CHAPTER-2

PROTECTIVE ENVIRONMENT FOR CHILD: GLOBAL AND NATIONAL PERSPECTIVE

GENERAL

Childhood is universal transcend all nationalities and know no artificial boundaries. Nature has provided some inherent rights to every human being including children. These fundamental rights or bestowed in human being from the very inception. Human being is endowed with rights since the stage of foetus. Foetus in the mother womb is the starting point since then human being is guaranteed certain basic rights. These rights are intrinsic in every one.

Human rights are those rights which are essential to live as human beings—basic standards without which people cannot survive and develop in dignity. They are inherent to the human person, inalienable and universal. The concept of human rights is based on the dignity and worth of the individual, the unit of creation without reference to man-made artificial divisions based on colour, race, sex, religion etc. Human rights are essential for the realization of true potential of every human being.

Human rights apply to all age groups; children have the same general human rights as adults. But children are particularly vulnerable and so they also have particular rights that recognize their special need for protection. Lots of Human rights treaties refer to Child Protection and Child Rights and are of their provisions apply to children. However, it was felt that children needed a separate convention and a clear definition of children’s legal rights under international law.

The right of child is such a broad topic that neither time nor space will permit to do full justice to the topic. This chapter, therefore, shall limit itself to examining briefly how child rights have evolved over the years within the international community, and how all developments related to child issues were codified in a comprehensive universal documents – the convention on the Rights of the Child, and it is to be implemented to national, regional and global levels thereby providing protection of the rights of children.

HISTORICAL DEVELOPMENT

Tracing the history of development of child rights, in traditional society, the child was integrated in the society through its family. Society’s traditions and customs prescribed patterns of behaviour of both parents and children. The parents’ principle duties were to monitor, protect and educate the child, while the children were expected to obey and respect their parents, and look after them in old age. However, there was no question of rights as we understand them now-a-days.6

Protection and protection of rights of children have long been a major concern of the international community. The main instrument for children at international level is the United Nations Convention on the Rights of the Child (UNCRC). In the international arena, briefly, the initiatives taken so far in the area of Rights of the Child are as follows: in 1924, long before the United Nations was established, the League of Nations adopted the Geneva Declaration of the Rights of the Child. In other words, the roots of the UN CRC can be traced back to 1924 when League of Nations (the predecessor of the United Nations) adopted the Declaration on the Rights of the Child.

The Declaration of the Rights of the Child, drafted by Eglantine Jebb and adopted by the international Save the Children, Geneva, February 23, 1923 and endorsed by the League of Nations General Assembly on November 26, 1924.7

"By the present declaration of the Rights of the Child, commonly known as the Declaration of Geneva, men and women of all nations, recognizing that mankind owes to the child the best that it has to give, declare and accept it as their duty that beyond and above all considerations of role, nationality or creed:

1. The child must be given the means requisite for its normal development i.e. both materially & spiritually.

2. The child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured.

3. The child must be first in all circumstances to receive protection and relief.

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

5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men."

The need to extend international protection to children was first recognised by the United Nations in 1948. Universal Declaration of Human Rights (UDHR) in article 25(2)8 recognised the “special nature of childhood and motherhood” which are “entitled to special care and assistance”.

Protection of children was further elaborated in the Declaration on the Rights of the Child in 1959. This consisted of ten principles and incorporated the guiding principle of working in the best interest of the child. However, this 1959

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7 Supra n.5.
8 Art. 25(2) of UDHR provides, “Motherhood and Childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”
declaration was not legally binding and was mere a statement of general principles. Later the concept was spelled out in two parts of the International Bill of Human Rights: the International Covenant on Civil and Political Rights (articles 23 and 24) and the International covenant on Economic, Social and Cultural Rights (article 10).

The observance of 1979 as the International Year of the Child (IYC) gave further impetus to the programmes for children and dramatic expansion took place during the following years. The long term benefits of the imaginative and innovative programmes for children and families in the developed and underdeveloped countries gave a sense of optimism about the possibility of rescuing children from the adverse effects of hostile social environment. The U.N. convention on the Rights of the Child 1989 is a historic watershed of immense significance.9


The Convention on the Rights of the Child (CRC) was adopted by the General Assembly by consensus, on the 30th Anniversary of the Declaration on November 20, 198910 which came into force on September 2, 1990. It is a set of international standards and measures intended to protect and promote the well-being of children in society. This convention is the recent major human rights instrument, is based on a commitment to a solidarity effort on behalf of the children of the world. The CRC, as compared to any other human rights instrument, has been ratified and accepted as a binding multilateral treaty by the largest number of countries in the shortest period of time. This indicates a core reality. In a world full of conflict and violent confrontation, we have found a single issue that can evoke a positive sense of agreement.11

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The 1989 convention is the most important, because it is legally binding and implements the standards outlined in the earlier declarations in international law.\(^\text{12}\)

Since its adoption by the UN General Assembly in November 1989, the convention has become the most ratified of all international Human Rights treaties accepted by 192 states, all except the US and Somalia, India ratified in 1992.\(^\text{13}\)

The convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. The leaders also wanted to make sure that the world recognised that children have human rights too.\(^\text{14}\)

The convention sets out these rights in 54 articles and two optional protocols. It spells out the basic human rights that children everywhere have. Some rights that children have according to the UN Convention on Rights of the Child are:\(^\text{15}\)

- A child means every human under 18.
- Every child deprived of his/her liberty shall have the right to prompt access to legal assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court.
- The government shall take all appropriate measures to ensure that the child is protected from all forms of discrimination or punishment on the

\(^{13}\) Supra n 5.
\(^{14}\) Supra n 3.
\(^{15}\) The Times of India, New Delhi, 6\textsuperscript{th} November 2008.
basis of the states, activities, expressed opinions or beliefs of the child’s parents, legal guardians or family members.

