



AN INVESTIGATION ON THE INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF CHILDREN

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Abstract: -Children are very vulnerable, so the United Nations and regional human rights agreements have given them a special status and extra-legal protection. They are entitled to the same basic liberties and human rights as everyone else. The international legal framework for the protection of children guarantees that nations have affirmative duties to ensure the preservation and defense of children's rights. In order to move in accordance with international legal frameworks for the protection of children's rights, the United Nations affirms the "Best Interests of the Child" principle in letter and spirit with the hope that the international community will pave a path to sensitize the domestic justice delivery systems of the states. The Havana Regulations and Riyadh Guidelines of 1990, among others, together create this international law framework with the objective and obligation to safeguard the most vulnerable group of our society, namely children.

Keywords: -Child Protection, Violence, Children Rights, United States, War.

Introduction

The international community recognizes the juvenile justice system as the most innovative and well-lit framework for promoting children's overall development. The most valuable resource for every country is its children. These are the determining factors for any nation's success. Every society's or state's most vulnerable group is this one. Youngsters are taken advantage of, mistreated, and led down unwanted paths by antisocial members of society. Children are regarded as priceless blessings from God in every nation, and it is our tremendous obligation as parents or guardians to provide children the chance to develop in a healthy sociocultural environment so that they may become responsible adults and healthy in all other respects. The whole world has a responsibility to provide every kid with the same favorable settings for growth throughout the era of their maturation. The study evaluates the system of international law governing the defense of children's rights. For the protection of children, several worldwide measures have been launched. We shall provide a summary of those global activities in this essay.

The UN Convention for the Prevention of Traffic in Persons and the Exploit of Others' Prostitution, 1949

The UN Convention on the Elimination of a Trafficking of Individuals for the Exploit of Others' Prostitution, 1949, prohibits the trafficking of women & children for prostitution purpose. According to the investigator, although all of this agreement's provisions remain equally relevant to children when they are indoctrinated into prostitution, 2 articles, namely Articles 17 as well as 20, expressly reference minors, as chooses to follow¹:

- (i) The Convention requires that State Parties collaborate on emigration and immigration-related issues, and implement or maintain the necessary steps to prevent the trafficking of people with either sex for prostitution, as well as make the necessary regulatory requirements for the protection of immigrants and emigrants, particularly women and children, at the point of arrival, departure, and during the final route.

¹ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (with Final Protocol) - United Nations and the Rule of Law, United Nations and the Rule of Law (2009), available at <https://www.un.org/ruleoflaw/blog/document/convention-for-the-suppression-of-the-traffic-in-persons-and-of-the-exploitation-of-the-prostitution-of-others-with-final-protocol/> (last visited Mar 9, 2022).



- (ii) Furthermore, this Convention requires State Parties to take the appropriate steps to safeguard the rights of immigrants and emigrants.

Geneva Convention Concerning the Safeguarding of Civilians in a time of War

This Convention provides the following rights for children throughout war or the beginning of conflicts among countries:

- i. Part II of Agreement offers comprehensive protection for civilians against the effects of conflict. This Convention emboldens this same High Consenting Parties in moments of peace and also the parties after commencement of hostilities to determine hospital as ²well as protection areas and local jurisdictions within their own territory, including occupied territories, to safeguard injured, sick, and elderly people, children under 15, pregnant mothers, and children's mothers under 7 from consequences of war.
- ii. All parties here to dispute are required by this Agreement to make every effort to reach local arrangements for the relocation of injured, ill, infirm, elderly, kids, and pregnancy instances from besieged / surrounded regions.
- iii. Even if the opposing High Contracting Party would be an adversary, the Parties are bound to allow free passage of all shipments of essentials like food, clothing, including tonics for infants under age of 15, pregnant women, as well as for maternity cases.
- iv. All parties here to dispute are also obligated to provide required care for children below the age of 15 whom were orphaned or isolated from respective family as a consequence of the war. These children shouldn't be left to their own resources, but they should be supported with sustenance, schooling, and the right to practise their faith by the governments.
- v. Part III of Agreement addresses the status as well as handling of protected individuals, whereas Section II addresses aliens on the jurisdiction of a conflicting party. It states that in general, safeguarded individuals are nonetheless subject to the regulations regulating foreigners in peaceful times. Furthermore, minors under the age of 15, pregnant women, especially mothers having children younger than of 7 are entitled to the same benefits as citizens of the State in question.
- vi. Occupying Power is however obligated to assist the correct functioning of all organizations dedicated towards the education and care of children, well with collaboration of local and national governments. It must undertake all necessary procedures to assist child identification as well as parental verification. It should make preparations for the upkeep and education of kids who have been orphans or parted from respective families as a consequence of the conflict and are unable to be appropriately looked by their close family or friend. This must therefore not obstruct the implementation of any preferable metrics for food, medical treatment, as well as protection provided to children below the age of 15, pregnant ladies, and mothers having children younger than the age of 7 years against by the consequences of war that could have implemented even before to occupation.
- vii. Section IV of Convention establishes rules for the handling of inmates. The Detaining Power would be obligated to keep members of a single family, particularly parents and their children, in the same site of incarceration throughout detention. Internees might also seek that their kids who have been released from custody be detained alongside them.
- viii. Chapter 3 of the Convention allows for the provision of food and clothes to internees. It states that expecting and nursing women, as well as children younger than the age of 15, are entitled to supplementary nourishment in accordance to their physiological demands.

²GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF 12 AUGUST 1949 Un.org, available at https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf (last visited May 7, 2022)



- ix. The Convention's Chapter V allows for religious, educational, and physical activity. The Detaining Power would be obligated to guarantee the schooling of children and youth, and they ought to be permitted to receive an education either inside or outside the location of internment. Furthermore, specific playground for adolescents and children will be established.
- x. The Convention's Chapter XII allows for release, return, and lodging in neutral nations. It states that during hostilities, the parties to the dispute must make every effort to reach agreements for release, restitution, come back to places of residence, or housing in a friendly nation with certain classes of inmates, like children, pregnant women, as well as mothers with infants whom have been held in custody for an extended period of time.

Protocol to Geneva Conventions on 12 August 1949 and Concerning the Safety of Victims of International Military Conflict (Protocol), dated 8th June , 1977³

- i. Article 69 of Convention I47 imposes mostly on Occupying Force the obligation that provide basic requirements to civilians in occupied territory. It states that when providing relief aid to civilians, emphasis should be provided to kids, maternity cases, expectant pregnant mothers, and breastfeeding mothers.
- ii. This Protocol that provides women with protection. It states that mothers and expectant women with dependants who would be arrested, imprisoned, or incarcerated for factors relevant to the military confrontation would have respective cases prioritized.
- iii. (III) The Convention further forbids warring parties from avoiding the imposition of the death sentence on mothers or pregnant women with dependant babies for an armed conflict-related crime.
- iv. In accordance with this Protocols, children are entitled to special consideration and protection from any type of indecent assault, as well as specific care & assistance based on their age⁴.
- v. It states that the conflict's parties must take steps to ensure that kids under the age of 15 are not directly involved in conflicts as well as that they are not recruited into respective military forces.
- vi. If minors under the age of 15 undertake direct part in conflicts and become the victims of an opposing Party, children will be given particular protection regardless of whether they have been war prisoners.
- vii. If minors are imprisoned, detained, or incarcerated during a military confrontation, they must be housed in separate quarters without adults.
- viii. The Protocol forbids the imposition of the death sentence on individuals under the age of 18 at the moment the crime was perpetrated, for a crime linked to a military confrontation.
- ix. The Protocol furthermore states that no parties to a conflict may organise for the transfer of kids to a different nation unless the youngsters have their own nationalities. Children may be temporarily evacuated due to their health or medical care, or when they are in danger in the seized area. Whenever parents or guardians could be located, their formal permission will be obtained for evacuation. This Protective Power must monitor such migration in consent of the Parties involved, particularly the Party organising the evacuation, any Party accepting the children, as well as any Parties whose citizens are indeed being relocated.

³ Protocols Additional to the Geneva Conventions of 12 August 1949 Legal.un.org, available at <https://legal.un.org/avl/ha/pagc/pagc.html> (last visited Jul 3, 2022)

⁴ Ibid



Protocol II to Geneva Conventions on 12 August 1949, Concerning the Safeguarding of Victims during Non-International Military Conflicts (Protocol II), dated 8 June, 1977⁵

The Protocol II additionally provides specific safeguards for children both during and after conflicts. The following are a few important clauses of the whole Protocol concerning child safeguards:

- i. Part II of Protocol addresses humane conditions, whereas Article 4 addresses basic rights. It states that all those who need not directly participate or have stopped to participate in conflicts remain entitled to consideration for the dignity, reputation, beliefs, and religious practises, regardless of whether individual liberty has indeed been constrained.
- ii. It states that children must be cared for and educated, particularly moral and religious instruction, according to the views of their families or even those accountable for their safety.
- iii. In accordance with this Protocols, children younger than the age of 15 must not be inducted into military services or organisations, and also, they are not to be permitted to participate in hostilities, and whenever they are seized, they should be provided particular security.
- iv. States shall make efforts to momentarily take children from region where armed conflict are occurring to a safe location within the nation with the permission of the respective parents or individuals who really are mainly liable for their care under custom or law and to do so, Nations making sure that kids are preceded by responsible parties for their protection and also well-being.
- v. These further states that perhaps the sentence of death should not be imposed on individuals under 18 years of age so at the time of crime and would not even be performed out with mothers or pregnant women of small children.

