CHAPTER – IV
NATIONAL AND INTERNATIONAL MEASURES TO COMBAT CHILD LABOUR

The problem of child labour is a worldwide problem. Industrialization on a large scale leads to the employment of children in factories, workshops and other unregulated occupations. It is a matter of deep concern to find out ways and means, to put an end to the employment and exploitation of children who are forced to join the labour stream. In recent decades, steady progress has been made in developing countries in the field of schools education, reselling in considerable improvements in the school enrollment of children. This progress has specially helped in bringing down the incidence of child labour.

In India, the problem of child labour continuous to pose a challenge before the nation. Government has been taking various proactive measures to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. State Governments, which are appropriate implementation authorities, have been conducting regular inspections and raids to detect cases of violations. Since poverty is root cause of this problem, and enforcement alone cannot help it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families. Government is also providing funds directly to the NGOs under the Ministry’s Grants-in-aid Scheme for running Special Schools for rehabilitation of child
labour, thereby providing for a greater role and cooperation of the civil
society in combating this menace.

Endeavour has been made in this chapter to examine the
various measures undertaken by U.N and ILO at the global level to
combat child labour. This chapter also examines the stand to Union
Government in India on various recommendations passed by U.N to
check the problem of child labour. Apart from it, the chapter also
makes a humble attempt to analyse the various steps taken by the
Union Government as well as by the Government of States on the
issue of eradication of child labour.

CONSTITUTIONAL PROVISIONS

Many constitutional provisions exist in Constitution of India for
the welfare of children. These provisions are:

**Article 15(3)** enables the State to make special provisions for
women and children. Women and children require special treatment
on account of their very nature. This article empowers the state to
make special provisions for them.

The Constitution (86th Amendment Act) 2001, proposed a new
clause Article 21A after Article 21 of the Constitution which provided -
“The State shall provide free and compulsory education to all children
of the age of 6 to 14 years in such a manner as the State may, by law
determine”.

**Article 23** prohibits traffic in human beings and beggar (from of
forced labour) and other similar forms of forced labour, “Traffic in
human beings’ means selling and buying men and women like goods, and it also includes immoral traffic in women and children for depraved or other purposes. This Article protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of “traffic in human beings” and forced labour in all its forms wherever they exist. It also prohibits the system of ‘bonded labour’ because it is a form of forced labour within the meaning of this article.

**Article 24** prohibits employment of children below the age of 14 years in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children. This Article however, does not prohibit their employment in any harmless job or work.

**Article 39(e)** makes it a duty of the state to prevent the children from entering into jobs unsuited to their age. It seeks to prevent health and strength of workers and tender age of children and seeks to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.

**Article 39(f)** recommends the protection of childhood and youth against exploitation moral and material abandonment. It also affirms to make sure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

**Article 45** directs the State to provide free and compulsory education to all children upto 14 years of age, within the time limit of
10 years. Eight years of education to all children in the age group of 6-14 years has been envisaged as Universal Elementary Educations (UEE) and reiterated in the Five Year Plans.

The Constitution: (86th Amendment) Act, 2002, added a new clause (k) to the Article 51-A of the Constitution. This provided “Parent or guardian to provide opportunities for education to his child or ward as the case may be between the age of six and fourteen years.

Besides above mentioned provisions some others provisions are also made in the Indian Constitution that also address the issue of employment of men and women which have some bearing on the problem of child labour as well. For instance:

**Article 38(1)** provides that the state shall strive to promote the welfare of the people by securing and protecting effectively a social order in which justice social, economic and political-shall inform all the institutions of national life.

**Article 39(a)** states equal right of men and women to adequate means of livelihood.

**Article 41** directs the State to ensure the people within the limit of its economic capacity and development: (a) employment, (b) education, and (c) public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want.

**Article 42** ensures the State to make provisions for securing just human conditions of work and for maternity relief.
**Article 43** ensures the State to try to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. It refers to a 'living wage' instead of a minimum wage’. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provision for education of children and insurance etc.

**Article 46** directs the State to promote the education and economic interests of the weaker sections of the society, and in particular of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and of all forms of exploitation.

**Article 47** imposes the duty to raise the standard of living of the people and the improvement of public health.

Although the principle of ‘Equal Pay for Equal Work’ is not principally declared by our Constitution to be a fundamental right, but it certainly is a constitution goal under Articles 14, 16, and 39 (c) of the Constitution.

These provisions and similar others stated in our Constitution have an important bearing on the problem of child labour, i.e. if these guidelines are adhered to in an effective manner then the problem of child labour can be limited to a certain extent.

The predicament of child labour emanates from social and economic crisis and thus, by achieving the constitutional goals, the
children in arduous socio-economic conditions can be prevented from
entering the labour market.

The Fundamental Right such as ‘Right to Equality’ and ‘Right
against Exploitation’ articulates the well being of children. Moreover,
the Constitution (86th Amendment) Act, 2002, added ‘Right to,
Education’ to the list of fundamental Rights. The Right to Education,
being a Fundamental Right, flows directly from right to life. The right
to life and the dignity of an individual cannot be assured unless the
right to education accompanies it.

The Directive Principles of State Policy set out aims and
objectives to be taken up by the states in the governance of the
country. The idea of welfare state envisaged by our Constitution can
only be achieved if the state endeavors to implement them. The ‘Social
and Economic Charter’ and the ‘Social Security Charter’ of the
Directives guarantee the welfare of children. The Fundamental Duties
embedded in our Constitution also include provisions, which guard
the interests of children.

Thus, the Constitution of India is of a clear view that childhood
is meant to be spent in schools and not in hazardous work
environment. Also, if the constitutional provisions related to the child
well-being are read together, they have a potential for laying down very
comprehensive guidelines for a total elimination of child labour and
for protection of children from any form of exploitation.
LEGISLATIVE MEASURES

In terms of statutory prescriptions, India has, by and large evolved a wide range of laws seeking to protect and promote the rights of child. There are more than 250 central and state Laws in India, applicable to children in various spheres of life, which are regulatory, protective or correctional in nature.

LEGISLATIVE MEASURES TAKEN BEFORE INDEPENDENCE

INDIAN FACTORIES ACT, 1881

First, protective legislation for child labour was enacted in 1881. This act was known as the Indian Factories Act, 1881. This act provided some protection to the children firstly forbidding employment of children under seven years of age in factories and also in two separate factories on same day, secondly, by limiting their working hours to nine hours a day and thirdly, by making it compulsory that four holidays in a month and rest intervals should be given to them. In addition, the act made the provisions for safety such as fencing of dangerous machines.

INDIAN FACTORIES ACT, 1891

In 1891, the Indian Factories Act was enacted on the recommendations of a Factory Commission which was appointed by the Government of India in 1890. This step was an advance over the Act of 1881. Under the Act of 1891, the lower age was extended from 7 to 9 years. The upper age also exceeded from 12 to 14. Working hours were reduced from 9 to 7 hours per day. The children were not allowed
to work at night. However, the exploitation increased because the attention was not paid to the provisions of the Act due to the inadequate enforcing machinery.

