

***CHILDREN AND THEIR RIGHTS  
CONVENTION***

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*for  
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**"Grown-ups never understand anything for themselves, and it is tiresome for children to be always and forever explaining things to them."**

The Little Prince  
Antoine de Saint-Exupery

**Introduction:**

*Tarun, a friend of mine had to go to a birthday party at short notice. His mother decided to pack one of the many presents he had received for his birthday the previous week assuming that Tarun would not notice. Tarun protested vehemently saying that it was his. His mother then had to enter into a protracted negotiation until Tarun finally agreed. Tarun is two years old.*

*Zui, my niece decided when she was two that she would be a vegetarian as she loves animals and cannot bear the thought of hurting them. No amount of persuasion by her parents could change her mind. Last year when she was four and a half she marched to save Cubbon Park. When asked why? She said that it was to save the habitat of the birds she loves.*

These two stories could easily be dismissed as cute examples. However both these children show us that they are capable of perceptions that we would not normally credit them with. Both these children were also exercising their rights instinctively. Tarun was protesting against his mother's assumption that she could take decisions regarding his belongings and Zui, her right to choice based on a moral principle that she believes in.

Both these children, like many other kids, have asserted their rights by actively participating in the adult decision making process. They have demonstrated this in their own ways and have maintained their side of the argument in the collective bargaining process.

The right to participate in determining aspects our lives, is the foundation, the most fundamental of all other rights. If this right is not exercised, all other rights become redundant and the individual becomes a mere passive recipient of services if and when they are delivered by 'benevolent providers'. They are also likely to become the meek victims of abuse and exploitation.

The fundamental principle of a democracy is the equal participation of all groups of society whether they are the tribal, women and other marginalised groups that include children in securing and maintaining their rights. In a real democracy rights are not handouts 'given' by those in control but the assertion of political space by those it belongs to.

The equal and active participation of the marginalised has to be enabled by those of us who now enjoy it. If we truly want a sustainable society we have to enable equal participation or all our theories and principles of a participatory democracy will fall apart.

It is no different when it comes to children and the Convention on the Rights of the Child is the first international convention to recognise this.

### **The Convention on the Rights of the Child (CRC):**

The United Nations Convention on the Rights of the Child (CRC), the most widely ratified convention, with the glaring exception of the United States of America, is a comprehensive frame that fosters the healthy growth and development of children.

Ratified by most countries of the world it has brought the rights of children into focus as never before. The CRC has dramatically influenced the thinking of various important children's advocacy institutions that have been rapidly transformed by their adherence to the CRC as a guiding principal and are now bringing to the international debate new values and objectives that only a few years ago were virtually ignored. It will be interesting to examine this within the context of child labour as the CRC has had a sizable impact on this issue.

The CRC has had a significant impact on the perspective on child labour. The first article is Article 3, which requires that the best interests of the child be **'a primary consideration'** in all actions concerning children. This article is so fundamental to the CRC that it colours all actions intended as expressions or implementation of the Convention. With regard to child labour, its effect has been to insert into international debate the heretofore unfamiliar demand that any intervention be, in effect, accountable to children before adults.

This is a dramatic departure from the earlier criteria and has crucial implications. For example, the thinking of the past hundred years or more has been to keep children out of the labour markets, even if they (the children) want or need work, in order to protect adult employment. This has been the backbone of all trade union initiatives. Now the tables have been turned and the same instructions that propounded this principle are forced to demonstrate that their interventions benefit children and their best interests are the primary objective.

The second Article of the CRC that has revolutionised the international debate is Article 12, which guarantees children the right to express their opinions in matters affecting them depending on their age and ability to form their own views.

By and large the opinions of children have not been welcome except to perhaps improve the implementation of programmes that serve children directly. However, following the CRC there has been a surge of initiatives by NGOs all over the world to enable the participation of children at the local, national and international levels. This has been met with mixed reactions. Some have found this idea outlandish and have argued that it increases the burden of already marginalised children. The point they seem to be missing however is that the more marginalised the children the stronger are the reasons for their voices to be heard.

Others have welcomed this approach and heralded it as a major breakthrough in the realisation of children's rights. Ms. Teresa Albanez, Special advisor of the Executive Director of UNICEF at the Hearing on Child Labour, said "because the Convention recognizes children's right to be heard and to participate in decisions affecting their lives, child labour must be approached... with children, with youth, with the ones who understand in their flesh and bones what this terrible problem is all about. We must listen to children who work and contribute, for they often have answers that elude adults<sup>1</sup>".

