CHAPTER-2

THE PROTECTION TO CHILDREN UNDER INTERNATIONAL LAW: An Analysis With Special Reference to Abolition of Child Labour
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child labour.

The significance and the importance of the child lies in the fact that the child is the universe. If there was no child, there would be no humanity and there cannot be human civilization without humanity. Therefore, human being owes to the child the best that it has to be given. If there is no proper growth of child today, the future of the nation will be in dark. It is thus an obligation of every generation to bring up children in a proper way. Today’s children will be the leaders who will maintain the prestige of the nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a curse on the society. Every society must, therefore, devote full attention to ensure that children are properly brought up in a proper atmosphere in order that they may be able to have their rightful place in society in future.
However, the reality lies in the fact child still has not been given proper attention and is being exploited by the people who achieve their selfish ends. It is possible to speak about children’s right and their protection from different angels i.e. from Constitutional law, civil law, criminal law and of course, family law. But without doubt, it is family law that plays the most significant part in the protection of the child’s interest, since it is this which regulates the relationship within the family ‘the natural environment for the growth and well-being of all its members and particularly children’. ‘For full and harmonious development’ of the child’s personality he or she should grow up in a family environment, surrounded by parents care and protection – one of the essential conditions of a normal child’s development. Every child, ‘as far as possible, has the right to know and be cared for by his or her parents’. At the same time the right of the child to a proper family upbringing is, in reality, his or her most significant personal right. How can we speak for protection of this if it is not even mentioned in law?

To perceive a child more as a subject than as an object of family relationship inevitably implies increasing parent’s responsibility for their children. The right to family
upbringing and to parental care must be equally granted to mentally or physically disabled children. Parents are obliged to bring up their children, and take care of their physical development and education. Violation of this rule, for example by evasion of their duty of upbringing, abuse of parental rights, cruel treatment and harmful influence should be considered as penal offences entailing responsibility under different branches of law.

Human Resource Development has been given top priority in development, planning and policy making. Child development should be of great concern for an overall development of this resource. A child is not expected to achieve a full physical and mental growth unless proper environment, adequate opportunities and sufficient facilities are provided. Child development is multifaceted Psychological, Sociological, economic and legal.

Most brain development happens before a child reaches three years old. Long before many adults even realize what is happening, the brain cells of a new infant proliferate exponentially, synapses crackle and the patterns of lifetime are established because these early years are a time of such
great change in a young life and of such long-lasting influence, which ensures the rights of the child at the every start of life. Choices made and actions taken on behalf of children during this critical period affect not only how a child develops but also how a country makes progress.

No reasonable plan for human development can wait idly for the 18 years of childhood to pass before taking measures to protect the rights of the child. Nor can it waste the most opportune period for intervening in a child’s life, the years from birth to age three. The time of early childhood should merit the highest priority attention when responsible governments are making decisions about laws, policies, programmes and money. Yet, tragically both for children and for nations, these are the years that receive the least priority. Attention to the youngest children is most needed in countries gripped by intractable poverty, violence and devastating epidemics. With the global economy blooming, the majority of children still live in poverty while the world embraces the hope of peace, profit driven conflicts and ethnic battles erupt, risking the lives of children.
Although the particulars of their lives might differ, millions of mothers and fathers around the world, in both industrialized and developing countries, share the same story finding and making time, investing energies, stretching resources to provide for their son and daughters. Their days are consumed in helping their children in healthy protecting, teaching, guiding, and encouraging their talents and channeling their curiosity, delighting in their enthusiasm and their accomplishments. They search for advice and counsel from informal support networks and community agencies as they struggle, often against great odds.

Today children are required to work individually without being given the personal and paternalistic guidance that they used to get in earlier times while working in family undertakings within or outside the precincts of their houses. They perform different types of repetitive, monotonous, unpromising boring and hazardous jobs and are quite often maltreated and exploited. The net effect of participation of children in work today is generally negative and harmful to their proper physical mental and moral development.

The conditions of work is so bad that the various functions performed by children today have converted their
work into labour. The children work on nominal wages for long hours without any rest interval, educational or recreational facilities, beyond their capacity and against their wishes. The protection and promotion of interests of working children has become a subject of paramount importance today and no civilized society can afford to overlook it.

The global perspective on child labour evolved during this century. While child labour was previously viewed mainly in terms of wage employment in the formal manufacturing sector, today it is viewed more broadly, from the perspective of human rights and development. As a result, initiatives to address the problems of child labour have also evolved from normative instruments to multipronged approaches. These approaches fit under several categories, including:

- promotion and enhancement of education,

- strengthening of national and international legislation and improved enforcement,

- empowerment of the poor,

- Social mobilization and community sensitization against all forms of child labour,
- Advocacy for increased responsibility among employers and corporations,

- General advocacy and awareness generation.

2.1. **International instruments on child Labour**

International legislation and discussions on child labour have had a very important role in influencing national policies and shaping global understanding of the issue. As estimated 96 per cent of the world’s children today are in countries where there is a legal obligation to protect children’s rights in some form. International efforts to regulate child participation in work during this century date back to the *ILO’s minimum Age (Industry) Convention of 1919* which was adopted at its first International labour conference. This Convention, ratified by 72 countries, established 14 years as the minimum age for children in industrial employment. It was followed by a series of similar Conventions specifying a minimum age and regulating conditions of work in specific economic sectors and activities. However, the two main international instruments on child labour so far, are *the ILO’s minimum age Convention*
no. 138 of 1973 and the UN Convention on the rights of the child.

2.1.1 **ILO Convention No. 138**

The 1973 ILO Convention No. 138 concerning Minimum Age for admission to employment is a general instrument covering child employment across all sectors. It supersedes all prior ILO instruments applicable to limited economic sectors. Although, it has been ratified only by 49 Countries so far, it has helped to create international awareness about child labour and has influenced the formulation of national policies that prohibit and regulate child employment.

The Convention requires ratifying Countries to declare a minimum age for employment which is at least the age required to complete compulsory schooling and not less than 15 years, and prohibits any employment under this age in any economic sector. It also obligates ratifying countries to undertake and pursue national policies for the effective abolition of child labour, and to progressively increase the minimum age for admission to employment to levels consistent with the fullest physical and mental development
of young persons. Exceptions in scope and coverage are allowed depending on the nature of the work and the adequacy of economic and educational facilities in the country. The Convention is supplemented by *ILO Recommendation No. 146* which calls for the minimum employment age to be progressively raised to 16 and in the case of hazardous employment to 18. It also recommends that high priority be given to meeting the needs of children in national development policies and projects and that measures are undertaken to ensure the best possible conditions for the physical and mental growth of children and youth.

2.1.2. **UN Convention on the Rights of the Child (CRC)**

The UN Convention on the Rights of the child is the most comprehensive international instrument on child rights and thus pertinent to the issue of child labour. It views investment in the physical, moral mental, spiritual and social development of the child as an imperative of all societies. As the most widely ratified human rights treaty in the world, the CRC has the widest legal force existing instruments of child labour. It was adopted by UN General Assembly in November 1989 and entered into force in September 1990 and is based
on the *Universal Declaration of Human Rights* and the *International Covenant on Human Rights*.

The CRC views the child in terms of a gamut of economic, civil, social, political and cultural rights. It constitutes the legal framework for the promotion and protection of all these rights in an integrated manner. It calls for the full and harmonious development of the child’s personality to fully prepare him or her for an adult life. All children must be ensured survival, personal and social development and physical psychological and moral integrity. Special protection measures must be taken for those in especially difficult circumstances. The CRC obliges any ratifying Country to undertake all appropriate measures to help parents and others to fulfill their respective obligations to children (defined as less than 18) under the Convention and to make fundamental changes in their national laws, institutions, plans, policies and practices to be in consonance with the CRC’s Principles. A fundamental tenet of the CRC is that all actions, under all circumstances, must take into account the “best interest of the child”. Among the many rights protected under the CRC are the child’s right to survival, to participation in society, to develop to full
potential, to the highest attainable standard of health care, to free compulsory primary education, to rest and relaxation, and to protection from all forms of sexual exploitation, abuse and illicit trafficking. Article 32 of the CRC, declares the child's right to protection 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. It also calls for a minimum age of employment and regulation of working conditions to protect the rights of the child with appropriate penalties and sanctions for enforcement and for the immediate elimination of hazardous and exploitative child labour.

