A Brief History of the UNCRC

Children have not always been on the Human Rights agenda. They have not been considered a separate group but were traditionally thought of as property of their parents. The question of children’s rights was not as an issue in the French Declaration of Rights of Man in 1780.

Early ideas of children’s rights put emphasis on their need for special protection. Children were mentioned in the U. N. Universal Declaration of Human Rights as follows:-

“Motherhood and Children are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection” (article 25 paragraph 2).

Other declarations and covenants have also recorded this concern.

Thus during the last century, universal concern for childhood has grown alongside the ideas of human rights. Human rights are today understood more in the form of the individual civil rights within a nation state than with the universal truths of brotherhood and humanity. United Nations Organisations has in fact established an international community which sets up ideal standards to be laid down in many matters including the treatment of children. According to Sieghart “How a sovereign state treats its own citizens is no longer a matter for its own exclusive determination but a legitimate concern for all other states and their inhabitants”. Thus the concern for children which initially started as part of the concern for the future of individual nation states has grown over the boundaries of the nation states and become a universal concern. This will be further borne out while going though the whole process of evolution of the Convention on the Rights of the Child.

It is commonly held that all children are born free and equal but this itself needs to be called into question because a child is conceived in a social context and born into a social context. Hence the prevalent social conditions have their effect on the child’s rights from the birth and may be even earlier. Every child that is born is a link in the civilization. This link always has a continuity with the past and it can also muster the powers to break with the past within certain limits. Rights of the child become relevant within the social context of here and now but also in relation to the past and even the future.

Human civilization has given birth to social institutions at various levels. These social institutions, primarily meant for protection and advancements of the interest of its members, have also often enough become exploiting or oppressing agents. Consequently the history of civilization has been embedded with conflicts of various forms. This has happened in the primitive tribal society and this does happen even in today’s modern society. For illustration one might take the institution of family itself. The family is considered to be most natural and primary in order to protect the interest of the members of the family, especially the children. But today it is a known fact that the family itself can and does on occasion become an oppressive and exploitative agent as far as the children are concerned.If this happens someone else has to come in support of the children. It may be the civil society, it may be larger social organisations, it may be the state.
But what happens when the state itself becomes opposed to the interests of the children? Larger formations or institutions in the form of international organisations or multinational bodies have come into the picture. In short, the interest of human beings and especially those of children can be protected only within certain international contexts, especially today as the world is moving to one global unit, notwithstanding the contradictions therein.

The human civilization is always in a dynamic state. Forces of destruction do exist therein and even take an upper hand on occasion, but as the forces of destruction get activated so do the forces of conservation and preservation. The first World War in the beginning of the last century was one such example where almost the entire globe was being drawn into a conflict. But the conflict ended and it also gave rise to various new initiatives to avoid such conflicts in the future. The League of Nations was one such initiative. This further means that this conflict started making people think about the future of the globe, the future of human civilization. But if the future of human civilization is to be thought about then the children must be thought about. The future of human civilization is the future of children.

It is in this context that various steps were taken in protection of the interests of the child. One can say that the most significant one was “Declaration of Geneva” which was promulgated in 1924 by the “Save the Children Fund International Union”. This declaration put forward 5 basic principles of child welfare and protection. The League of Nations endorsed this declaration in the same year. Then came the more devastating second World War after which the U. N. O. was set up on 24th October 1945. The Declaration of Geneva was further revised and extended in 1948 and in 1959 by the U. N. The Declaration on the Rights of the Child was adopted unanimously by the General Assembly of the United Nations on 20th November 1959.

What exactly is the difference between Declarations and Conventions? Declarations are certain general principles put forward as guidelines. These are not binding. Technically these are known as “soft laws”, whereas Conventions are binding. Conventions which have been ratified by the parties to it become a legal instrument. These are known as “hard laws”. Hence though the declaration on the Rights of the Child was unanimously accepted by the U. N. General Assembly in 1959 it was not legal binding on the member states. Hence the movement towards the convention on the Rights of the Child. This does not mean that there have been no binding instruments on the international community of nations as far as the Rights of the Children were concerned. There have been ‘the Red Cross Geneva Convention’, ‘the ILO Convention’, ‘the International Covenants of Civilisation and Political Rights on Economic, Social and Cultural Rights’, etc, which has relevance to the situation of the children. Further there have been ‘Standard minimum rules for the treatment of prisoners’, ‘the principles of medical ethics’, etc, which are not binding. All this may specify reference to the child but all these have been spread out in different documents and have not been codified. Further these references did not take the specific situations of the child into consideration. All these were a mixture of “hard” and “soft” laws and not easy to be complied with or enforced.