We as a generation have lost our way, we can no more claim the moral right to advocate for our children let alone make decisions that affect their lives without their participation and consensus. In the light of our track record it is not at all surprising that working children have questioned our efforts and challenged our intentions. They say that all laws, policies and conventions, including the Convention on the Rights of the Child are empty promises. They seem to have decided to take their lives into their own hands and use their right to organise to change this state of affairs.

The active participation of working children in the debate during the past few years bring about an implicit accountability on the part of policy makers and programmers to the best interests of the child and lends force to Article 3.

At the First International Meeting of Working Children's Organisations in Kundapur, India (1996) and the Global Conference on Child Labour in

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<sup>1</sup> 'Elimination of exploitative child labour: challenges and progress', Statement by Ms. Teresa Albanez, Special advisor of the Executive Director of UNICEF at the Hearing on Child Labour, sponsored by the United States Department of Labor, Washington, D.C. - 5 May 1995.

Amsterdam (1997) where a delegation of working children representing their organisations participated the children voiced the often heard complaint that interventions designed to protect and assist them have instead put them at a disadvantage and sometimes even pushed them into situations that were much more exploitative than before. For them, the biggest and most glaring irony in their lives is that though they are the ones most directly experiencing the problem, the most affected by the interventions we design - especially the ones that go wrong - the ones who live with exploitation and abuse in their daily lives, they are the ones who are the least involved in designing and developing the solutions.

Martin Woodhead in his very interesting participatory study in six countries of the world called *Children's Perspectives on their Working Lives*<sup>2</sup> argues forcefully for taking into account children's perspectives. He says: "Children are important sources of evidence on how work may harm their development and are not passively affected by their work- too young and too innocent to understand what is going on. They are active contributors to their social world, trying to make sense of their present circumstances, the constraints and the opportunities available to them. Listening to children's perspectives does not undermine efforts to combat child labour that is hazardous and exploitative. It provides a much more sound starting point for intervening in ways that are child-centered, context-appropriate and in the best interests of working children."

Bill Myers argues, "A potential effect of increased participation, just now becoming perceptible, is change in the politics of child labour provoked by forcing more accountability on those taking social decisions. If children have a free voice, it will be increasingly difficult for governments, international organisations or influential civil society groups to pursue their own agendas and interests without regard to the children involved. After all how credible can a protective policy or programme of action be when the very children it is supposed to protect that it instead tramples their rights and leaves them more vulnerable?"

However, in India, the Convention on the Rights of the Child is by and large regarded as the fulfillment of basic needs and services with the responsibility of providing these accorded to the State.

Often in our zeal to fulfill one right of the child we end up violating several others. It is such obvious common sense that the full range of children's needs should be taken into consideration when deciding what to do that it must be asked why so apparent a principle seems so often to be neglected.

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<sup>2</sup>Martin Woodhead's study 'Children's perspectives on their working lives'. Radda Barnen - May 1998.

Rights, no matter how well enunciated or spelt out do not necessarily become the reality. The providing of 'services', the laying down of procedures, even the translation of the Articles of the Convention on the Rights of the Child into national legislation does not ensure that these rights actually reach our children. To consider children as the holder of rights is not enough to enable these rights to be acknowledged and enforced. They have to be able to demand, obtain and exercise these rights. This however does not preclude the need for negotiations between all the stakeholders but it does maintain that the effected group participates in the process based on their age and ability to do so.

The Convention on the Rights of the Child is the first global recognition that children also have the two most fundamental rights, the right to organisation and participation - Articles 12 (the right to be heard) and 15 (freedom of association). It acknowledges the fact that it is only through the exercising of these two rights that all the other rights in the CRC obtain true meaning.

The most effective way for any right to be realised is the power of the collective voice, the strength of organised action. The United Nations Convention on the Rights of the Child (CRC) paves the way for this in its recognition of these two fundamental principals, but children have been denied this for centuries and we are slow in providing the space for this to become an actuality.

These are the two rights, that if exercised, will ensure - more than any other measure, the realisation of all the other rights articulated in the Convention on the Rights of the Child.

### **The need for a paradigm shift:**

We, the adults of this world, have by and large viewed children with pity, as passive victims of their situations needing our care and protection, as 'projects to be acted upon', the target of politics, advertising and programmes.

In a society, which is predominantly patriarchal and paternalistic, children have been viewed as beings 'in training', not full persons and have been excluded from participating in decisions about themselves. They are not considered as legitimate social actors with the right to vigorously participate in all aspects of society. They are invisible beings denied citizenship until some future date.