The CRC has played an important role in highlighting the human rights dimension of child labour and influencing government legislation, policies and Constitutions. As of September 2002, 14 Countries had incorporated the principles of the CRC into their Constitutions, 35 had passed new laws or changed existing ones, and 13 had built the Convention into their curricula or courses in educating children about their rights. Teachers, lawyers, police, and judiciary have also been trained on the principles of the CRC in many countries.
2.1.3. **OSLO Conference on Child Labour**

The OSLO conference on child labour, held in October 1997, was based on broadly accepted international instruments such as the CRC and the ILO minimum age convention. It urged Countries to progressively eliminate all forms of child labour for children of school going age with priority to be given to the immediate removal of children from the most intolerable forms of child labour and to their physical and psychological rehabilitation.

The conference called for action on various fronts to combat the problem. At the national level, countries were urged to undertake social and economic policies directed at poverty alleviation of concerned families and communities. It was also stressed that they establish cross-sectoral and integrated institutional mechanisms within the country for eliminating child labour. They were urged to improve statistical information on child labour with special focus on the girl child, to establish multi-sectoral rehabilitation programmes for children withdrawn from work, and to encourage social mobilisation through initiatives by trade unions, employer's organization and the non-governmental organizations. The conference highlighted on the importance
of education, particularly basic education in combating child labour.

At the global level, the conference urged international community to take several steps, including increased poverty orientation programmes, facilitating the ratification and implementation of relevant international instruments, providing assistance to countries actively involved in the elimination of child labour, examining existing development co-operation programmes for their impact on child labour, and helping to establish improved information systems for data on child labour. The conference also made special note of the high risk faced by girl children due to sexual exploitation and child trafficking besides prostitution and urged the international community to provide special attention to girl child workers.

2.1.4. Other Conventions with bearing on Child labour

These include:

a. The International Covenant on Economic, Social and cultural rights (entry into force: January 1976, ratified by 133 Countries)
Through this covenant, countries have to protect their children from economic exploitation and employment which hurts moral health and normal development. The countries are to provide age limit below which paid labourers would be prohibited or punishable by law. Some of these provision also relate to compulsory free primary education.

b. The International Covenant on Civil and Political Rights (entry into force: March, 1976, ratified by 132 Countries)

This covenant deals with the prohibition of slavery, servitude, forced labour and the protection of minors.

c. Supplementary Convention on the Abolition of Slavery, the slave trade, and Institutions and Practices similar to Slavery (entry into force: April, 1957, ratified by 114 Countries)

This Convention refers to the debt bondage of children.

d. Convention for the suppression of the Traffic of persons and of the Exploitation of Prostitution of others (entry into force: July, 1951, ratified by 70 Countries)

2.1.5. **International landmarks on child labour.**
The 1990 world summit for children and its resulting world declaration on survival, protection, and development of children signed by over 150 countries, was an important international event with bearing on child labour. The declaration called upon countries to “work for the special protection of the working child and for the abolition of illegal child labour”. It was also supported by a plan of action which required countries to work towards ending the employment of children under hazardous and exploitative condition, for protecting such children, and for providing opportunities for their healthy development.

The 1990 world conference on Education for All was significant for child labour. Its resulting declaration called specifically for an understanding of child labour laws and for increased flexibility in the educational system to be adapted to different circumstances for children.

More recently, there have been several meetings and resolutions on hazardous and exploitative forms of child labour. The declaration of the 1995 conference of labour ministers of the Non-Aligned movement and other developing countries refers to child labour as a “moral outrage” and “an affront” to human dignity and a plan of action was developed
to eliminate child labour. The Stockholm Congress on commercial sexual exploitation of children held in August 1996 put child prostitution formally on the global agenda for the first time. A declaration and Agenda for Action was also adopted at this Congress. Similarly, the Non Aligned Movement Conference in New Delhi in August 1996, called for priority to be given in eliminating child labour in hazardous employment. The third SAARC Ministerial Conference on children of South Asia in August 1996, called for priority to be given in eliminating bonded child labour by 2000, with total elimination of child labour in the region by 2010. A major Conference on child labour, organized by the Norwegian government, ILO and, UNICEF was held in Oslo in October 1996. Child labour was also included in the agenda of the 1998 International Labour Conference.

The ILO has proposed a new Convention to bar intolerable forms of child labour that constitute a real affront to the conscience of human kind and that no society worthy of any name can tolerate, irrespective of its level of economic development. This Convention would aim at strengthening the existing set of ILO standards and at prioritising the elimination of child labour. It would prohibit work performed
by children in slavery including forced and bonded labour, the exploitation of children for prostitution or other illegal sexual practices, the use of children for drug trafficking, and the production of pornography. The ban would also include work, which exposes children to especially grave health and safety hazards or prevents them from attending school. A law and practice report has already been produced in preparation for this new Convention\textsuperscript{1}.

2.1.6. **Concept of Human Rights**

As man became civilized, the rights of man were called as human rights. The human rights can be taken as gift of civilization. The struggle to preserve, protect and promote basic human rights continues in every generation and in every society. New rights arise from the womb of the old. Human rights in the 20\textsuperscript{th} century name for what have been traditionally known as natural rights, which every human being everywhere, at all times, ought to have, simply because of the fact that he is rational and moral. No man may be deprived of these rights without grave affront to justice. The human rights or natural rights are sometimes to which every human being everywhere is entitled by virtue of the simple

\textsuperscript{1} International Labour Office 'Children and Work' Geneva, November, 1996
The expression human rights presupposes a level at which biological entities are bestowed with the dignity of being called human. Human rights denotes the enabling qualities of human being likely to assist him in realization of his potential as human being. It is the right of human being to life, liberty and equality before law. Freedom from exploitation, ecological harm and nuclear disasters can also be covered under human rights. At present human rights can be categorised as basic human right and modern human right. These two categories can be further understood as right to bread and right to freedom. Freedom is the liberal rather modern conception of right and bread comes under the basic needs of human. Without bread, freedom of speech, assembly, association, conscience, religion and other political freedom may be meaningless. Under modern human rights, every human being in this world should be able to live as a free, individual with adequate opportunity to mould his own future and to live as comfortably as he can be free from all kinds of fear. Freedom and well being are the needs of every
individual and there should not be any unnecessary restrictions imposed on them either by other individual or by organised government. Freedom of speech and expression, right to move freely, right to form association, right to carry out any profession, occupation, trade or business, right to well being imply right to development which means right to work, right to education, right to protection of environment, right to medical facilities, right against exploitation and free access to natural resources etc, can be put under the modern Human Rights.

There is a conflict between basic human rights and modern human rights. Shelter for millions of pavement and slum dwellers have been demolished to construct five star hotels so that the rich and privileged can enjoy human rights. At one place poverty and starvation for people to sell themselves, their wives and children and at another large amount of food is wasted at big social gatherings. More than half of rural people do not have access to potable water but the urban people bathe in clean and fresh swimming pools. If only a handful enjoy human rights and the majority is denied basic human needs, the very notion of humanity is dismissed and such society will be called as basically unjust society.
which gives birth to condemned social evils like child labour, bonded labour, forced labour, slavery, peonage etc.

The root of the development of human rights can be traced into historical documents such as Magna Carta (1215), Bill of Right (1689), and the American Declaration of Independence (1776), which was modeled after John Lock’s concept of natural rights. Similarly, the French Revolution (1789) laid down the right of man, the Congress of Vienna (1815) demonstrated international concern for human rights. The congress dealt with religious freedom and civil and political rights.

In the beginning of the twentieth century, some principles of human rights were formulated before the era of the United Nations. Such principles and aims were already incorporated in the Constitution of the International Labour Organisation (ILO) established in 1919. The organisation’s objective and aim was to ameliorate the position of working human beings generally around the world. In 1924 under the initiation of ILO “Save the Children Fund International Union” promulgated certain rights of the child popularly known as “Declaration of Geneva” There were five basic principles for child welfare and protection. The same year the
League of Nations for the first time attempted to codify the fundamental conditions to which the children have right. It was later revised and amplified in 1948 under the "Universal Declaration of Human rights" (UDHR). The other humanitarian goals were set out in the covenant of the League of Nations specially in article 23\(^2\) and article 25\(^3\) respectively. In 1930, ILO adopted Convention No-29 laying down that, "each member of the ILO which ratifies the Convention undertakes to eradicate the use of forced or compulsory labour in all its forms within the shortest possible period" (The Convention came into force on 1\(^{st}\) may, 1932). The Convention also provided for necessary measures to safeguard the health of the workers and to guarantee the necessary medical care. This was the period in which international solidarity was based on collaboration and mutual assistance in all fields to promote human welfare that could not be achieved due to out break of World War II in 1939.