**Mines Act, 1901**

The third major legal provision for protecting the child labourers was the passing of the Mines Act, in 1901. The Mines Act (1901) prohibited employment of children in mines below 12 years of age. This act was enacted in 1901 because in 1800 mines in different parts of the country, 200,000 workers were employed. Out of these, more than 5,000 children were found working in most dangerous condition”

**Indian Factories Act, 1911**

The Factories Act of 1911 reduced the working hours of children in factories to 6 hours a day. The Act further provided that all child workers should have in procession a certificate of age and fitness for employment.

**Indian Factories (Amendment) Act 1922**

The next step in the history of child labour law was the Indian Factories (Amendment) Act of 1922 which was enacted to give effect to the International Labour Conventions on the minimum age for admission of children into employment, hours of work and night work of young persons and women. The children were prohibited by this Act, to have a medical certificate as to their age and physical fitness for the employment. The working hours were fixed by this Act to 6 hours a day with an interval of half an hour to the children employed
for more than 5½ hours. The inspectors were empowered to enquire from children a certificate of re-examination for continuing work. This Act also prohibited the employment of women and young person under 18 in certain processes. Some minor changes in this Act were introduced by an amendment in 1923.

**THE TEA DISTRICT EMIGRANT LABOUR ACT, 1932**

The major legal provision affecting the child labour, albeit marginally, was the passing of the Tea District Emigrant Labour Act 1932, which aimed at regulating the conditions of recruitment of labour for employment in the tea gardens of Assam only. Under these Acts, persons below the age of 16 years of age shall not be employed in tea gardens of Assam and should not be imparted to work in the tea garden unless they were accompanied by their parents or close relatives.

**CHILDREN (PLEDGING OF LABOUR) ACT, 1933**

In 1933, one more step was taken to prevent the exploitation of child when Children (Pledging of Labour) Act, 1933 was enacted by the Government of India on the recommendation of the Royal Commission on labour. The main aim of this Act was to eliminate the evils arising from the pledging of the labour of young children by their parents for a loan or an advance.

**INDIAN MINES (AMENDMENT) ACT, 1935**

In 1935, Indian Mines (Amendment) Act, 1935 regulates the working conditions and working hours in mines. This amendment
prohibited the employment of children under 15 in mines. This Amendment Act further laid down that adolescent, i.e., the young between 15 and 17 years could be employed in underground work as adult on the production of certificate of physical fitness issued by recognized medical authorities. The working hours for such workers, according to this amendment, were 10 hours a day and 54 hours a week for above groundwork and 54 hours a week and 9 hours a day were fixed for underground work.

The Factories Act was subsequently amended by Factories Amendment Act, 1935 and Repealing and Amending Act, 1937 which did not alter the general provision of the Act.

**THE EMPLOYMENT OF CHILDREN ACT, 1938**

In 1938, the Employment of Children Act, 1938 was enacted in order to prevent the evils of employment of children in workshops which were not covered by Factories Act. The provision of this Act continues till now. This Act prohibits the employment of children under 15 in Railway and Port. By the amendment of 1939, the children under 12 are prohibited to work in workshop connected with bidi-making, carpet-weaving, cement manufacturing, cloth printing, dying and weaving, manufacturing of matches, explosives and ire works, mica cutting and splitting, shellac manufacture, soap manufacture, tanning and wool cleaning.

It is fruitful to note that before independence the law relating to the employment of children in various sectors failed to achieve its goal
– the elimination of the evils of child labour. The Labour Investigating Committee, in its report in 1946 pointed out that the main cause of this was the inadequacy of the inspecting staff to enforce the provisions of law.

**LEGISLATIVE MEASURES TAKEN AFTER INDEPENDENCE**

**THE FACTORIES ACT, 1948**

The Factories Act, 1948 prohibits the employment of children below 14 years in factory. The Act requires persons between the age of 14 years to 18 years to obtain a certificate of fitness from a certifying surgeon and periodical examination. The Act prohibits employing children between 14 and 17 years at night (between 10 p.m. – 6 a.m.) between 14 and 15 years for not more than 42 hours in any day, only one shift and in one factory. The Act prohibits employing children in certain processes within factories. They shall not be allowed to work on machines which are considered dangerous. They shall not clean, lubricate or adjust any part of prime mover or of any transmission machinery while it is in motion or if they stand the risk of injury. They shall not be employed to press cotton if a cotton opener is at work in that area.

**THE PLANTATION LABOUR ACT, 1951**

The Act lays down that, children who have not completed 12 years of age shall not be employed in plantation (in tea, coffee, rubber), which measures 10.117 hectares or more and employing thirty or more persons. Every child, above 12 years of age is required
to obtain a certificate of fitness (valid for a period of one year at a time) from a certifying surgeon. The Act provides that it is the responsibility of the employers to provide education to the children. Apart from it the Act provides that housing, medical and recreational facilities are also to be provided to the children.

**MINES ACT, 1952**

Minimum age for employment in mines is fixed at 15 years. The Act prohibits employment of children below that age in any part of the mine which is below ground or in any open excavation in which any mining operation is carried on. It lays down that adolescents will not be employed for more than 4.5 hours a day. The minimum age for employment in mines is 15 years of age. The Act includes all excavations where any operation for the purpose of searching is carried out. The Act not only prohibits the presence of children in any part of a mine, which is below ground or in any part of a mine in which any mining operation is being approved. Even an adolescent is not allowed to work in any part of a mine which is below ground, unless he has completed his 16th year and has a medical certificate of fitness for work. The certificate is valid only for 12 months.

**PLANTATIONS LABOUR ACT, 1957**

Minimum age for employment is fixed at 12 years under this Act.
THE MERCHANT SHIPPING ACT, 1958

The Act prohibits the employment of children in any capacity, who are below 14 years of age, on sea-going ships, except (a) in a scholarship or training ship; or (b) in a ship in which all persons employed are members of one family; or (c) in a home made ship of less than two hundred tons gross; or (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult or a male relative.

THE MOTOR TRANSPORT WORKERS ACT, 1961

Minimum age required for employment in every transport undertaking employing five or more workers, is 15 years. The adolescents are prohibited to work unless a certificate of fitness is granted, which is valid only for one year. An adolescent can work only for 6 hours including a rest interval of half an hour and between 10 a.m. and 6 p.m. only.

THE BEEDI AND CIGAR WORKERS (CONDITIONS OF EMPLOYMENT) ACT, 1966

No child who has not completed his 14th year shall be required or allowed to work in any industrial premises, where any manufacturing process connected with the making of Beedi or Cigar is carried on irrespective of the number of persons employed. The employment of young persons between 14 to 18 years is prohibited between 7 p.m. to 6 a.m. Provisions for canteen, first aid, ventilation, and cleaning are also made under the Act.
STATE SHOPS AND COMMERCIAL ESTABLISHMENT ACT, 1969

Different States have enacted their own laws regulating employment of children in shops and establishments, restaurants and hotels and places of amusement and notified urban areas etc. to which the Factories Act, 1948 does not apply.

