CHAPTER 1

INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS OF CHILDREN

It is only by the beginning of the 20th century that the development of the ‘international law on the rights of the child’ has paralleled with the development of the ‘international human rights law’.

1 The growth of ‘international law on the rights of the child’ witnesses two distinct, but interconnected phases:

Phase I: The international community recognises that all individuals, including children are the objects of international law, requiring legal protection and it asserts specific substantive rights to individuals, including children.

Phase II: The international community acknowledges specific rights and freedoms addressed to children.

Phase I: Recognition of Rights of Individuals

Any philosophical and analytical enquiry into the existence of children’s rights in the international sphere envelops the recognition of general human rights by the international community. The UN Charter itself, made explicitly its resolve to stand stern for the protection of fundamental human rights:

“We the people of the United Nations determined …. to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small. …”

Universal Declaration of Human Rights, 1948 (UDHR)

UDHR recognises the inherent dignity and equal, inalienable rights of all members of the human family, which impliedly includes children also. It proclaims that all human beings are born free and equal in dignity and rights. Slavery, servitude, torture, cruel, inhuman or degrading treatment towards individuals were condemned in this Declaration. The fundamental human rights pertinent to children also have been recognised much early, in this document. Article 25(2) says:

“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.”

Again, Article 26 asserts the right of education, which is fundamental to the child for the enjoyment of all other stipulated human rights:

“(1) Every one has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

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2 Preamble to the UN Charter, June 26, 1945, entered into force October 24, 1945
4 Article 1, UDHR
(3) Parents have a prior right to choose the kind of education that shall be given to their children.”

It is quite interesting to analyse how beautifully the following civil and political rights enumerated generally under the Declaration are specifically asserted in the coming declarations specifically addressed to children also:

1. Right to life, liberty and security of person

2. Prohibition of slavery and slave trade

3. Prohibition of torture, cruel, inhuman or degrading treatment or punishment

4. Right to be recognised as a person before law

5. Equality before the law and equal protection of law against any discrimination in violation of the Declaration

6. Right to effective remedy by competent national tribunals

7. Prohibition of arbitrary arrest, detention or exile

8. Right to be presumed innocent until proved guilty and freedom from ex-post facto laws

5 Article 3
6 Article 4
7 Article 5
8 Article 6
9 Article 7
10 Article 8
11 Article 9
12 Article 11
13 Article 11
9. Freedom from arbitrary interference with privacy, family, home,… or attack on honour or reputation and right to protection by law against such interference

10. Right to freedom of movement and residence within the borders of state

11. Right to nationality

12. Right to freedom of thought, conscience and religion and freedom of opinion and expressions

Though there is a little specific address to children in UDHR, the subject of humane concern towards children in the international sphere is well rooted in this resolve. And amazingly, UDHR paved way to various international conventions creating legally binding obligations of which the 1966 Convention on the Economic, Social and Cultural Rights deserves mention.

Article 12
Article 13
Article 15
Article 18
Article 19

Convention for the Suppression of the Traffic in Persons & of the Exploitation or Prostitution of Others (1949);
Convention on the Status of Refugees (1951);
Convention on the Prevention & Punishment of Genocide (1951);
Convention on the Political Rights of Women (1952);
Convention on the Status of Stateless Persons (1954);
Supplementary Geneva Convention for Abolishing Slavery, Slave Trade and Institutions and Practices Similar to Slavery (1956);
Convention on the Forced Labour (1957);
Convention on the Reduction of Statelessness (1961);
Convention on Consent to Marriage, Minimum Age for Marriage & Registration of Marriages (1962);
International Convention on the Elimination of All Forms of Racial Discrimination (1966);
International Covenant on Civil & Political Rights (1966);
International Covenant on Economic, Social & Cultural Rights (1966);
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
Convention on Rights of Child (1989) etc.
International Covenant on the Economic, Social and Cultural Rights, 1966 (ICESCR)

This Convention pays concern towards children in the following words:

“The State Parties to the present Covenant recognize that:

(1). The widest possible protection and assistance should be awarded to the family, which is the natural and fundamental group unit of the society, particularly for its establishment and while it is responsible for the care and education of dependent children.

