CHAPTER - V

AN ASSESSMENT
This dissertation focuses on children’s rights and related laws, policies and action plans in the national and international law.

The CRC is not the result of quick action. Before the adoption of CRC, there were many attempts taken under international law. These attempts proved to be more helpful to draft a durable and effective international Convention regarding the rights of children. These were the Declaration of the Rights of the Child, 1924, Declaration of the Rights of the Child, 1959. These instruments also dealt with the issues of children but were not very effective and successful. There was a great need to draft such an international Convention which could prove to be a boon to the rights of children in real sense. It could become possible only after the adoption of CRC in 1989. The drafting was not very easy but finalized after many contradictions, arguments and opposition of states regarding the Convention. But at last, the efforts of the United Nations General Assembly (UNGA) became successful on 20 November 1989, when the CRC was adopted. It entered into force on 2 September 1990. Now it is legally binding on the states party.

The Convention had 54 articles. The provisions of the Convention have tried to include all the aspects of children and their rights. The important provisions are – article 2 (non-discrimination), article 3 (best interests of the child), article 12 (respect for the views of the child), article 6 (right to life, survival and development), article 28 (right to education), article 32 (child labour).

The other important feature of this Convention is that, it has a strong implementing body which acts as a watchdog on the member countries of the Convention regarding its implementation. The convention provides for a “Committee on the Rights of the Child” (CRC Committee) as
implementing body. The role of the Committee is very crucial and significant because it has to give its recommendations and observations on the country reports submitted by the States Parties. So, the implementation mechanism of the Convention is very powerful.

Thus, international law has given a powerful tool in the form of Convention to protect the most beautiful creature of the world i.e., children. Now, it should be the duty of the states parties to implement the provisions of the Convention properly and smoothly after ratification. The governments of each state party should perform the responsibility through its court, law enforcement agencies, legal aid apparatus etc. The development of comprehensive policies should be in such a way whose main focus should be the child not only the compartmentalize issues. This is fact that the unitary law or scheme is not the solution of the problem of children but multiple strategies must be developed. All the laws of the countries relating to children need to be reviewed. The content and infrastructure of the implementation of laws, policies and schemes should be in harmony with the Convention on the Rights of the Child (CRC).

The UNGA extended the obligation of states parties by adopting two Optional Protocols to the CRC – on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. These Protocols adopted in 2000 and entered into force in 2002. India has ratified both the Optional protocols to the CRC in the year 2005. The issues raised in these Protocols are appreciable effort of UNGA. Recruitment of children into the armed forces is completely prohibited. The Protocol on the involvement of children in armed conflict establishes 18 years as the minimum age for compulsory recruitment. Children below the age of 18 years are not supposed to take direct part in armed hostilities. The Protocol on the sale of children, child prostitution and child
pornography considered all these evil activities illegal. These are the sexual exploitation of children carrying out for both commercial and non commercial purposes.

The governments of ratifying countries of the Protocols should take all the possible measures to prevent children from taking part in direct hostilities. It should be the duty of the state officials to command to stop recruitment of children below the age of 18 years into the armed forces. Simultaneously, the governments should take legal measures to prohibit an independent group who uses children in conflicts for their own purposes. Similarly, the States Parties to the protocol should take legal and other measures to control the growing abuse and sexual exploitation in the form of sale of children, prostitution and pornography. At the very first, it should be understood that trafficked persons are human beings and they have human rights too. So, throughout the remedial process, the human rights of trafficked persons should be kept in mind. To solve the problem of trafficking, it is necessary to introduce use of testimony, mandatory reporting laws, delayed discovery statute, expeditious hearings etc. Child prostitution is also a very serious matter. NGOs and poverty alleviation and development programmes of the governments should target those poor families who send their children to earn. There is need of integration and cooperation among various agencies. Bilateral and inter-state control and reintegration and advocacy programmes should be developed to stop forced prostitution and trafficking. There is need to initiate strong and appropriate legislation to make sexual abuse and commercial sexual exploitation a serious and punishable crime. The child pornography is engaging minors in various sexual acts. There should be specific laws which protect children from pornography and also protection from being depicted in them.
As far as India is concerned, children have been given protection in the constitution of India as well as in the statutory laws. India is committed towards the protection of child as well as their rights since ancient times. Children are protected in the constitution of India – in the Fundamental Rights (Part III), in the Directive Principles of State Policy (Part IV) and in the Fundamental Duties (Part IV A). The provisions which talk about the rights of children in the constitution of India are articles 15, 23, 24, 39(e), 39(f) and 45. There are also statutory laws which gives protection to children – Indian Penal code (1860), Guardians and Wards Act (1890), Child Marriage Restraint Act (1929), Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice (Care and Protection) Act 2000 and National Commission for Protection of Child Rights.