\(^2\) "The covenant of the League of Nations, Article 23, states in part " subject to and in accordance with the provisions of International conventions existing or hereafter to be agreed upon, the members of the league (a) will endeavor to secure and maintain fair and human conditions of labour for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extend and for that purpose will establish and maintain the necessary International organisation.

\(^3\) "The covenant of the League of nations, Article 25 states. " The members of the league agreed to encourage and promote the establishment and co-operation of duly authorised voluntary National Red Cross Organisation having as purpose, the improvement of health, the prevention of disease and the mitigations of suffering throughout the world"
Though an attempt was made by the covenant of league of nations and the ILO Convention of 1930 to give shape to human rights but the human rights did not become the concern of international politics or law until after IIInd world war. Earlier, how a state treated its own citizens was considered to be its own business. There was no serious disposition to render the treatment of the individual human beings in his own country, a subject of international law and diplomacy. In 1944 (i.e. within the continuing phase of the IIInd world war) another attempt was taken by the league of Nations and ILO “The Declaration of Philadelphia”\(^4\), but it also turned to be a futile at that time and later attained effectively through the ILO Constitution. The wave of revulsion arose from shocking crimes committed against humanity during the Second World War. The far reaching effects of the IIInd world war could be assessed with its end on 14\(^{th}\) August, 1945, which created a favour of human rights not only in the war devastated countries but more or less throughout the world. Human rights made through a dominant position in U.N. charter and United Nation officially came

\(^4\) Declaration of Philadelphia, 1944 recognises the solemn obligation of the ILO to further among the nations of the world programmers which will achieve the effective recognition of the right of collective bargaining, the Co-Operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures.”
into effect on 24th October 1945. The U.N charter came to be recognised as the first basic instrument laying the foundation of the law of the International Human Rights. Consequently ILO got a moral boost and became specialized agency of U.N in 1946, and with unique co-operation both U.N.O. and ILO went ahead with their Conventions, recommendations, declaration and International Covenants not only in their field of International Human Rights but also they accorded special protection to child and child labour in many cases through their Conventions, recommendations, declarations and International covenants because they set out "hard law" as binding instruments for states once ratified and on which effective promotion and defence of human rights could take place.

In this context let it be mentioned that the sole credit for creating the milestones of peace in the International sphere of Human Rights specially Rights of child does not go to UN or ILO only, but also to United Nations International Children’s Emergency Fund (UNICEF), [UNICEF established in 1946, to meet the emergency needs of children, particularly in the war devastated. Countries. UNICEF is not a special
agency, but a subsidiary body of the General Assembly reporting to the Economic and social council] for its valuable contribution through Investigation, Reporting and Research to formulate effective covenants and standards for protection of children.

2.1.7. United Nation (UN) On Protection Of Child

The first vital and bold move taken by UN after its formation in the international sphere was the Universal Declaration of Human Rights, Which was adopted by the General Assembly of the UN on 10th December 1948. It makes specific, the general character of human rights including the rights of child. The declaration is a remarkable juncture of political, civil, economic and social rights with equality and freedom from discrimination. It sums up the civil, political and religious liberties for which men have struggled so long. It also contains new economic and social rights, which are being recognised today. The preamble to the Declaration stresses the “dignity and worth of the human person”. The aims of this declaration are stated categorically within 30 (thirty) Articles of the Declaration. Basically this declaration aims at protecting the liberty, physical and moral integrity of human person including the right to life, freedom
from slavery, servitude and forced labour freedom from
torture, or from cruel, inhuman or degrading treatment or
punishment, the right to freedom from arbitrary arrest or
detention, the right to fair trial, the right to privacy, right to
freedom of thought, conscience and religion. *The universal
declaration of Human Rights* formulated by United Nation
with care and deliberations, set out the common standard that
should apply to Human Society, irrespective of race, colour,
sex language, birth or other status. In effect, it sets forth the
attributes of a democratic system and with respect to the
function of the rule of law. The declaration is a declaration
and does not have much binding effect, therefore this
declaration has been converted into two covenants :-

*The covenant on Civil and Political Rights 1966* came
into force on 23rd March, 1976 and contain a bundle of Civil
and Political Rights),

*The Covenant on Economic, Social and Cultural Rights
1966* (came into force on 3rd January 1976 and contain a
bundle of Economic Social and Cultural Rights) and
international organisations concerned with the welfare of children. Besides laying down the general obligation of the men and women, institution and governments towards the child the declaration, it specifically lays down that the child is not to be admitted to employment before an appropriate minimum age and is not to be caused or permitted to be engaged in any occupation or employment which would prejudice his health or education or interfere with his physical, or mental development.

Next dominating step by UN was the *Convention on the Rights of Child 1989*. This Convention was intended to purge the shortcomings of the previous declarations on the rights of the child and all the previous declarations were to supplement this declaration. The major reason for choosing 1989 is the symbolic importance of that year. It marks the tenth anniversary of the international year of the child. This declaration is setout in preamble and Articles the Convention declares that “children all round the world have equal rights, irrespective of their religion, ethnicity or sex”. Article 32 being the most important Article of the Convention at first states the definition of child labour. “Any work that impedes the social, physical and emotional well being of the child is
An optional protocol to the Covenant on Civil and Political Rights 1966 providing machinery for complaints from individuals.

Apart from the Universal Declaration of Human Rights there are various subsequent U.N. instruments which seek to deal with the human rights specially. As for example protection of the human being in his very existence, the elimination of racial discrimination, the protection of women, the protection of children and child labour, the protection of workers, the protection of refugee and stateless persons, the protection of combatants, war victims, civil population etc.

After the 2nd World War, on November 20th 1959, the United Nations General Assembly with representatives of 78 countries meeting in plenary session adopted ten point Declaration on the Rights of the child unanimously. The spirit of the document was reflected in the preamble, which said in part “mankind owes to the child the best it has to give”. The declaration contains the preamble and ten principles and being issued in consonance with philosophy contained in the United Nations Charter, Universal Declaration of Human Rights, 1948, the Geneva Declaration on the Rights of the Child, 1924; the statutes of specialised agencies and
considered child labour (or child exploitation)". Next this article bids that State parties to recognize the rights 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 be harmful to the child's health or physical, mental spiritual, moral or social development". All member states of the UN have ratified this Convention,

2.1.8. **ILO (International Labour Organization) On protection of child**

As far as action by the ILO itself is concerned, virtually all of its activities' under its different programmes are aimed at making reality of the rights and freedoms proclaimed in the Constitution of the ILO, they also are effective means of implementing many of the rights mentioned in the *Universal Declaration of Human Rights* and the *International Covenants of Human Rights* which are concerns of ILO. ILO's work in the field of Human Rights aims interalia at safeguarding freedom of association; abolition of forced labour; elimination of discrimination in employment; promotion of equality of opportunity, protection
of children from economic exploitation, minimum wages, social security and adequate conditions of work and life.

So far ILO has adopted 18 Conventions and 16 Recommendations in the area of employment of child labour. These relate to various phases of the employment i.e. minimum wages for employment of children, medical examination of child labour, prohibition of night work for children, conditions of employment of children in underground work and their training etc. Conventions are generally set out under the defined heads of scope, object, theme, exceptions, prior consultation and enforcement, but Recommendations generally carry observation and suggestive notes.

The various ILO Conventions and Recommendations relating to the employment of child labour are as under:

a. **Minimum age**:

i. *Minimum Age (Industry) Conventions-1919*,

ii. *Minimum Age (Sea) Convention-1929*,
iii. Minimum Age (Trimmers & Stokers) Convention-1921,

iv. Minimum Age (Agricultural) Convention-1921

v. Minimum Age (Non Industrial Employment) Convention-1932,

vi. Minimum Age (Sea) (Revized) Convention – 1936,

vii. Minimum Age (Industry) (Revized) Convention - 1936,

viii. Minimum Age (Non industrial Employment) (Revized) Convention – 1937,

ix. Minimum Age (Fisherman) (Revized) Convention-1959

x. Minimum Age (Underground Work) (Revized) Convention – 1956,

xi. Minimum Age (On Minimum Age) (Revized) Convention - 1973,

xii. Minimum Age (Coal Mines) Recommendation, 1953,
xiii. *Minimum Age (Family)*
Recommendation, 1937,

xiv. *Minimum Age (Non Industrial Employment) Recommendation, 1932,*

xv. *Minimum Age Recommendation, 1932,*

xvi. *Minimum Age (Underground Work) Recommendation, 1965*

b. **Medical Examination of young persons**

i. *Medical Examination of young persons (Industry) Convention, 1946,*

ii. *Medical Examination of young persons (Non Industrial Occupation) Convention, 1946*