- No child shall be subjected to arbitrary or unlawful interference to his/her privacy and family, nor to unlawful attacks on his/her honour and reputation.

- The government must protect the child from all forms of sexual exploitation and abuse. It must take national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity.

(A) Essential Principles\textsuperscript{16} :- The UN Convention on the Rights of the Child is universally identified as the basis for child protection. The convention is guided by 3 essential principles and they are as follows:

(1) Non-discrimination (Art. 2) :- The principle is that all rights apply to all children without exception “whatever their race, religion or abilities; whatever they think or say, whatever type of families they come from. It doesn’t matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.”

Art. 2 in particular clarifies that a child’s right of survival and development, protection from exploitation and aggression, and the right to participate in matters that concern the child, consist with evolving maturity, must be realized for all children within ratifying countries. Factors such as the child’s or the parent’s or guardian’s birth, economic class, disability, ethnicity, religion or gender, cannot be a justification for denying these rights or diluting them.

(2) Best Interest of Child (Art. 3) :- In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law,

\textsuperscript{16} Supra n 5.
administrative authorities or legislative bodies, the best interest of child shall be a primary consideration.”

(3) Respect for Views of Children (Art. 12) :- “State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.

This principle does not interfere with parents right and responsibility to express their views on matters affecting their children. Moreover, the convention recognizes that the level of a child’s participation in decisions must be appropriate to the child’s level of maturity.

(B) Four Sets of Basic Rights :- The convention draws attention to four sets of civil, political, social, economic and cultural rights of every child. These are:

(1) The right to survival (Ss. 3, 6, 7, 8, 21, 23, 24, 25, 27, 88 and 40) :- Which 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.

(2) The right to protection (Ss. 9, 21, 22, 23, 24, 25, 32, 34, 37, 38, 39 and 40) etc. :- Which 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 argued conflicts.

(3) The right to development (Ss. 5, 23, 26, 28, 29, 31, 39) :- Which includes the right to education, support for early childhood development and care, social security, and the right to leisure, recreation and cultural activities.

(4) The right to participation (Ss. 12, 13, 14, 15, 17, 23, 24, 28) :- Which includes respect for the views of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

The convention guarantees these rights for the overall development of the child. The convention aims to ensure physical, mental, moral, spiritual, and social
development of children through guaranteeing the above discussed rights. Member states are obliged to implement the provision of the convention to guarantee these rights to children.

(C) Optional Protocol to the Convention on the Rights of Child


In adopting the convention, the international community recognized that people under 18 years of age often need special care and protection that adults do not. To help stem the growing abuse and exploitation of children worldwide, the United Nations General Assembly in 2000 adopted two Optional Protocols to the convention to increase the protection of children from involvement in armed conflicts and from sexual exploitation.

A protocol is ‘optional’ because it is not automatically binding on states that have already ratified the original treaty. The obligations in the protocol are additional and may be more demanding than those in the original convention, and so states must independently choose whether or not to be bound by a protocol.

(i) The Optional Protocol on the Involvement of Children in Armed Conflict, establishes 18 as the minimum age for compulsory recruitment and requires states to do everything they can to prevent individuals under the age of 18 from taking a direct part in hostilities.

(ii) The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography draws special attention to the criminalization of these serious violations of children’s right and emphasizes the importance of fostering increased public awareness and international cooperation in efforts to combat them.
The optional protocols must always be interpreted in right of the original treaty that must be guided by the principles of non-discriminalism, best interest of Child and Child Participation.

(D) Committee on the Rights of the Child

The UN Committee on the Rights of the Child was convened in Geneva for its opening session on 3rd September 1991. It is an international body of 10 children’s rights experts elected by states parties to monitor and report on the progress of each country that has ratified the convention. It also monitors implementation of the two optional protocol to the convention and also aids the Governments in bringing their national laws and practices into conformity with the treaty. The members of the committee are elected by secret ballot from a list of persons nominated by states parties. Each state party may nominate one person from among its own nationals. The member of the committee are elected for a term of four year.

The state parties undertake to submit to the committee, reports on the measures they have adopted on the progress made on the implementation of rights. States must report initially two years after acceding to the convention and then every five years. The committee examines each report and also reviews additional reports which must be submitted by states who have acceded to the two optional protocols to the convention.

The Convention on the Rights of Child does not lay down any procedure for individual complaints from children or their representatives. However, it has

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17 Art. 43 of UNCRC provides, “The committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this convention”. But the conference of state parties to the convention on Dec. 12, 1995 adopted an amendment to Article 43 increasing the membership of the committee to 18 experts. The amendment was approved by the General Assembly on Dec. 21, 1995 by Resolution 50/155, dated December 31, 1995.
19 Art. 43(6) UNCRC.
20 Art. 44(1) UNCRC.
merely achieved the universal ratification. The convention provided on international standard against which the behaviour of nations can be measured and improved.\textsuperscript{21}

The convention on the Rights of the child has already proved to be an effective framework for international action. The key underlying advance was the recognition of the child as a complete individual. The convention establishes that the child has an identity distinct from those of parents or nurtures and that the community has a duty to protect that identity and to enable the child to express it in matters such as guardianship or custody.\textsuperscript{22}

By agreeing to undertake the obligations of the convention, national governments have committed themselves to protecting and ensuring children’s rights and they have agreed to hold themselves accountable for this commitment before the international community. States parties to the convention are obliged to develop and undertake all actions and policies in the light of the best interest of the child.