The minimum age for employment in shops and commercial establishments is 12 years in Bihar, Gujarat, Jammu and Kashmir, Madhya Pradesh, Karnataka, Orissa, Rajasthan, Tripura Uttar Pradesh, West Bengal, Goa, Daman and Diu, and Manipur, and 14 years in Andhra Pradesh, Assam, Haryana, Himachal Pradesh, Kerala, Tamil Nadu, Punjab, Delhi, Chandigarh, Pondicherry and Meghalaya. The minimum age of employment is 15 years in Maharashtra. There is no separate Nicobar, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshdweep, Nagaland, and Sikkim.

RADIATION PROTECTION RULES, 1971

Under these rules, a person shall not for being engaged as an apprentice to undergo apprenticeship training, in any designated trade, unless he is above 14 years of age. The total number of hours for an apprentice shall be 42 hours to 48 hours per week, including the time spent on related instructions. No apprentice other than a short-term apprentice shall be engaged in such training between 10 p.m. and 6 a.m. The Act applies to such areas or industries as may be specified by the Central Government.
THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

The Child Labour (Prohibition and Regulation) Act, 1986 (CLARA) is an outcome of various recommendations made by a series of Committees. On the basis of recommendations made by various Committees, there was a national consensus in favour of a uniform comprehensive legislation, to prohibit the engagement of children in certain other employment. To achieve this goal, Parliament enacted the Child Labour (Prohibition and Regulation) Act, 1986 which came into force on December 23, 1986.

OBJECTIVES OF THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

The objectives of the Child Labour (Prohibition and Regulation) Act 1986 are:

- Banning the employment of children, i.e. those who have not completed their fourteenth year, in specified occupations and processes,
- Laying down procedures to decide modifications to the schedule banned occupations or processes; and
- Regulating the conditions of work of children in employment where they are not prohibited from working.

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93 National Commission on Labour, 1969, the Committee on Child Labour, 1979, the Gurupadswamy Committee on Child Labour, 1979, and the Sanat Mehta Committee, 1984.
Main Provisions of Child Labour (Prohibition and Regulation) Act, 1986

The Preamble to the Act states that it is an Act to prohibit the employment of children in certain works and to regulate the conditions of working children in certain other employment. The Act prohibits the employment of any person who has not completed his fourteenth year of age in occupations and processes set forth in Part A and Part B of the Schedule of Act.\(^94\)

The Act, thus, classifies all establishments in two categories:

- Those in which employment of child labour is prohibited, and
- Those in which the working conditions of child labour shall be regulated.

The Central Government has the power to amend the Schedule.\(^95\) The Central Government may by notification in the official gazette constitute an Advisory Committee called the Child Labour Technical Advisory Committee for the purpose of addition of occupations and processes to the Schedule.\(^96\) Several occupations and processes have been added. More have to be added. For instance, domestic child labour, and artistic performances like clubs, circuses, etc., present a risk of serious damage to the health or morals of young persons.

The prohibition of employment of children is not applicable to any workshop wherein any process is carried on by the occupier with the aid of his family, or to any school established by or receiving

\(^{94}\) Child Labour (Prohibition and Regulation) Act, 1986, Section 3
\(^{95}\) Ibid, Section 4
\(^{96}\) Ibid, Section 5
assistance or recognition from government.

Part III of the Act provides for regulation of conditions of work of children in establishments in which none of the occupations or processes referred to in the Schedule are carried out. It provides for the hours and period work and weekly holidays for the children. The period of work on each day shall be so fixed that no period shall exceed three hours and no child shall work for more than three hours before he has an interval forest for at least one hour. The total period of work inclusive of the interval for rest should not be more than six hours. The child is not permitted to work between 7 p.m. to 8 a.m. and overtime. The double employment a child is banned. The Act also empowers the appropriate government to make rules for the health and the safety of the children employed or mitted to work in any establishment or class of establishments.

**JUVENILE JUSTICE ACT, 1986**

It came into force in 1987 on a uniform basis for the whole country. The Preamble of the Juvenile Justice Act, 1986 (JJA 1986) states that the Act is to provide for the care, protection, treatment, development, and rehabilitation of neglected and delinquent juveniles and adjudication of certain matters relating to disposition of delinquent juveniles.

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97 Ibid, Section 7(1) (2) (3) (4) (5) (6).
98 Ibid.
The objectives of the Juvenile Justice Act, 1986 were the following:

- To lay down a uniform framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up,
- To provide for a specialized approach towards the prevention and treatment of juvenile delinquency,
- To spell out the machinery and infrastructure required for the care, protection, treatment, development, and rehabilitation of various categories of children coming within the purview of the juvenile justice system,
- To establish norms and standards for the administration of juvenile justice,
- To develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies,
- To constitute special offences in relation to juveniles, and
- To bring the operation of the juvenile justice system in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

Under the Juvenile Justice Act, 1986, juvenile means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. The juveniles are further classified into neglected juveniles and delinquent juveniles. A neglected juvenile is a

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99 Juvenile Justice Act, 1986, Section 2(h)
very wide term and includes a juvenile who is found begging,\textsuperscript{100} or who has no home and is a destitute, or who has unfit parents, or who lives in a brothel or with a prostitute, or who leads an immoral life, or a juvenile who is being abused or there is a possibility that in future he may be abused for immoral purposes. A delinquent juvenile\textsuperscript{101} is one who has committed an offence under any law of the land and comes in conflict with law. The Juvenile Welfare Board deals the neglected juvenile whereas the delinquent juveniles are brought before the juvenile court.\textsuperscript{102}

\textbf{THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000}

The ratification of the Convention on the Rights of the Child 1989 by India in 1992 and the changing social attitude towards criminality by children reflected in Supreme Court decisions like Arnrutlal Someshwar Joshi,\textsuperscript{103} Ramdeo Chauhan and Arnit Das,\textsuperscript{104} and the need for a more friendly juvenile justice system were some of the factors that led to the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000.

The preamble to the Act states that it is an Act to consolidate the Law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection, and treatment, by catering to their development needs, and by adopting a

\textsuperscript{100} \textit{Ibid, Section 2(a)}
\textsuperscript{101} \textit{Ibid, Section 2(e)}
\textsuperscript{102} \textit{Ibid, Section 2(i)}
\textsuperscript{103} (1994) 6 SCC 488.
\textsuperscript{104} (2000) 7 SCC 455.
child-friendly approach in the adjudication and disposition of matters in the best interest children and for their ultimate rehabilitation through their various bushed institutions under this enactment.

In this Act, ‘juvenile’ or ‘child’ means a person who has not completed eighteenth year of age [Section 2(k)] whereas the ‘juvenile in conflict with means a person who is alleged to have committed an offence [Section

Thus there are two distinct categories of children under this Act:

- ‘Juvenile’ for children in conflict with law and
- ‘Child’ for children in need of care and protection.