iii. *Medical Examination of young persons (Sea) Convention, 1921*

iv. *Medical Examination of young persons (underground Work) Convention, 1946*

c. **Night Work of Young Person**

i. *Night work of young persons (Industry) Convention, 1919*
ii. *Night work of young persons (Industry) Convention*, 1945

iii. *Night work of children and young persons (Agriculture) Recommendation*, 1921

iv. *Night work of young persons (Non-Industrial occupations) Recommendation*, 1946

d. **Miscellaneous (8 other Recommendations):**

i. *Apprenticeship Recommendation*, 1939,

ii. *Conditions of Employment of Young Persons (underground work) Recommendation*, 1965,

iii. *Lead Poisoning (women and children) Recommendation*, 1919,

iv. *Special Young Schemes Recommendation*, 1970,

v. *Unemployment (Young person) Recommendation*, 1935,

vi. *Vocational Training (Fisherman) Recommendation*, 1966,
It was only about a hundred and fifty years ago that the issue of child labour began to emerge as a matter of concern in Europe and in the US. This concern initially centered on the long hours and grim conditions under which children worked in sweat shops. No reader of 19th century of English literature can forget the graphic accounts of the condition in which children worked in factories and workshops or the horrors of little chimney sweeps climbing of soft filled chimney to clean them, so vividly described in the novel of Charles Dickens and others.

It was however only in the 20th century that child labour began to be seen as a matter of global concern for all nations and peoples of the world. The fore-front of the emerging concern against child labour was the International Labour Organisation (ILO), setup as a part of the treaty of Versailles after the first world war, whose guiding principle of social, justice militated against the child labour. Starting form the preamble to the construction of the ILO, the concern for
protecting children from the effects of premature work was reflected in the many Conventions that the ILO adopted against the child labour. The first of these was the Convention No. 5 which prescribed a minimum age below which no person could work in industrial establishment. This Convention was adopted by the ILO in the very first year of its inception in 1919. Convention No. 5 was followed by a series of 11 Conventions that went on to lay down norms for the employment of children in many other sectors of employment like agriculture, railways, mining, sea-faring and plantation etc.

By the 1970s world opinion against the child labour had developed to the stage where there was a strong need felt to set international standards against child labour in all sectors of employment. Thus emerged Convention No. 138, which was adopted by the International Labour Conference of the ILO in 1973. This Convention is a flexible instrument that fixes different minimum ages not only for different forms of employment but also for countries at different stages of economic development. Thus, in a country like India the minimum age for normal categories of work is 14 while for the same categories of normal work the minimum age in a
developed country is 15. The minimum age for entry into an employment increases to 16 to 18 respectively for developing and developed economies, in the case of hazardous work and work that is likely to endanger the health, safety and morals of children. The minimum age falls to 12 to 13 respectively in the case of light work. The principal point about this Convention is that all forms of child labour is prohibited below the age of 12. The status ratification of Convention No. 139 by the international community has been very disappointing, only 54 countries have ratified this instrument as on 1st July 1997. Neither India nor many developed countries including the US have ratified it so far.

Another significant recent international development on child labour is the unanimous adoption of the UN Convention on the Rights of the child, more popularly known by its acronym CRC, by the UN General Assembly in November 1989. The CRC seeks to protect a wide range of children’s rights including the right to protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with their education or to be harmful to their physical, mental, spiritual, moral and social development. The CRC requires state parties to take
legislative, administrative social and educational measure to ensure the implementation of the Convention and in particular to provide for :-

- Specifying minimum age or minimum ages for admission to employment.

- Appropriate regulation of the hours of work and condition of employment.

- Appropriate penalties or other sanctions to ensure the effective enforcement of its provision.

The CRC also contains important provision which have a bearing on extreme forms of child labour, such as the sexual exploitation of children and the abduction and sale of trafficking in children for any purpose or in any form. The CRC is one of the most ratified international instruments on any subject in the world. So far 189 countries of the world, all excepting the US and Somalia have ratified the Convention.

The last decade has witnessed an explosion in global interest in child labour that has manifested itself in various forms. One form has been the growing concern amongst western consumers that the products that they buy and use
should not have been made by children. Consumer concern has manifested itself in boycott of goods produced by child labour and through encouraging purchase of only products that are labeled free of child labour. There has also been active concern amongst governments of many western countries that the growing numbers of child labourers worldwide would harm childhood on the one hand and the future economies of these courtiers on the other. Government interventions have taken various forms but most significant amongst them has been the positive act of international efforts against child labour.

Thus the German offer of funding of the *International Labour Organisation's Technical Co-operation Projection child labour* led in 1992 to the establishment of the International programme on the elimination of child labour (IPEC). IPEC is today funded by about a dozen countries and has about 30 countries participating in it. Governments have also stepped up funding of child labour projects through bilateral conduits. Many western governments today channel funds for child labour through their development agencies in Africa, Central and South America and South East Asia. A third measure of government's concern against child labour is
The increased public attention on the subject, reflected in the growing debate on child labour within international agencies like the ILO, UNICEF, UNDP etc. International conferences on child labour like the recent OSLO conference are examples of government support in building up an international environment against the child labour through mobilising world public opinion against it. While there has been growing talk in some countries of bringing in domestic legislation against the import of goods manufactured by children and of trade sanctions against countries that do not discourage child labour, no such laws have as yet been put on the statute books in any country or on international statute books.

The growing public opinion against child labour is reflected also in the initiatives being taken by NGOs in developed countries and significantly, in those developing countries where child labour is endemic. We not only see a greater NGO involvement and action against child labour in Europe and the US, but a similar increase in NGO activity in a country like India during the last one decade. International attention on child labour is likely to grow in coming years. This attention is both a challenge and an opportunity for a
country like India, facing with the largest member of child labourers anywhere in the world. The future of India's children, its human capital formation and its future economic growth would largely be decided on how the country copes with this challenge and exploits the opportunity that the present climate of international opinion on child labour provides.

2.1.9 **The Role of ILO** : Present and future perspective

The organizations Constitutional instrument have been drawn as a legal basis for certain important standards. This has been the case for two passages, how well known, in the declaration of Philadelphia of 1944, which has been incorporated into the ILO Constitution. One of these affirms that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity, the other, that freedom of expression and of association are essential to sustained progress”. There are no empty phrases. They have provided the legal framework for concrete action on a large scale, both to safeguard trade union freedom and to combat
racial discrimination. They have made possible an evaluation of the behavior, the law and the practice of states, and they have permitted recommendations to be made, where necessary, for corrective action or even a change in Social Policy.

At the other end of the standard setting spectrum will be found standards which are less formal than conventions and recommendations, such as resolutions adopted by the Conference, some of which, on trade union freedom and human rights, have often been used as a basis for decision of the ILO supervising bodies, and for the case law of these bodies.

It is however principally the Conventions and recommendations – which have formed the foundations of ILO action for the protection and promotion of both economic and social rights (employment, conditions of work and life, social security, employment of women, children and special categories of workers, social institutions, etc.) and certain fundamental rights and freedoms such as freedom of association, the abolition of forced labour and the elimination of discrimination in employment.
At this stage, certain essential questions must be clarified.

**Future perspective:** What is the future outlook for the adoption of international labour standards? Must it be considered, first of all, that the present body of standards, consisting of area 300 instruments, how covers the essential labour problems and that the task of drawing up international standards is practically complete?

First of all, needs and conceptions change with the years at the international as well as at the national level, and the older instruments thus often have to be reworked to adopt them to contemporary needs. Already some 40 of the 150 odd Conventions were adopted of older instruments of the test of time and the lessons of experience. Whether it be a question of the earlier concept of social insurance which has developed into social security or of the employment of women where the concern for their protection is progressively giving way before the striving for equality. Standards are steadily being brought up to date and there is no doubt that this will continue, perhaps even at an accentuated pace, in the years to come.
A second consequence of the evaluation of needs and concepts will be that new questions will arise which will call for the adoption of international labour standards. The very history of international labour law like that of national labour law – made up of the emergency of new questions as a result of social progress and of needs which make themselves felt in modern societies – the need for greater material security and welfare but also the need for freedom, equality and participation. Thus when the first ILO Convention on holidays with pay was adopted in 1936 the idea was a recent one and was considered revolutionary. Its development since is well known and what is to be said of the Convention against discrimination in employment, which was adopted in 1958, in response to relatively recent developments in ideas and awareness, and which rapidly came to be regarded as one of the fundamental instruments of the ILO. In the field of occupational safety and hygiene, which affect workers lives and health rapid technological change makes necessary the constant adoption of measures against new or newly identified risks. This trend will certainly continue. This problem of the environment will no doubt require action on a broader scale than the classical questions of occupational health and safety. Thus, again, aquaria which, although it is
not new, has became more acute in modern societies has already been included in the agenda of the namely that of older workers.

