CHAPTER - VI

INTERNATIONAL INSTRUMENTS REGULATING
CHILD LABOUR

"Every child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's health or physical, mental, spiritual, moral or social development."\(^1\)

6.1 Historical Perspective

Child labour is a universal problem and is prevailing across the world whether it is developed, developing and under developed country. Long ago, countries basically had no concern for children and their rights. It is significant to make a mention that, factory system in England abused child labour force and were employed and made them to work for long hours from the age of 8 years. Children who were forced to work at the machines for a long time, used to sleep and get rolled into them along with cotton bales.\(^2\)

The history of rights of child can be traced back to mid-nineteenth century with the publication of an article in June 1852 by Slagvock, titled “The Rights of the children”, followed by Kate Kliggins “Childrens rights” in 1892. Gradually there was shifting of working conditions of children and the legal position of children in England began to change with the introduction of factory laws, which concentrated on

\(^1\) Article 32, The United Nation Convention on the Rights of the Child.
the amelioration of the working conditions of employees especially children.\textsuperscript{3} The International childrens' rights movement has been traced to the work of the British born Eglantyne Jebb, who founded SCIU in Geneva in 1919.\textsuperscript{4}

In the year 1923, for the first time International attention was drawn concerning the situation of children when the Council of newly established NGO “Save the Children International Union” adopted a five point declaration on the rights of the children.

Prior to the 19\textsuperscript{th} century child was the human property, chattel of the parents, the parents enjoying an absolute right over the child’s services and earnings and total control over the child’s person and property. Hence concept of the rights of the child was never recognised prior to the 19th century. The International law for the first time recognised the importance of the rights of the child in 1924. The Geneva Declaration, 1924 and following it the United Nations Declaration of the rights of the child 1959, have proclaimed the child to be the most privileged ward of humanity; when they stated that “Mankind owes to the child, the best it has to give”. Legal evolution brought substantial improvements in the area of Children’s Rights.\textsuperscript{5}

6.2 Pre-United Nations Instruments
6.2.1 The Geneva Declaration of 1924

The Geneva Declaration or the 1924 Declaration of the Rights of the child which was adopted by the League of Nations was the first Convention in which the

\textsuperscript{3} Ibid, also see Srinivas Gupta, “Human rights of the Child” (1994) 7 CILQ.
Rights of the child were considered. It conferred upon men and women of all nations the following obligations.

(1) The child must be given the means needed for its normal development.
(2) The child that is hungry should be fed; the child that is sick should be helped; the erring child should be reclaimed; and the orphan and the homeless child should be sheltered.
(3) The child must be the first to receive relief in times of distress.
(4) The child must be protected against every form of exploitation.
(5) The child must be brought up in the consciousness that its best qualities are to be used in the services of its fellow men.

The 1924 Declaration was based on relief-oriented approach. The attitude was that the child in difficulty should receive help. The brutality experienced during the First World War had prepared mankind to appreciate the position of the weak in times of distress. There should not be hungry, sick or an orphan or homeless child who is not cared for. An erring child should not be treated as a criminal but should be rehabilitated. All means should be provided for the material and spiritual growth of the child so that he grows up to appreciate the human life and contributes to the well-being of the mankind. But Right to economic or political freedom was absent from the catalogue of the children. The Declaration was only an expression of good will that the mankind felt towards the future and the very existence of a civilized World, and represented a feeling that children are part of the “sacred trust of civilization”.6

6 Ibid, pp 40 - 41.
6.2.2 The UN Charter, 1945 and Human Rights

The Members of the United Nations affirmed their faith in fundamental human rights and the dignity worth of the human being in various provisions of the charter. It is to be noted that the dignity and worth of the human being stated there also includes children.\(^\text{7}\)

6.3 The United Nations Instruments

6.3.1 Universal Declaration of Human Rights, 1948

The General Assembly of the United Nations adopted the Universal Declaration of the Human Rights on 10\(^{\text{th}}\) December 1948,\(^\text{8}\) proclaimed UDHR as a "Common standard of achievement for all peoples and all nations". The Declaration 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".\(^\text{9}\) It recognizes the inherent dignity and equal and inalienable rights of all human beings as the foundation of freedom, justice and peace in the World. It embodies more measures to protect the children, throughout a "common standard" of achievement for all people and all nations was adopted. It provides that, every one is entitled to all the rights and freedoms set forth in this Declaration without any distinction of any kind. Naturally the standard set forth includes children.


\(^{8}\) Adopted and proclaimed by General Assembly Resolution 217A (III) of 10\(^{\text{th}}\) Dec. 1948.

\(^{9}\) Preamble to the Universal Declaration of Human Rights, 1948.
Article 25(2) of the Universal Declaration of Human Rights says that: “Motherhood and Childhood are entitled to special care and assistance. All children whether born in, or out of, wed lock shall enjoy the same social protection”.

Article 26(1) of the Universal Declaration of Human Rights more focused that every one has the right to education, and that education shall be free and compulsory upto elementary and fundamental stages and Article 26(3) says that, parents have a prior right to choose the kind of education that shall be given to their children.

