



RESEARCH PAPER

The Non-Implementation of UN Convention on the Rights of the Child: Internal and External Challenges of the Convention

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ABSTRACT

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UN Convention on the Rights of the Child revolutionized the jurisprudence and concepts of human rights and declared children as rights holder for the first time. However, there are manifold challenges which are hurdling the implementation of Convention. The challenges are of three different types i.e., the challenges within states parties, challenges in Convention self and some external challenges that are causing problems in the implementation of Convention, thereby resulting into non-realization of the rights of the children. This paper discusses the last two categories of the challenges, that lie within Convention itself and external ones. Although Pakistan is major focus, but United Kingdom and France have been taken as examples and comparative purpose being torch bearers of Common Law and Civil Law respectively.

Introduction

In the As discussed in my earlier paper, there are many challenges that exist within states parties and hinder implementation of UN Convention on the rights of the Child. Enumerating these challenges such as reservations by the states parties; lack of economic resources and poverty; outdated and parallel various schools/education systems; absence of a whole-of-sector view and weak institutions; lack of policy coherence; the division of society in secular and religious segments both being at their extremes and the sectarianism; lack of responsibility, absence of genuine political will and limited efforts by the governments for the implementation of the convention; law and order situation; weak planning and management; scatteredness

of society; the division of society in secular and religious segments both being at their extremes and the sectarianism; lack of education, ignorance and unawareness; deteriorated family role in industrialised societies; adherence to the historical and cultural values and failure of democracy. Along with these internal problems and challenges, there are some challenges that are present within Convention. Furthermore, there are some challenges, which may be termed as external problem, that are equally damaging the implementation of UN Convention on the Rights of the Child.

The Problems and the Challenges Lying with The Convention itself

The UN Convention was so acute, comprehensive, and acceptable to all that it got almost universal recognition and acceptance. The Convention changed the ways of thinking about the children and their rights however, there were some lacunas in the Convention which led to make bit controversial and caused impediments on its way of application, for example its bit general and uncertain provisions at the same time it reflected the western values of child and childhood.

Ambiguous and Uncertain Nature of the Convention Itself

The Convention has been held very comprehensive document in the history of children's rights, however sometimes its general nature has been the cause of its rejection by some states. For example, the French Superior Courts have been rejecting the Convention on the basis that it does not contain specific, précised and determined rights for the children but it only contains the commitments made by the states parties (case of 'le jeune' and case of Mazurek v. France). In France, it has been held that the substance of the Convention is itself a reason for its non-direct applicability. For example there are many provisions which are vague, uncertain and not precisely defined, which could not be clearly invoked in court, such as child's rights to know his parents (Art. 7), rights of adoption (Art. 20), child's right to be heard (Art. 12) and freedom of expression (Art. 13) etc.

A Depiction of Western Values

The UN Convention on the Rights of the Child has also been held as a depiction of western culture and values and neglecting thoroughly the Eastern values, leading thereby reservations and then not fully implementation all over the world. The contemporary understandings of childhood are the product of a specific historical period and its prevailing social conditions, around the development of liberalism in 18th and 19th Centuries. This was the reason, many of the Islamic States, even Pakistan at the time of ratification of the Convention made reservation to the Convention that it will be interpreted under the auspices of Islam. Although Pakistan withdrew its reservations later, but there are many other Muslim states which don't agree with some provisions of the Convention. For an instance, Iran and Saudi Arabia don't believe on the 18 years of age as an age of majority.

Reporting Procedure and Laziness of the States

The Convention provided that the member states should submit their initial reports within two years of ratification and then every 5 years (UNCRC, Art. 44b). The Article 44 of the Convention provides “the states to regularly report on the measures they have adopted to give effect to the rights enshrined in the Convention and with the progress they have made with reference to the enjoyment of those rights”. Although Committee have appreciated some states parties on the submission of timely periodic reports, but in reality, even if we take the example of Pakistan, France and UK, these all have shown some kind of lethargy or laziness and have submitted their periodic reports to the Committee late that shows their non-serious attitude.

For example, Pakistan submitted its initial report in 1994 second in 2001, which was due in 1997. Pakistan submitted its 3rd and 4th periodic reports in 2008, due in 2007. The France submitted its initial report in 1994, 2nd was submitted in 2002, due in 1997. 3rd and 4th Consolidated reports were submitted in 2008 due in 2007 and 5th Periodic report was submitted in 2013 due in 2012. United Kingdom too submitted its initial report in 1994, second in 1999 updated in 2002 but was due since 1997, the 3rd and 4th periodic reports were submitted in 2007 and 5th late as well in 2014 due in 2012. This trend of states parties manifests explicitly their disinterest and a cause of non-proper implementation on UNCRC in domestic settings of all the states parties (Amelie Robitaille-Froidure, para 27).