(2) ..............

(3). Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punished by law.”

Further, Article 10(3) says that special measures of protection and assistance should be given on behalf of all children and young persons without any discrimination for reasons of parentage and other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their normal development should be punishable by law.

In line with Article 26 of the UDHR, Article 13 of the ICESCR declares the right to education. Accordingly, education shall be directed to the full development of the human personality and enable all persons to participate.

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20 993 UNTS No. 14531(1976) p.3
21 Article 10
effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. Article 13(2) says:

“……………

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

b) Secondary education in its different forms, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

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

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

e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established and the material conditions of teaching staff shall be continuously improved.”

The covenant has also recognised the liberty of parents or legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.\textsuperscript{22}

\textit{International Covenant on Civil and Political Rights, 1966 (ICCPR)}

This is a document, which complements the International Covenant on the Economic, Social and Cultural Rights, 1966. Children are entitled to benefit from

\textsuperscript{22} Article 13(3)
all the relevant rights contained in the covenant and in addition, there are specific provisions for children including safeguards for the administration of justice; viz., sentence of death shall not be imposed on persons below 18 years of age 23; accused juveniles shall be separated from adults and brought as speedy as possible for adjudication 24; juvenile offenders shall be segregated from adult offenders and be accorded treatment appropriate to their age and legal status 25. Article 14(1) provides an express exception to the right of hearing in public, when it is in the interest of juveniles or when it concerns the guardianship of children.

ICCPR also recognizes family as the natural and fundamental unit of society and as such is entitled to the protection of the state. 26 It is also made obligatory for the States to respect the liberty of parents to ensure the religious and moral education of children in accordance with their beliefs and in the event of dissolution of marriage provision should be made for the protection of children 27. In addition to all, Article 24 provides:

“(1) Every child shall have without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as minor, on the part of his family, society and the State.

(2) Every child shall be registered immediately after birth and shall have a name.

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

By virtue of Article 24 a child is entitled to special measures of protection in addition to the measures, which State Parties are under a duty to take under Article 2, in favour of all individuals. But the Human Rights Committee has observed that the reports from States often reveal that this obligation of the States

23 Article 6(5)
24 Article 10(2)(b)
25 Article 10(3)
26 Article 23
27 Article 18(4) & Article 23(4)
is underestimated and inadequate information is often supplied about the way in which children are afforded enjoyment of this special protection.\textsuperscript{28}

**Phase II: Recognition of Rights Specifically Addressed to Children**

The extreme vulnerability of children and the failure of State Parties to have expeditious and effective measures to implement the general rights asserted in various covenants and declarations with a view to ensure the specific protection of children, prompted the international community to adopt comprehensive international documents on the rights of children. In this category, the primary reference owes to the Geneva Declaration of the Rights of the Child, 1924 \textsuperscript{29}, the General Assembly Declaration on the Rights of the Child, 1959 \textsuperscript{30} and the UN Convention on the Rights of the Child, 1989 \textsuperscript{31}. The protection thus afforded can be identified in the following categories:

(i) **Child Labour**

The exploitation of child labour still remains a current and widespread problem, particularly in the developing countries. The problem of child labour is connected with poverty, underdevelopment and is extended not only to the engagement in hazardous labours, but also to child prostitution, pornography, enforced begging, debt bondage and sale of children.\textsuperscript{32} The realization of this danger urged the international community to place emphasis against child labour. The 1959 Declaration on the Rights of the Child provides:

“The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or

\textsuperscript{28} UN Doc. CCPR/C/21/Rev.1

\textsuperscript{29} This Declaration was based on the philosophy of Eglantyne Jebb, the British founder of ‘Save the Child Union’

\textsuperscript{30} Adopted by the General Assembly on November 20, 1959.

\textsuperscript{31} Adopted by the General Assembly on November 20, 1989 and entered into force on September 2, 1990.

permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.”  

In tune with the 1959 Declaration, the 1989 Convention on the Rights of the Child also asserts in Article 32:

“1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

a) Provide for a minimum age or minimum ages for admissions to employment;

b) Provide for appropriate regulation of the hours and conditions of employment;

c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”

Again various reports of Human Rights Committees, UNICEF and ILO highlight the need for information, education, vocational training, social action and development aid as well as absolute adherence to international labour standards, to eradicate this evil.  