\textbf{II) World Summit for Children (1990)}

The World Declaration, adopted by the World Summit for children, which met in New York on 30\textsuperscript{th} September 1990 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 society. The Summit adopted the World Declaration on the Survival, Protection and Development of Children and the Plan of Action for implementing the World Declaration.\textsuperscript{23}

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\textsuperscript{23} Supra n 21 p. 129.
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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.\(^\text{24}\)

A set of goals for children and development in the 1990’s has been formulated in several international forum attended by virtually all governments, relevant UN agencies, and major NGO’s. In support of these goals and in line with the growing international consensus in favour of greater attention to the human dimension of development in the 1990’s, this Plan of Action calls for concerted national action and international cooperation to strive for the achievement, in all countries, of the following major goals for the survival, protection, and development of children by the year 2000.\(^\text{25}\)

(a) Reduction of 1990 under-five child mortality rates by one-third or to a level of 70 per 1,000 live births, whichever is the greater reduction;
(b) Reduction of maternal mortality rates by half of 1990 levels;
(c) Reduction of severe and moderate malnutrition among under-five children by one-half of 1990 levels;
(d) Universal access to basic education and completion of primary education by at least 80% of primary-school age children;
(e) Universal access to safe drinking water and to sanitary means of excrete disposal;
(d) protection of children in specially difficult circumstances, particularly in situation of armed conflict.

Since the historic world summit the world has achieved by the year 2000 significant progress in meeting goals established for helping children. However,

\(^{24}\) Ibid.
children continue to pure a threat to the principles laid down in world summit. For instance, more than one crore children under the age of 5 still die each year, Armed conflicts killed more than 20 lakh children in last 10 years and left many other millions psychologically traumatized, disabled and even mutilated, over six crore children work in the worst forms of child labour etc., Although these facts show a gloomy picture, the achievements emphasize that overall a beneficial foundation has been laid to reach the Summit’s objectives.  

A significant step, extending and widening the thrust and horizon of the 1990 world summit on children in the Beijing Declaration of 1995 which calls for elimination of the all forms of discrimination against the girl child and the full implementation at the domestic level of the convention on the inputs of the child.  

**Beijing Conference (1995)**: The Fourth World Conference on Women, held in 1995 in Beijing, commonly called Beijing conference stated that ‘women’s rights are human rights’. It considered issues of violence against women in public and private life as human rights issues. The conference also called for the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The Conference and the Convention on Elimination of All forms of Discrimination Against Women (CEDAW) could not achieved the desired effect in view of the fact that women’s/girl’s human rights are still violated worldwide in different ways and to varying degrees. Violence against girl child remains a

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26 Supra n 21 pp. 129-130.
27 4-15 September 1995.
global phenomenon against which no country, no society and no community is immune. Discrimination against women exists because it has roots in societal norms and values that do not change as a result of international agreements or even by legislation.\textsuperscript{28}


The General Assembly for the first time decided to hold a special session on issue relating to children from September 19 to 21\textsuperscript{st} of 2001 in New York. The conference was to make review of progress made since World Summit for Children where governments committed to specific and time-bound goals on child survival, protection and development.\textsuperscript{29} The special session on children later held in 2002 in New York to reviewed the progress made for children since 1990 World Summit for Children. After deliberation, the Assembly adopted “A World Fit For Children” setting out goals and a specific plan of action to help millions of young people across the globe to receive adequate education, health services and standards of living. The text’s plan of action established new goals for children and set out specific targets in the fields of health, education, protection against abuse, exploitation and violence, as well as the struggle against HIV/AIDS.

\textbf{IV) International Labour Organisation (ILO)}

The world should, indeed, have outgrown the many forms of abuse labouring children endure. But it hasn’t, although not for lack of effort. Child Labour was one of the first and most important issues addressed by the international community, resulting in the International Labour Organisation (ILO) 1999 Minimum Age Convention.\textsuperscript{30}

\textsuperscript{28} \textit{Supra} n 21 p. 113.
\textsuperscript{29} However, it could not be held because of terrorist attack in United States on September 11, 2001.
\textsuperscript{30} \textit{Supra} n 11 p. 91
The International Labour Organisation (ILO) is a specialized agency of the United Nations that deals with labour issues. Its headquarters are in Geneva, Switzerland. Its secretariat – the people who are employed by it throughout the world – is known as the International Labour Office. The organization received the Noble Peace Prize in 1969.