The Act expands the definition of the ‘neglected juvenile’ by adding new categories of children. This category of children includes: mentally and physically disabled children; sick children or children suffering from terminal diseases or incurable diseases having no one to support or look after them; children who are abused or tortured or likely to be abused or tortured; children likely to be inducted in drug abuse, and children legitimized by armed conflict or natural calamity.105

**RIGHT TO EDUCATION ACT, 2009**

In the Indian Constitution education was placed in the 'state' subject. But, in the post-Independence years, the Central government played a critical role in developing a fairly uniform system of education across the country.

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The World Conferences on 'Education for All' conducted at Jametin (Thailand) 1990 and Daker (Senegal) 2000 pressurised the governments to frame inclusive policies. The Supreme Court of India with reference to the Unnikrishnana case interpreted Article 45 in unison with Article 21 of the Constitution and recognized education as a fundamental right. All these series of events culminated in forcing the Government of India to bring the 86th Constitutional Amendment in 2002 which is considered instrumental in passing an Act making education for all a compulsory matter. Prior to this provision, education was a part of the Directive Principles of State Policy under Article 45 of Chapter IV of the Constitution and with the 86th Amendment, education has been brought under Chapter III Article 21A of the Constitution which deals with Fundamental Rights of Citizens.\textsuperscript{106}

After the Amendment, the government took seven long years to formulate the Right to Education Act which became operational from August 2010. Manmohan Singh, the Prime Minister of India said, “if we nurture the children of our country and young people with the right to education, India's future as a strong and prosperous country is secure”. Even the National Commission for the protection of Child Rights (NCPCR) which is responsible for monitoring the implementation of Right to Education Act pleads with the civil society and all others concerned to work towards ensuring that every child of

the country is in school and is able to get at least eight years of quality education. Thus, the Right to Education Act is creating a new hope among all, particularly the weaker sections of society that their wards who hope to get free education under the umbrella of the government and have their social status enhanced.107

**Main Features of the Act**

The important features of the Act include:

- Provision of free and compulsory education to all the children from six to 14 years age.
- Action on the part of the government and local authority to establish a school within the limits of the neighbourhood;
- Central and State Governments should share the expenditure on education as agreed upon;
- No segregation of children of downtrodden communities admitted into schools from other children in the classroom nor should the classes be held at places and timings different from the classes held for other children.
- Making parents/guardians responsible for admitting their child; reserve 25 per cent of seats to the weaker sections and to abolish capitation fee at the entry level.
- Not to conduct any entrance tests and, public examinations up to VII standard;

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107 *Ibid* p. 580
• Maintenance of teacher-student ratio as per prescribed norms, provision of necessary facilities in the schools, student-friendly education, etc.\textsuperscript{108}

As per the provisions of the Act, schools which have not received any benefit by way of a grant of land at a concessional rate or building grants of any kind, will receive a subsidy from the government towards the fees of these children "to the extent of per child expenditure incurred by the state, or the actual amount charged from the child, whichever is less.." The question arises as to what parameters will be adopted to calculate the per child expenditure incurred by the state.\textsuperscript{109}

There is bitter irony in the provision in the Act which says, "The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provision of the Act. "There are states where the government has no resources to pay the salaries of teachers for months on end, where government schools are under-staffed because the State Government does not have the resources to pay the salaries for a full component of teachers. Against this background, it appears unrealistic to expect from State Governments that they will provide more resources for this additional financial burden.\textsuperscript{110}

\textsuperscript{108} Ibid
\textsuperscript{109} Harish Dhillon, "Bright but less privileged", \textit{The Tribune}, May 4, 2010
\textsuperscript{110} Ibid
There are two types of private school in operation in the country, the one is the old public schools where every penny that might be saved at the end of the year is pledged to improve the infrastructure and make additions to the facilities that are provided to the children. These schools, obviously, will not have any extra funds to cope with this shortfall. There is the other group of private schools, most of them excellent schools, which are run as commercial ventures.\textsuperscript{111}

Schools which have been granted land at a confessional rate, or who received any kind of grant towards the buildings, will not receive any subsidy and will have to generate the entire fees of this 25 per cent from their resources.\textsuperscript{112}

The immediate and most obvious solution to this problem would be for the schools to raise the class strength at the admission level without, in any way, having to add to the infrastructure to increase the strength of the staff. This solution is workable in schools like YPS Mohali, where the strength at the nursery level is 20 per section and at class I level, the strength is 25 per sections. But here, too, an increase of even five per section would definitely effect the qualify to education being imparted. In schools, where the strength already stands at 40 or more per section, this solution is not viable.\textsuperscript{113}

The other possible solution to the problem, and one that most schools, will, eventually, be forced to take, is to raise the fees of the full

\textsuperscript{111} Ibid
\textsuperscript{112} Ibid
\textsuperscript{113} Ibid
fee paying students to meet the shortfall created by the government—sponsored students. In other worlds, the government is shirking its duty to provide quality education to be less privileged sections of society and is passing on the responsibility to private schools, which in turn will be passing on the burden to the fee paying students. I find an irony in this situation, too; the very parents who are being asked today for the governments' failure are the ones who have already paid an education cess along with their income tax. 114

There will also be a section of parents who will not be able to cope with this increase in fees and will be forced to withdraw their children. So, we will end up creating the paradoxical situation of extending the benefit of quality education to a section of society who would otherwise not have enjoyed this benefit, but, in doing so, we will be excluding another section of society from this benefit—a benefit which they presently enjoy.115

Many Commissions, Committees have been set up by successive Union Governments and State Governments to check the problem of child labour, to quote few:

**REPORT OF THE NATIONAL COMMISSION ON LABOUR, 1969**

The Commission was appointed in 1966 by the Ministry of Labour, Employment and Rehabilitation under the Chairmanship of Dr. P.B. Gajendragadkar to review the conditions of labour and suggest measures for their improvement. The Commission noticed

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114 Ibid
115 Ibid
that 8 percent of the workers were below 15 years of age, with most of them employed in agriculture and the allied activities. However, in the organized industries, the employment of children was declining. The employment of child workers below the prescribed age was also reported to be continuing in far off places and in rural areas where the enforcement of statutory provisions was more difficult. The Commission found that in certain industries such as glass, bidi, carpet manufacturing, etc., the conditions under which children worked were deplorable. It realized that the employment of children was more than an economic problem than anything else. The Commission felt that the early employment resulted in the denial of education to children; therefore, it suggested that the employment hours of children should be fixed in such a way so as to enable them to attend school. Where the number of children is adequate, the employers with the assistance of the State Governments should make arrangements to combine work with education.116

REPORT OF THE HARBANS SINGH COMMITTEE, 1977

Harbans Singh Committee was constituted in 1977 investigate the problems of child labour in various factories and industries in Ramanathapuram district of Tamil Nadu. The report was submitted in 1977, but was not made public.117

Accepting that banning child labour would not remove all the children from the labour force. The Committee recommended that the

working hours should be reduced, wages should be increased and instead of the prevailing piece-rate system, the wages should be linked to the cost of living index. The Committee also recommended that the non-formal education should be given to children in the factories. School attendance should be made compulsory and it should be a precedent condition for employment in factories. The Committee suggested the radical measures to end the scourge of child labour.\textsuperscript{118}

**REPORT OF THE COMMITTEE ON CHILD LABOUR, 1979**

The Committee was appointed in 1979 by the Ministry of Labour under the Chairmanship of M.S. Gurupadswamy to look into details of the causes leading to and the problems arising out of the employment of children in India.\textsuperscript{119}

Gurupadswamy Committee in its report submitted in 1979 recommended:

- Setting up of Child Labour Advisory Boards,
- Fixation of minimum age of entry to any establishment;
- Strengthening of enforcement machinery; and
- Formulation of effective educational policy with emphasis on integration of educational requirements with local crafts.