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33 Principle 9
34 See for details, [Minimum Age(Industry) Convention 1919-revised in 1937; Minimum Age (Sea) Convention 1920-revised in 1936; Minimum Age (Agriculture) Convention 1921; Minimum Age (Trimmers & Stockers) Convention 1921, etc. which became denounced when the parties became parties to Convention No.138];
(ii) Adoption

The 1989 Convention, in Article 21 has specifically laid down the need of adoption of certain categories of children. It is identified as a means of humanitarian assistance in the enjoyment of applicable rights set forth in the Convention. In this regard, it is obligatory on the part of the States Parties to provide appropriate co-operation in any efforts by the UN and other competent inter governmental organisations or non-governmental organisations. The test of ‘Paramount Consideration of the Best Interest of Child’ is adopted by the Convention laying down the following guidelines to the States Parties that they shall:

a) “(a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the Child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

b) (b) Recognise that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a

Forced Labour Convention, 1930;
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949;
UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and the Institutions & Practices Similar to Slavery, 1956;
Convention Concerning Minimum Age for Admission to Employment 1973 (No. 138);
European Recommendation 989 on the Fight Against Drug Abuse & Trafficking, 1984;
World Declaration on the Survival, Protection & Development of Children, 1990;
ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up Adopted by the ILO in 1998;
Worst Forms of Child Labour Convention, 1999(No.182);
foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;

c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.” 35

Again, the Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption 36 seeks to regulate inter-country adoption. The Convention recognizes that inter-country adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her state of origin, and recognizes the need in such situations to take account of the best interests of the child37.

35 Article 21
36 May 29, 1993
(iii) Exploitation & Abuse

The exploitation of children is universal, mainly due to the subordinate status, immaturity and vulnerability of children\textsuperscript{38}. The need for protection of children against all forms of exploitation first appeared in the 1924 Declaration on the Rights of Children\textsuperscript{39} and was reiterated and expanded in the 1959 Declaration.\textsuperscript{40} The UN Convention on the Rights of the Child developed the concept further imparting multifarious dimensions to the aspect of exploitation. Article 11 obliges the States Parties to take measures to combat the illicit transfer and non-return of children abroad. The States are bound to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child\textsuperscript{41}. Though the 1924 and 1959 Declarations prohibit exploitation in any form, the 1989 Convention is the first international treaty to place a comprehensive duty on State Parties to protect the child from all forms of sexual exploitation and abuse. Article 34 highlights three specific aspects of sexual exploitation of children:

(a) “The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials”.


\textsuperscript{39} Principle 4

\textsuperscript{40} Principle 9

\textsuperscript{41} Article 19
State Parties are also required to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.  

The approach of Article 32 of the 1989 Convention is to regard the right against exploitation as the right of the child to be protected against economic exploitation which assures protection from performing any work that is likely to be hazardous or to interfere with the child’s education, health or physical, mental, spiritual, moral or social development.

Apart from the major Convention of 1989, many international attempts have tried to provide detailed conditions and requirements under which the rights assured under the Convention can be safeguarded.

(iv) Juvenile Justice

Until the ICCPR 1966, no specific provision regulating the administration of juvenile justice was enshrined in a global treaty. In 1980, the 6th UN Congress on the Prevention of Crime and the Treatment of Offenders called for the preparation of minimum rules regulating the administration of juvenile justice. In 1985, the General Assembly adopted the UN Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules. The Beijing Rules cover the whole range of juvenile justice process: general principles, investigation and prosecution, viz., adjudication and disposition, non-institutional treatment, institutional treatment and research and planning, policy formulation and evaluation.