The 1951 Convention on the Status of Refugees

The 1951 Convention Concerning the Status for Refugees has no provisions for refugee children's rights or offences involving refugee children. This only requires Contract States to permit refugees to exercise their choice of religion and to permit parents to select religious instruction for their child. This consideration should be minimum as favourable as that given to their citizens⁶.

The 1955 UN Standard Minimal Guidelines for the Prisoner's Treatment⁷

The UN Standard Minimal Guidelines for Treatment of Prisoners, 1955 include the following requirements for juvenile or young prisoners:

- i. Although these regulations do not govern the operation of facilities for young people like Borstals or penitentiary schools, Section I66 of Guidelines is extremely applicable in those kinds of settings. Most juvenile people who fall under the authority of juvenile justice system are included in the categories of young inmates, and as a general rule, these young people shouldn't be condemned to incarceration.
- ii. (It states that juvenile convicts must be kept apart from adults.)
- iii. It further states that adolescent inmates must get physical as well as recreational training while inside.

⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) - United Nations and the Rule of Law United Nations and the Rule of Law, <https://www.un.org/ruleoflaw/blog/document/protocol-additional-to-the-geneva-conventions-of-12-august-1949-and-relating-to-the-protection-of-victims-of-non-international-armed-conflicts-protocol-ii/> (last visited Jun 6, 2022)

⁶ The 1951 Refugee Convention - Immigration History Immigration History, available at <https://immigrationhistory.org/item/the-1951-refugee-convention/> (last visited Mar 2, 2022)

⁷ Unodc.org, available at https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf (last visited Aug 14, 2022)



- iv. The Rules explicitly address appropriate postnatal and prenatal treatments and care for women's facilities. If possible, preparations must be arranged for children to also be delivered in a clinic outside of the facility, and when a child has been born in jail, that aspect must not be included on the child's birth record.
- v. The Rules likewise address children who would be permitted to remain in jail alongside their mothers. It states that even if nursing babies are permitted to stay alongside their mothers behind jail, a nursery maintained by trained personnel should indeed be established in which such new-borns will be housed while they aren't in the supervision of their respective mothers.
- vi. In addition, juvenile untried (under-trial) convicts should indeed be kept away from the adults and incarcerated in facilities designed specifically for them⁸.

The Additional Convention on the Elimination of Slavery, including Slave Trade, and Corresponding Organizations and Practices, 1956⁹

This Additional Agreement mostly on Abolition of Slavery, Slave Trade, as well as Corresponding Institutions and Practices to Slavery, 1956, would constitute an amendment to the "1926 Slavery Convention." Some of the most essential features of this Accord addressing children are as follows:

- i. Among interpretations of "Institutions and Practices Similar to Slavery" is any institution or exercise where a child or youth under age of eighteen was indeed given by his regular guardians or parents to another individual, whether for compensation or not, with the specific intent of enslavement of the youngster or child or even to his workforce.
- ii. Whenever a woman being pledged or given marriage for a monetary or in-kind compensation by her family, guardians, relatives, or another individual or entity without the ability to reject, such practise is likewise considered an organization and practise analogous to slavery. This explains why this agreement speaks about establishing a mandatory marriage age for females, such that she may offer genuine permission for marriage.
- iii. Transporting or attempting to transfer slaves from one country to another by any form of transportation is a crime which will be pursued criminally within this Agreement.

The 1959 United Nations Declaration on the Rights of Children¹⁰

The UN Declaration on the Rights of Children, adopted in 1959, states that perhaps the child, because of his as well as mental development, requires particular protections and caring, particularly proper legal protection, both prior to and following birth. It covers ten principles pertaining to children's rights such that they might have a great upbringing and appreciate the freedoms and liberties outlined in this Resolution for their own welfare and the society's benefit. The researcher intends to highlight four elements of this proclamation concerning the safety and wellbeing of children. Every child ought to receive special protection, opportunities, and opportunities, via law and other means, to enable him to develop physically, intellectually, morally, psychologically, and financially in a safe & normal manner, under conditions of respect and freedom. For this purpose, the best interests of a child must take precedence in the development of law. In all instances, the kid must be the one who receives protection and assistance. Every kid must be protected from negligence, violence, or exploitation. He cannot be involved in any form of traffic. Every child would be protected against activities that promote ethnic, religious, or some other forms of prejudice.