**REPORT ON CHILD LABOUR IN INDIAN INDUSTRIES, 1981**

\textsuperscript{118} Ibid
This Report of the Committee is based on the findings of a rapid survey conducted by the Labour Bureau in certain organized and unorganized sectors of Indian industries.

The Report states that the majority of working children come from poor families to supplement their family income. They are compelled to discontinue their studies, as there is no provision of night schools for those who want to continue studies. The Report emphasizes on bringing about a change in the social attitude towards child labour, besides tightening the laws and activating the enforcement machinery.\textsuperscript{120}

**NATIONAL POLICY ON CHILDREN, 1974**

As a follow-up of the commitment to combat child labour, and being a party to the UN Declaration on the Rights of the Child 1959, India adopted the National Policy on Children in 1974. The policy reaffirmed the constitutional provisions and stated that it shall be the policy of the state to provide adequate services to children, both before and after birth through the period of growth to ensure their full physical, mental and social development. The state shall progressively increase the scope of such services so that within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth.\textsuperscript{121}


\textsuperscript{121} *Ibid.*
Unfortunately, the single comprehensive resolution, namely the National Policy for Children, 1974, has not been revised to include the commitments made within the context of CRC. It is pertinent to note that though the National Policy for Children did not speak the language of rights, it aims at providing free and compulsory education for all children up to the age of 14 years. In addition, it also states that no child under the age of 14 years would be permitted to be engaged in hazardous occupations or be made to undertake heavy work. However, these laudable goals are tempered with to the ‘harsh reality’ that is reflected in its provision dealing with alternate forms of education for who are children unable to take full advantage of formal school education for whatever reasons. In terms of the specific policies, it is strange that with respect to the issues of child labour and education, the policy is formulated after the law is enacted instead of the policy document preceding the law. Therefore, the law lacked direction with respect to child labour.

**CENTRAL ADVISORY BOARD ON CHILD LABOUR**

The Central Advisory Board on Child Labour was constituted on March 4, 1981. The following are the Terms of Reference of the Board:

- Review the implementation of the existing legislation administered by the Central Government,
- Suggest legislative measures as well as welfare measures for the welfare of working children,
• Review the progress of welfare measures for working children, and
• Recommend the industries and areas where there must be a progressive elimination of child labour.

The Union Labour Minister is the ex-officio Chairman of the Central Advisory Board. The other Members of the Board include representatives from the various sister Ministries, Members of Parliament, non-governmental organisations, representatives of major trade unions and employers’ organisations.122

NATIONAL CHILD LABOUR POLICY, 1987

In pursuance of India’s development goals and strategies, a National Child Labour Policy was adopted in 1987 following the Child Labour (Prohibition and Regulation) Act, 1986. The national policy reiterates the directive principles of state policy in India’s Constitution. It resolves to focus general development programmes to benefit children wherever possible and have project based action plans in areas of high concentration of child labour engaged in wage/quasi-wage employment.123

It was expanded to cover 76 districts in 1994-1995, 100 districts between 1997-2002 and by 2011 covered total 300 districts.

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With this expansion, it has covered nearly half of the country, which has about 650 districts. It is one of the largest child labour programs in the world, with a budget of US $ 154 million over five years.

The Ministry of Labour and Employment has been implementing the national policy through the establishment of National Child Labour Projects (NCLPs) for the rehabilitation of child workers.

The experience gained by the Government in running and NCLPs over several years resulted in the continuation and expansion of the projects during the Ninth Five year Plan. Around 100 NCLPs were launched across the country to rehabilitate children working in hazardous industries such as glass and bangles, brassware, locks, carpets, slate tiles, matches, fireworks, and gems. The Central Government made a budgetary allocation of Rs. 2.5 billion (about US$ 57 million) for these projects during the Ninth Five Year Plan.

The NCLP was first initiated in 1988, as a part of a larger plan of action arising out of the National Policy on Child Labour. Since then it has been supported by several major initiatives at the central, state and district levels aimed at elimination of child labour. A high-powered National Authority for the Elimination of Child Labour (NAECL) was set up on June 26th, 1994 comprising Secretaries to the Government of India representing various Ministries such as the Ministries of Finance, Women and Child Development, Education, Labour, Welfare, Information & Broadcasting, Rural Development,
Health & Family Welfare and Textiles. The main functions of the NAECL are

- To lay down policies and programmes for monitoring and coordinating the implementation of child labour projects; and
- To achieve convergence with various concerned Ministries of the Government of India.\textsuperscript{124}

The main thrust of the NCLP has been to reduce the incidence of child labour in the high-concentration pockets. Providing education through special schools, and subsequently mainstreaming them in regular schools are the major activities under the NCLP at the ground level. The working children are identified through surveys conducted by independent agencies and inspections conducted by the Labour Department of the State Governments. On the basis of their reports, children are withdrawn from the labour force. These children are then enrolled in the special schools which provide formal/non formal education, vocational training, supplementary nutrition, monthly stipend, regular health check-, etc. The children are subsequently mainstreamed in formal education or self-employment within a period of six months to three years of their enrolment in the special schools. However, NCLP’s task does not end at mainstreaming of the enrolled children. In order to check and minimize relapse, NCLP also does the

\textsuperscript{124} \textit{Ibid}, p.3.
follow-up of the mainstreamed children for the next few years, either in further education, or employment.\textsuperscript{125}

The NCLP runs through various stages of operation viz.,

- Establishment of a District Project Office (DPO) in each of the child Labour endemic districts,
- conducting survey and identification of child labour, particularly in hazardous occupations,
- opening up of special schools and supporting then,
- enrolment of working children in the special schools and ensuring their formal/informal education upto a maximum period of three years,
- providing mid day meals and regular health checkups to the enrolled children, and finally
- mainstreaming those children and keeping track of them for a few years after mainstreaming. In order to successfully carry out the above mentioned activities, NCLP's DPOs are expected to
  - establish convergence of services and schemes with their departments; and
  - implement and abolition of child labour.\textsuperscript{126}

\textbf{CHILD LABOUR TECHNICAL ADVISORY COMMITTEE}

Under Section 5 of the Child Labour (P&R) Act 1986, the Government of India is empowered to constitute a Child Labour

\textsuperscript{125} Ibid, p.4.
\textsuperscript{126} Ibid.
Technical Advisory Committee for the purpose of addition of occupation and processes in the Schedule to the Act. The Committee consists of a Chairman and Members not exceeding ten. The Committee has been reconstituted in February, 1996 under the chairmanship of Director General of Indian Council of Medical Research.\textsuperscript{127}

\textsuperscript{127} n. 7, p.21.
NATIONAL AUTHORITY FOR THE ELIMINATION OF CHILD LABOUR-REHABILITATION OF CHILDREN WORKING IN HAZARDOUS OCCUPATIONS, 1994

A major program was launched on August 15, 1994 for withdrawing child labour working in hazardous occupations and for rehabilitating them through special schools. Under the program, a total of two million children were sought to be brought out of work and put in special schools where they would be provided with education, vocational training, monthly stipends, nutrition and health-checks. As a follow-up, a high powered body, the National Authority for the Elimination of Child Labour (NACEL) was constituted on 26th September, 1994 under the Chairmanship of the Minister for Labour, Governments of India.

