CHAPTER - I

CONVENTION ON THE RIGHTS OF THE CHILD (CRC): DRAFTING, PROVISIONS AND IMPLEMENTATION MECHANISM
Adoption of the Convention on the Rights of the Child (CRC) is one of the positive efforts taken by international community. Actually, international law has always kept the vulnerable groups under consideration. No doubt children are one of the vulnerable groups of society. With a view to improve the daily lives of children as well as to stop the violations of their rights, international law brought a Convention on the Rights of the Child i.e. CRC. The United Nations General Assembly (UNGA) adopted CRC on 20 November 1989, which entered into force on 2 September 1990. Convention on the Rights of the Child was adopted unanimously.

The establishment of a legally binding international instrument for the protection of children worldwide is the aim of increased awareness regarding the problems of children. They are socially and physically backward section of society. Children suffer from all forms of violence and exploitation in different areas – labour, sexual, mental, emotional, torture, inhuman or degrading treatment, etc.¹

The international efforts of providing protection to children started in the late 19th and 20th centuries. Now there are a number of international instruments which talk in one way or another concerning child rights. But CRC is proved to be more effective covering the full range of human rights – social, economic, civil, cultural, and political rights. The CRC is not adopted suddenly but took 10 years in drafting with its historical background.²

² Ibid., pp.191-193.
Drafting

The beginning of the 20th century witnessed the development of international law on the rights of the child and the general body of international human rights law. The development of both bodies of law can be divided into three stages. In the first stage, the international community recognized that all individuals including children were the objects of international law needed legal protection. The second and third stages are still developing. According to second stage, specific substantive rights should be given to individuals including children. The third stage acknowledged that individuals should not only exercise their fundamental rights but also should have the capacity to claim their other rights and freedoms.3

In older times, children were not supposed to exercise all human rights equivalent to adults. Gradually, issue rose over the concept that, should children exercise all human rights? Different opinions came out over the application of human rights to children. Some regard that civil, social and cultural rights are not applicable to children but some regard economic and political rights as inapplicable to children. According to Gooneskeres's argument, children are not capable of having political rights.4

Before the adoption of CRC, many other human rights instruments were adopted which also protect the rights of children. These human rights instruments provided noble path to the adoption of CRC. In other words, it

can be said that, the task of CRC has become easy after these human rights instruments like Declaration of the Rights of the Child (DRC) 1924, Declaration of the Rights of the Child 1959, Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) 1979. It shows that international law is working in the right direction to provide legal protection to the rights of children at the national as well as international level since 1924.

The Declaration of the Rights of the Child 1924

The first international instrument concerning the issue of children’s rights was the Declaration of the Rights of the Child (DRC). The fifth Assembly of the League of Nations adopted this Declaration in 1924. It was the very first effort of international community besides the historical diplomatic invisibility of children. The claim established by the Declaration is “mankind owes to the child the best it has to give”. It means that, human beings are under obligation to give children the best thing as much as they can. The human beings should provide all the things to children through which children could exercise their rights.5

The Declaration provided five principles which proved to be helpful in exercising the rights of children:-

(i) The child must be given the means requisite for its normal development, both materially and spiritually.

(ii) 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 child must be reclaimed; and the orphan and the ‘waif’ must be sheltered and succoured.

5 Van Bueren, n.4, p. 7.
(iii) The child must be the first to receive relief in times of distress.

(iv) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation.

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

The Declaration of the Rights of the Child 1924 is very important because, it highlights the economic and social rights of children. It also established the concept of children’s rights at the international level. Thus, DRC, 1924, is the first instrument at the international level which highlighted the issues, problems and concepts of children’s rights.