The Universal Declaration of Human Rights is an elaboration of UN Charter obligation relating to human rights and recognizes, that every person to be free from inhuman and degrading treatment-slavery, slave trade etc. Inspite of the recognition of human rights long back, a child labourer is deprived of such rights.

6.3.2 The UN Declaration of the Rights of the Child, 1959

The adoption of the Declaration of the Rights of the child by the General Assembly of the UN on November 20, 1959 was indeed a very important event as regards the international recognition of the right of the child. The General Assembly affirmed that the child has the right to enjoy special protection and to be given opportunities and facilities to be able to develop in healthy and normal manner. The Declaration contained 10 principles, being of comprehensive nature which formed code for the well-being of every child. The 1959 Declaration expanded the 5 principles of the Geneva Declaration to 10 basic principles. There was no reference to bind the Members States for their implementation. The child only remained as an object of concern, rather than a person with self-determination.

(A) **International Covenant on Economic, Social and Cultural Rights, 1966:**

There are 31 Articles incorporated in the covenant. Article 10, 12 and 13 of the covenant refer to the needs of the children. In response to Rights laid down in Article 25 and 26 of United Nations of Human Rights, Articles 10, 12 and 13 have framed as covenant on Economic, Social and Cultural Rights. Article 10(3) of the ICESCR provides that, “special measures of protection and assistance should be taken on behalf of children and young persons without any discrimination for reasons of parentage and other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to like or likely hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law”. Thus children and young persons are to be protected from economic and social exploitation. Their employment in hazardous work which is harmful to health or dangerous to their life and likely hamper their normal development and should be made punishable by law and states are under an obligation to observe and implement it. It also insists state parties to set age limits for employment.

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Article 12 of the ICESCR recognises the right of everyone to the employment of the highest attainable standard of physical and mental health.

Article 13 of ICESCR provides that state parties to this covenant recognise the right of everyone to education and that education shall be directed to the full development of the human personality and the sense of its dignity and strengthen the respect for human rights and fundamental freedoms. Article 13(2) is intended to achieving the full satisfaction of this right:

(a) Primary Education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and Vocational;

Secondary education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education;

(c) Higher education shall be made available equally to all, on the basis of capacity, by every appropriate and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as for as possible for those persons who have not received or completed the whole period of their primary education; and

(e) The development of a system of schools at all levels shall be actively perused, an adequate fellowship system shall be established, and material conditions of teaching staff shall be continuously improved.
(B) The International Covenant on Civil and Political Rights (ICCPR) 1966

This Covenant consisting of VI Parts with 53 Articles. Article 24 provides in respect of children:

(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 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; and

(3) Every child has the right to acquire a nationality.

According to Article 24, every child has the right to protection by its family, society and state. The Human Rights Committee extended Article 24 to extreme forms of child labour and stated that, every possible social and economic measure should be undertaken to prevent forced labour and prostitution.

6.3.3 The United Nations General Assembly adopted another Declaration on Social Progress and Development in 1969.

Part I of this Declaration, which focusing on the concept of family as a basic unit of society, observed that the growth and well-being of its members, particularly

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children and youth, should be assisted and protected. Part II provides for the protection of the rights of the child.

6.3.4 Declaration on the protection of woman and children in emergency and armed conflict in 1974.

Which provides for prohibition of attacks and bombings on civil population inflicting incalculable suffering specially on woman and children who are the most vulnerable members of the population.

6.3.5 International Year of the Child 1979

The UN General Assembly decided on 21st December 1976 to observe the year 1979 as the International Year of Child with the following objectives.13

(a) To provide a frame work for advocacy on behalf of children and for enhancing the awareness of the special need of children on the parts of decision makers and the public.

(b) To promote recognition of the fact that programmes for children should be an integral part of economic and social development plans, with a view to achieving, in both the long term and short term, sustained activities for the benefit of children at the National and International level.

The International Year of the Child 1979 was observed as the 20th Anniversary of the adoption of the 1959 Declaration on the Rights of the Child. It was marked by activities, at national, regional and international level, for the improvement of life of the children. UNICEF has provided with the essential leadership. In India during the

International Year of Child, Nov. 14, Jawaharlal Nehru’s Birthday was declared as Universal Children’s Day. India is the only country in the world, which celebrates birthday of its Prime Minister as Children’s Day.

6.3.6 UN Convention on the Rights of the Child, 1989

The Declaration of 1959 prompted the UN Human Rights Commission to constitute a working group of representatives of the UN Commission to draft a Convention on the Rights of the Child. The Convention, drafted by the UN Commission on Human Rights and adopted by the General Assembly on 20th November 1989, came into force on 2nd September 1990 and India became party to the Convention on 11th December 1992 and has now being ratified by 191 countries at the end of 2000, but USA and Somalia have not ratified the Convention. But USA however has signed convention, there by showing general support for Convention on the Rights of the Child and it did not intend to take actions, which would in fact disregard Convention on the Rights of the Child principles.

