
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</table>

Protocol 1

P89 Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948

* Later denounced. The Convention requires, internal furnishing of statistics concerning unemployment every three months which is considered not practicable.

* Convention denounced as a result of ratification of Convention No.89.

** Excluding Part II.

# Branches (c) and (g) and Branches (a) to (c) and (l).

@® Minimum Age initially specified was 16 years but was raised to 18 years in 1989.

@@ Article 8 of Part – II.

Source: http://labour.nic.in/welcome.html; MOLE, Government of India
F. Abolition of Forced Labour Convention, 1957 (No.105)

This Convention was adopted by the General Conference of ILO on the 25th day of June, 1957. India has also ratified this Convention. As per this Convention the ratifying state undertakes to 'suppress and not to make use of any form of forced or compulsory labour: as a means of political coercion or education or as a punishment for holding or expressing political views for ideologically opposed to established political, social or economic system; mobilising or using labour for economic development; means of labour discipline punishment for participation in strikes; and as a means of racial, social, national or religious discrimination (Article 1).

It provides under Article 2 for effective measures by states to 'secure immediate and complete abolition of forced or compulsory labour, as provided under Article 1 of this Convention.

3:3 Summing up:

In the sum up it reveals that among the international instruments, the United Nations has adopted some Conventions which complement the ILO's child labour standards. The most comprehensive of these is the UN Convention on the Rights of the Child (CRC), 1989.

Besides, the international Covenant on Economic, Social and Cultural Rights (CESCR) 1966 and the international Covenant on Civil and Political Rights (CCPR), 1966 also prohibit economic exploitation and commit countries for protection of minors.

Many countries have so far ratified UN Conventions to protect children and prevent from child labour. According to ILO (ILO-IPU:2002) 191 countries have ratified CRC; 145 countries ratified CESCR; 147 countries have ratified CCPR; 119 countries have ratified the Supplementary Convention on the Abolition of Slavery (CAS); and 73 countries have ratified the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (CSTP) as of 18 December, 2001.

204. http://labour.nic.in/welcome.html
India has also ratified all the above mentioned UN Conventions. Besides ratifying the two Optional Protocols of CRC in 2005, earlier India has also ratified Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 that essentially commits countries for welfare and protection of girl children from exploitation. Being a signatory to the Universal Declaration of Human Rights, 1948 and having ratified the UNCRC with an obligation to the principles set out in the Declaration of the Rights of the Child, 1959, the responsibility is quite clear above 'rhetoric'.

But the UNCRC as the most important document in this regard, the 'Committee on Rights of the Child' is lacking strong 'procedure to examine allegations of non-observance' (ILO-IPO:2002:40).

At the same time the ILO Conventions Nos. 138 and 182 are recognised by the ILO to be the priority Conventions and each member state to report on their application to the ILO every two years.

In respect of ILO, it is noted (ILO-IPU:2002:35) that ILO Declaration on Fundamental Principles and Rights at work, adopted in 1998 at 86th session by ILO General Conference at Geneva declares that all ILO Members "even if they have not ratified the conventions in question, have an obligation, by virtue of their membership of the organisation, to respect, promote and realize the principles concerning fundamental rights that include the elimination of all forms of forced or compulsory labour and the effective abolition of child labour.

It is therefore stated (ILO-IPU:2002:37) in a perception of ILO that "all ILO member states, even if they have not yet ratified the ILO's basic child labour conventions (i.e. Convention Nos. 138 and 182), are under obligation to make their best efforts to abolish child labour, and particularly its worst forms. And non-ratifying countries are required to report annually on the efforts that they have made".

On the other hand, although India has ratified the two important ILO Conventions Nos. 29 and 105 on forced labour, however indicated around
15 million victimised as bonded labourer of minor age out of 50-120 million odd child labourer in this country, however 'precise figure unavailable' (Alvtr Sadhwani:2009:5) for weak enforcement and societal reluctance.

Again, among the eight Core Conventions also called fundamental/human rights Conventions of ILO, namely, Nos. 29, 105, 100 and 111 are being ratified by India but the other four ILO Conventions, namely, Freedom of Association and Protection of Right to Organize Convention, 1948 (No.87); Right to Organize and Collective Bargaining Convention, 1949 (No.98); Minimum Age Convention, 1973 (No.138); and Worst Forms of Child Labour Convention, 1999 (No. 182) not yet ratified by India is a major flaw in view of truly checking higher incidence of child labour abuses in this country.

But in fact, the Governing Body of ILO (GB.300/LILS/7) Geneva, November 2007 has stated that out of 181 member states, 127 have ratified all eight fundamental ILO Conventions.

Describing India's position of non-ratification of four of these eight Conventions Nos.87,98,138 and 182, this document (Paragraph 21) quoted at the 95th Session (June 2006) of ILC, “the Government stated that Conventions No.182 would be ratified when national laws and practice were in full conformity with its provisions, and indicated a number of measures being taken in this regard. With respect to Convention No.138, the Government referred to the need to establish conditions ensuring that children are not being compelled by circumstances to seek work and appropriate enforcement machinery. Previously, the Government stated that Convention Nos.87 and 98 could not be ratified, as this would involve granting of certain rights to government employees which are restricted under national legislation in order to ensure their impartiality and political neutrality”.

It therefore hardly manifests the Government of India's clear stand towards ratifying ILO Conventions Nos.182 and 138 more particularly in the near future that pause in overcoming the challenge which is more serious
pro-crime childhood practices in many of the hidden forms.

Again, ratification of ILO Conventions, such as Nos. 138 and 182, involves entering into different and in some cases more specific commitments and agreeing to a possibly stronger system of supervision.

So, India being a premier founder constituent pro-active conviction of ILO towards abolition of child labour demands extended responsibility priority commitment to eradicate worst forms of child labour in the world by the year 2016 that would obviously generate a meaningful compliance to UN Conventions and commitments domestically as well as in the international context of globalisation and preventing crime against child labour abuse.