These predictions are more than mere suppositions. Followings a recent “in depth review” of international labour standards, a working party of the ILO Governing Body is in the process of examining all these standards so as to identify in particular, the instruments which are in need of revision and the subjects on which the preparation of new standards should be considered. This work is still under way, but it is already apparent that the subjects which at first sight, would seem to come into these two categories are so numerous that they would fully engage all the ILO’s legislative capacity for the next 25 years or more, irrespective of the questions to which future developments will give rise. A huge area thus remains to be covered by international labour law, which will continue to make a major contribution to social policy in the world as long as it able to anticipate and channel the new needs of societies in constant evolution.

This continuing legislative activity gives rise to a further problem, that of the growing number of international
instruments. Is there not a danger that the existence of several hundred instruments will embarrass, if not paralyse, countries (governments as well as occupational organisations)? Reference has some times been made to “dead wood” that needs elimination. This approach has given rise to objections that would be involved in abrogating instruments. Most of which have been the subject of formal undertakings, it has been observed that it would be unlikely that everybody would agree that a given Convention has lost all interest. While it may have become out of date for some countries, an instrument may still be of value or even premature for others. The problem is now approached from another angle, is that the working party has decided to place in a distinct category the instrument whose verification and application should be promoted on a primarily concentrated on these instruments.

A final point on which, it is possible to make a prediction without fear of error, relates to the way in which future instruments will be drafted. These is no doubt that the use of flexibility devices will be continued and even intensified, especially on Conventions laying down general principles which are supplemented by recommendations providing guidance on methods of implementation and for
Conventions containing provisions for their progressive application such as those which can be ratified with the initial acceptance of only certain parts.

2.1.10. The United Nations and Human Rights:

While it might have been thought that the rights of the child were adequately protected by existing human rights instruments, particularly the ICCPR, it was nevertheless agreed in 1779, the year of the child, that a working group of the CHR should draft a Convention which would give effect to certain child oriented rights. The U.N. Convention on the rights of the child was adopted by the General Assembly in 1989 and entered into force in 1990. In addition to the protection of a number of traditional civil, political, economic and social rights, the Convention includes certain rights which apply to the child alone, a child being defined by article 2 for these purposes as every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. Among the ‘new’ rights protected are the right to a home, to know and be cared for by his or her parents, the preservation of child’s identity, freedom from sexual abuse and exploitation, narcotic drugs and trafficking.
A number of provisions also place obligations on appropriate measures, that children will be allowed to develop their maximum potential.

Supervision under the Convention is by a ten member committee on the rights of the child. The member of the committee are to be drawn from the States parties and they serve in their individual capacities. As with other UN Treaties supervision is by a system of periodic reports submitted by the states parties which are studied by the committee. Under Article 45 of the Convention, the committee is obliged to forward a biannual report of its activities to the General Assembly via ECOSOC. It is also interesting to note that UNICEF and other competent UN Organs are entitled to participate in considering the implementation of the obligations under the Convention. As yet, it is too early to speculate on the likely effectiveness of the particular instruments, but it clearly has the effect of strengthening UN institutional co-operation and supervision in this particular area.5

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5 Book – A study on behalf of the Henry Dunaut Institute – Generva. CHILD SOULDERS-The role of children in armed conflicts – Guy Goodwin- Gill and ILENE COHN.
2.2. **Who is the child?**

According to the 1989 United Nations Convention, child means 'every human being below the age of 18 years unless under the law applicable to the child, majority is attended earlier'. The possibility of a patchwork definition in international law is striking and not only altogether satisfactory, as national legal systems – the applicable law, work with their effect. The age of majority is a social, religious, cultural or legal device by which societies acknowledge the transition to correction between any of the levels. For the purpose of participating in religious ritual, for example, a child may become an adult at age 13. For legal purposes, however, such as contracting obligations, including marriage, giving evidence under oath, being criminally liable or voting in elections, other age requirements will prevail. On occasion the child’s actual capacity to understand will be determinative for example, in appreciating the meaning of evidence under oath, in other cases, the legislator will make assumptions as to capacity and understanding at a certain age, for example, in setting eligibility to vote.
Although State practice displays some variation, participation in the political process is nevertheless a reasonably accurate indicator of the moment at which the community as political party recognizes the intellectual maturity of the individual. The Inter Parliamentary Union recently received the electoral systems of 150 of the world’s 186 Sovereign states. It noted “The rights to vote supposes that electors should have reached on age at which they are able to express an opinion on political matters, as a rule coinciding with the age of legal majority”. The name today is ‘eighteen years’ an overwhelming majority of 109 states has opted for this minimum age limit, with most other States having a slightly higher limit (19 – 21 years). The lowest limit 16 years – is practiced in four countries : Brazil, Cuba, Iran and Nicaragua.

There is again no necessary correlation in national legislation between voting age and liability to or eligibility for military service. In Brazil, Nicaragua and Iran, the voting age is 16 but liability to military service starts at 19 in Brazil, 17 in Nicaragua and in subject to no apparent age limit in Iran.
Variations also occur among states as concerning 'military age', but there is as strong tendency towards 18 or later as the minimum age for the military obligations. 185 states were surveyed and among the 103 for which information was available only 7 put the age for compulsory military service below 18 years: Afghanistan, Iran, Lao People’s Democratic Republic, Mexico, Namibia, Nicaragua and South Africa; while 24 states permit voluntary enlistment of young person below 18 years of age, generally subject to parental consent. Australia, Austria, Bangladesh, Belgium, Chile, El Salvador, Finland, Germany, Greece, Guatemala, Honduras, Iran, Libya, Luxembourg, Mauritania, Poland, South Africa, United Kingdom, United States of America and former Yugoslavia.

So far as the provisions of national laws (as opposed to actual practice) may indicate the position of States on the international laws issues attaching to recruitment, a reasonable inference would support the principle of transition to adulthood at the age eighteen and the argument that young persons below that age should not be compelled to take up arms. The practice of remaining parental consent for
voluntary enlistment below the age of eighteen is equally consistent with such a principle.

Moreover, international humanitarian law, international human rights instruments and national legislation in numerous countries combine to prescribe the death penalty on persons under eighteen at the time of commission of the offence. This prohibition applies both in time of peace and in international and internal armed conflicts and acknowledges the reduced ability of those under eighteen to appreciate the nature of their actions in the context of criminal responsibility. The same consideration, however, is not given to the capacity of the child or young person to evaluate the reasons for death in combat.

Thus, the idea of the child as a person under 18 enjoys a wide measure of support, even if different terminology such as 'youth' or 'young persons' may be a better phrase to describe those in the crucial 15-18 age bracket, whose physical and intellectual maturity is rapidly developing even as they continue to face certain legal disabilities. If age eighteen reflects a general rule, with certain limited exceptions traceable to specific political, religious or cultural
factors then the question is when and in what circumstances those under eighteen can lawfully be admitted for military service or permitted to participate in hostilities?

2.2.1. The International Law of the Child:--

The League of Nations adopted in 1924, the first declaration on the rights of the child, stressing the need for special care and protection. Though followed by a series of similar and related declarations, another sixty-five years were to pass before the international community acknowledge the very special status of children and the desirability of states entering into a treaty on their behalf. The 1989 UN Convention on the rights of the child already ratified by some 144 states, is rightly recognized as a critical milestone in the legal protection of children.

At the earlier stage, in 1948, the United Nations adopted the *Universal Declaration of Human Rights*, a non-binding instruments since followed by both regional and global treaties in which states have accepted formal legal obligation with respect to a wide range of human rights. These include the two 1966 Covenants, on civil and political rights and economic, social and cultural rights. The 1951
Convention and 1967 Protocol relating to the status of refugees and the 1984 Convention against torture and other cruel in human or degrading treatment or punishment. All provision in these instrument pertain to children, except for specific articles codifying rights of political participation extended only to those over a certain age. In addition, regional organizations have promoted local systems of obligation and supervision, for example, the 1950 European Convention on Human Rights, the 1969 American Convention on Human Rights and 1981 African Convention on Human Rights and People’s Rights. The rules of international humanitarian law are found, in particular, in the four 1949 Geneva Conventions and the two 1977 Additional protocols, as well as in the practices of States and the resolutions of the International Conference of the Red Cross and the Red Crescent.