The Convention on the Rights of the Child is really a "Magna Carta" and it is a Bible for children and it is a most important human rights document focusing and concentrating on children. The Convention on the Rights of the Child is the most complete statement of child rights ever made. It is the guiding principle of Convention on the Rights of the Child to protect best interest of child as mandated by it. It is indeed an innovative document in overall human rights theory and practice. In fact, it is the first United Nations Human Rights instrument since the Universal Declaration of Human Rights which brings together as inextricable elements of the life of an
individual human being, the full range of civil and political rights, and economic, social and cultural rights. The Convention on the Rights of the Child treats children as complete individuals rather than as elements in an economic or socio-political system. The Convention aims to create balance between the rights of children and those of the parents or adults responsible for their survival, development and protection. This is achieved by according children the right to participate in decisions concerning them and their future. It is thus, a holistic document, for each Article is intertwined with the others. The Rights defined in the Convention are interdependent as none of the articles can be dealt in isolation.14 The Convention is a set of international standards and measures intended to protect and promote the well being of children in society. The Convention contains 54 Articles, and it provides civil, political, social, economic and cultural rights of every child, and out of 54 Articles 41 relate specifically to the rights of children. These rights are:

(a) The Right to Protection: It includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment, and neglect including the right to special protection in situations of emergency and armed conflicts.

(b) The Right to Development: It includes the right to education, support for early childhood development and care, social security, and the rights to leisure, recreation and cultural activities.

(c) The Right to Participation: It includes respect for the views of the child, freedom of expression, access to appropriate information and freedom of thought, conscience and religion.

(d) The Right to Survival: It includes the right to life, the highest attainable standard of health, nutrition and adequate standards of living. It also includes the right to a name and a nationality.

Thus Convention on the Rights of the Child is the first globally binding treaty protecting children's civil, political, economical, social and cultural rights with regard to problem of child labour in India. Convention on the Rights of the Child addresses:

1. To find out the extent of incorporation of the provisions of Convention on the Rights of the Child concerning child labour into the legislation and policies of India.
2. To find out whether there remains any gaps in India's legal regime vis-a-vis the obligations arising out of Convention on the Rights of the Child.15

Among other Rights that Convention on the Rights of the Child accords to children, the following are the relevant and important ones in the context of child labour. They are:

1. Article 6 recognizes Right to Life, Survival and Development.
2. Article 19 mandates to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, mal treatment or exploitation including sexual abuse.

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(3) Article 24 provides the right to the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. It directs the state parties to strive to ensure that no child is deprived of his/her right of access to such health care services.

(4) Article 27 recognizes the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. It directs the parents or others responsible to ensure child development. It directs the state parties to take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

(5) Article 28 recognizes the right of the child to education with a view to achieve this right progressively and on the basis of equal opportunity, and to make primary education compulsory and available free to all. It directs to encourage the development of different forms of secondary education, general and vocational education available and accessible to every child, and state parties to take measures for introduction of free education and offering financial assistance in case of need. It further directs to encourage regular attendance at schools and the reduction of dropout rates. It mandates to promote and encourage international co-operation in matters relating to education, in particular with a view to contribute to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods.
Article 32 of the UN Convention on the Rights of the Child, 1989 prohibits practice of Child Labour and recognises the rights of the child to:

(i) be protected from economic exploitation and performing any work that is likely to be hazardous; or (ii) interfere with his education; or (iii) be harmful to the child’s health or physical, mental, spiritual, moral or social development. It mandates every state party to:

(i) provide for a minimum age or minimum ages for admission to employment;

(ii) provide for appropriate regulation of the hours and conditions of employment; and

(iii) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the above article i.e. (Art. 32).

The International Labour Organisation is also opposed to child labour in situations where children are disadvantaged educationally and socially where they work in conditions that are exploitative to their health.

The significance of the Convention on the Rights of the Child lies in the fact that it has revolutionized the concept of the rights of the child by introducing two elements.

(i) First, it has widened the perspective of the rights of the child not by treating him as mere beneficiary of special protection and assistance but rather as an active person possessing certain rights.

(ii) Secondly, for the effective implementation of the rights contained there in, the convention laid down certain measures, such as the obligations of the states parties to
respect and ensure the rights set forth in the present convention to each child within their jurisdiction, their obligation to provide information to both adults and children regarding the rights of the child and their obligation to publicize their reports on the implementation of rights of child.\textsuperscript{16}

\textbf{6.3.6.1 Procedure for the implementation of the Convention}

The states parties to the Convention undertake under Article 44 paragraph 1, to submit Report to the Committee on the Rights of Child through the Secretary-General of the United Nations on measures they have adopted to give effect to rights recognised in the Convention and on the progress made there to and Reports should indicate practical difficulties they faced and Committee suggest remedies.\textsuperscript{17}

State parties are required to submit their first report within two years of the entry in to force, of this Convention and every five years there after.\textsuperscript{18} In total the Convention on the Rights of Child does not have a time limit nor does it have an expiry date.