And the concept of “general principle” has also played a role in non-serious implementation of the Convention. For example, Bruce Abramson, a child rights expert, criticised the reporting procedure in general comment on general measures. According to him, the concept of ‘general principles’ has turned out to be a stumbling block in the reporting procedure as it has led to disorganization and misunderstandings of CRC rights and to the problem of ‘front-loading’, *i.e.*, the habit of using this cluster ‘to ask questions that really should be asked in the clusters that pertain to the various substantive rights’ (B. Abramson, Sep. 2003). He says that the member states front-load their reports in response to the guidelines. After this, the CRC’s Committee follows the established patterns. According to him, the notion of general principles and reporting procedures, misinterpret the legal obligations of the member states and undermines the concept of rights (B. Abramson, Sep. 2003).

The reinforcement and reporting are not legally binding upon the signatory states to the Convention but on the full member states (Jennifer Riddle, 2002, P. 605). Secondly the Committee have limited authority to force the member states to submit their periodic reports on the enforcement and progress in the child rights implementation. Further Committee can only give observations and recommendations for the proper implementation of the Convention, without having force of incorporation of the recommendations by the member states into their domestic legislations.

Quality of the Reports

The proper functioning and effectiveness of the Convention's report system not only depends upon the timely submission of the periodic reports but also on the quality of stuff inside the reports. The Committee has to evaluate the progress of implementation of the Convention from the substance and information provided by the state party in its periodic reports. However, the Committee has regretted on many occasions that the periodic reports submitted by the states parties don't bear any quality and contain many disparities (A. Glenn Mower, Jr., 1997, p. 109). Committee held that not only substance of the reports by different states parties differs to a great extent from each other, but periodic reports of some states parties contained nothing, what she needed to make evaluation. For example, the periodic report of the UK was judged to be deficient, because it lacked many things which Committee required state party to produce (A. Glenn Mower, Jr., *The Convention on the Rights of the Child: International Support for Children*, USA, 1997, p. 109).

Monitoring Mechanism of the Rights of the Child

The flaws in monitoring mechanism are too a big reason for non-implementation of the Convention. Monitoring occurs normally on two levels. If seen narrowly, the monitoring assessment of efforts dedicated to register systematically the violations of human rights, while if seen broadly, the monitoring access the programs to implement the standards of international human rights. Practically, there are two levels of monitoring mechanism, i.e., national, and international level. Firstly, on national level, the Convention obligates the states parties to create independent monitoring bodies and states have also established the Ombudsmen for children, but they are not independent in many developing countries and cannot carry out their functions freely. They are mostly politicised for example in Pakistan, when they are appointed by the executive and are supposed to be neutral after their appointment, but they are unable to do so. Secondly on international level, it is the Committee on the rights of the Child, as stated earlier; it mostly relies on the unilateral reports submitted by the states parties. Being not in the field, the Committee can be kept mostly ignorant from the actual situations of the children in a state.

Non-Domestication of the Convention in Domestic Legislations

Non-domestication and not making the supporting legislation in the domestic legal systems is another reason for the non-proper implantation of Convention. Although, the Convention is the only one international human rights document, which have got almost universal recognition, but its incorporation into the domestic laws of the member states have been an issue being awaited since its inception. The states consider the domestication in their local law of the Convention, as an exception rather than a norm. For example, neither France has given the force of direct applicability to the Convention into the national courts, although monist state, nor UK and Pakistan, being dualist states, have adopted enabling legislation, corresponding to the Convention

The procedural impediments at court level, open ended nature of many CRC principles and continuous controversies over the rights of the children are the other impediments for the non-compliance with Convention. The judges at the courts also become confused or neglect the rights of the children. The judges may have personally sympathies for the rights of children, while deciding the issues, however they don't decide what to do for the children as an individual, but they decide what is to be done in the name of whole society (John Tobin, 2009, p. 579).

The Limited Mandate and Expertise of the Child Rights Enforcing Bodies/Agencies

The limited mandate and expertise of the child rights enforcing bodies either at local level or created internationally may be another cause of non-implementation of the Convention. These bodies either have limited powers to monitor the obligations of the state's parties, reporting the violation of children rights and making sure the implementation of the Convention otherwise. The pronouncement of bodies' factual situations regarding the violations of the rights contained in the treaty is narrowed and restricted (Noam Lubell, 2005, p. 737).

Lack of Coordination among Different levels and sectors

If not in developed countries but in underdeveloped and developing countries the lack of proper coordination among the child rights bodies, organizations and governmental authorities and public and private sectors, cause non cohesion of policies resulting in their non-implementation. The fragmentation of law enforcement agencies (and children rights as well) raise concerns about the lack of coordination of efforts among different agencies in the same geographical jurisdiction, which results in the loss of efficiency and effectiveness (Wesley Skogan and Kathleen Frydl, 2004, p. 52). These concerns lead to the non-system of the all the components of a system.