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42 Article 35;  
See also, Article 36  
Single Convention on Narcotic Drugs 1971;  
Convention on Psychotropic Substances 1971;  
44 Article 10(2);  
Article 14(4)  
45 UN Doc. A/RES/40/33
The Beijing Rules were adopted and modified by the 1989 Convention. Article 37 of the Convention makes it obligatory on State Parties to ensure that:

“(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

As a means of fulfilling the aims of juvenile justice in international law, Article 40(3) of the Convention provides that State Parties should seek to promote the establishment of laws procedures, authorities and institutions specifically applicable to children. Where separate systems of justice are established they should still be in conformity with international human rights law.
Although the international law on the administration of juvenile justice does not expressly place a duty on states to take account of a child’s sense of time, Article 10(2)(b) of the ICCPR provides that the juveniles shall be brought as speedy as possible to adjudication. According to Article 40(2)(a) a child should not be made accused of any offence by reasons of acts or omissions which were not prohibited either by national or international law at the time that they were committed. It is clear that Article 40 encompasses the fundamental principles of administration of criminal justice, which shall be made specifically available to children also, viz.,

a) protection from expost facto laws\(^{46}\);

b) presumption of innocence until proven guilty\(^{47}\)

c) to be informed promptly and directly of the charges against him or her\(^{48}\)

d) right to have legal assistance in the preparation and presentation of defence\(^{49}\)

e) right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law\(^{50}\)

f) right against compelling to give testimony or confessing guilt\(^{51}\)

g) right to examine witnesses\(^{52}\)

h) right to review the decisions against him or her if considered to have infringed the penal law\(^{53}\)

\(^{46}\) Article 40(2)(a)

\(^{47}\) Article 40(2)(b)(i)

\(^{48}\) Article 40(2)(b)(ii)

\(^{49}\) Article 40(2)(b)(ii)

\(^{50}\) Article 40(2)(b)(iii)

\(^{51}\) Article 40(2)(b)(iv)

\(^{52}\) Article 40(2)(b)(iv)
i) right to have the assistance of interpreter

j) right to have his or her privacy fully respected at all stages of the proceedings

(v) Health

The World Health Organisation (WHO) in its Constitution defines health as ‘a state of complete physical, mental and social well-being. Thus good health should enable individuals to develop to the maximum of their physical and mental potential, the realisation of which needs the action of many economic and social factors. This holistic approach to health is contained in Articles 6, 24, 25 and 27 of the 1989 Convention. Article 6 recognises the inherent right to life of a child. Article 24 obliges the State Parties to ensure the enjoyment of the highest attainable standard of health of child by providing facilities for treatment of illness and rehabilitation of health. It is particularly the duty of States to take measures:

(i) to diminish infant and child mortality

(ii) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care

(iii) to combat disease and malnutrition, including within the frame work of primary health care, through the application of readily available technology and through the provision of adequate nutritious foods and

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53 Article 40(2)(b)(v)
54 Article 40(2)(b)(vi)
55 Article 40(2)(b)(vii)
57 Article 24
clean drinking water, taking into consideration the dangers and risks of environmental pollution

(i) to ensure appropriate pre-natal and post-natal health care for mothers

(ii) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantage of breast feeding, hygiene and environmental sanitation and the prevention of accidents

(iii) to develop preventive health care, guidance for parents and family planning education and services

(iv) to effectively abolishing traditional practises prejudicial to the health of children

(v) to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the Article.

(vi) Education

Education has much to contribute to individual and national development. It is essential for children because it helps to realise their full potential. Surprisingly, the 1924 Declaration omitted any specific reference to the right of education of the child. The first express reference is seen in Principle 7 of the 1959 Declaration of the Rights of the Child.

The ICESCR establishes the duty on State Parties to provide different levels and types of education and sets out the time frame for the provision of free primary education. In addition, UNESCO has adopted both a Convention and

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58 Articles 13 & 14; See also, Article 2, Protocol No.1, European Convention on Human Rights; Article 26(1), UDHR
Recommendation against Discrimination in Education\textsuperscript{59} which defines educational discrimination as any distinction, exclusion, limitation or preference which being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth and in particular

(i) of depriving any person or group of persons of access to education of any type or at any level

(ii) of limiting any person or group of persons to education of an inferior standard

(iii) of inflicting on any person or group of persons conditions which are incompatible with the dignity of man

Article 5 of the Convention against Discrimination in Education makes it essential to recognise the right of national minorities to carry on their own educational activities.