**Declaration of the Rights of the Child (DRC) 1959**

The principles in the preamble of the DRC, 1959 are called enunciating rights and freedoms. The governments should observe these rights and freedoms by legislative and other measures. The preamble of the 1959 Declaration gives reference to the United Nations Charter as well as Universal Declaration of Human Rights. The preamble includes the safeguards, care, legal protection etc. needed by children. It also repeats the same pledge that, ‘mankind owes to the child the best it has to give’. The DRC 1959 prescribes duty to the voluntary organizations and local authorities to work hard for observing the rights of children. The DRC 1959 highlighted the role of voluntary organizations because they really play instrumental role in chasing governments for providing legal protection to children’s rights.\(^7\)

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\(^6\) Bajpai, n.3, p.15.

\(^7\) Bajpai, n.3, p.16.
The Declaration consists of ten (10) Principles along with the preamble. The Principle 2 of the Declaration states that, the best interests of the child shall be the paramount consideration. By applying this principle, children will be provided special protection. There is a clause in Principle 2 which contains the provision of non-discrimination. According to Principle 3 a child has been given the right to a name and nationality. Principle 4 deals with the nutrition, housing, recreation and medical services. Principle 5 draws attention towards the physically, mentally and socially handicapped children. Principle 6 deals with the children who are without family. Principle 7 deals with an important aspect for children's life, education including play and recreation. There is a slight difference between the principles of DRC 1924 and DRC 1959 because DRC 1924 clarifies that, 'children must be the first to receive relief,' on the other hand DRC 1959 lays down that, 'children shall be among the first to receive protection and relief.' This approach is much more realistic because lives of many children could be saved if relief will be given first to an appropriate adult like doctor. Thus, it was only on 20 November 1959, a very important and specific Declaration on the Rights of the Child was adopted at the international level by the United Nations General Assembly. These two Declarations gave the way to adopt a more appropriate and effective instrument for the protection of children as well as their rights at the international level.

**Convention on the Rights of the Child (CRC) 1989**

The CRC is one of the recent treaties among all human rights treaties for children. The CRC recognize that all individuals including children have a status under international law and the states will agree to

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8 Ibid.
sign the treaty to implement rights to all, including children. The member states of the UN were not in favour of a binding treaty. They opposed the adoption of a binding treaty on the Rights of the Child. But the mind of the States changed in 1979 (International Year of the Child) and they withdrew their opposition. Twenty years were taken in drafting CRC, because States were not enthusiastic in supporting the adoption of a binding treaty for children. States didn’t take the Convention as a high priority during the drafting time. At the same time the negotiation on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. 1984 was proceeding on, sometimes even in the rooms of same corridor. State delegates were supposed to move from one treaty working group to the other discussing on the provisions of Torture Convention and CRC. The Convention’s main emphasis was on economic, social and cultural rights but the final drafting was beyond its original draft. Because state delegates realized the importance of their work hence Convention developed its own momentum.9

It is very important to see Poland’s role for raising the issues of child rights and hence call for a binding treaty for them. It is noted that there was always East-West tension, still Poland’s resolution for a separate Convention on the Rights of the Child shows the importance of children and their rights throughout the world. The question comes that what is the reason of changing mind besides East-West tension at the UN? Actually there are seven reasons for the international change of mind. Firstly, there was changing attitude of states towards the status of children in their national laws. Simultaneously, Declarations of the Rights of the Child were not very effective towards the needs of world’s children. These

9 Van Bueren, n.4, p.12.
Declarations were completely silent over the civil and political rights of children. Secondly, States had realized that there is need of an instrument which will not only prohibit the discrimination against children and denial of their rights but will also work for other sections of global community such as women and refugees. Third reason was that, children need a higher standard of protection and additional rights. Fourthly, interpretation of some principles was required for the effective application of the rights of children, like evolving capacities and best interests of the child. The fifth reason, why states need such a Convention was that 20 years had passed and no specific decision was being taken regarding the convention for the protection of rights of children. So, there was great need for uniformity in international standards. According to the sixth reason, the two Declarations and the two international Covenants i.e. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights had not provided adequate safeguard to children. Thus, the drafters of the Convention on the Rights of the Child aimed to provide a comprehensive document which will be obtainable for children as well as those working in the field of children. Last but not the least reason was that the UN had celebrated 1979 (20th anniversary of DRC) as the International Year of the Child. It acted as a magnet for states hence drew attention towards the idea of a Convention.¹⁰