(A) Functions of ILO :- The main functions of ILO include the development and promotion of standards for National Labour Legislation and practice to protect and improve conditions of work and living. It provides technical assistance, in social policy and administration and in manpower training and utilization and foster cooperative organisation. The ILO is also concerned with the protection of human rights and the attempt to associate labour with economic and social decisions.31

(B) Conventions Adopted by ILO :- In 1919, the International Labour Conference adopted at its first session several conventions on the subject, including the minimum Age (Industry) Convention32 and the Night Work of Young Persons (Industry) Convention. In 1920, the ILO adopted the Minimum Age (Sea) Convention and in 1921, the Minimum Age (Agriculture) Convention. The most important ILO convention on the subject is the Minimum Age Convention, 1973,33

32 The convention was adopted in the year of 1919. It prohibits the work of Children under the age of 14 in industrial establishment.
33 It applies to all sectors of economic activity and whether or not children are employed for wages. It covers work done by children both for another person and on their own behalf (self-employment). The convention establishes that the minimum age should not be less than the age of completing compulsory schooling and in no event less than 15 years of age. However, it allows a developing country to specify initially a general minimum age of 14 years instead of 15. It also specifies the minimum age for Hazardous work, that must be at least 18 years. But a lower age of 16 is allowed where the health, safety and morals of young persons are fully protected. This convention allows a lower age for light work from 13 to 15 years of age, provided the work is not hazardous to child health or development, and does not hinder the child's education. A minimum age for light work at 12 instead of 13 can be set in countries where the basic minimum age of 14 is allowed.
which revise a number of earlier conventions on the same subject and is, in turn, complemented by other ILO nations that certain provisions on minimum age in specialized areas or that deals with other aspects of the work of young people.

(C) **Worst form of Child Labour convention, 1999** :- The convention concerning the prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour, known in short as the worst forms of Child Labour Convention, was adopted by the International Labour Organisation (ILO) in 1999.

The ILO also adopted the Worst Form of Child Labour Recommendation in 1999. This recommendation contains, among others, recommendations on the types of hazards that should be considered for inclusion within a country-based definition of Worst Form Hazards faced by children at Work. The Immediate abolition of Worst Forms of Child Labour Convention, 1999 defines the 'worst form of child labour' as comprising.

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<td>a.</td>
<td>All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage and serfdom;</td>
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<td>b.</td>
<td>The use, procuring or offering of a child prostitution for the production of pornography or for pornographic performances,</td>
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<td>c.</td>
<td>The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;</td>
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<td>d.</td>
<td>Work which, by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or moral of children.</td>
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34 Art. 3 of the Immediate Abolition of the Worst Forms of Child Labour Convention, 1999.
ILO’s Response to Child Labour: The ILO’s International Programme on Elimination of Child Labour (IPEC) was created in 1992 with the overall goal of the progressive elimination of child labour, which was to be achieved through strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labour. IPEC is the largest programme of its kind globally and the biggest single operational programme of the ILO.

IPEC’s work to eliminate child labour is an important facet of the ILO’s Decent work Agenda. Child labor not only prevents children from acquiring the skills and education they need for a better future, it also perpetuates poverty and affects national economies through losses in competitiveness, productivity and potential income. Withdrawing children from child labour, providing them with education and assisting their families with training and employment opportunities contribute directly to creating decent work for adults.

V) United Nations Children’s Fund (UNICEF)

The United Nations Children’s Fund (UNICEF) was created by the United Nation’s General Assembly on 11th December 1946, to provide emergency food and healthcare to children in countries that had been devastated by World War II. In 1953, UNICEF became a permanent part of the United Nations system and its name was shortened from the original United Nations International Children’s Emergency Fund but it has continued to be known by the popular acronym based on this old name. Headquartered in New York city, UNICEF provides long-term humanitarian and developmental assistance to children and mother in developing countries. The UNICEF was awarded the Nobel peace prize in 1965 and the Prince of Asturias award of concord in 2006.
(A) Fundamental UNICEF Programmes:
(a) Nutrition
(b) Water
(c) Health
(d) Education

(B) Primary Priorities: UNICEF is currently focused on five primary priorities:
(i) Child Survival and Development
(ii) Basic Education and Gender Equality (including girls education)
(iii) Child protection from violence and abuse,
(iv) HIV/AIDS and Children
(v) Policy advocacy and partnerships for children’s rights

(C) UNICEF Fund Raising: UNICEF is funded exclusively by voluntary contributions, and the National Committees Collectively raise around 1/3rd of UNICEF’s annual income. This comes through contributions from corporations, civil society, organizations, and more than 6 million individual donors worldwide.

(D) Sponsorship: Recently, UNICEF has begun partnerships with world-class athletes and teams to promote the organization’s work and to raise funds.

On 7th September 2006, an agreement between UNICEF and the Catalan association football club FC Barcelona was reached whereby the club would donate 0.7% of its total yearly revenue to the organization for five years.

In January 2007, UNICEF struck a partnership with Canada’s national tent pegging team. The team was officially re-flagged as “UNICEF Team Canada”, its riders wear UNICEF’s logo in competition, and team members promote and raise funds for UNICEF’s campaign against childhood HIV-AIDS.

The Swedish club Hammarby IF followed Canadian, also raising funds for UNICEF and displaying the UNCIEF name on their sportswear. The Danish Soccer club Brandy IF did likewise from the summer of 2008.

UNICEF recently announced a landmark partnership with Scotland's Rangers F.C. UNICEF will partner the Rangers Charity Foundation and have pledged to raise $300,000 by 2011.

(E) UNICEF Junior 8 Summit: Is the youth event linked to the 98 summit and jointly organized by UNICEF and the 98 presidency. The summit aims to advance young people's understanding of global issues and to provide a platform for them to discuss and advocate on the issues with some of the most powerful leaders in the world. Canadian high school students, age 14 to 17, are some of the luckily one's who were invited to discuss the issues affecting them and their global peers with Prime Minister Stephen Harper, President Barack Obama and other world leaders attending Junior 8 summit on July 8-10, 2009 in Italy.36

VI) South Asian Association for Regional Cooperation (SAARC)

Introduction: The South Asian Association for Regional Cooperation (SAARC) comprising the seven countries of South Asia i.e. Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka is manifestation of the determination of the peoples of South Asia to work together towards finding solution to their common problems in a spirit of friendship, trust and understanding.