While considering the rights of children, it is generally assumed that the provision of social services such as schooling, health care and nutrition, and rights such as the right to a family secured through legal provisions, covers the gamut of children's rights. By and large, children are not considered to have political rights. "This view hides the paternalism and the authoritarianism of adults, limits the

potential of the child and ignores the responsibility on the part of society as a whole in promoting and defending these rights<sup>3</sup>".

However, a universally acknowledged concept, that of the socialization of the child is the process by which the child not only seeks to relate itself to other persons, but to its environment in general. This interactive process determines the development of each person. The richer the process of socialization, the better a person's life experience. For this reason the socialisation of the child cannot be an unconscious or uncritical process, separated from reality and governed by the paternalistic attitude of adults. Just as the environment influences the child, the child can also influence its environment. The relation of the child to reality cannot be marginal and devoid of contemplation or questioning<sup>4</sup>.

Children, from an early age, should be encouraged to gradually further their capacity to learn, question and transform a reality that is not capable of upholding the legitimacy of their rights. This should be enabled without hampering or pushing the child's development but contributes to children developing a sense of self-esteem and security.

### **Redefining the role of adults:**

In the role of caregiver and protector we have been sadly derelict. On the other hand we have not desisted from playing the role of the oppressor. It is our assumed right to control and advocate on behalf of children that also gives us the possibility to abuse them. Children should have the right and the ability to resist this.

By and large, it is apparent that the degree and level of participation of children in 'adult affairs' depends on the extent adults enable it and are willing to open up space for children. We lay down the frame and set the rules of the game. It depends on our willingness to share the power and control we now enjoy. In a world where adults have taken decisions for children and set standards for them, the listening to smaller voices is still seen by many as a means of gathering interesting information from the perspective of children, involving them in 'doing something' and preparing them to be complete social subjects when they reach adulthood.

This facilitation by adults opens a space for children's voices to be heard, but it can also act as a barrier where children are mere testimonies of exploitation, symbols that reinforce the victim image, while the adults proceed with the 'real'

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<sup>3</sup> Jaime Jesus Perez, Radda Barnen, Lima.

<sup>4</sup> Amuktha Mahapatra, educationalist, India.  
Jaime Jesus Perez, Radda Barnen, Lima.

deliberations. When children wish to take the initiative to question us we tend to draw the line and rarely allow them to suggest to us how things should be done.

To quote a South African proverb "Until the lions have their historians, history will always be told by the hunters<sup>5</sup>." So until children reach the stage where they can re-write history, they will remain mere helpless victims in our eyes and not the determined small beings they are, capable of a more holistic and beautiful vision for the new age.

The implications are enormous. To see children as social subjects capable of and with the right to actively affirm their role in relation to their reality challenges the prevailing paternalistic paradigm. We as adults will have to dissolve the image we have of ourselves. We will have to share the power and control we now exclusively enjoy. We will have to redefine our roles vis a vis our children. We will have to value the ability of children to contribute to their own development, that of their family and community.

The CRC conceptual framework forces us to reexamine many old assumptions about childhood, children's roles and development. The child also cannot be viewed as separate from family and community. A child-centered perspective automatically enlarges the frame and widens the canvas. For instance narrow concerns regarding child work issues have to be widened to consider more comprehensive issues about the role of children and their rights in society.

However, for adults to accept the children's agenda implies acknowledging that children are protagonists of their own lives, legitimate actors actively participating in society. This view directly challenges the prevalent paternalistic image of children.

The right of children to participate in decisions regarding themselves does not mean that they have all the answers, nor does it mean that we, as adults, are absolved of our responsibilities towards our children. It is only giving them the first step towards being able to defend themselves and reshape their future. These children must be given the right to intervene in their environment and change elements that do not uphold their rights as children.

We must also be prepared for the fact that children will say things we do not necessarily agree with, they will ask embarrassing questions for which we do not have ready answers and they will disagree on the stands they take based on the differing realities they face. But we must be willing to accept this.

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<sup>5</sup> Statement of Deputy President Thabo Mbeki, at the workshop 'Reporting on the implementation of the Convention on the Rights of the Child', Pretoria, July 24, 1997.



The concerns of children need to be put on the agenda and discussed. Their \*questions must be answered and only if we accept this challenge will we be any closer to finding solutions that work.

"We will listen until we can hear their tears, their smiles, their sadness and their hopes."

- Ancient Chinese Proverb<sup>6</sup> -

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<sup>6</sup> Ancient Chinese Proverb quoted in NATs, Working Children and Adolescents International Review, February 1995.