Article 45 provides that for the effective implementation of the Convention and to encourage international co-operation, the Committee may invite specialized agencies, UN organs and the UNICEF to be represented at the consideration of implementation of such provisions as they would fall within their respective mandates.\textsuperscript{19}

\begin{footnotesize}
\begin{enumerate}
\item Supra note 13, pp.253-254.
\item Article 44.2 Convention on the Rights of the Child.
\item Article 44.1 Convention on the Rights of the Child.
\item Supra note 5, pp.101-102.
\end{enumerate}
\end{footnotesize}
One of the main drawbacks of the Convention is that nowhere does it hold states responsible for failure to implement the children’s rights they have accepted as a matter of obligation. Since there are no concrete steps laid down for the states to implement and ensure the rights of the children made for, there is a scope for making criticism for its partial/total failure of implementation of children rights. The words “Appropriate measures” used in various Articles of Convention on the Rights of the Child is a vague expression and hence responsibility cannot be fixed on such state.\textsuperscript{20} There is no accountability on states for their performance of their obligation. There is a need to empower the Committee to take cognizance against such states to provide Justice to the citizens.

6.3.7 Declaration on Survival, Protection and Development of Children: World Summit for Children, 1990\textsuperscript{21}

The World Summit for Children was convened at United Nations Head-Quarter, New York on 30\textsuperscript{th} September 1990. It was convened at the initiative of Canada, Egypt, Mali, Mexico, Pakistan and Sweden. More than seventy world leaders gathered in 1990 and made “A Solemn Commitment to give high priority to the rights of children, to their survival, protection and development” and to adopt the Plan of Action for implementing the World Declaration for survival, protection and development of children.

\textsuperscript{20} Ibid, p.102.

\textsuperscript{21} Adopted by the General Assembly of the United Nations in its General Assembly Summit in 1990-India State party agreed to at the World Summit for Children on 30\textsuperscript{th} Sep. 1990, declaration reads 1, we have gathered at the world summit for children to undertake a joint commitment to make an urgent universal appeal to give every child a better future.
The 1990 World Declaration on the Survival, Protection and the Development of Children provide that, children are entitled to Joy and Peace, playing, learning and growing which are necessary for the harmonious development of children. But there are many children who face various problems and suffer in their very childhood. The Declaration lays down 10 point programme for the protection of the rights of the children and improvement in their lives. It aims to have programme for reducing illiteracy and promoting educational opportunities for all children.

A Plan of Action for implementing World Declaration on the survival, protection and development of children in 1990 was drawn having three parts namely: (a) Introduction, (b) Specific Action for child survival, protection and development, (c) Follow up actions and monitoring.

Thus, as the needs and problems of children vary from place to place, community to community, “The Plan of Action” dealt with the “common aspirations”. While addressing the World Summit for Children in 1990 J. Perez de cuellar, the former Secretary-General of United Nation’s said: “As we look at the world’s social and economic landscape, we marvel at the extraordinary advances that have been made in civilization as a whole yet with all this we also see that children continue to be the most vulnerable segment of society. Two set of anxieties are to be addressed, one arises from the global social crisis which robs children of emotional shelter and the most sustenance that they need. The other cause of distress is the poverty that stalks the larger part of the world and that denies children enjoyment of their rights.
To this are added effects of conflicts internal and external. One in two among the eight million refugees in the world is a child”.  

The World Declaration on the survival, protection and the development of children, 1990 and the follow up plan of action made a promise to end child labour practices and protect the child.  

6.3.8 Out come Document Titled “A World Fit for Children”.

Adopted by the United Nations General Assembly special session on children held in May 2002 (6th plenary meeting, 10th May 2002) The Document contains the goals, objectives, strategies and activities to be undertaken by the member countries for the current decade.

6.3.9 World Conference on Human Rights - The Vienna Declaration and Programme of Action – 1993

The world conference on human rights reiterates the principle of “First call for children” and in this respect, underlines the importance of major National and International, especially those of the United Nations children’s Fund for promoting respect for the rights of the child to survival, protection, development and participation.

It also mandates to take measures to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the World Declaration on the survival, protection and development of children and Plan of

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22 Supra note 2, pp 407,408.
Action adopted by the world summit for children as well their effective implementation. The world conference on Human Rights urges states to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to International treaty law.

The world conference on Human Rights urges all states, with the support of International Co-operation, to address the acute problem of children under especially difficult situations. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.24

6.3.10 Second World Children Congress on Child Labour Delhi, 200525

First children’s World Congress on Child Labour was held in 1993. The Second World Children Congress on Child Labour and education was held in New Delhi from 4th to 8th September 2005, which was organised by Global March Against Child Labour and hoisted by its core partner in India, Bachpan Bachao Andolan. Children from 30 different countries with children from India attended the Congress. Objectives of the Congress was to provide Justice to the children, who were denied, the Visa and could not participate in the First Children’s World Congress 1993, giving them a platform to share opinions, experiences and ideas and to learn from one another and empowering them in the process to emerge as the leaders in the struggle

against child labour. Another objective is to formulate a children’s Plan of Action to implement the Declaration made by the children in the First Children’s World Congress 1993 and to strengthen, broaden and consolidate, a world wide child and youth movement against child labour through the establishment of a strong network and to remind Govt. to fulfill their promises to ratify and implement ILO conventions 182 and 138.

Lastly, to urge International organisations to increase their support to programmes aimed at eradicating child labour, poverty reduction, achieving universal, free and quality education for all children.