Evolution: The concept of regional cooperation in South Asia was first mooted in November 1980. After consultations, the Foreign Secretaries of the seven countries met for the first time in Colombia in April 1981. But finally the SAARC was launched/established in the First Summit that was held in Dhaka on 7-8-December 1985 and was signed by the heads of the State or Government.

SAARC Policy and Children :- The development and well-being of children is a principal area of cooperation identified by SAARC from its very inception. The objective of building a region-wide consensus on social action for achieving the rights of the child and the goals set for them was addressed during three ministerial conferences on Children held in Delhi (1986), Colombo (1992) and Rawalpindi (1996).

The year 1990 was observed as the SAARC year of the Girl Child and the decade of 1991-2000 was designated as the SAARC decade of the Girl Child. The decade from 2001 to 2010 is being observed as the SAARC decade of the Rights of the Child.

The Ninth Summit (Male, May 1997) gave impetus to tackling the important issues relating to women and children. Pursuant to the decision of the Ninth Summit, the SAARC signed two conventions for child protection and child rights :-

(A) The SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia :- The convention was signed on 5th January 2002 during the Eleventh summit in Kathmandu. The objectives of the convention include facilitating the development and protection of full potential of the South Asian Child, with the understanding of their rights, duties and responsibilities as well as those of others.

(B) The SAARC convention on Preventing and Combating the Trafficking in Women and Children for Prostitution :- The convention was signed on January 5, 2002 at the inauguration of 11th summit. The objectives of the convention is to “promote cooperation amongst member states to effectively deal with various aspects of prevention, interdiction and suppression of trafficking in women and children; repatriation and rehabilitation of victims of trafficking and preventing the use of women and children in international prostitution networks, particularly
where the SAARC member countries are the countries of origin, transit and destination.

These two conventions are a milestone on the path to coordinated interventions against trafficking at the sub-regional level. The countries have committed themselves to develop a Regional Plan of Action and establish a Regional Task Force against trafficking.

INTERNATIONAL CONVENTION AND ROLE OF INDIA

India ratified the UN CRC on the 11th December 1992. Accordingly, the different governments have been taking action to review the national and state legislation and bring it in line with the provisions of the convention. India submitted a declaration. This declaration concerns the article 32 related to prevention of child labour according to which the child has the right to be protected from work that threatens his or her health, education, or development. The state shall set minimum ages for employment and regulate working conditions. With this declaration, India asks time to implement progressively legislations and policies in this field. “While fully subscribing to the objectives and purposes of the convention, realizing that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries subject to the extent of available resources and within the framework of international co-operation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India the Government of India undertakes to take
measures to progressively implement the provisions of article 32, in accordance with its national legislation and relevant international instruments to which it is a state party."


II) Declaration by India: India has made no declaration to the optional protocol on the sale of children, child prostitution and child pornography. India has made a declaration to the optional protocol on the involvement of children in armed conflicts.

The article 3(2) of the protocol mentions that "each state party shall deposit a binding declaration upon ratification of or accession to the present protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced." The declaration made by India is an answer to this query. It states that the minimum age for recruitment is 16 years and that this recruitment is purely voluntary.

"Pursuant to article 3(2) of the optional protocol to the convention on the Rights of the Child on the involvement of children in Armed Conflict, the Government of the Republic of India declare that:

(i) The minimum age for recruitment of prospective recruits into Armed Forces of India (Army, Air Force and Navy) is 16 years. After enrolment and requisite training period, he attested Armed Forces personnel is sent to the operational area only after he attains 18 years of age;
(ii) The recruitment into the armed Forces of India is purely voluntary and conducted through open rally system/open competitive examination.

There is no forced or coerced recruitment into the Armed Forces.

III) UNICEF in India :– UNICEF has been working in India since 1949. The largest UN Organization in the country, it has implemented a $400 million programme from 2003 to 2007.

UNICEF is fully committed to working with the Government of India to ensure that each child born in this vast and complex country gets the best start in life, thrives and develops to his or her full potential.

What makes UNICEF unique in India is its network of 13 state offices. These enable the organization to focus attention on the poorest and most disadvantaged communities, alongside its work at the national level. UNICEF uses its community-level knowledge to develop innovative interventions to ensure that women and children are able to access basic services such as clean water, health visitors and educational facilities, and that these services are of high quality. At the same time, UNICEF reaches out directly to families to help them to understand what they must do to ensure their children thrive.

(A) Milestone in the History of UNICEF’s Work in India

1949 – UNICEF begins working in India


1985-86 – UNICEF supports launch of Government of India’s Universal Immunization Programme, now reaching millions of Children throughout India.
2000 – UNICEF partners with Government of India to ensure eradication of guinea worm.

2004 – UNICEF joins Government of India efforts to eradicate polio.

(B) Key Achievement of the UNICEF Country Programme (2003-2007)

In collaboration with govt. schemes, key achievements over these five years include:

- increased household consumption of iodized salt;
- provision of water supply and sanitation to 65% of schools;
- Mainstreaming of HIV/AIDS prevention education for adolescents in 75% of all govt. schools;
- Improved school governance and child-friendly classroom environments;
- Adoption of Integrated Management of Neonatal and Childhood Illnesses (IMNCI) as a key strategy for child health.