Most of the provisions regarding child rights contained in the constitution of India and the statutory laws are not fully implemented. Therefore there is great need of sensitization, commitment, enforcement mechanism and trained personnel. The political will of the policy makers should be improved, the interest of administrative machinery should be developed, there should be budgetary commitment also. The level of awareness is very low among children, which should be created. Awareness regarding rights of children could be raised only after the children’s participation. There should be community understanding and willingness. Awareness of rights and laws is very necessary because sometimes the children even do not know that their rights are getting violated. Indian Penal Code should also deal with the problem of child pornography. The emotions of the child should be considered over the custody and guardianship disputes. The judges deciding the custody and guardianship of children should be experienced and able so that they could
handle such sensitive matters. The judges, staff and other personnel should be child-friendly. The child Marriage Restraint Act, 1929, should be amended. There should be compulsory registration of marriages. All children and their families should be provided medical and community facilities. There is also need to amend Child Labour (Prohibition and Regulation) Act 1986. The Act should include the issues like rehabilitation, education and family income generation schemes. There must be legislative ban on employment of children below 14 years of age. The condition of domestic child labour should be given more emphasis. Great protection should be provided to illegal child labourers. To eliminate and identify bonded child labour, there is need to strengthen district-level vigilance committees. The Juvenile Justice (Care and Protection of Children) Act, 2000, also needs amendments. It should include right to counsel, right to speedy disposal of cases and right to child-friendly proceedings. This Act should provide complaints and prosecution mechanisms to try the cases of custodial abuse of children. Compensation should be provided to the child victims of custodial and institutional abuse.

All the statutory laws, such as Juvenile Justice (Care and Protection of Children) Act, 2000, should be linked to the Probation of Offenders Act 1958, the Child Labour (Prohibition and Regulation) Act, 1986, the Child Marriage Restraint Act, 1929, should be harmonized and interlinked. The different ministries under the Indian government should work in coordination with each other regarding children. The judiciary, ministries, bureaucrats, medical professionals, NGOs, legal activists, police, teachers, lawyers, counsellors, parents and mental health professionals must adopt a coordinated approach on matters concerning children. National Commission for Protection of Child Rights is established on the pattern of other statutory commissions whose nature of work is recommendatory. The
Commission must have the power to give or enforce its own recommendations on the matter concerning child rights. Similarly, the Commission must have the power to initiate enquiries on the complaints received by it. This would enable the Commission to provide protection to children in real sense.

After becoming party to the Convention on the Rights of the Child, India is becoming much more concerned towards the protection and promotion of child rights. India took a number of measures to provide protection to children. Government of India tried to implement the provisions of CRC in various fields related to children. India showed its implementation work in the reports submitted to the Committee on the Rights of the Child. India ratified CRC on 11 December 1992, and submitted initial report in 1997 and second periodic report in 2001. These two reports reveal that the government had tried to review the situation of children in the country in accordance with the provisions of the Convention. The primary focus of initial report is on the civil rights and freedoms and special measures of protection to children. National plan of action has been an important tool to monitor the progress in the country. The second report is more comprehensive and gives detailed explanation of all the efforts and measures undertaken by India towards protection and promotion child rights. The priority issues dealt with the report are Universal Elementary Education(UEE) giving special focus on female literacy, Integrated Child Development Services(ICDS), Sarva Shiksha Abhiyan(SSA), survival, children, health, nutrition eradication of malnutrition, micro-nutrient deficiencies, prevention of trafficking of children, eradication of child labour, family environment and alternate care, special protection measures etc. According to the report, prime minister announced Nutrition Mission on 15 August 2001. Establishment
of National Commission for Protection Child Rights (NCPCR) is another positive effort in the direction of children's rights. All these efforts are a testimony to the government's commitment towards child protection.

However, India still needs to bring some changes in the laws, policies, schemes, action plans and should try something more than that to transform all the laws, policies etc. into reality. There is great need to improve the life of the child in the family and Community; otherwise all its efforts would be meaningless. There should be control on poverty and children should be given facilities to lead a proper life. There should be awareness campaigns throughout the country so that children would participate in all the activities related to them. Time to time amendment of laws is necessary. Courts should play an important role in promoting the rights of children. The interests of the child should be represented separately in the courts. No doubt NGOs play a critical and significant role in protecting rights of children, they must ensure effective assertion of the rights of children. They must search the ways of using regional human rights machinery to address the problem of children at the regional level. NGOs including law-enforcing agencies, police, judiciary, lawyers, doctors and so on should be trained. Whatever be the measures, the main aim of the efforts should be the protection and promotion of child rights with the aim of transforming paper laws into reality.

In conclusion it could be said that after becoming party to the Convention on the Rights of the Child India has made a number of attempts(and is still making) to bring the country up to the standards and levels of International law regarding protection, promotion and the fullest development of children and their rights. India needs to do many more things to remove gaps in the domestic implementation of CRC.