The DRC is said to be the parent of the CRC. The text submitted by Poland was very much similar to the 1959 Declaration. It was the first draft of the Convention submitted by Poland in 1978 to the Commission on

¹⁰ Ibid., pp.13-14.
Human Rights. The aim of Poland behind this submission was to celebrate the International Year of the Child in 1979.\footnote{Ibid.,p.14.}

It was the duty of the Secretary General to gain views, observations and suggestions from member states of the United Nations on the request of the Commission on Human Rights. The Secretary General collected 28 replies from member states, 4 from Specialized Agencies and 15 from NGOs. UNICEF which is regarded as the leading agency didn’t submit any observations. According to the replies given by member states, Specialized Agencies and NGOs, a Professional Working Group was established to draft the CRC by the Commission in 1979. Even the States which were not members of the Commission on Human Rights, were allowed to participate. In the beginning the Polish text was the basic working document but along with the development states wished to expand the Polish text. The Chairman Adam Lopatka accepted that the drafting depends upon the working text which would attract a majority opinion. Sometimes UN texts of the NGOs were considered as the basic working text. There was great contribution of NGOs which was later recognized by the state members as well as by the Chairman. The NGOs divided themselves into adhoc groups to help in drafting with their proposals and got success. This success proved that the making of international law is not a closed process but an open one. The first reading of the Convention completed in February 1988. Twelve (12) meetings held from 28 November to 9 December including UN delegates on Saturday, completed the second reading. The Working Group brought many significant changes during the second reading of the Convention.\footnote{Ibid.}
Finally report of the Working Group considered 54 articles including preamble after establishing 16 drafting groups. But the main aim of the Working Group was to complete the second reading to save the momentum. Some of the main issues related to children had not been discussed like medical treatment etc. After doing amendment, the Working Group finally adopted report on 21 January and then sent to the Commission on Human Rights. The report was under consideration of General Assembly. The General Assembly adopted the Convention on the Rights of the Child (CRC) on 20 November 1989 and the Convention entered into force on 2 September 1990. Now the challenge is to implement the Convention effectively.\textsuperscript{13}

The CRC is the first international instrument for the protection of children's rights. The Convention is legally binding treaty covering the full range of human rights i.e. civil, political, social, economic and cultural rights. Before the adoption of CRC, human rights instruments like ICCPR and ICESCR articulated rights that also covered children's issues.

The CRC is concerned with the four principles i.e. participation, protection, prevention and provisions (4Ps). Participation of children is essential in the decisions which affect their destiny. Protection of children from all forms of neglect and exploitation as well as protection against discrimination is necessary for protecting their rights. No person is entitled to harm children of the country under the principle of prevention. According to the needs of children, they have given the provisions of assistance. Out of the four Principles i.e. 4 ‘Ps’, participation rights is most

\textsuperscript{13} Ibid., p.15.
significant for the development of children’s rights. Simultaneously, the participation right is most controversial also.\textsuperscript{14}

Thus, the drafting history of CRC proves that how much world leaders are concerned towards the protection of children’s rights. No doubt it took many years in the making of CRC but now it is successful.