(C) The Country Programme (2008-2012)

The overall goal of the 2008-2012 country programme is to advance the fulfillment of the rights of all women and children in India to survival, development, participation and protection by reducing social inequalities based on gender, caste, ethnicity or region.

UNICEF’s work is centered on children from neonatal stages to adolescence. There is also a special focus on social inclusion in all these programmes, keeping in mind the fact that the 11th Five years plan emphasis on ‘inclusive growth’. UNICEF will work closely with government flagship schemes to strengthen their capacity to deliver quality services to all its citizens.

IV) Human Rights Framework : At National Level

In India, the post-independence era has experienced an unequivocal expression of the commitment of the government to the cause of children through constitutional provisions, policies, programmes and legislation.
In 1959, in India the first move was made to introduce child welfare as a part of national planning. Prior to that, the child was lumped with the aged, the women and the handicapped for, as per the terms of our financial moghuls who dominate the bureaucracy, all come under the dependent groups category.37

Fortunately the late Prime Minister, Jawaharlal Nehru, responded very positively to the idea that a child is dependent only temporarily and is in fact an integral part of our investment in the future. Manners and parliamentarians followed his lead. To that end, the first budget allocation for child development came in the Third Five Year Plan.

As a follow-up of commitment made by India and being a party to the UN Declaration on the Rights of the Child 1959, India adopted the National Policy on children in 1974. Furthermore, in that year a National Children’s Board was created whose permanent chairman has always been the Prime Minister. This body is the highest authority for new policies and programmes for India’s children. The National Policy passed in 1974 stressed that “children’s” programmes should find a prominent part in our national plans for the development of human resources.

The Constitution of India in Article 39 of the Directive Principles of state policy pledges that “the state shall, in particular, direct its policy towards securing and providing opportunities and facilities to children to develop in a healthy manner and in the conditions of freedom and dignity.” It is an obligation on the part of the state to see that child and youth are protected against exploitation. There shall not be moral and material abandonment of children.38

As a follow-up of this commitment, India adopted the National Policy on Children in 1974. The policy reaffirmed the constitutional provisions and stated that-

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38 The Constitution of India, Art. 39(e)
"it shall be the policy of the state to provide adequate services to children, both before and after birth and 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".

Therefore, keeping in view the Constitutional Commitments and the National Policy for Children 1974, the Government of India announced Charter for Children 2001. According to this charter the children are entitled for the following rights:

(a) Right to Education
(b) Right to be protected from economic exploitation
(c) Right to Health
(d) Right to a standard of living
(e) Right to protection from maltreatment
(f) Right to protection from illegal activities and distress
(g) Right to freedom to seek and receive information
(h) Right to protection of girl child.

V) India’s Commitment Towards Children’s Right

(A) Children Rights and Indian Constitution :- The constitution of India provides to all its citizens; justice, social, economic and political, liberty of through, expression belief, faith and worship, equality of status and opportunity. The constitution of India has also resolved to promote among its citizens; fraternity in assuring the dignity of the individual and the unity of the nation.\textsuperscript{39}

Constitution is with reference to all the citizens of India including children.

Though children are not expressly mentioned in the explanations provided under the constitution, it is implied in its meaning, concerning the meaning of the term ‘citizen’ the constitution states that “every person who has born in the

\textsuperscript{39} Id; Preamble
territory of India" is a citizen of India. Children conforming to the above provision are deemed to be citizens of India. Constitution guarantees certain fundamental rights to its citizens. However, by considering the child’s vulnerability constitution offers special rights and protection to children.

Child – An Important National Asset

Once Mahatma Gandhi said, “If we are to reach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with children. And if they grow up in their natural innocence, we won’t have to pass fruitless idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which, consciously and unconsciously, the whole world is hungering.”

Children are considered as the nation’s ‘supremely important national assets and its living malleable potential. The future of any nation is largely determined on how its children grow and develop.

In Lakshmikant Pandey’s case, the Supreme Court has emphasized upon the great significance of child welfare in the country. According to the Supreme Court, “the welfare of the entire community depends on the health and welfare of the children. The constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interests and welfare of children in the country.”

(1) Preferential Treatment to Children: State Government under article 15(3) of the constitution is empowered to make special provisions for the children. The use of word ‘for’ in this clause signifies that special provisions can be made only in favour of children and not against them.

(2) Right of Child of a Dignified Life: According to Punjab and Haryana High Court a child cannot be treated as an “inanimate object”. And cannot be treated

40 Id; Article 5
43 Laxmi Kant Pandey vs. Union of India, AIR 1984 SC 496.
like a property. Right to dignity means giving the child the fullest opportunity to develop his personality. It means right to live a healthy life including a reasonable standard of comfort and decency,\(^{44}\) and all that give meaning to a child’s life.\(^{45}\)

(3) **Right to Survival** :- Right to life guaranteed under Article 21 includes within its purview of the right to Health and survival etc. children in India continue to face unequal chances of survival depending upon where they born. Because the infant mortality rate in rural areas has always exceeded that in urban areas and the gap continues to persist. But dramatically India has made progress in reducing its IMR from a levels of 129 deaths per 1,000 live births in 1971 to 79 in 1992. India made commitment for reduction of IMR to 45 per 1,000 live births in 2007 and that is also achieved by the government. The next commitment made by India by 2012 is of reduction in IMR to 28 per 1,000 live births.\(^{46}\)

(4) **Right to Shelter** :- All children including abandoned child, homeless and orphans have right to Shelter. In *Chameli Singh vs. Union of India*\(^{47}\) the Supreme Court emphasized on the importance of the right to shelter as one of the basic human rights created to ensure all facilities to the man to develop himself as a member of a civilized society. The court said that “shelter for a human being is not a mere protection of life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually.