The 1989 Convention on the Rights of the Child encompasses the spirit of all international attempts recognising the fundamental human right of education of the child and makes it obligatory on the part of States, on the basis of equal opportunity, to:

(i) make primary education compulsory and available free to all

(ii) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate

\textsuperscript{59} Adopted by the General Conference of UNESCO on 14 December, 1960; See also, Protocol Instituting a Conciliation & Good Offices Commission to be Responsible for Seeking a Settlement of any Disputes which may Arise between States Parties to the Convention Against Discrimination in Education, 1962; UNESCO Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms 1974; European Community Directive on the Education of Children of Migrant Workers 1977
measures such as the introduction of free education and offering financial assistance in case of need

(iii) make higher education accessible to all on the basis of capacity by every appropriate means

(iv) make educational and vocational information and guidance available and accessible to all children

(v) take measures to encourage regular attendance at schools and the reduction of drop-out rates

(vi) ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention

According to Article 29 the education of the child shall be directed to:

a) the development of the child’s personality, talents and mental and physical abilities to their fullest potential

b) the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations

c) the development of respect for the child’s parents, his or her own cultural identity, languages and values for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own

d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and

60 Article 28, Convention on the Rights of the Child
friendship among all people, ethnic, national and religious groups
and persons of indigenous origin

e) the development of respect for the natural environment

The right to education highlights the right of a girl child also to have
proper education\textsuperscript{61}. The international community has identified the major
obstacles to the education of women as follows for which the State Parties are
bound to provide adequate solutions:

a) heavy workloads

b) deep-seated cultural beliefs that favour the education of boys and deem
girls as inferior and destined to the roles of wife and mother

c) early marriage and pregnancy

d) long distance to the nearest school, leading parents to fear for the safety of
their daughters

e) effects of war and other calamities\textsuperscript{62}

\textsuperscript{61} UNICEF works with a broad range of local, national and international partners to realize the
educational and gender-equality goals established in the Millennium Declaration 6 and the
Declaration on Education for All, and to bring about essential structural changes that are
necessary to achieve social justice and equality for all; See also, Promoting Quality Education
for Orphans and Vulnerable Children: A Sourcebook of Programme Experiences in Eastern
and Southern Africa (2009)
Abolishing School Fees in Africa: Lessons from Ethiopia, Ghana, Kenya, Malawi, and
Mozambique (2009)
Gender Achievements and Prospects in Education: The GAP report
Child Friendly Schools and Care and Support in Schools (2006)
Reaching the Girls in South Asia: Differentiated Needs and Responses in Emergencies (2006)
available in www.unicef.org

\textsuperscript{62} UNESCO Conference 1990
(vii) Family

Although international law recognises childhood as a separate status, it does not follow that the rights of the child can be best protected if the child is treated in isolation from the rest of the family. The international community acknowledges the family as the basic unit of society and as the natural environment for the growth and well being of the child. To ensure protection of the rights of the child effectively, the State should be able to ensure protection to his or her family also.

Of the different concepts of family i.e., single parent family, nuclear family, polygamous family, and extended family, with its own implication in the upbringing of children, it is the traditional concept, which appraises the presence of both the parents that caters the fundamental needs of the child, is respected by the international law. Again, the recognition by international law of the rights of the child to have a family does imply the enthusiasm to raise the level of dignity and respect for all the family members. In the context of the Declarations and Convention on the rights of the child, outdated notions that parents ‘own’ their children and have absolute rights over them are replaced by the concept that parents are responsible for protecting their children.63

Article 16(3) of the UDHR acknowledges family as the natural and fundamental group unit of the society and is entitled to protection by society and state. Recognising all these facts, under the 1989 Convention, the States are bound to afford the necessary protection and assistance to families so that it can fully assume its responsibilities within the community. It is also admitted that the full and harmonious development of the personality of the child shall be possible in a family environment of happiness, love and understanding.64

63 Articles 5 & 18, Convention on the right of the Child, 1989
64 Preamble, Convention on the Rights Of the Child, 1989
Article 9 reminds that a child shall not be separated from his or her parents against their will and Article 10 obliges the States to deal with the proceedings of family re-unification in a positive, humane and expeditious manner.