The International law of child as a whole must be understood in context, that is, as a body of rules operating primarily between States and generally having only an indirect effect only on non-state actors such as individuals, Non Government Entities (NGEs) or other groups, however do not exclude the possibility of the individual liability for
breaches of the law. By contrast, the international humanitarian law of internal armed conflicts applies equally to government armed forces and dissident armed groups, i.e. to the ‘parties to the conflict’ where there are gaps or contradictions, as often happens when humanitarian need is opposed to military necessity, the long-standing martens clause, one of the clearest examples of a rule of customary international law in this field, recalls and confirms the most basic standard.

2.2.2. **In the words of additional protocol:**

In case not covered by this protocol or by other international agreements civilians and combatants remain under the principles of International law derived from established custom, from the dictates of public conscience.

Children, whether victims or participants in armed conflicts, are thus protected and their liberties are ensured at least in theory, by international and national law. The specific provisions of international law regulating the requirements and participation of children in armed conflict turn on a number of factors, including the type of conflict and ratification of or accession to the relevant treaties. The status
of the party recruiting or employing children on its ranks may also be at issue, so far as the applicability of rules other than those of international humanitarian law is concerned.

2.2.3. **The Child As Protected Person**

In the words of the preamble to the 1989 Convention on the Rights of the Child (CRC), ‘the child should be fully prepare to live an individual life in society’ and brought up in the spirit of the ideas proclaimed in the Charter of the United Nations-other international instruments stress the developmental needs of the child—freedom from hunger, access to education, participation in social and cultural life— and the particular role of the family. The CRC uniquely embraces the whole spectrum of children’s rights, specifically endorsing the basic principles of the best interests of the child in total regime oriented to his or her development and self fulfillment.

2.2.3.1. **Law and Process :-**

All areas of the law would benefit from upgrading. A significant part of international human rights law is based on the protection of children and young persons up to the age of 18, a general principle which should be central to the
interpretation of additional protocols I and II and the Convention on the rights of the child. So far as recruitment is concerned, universal and formal acceptance of 18 as the minimum age is a key objective. International humanitarian law provides the basis for such a rule, but it needs updating and clarification. This could be promoted from the grass roots, through National Red Cross and Red Crescent Societies, with the endorsement of the Council of Delegates and the 26th International Conference of the Red Cross and Red Crescent. It must be driven, too, by non-governmental organizations of all persuasions, using the resources of government, parliament, regional and international organization, the media and public support.

Specific goals should include National legislation and practice in accordance with the minimum 18 age rule, i.e. formal endorsement of the rule by the ICRC, unilateral declaration by states parties to the Convention the Rights of the Child and eventually the development of a protocol codifying the rule, the activation or improvement of existing human rights jurisdiction.
Children in internal strife, the most common situation of conflict today, suffer because of the perceived inapplicability of international humanitarian law. Every support to them should be given. Therefore, the efforts to raise the standards, for example through declaration of minimum humanitarian standards provided they include the minimum age 18 rule and clarify the responsibilities of adults as recruiters or commanders should be made. Such an initiative also could be supported by National Red Cross and Red Crescent Societies.

The principles of the United Nations, binding upon the organization include promoting universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The UN human rights machinery, slow as it is, must be understood in the light of this overall policy goal. For example, bringing complaints to the notice of the Commission on Human Rights, helps it to identify situations involving a consistent patterns of gross and reliably attested violations. NGOs play an important role as source of information and also in bringing such issues before the sub-commission on the protection of minorities and the prevention of discrimination
so that patterns of human rights violations can be brought to the General Assembly.

UNHCR has expressly recognized its responsibilities towards children in refugee camps, who must be protected from recruitment by governments and non-governmental entities alike. The High Commissioner’s reports are one way in which the problems of refugee children can be brought to the attention of a wider forum. UNHCR’s strength as a human rights organization lies in the fact that it is widely represented throughout the world, particularly in areas of conflict involving both refugees and child soldiers.

UNICEF, which has a specific role under the CRC, should develop guidelines for its own officials to report on recruitment and related practices, while also encouraging local NGOs to assume monitoring and reporting responsibilities.

The ICRC, although an obvious first avenue of complaint wherever a party to a conflict appears to be acting in violation of its obligations under the Geneva Conventions and / or the Additional Protocols, often has very limited scope of action. The recently established International Fact -
Finding Commission, which has offered its services in the investigation of all violations of humanitarian law, including those committed in civil conflict, might be supported as a possible alternative monitoring mechanism relieving the ICRC involvement in activities that potentially compromise its impartiality.

In addition to the 'political' human rights bodies, advocates for children whether in universal or regional treaty monitoring committees offer channel for recourse, notwithstanding their particular focus and lengthy procedures.

The Committee on the Rights of the child deserves particularly close attention, specially given the number of ratifying states and the lack of provisions for derogation from the CEC. The Committee has already announced that it will develop urgent action procedures for children, draft a general comment on child recruitment and promote an optional protocol establishing minimum age 18. This Committee is also highly accessible to NGOs and by international agencies having specific responsibilities towards children, such as UNICEF and UNHCR.
2.3. **WTO on Children**

The WTO grew out of the GATT –1947, which successfully developed and oversaw global trading rules in the period after the second world war. The creation of the WTO in 1995 can be seen as the fulfillment of the vision of the participants at the Bretton Woods Conference in 1944, albeit half-a-century later. The evolution of the GATT into the WTO is aimed at reducing protectionism, reduction in tariffs and hence an increase in the world trade. The basic philosophy of the WTO is that open markets, nondiscrimination and global competition in world trade are conducive to the national welfare of all countries. There has been an ever increasing realisation by all trading countries that global governance in a rapidly integrating world economy has become important, as policies can have large and immediate detrimental effects on trade. The creation of a firm legal foundation for the institution that manages the multilateral trading system is therefore, of great importance. A stronger institution may allow the system of rules and disciplines to be enforced more rigorously than in the past and should at the very least ensure that the trade policies of the members become transparent. It would be useful to remind ourselves of the fact that GATT, however continues to exist as a substantive agreement, establishing a set of disciplines on the trade policies for its Members (the other agreements, negotiated by its members are GATS and TRIPS).
The issue of standards: This has been talked of at length in the WTO standards, like regulations are technical specification for a particular product or production process. A standard differs from a regulation is that the former is voluntary, usually being defined by an industry or by a non-governmental standardization body. On other hand, technical regulations are mandatory. It needs to be mentioned at this juncture that standards are usually under the control of the firms and industries. Standards, whether for product or aimed at human wealth and safety, are often welfare enhancing. However, standards may have trade impeding effects, which is why they are dealt within the GATT. Two basic issues need to borne in mind first ascertaining whether a standard is indeed welfare enhancing rather than being the result of rent seeking by particular body and second the determination of the trade impact. For there to be an economic rational for standards there need to be market imperfections. The developed countries have been talking loud for the adoption of labour and environmental standards by all the trading players in the international market. There remains a requirement for interested parties to co-operate and to the extent that there are costs to developing or adhering to a standard, there may be an incentive to free ride. Given that there are costs involved in meeting the standards, its existence may reduce the contestability of a market because potential entrants find it less attractive to compete or enter. The barriers to entry are greater and thereby the profit enhancing impact of the imposition of the standard is more. Standards are thus, perceived at least by the
developing partners, to have created rents for the developed countries and the standard setting activity being therefore, termed as collusive.

As far as the issue of labour standards is concerned, it was introduced at the insistence of the USA and France in the final stage of the Uruguay round. The object of these countries was to initiate discussions on the introduction of a social clause specifying minimum standards in this area.

Talking from the viewpoint of a developing nation, it has been suggested at various levels that the labour standards as envisaged under the WTO regime, lend to presume that labour standards are defined to absolute and universal rather than matters to be decided by sovereign nations. It needs to be recognised that the choice standards may depend on a country's stage of development and per capita income, and therefore, the weights attached to standards may differ across welfare functions of different countries.

The social clause, is thus also aimed at forcing countries to comply with certain standards, and if the developing nations resist or fail to comply, such actions could involve imposition of import restrictions from these economies or some other type of sanction which might be even costlier to the non-complying nation. Meanwhile, it is also possible that forcing developing countries to adopt cost-raising labour standards may be harmful to their
economic interests and could interfere with their efforts to pursue, less interventionist and more export-oriented economic policies. Alternatively, it is also being argued that world efficiency is best served by allowing each country to set its standard in accordance with its own needs and perceptions of cost. To do otherwise, to require that all countries impose the same standards will mean that some countries impose higher standards than the corresponding social costs or that others will impose lower standards than the social cost. Either way outputs will then be set inappropriately low or high, as the case may be, and welfare will not be maximised.