\textbf{Provisions}

The articles on the right to survival and development in the Convention on the Rights of the Child (CRC) are called provisions of CRC. The main objective of the Convention is to protect children from discrimination, neglect and abuse. It is the principal treaty for children in peacetime as well as during armed conflict. There are 54 articles in the Convention categorized under Part I, Part II and Part III. Part I consists of 1 to 41 articles, Part II deals with 42 to 45 articles and Part III deals with 46 to 54 articles. The obligation of states parties towards children also includes that survival will be undertaken with the growth and development of children.\textsuperscript{15}

The basic human rights given by CRC to children encompass civil, economic, social, cultural and political rights. The civil rights provide right to a name, nationality, protection from torture and maltreatment to children. It also provides some special rules through which children may not be deprived of their liberty or isolated from their parents. The economic rights provide right to benefit from social security such as standard of living which ensures the proper development and protection from exploitation during working hours. The social rights provide standard

\textsuperscript{14} Ibid.
of health services, social care for handicapped children, and protection from sexual exploitation, abduction and regulation of adoption. According to the cultural rights children have the right to education, recreation, leisure, participate in cultural activities. This is the first treaty which not only grants and implements rights in times of peace but also during armed conflicts.\textsuperscript{16}

The provisions of CRC tried to great extent to provide rights to children. It has tried to cover each and every aspect of life of children. Some of the provisions have been discussed in this chapter. Articles 4, 42 and 44 of CRC deal with the general measures of implementation which highlights that there is need to review reservations and national legislation in accordance with the CRC. Article 1 deals with the definition of the age of the child i.e. a child means every human being below the age of 18 years. Articles 2, 3, 6 and 12 deals with the four general principles of the Convention. Article 2 deals with the right to non-discrimination. Article 3 talks about the obligation placed on public and private social welfare institutions, courts of law, administrative authorities and legislative bodies which assures that in all cases best interests of the child will be primary consideration. Article 6 emphasises the right to life, survival and optimal development of children. Article 12 deals with the respect for the views of the child. Articles 7, 8, 13-17 and 37 (a) deals with the civil rights and freedoms.\textsuperscript{17}

The articles 5, 9-11, 18, 19, 21, 25 and 27 deals with the parental guidance and responsibilities, illicit transfer and non-return, unaccompanied minors and adoption, psychological recovery and

\textsuperscript{16} Bajpai,n.3, pp.17-18.
\textsuperscript{17} Ibid.,pp.18-19.
reintegration. It also includes an article which stresses health, standard of living and facilities for treatment and rehabilitation in articles 6, 18, 23, 24, 26 and 27. Articles 28, 29 and 31 deals with the education, leisure including vocational training and guidance and also protection of refugee children, juvenile children etc., physical and psychological recovery are covered in articles 22 to 32, 32 to 36 and 37 to 40.\(^{18}\)

The Convention emphasizes those children’s rights regarding survival and development creates duties of parents and the family. Article 18 (2) deals with the parental and guardianship responsibilities.\(^{19}\) Article 24(2) deals with the children’s right which is pertinent to health and nutrition.\(^{20}\)

Child labour is one of the worst forms of economic exploitation of children. Article 32 deals with the child labour hence state party must take legislative, administrative, social and educational measures to protect children from economic exploitation and prevent them from performing any work that is hazardous to their health and interfere with the child’s education.\(^ {21}\) Article 24 (3) talks about the abolition of traditional practices like child marriage.\(^{22}\) Article 17 talks for the encouragement of mass media which can interfere in the matter related to child.\(^ {23}\) One of the important provisions of the Convention is article 43, which establishes the Committee on the Rights of the Child. The Committee on the Rights of the

\(^{18}\) Ibid., p.19.
\(^{19}\) Goonesekere, n.15, p.192.
\(^{20}\) Ibid., p.201.
\(^{21}\) Ibid., p.213.
\(^{22}\) Ibid., p.223.
\(^{23}\) Ibid., p.231.
Child is a monitoring body of 10 experts who examine the progress done by the states parties to implement the provisions of CRC.\textsuperscript{24}

The provisions are the most important aspect in the Convention for the well being of children. The Convention gives message through the provisions that it is better to provide 'rights' rather than giving benefits to the poor, through its approach in articles on survival, growth and development.