(5) **Right to Education** :- 15\(^{th}\) December 2008. Seventy three years since Mahatma Gandhi gave the call for universal education in 1937; sixty three years since independence; fifty eight years since constitution, instead of making education a fundamental right made it part of the Directive Principles; seventeen years since the Supreme Court in 1993\(^{48}\) ruled on the right to education; ten years

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\(^{44}\) Chameli Singh vs. State of UP, AIR 1996 SC 1051.

\(^{45}\) Ram Sharn vs. Union of India, AIR 1989 SC 549.


\(^{47}\) AIR 1996 SC 1051.

\(^{48}\) In a historical judgment the Apex Court I Unni Krishnan vs. State of A.P. [(1993)1 SCC 645] has held that the “right to education” upto the age of 14 years is a fundamental right within the meaning of Art. 21 of the constitution.
after the 86th constitutional amendment was passed by the parliament in 2002 by inserting Art. 21-A making education a fundamental right for children in the restricted age group of 6 to 14 years; the right to free and compulsory education Bill was introduced in the Rajya Sabha on 15 Dec. 2008. Though the delay on part of the state is deplorable; the introduction is undeniably momentous, that takes the shape of the Right of Children to Free and Compulsory Education Act, 2010.

Instead of Article 21-A, Recognition of the need to make available free and universal primary education is also provided by Directive Principles of State Policy under Article 45 as under:-

"The State shall endeavour to provide, early children care and for free and compulsory education for all children until they complete the age of fourteen."

Art 41 provides "the state shall; within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

Further, Article 51-A (k) says-

"It shall be duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, the age of six to fourteen."

(6) **Right to Proper Nutrition** :- Art. 47 states that "it is the duty of the State to raise the level of nutrition and standard of living and to improve public health."

This Article provides that the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the state shall endeavour to bring about
prohibition of the consumption, except for medicinal purpose, of intoxicating drinks and drugs which are injurious to health.”

(7) Right Against Exploitation: Art. 23 & 24 guarantee “the fundamental right against exploitation”. Art. 23 prohibits traffic in human beings, ‘begar’ and ‘forced labour’. Article 24 provides for the protection of children from being employed in hazardous employments.

In Raj Bahadur’s case, the expression “traffic inhuman being” was defined as “any dealing in human beings like Chattel”. In Vishal Jeet’s case, the Apex Court issued directions to State Government and UT’s for the eradicating the evil of child prostitution and for evolving programs for the care, protection, treatments, development and rehabilitation of young fallen victim. The court further stated that Article 23(1) is to be read with Article 39(e) and 39(f) which impose obligation on the state for protection of children and youth against exploitation and against moral and material abandonment.

(B) Children and Directive Principles: Constitution provides for directive principles of state policy. Directive principles are guidelines for the state in its functioning. At the same time these directive principles imposes certain obligations on the part of the state in guaranteeing the fundamental rights of citizens including children. As far as the rights of children are concerned following directive principle is very much significant.

Article 39 of the constitution directs the state to provide opportunities and facilities to children to develop in a healthy manner and in the conditions of freedom and dignity. It is an obligation on the part of the state to see that child and youth are protected against exploitation. There shall not be moral and

51 Raj Bahadur vs. Legal Remembrancer, AIR 1953 Cal. 522.
52 Vishal Jeet vs. Union of India, AIR 1990 SC 1412.
53 Subs. by the Constitution (Forty-second Amendment) Act, 1976, Section 7, for clause (f) (w.e.f.) 3-01-1977.
54 Supra n. 38, Directive Principles of State Policy Under Articles 36 to 51.
material abandonment of children. This directive intends to protect children rights such as right to childhood, right to health, dignity, right against exploitation. The state has the responsibility to create such an atmosphere for the overall development of the child. It is a duty on the part of the state to prevent the children from doing a work which does not suit their age.

VI) Steps taken by Indian Government in interest of Children

(A) At National Level

(1) Ministry for Women and Child Development: The department of women and child development was set up in the year 1985 as a part of the Ministry of Human Resource Development and then as part of the Ministry of Social Justice and Empowerment. From January 2006, the department has been upgraded to a ministry under the independent charge of Smt. Renuka Chawdhary; Minister of state for women and child development.

Mandate: The mandate of ministry is to promote holistic development of women and children. It formulates plans, policies and programmes; enacts/amends legislation, guides and coordinates the efforts of both governmental and non-governmental organizations working in the field of child developments. The ministry implements and monitors also certain innovative programmes for women and children.

Concerning children, in addition to its nodal function on all policy issues related to children and the implementation and monitoring of the CRC, the ministry has the primary responsibility for planning, implementation and coordination of child protection services. It examines how to rationalize programs and approaches for creating a strong protective environment for children, diversify and provide essential services for children, mobilize intersectoral

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55 Id; Art. 39(e).  
56 Id; Art. 39(b).
response for strengthening child protection and set standards for care and protection.

Most of the programmes of the Ministry are run through non-governmental organizations. The major policy initiatives undertaken by the ministry in the recent part include universalisation of a programme titled “Integrated Child Development Services” (ICDS), which provides a package of services comprising supplementary nutrition, immunization, health check up and referral services, pre-school non-formal education. It has also been currently developing an integrated child protection scheme (ICPS).