The Universal Declaration on Human Rights was adopted in 1948. Children’s Rights are an integral part of this declaration. But as the situation of children are specific, protection of the rights of the children called for a specific international convention which was binding on the parties to the convention.
It was the Government of Poland who first proposed such a convention on the Rights of the Child on the eve of the International Year of the Child i.e. in 1978. This initiative provided an opportunity and impetus to define more clearly and to harmonise Human Rights standards for children. This proposal was not to replace the Declaration on the right of the child of 1959 but to supplement it. It was meant to make at least part of the Declaration on the rights of the child binding on the member states.

However, this proposal was not easily accepted by the members of the United Nations. Some argued that it was not necessary because there always existed a declaration on the Rights of the Child and others argued that the Rights of the Children were also protected by the Universal Declaration on Human Rights and the International Covenants etc. But finally the supporters of the idea of the convention succeeded in dispensing the hesitations and taking the project forward. Hence a working group was set up. The U. N. Commission on Human Rights in 1979 reviewed the text proposed by Polish Government. The working group was called “Working Group” on the question of a Convention on the Rights of a Child. It consisted of members from 43 member states. The delegates from other member states also could attend as observers. Non Governmental Organisations (NGOs) in consultative status with U.N. Economic and Social Council could also be represented. The working group meetings were open to the public.

Several NGOs reacted to the Polish proposal for the draft convention. Few of them played a very active role but as the NGO involvement was more sporadic, a consultation was organised for interested organizations and an NGO ad hoc group on the draft of the convention was set up. This group met twice a year and unified the proposal to the U. N. working group. The contribution of the NGOs have been significant and the U. N. working group has sometimes taken the entire article proposed by the NGO ad hoc group. The NGO ad hoc group worked also in collaboration with UNICEF.

The convention has mainly three sections (1) The preamble which puts down the nature and underlying the principles of the question that the convention is tackling. (2) The substantive articles which lay down the obligations of those states that ratify the Convention in due course. (3) The implementation provisions which define the procedures of compliance with the convention.

Once the working group adopted the first draft of these 3 sections the entire text was reviewed to remove the contradictions that might have been there. The text also was standardized in the terminology of international legal text. Then it was put before the commission on Human Rights which after approval send it to the U. N. Economic and Social Council. This Council presented it to the U. N. Assembly.

Thus in November 1989 at its 44th session the United Nations the member states were asked to vote for this historic convention on the Rights of the Child. The Convention was designed to elevate the nations' political and humanitarian obligations towards their children. The commitments to the protection of children which have been scattered through more than 80 International Treaties and Declarations upto now since the days of League of Nations (a 60 year period) have been codified and upgraded through this convention. The existing standards have
been modified and consolidated and a range of relatively new issues of importance have been included. This is a comprehensive Human Rights Convention specially focusing on the special needs and situation of the children. The convention demands an active decision from the individual states to ratify them. A mechanism of monitoring has been included in the convention.

The convention recognizes special vulnerability of children and address their civil, political, economic, social and cultural rights as elements of inter dependent or mutually reinforcing set of provisions. The rights of survival, development, protection and participation are recognized as basic human rights of children. The survival right includes adequate living standards and access to medical services.

Development right includes access to information, education, play and leisure, cultural activities and the right of freedom of thought, conscience and religion. Protection apart from embracing of the above also covers all forms of exploitation and cruelty, arbitration, separation from family and abuses in the criminal justice system. Participation rights include the freedom to express opinion in matters affecting ones’ own life and the right to play an active role in society at large.

The other problems addressed by the convention are problems of refugee children, sexual and other of child exploitation, drug abuse, children in trouble with the law, inter country adoptions, children in armed conflicts, disabled children and the children of minority and indigenous groups.

The primary underlining principles of the convention is the best interest of the child. It states that the child’s own opinion shall be given due regard. The child is regarded as an individual with needs which evolve with age and maturity.

One might now go on to answer a few questions that is expected on the convention on the Rights of the Child. The first question would be about the need for a separate convention on the Rights of the Child. Although the children were covered by the existing conventions, a comprehensive treaty for the protection and support of children was a necessity. The convention not only embraces the existing provisions but improves on them. The convention defines the child as person under the age of 18 years. However, this is subject to the national laws defining the attainment of maturity i.e. becoming a major.