Labour standards have emerged as a challenge in the arena of the political economy of the world trading system. In this context, it is also essential to distinguish between the differences in labour costs and differences in the labour standards. The current debate centers on the second, not the first. The reason is that labour costs are endogenous, and largely reflect a country's comparative advantage. Insisting that further trade liberalisation be made - conditional convergence in labour costs make little sense, and would constitute blatant protectionism. The gains from trade result precisely from differences in costs, which are a reflection of differences in factor endowments and technological capacities of countries. The focus of attention is therefore, on labour standards and basic workers rights.

In the coming years, the WTO will have to face an important challenge to contain the threat of protectionist capture of the
environment and labour standards issues. This may require some acceptance of harmonisation through an agreement to adopt specific minimum labour standards. Some movement may be required in this direction as a quid pro quo for further market opening in the WTO's traditional areas-goods and service markets. If so, care must be taken to minimise the possibility of capture by industrial or anti-trade lobbies. Transparency will be important here. Moreover, a necessary condition should be that affected countries are compensated for the trade barriers, except, if trade sanctions are used to enforce a multilaterally agreed treaty. Protection in such cases should not be allowed to benefit the domestic import competing industries. As the purported objective is related to labour rights, revenues collected through trade action should be used to ameliorate the situation is the exporting country.

In the fifth conference of labour minister of developing countries (1995), it was expressed that the social clause was totally unacceptable to them. In their view, it is rather imperative to commit to promote and safeguard human dignity through the promotion of measures aiming at improving the working conditions and living conditions of all people and provide better levels of protection.
2.3.1. **United Nations Child Rights Convention**: (UNCRC), 1990 – A South Asian perspective.

There has been a growing awareness at the global level regarding the rights of child. Despite the growing realisation world over that children must be brought up in an environment of love and care, not much headway has been made in terms of awareness about the international human rights instruments. Domestic jurisprudence, most often, fails to take cognizance of the international human rights Conventions to which the respective states are a party. It is in the wider context of international human rights instruments that there is an urgent need to address the issue of children, law and justice, in the south Asian region.

There is a felt need to indicate the space available for using the United Nations's Child Rights Convention (UNCRC, hereafter) 1990, to create a legal environment favorable for the realisation of the rights of children in developing countries of south Asia.

The issue of child Rights within the framework of international law, may be seen as a step ahead in the evolution of the concept of child rights within the womb of human rights and how child came to be treated as a person and how and when different efforts were initiated at the International level for a tackle of the problem of creating a suitable framework for child’s rights with in the ambit of social justice. It may be noted that a historical approach towards the understanding of the development of the
concept of child rights does provide some insights into the manner in which the interests of the children have come to occupy a central position in the international law. In this context, we may look at the hypothesis that the genesis of child rights can be traced to Eurocentric values and culture. The Asian children today are struggling as a result of a common legacy of authoritarianism and exploitation, which has been modified through a basic process of social, economic and legal change in Europe. The international norms on child rights are, thus as relevant for children in the western world whose societies have moved closer in this century to the egalitarian norms reflected in the various standards set by international human rights.

The framework of rights articulated in the Convention on the Rights of the child of the United Nation also, very importantly, tows the line of the basic concepts of family privacy and the role the state as parents patriae in the care and development of children. The Convention confers (a) rights of survival and development (b) protection from abuse and exploitation and (c) participation right; the first two fall within the traditionally accepted area of child welfare, but are given a new dimension. Although, the issues related to survival and development- the traditional areas for policy planning and intervention in many countries- have been given their due recognition, equal weight has also been given to the aspect of protection. It is important to note that there is a movement away from the perception of the child as a beneficiary of privileges
conferred at the discretion of the parents, the family, the community and the state towards a perception of the child as a repository of legal rights under international law. The rights of participation incorporated in the Convention involves the development of existing legal concepts in some countries, but gives priority to the idea that children have a right to participate in matters that concern them or their community as they grow from childhood to maturity. The recognition of this concept and yet the diminishing role of parental and adult rights with, the evolving capacities of the child, introduces an important balance between familiar survival development and protection rights, and the new ideology of participation or personal autonomy rights as per the Conventions. The Convention’s preamble as well as its articles confer important rights and some obligations on the child, and seek to balance them with adult rights and responsibilities.

Human rights have been perceived till now as concept that has relevance for an adult world. Critics of the Convention can argue that advocating rights for children will erode family values, undermine parental and family responsibility for them, and take the concept of human rights beyond its legitimate scope. However, a detailed look at the substantive article of the Convention shows that it value base prevents children’s rights from being used to launch an
aggressive campaign for personal autonomy so as to undermine family privacy and the role of the community and the State in the care and development of children.

An important problem relating to the UNCRC is concerned with its ratification and putting them within the legal framework of ratifying member countries. Since ratification is an executive act, there is a very real danger that the Convention will remain a treaty that does not suit local situation unless steps are taken to ensure transformation. The Indian and SriLankan judicial experience of treaty transformation affords some insights into the implication of legislative or political apathy in this regard. This kind of judicial activism is unusual, but it can be harnessed to ensure that a government is not apathetic with regard to its obligation to bring the legislation in a country in conformity with the Convention on the Rights of the Child. In this Context, a significant opinion that may be considered for further debate is that international instruments can themselves become part of customary law or juscogent through international consensus.
Forging a link with international standards through judicial activism that incorporates their norms into national law can compensate for legislative apathy in enacting laws in conformity with treaties. Monitoring and lobbying at the national and international levels combined with development assistance can be used effectively to create an environment in which States feel compelled to take initiatives to fulfill their international commitments. The status of the Convention on the Rights of the child in domestic law indicates that those who operate the legal system must be made partners in the process of implementation by combination of strategies that seek to inform advocate as well as monitor their performance on children's rights.

The UNCRC has set international standards on commitments to children that are relevant to both industrialised and developing countries. There are provisions in the Convention, which recognize the special problems, that developing countries face in realising the standards set by the Convention. While the Convention envisages international co-operation and development assistance for the realisation of child rights, it also encourages regional co-operation and sharing of experiences and strategies. The situation of
children in the South Asian region has not improved despite several declarations and national policies and programmes. SAARC declarations have not been followed by an action plan for shared regional commitment and initiative in prioritising the interests of children. It may thus be argued that there is a need for sharing country experience on current inadequacies in the legal systems as well as progress in the area of realising child rights, which interalia can be of some relevance for national efforts to develop legal systems so as to obtain complements with the values and contents of the Convention.

In this context, it may be noted that the existence of personal laws in south Asia within a uniformly applicable legal regime has created problems of conflict of laws that can undermine state policies formulated by government. Pluralism can become a barrier to recognize the international standards articulated in the UNCRC, while the existence of federal or national laws and a range of different judicial and other authorities at the state or provincial levels make the task of law reform and law enforcement a complex matter. The factor of pluralism in law and the application of significant constraint as the problems of weak enforcement of laws and
provision of socio-economic support do for the effective realization of strategy of rights. The Convention's standards on children rights can not be realized without a serious effort to address the problem of legal pluralism in all its varying dimensions. Thus, all concerned social partners have to urgently deal on the issue of a framework for child rights within the context of the UNCRC. In fact, it may be suggested that there should be some synchronisation of the upper age limit for childhood, if the rights of children are to be realized by legislations, administrations, Social welfare institutions and courts of law in the 'best interest of the child' in the manner envisaged by the Convention.

As far as the acceptability among the South Asian Countries of the framework as suggested by the UNCRC is concerned, the conceptual framework of the Convention with regard to the child, the family and the state is basically compatible with the values of Constitutions, Statutes and other laws in South Asia. The values in the formal legal system in areas of parental status and family relations will have to be significantly modified if the laws of these countries are to be harmonised with the conceptual framework of the Convention.
For illustrative purposes, one may consider the case of Sri Lanka and the state of Kerala in India, both of which reflect high indications of women and children in comparison to other countries in South Asia as well as other states in India. It is important to recognise that Sri Lanka and Kerala had social systems, which focused on the importance of women in the family. Legal reforms that reflect a new value system, and recognise a woman's role in the family may help to develop gender equity and strengthen the capacity of women to become agents of change and contribute to the well-being of children. Both the Conventions on the Rights of the child and the World Summit On Children contemplate development of adult literacy programmes. The commitment of the state in creating parental awareness on the rights of children, the responsibility of the family and the state so as to prevent the exploitation of children are crucial dimensions in realising child rights in the region.

