The Position of Privacy Rights of the Child in Iran's Enacted terms and Comparing it with the Convention on the Rights of the Child 1989

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ABSTRACT

Convention on the rights of the child 1989(CRC) is from the most important and general documents which has been approved so far in the field of supporting the children. This document has a special significance due to the numerous member countries and has created many commitments for the governments, so, it can be considered from the most acceptable documents in the field of child’s rights. In this paper, the stages of forming the convention have been considered and it has been tried to indicate its strengths and problems as far as possible. The main subject of the discussion is to analyze the articles of the convention and comparing it with the laws of Iran.

INTRODUCTION

Children’s rights are part of the human rights issues which requires strong support from the international society. Human requires physical, mental, economic etc. security in order for his social life. Also children need special cares due to their special physiological condition.

According to the statistics of UNISEF (1989 – 1990) every day, forty thousand under five year children lose their life due to malnutrition and preventable diseases; close to a hundred million of children are deprived from basic education plans; half of the children in developing countries do not access to the safe drinking water; annually half million of mothers lose their lives in pregnancy and childbirth; more than a hundred million in the world subsist through risky works and often under fatal conditions. Infraction of children’s rights in the developing countries, mostly is due to poverty, while in the West, moral malaise and weakness of foundations of the family are the inflict of children’s rights.

In the convention on the rights of the child an ideal legal condition has been predicted for the children and the countries which join the convention must try to promote the welfare and livelihood, legal, educational and upbringing conditions of the children to the desired level of the convention.

In the mentioned convention, numerous and different rights for the children have been discussed including: right of living, accessing identity, right to live with parents, entertainment, playing etc. and Iran with the acceptation of the convention on the rights of the child has accepted that there must not be any contradiction between the domestic laws and the articles of the convention.

According to the article 1 of the convention in determining the child it has been stated that the mean of child is the under 18 year old persons unless according to the applicable law the age of maturity is identified lesser. In this study we are intended to identify the child and after it discuss about subjects such as child abuse (sexual and physical), exploitation and child labor (forced labor), child adoption and marriage of the child.

The Research Aims:

In this study we are intended to identify the child and after it discuss about subjects such as child abuse (sexual and physical), exploitation and child labor (forced labor), child adoption and marriage of the child.

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The Research Theory:
In some cases, some inconsistencies can be seen between the convention’s articles and the domestic law of Iran such as the age of the child, responsibility of the child and some other cases.

The Research Methodology:
Gathering references has been in the librarian way using books and articles and also the logical analysis and adaptive ways will be used.

Key Words:
Convention, child, rights of the child, child abuse

Arrangement of the convention on the rights of the child (1989) (CRC):
“The declaration of the rights of the child” has been arranged in Geneva which was mostly in the fields of nutrition, hygiene and habitat for the displaced and war children and supporting them against the physical and mental hurts caused by the war. Also, the establishment of the United Nations International Children Emergency Fund (UNICEF) in 1946 was an important step for addressing the legal issues of the world’s children. UNICEF was established according to the general assembly resolution of the United Nations after the world war II in order for the freedom of fourteen European countries of the bondage of poverty, hunger, disease, being derelicty and homelessness. Also, the universal declaration of the Human rights 1948 is another reference for the Convention on the Rights of the Child.

The declaration of the rights of the child was approved by the United Nations General Assembly and in fact, it established the foundation of the convention on the rights of the child and also the international agreement on the Elimination of All Forms of Racial Discrimination in 1965. The International Covenant on Civil and Political Rights 1996 and the Convention on the minimum age for employment in 1973 is from the other issues in relation to children’s rights.

The Islamic Republic of Iran’s Government has joined both CRC’s Optional Protocol, means the optional protocol on the sale, prostitution and pornography of children and the additional protocol on the exploitation of children in armed conflicts. It is necessary to mention that however the 51 article of the CRC only allows the reservation right to this convention when the approval or accession, but the government of Iran enacted a reservation right for itself when signing the convention as follows: “the government of Islamic Republic of Iran applies a reservation about the provisions and articles which may differs from the Islam religion, and it keeps the right for itself to apply such a reserve at the time of enacting, too.”

The concept of child:
From the idea of this convention, the people under 18 year are accounted as child. In this definition, the end of childhood has been determined but the beginning of it has not been mentioned. This assumption is not acceptable in Islam religion, because from the perspective of Shiite jurisprudence the beginning of childhood is from the moment of ratification of sperm, but it seems that this objection and impression of Islam can be criticized; because Islam has not mentioned the stage of “ratification of sperm to birth time” as child.

Prohibition of child trafficking:
In the article 11, the child trafficking has been prohibited and the member countries of the convention must take some actions in order to combat child trafficking and transmission and lack of returning the children (resistant) of outside of the country.