Thus, The Vienna Declaration 1993 addressed the root cause of child labour and encouraged combating exploitation and abuse of children. It also stressed the need for necessary measures to eliminate child labour.26

6.4 Specialised Agencies of the United Nations

There are specialized agencies of United Nations whose functioning is of great relevance to the protection and rights of the child. They are International Labour Organization (ILO), United Nations Educational, Scientific & Cultural Organisation (UNESCO), United Nation’s Children Emergency Fund (UNICEF), South Asian Association for Regional Co-operation (SAARC) and World Health Organization (WHO) etc.

26 Supra note 12.
6.4.1 International Labour Organisation (ILO)

ILO is an inter-governmental agency, established by Peace Treaty of 1919 for promotion of Industrial peace and social justice. Its structure is tripartite and includes representatives of Governments, employers and workers. The basic principles of the ILO are: (i) Labour is not a commodity. (ii) Freedom of expression and of association is essential to continued progress. (iii) Poverty any-where constitutes a danger to prosperity everywhere. (iv) Workers and employers enjoying equal status with Governments and join with open discussion and take democratic decisions which can be carried to the promotion of the common welfare. The significant feature of ILO is its constitution of organization which comprises not only the representation of the Member States, but also of the workers and employers. The Tripartite system of partnership has made the organization one of the most representative and democratic in the real sense of the term. It is the policy and objective of ILO to abolish child labour. It is a time taking process, but it is intended to make beginning in making the "world free from child labour". Its objective based on the convention that, "childhood should be consecrated not to work but to education and development, that child labour. Often jeopardizes children's possibilities of becoming productive adults. and that child labour is not inevitable...its elimination is possible when the political will exists".

The ILO standards conventions and recommendations were designed to improve working and living conditions of the workers. It has done commendable work to achieve social-justice for the workers. In the field of International Legislation, International Labour Code is a significant achievement.

ILO is committed to the abolition of the worst forms of child labour and gradually other forms also. This is the first child labour convention, which prohibited the work of children under the age of 14 in industrial establishments. The protection of the child against exploitations in employment is one of the major concerns of this Convention.

ILO has moved totally 19 Conventions out of which

(a) 10 Conventions are related to minimum age for employment of children.
(b) 5 Conventions concerned with medical examination of children to decide the fitness for employment.
(c) 3 Conventions are related prohibition of night work for children.
(d) 1 Convention with regard to total prohibition of worst forms of child labour.

The basic objective of ILO's Conventions was to provide certain norms and standards for the well being of the working children. Thus ILO so far in the interest of children all over the world has adopted 19 Conventions and 17 recommendations.

(1) Minimum Age (Industry) Convention, 1919;
(2) Night Work of Young Person's (Industry) Conventions, 1919;
(3) Minimum Age (Sea) Convention, 1920;
(4) Minimum Age (Agriculture) Convention 1920;
(5) Minimum Age (Trimmers and Stockers) Convention, 1921;
(6) Medical Examination of Young Persons (Sea) Convention, 1921;
(7) Minimum Age (Non Industrial Employment) Convention, 1932;
(8) Minimum Age (Sea) Convention, (Revised) 1936;
(9) Minimum Age (Industry) Convention, (Revised) 1937;
(10) Minimum Age (Non-Industrial Employment) Convention, (Revised) 1946.
(11) Medical Examination (Sea-Farers) Convention, 1946;
(12) Medical Examination of Young Persons (Industry) Convention, 1946;
(13) Medical Examination of Young Persons (Non Industrial Occupation) Convention 1946;
(14) Night Work of Young Persons (Non Industrial Occupations) Convention, 1946;
(15) Night Work of Young Persons (Industry) Convention, 1948;
(16) Medical Examination of Young Persons (Under Ground Works) Convention, 1965;
(17) Minimum Age (Under Ground Works) Convention, 1965;
(18) Minimum Age Convention, 1973;

Out of 19 Conventions, one of them is for effective abolition of child labour. \(^{28}\)

The global financial crisis could push an increasing number of children, particularly girls, into child labour according to new report issued by the ILO. It has been released to mark the world day against child labour on June 12.

\(^{28}\) *The Hindu*, 11\(^{th}\) June 2009.
6.4.1.1 ILO’s Worst Forms of Child Labour Convention-1999 (No.182)

On 17th June 1999, the 87th session of the General Conference of the International Labour Organisation (ILO) adopted a Convention and accompanying Recommendation concerning the prohibition and elimination of the worst forms of child labour. So far 163 countries have signed this Convention. The adoption of this Convention represents a significant strategic shift in the international campaign against child labour. The intention of this Convention is to target certain forms of child labour for prioritized action. The Convention defines as ‘child’ all persons under the age of 18. Nations which ratify the Convention promise to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”.

“The worst forms of child labour” defined in the Convention include:

(1) Bonded or forced child labour;
(2) Compulsory military recruitment of children;
(3) Participation in the commercial sex industry through prostitution and pornography;
(4) Use of children in the drug trade and other illicit activities; and
(5) Hazardous work.