⁸Unodc.org, available at https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf (last visited Aug 14, 2022)

⁹ Slavery Convention Legal.un.org, <https://legal.un.org/avl/ha/sc/sc.html> (last visited May 9, 2022)

¹⁰Declaration of the Rights of the Child, 1959 - Text – Humanium, available at <https://www.humanium.org/en/text-5/> (last visited May 7, 2022)



International Covenant for Political and Civil Rights adopted in 1966.

The mentioned covenant specifies the following rights for health as well as safeguarding of children: The Convention bans the application of the death sentence on offenses perpetrated by individuals under the age of 18 including pregnant women. Juveniles are likewise protected by this Covenant. It specifies that suspected minors must always be taken from their parents and brought to court as quickly as possible. Juvenile criminals must also be isolated from adults and handled in line with respective ages as well as legal power. Parents and legal guardians have the right to provide their child's religious and moral education in line with their own convictions. However, it is a parental right, not really a child's right. Governments must offer adequate safeguards to children with in event of a divorce between spouses¹¹. There should not be any discrimination against a kid mostly on basis of his race, ethnicity, colanguage, creed, regional or economic origin, wealth, or birthplace, and he must be accorded the safety demanded by his underage status by the family, community, and also the State. Each kid must be identified & given a name shortly after birth. Furthermore, every kid does have the right to become a citizen.

The 1967 United Nations Declaration on the Exclusion of Discrimination Against Women¹²

The Declaration abolishes gender inequality and grants women equal legal rights. The following are a few of the declaration's sections concerning children's welfare: Women have been granted equal obligations and rights regarding marriage and also its breakup, and indeed the interests of children have precedence in all situations. It states that parents have equal legal rights in things pertaining to the children, and also that the best interests of children take precedence in all situations. This Resolution also forbids child marriages. It states as child marriage including marriage alliance of young girls without puberty are forbidden, that the age limit of wedding must be defined by law, and also that marriage certification must be made mandatory.

The 1969 United Nations Resolution on Social Development and Progress

The purpose of this Resolution would be to illustrate that a person would fulfil his or her maximum capabilities within an equitable social structure, thereby contributing to global peace and solidarity. Member nations reaffirmed their belief in fundamental freedoms and human rights in addition to the Charter's objectives of harmony, personal dignity and value, and social equality. The Declaration particularly addresses the safety and well-being of children, as described in the following¹³:

- i. It states that perhaps the family should indeed be helped and safeguarded since it is a fundamental unit of both society and nature for the development and very well-being of each of its individuals, especially adolescents and children.
- ii. Also, it protects the rights of the mother and the child, as well as care for growth and children's health. Furthermore, steps should be done to protect the welfare and well-being of women, especially working moms, throughout pregnancy and also the early years of the kid's development.
- iii. The preservation of children's rights and also the assurance of their well-being.
- iv. Youth education and advancement of the ideas of justice as well as peace, mutual acceptance and respect among individuals, and youth full participation in the course of nation - building.
- v. The abolition of situations that contribute to criminal activity and delinquency, particularly juvenile delinquent behaviour.

¹¹ Ibid

¹²Declaration on the Elimination of Discrimination against Women. United Nations Digital Library System, available at <https://digitallibrary.un.org/record/202972> (last visited Jan 2, 2022)

¹³1969 United Nations General Assembly Resolutions Worldlii.org available at <http://www.worldlii.org/int/other/UNGA/1969/> (last visited Sep 3, 2022)



Conclusion

We may infer from the aforementioned research that during the Second World War, when many children were left orphaned or crippled as a result of the conflict and required particular protection, the necessity for having unique and special rights for children became apparent. Many who work with children thought that the world's current structure was unable to fully address the needs of the youngsters. The worldwide legal framework for the protection of children's rights fell short of expectations. As a result, for the first time in history, the UN Convention on the Rights of the Child (1989) encapsulated all of a child's rights in a single treaty. The "best interest principle," which states that every decision made about a child must be in that kid's best interest, is the single most crucial premise upon which the rights of children are built. India ratified the Convention on the Rights of the Child on December 11, 1992, which outlines fundamental rights for children that address many different needs and concerns. Access to justice is a basic right in and of itself, with inherent values for preserving and advancing the most revered human rights principles. According to Article 3 of the UN Convention on the Rights of the Child, the United Nations has reaffirmed that everyone has the same access to justice. This includes the protection of children's rights, which include legal protection from violence, abuse, and exploitation as well as protection from discrimination.