Freedom of the child’s opinion:
In the article 14, the freedom of the opinion and thought and religion has been emphasized and the parents and caretakers of the child are obliged to conduct the child in the applying of these rights.

Child’s Privacy:
In the article 16 of the convention, the illegal and arbitrary interference and consideration and also the desecration of the privacy and family affairs and even correspondences of the child has been prohibited.

Children of ethnic and religious minorities:
In the article 30 of the convention it has been paid attention to the children of ethnic and religious minorities and such children must have the right of having their own culture and teaching and religious practices and language.
Child Labor:
In the article 32 of the convention it has been paid attention to the child’s labor and the age and conditions of the child’s labor and it has been requested from the governments to prevent from the economic exploitation of the child and any work which is harmful to him or causes stop in his education or is harmful to his physical, mental, moral and social hygiene and in order to meet this purpose, they must approve and apply the minimum age and the maximum work hours and other executive guarantees.

Prohibition of torture and the principles of justice:
In the article 37 of the convention, some cases are considerable and the member countries are necessary to observe them:
1- Torture and death and life imprisonment penalty for children under 18 years old is prohibited.
2- Arresting and detention of the child illegally and arbitrarily has been forbidden.
3- The child has the right of fast accessing to the legal counsel or other necessary assistances and also the right to object to the legality of his imprisoning before the court and other competent authorities.

However the convention has some strength points and virtues, but it has some objections in its turn including, the lack of innovation and contraption in some articles, lack of definition of offender children, lack of attention to some of the world’s progressive principles, the existence of “the right to protect” for the countries, ambiguity and brevity in some cases, lack of definition of refugee child.

The concept of childhood:
The child is the result of common living of the father and mother. The parents who have been together based on a link and created a center filled with kindness and affection called family.

The age of childhood in the convention:
This convention with the enacting of the article 1 has defined the child such as following: “from the idea of the convention, the mean of the child is the persons under 18 years old, unless according to the applicable law about the child, the maturity age is determined lesser.”

Childhood from the perspective of the civil law of Iran:
Regarded to the fact that in the civil law of Iran even the right of living has been determined for the child which has not been born yet, that is why the childhood territory in Iran can be considered wider than the international conventions.

Child Adoption:
Child adoption means a legal relationship which is created by the wife and husband due to the acceptation of a child as bairn (child) without the matter that the child acceptors are the real parents of the child. The experience has proved that such deep relationship will be created between the adopted child and the godmother and godfather that the distant between the real bairn and the apparent bairn completely disappears and the wife and husband forgot that the mentioned child is not their real child.

Child Adoption in Convention:
In the Convention on the Rights of the Child, child adoption has been accepted and the adopted child enjoys the same rights and benefits.

In the introduction of the Convention on the Rights of the Child the child adoption has been referred as one of the items of the Minor Child Support. This convention in some of its articles emphasizes on the rights of orphaned children including the articles 20, 21, 25 and 27.

Child Adoption in Iran’s Law:
The article 1 of this law has considered residence in Iran as one of the criterion of the wardenship and the article 11 of the mentioned law has enacted the duties of the warden of the child just as the rights and duties between child and parents in terms of caring, training, alimony and respecting.

The issuance of final sentence of wardenship and even the issuance of new birth certificate for the child with the specifications of the warden couple and the family name of the husband will not cause the interruption of the relative relationship of the child with his real parents.

The necessary conditions for child adoption in Iran:
• The wife and the husband must be both volunteer for adoption and both must be resident of Iran.
• It must have lasted five complete years from the date of their marriage and they must have no child from this marriage.
• The age of one of the spouses must be 30 years at least.
- The couple must not have conviction for penal because of committing an intentional and obsolete crime.
- The couples or one of them must have financial property.
- The couple must have no incurable or refractory disease.
- The couples must not be addicted to the alcohol or drugs and other harmful addictions.
- Whenever doctor couples cannot have a child, the exemption of the conditions 2 and 3 is to the court.

Counseling before the child adoption is from the important cases which the couple should participate in it before their child adoption, the result of the sessions will be inserted in the file.

Child Marriage in the international instruments:

The legal issues of the children have been specially paid attention to in the international instruments of the human rights.

The arrangement and adoption of the declarations and a special convention such as: “enjoying the free and compulsory education, prohibition of recruitment and employment of the children, supporting children from cruelty, exploitation and abuse and having the necessary facilities for intellectual, physical breeding, etc.” indicates this special attention.

Even though the issue of under age children’s marriage has not been molested in the Declaration of the Rights of the Child, but the general spirit of this declaration is to fight with such behaviors to the children severely. Even it seems that the lack of interference aspect of the mentioned declaration to the children’s marriage has been its clarity of prohibition such that the drafters of the declaration did not consider its recitation necessary.