29 Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour (ILO) No. 182 adopted 17th June 1999 (herein after ILO 1999 Convention, 1999 recommendations.)
30 ILO 1999 Convention, “Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for National and international action, including International Co-operation and assistance.”
Thus, the Convention defines “worst form of child labour” as all forms of slavery or practices similar such as the sale and trafficking of children, debt bondage, serfdom and forced or compulsory labour, forced or compulsory recruitment of children for use in armed conflict, use of child for prostitution, production of (pornography), use in illicit activities etc.

This Convention also defines “hazardous work” as work which exposes the children to physical, psychological or sexual abuse, work underground, under water, at dangerous heights, closed places, with dangerous machines/tools, work in unhealthy atmosphere, long hours, during nights etc.

The Convention requires ratifying states: 31

(1) To work on the implementation programmes of action for the elimination of the worst forms of child labour as a priority.

(2) To establish appropriate mechanisms for monitoring the implementation of the Convention.

(3) To take time bound measures for prevention of child labour.

(4) To provide adequate support for the removal of children from the worst forms child labour, effort for the rehabilitation of the child labour and proper guidance, so that the children get access to free basic education or vocational training.

(5) Calls for International co-operation or assistance in the efforts to make its provisions really applicable.

6.4.1.2. Minimum Age Convention 1973 (No. 138) 32

The Convention 138 was adopted by the ILO at its first session in 1973 and 149 countries have signed this Convention. This is the most comprehensive ILO Convention on the child labour issue and calls for fixing minimum ages for admission to work or employment. This Convention demands for a National Policy designed to ensure effective and gradual abolition and elimination of child labour. The Convention lays down the basic principle, that the minimum age for admission to employment or work should not be less than upper age limit of compulsory education and in any case should not be less than 15 years. It also provides flexibility in the minimum age for employment for countries which are less developed in educational facilities and such countries can fix minimum age as 14 instead of 15 in the initial stage and gradually increase the same. The Convention also suggests that the minimum age for hazardous work should be 18. It also suggests that the minimum age should not be static; it should be progressively raised to a higher level corresponding with the full physical, mental and spiritual development of young persons. 33

32 The Minimum Age Convention 1973 (No.138) was adopted by ILO, setting out the minimum age standards for employment which came into force from 19.06.1976. This aimed at achieving total abolition of child labour, this Convention replace the previous Conventions on minimum age of employment of children.

The ILO has reiterated that it considers the term ‘child labour’ to include violations of the standards of the 1973 Minimum Age Convention. Since these standards permit full time employment by minors as young as 14 in developing countries, allow some minors to be involved in hazardous employment under certain circumstances and permit children as young as twelve to be engaged in formal part time employment.\(^{34}\) Work that does not interfere with education (light work) is permitted from the age of 12 years. Light work has a different definition under Convention 138 and is allowed from 12 years. The word hazardous is confusing and is left out here. The Convention 138 (Article 7) provides light work is work from the age of 12 which is:

(a) Not likely to be harmful to their health or development and

(b) Not such as to prejudice their attendance at school, their participations in vocational or training programmes approved by the competent authority or their capacity to benefit from the instruction received.\(^{35}\)

Thus, according to Convention 138, child labour refers to children working in contravention of the above standards and involves children below 12 years of age working in any economic activities; and those aged 12-14 years engaged in non-hazardous fulltime work, those under 18 engaged in hazardous work as determined by national legislation and all children engaged in other worst forms of child labour.


\(^{35}\) \textit{Supra} note 33, p.135.
6.4.1.3 Minimum Age Recommendation 1973 (No. 146)

This calls on States to raise the minimum age of employment to 16 years. Though it is not legally binding, but it compels member states to initiate action on this Convention No. 138 and these recommendations are regarded as the most comprehensive international instruments and statements on child labour.

6.4.1.4 ILO’s International Programme for the Elimination of the Child Labour (IPEC)

The International Programme for the Elimination of the Child Labour is global programme launched by the ILO in Dec, 1991. India was a first country to join it in 1992 when it signed a Memorandum of Understanding with the ILO. The long term objective of IPEC is to contribute to the effective abolition of child labour.

Its immediate objectives are:\(^{36}\)

(a) Elimination of the capability of ILO constituents and Non-Govt. Organisations to design, implement and evaluate programmes for Child Labour Elimination;

(b) To identify interventions at community and national levels which could serve as models for replication; and

(c) Creation of awareness and social mobilization for securing elimination of child labour.

At the International level, IPEC has a programme Steering Committee consisting of representatives of the ILO, the donors and participating countries. At the National level in India, there is a National Steering Committee of which the

\(^{36}\) Supra note 31, p.101.
Labour Secretary is the Chairman. This is a tripartite body, in its composition with representation from the NGO’s as well. There is National programme co-ordinator based at New Delhi who co-ordinates IPEC work between the Ministry of Labour, the agencies receiving assistance and ILO Head Quarters.

Two pillars of ILO/IPEC approach in its direct programme have been:
(a) The economic empowerment of the household at risk.
(b) Making education accessible and meaningful to the children concerned.

Further, the IPEC\textsuperscript{37} is the technical co-operation programme on child labour in the world. In more than 70 countries ILO/IPEC inspires, guides and supports national initiatives to eliminate child labour.