Lack of Authority: Absence or Limited Powers to Implement the Convention to the Committee on the Rights of the Child

The very small powers of the UN Committee on the rights of the Child are another cause for non-implementation of the Convention. The Committee just reviews the periodic reports and gives its recommendations. It cannot punish any state or impose sanctions on non-complying states and even the Committee cannot investigate (Amélie Robitaille-Froidure, 2012, pp. 1-23) and has to study just, what have been submitted by the states parties. The Committee should be empowered, so that the States should have fear of at least some sanctions. Even in many states, the monitoring bodies do have very limited power to enforce the rights of the child and make redress of their violations.

The UN Convention is not Made Public and Assimilated

The contents of the UNCRC have not been made public to the children so that they know about their rights. For example, in case of Pakistan, there is hardly any

syllabus of public and private school systems, where the human rights or the children rights have been made part of it. Further, the teachers' training and refresher courses in Pakistan are not devised in such a way to teach them about the rights of the children.

Another cause for the non-awareness of the children rights can be said the presence and limited roles of NGOs and other Non-profit Organizations. Firstly, they are less in number in Pakistan than to France and UK, secondly, they have limited resources. So, their activities are limited too in creating awareness of the children's rights among the masses. Thirdly, most of such organizations operate in limited areas, localities, districts, or provinces, resulting thereby the lack of coordination among these organizations.

External Problems and Challenges

Along with the internal problems of the state's parties, there are also plenty of international and global problems which hinder the implementation of human rights treaty and in present context the UN Convention on the Rights of the Child. The Child should have had been recognised as "*international citizen*" but unfortunately it has been the international target of miseries. The global war of terrorism, anti-terrorism, the environmental changes, and international migrations are the major impediments for the non-implementation of UN Convention on the Rights of the Child.

The War against Terrorism

Both the terrorism and the acts of anti-terrorism (Manzoor Khan Afridi *et al.*, 2014, pp. 2000) all over the world since the 9/11 have changed even the scope of human rights. Pakistan on the one hand, being the target of terrorism and on the other, a front-line fighter against the terrorism (Razia Musarrat *et al.*, 2014, p.167) has seen its worst time in the last decade (Amélie Bloma, 2011, p. 179-183). The catastrophic damages have been incurred by Pakistan due to terrorism (Zahra Malik *et al.*, 2013, p. 1103). More than 50000 people (personnel of armed forces and civilian population) have died in suicidal, bomb and other types of terroristic attacks. The infra-structure of the country has been destroyed, the schools have been the special and easy targets of the terrorists, ended up the tourism (Syed Ali Raza, 2013, p. 65), Billion dollars properties have been demolished. The children in Pakistan are living under the fear of sudden terroristic attacks. Pakistan being under the continuous state of war internally and on international borders with India and Afghanistan, it's very difficult that it can implement the UN Convention in its fullest capacity. So, the terrorism in Pakistan is the major cause for the many children that they could not be benefitted by the rights and protection provided by the UN Convention on the Rights of the Child. UK and France, they too are the leading fighters against the terrorism beyond its territories, but if they had spent the money on their own children rather than to provide arms and money to the rebel groups in first and then to fight against the same.

International Politics and New World Order

If talking in the context of international scenario, the United Nations Convention on the Rights of the Child came into force at the eve of the end of Cold war: the war of rivalry for the title of superpower, political hold on other nations, and possession of diverse resources. The war was not being fought among two great powers, but directly and indirectly many nations were involved, and the Pakistan was front liner in this war. The Cold war was not an easy time for many adolescents and children and many children were deeply troubled and in continuous fear of nuclear war (S. Escalona, 1982, p. 600).

The end of the 2nd World War saw soon or later, the various international human rights law documents for all groups of human beings. However, the end of the Cold War caused a new World Order disturbing the balance of North-South hemispheres. The globe after this New World Order saw the tremendous global transitions, which created more social problems than solutions (Jan Clark, 2008 and Walter 1999, p. 145). The growing disparity between North and South in wealth and access to resources and the end of superpower rivalry caused the alarming increase in poverty, violence, displaced persons, homelessness, unemployment, and erosion of environmental stability all over the world (John J. Mearssheimer, 1990, p. 5). Even the global economic recession was held more severe than the Great Depression of 1930 (Diana Ayton-Shenker, 1995). All this was happening when the UN Convention on the Rights of the Child was taking its first Flights. The World powers got busy with their own international economic and political interests, rather than to promote the human rights. The world Powers' activities outside their territories not only violated the international law, the sovereignty of the other states and the human rights of the population there, but the human rights of their own nationals were severely affected. During this whole game, the children were on the front line, who were most affected directly or indirectly. UK and France being the part of this game and Pakistan being the target in many aspects, the rights of the children everywhere have been not fulfilled.