The nature of NACEL being:

- To lay down policies and programs for the elimination of child labour, particularly in hazardous employment;
- To monitor the progress of the implementation of programs, projects and schemes for the elimination of child labour.
- To coordinate the implementation of child labour related projects of the various sister Ministries of the Government of India (for convergence of services for the benefit of the families of child labour)

Secretaries to Government of India in the Ministries of labour, information and Broadcasting, Welfare, Rural Development, Textiles and the Departments of Education, Health, Family Welfare and
Women and Child Development are members of the National Authority for the Elimination of Child Labour.\textsuperscript{128}

With the setting up of the National Authority for the Elimination of Child Labour (NACEL) under the Chairmanship of the Labour Minister, Government of India, a convergence of services and schemes for eliminating child labour were being achieved. The NACEL, comprising representatives from the Central Ministries, is like an umbrella organization to coordinate the efforts of the different arms of the Government for the progressive elimination of child labour.\textsuperscript{129}

**NATIONAL POLICY ON EDUCATION, 1986 (MODIFIED IN 1992)**

In several developed and developing countries, universal education was seen as a main factor in the development of a modern nation. The National Policy on Education in India was modified in 1992. Thereafter, Parliament approved a programme of action which sought to launch the National Elementary Education Mission—Education for All – in 1993 and the District Primary Education Programme launched in 1994. Currently the emphasis is on universal primary education.

**INTERNATIONAL PROGRAMME ON ELIMINATION OF CHILD LABOUR**

The International Programme on elimination of Child Labour is a global programme launched by the International Labour Organisation in December, 1991. India was the first country to join it

\textsuperscript{128} n. 4, pp.21-22.
\textsuperscript{129} Ibid
in 1992. The long-term objective of International Programme on Elimination of Child Labour is to contribute to the effective abolition of child labour, Its immediate objectives are:

- Enhancement of the capability of International Labour Organisation (ILO) constituents and NGOs to design, implement and evaluate programmes for child labour;
- To identify interventions at community and national levels which could serve as models for replication; and
- Creation of awareness and social mobilization for securing elimination of child labour.

**INDUS PROJECT**

The Government of India and the US Department of Labour have initiated a joint US$40 million project aimed at eliminating child labour in identified hazardous sectors across 21 districts in five States, namely, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and NCT of Delhi. This project was implemented by International Labour Organisation, popularly known as INDUS. Though the project has ended its term on 30th September, 2008, it has now been extended. Another project to support India Convergence Model is under consideration.130

**V.V. GIRL NATIONAL LABOUR INSTITUTE**

V.V. Giri National Labour Institute is a premier national institution involved with research, training, education, publication

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and consultancy on labour related issues. The Institute, established in 1974, is an autonomous body of the Ministry of Labour, Government of India. The Institute was renamed in 1995 in honour of the late President of India, Shri V.V. Giri.

The Institute performs the following activities.

- To address the issues of transformation of the world of work in a global economy;
- To project labour issues as a core concern of policy making;
- To empower the social actors with capacities to meet the challenge of change;
- To highlight the role of labour in shaping of modern India; and
- To preserve and disseminate information on labour matters.

**THE NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS**

The National Commission for Protection of Child Rights (NCPCR) has been set up by an Act of Parliament in December 2005 to stand by children, give a call that ‘children come first’. The child is defined as children in the 0-18 year’s age group. The mandate of NCPCR is to ensure that all laws, policies, programmes, and administrative mechanisms are in consonance with child rights perspective. Thus protecting children’s rights is not a charity act but one of taking a correct stand on behalf of children and their rights and ensuring that the state meets its obligation to protect children and their rights. Indeed in a sense NCPRC is the legitimate space provided by state for children and all those who vouch for children both in the government and in the civil society.
STRATEGY FOR THE ELIMINATION OF CHILD LABOUR UNDER THE 10TH PLAN

An evaluation of the scheme was carried out by independent agencies in coordination with V.V Giri National Labour Institute in 2001. Based on the recommendations of the evaluation and experience of implementing the scheme since 1988, the strategy for implementing the scheme during the Tenth plan was devised. It aimed at greater convergence with the other developmental schemes and bringing qualitative changes in the Scheme. Some of the salient points of the 10th Plan strategy are as follows:

- Focused and reinforced action to eliminate child labour in the hazardous occupations by the end of the plan period.
- Expansion of National Child Labour Projects to 150 districts.
- Linking the child labour elimination efforts with the Scheme of Sarva Shiksha Abhiyan of Ministry of Human Resource Development to ensure that children in the age group of 5-8 years get directly admitted to regular schools and that the older working children are mainstreamed to the formal education system through special schools functioning under the NCLP scheme.
- Convergence with other Schemes of the Departments of Education, Rural Development, Health and Women and Child Development for the ultimate attainment of the objective in a

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time bound manner.

**On October 10, 2006, the Government has banned**

employment of children as domestic servants or workers and as helpers in dhabas, restaurants, hotels, motels, teashops, resorts, spas and other recreational centres. This ban has been imposed under Child Labour (Prohibition and Regulation) Act, 1986).\(^{132}\)

Thus, Government has been taking proactive steps to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations. Since poverty is the root cause of this problem, and enforcement alone cannot help solve it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families.\(^{133}\)

The government, judiciary and the citizens should jointly launch a campaign against the problem of child labour. It should be a matter of public concern. Media should also play an active role to bring back the lost childhood of child labour. Every day we see children working in restaurants, tea-stalls and as domestic servants. It is duty of every one to be involved and - to highlight these cases. This problem will be eliminated completely if all of us join hands together to fight with this problem.

\(^{132}\) Ibid.

\(^{133}\) Ibid.
STRATEGY FOR THE ELIMINATION OF CHILD LABOUR UNDER THE 11TH PLAN

The Eleventh Plan emphasises on gender equality and arresting the decline in the child sex ratio. Nutrition Programme for Adolescent Girl, Kishore Shakati Yojana, Balika Samriddhi Yojana were adopted to cater the need of the girl child.