(viii) Protection on Disability and Neglect

‘Children with special needs’ are considered as children with needs, which have to be met so that they are able to benefit from the exercise of all the assured rights. In other words, special attention needs to be paid to ensure non-discrimination and the equal enjoyment of all the human rights and fundamental freedoms by disabled children. The international law has many a time reaffirmed that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities.55

International concern for children with disabilities was first expressed in the Declaration on the Rights of Child 1959, which includes not only physical and mental handicap, but also the concept of social handicap. Principle 5 of the Declaration proclaims that children who are physically, mentally or socially handicapped should be given the special treatment, education and care required by their condition. Again, Article 23 of the Convention on the Rights of the Child 1989 proclaims the resolve of the State Parties recognising the fundamental needs of the disabled children. Article 23 says:

1. State Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self reliance and facilitate the child’s active participation in the community.

2. State Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognising the special needs of the disabled children, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.”

UNICEF has adopted a prevention and rehabilitative strategy for childhood disabilities, based upon recommendations submitted to it by Rehabilitation International.\textsuperscript{66} The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, 1993 provides that States should recognise the principle of equal primary, secondary and tertiary educational opportunities for children with disabilities, in integrated settings. They should see that the education of persons with disabilities is an integral part of the educational system. In situations where the general school system does not yet adequately meet the needs of all persons with disabilities, special education may be considered. It should be aimed at preparing students for education in the general school system.\textsuperscript{67}

\textsuperscript{66} UNICEF Executive Board 1980
\textsuperscript{67} The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities 1993, Rule 6
Along with disability, ‘neglect of child’ also deserves special mention. Neglect may be due to disability, poverty, economic reasons, loss of parentage due to many reasons, etc., which result in exploitation and delinquency of children. Article 2, Article 7, and Article 33 ensures protection to children from the possible situations of neglect. Article 19 specifically provides:

“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical, or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child”.

Child Friendly Schools

UNICEF has a new program called "Child Friendly Schools," which require a certain number of changes to school curricula and buildings so that more pupils can use them more easily. This program is strengthened by states so that "Child friendly schools" programs around the world will be both architecturally and programmatically welcoming of children with disabilities. This may mean the addition of a ramp, or an accessible bathroom or training of teachers in "disability friendly and accessible classrooms." For blind or deaf children, it may mean making educational materials available in Braille or on tape or presenting lessons in sign language. It is important that all UNICEF country program directors be encouraged to creatively explore how disabled children can be brought into existing outreach projects.

(vii) Civil, Economic, Social & Cultural Rights

The UN Declaration of 1959 assures children protection from racial, religious and any other form of discrimination. Accordingly the children shall be

68 “State Parties shall respect and ensure the rights set forth in the present Convention to each child within its jurisdiction without discrimination of any kind…”
69 “The child…shall have….the right to know and be cared for by his parents….“
70 “…to protect children from the illicit use of narcotic drugs…”
71 http://www.disabilityworld.org/06-08_03/children/unicef.shtml visited on 39-03-2010
brought up in a spirit of understanding, tolerance, friendship among people, peace
and universal brotherhood. The 1989 Convention also assures the right of expression, opportunity to be heard in any administrative and judicial proceedings, freedom of thought, conscience and religion, freedom of association & peaceful assembly, protection from arbitrary or unlawful interference with privacy, family, home or correspondence, protection from unlawful attacks on the honor and reputation, access to information, right to benefit from social security, and right to have adequate standard of life fit for the physical, mental, spiritual, moral and social development.

Conclusion

Despite the international attempts, the world is not yet a place fit for millions of children, who are to be fed, clothed, sheltered and educated. The root problem is the inaction and inability of the State Parties to attain the goals of the Convention and Declarations. It may be expected that the resolve of the national governments to commit themselves “to build a world fit for children may be achieved by 2005 or 2010,” would be fulfilled at least by 2015.

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72 Principle 10
73 Articles 12(1) & 13
74 Article 12(2)
75 Article 14
76 Article 15
77 Article 16
78 Article 16
79 Article 17
80 Article 26
81 Article 27
82 Declaration and Plan of Action adopted by the UN General Assembly on May 10, 2002