The family which is the main and natural element of the society must be supported and helped as much as possible especially for its creation and establishment and since the family is the responsible for keeping, educating and breeding the children, the marriage must be accomplished with the freely satisfaction of the spouses.

Child Marriage in Iran’s Law:

The article 1041 of the civil law enacted in 1991 has prohibited the marriage before maturity. According to the amendment of the article 1210 of the civil law “the maturity age in boys is fifteen complete Hejira years and in girls it is nine complete Hejira years”. The amendment of the article 1041 appointed that “the marriage before the maturity is right with the permission of the warden and in condition of satisfaction of the child who is presided”.

Review of the article 1041 of the civil law:

The article 1041 of the mentioned law is summarized from different aspects and in addition to the above summary, the issue of the marriage of immature children, in the civil law because of lack of description of the consequences, the results and sentences has been proposed incompletely. The jurisprudents explicitly ban getting married to the immature girls and having sex with them and they have considered some penalties for any trespasser person of this sentence. The civil law in the article 1041 has fixed the nature of allowance for marriage of the immature children complying with the judgment of the jurisprudents, but it has not proposed the important sentence which is not negligible about the prohibition of the sex. It may be bethought that the legislative has predicted the issue of prohibition of sex before the maturity in the top of the issue and it has enacted that “marriage is prohibited before the maturity” and the term of the above amendment which says that “the marriage is right before the maturity but with the permission of the warden and the satisfaction of the one who is presided” is the mirror of the matter that the aim of banning the marriage at the top of the article is to prohibit the sex relation; but with a little thought this bethought is rejected because: first, the sex relation before the maturity is banned against the girl, and in fact what has been banned is having sex with an immature wife, and the jurisprudents have not bring any prohibition for the husband. Secondly the mentioned prohibition is a derivation from the derivations of the children’s marriage issue and it is unlikely that about an issue first the derivation is recited and then the main issue is molested.

Some suggestions in order to overcome the shortcomings of the aforementioned article:

a) The guarantee of the implementation of not observing the interest is expressed explicitly.

b) Aspecified and competent authority must be determined to determine and confirming the existence of the interest and the warden of the immature child before the marriage must get the permission from the mentioned authority.

c) The prohibition of sex relation with the immature wife must be announced in law explicitly.
Child Labor:
Nowadays, the laws of children’s labor in the Canadian provinces are similar to the laws of the United States. Also, most of the countries of the world have some laws for restricting the children’s labor and the children’s labor is still as a social problem in the societies. Also in Iran for different reasons the number of the working children is increasing, but there is not an exact statistic about the labor of children. The number of more than 20 thousands of working children has been approved in Tehran. In the estimating statistics of the International Labor Organization in 2005 more than 71.4 percent of the children between 10 to 14 years old in Iran are economically active.

Reasons of the Child Labor:
The exploitation of the child labor force has roots in the various economic, cultural and social factors in a way that the economic poverty, unemployment of the parents, addiction and divorce and the class gap are considered from the most important factors of the increase of working children in a society.

Consequence of the Child Labor:
Unfortunately the labor children who appeal to the productive and service activities or false jobs are hindered from many of the human rights, right of education and training; the physical and mental health of these children is severely exposed to a variety of injuries and physical and even sexual violence and in the future, they will face depression, malnutrition and a variety of mental and physical diseases.

Child Labor in the International Conventions:
The importance of the children’s right is as much as the Human Rights start with the children. In the International Declaration of the Human Rights it has been stated that: “every individual is deserved to enjoy equal and basic rights which are the integral part of their essence. The right to enjoy “humanposition”means that every individual deserves respect because of his humanity”.

From the perspective of the International Labor Organization, child labor is called that group of the economic activities which cause harming the physical, mental, moral or social health of the children or cause their training faces the problem through three ways.

The article 32 of the International Convention on the Rights of the Child states that: the child must be supported against any work which threatens his growth and health and the governments must determine the minimum age of the child work.

From the viewpoint of the International Labor Organization, the worst forms of the child labor includes: buying and selling the children, participating in the military activities and wars, sexual child working or playing role in pornographic movies, using children in illegal works such as distributing and selling narcotics etc.