Non-Adherence of USA to the UN Convention on the Rights of the Child

Although it does not make much difference, but it is important as well because the almost all the world countries have ratified the UN Convention, but not the United States of America. After the end of Cold War and fall of USSR, USA emerged as single international superpower. The policies and trends adopted by the USA affect the world, similarly the children rights (Lainie Rutkow, 2006, p. 161). So, the non-adherence of USA to the UN Convention perhaps causes the less interest of the other adhered states.

Environmental Factors an Obstacle in the Way of Convention

The extreme climate events are happening frequently all over the world due to climate change. These climate extremes put devastating effects on the human beings.

Environmental degradation and climate change are now causing the millions of the people to displace, leading even to international migrations. Particularly in Pakistan, since last two decades the earthquakes, uncontrolled rains, floods, and other natural disasters have taken the lives of thousands of peoples, their homes and the schools of the children have also been swept away. For example, the earthquake of 2005 in Islamabad and Northern Areas, each year floods especially in 1992, 2010-11, and 2014 destroyed the infra-structure of the whole country. The real picture of implementation of UN Convention on the Rights of the Child may not be seen in Pakistan due to these environmental changes.

High Number of Refugees Hosted by States Parties

The masses are leaving their countries of origin due to multiple reasons. The incoming population bring many economic, social and integration problems with them for the existing population, as they put an extra burden over the economy of the country. The situation becomes worse if the flux passes into the underdeveloped or developing countries. UK, France, and Pakistan host a large number of refugees all over the world. UK and France being developed countries may not face the same problems, as the Pakistan has faced due to massive movements from Afghanistan to Pakistan due to her limited economy and resources. Pakistan although tried its best with its limited resources and infra-structure to host these refugees, but the many of their rights under the UN Convention went unfulfilled. Along with the migrated children, this affected the indigenous children as well.

UN Mechanism of Enforcing Human Rights Treaties

United Nations normally have two types of monitoring and enforcing mechanisms for the international human rights treaties. Firstly, the *Conventional Mechanism* relates to the specific monitoring committees established through the relevant Convention or Treaty, called "treaty bodies". These committees monitor the implementation of individual human rights treaties in the individual state party. The Second UN system of monitoring is, *Extra-Conventional, Ad-hoc or independent system* of fact finding outside the framework of the treaty. This system refers to the special procedures on the violation of human rights treaties. The experts entrusted with special human rights mandates are designated as, Representative, special rapporteurs, independent experts, or in the form of working groups. Then the country mechanism and thematic mechanism are two ways where the violation of human rights is monitored. The problem with these representatives and committees is that, sometimes these bodies do not give free and fair reports, sometimes they exaggerate the things in some countries while on the other hand, sometimes they don't report even the acts of heinous crimes by some states. The impartiality of the monitoring bodies is questioned. So, the faith of the people in UN is in decay due to its uni-polar policies.

Conclusion

As visible from the discussion above, the more problems and challenges are states oriented. If they are redressed, the aims and ambitions of the Convention can be achieved. Although there are some challenges which cannot be avoided such as natural disasters, earth quacks, floods and rains, but many are man/state created problems such as allocation of resources, increasing literacy rate and awareness etc. The ground realities are very harsh if we talk about Pakistan. The Country extremely rich with resources but mismanaged and mishandled by the corrupt and dull peoples, is deteriorating day by day. The terrorists defamed and misshaped not only Pakistan but Islam as well. Taking the example of Health of children, the condition is alarming too. Polio, the World is going to become polio-free, but the cases are still being reported in the NWFP and Tribal Areas of Pakistan, where the militant groups do not let the officials to do vaccination against Polio for children. If the states parties understand their national and international obligations and create mechanisms of self-monitoring and self-evaluation, the spirit of the Convention can be achieved.

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UN have established treaty bodies for the 6 core United Nations Human Rights instruments that monitor the state and the efforts of the states parties for the implementation of the signed and ratified treaty by the state. The Committees include, the Human Rights Treaty (HRT), which monitors the implementation of International Covenant on Civil and Political Rights (ICCPR). The Committee on the Economic, Social and Cultural Rights (CESCR) monitors International Covenant of Economic, Social and Cultural Rights (ICESCR). The Committee on the Elimination of Racial Discrimination (CERD) monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee on the Elimination of Discrimination against Women (CEDAW) monitors the Convention on the Elimination of All Forms of Discrimination Against Women. The Committee Against Torture (CAT) monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. And lastly, The Committee on the Rights of the Child (CRC), composed of 10 members, monitors the Convention on the Rights of the Child.

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