Child trafficking and sexual exploitation are the serious problems which the society is increasingly being confronted with. The Eleventh Plan proposed to ensure that this vulnerable group must be protected from further abuse. The Eleventh Plan addressed the problems of Critical Target Groups which include children affected by HIV/AIDS, children in conflict with law, children in distressed circumstances, and children with disabilities.

Through an Act of Parliament, the Government of NCT Delhi has set up Delhi Commission for Protection of Child Rights (DCPCR). The Commission is meant to protect and fulfill the various rights for children enumerated under UN’s Convention on Rights of Child (UNCRC) for their survival, protection, development and participation. The creation of Delhi Commission for Protection of Child Rights by the Delhi Government is a historic and pioneering initiative. The children are reported to be extremely deprived, marginalized and poor and suffer multiple forms of abuse and exploitation. A large number of them are legally defined as “Children who Need Care and Protection” under Juvenile Justice Act, 2000. The Commission is committed to convert these children into “Supreme Assets”. The programmes
recommended by the Eleventh Plan should include improving the reach and quality of existing programmes and formulating new schemes to address hitherto un-addressed areas and issues based on National Policy for Children, 1974. National Charter for Children, 2004, which makes special mention of the importance of protecting the rights and dignity of girl children; National Common Minimum Programme and the National Plan of Action for Children 2005.

The Eleventh Plan marks a big step forward in the area of Child Rights. It is entrenched in a Rights Framework that views children as agents and not as recipients. It recognizes and acknowledges multiple discriminations wherein the children are trapped in. This acceptance of the situation of the children can alone safeguard their rights and ensure better outcomes for children.134

The recent trend in the global system is to evaluate the development of any country, not in terms of their military or economic strength or the splendour of their capital cities and public buildings, but also in terms of human development or the well-being of its people. Against this backdrop the existence and perpetuation of child labour has been one of the main limiting factors in the way of human development in almost all the third world countries including India. The issue of child labour is major human rights issue and at the same time, it is highly emotive one. These emotions tend to be coupled with very strong views both on what the child labour problem is and on

what ought to be done for its elimination. Although the predominance of child labour has to be quite pronounced in all the developing and under-developed countries, it is a global phenomenon which exists in almost all the countries of the world. The difference, if any, is of degree only. The concept and practice of child labour being economically unsound, psychologically wrong and socially disastrous has posed a big threat to peace and overall world development. Therefore, the gravity of the situation and pervasive nature of the problem has attracted the urgent attention of social and political scientists, activist groups and governments of various countries of the world including India.

INTERNATIONAL MEASURES TO COMBAT CHILD LABOUR

The International Labour Organization has formulated a policy to abolish child labour. The objective of ILO is based on the recognition that total abolition will take time and that a start has necessarily to be made. To this end, it has determined priority areas. It has launched a global project, the International Programme on the Elimination of Child Labour. The United Nations Children Fund (UNICEF) acknowledges the need to tackle the problem of child labour in order to implement the Convention on the Rights of the Child, 1989. International standards, especially those laid down by the International Labour Organization and the United Nations have had its impact on our law-making process. One of the most important tools available to the ILO and the UNO for improving the legislation
and international standards concerning child labour is the set of large numbers of international treaties, declarations, covenants, and conventions.\textsuperscript{135} Some of them relating to child labour are as follows:

**1919: MINIMUM AGE (INDUSTRY) CONVENTION NO. 5**

Adopted at the first session of the ILO and ratified by seventy-two countries, the Convention established fourteen years as the minimum age for children to be employed in industry. It was the first international effort to regulate children’s participation in the workplace and was followed by numerous ILO instruments applicable to other economic sectors.\textsuperscript{136}

**1930: FORCED LABOUR CONVENTION NO. 29**

This Convention provides for the suppression of the use of forced or compulsory labour in all its forms. The term ‘forced or compulsory labour’ is considered to mean all work or service exacted from any people under the threat of penalty and for which they have not offered themselves voluntarily.\textsuperscript{137}

**1966: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Adopted by the UN General Assembly in 1966 and entered into force in 1976, it reaffirms the principles of the Universal Declaration of Human Rights (1948) with regard to civil and political rights and commits stair parties to take action to realize these rights. Article 8


\textsuperscript{137} *Ibid.*
states that no one should be kept in slavery or servitude or be required to perform forced or compulsory labour.\footnote{Ibid.}

**1966: INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS**\footnote{Ibid.}

Adopted by the UN General Assembly in 1966 and enforced in 1976, it reaffirms the principles of the Universal Declaration of Human Rights with regard to economic, social, and cultural rights. Article 10 states that parties are to protect young people from economic exploitation and employment in work likely to hamper their morals, their health, or lives, or likely to hamper their normal development. It also commits parties to set age limit below which the paid employment of child should be prohibited and punishable by law.

**GENEVA CONVENTION IV AND THE ADDITIONAL PROTOCOLS**

The advent of the Industrial Revolution brought about the enactment of child labour laws, some of them dating back to the first half of the 19th century. It was then that the first conventions indirectly protecting children began in the international arena. Geneva Convention IV and the Additional Protocols incorporated and expanded, many of the principles contained in the Hague Conventions specifically provided for the protection of children.\footnote{Arpita Ghosh and Ahana Datta Mukherjee, “Protection of Child Rights: Concern, Issues and Reality”, in Subrata Sankar Bagchi (ed.), *Expanding Horizons of Human Rights*, Atlantic Publishers, New Delhi, 2009, pp.153-154.}

Articles 14 and 24 of the Geneva Convention IV and 76, 77, 78 of the Protocol, Article 50 of the Geneva Convention IV afford general

\begin{flushright}
138 Ibid.  
139 Ibid.  
\end{flushright}
protection to children as well as protects them in occupied territories. The Forced Labour Convention of 1930 and the Abolition of Forced Labour Convention of 1957, require state parties to suppress and abolish forced child labour imposed by either the state or by the private individual and organizations.\(^\text{141}\)

The United Nations, its specialized agencies, non-governmental organizations and various other organizations of the UN have done pioneering work in protecting the rights of the child. The United Nations has adopted the Convention on the Rights of the Child in 1989.\(^\text{142}\) It can be mentioned here that any Convention on the Rights of the Child must be read within the framework of the International Bill of Rights, composed of the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights (ICCPR), 1966 with its optional protocol and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966.\(^\text{143}\)

**1973: ILO MINIMUM AGE CONVENTION NO. 138**

This supersedes prior instruments applicable to limited economic sectors. The Convention obliges member states to pursue a national policy designed to ensure effective abolition of child labour. In this connection, it establishes that no child can be employed in any economic sector below the age designated for the completion of compulsory schooling—and not less than fifteen years. The minimum

\(^{141}\) *Ibid.*  
\(^{142}\) *Ibid.*  
\(^{143}\) *Ibid.*
age for admission to any work likely to jeopardize health, safety, or morals is eighteen years.\textsuperscript{144}