(2) National Human Rights Commission :- The National Human Rights Commission (NHRC) is an independent and autonomous statutory body established under the Human Rights commission Act 1997. The NHRC was created in response to 1991 UN-sponsored meeting of representatives of national institutions held in Paris, which laid down a detailed set of principles on the status of national institutions commonly known as the Paris Principles. These principles, subsequently endorsed by the UN Commission on Human Rights and the UN general Assembly have become the foundation and reference point for the establishment and operation of National Human Rights Commission.

Mandate :- The Commission’s mandate include inquiry at its own initiative or on a petition presented to it by a victim into complaint of violation of human right. The commission receives complaints in thousands every year. These relate to custodial death, custodial rape, disappearance, police excesses, indignity of women etc., it also deals with issues relating to violations of child protection and child right such as child trafficking, child labour, sexual violence against children, organized workshops on these issues and publishes studies or findings related for instance to missing children, trafficking on children, etc.

However, it is important to note here that the commission does not have the power of prosecution. What it can only do is to make recommendations to the government or recommendations to the courts to initiate proceedings based on the inquiry that it conducts. And for the purpose of inquiry the 'commission have all the powers of a civil court trying a suit under C.P.C.

(3) National Commission for Protection of the Child Rights (NCPCR) :- The National Commission for Protection of the Child Rights Act 2005 envisaged setting up a National Commission at the National level and State Commissions at the state level. This statutory body for protection of child rights was constituted in 2007. It aims to favour effective enforcement of children's rights and proper implementation of laws and programmes relating to children.

Mandate :- The mandate of the commission is to spread child rights literacy among various sections of the society and promote awareness. The commission examine all factors that inhibit the enjoyment of rights of most vulnerable children and children in need of special care and protection. The commission undertake periodical review of existing policies, programmes and promote research in field of child rights. It examine and review the safeguards provided by treaties and other international instruments and by the Indian constitution or any national law for protection of child rights and recommend measures for their effective implementation. It inspects juvenile custodial home, or any other place of residence or institution meant for children for the purpose of treatment, reformation or protection and take up with these authorities for remedial action. The commission also inquire into the complains of matters relating to (i) deprivation of child’s rights (ii) non-implementation of laws for development and protection of children; and (iii) non-compliance of policy decisions, guidelines or and to provide relief to such children.
(4) The commissions for protection of child rights (Amendment) Act 2006:-
In the commissions for protection of Child Rights Act, 2005, in the proviso to section 4, for the words “Minister-in-charge of the Ministry of Human Resource Development”, the words “Minister-in-charge of the Ministry of the Department of Women and Child Development” shall be substituted.

(5) Central Advisory Board on Child Labour :- The Central Advisory Board on child labor was constituted on March 4, 1981. The mandate of the Board includes–

(i) To review the implementation of the existing legislation administered by the central government.

(ii) To suggest legislative measures as well as welfare measures for the welfare of working children.

(iii) To review the progress of welfare measures for working children.

(iv) To recommend the industries and areas where there must be a progressive elimination of child labor.

(B) At State & District Level

(1) The State Commission for Protection of Child Rights :- The commissions for Protection of Child Rights Act 2005 provides that State Governments may constitute state commissions for protection of child rights in their state and designate a state level and other district level children’s court in their respective state. The Act empowers the State Government to notify at least a court in the state or a court of sessions in each district as a children’s court, with concurrence of the Chief Justice of the concerned High Court. For every children’s court, the State Government is required to appoint a public prosecutor or appoint an advocate who has been in practice for not less than seven years as the special public prosecutor.

(2) Child Welfare Committee (CWC) :- The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 recently passed by both the houses
of parliament makes it mandatory to have one Child Welfare Committee in each
district as the final authority to dispose of cases for the care, protection, treatment,
development and rehabilitation of children in need of care protection and to
provide for their basic needs and protection of human rights. It has sole authority
to deal with matters concerning children in need of care and protection.

(3) **Juvenile Justice Boards (JJB)**: The Juvenile Justice (Care and Protection of
Children) Amendment Act, 2006 makes it mandatory to have one Juvenile Justice
Board in each district to deal with matters relating to juveniles in conflict with
law. The Juvenile Justice Boards will consist of two social workers in which one
shall be a women along with a judicial Magistrate. There are many states / UT’s
in the country, which have not yet established JJB’s. Even in those states/UT’s
where JJB’s have been established, the infrastructure is often inadequate making
it difficult for the board to effectively discharge their duties. This ultimately
results in unnecessary delay in disposition of matters pending before the Board.

(4) **Special Juvenile Police Unit (SJPU)**: The Juvenile Justice (Care and
Protection of Children) Act 2000 provides for setting up special juvenile police
units in every district to coordinate and upgrade the police interface with children.
All the police officers, designated as Juvenile/child welfare officers, are numbers
of SJPU. While states/UT’s have formed the SJPU and many others are in process
of setting them up.

As a statutory requirement the Integrated Child Protection Scheme (ICPS)
shall provide for two paid social works in each SJIU for supporting the unit out of
which one shall be a women and other having expertise in child protection.

Thus, the protective environment for child at global level that is
adopted by India is well in line because it is not only adopted at national but
State and District level as well. Every effort has been made by our nation to
provide children a protective shield against abuse, neglect and exploitation etc.

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