\textbf{Implementation Mechanism}

CRC is such a legally binding international instrument which showed a wide response on ratification. Ratification requires states parties to implement CRC in an effective manner for the protection of children. The CRC has opted the best way to implement it through the regular submission of reports specific to that country. In international law there is no provision of complaints procedure but CRC adopted a procedure which involves state party's performance by periodic reports. What is the role of the monitoring Committee? The main role of the monitoring Committee on the Rights of the Child is to examine the progress done by the states parties for fulfilling their duty provided in the CRC regarding children. Implementation mainly depends on the good faith of states parties.\textsuperscript{25}

The role of Committee is more demanding than any other comparable Committee established under an international treaty. It means that the Committee monitors the performance of parties to the Convention as well as helps in increasing international co-operation regarding child

\textsuperscript{24} Ibid., pp.396-397.
\textsuperscript{25} Goonesekeere, n.15, p.350.
The Committee is the body of 10 independent experts which monitors the implementation of the CRC.\textsuperscript{27} The Committee also monitors implementation of two Optional Protocols to the Convention – on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. It is very important to know that how the rights are being implemented in the countries that have ratified the Convention. States parties must report initially two years after ratifying the Convention and thereafter every five years.\textsuperscript{28}

The Committee has the power to take expert advice on the implementation of the provisions of the Convention from Specialized Agencies, United Nations Children’s Fund, and other competent bodies as stated in Article 45 of the Convention.\textsuperscript{29}

The Committee meets three times every year, in January, May – June and October at the headquarters of the High Commissioner for Human Rights in Geneva or any other convenient place as determined by the Committee. A working group prepares the issues which are to be discussed before each session and also defines the agenda to analyse the reports. The members of the Committee are appointed to a term of four years. The reports submitted by the states parties are examined by the Committee in open meeting in the presence of state representatives. After examining the report, the Committee discloses its final observations and recommendations. Simultaneously, the Committee publishes its
interpretation of the content of human rights provisions called "general comments", so organizes days of general discussion.\(^{30}\)

The Committee recognized the importance of corporal punishment to improve the protection and promotion of the rights of the child in the report of its fourth session (1993).\(^{31}\)

Before examining the state party’s report, the Committee takes opinion from Commissions, NGOs such as national charities, international bodies like UNICEF etc. through a ‘pre-sessional’ working group. The CRC is the only treaty which wished to involve NGOs and requested them to submit coordinated reports through the Committee.

The Committee adopted a new General Comment on the issue of corporal punishment at its 42nd Session, held in Geneva from 15 May to 2 June 2006. This is the first General Comment on the protection of children from all forms of violence against children in 2000 and 2001. The reason of smooth implementation of CRC is that, the Committee has issued detailed guidelines to states on how to prepare the periodic reports in implementing the Convention.\(^{32}\) Thus, the Committee on the Rights of the Child is the implementing body of the CRC which is functioning smoothly by establishing pressure on state party to submit periodic reports wished to contain desired results.

**Summary Observations**

The Convention on the Rights of the Child is the gift of the United Nations General Assembly. CRC is not the result of one day’s effort but

\(^{32}\) www.unhchr.ch, Retrieved 05-11-09.
took ten years in the making. General Assembly adopted CRC on 20 November 1989, exactly 30 years after the 1959 Declaration. CRC entered into force on 2 September 1990. The Convention has a long history behind it. The history of CRC shows that the rights of children are a matter of consideration at the international level since 1924. Almost all the countries have ratified CRC except Somalia and US.

The CRC contains 54 articles as its provisions. The provisions are boon to children of the world. The provisions contain each and every aspect related to children's rights which stop violation of their rights and protect them from all forms of violence. The articles are divided into three parts – part I consists articles from 1 to 41 articles, part II encompasses articles from 42 to 45 articles and part III deals with 46-54 articles.

The CRC works with an effective implementing body i.e. Committee on the Rights of the Child. The role of Committee is to create pressure on the state party to submit regular country reports (periodic reports). The implementation of CRC is reflected in periodic reports where the state outlines the efforts done for the protection and promotion of children’s rights.