**1989: CONVENTION ON THE RIGHTS OF THE CHILD**

The importance of the 1989 Convention on the Rights of the Child (CRC) is now widely accepted and recognized. The CRC has been described as nothing short of ‘the cornerstone of a new moral ethos for children’, and an instrument stressing that ‘respect for and protection of children’s rights is the starting point for the full development of the individual’s potential in an atmosphere of freedom, dignity and justice’. Once ratified, the CRC makes it a binding duty for the States to implement its provisions by adopting relevant legislative and administrative measures. Further, governments must report on the measures adopted and progress made in advancing children’s rights in their countries in the form of a report submitted to the Committee on the Rights of the Child\textsuperscript{145} appointed by the United Nations under Article 43 of the Convention.\textsuperscript{146} The Government of India submitted its Country Report on the Convention of the Rights of the Child in February 1997. The report reviewed the situation of children in the country with reference to the articles of the Convention. The priority issues that the Report focused on included the measures of

\underline{\textsuperscript{144}} n. 1, p-194.
\underline{\textsuperscript{146}} The Committee comprises ten members elected by the State parties for the term of four years. The Committee meets three times every year. See M. O’Flaberty, *the United Nations and Human Rights*, Sweet and Maxwell, 1996, p. 180.
implementation, civil rights of freedom, and special measures of protection. The first India Country Report on the CRC stated that:

The General Assembly of the United Nations adopted a Declaration on the Rights of the Child in 1959 in which it declared that “the child by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection, before as well as after birth”. Taking into account the various efforts made in this direction, the General Assembly adopted the Convention on the Rights of the Child on November 20, 1989 which entered into force on September 2, 1990 after requisite ratifications made under Article 49. India is a party to this convention which was ratified by it on December 11, 1992. As on June 2005, the Convention had 192 state parties. It has 54 articles and is divided into three parts.

A number of rights have been stipulated in the Convention which includes the following:

- Right to life (Article 6, Para 1).
- Right to acquire nationality (Article 7).
- Right to freedom of expression (Article 13, Para 1).
- Right to freedom of thought, conscience and religion (Article 14, Para 1).
- Right to freedom of association and to freedom of peaceful assembly (Article 15, Para 1).
- Right to education (Article 28, Para 1).
- Right to benefit from social security (Article 26, Para 1).
- Right to a standard of living adequate for the child’s physical, mental, spiritual and social development (Article 27, Para 1).
- Right to enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health (Article 24, Para 1).
- Right to the protection of the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence.
- Pre-natal and post-natal care for mothers Article 24(2) (d)j.
- Protection of the child from narcotic drugs (Article 33), sexual exploitation and sexual abuse (Article 34) and trafficking in children (Article 35).
- No child will be subjected to cruel, inhuman or degrading treatment or punishment or life imprisonment (Article 37).
- A child below 15 years of age is not to take part in hostilities (Article 38).

**WORLD SUMMIT FOR CHILDREN, 1990**

The World Summit for Children was held on September 29-30, 1990 in New York to bring attention and promote commitment at the highest political level, to goals and strategies for ensuring the survival, protection and development of children as key elements in the socio-economic development of all countries and human societies. The Summit adopted the World Declaration on the survival, protection and development of children and the Plan of Action for implementing the World Declaration.
While the Declaration is a moral and joint commitment, the plan of action is a practical guide for national governments, international and non-governmental organizations to ensure the implementation of the Declaration’s specific principles. The Action Plan sets specific goals for children and development in the 1990-2000 decade. Some of the goals are as follows:

- Reduction of under-five child mortality rate by one third or 70 per 1000 live births, whichever is less.
- Reduction of maternal mortality rate by half.
- Reduction of severe and moderate malnutrition among under five children by half.
- Universal access to safe drinking water and to sanitary means of excreta disposal.
- Universal access to basic education and completion of primary education by at least 80% of primary school age children.
- Improved protection of children in especially difficult circumstance.

However, children continue to pose a threat to the principles laid down in World Summit. For instances,

- More than one crore children under the age of five still die each year mostly from readily preventable diseases.
- Armed conflict killed more than 20 lakh children in the last years and left many other millions psychologically traumatized, disabled and even mutilated.
• An estimated three crore children are victimized by traffickers who almost invariably go unpunished.
• An estimated 15 crore children are malnourished.
• An estimated one child in three fail to complete five years of basic schooling.
• Over 10 crore are still out of school, 60% of them girls.
• Over 6 crore children work in the worst forms of child labour.

SECOND INDIA COUNTRY REPORT TO U.N. RIGHTS COMMITTEE

The Government of India is in the process of framing the second India Country Report to the UN Child Rights Committee. The Country CRC Report preparation process is underway since August 1999. There have been consultative-workshops a mix of community-based NGOs and those with experience of national/global meetings on child rights and child representatives. There is a provision in the CRC for Non-Governmental Organizations in member countries to propose and undertake to submit Alternate Reports to those of the national governments. The first Alternate Report suggested that the Indian child is deprived and vulnerable in more ways than one.147 Wide consultations are on amongst the NGOs for framing the Second Alternate Report.

As far as India is concerned, the UN Committee on the Rights of the Child observed that the State party should establish a statutory, independent National Commission for Children with the mandate of,

147 n. 32.
inter alia, regularly monitoring and evaluating progress in the implementation of the Convention at the federal, State, and local levels. Further, such a Commission should be empowered to receive and address complaints of violations of child rights, including those with respect to the security forces. Subsequent to the observations of the UN Committee, the Indian Government has established National Commission for Children.

Since signing its agreement to the Convention, the Indian Government has made several attempts to bring the country up to the standard, such as organizing reviews of the existing laws pertaining to children, increasing publicity around children’s issues by organizing conventions with key functionaries and the public, and so forth.

**CHILDREN’S CODE BILL 2000**

A Children’s Code Bill 2000 (CCB 2000) has been drafted for the setting up of a National Commission for Children (NCC) which is likely to be placed before Parliament any time.\(^{148}\) A draft National Policy and Charter for Children (NPC 2001) has been drawn up. Policy documents like the ninth Five-Year Plan and population and health policies have reiterated the government’s commitment to protecting the child.

\(^{148}\) *Ibid*
1999: CONVENTION No. 182 CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR

On June 17, 1999, this ILO Convention was adopted. The new Convention defines for the first time what constitutes the ‘worst forms of child labour’, and includes a ban on forced or compulsory recruitment of child soldiers. It calls for international cooperation on social and economic development, poverty eradication, and education to realize its terms, and provides for broad consultations among governments, workers, and employers—the ‘social partners’ in the ILO’s tripartite structure. It defines the worst forms of child labour as:

- All forms of slavery or practices similar to slavery, 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 a child for prostitution, production of pornography or pornographic performances;
- Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and
- Work which is likely to harm the health, safety, or morals of children.

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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’ organizations. 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; and take into account the special situation of girls’.

An accompanying recommendation defines ‘hazardous work’ as ‘work which exposes children to physical, psychological or sexual abuse; work underground under water, at dangerous heights or in confined spaces; work with dangerous machinery or tools, or which involves heavy loads; work in unhealthy environments which may expose children to hazardous substances, temperature, noise or vibrations; and work under particularly difficult conditions such as long hours, during the night or where a child is confined to the premises of the employers’.