The convention does refer to the issue of protection of unborn child in Article 6 where it states that every child has an inherent right to life. However, this question is kept open within certain limits, allowing each nation to decide for itself how it has to approach the issue of protection of the unborn child within the context of its own culture, tradition and religion.

The convention recognizes the importance of family as a primary social group. However, here also the primary concern of the convention is the interest of the child in question. If the interest of the child calls for its separation from the family the convention allows it. The child has the right to protection even against familial abuse. The convention recognizes inter country adoptions as an alternative solution if the child cannot be cared for in a suitable manner in its own country. However, it puts the obligation on the member state to have standard safeguards in
the child’s own interest against inter country adoptions. It regulates that no improper financial gain is involved in the inter country adoption.

The convention recognizes child’s rights to protection from economic exploitation and from performing work that is likely to be hazardous or to interfere with child’s education. The child is further protected against sexual abuse. The child has a right to express his or her views and the state parties are obliged to give due regard to the same. The state parties are further required to respect the right of the child to freedom of thought, conscious and religion. The convention lays down the states obligation to ensure the survival and development of every child. This means that the states are legally bound to do everything possible to prevent child mortality and disability.

The states which agree to observe the convention will report to a committee on the steps they have taken to comply with it. The convention requires the states to ensure that the principles of the provisions of the convention would be widely known and to see that their reports n the committee on the rights of the child are made public. The convention becomes an International Law when 20 nations have ratified it.

One of the special features of this convention is the recognition of children rights of choice. It allows them to have a voice in decisions made for their protection and welfare. The 1959 Declaration did not include this. Another significant feature is the extra ordinary involvement of non governmental organizations in the entire process of preparing the draft deliberating on them etc. The assertion that the “best interest of the child shall be a primary consideration” in all actions concerning children is another significant feature.

The convention became a law on the 2nd September 1990 only 9 months after it was approved unanimously by the U. N. General Assembly. It is reported that no other human rights convention has become a law so quickly. By the time of the World Summit for children 50 nations had ratified the convention on the Rights of the Child and another 78 had signed their intention of becoming parties when their governments had completed ratification procedures. The convention has subsequently been signed by all nations with the exception of the United States of America.

It might be interesting to examine whether such international legal provisions become really useful in promoting the rights of the child. The answer is in the affirmative but with certain qualifications. The whole process of the convention has to be looked upon as a result of a long drawn process involving many governmental, non-governmental agencies, groups and individuals. This process however has to continue in the event of which the convention becomes a new powerful instrument in the hands of interested parties, government, non-governmental organisations and individuals, who are committed to the cause of children. Thus in our efforts of promoting the rights of the child the institution of the Convention, on the rights of the child is both culmination of the process and the beginning of a new process with definite continuity with the past. Granted this the convention will go a long way in defending the rights of the children world over. In conclusion one might assert that future defending the rights of the children amounts to defending the future of the world, that is the future of the human civilisation. This
imposes a great responsibility on all of us here, you and me, to preserve the world, the globe for
the future generation. Let us be clear that we have not inherited the universe from our forefathers
but we have rather borrowed it from the future generation and we have got to return it to them.
As a historical link in time and space of the human civilisation, it is our duty to make the best of
the universe here and now preserve it for the future generation that is the children of today.

The Government of India itself has ratified the Convention on the 10th of December 1992. The
text of the ratification reads as below:

“While fully subscribing to the objective and purpose of the convention, realizing that certain of
the rights of the child. Namely those pertaining to the economic, social and cultural rights can
only be progressively implemented in the developing countries, subject to the extent of available
resources and within the framework of international cooperation, recognizing that the child has
to be protected from exploitation, nothing that for several reasons children of different ages do
work in India, having prescribed minimum hours and conditions of employment, and being
aware that it is not practical immediately to prescribe minimum ages for admission to each and
every area of employment in India the Government of India undertakes to take measures to
progressively implement the provision of Article 32(a) particularly paragraph 2 (a), in
accordance with the national legislation and relevant international instruments to which it is a
state party.”

The government of India does not seem to undertake the obligation which the ratification lays on
them. That is where our concern must continue in the form of addressing the Government as to
its obligations and educating the public on the issues of children’s rights.

C J George