The aim of IPEC is to work towards progressive elimination of child labour by strengthening national capacities and policies to address the child labour problems and creating world wide movement to combat it.

Priority target groups for IPEC are:
(1) Bonded child labourers; (2)Children in hazardous working conditions and occupations; and (3) Children who are particularly vulnerable.

The support is given under this programme to organizations to develop and implement measures which aim at preventing child labour, withdrawing children from hazardous work and providing alternatives and improving working conditions and livelihoods.

The important activities of IPEC are:

\textsuperscript{37} Supra note 33, p.63.
(1) Motivating a broad spectrum of partners to acknowledge and act against child labour;

(2) Carrying out the situation analysis to find out quantitative and qualitative attributes of child labour to create awareness on the problem; and

(3) Promoting development and application of protective legislation and preventive and rehabilitative policies and programme etc.

IPEC is moving forward with several projects in the country, one of the projects is Karnataka Child Labour Project.

6.4.2 United Nations Education, Scientific and Cultural Organisation (UNESCO)

UNESCO is a specialized agency of the United Nations. The Constitution of the United Nations Education, Scientific and Cultural Organisation (UNESCO) was adopted by the London Conference in Nov. 1945 and entered into effect in Nov. 1946. According to 1 of its Constitution, UNESCO’s main functions are to collaborate in the work of advancing the mutual knowledge and understanding of people through all means of mass communications, giving fresh impulse to popular education and the spread of culture, maintain and or increase and, diffuse knowledge and encourage the teaching and understanding of science. UNESCO focuses on four major programmes (a) Education, (b) Natural, Social and Human sciences, (c) Culture and, d) Communications.
6.4.3 United Nations Children’s Emergency Fund (UNICEF)

The UNICEF is not legally a specialised agency as it was created by the UN General Assembly in 1946 as one of its subsidiary bodies.38 At the beginning stage it focussed to provide large scale emergency relief to the child victims of World War II with 3 years duration. But later on UNICEF’s mandate was extended indefinitely and expanded to include children in the developing world.

UNICEF acknowledges the need to tackle the problem of child labour in order to implement the Conventions on the Rights of the Child and achieve the goals for improving the conditions and well being of children. UNICEF’s objectives are: 39

(1) To promote compulsory primary education as the fundamental strategy for the elimination and prevention of child labour;

(2) To advocate revision and enforcement of child labour legislation and to strengthen monitoring systems;

(3) To assist Central and State Governments to develop and implement programmes and an action plan for the withdrawal and rehabilitation of child labour; and

(4) To promote convergence of all sectoral and developmental programmes on “at risk” families.

During the year 1965, UNICEF was awarded the Noble peace prize in recognition that the well being of today’s children is, inseparable from the peace of

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38 Supra note 5, p.56.
tomorrow's world. The UN General Assembly entrusted the UNICEF with the responsibility of co-ordinating all activities relating to the International year of the children in 1979.

UNICEF has played a prominent role in emergencies. It has a four pronged emergency approaches. They are:

(a) Preventive actions through which the acute threat or risks to children are identified, monitored and eliminated or reduced by addressing root causes;
(b) Readiness measures, which will ensure that emergency assistance will be effective, timely and appropriate;
(c) Emergency assistance, through the provision of a range of goods and services in the midst of a crisis necessary to assure the survival, protection and essential developmental needs; and
(d) Rehabilitation and recovery assistance to help victims towards physical, social and psychological recovery.

State of World Children's Report 2006 from UNICEF points out that, half the world's under nourished children live in South Asia.41

According to the recent State of Worlds Children Report prepared by UNICEF, children of the poorest house holds in rural areas are the most likely to be engaged in labour as they are most vulnerable. It is also important to note that, child labour is made possible by the social and cultural sanctions that it continues to receive so that

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40 Supra note 5, p.57.
41 The Hindu, 22nd July.2006, “India Dangerous for Children”.
we can move towards not only eliminating poverty and ensuring access to education but also making child labour culturally and socially unacceptable.\textsuperscript{42}

6.4.4 South Asian Association for Regional Co-operation (SAARC)

SAARC is not a specialized agency of the UN but is a regional organization, which works one behind the other \textit{i.e.}, with the UN. SAARC is regional organization which comprises seven countries, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. These countries’ geography indicates resources and cultural environment, share common religions and historical traditions and linkages with antiquity or the ancient days. The common history and difficult socio-economic realities have inevitably touched the lives of the majority of children in all countries of the region.

The idea of regional co-operation in South Asia was first mooted around November 1980. After consultations, the Foreign Secretaries of the seven countries met for a first time in Colombo in April 1991 and thereafter identified 5 broad areas for regional co-operation. They are Agriculture, Rural Development, Telecommunication, Meteorology and Health and population activities.