Action Programs:
As an immediate subject and with the consultant of the governmental organizations and related entrepreneurship and work organizations and due to their own ideas, the families of the children who have directly influenced by the child labor and if necessary the other related groups are committed to accomplish the conventions aims and this advice is determined and will be applied. These aims must pay attention to the following items:

a) Determination and condemnation of the child labor
b) Preventing from or prohibiting the working of children, protecting them from retaliate acts, and predicting the rehabilitation and social adjustment through actions which consider their educational, physical and psychological needs.
c) Special attention to:
   - the younger children
   - the girl child
   - the problem of the hidden work situations in which the girls are exposed to the special risk
   - other children groups exposed to special needs or vulnerability
d) Determining, accessing and working with the societies in which the children are exposed to the special risk
e) Informing, sensitizing and mobilizing the public thoughts and the related groups including the children and their families

Minimum age for working:
The article 79 of the Labor Law explicitly states that: “the employment of the persons under 15 years old is prohibited.”
Law for the Protection of the Rights of Children and Adolescents:

Law for the Protection of the Rights of Children and Adolescents enacted in 16/12/2002 in Islamic Consultative Assembly which includes 9 articles only in its article 3 it has addressed the issue of child labor. This article states that: “any buying, selling and exploiting the children in order to commit unlawful acts such as trafficking is prohibited and the perpetrator in addition to compensation of the damages caused will be condemned from six month to one year of prisoning or a fine of 10 to twenty million rials.”

Child Abuse:

“It means the injury or threatening the physical and mental health or felicity and welfare and well-being of the child by the parents or the persons who are responsible for him.”

The second article of the Law for the Protection of the Rights of Children and Adolescents in defining a type of child abuse states that: “any kind of bothering and harassment of the children and adolescents which cause the physical or mental and moral hurt for them or endanger their physical or mental health is prohibited.”

The daily increasing of the violence against the children in the US caused that the association of fighting with the child abuse to be formed in 1874. In the years of 1940 treatment reports without the explanation of the reason of the injury of the children especially numerous breakings of the bones, swelling the skull and bleeding prompted new suspects about the child abuse.

The issue of child abuse during the recent decades, means from the time that the term of injured child was invented by Henry Camp in 1992 has been severely discussed. In 1992 Camp considered the innovation of “the injured child syndrome” as the conditions that under them the beating and child abusing cause the permanent hurts and even their death.

The Types of Child Abuse:

The hurts to the children are divided into various types which their most important ones are:

1. physical abuse
2. psycho-emotional abuse
3. hurts caused by negligence and carelessness
4. sexual abuse

Trafficking:

Several United Nations conventions on transnational organized crime and in particular the 2000 Convention and its Optional Protocol for the Prohibition of suppression and punishment of trafficking of persons, especially women and children, and several declarations on the subject has severely prohibited the issue of child abuse and child trafficking and fortunately as mentioned before, Iran has joined them. Stockholm World Congress1996 against business and buying and selling and trafficking of the children for their exploitation and sexual abuse in its statement to the governments has emphasized on the necessity of more powerful cooperation between the governments and dedication of priority to the fight against the child trafficking for the intention of their sexual exploitation.

Causes of Child Abuse:

Child abuse is a cultural, social, and medical issue which is often shared by several factors that contribute to its development. The factors related to the child abuse can be divided into three major groups: a) mental factors, b) family factors, c) cultural factors

Child Abuse from the Perspective of the Convention:

The UN General Assembly in the session of November twentieth (1959) enacted the Universal Declaration on the Rights of the Childinapreamble and ten articles. In the primer section of the article 9, it states that: “the child must be protected against any kind of negligence, cruelty, violence and exploitation.”

The Child Abuse from the Perspective of Iran’s Law:

Whenever due to the carelessness or moral corruption of the parents who are the supervisors of the child the physical or moral health of the child is exposed to risk, the court can make any necessary decision for the wardenship of the child due to the request of the child’s guardian or the head of jurisdiction.

Conclusion:

It has been determined that “the maturity age in boys and girls is equally 18 complete solar years, even though in cases which are necessary, the court can issue the growth judgment for the persons who are over 15 years old by obtaining the intellectual growth.”

Child adoption was examined and it was observed that the child adoption has been confirmed by the convention on the rights of the child and various countries have been encouraged to observe the high interests of
the children more and more; this is while in the Iran’s laws there were no legal text or judicial procedure on this matter but with the ratification of the law of protecting the children who are derelict and have bad warden, some important steps were taken in this regard.

The marriage of the children was discussed and it seems that with the experience of several times of legislating and inordinacy in this way, the article 1041 of the civil law enacted in 1932 is more compatible with the physical ability of marriage and natural maturity in Iran and the family expedient which had predicted the marriage age 18 years for the boys and 15 years for girls and exceptionally an exemption of over 15 years for boys and over 13 years for girls from the age condition.

We examined that the child labor instead of their employment to education and other affairs is not desirable for any society, and we discussed about the poverty as the most important reason of making children work, in the international law part, it was determined that also in the convention, making the under 18 years old children work has been prohibited.

Unfortunately, about the child abuse there has been no special determination of crime and as it was observed and reviewed, even in some legal cases, when the victim is child, lesser juridical support has been raised for him. This is while in the convention it has been emphasized on the necessity of special determination of crime for the child abuse. So, in order to protect the children, it is suggested that governments significantly help these children with creating juridical sponsorships.

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