Gender equity for women cannot be realised in South Asia without addressing the basic issue of discrimination against the girl child practically in all countries. It is vital that fixed perceptions of 'paternalism' and 'protection' in linking women with children should not be allowed to
undervalue the importance of making the concern with the girl child, a central issue in campaigns and strategies to realise women's rights. Establishing and developing linkages and focusing on a common agenda can help to realise substantive equality in a context where proposals for achieving formal equality may not address vital issues like the implication of child-care responsibilities within families. Besides, efforts to eliminate inequities with regard to girls may motivate political and the will of the community towards the policies that can impact on women's education and health in countries which have avoided ratification of the Convention on women's Rights.

On other positive aspects of the UNCRC, it may be noted that the cluster of articles on the right to survival and development in the UNCRC which has been described as provisional rights, aims to link the right of survival to the important right of development. The linkage is important for developing countries, in a context where invention with regard to child survival has often been seen as more basic than the right of development when limited economic resources is available. The obligation of State parties 'to provide' for children encompasses a detailed range of
measures intended to ensure that planning for survival is undertaken together with a commitment to ensure growth and development.

The Conventions perception of common and shared responsibility of parent is, therefore, not easy to realise in the context of the existing focus on pluralism in religious and customary law and including 'male breadwinner's' support obligation. The reality of the economic dependence of women is no argument for refusing to accept the concept of common and shared responsibility in context where the law can clarify that the contribution to child support is dependant on a parent's financial capacity or the ability to provide for a child. Reforms in the uniform statutes, the law on support obligations of both parents, inline with the Conventions concept of family responsibility are a necessary adjunct to initiate efforts to realize the survival and development rights of children.

The need of the hour is, thus, to bring into focus the debate on the child as envisaged in the UNCRC. It is, therefore, significant to note that at a time when the debt crisis and policies of structural adjustment require
privatisation and a movement away from public sector expansion, the provisions in the Convention play an important role for the State in ensuring that families are equipped to provide for children.

The concept of income support and State assistance to families through welfare measures can be perceived as an orthodox approach, which has been proved to be a constraint to economic growth. The losses and lack of efficiency of state enterprises has encouraged new policies in which the State moves back, and communities with employers take over the task of strengthening the capacities of the families to care for children. Community support and employer's sense of responsibility are considered adequate safety nets to achieve this task and also creative developments that will discourage welfare dependency.

Existing policies in the areas of health and education in South Asia pose the question whether the situation of families and children in particular would worsen if the existing limited state initiatives are completely replaced by a policy of non intervention? Considering that Community and family involvement in the survival and development of children is
vital, and employer initiatives are important, the question is whether the situation of children in South Asia still requires a major role of State in this regard? The Convention’s articles on the relationship between the family, the state and the child envisage state involvement as well as family and community concern. Should policies in the future focus on achieving that balance or move towards non-interventions? This is an important issue which would require intense debate at all conceivable platforms.

The non-involvement of the state has an important impact on the capacity to use regulatory processes and the law in the area of rights for children. Discussions on judicial activism in the area of social and economic rights will clarify that the concept of administrative justice has been developed in the legal system of South Asia to provide relief against abuse of power of infringement of individual rights by State officials. Constitutions have been used in recent times, especially in India, to query governmental apathy or infringement in circumstances where regulatory procedures require delivery of services to the community, and impose responsibilities for implementing a particular social and economic policy on the state. The basic Constitutional
doctrine is that fundamental rights can be asserted only against the State or State agency, not against private citizens and agencies. Thus, if the state moves out of this area, the legal jurisprudence on administrative matters will have to be modified significantly, if the law is to be used to contain abuse of power and inaction by private employers. This particular problem has already arisen with regard to the use of Constitutional remedies and civil actions against errant employers in the investment promotion zones. Existing Constitutional provisions make it difficult to institute court action against them for violation of fundamental rights.

Activist who work in the area of women’s issues, child labour and occupational health are already making efforts to use even the existing law to ensure the compliance of regulatory processes by the employers. They are asking for better law enforcement, particularly in new industries in investment promotion zones, and for increased converge in respect of piece rate workers and those linked to the manufacturing industry in home-based enterprises or small business. Research has revealed that worker exploitation is greatest in these small enterprises or in home-based industries, and that children have been brought into the
production process at the prejudice of their schooling, even in countries where there is an effort to ensure educational participation. De-regulation and non-intervention by the state can therefore, expose children to greater risks and undermine the potential of state parties to fulfill their role under the Conventions.

While the focus on the family and the community as an important support system for its members and for family survival and development, is appropriate, the state's right and duty to strengthen families and also to penetrate in family privacy must be recognized. The concept of state performance and the state's role in relation to the family and the child that the Convention maintains a balance requires a creative response to poverty alleviation, child protection and social security. The state's supportive role with regard to the child, the family and the community should be recognized rather than excluded giving legitimacy to interventions by the State.

Emerging trends indicate that a cutback on state support can impact on the middle income groups who are in their own way struggling to ensure the best possible care for their families and children. A ‘vulnerable group’ must be
determined in a country’s context. A failure to appreciate the need for a contextual approach can result in the marginalisation of a group that is important for sustaining the very services whether it be health or education that are vital for the survival and development of all children. The phenomenon of educated migrant middle level workers from Sri Lanka and other countries becoming ‘economic refugees’ and so contributing to the brain drain of needed middle level skills is a response to the lowering of standard of living. These people are developing their own ‘safety net’ by seeking any job overseas. Migration of a parent or sibling becomes a strategy for the economic survival of those left behind at home. Many countries in the region depend on the remittances of migrant worker as an important source of foreign exchange. The resulting social and psychological problems of these trends can create for children ethnic tensions in the host countries which indicate the vital importance of providing an adequate safety net by the state within developing countries.

It is in this context that the governments of South Asia which are pursuing new economic policies are required to reassess their own commitments with regard to allocation of
resources in key areas such as education and health in order to support the families 'capacity to care for the child'. The Convention has made an important contribution in linking child development with child survival. The experience of south Asia indicates that the failure to focus on child development is a major constraint to progress on child survival. The absence of enthusiasm with regard to non formal education not in line with formal education has been recorded in Sri Lanka while the success of the approach in Bangladesh, indicates how low income parents perceive non formal education positively when it feeds into the formal system. A sense that the development of the child can contribute to the child's and the family's prospects in life is a powerful motivation to ensure child survival. The experience of Sri Lanka on investment in health and education also indicates that a vision of child development which recognises state commitments to give access to facilities for health and education to the poorest sections of society has impacted on social indicators for child survival. The investment on free education and raising literacy levels for both men and women have not raised awareness. These policies have provided a vision of a different future and prospects of upward social mobility. They have helped to create a perception of the child
as a valuable area rather than as another mouth to feed or another contribution to family labour in an atmosphere of grinding poverty. In emphasizing survival and development as equally important rights, the Convention encourages policy planners to perceive problems such as early marriage, denial of childhood through exploitation in the workplace and access to education as issues that are linked with child survival and ensuring adequate care, nutrition and health for infants.

The Convention on the rights of the child, despite its acceptance of a progressive effort to realise social economic rights depending on available resources, adopts the same 'rights' emphasis rather than a 'benefits' approach to the obligation of a state to provide for its child population. It is in this wider context that one needs to look at the scope for translating the UNCRC into specific state interventions within the national legal framework of the South Asian countries. Such an approach may be helpful to ensure the childhood of the children.

The problem of child labour has been attempted to be tackled by various legislative measures, policy interventions
and other non governmental initiatives, as well as those taken up by various international agencies working in this area. The recent past has been a witness to attempts and efforts to tackle this malady with a renewed vigour at all levels ranging from the grass root at the village and the Panchayat level to those by international agencies namely UNICEF and ILO (through international programmes) for the eliminations of child labour. However, while efforts are made in forms and coverage in making a significant dent to solve the problem of child labour at international level through various agencies of U.N., there is a general feeling that most of these efforts have failed to realize the significance of convergence among those.

With a view to effectively dealing with the problem of child labour, efforts have to be made to understand its intricacies. This in turn is crucially dependent on being a able to comprehend the problem from several angles. In fact, in the absence of proper comprehension of the problem, there is a possibility that myopic actions may be taken losing sight of the multidimensional character of the problem. In such situations, the effectiveness may be lost and may be even retrograde to welfare of the children involved. A possible and
realistic way of attacking the problem ought to be examined. The situation of working children in detail and the magnitude of child labour in the various parts of the country should be seen in correlation with the several ongoing development programmes in different parts of the world. This may pave the way for placing the problem in an appropriate perspective and a framework amenable to further analysis and policy formulations.