It is significant to understand that, 1/4\textsuperscript{th} population of the world’s children live in SAARC countries and more than 3.5 million children under-5-years old died from poverty related causes. Almost 2/3\textsuperscript{rd} of the region’s children were under nourished and fewer than half the children were likely to complete five years of

\textsuperscript{42} UNICEF, State of World’s Children Report 2009, also see Vinod Bhanu, "Centre for Legislative Research and Advocacy", New Delhi.
primary education. The main obstacles to child survival and development in the region are malnutrition, poor sanitation and hygiene, poverty and illiteracy.

In order to address these problems regional countries have formulated plan of action and convene Summit’s either yearly/every two years at different places in the region. The second SAARC Summit saw held at Bangalore (India) on 16th, 17th November, 1986 which called for concrete efforts create an environment favourable to the realization of the rights of the child. The Fifth SAARC Summit was held at Male (Maldives) on 21-23, November 1990. The year 1990 had been recognised as the “SAARC year for girl child” and prioritise the problem and initiate policy intervention for vulnerable section of the child population in the region. The Sixth SAARC Summit was held at Colombo (Sri Lanka) on 21st December, 1991. Subject of children’s right was high on the agenda in this Summit. This Summit adopted a Regional Plan of Action for Children with special focus on girl child and SAARC conference on 1992 focussed on strategies for implementation. The Seventh SAARC Summit was held again at Dhaka (Bangladesh) on 10-12, April 1993. This Summit stressed on its commitment to eradicate poverty from South Asia by social mobilization and human development and focussed on the right to work and primary education should receive the highest priority. The Eighth SAARC Summit was held at New Delhi (Capital of India) on 2-4, May 1995. This Summit approved the establishment of a three-tier mechanism for dealing with poverty issues. The first tier would comprise of the Secretaries to the Governments concerned with poverty eradication and social development in SAARC countries. The second tier comprises
of finance and planning Secretaries and third tier would comprise of finance and planning ministers. The Eleventh SAARC Summit was held at Katmandu, (Nepal) on 4-6 January 2002 during new millennium year. The eleventh session in Katmandu had brought into two conventions. SAARC convention on preventing and combating trafficking in women and children for prostitution, 2002 and SAARC convention on Regional Arrangements for the promotion of child welfare in South Asia, 2002. It also made efforts of poverty alleviation in the region and drawn, a practical road map for alleviating poverty in the region.

6.4.5 World Health Organization (WHO)

In 1945, The United Nations Conference on International Organisation, meeting was held in San Francisco. It unanimously approved a proposal by Brazil and China to set up an autonomous International Health Organisation within the United Nation System. The constitution of the World Health Organisation (WHO) was adopted by the International Health Conference, convened by the United Nations Economic and Social Council (ECOSOC) in New York in 1946. In July 1948, this organisation was brought into relationship with the UN and finally on 1st September 1948, it started functioning as a permanent organisation.43

One of the basic objectives of WHO as per Art. 1(1) is to promote maternal and child health welfare and to foster the ability to live harmoniously in a changing environment. WHO concerns with health needs and health care. It defined health “as a state of complete physical, mental and social well-being not merely the absence of

43 Supra note 5, pp.54-55.
disease and infirmity”. WHO as serious concern over the drug testing and its effect on infants and children. It focussed on dis-advantages and effects on bottle feeding and advantages of breast milk feeding to make polio-free nations, for the promotion and potential health of children. WHO reported on World Health Day (7th April 1995) that, 146 countries have had no cases of Polio.

6.5 Conclusion

It is very difficult to draw conclusion with reference to International Instruments regulating child labour. The main contribution of the Convention on the rights of the child has been codification of children rights into one International document and recognising aspirations which mankind has for its children.

Conventions and Declarations make promises and set high aspirations. But the state parties face practical difficulties in implementation due to socio-economic and cultural and political systems. There are no implementing provisions either in the conventions or declarations. There is no responsibility or accountability upon the state parties for their acts and omissions.\(^{44}\)

The UN Declaration of the Human Right to Development, 1986 emphasises on people centered development, focussing on the interests of poor and less advantaged. The people must be active participants in developmental activities. So steps are taken for the welfare of child labourers and gradual abolition of child labour. The 1999 Worst Forms of Child Labour Convention represents an important strategic shift in the child labour movement, for it recognises the important prioritizing efforts.\(^{45}\)

\(^{44}\) Supra note 5, pp.220 -221.

\(^{45}\) Supra note 34, p.987.
The Convention requires ratifying states to design and implement programmes of action to eliminate the worst forms of child labour as a priority and to establish or designate appropriate mechanisms for monitoring implementation of the Convention in consultation with employers and workers organisation. It also says that the ratifying states should provide support for the removal of children from the worst forms of child labour, and their rehabilitation; ensure access to free basic education or vocational training for all children removed from the worst forms of child labour; identify children at special risk; to take into account the special situation of girls.46

The UN General Assembly special session on child was held in New York, in May 2002 and brought out a Final Outcome Document entitled “A world Fit for Children” on 10th May 2002 and Nations will always, abide by the principle of “First call for children” for their survival, protection and development giving the highest priority.

A comprehensive strategy has to be designed to address the basic causes that create and perpetuate child labour. An Action Plan—that identifies a set of specific interventions that will have an impact on the basic causes of child labour and create alternatives that improve the quality of life of child workers and their communities—will have to be formulated.