

## **Child Rights:**

### **Discourse Analysis of the International Literature Relating to the Historical Background and Guiding Principles of Convention on the Rights of Children**

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#### **Abstract**

The endorsement of the UN Convention on the Rights of Children (UNCRC) 1989 has made child rights a major area of study during the past years. Academic work on child rights is presently unthinkable without taking into account the CRC as the carrier of the child rights debate. The article provides an account of those developments and movements which led to the adoption of CRC. By means of a discourse analysis of international literature, the article maps the academic discourse on children's rights. The article has enlisted the four guiding principles of CRC and offered a detail description of all the four guiding principles which are equality, best interest of the child, life, survival & development and participation. The article has further explained the postulates of each guiding principle and its importance for children.

**Keywords:** Children, Rights, Convention

#### **Introduction**

This article attempts to trace back the historical development of the child rights and elaborates the framework for child rights legislations. It provides a summary of those major events and developments which led to the adoption of CRC. The article critically examines those Declarations which were passed before the CRC and also highlights the loopholes in those conventions. The article is categorized into two sections. The first section provides a review of the history of child rights while the second section of the article provides an understanding about the CRC and its guiding principles. The guiding principles have been divided in four categories and each category has been described separately.

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## Section I

### Historical Background

The belief about child rights had a long journey. Numerous writers are regarded as making the initial references to child right. For example the French revolutionist Jules Vallés(1832-1885) was the pioneer to protect the child rights. His autobiography *The Child* (1879) was a complete censure of the forceful methods practiced by the materialistic culture and achieved by high position along with other literatures that also was sensitive to the matter, as Charles Dickens(Flores, 2007).

In medieval period, mostly children and the adults were considered as the same because of no acknowledgement of the rights of children (Aries, 1962; De Mause, 1974; Hoyles, 1989). As a result children participated in every field of life next to adults. In addition to this, children were hired in the army at the age of 11, and in some circumstances they were given the position of a leader. i.e.; in American Independence War (1775-83) a boy of 16 years commanded a ship (Hoyles, 1989). People did not realize children's specific environment and the specialrights neither they were set apart from the complexities and lewdness of adults (Plumb, 1972). However, in the 17<sup>th</sup> century, beliefs regarding children rights started to change. The beginning of childhood in Western Europe became narrower, inflexible and intrinsically intertwined with ideas such as up-to-date education and biological age.Archard(1993) uphold the view and pointed that at this a very developed, clearly expressed and metaphysical recognition of what is intricate in the existence of a child became apparent.

In 1892 a huge advancement occurred in USA, when the author and teacher Kate D. Wiggin(1856-1923) produced *Children's Rights*, in which she revealed not only the need to protect the child rights, but also clarified certain content of the idea(Flores,2007).This resulted in the recognition of certain special protection and rights particularly outlined for them due to their childishness, absence of conscious judgment and scarcity of occurrence in the world(Ncube,1998).

However, children in the 19<sup>th</sup>centuryremained comparatively unseen at the international arena. This invisibility of children in 19<sup>th</sup> century was beginning to change the international docket in the first two decades of the 20<sup>th</sup> century. As a matter of fact there were a huge number of various agents of change, and the most significant were the responses to the situation of exploitation of such children and particularly cross boundary

sides (The White Slave Trade), and the serious concerns of people over the conditions of children during wars and after-effects. International Agencies started their role and targeted more clearly than before. This was the period in which international community started to utilize the laws regarding children to reinstate their wider and vigorous attempts to abolish abuse and to support the acquiring of certain corrective steps by nations (Alston & Tobin, 2005).

In this regard, the League of Nations in its 5<sup>th</sup> Assembly introduced the first important international document clearly shielding the rights of children in 1924. It was legally embraced and called Declaration of Children Rights also known Declaration of Geneva (Hodgson, 1992). Although it was an aspirational document, by surfacing primary guidelines on the international arena, it did provide the base for the intensified new changing situation and internal standard (Heintze, 1992). Van Bueren (1995) upholds this point by saying that, firstly, concept of the child rights and the idea that they have rights has been internationally established by the Declaration, thus placing the basis for future global standards in this area. Secondly, it was important because it elucidates as a fallacy the contention that the international rights of the child is a new development in international human rights law. Thirdly, the Declaration was also proof that the initial advancement of international human rights law was not wholly concerned with the advancement of civil and political rights as it highlights the social and economic entitlements of children. Lastly, the Declaration was significant because its label offers the first global recognition of the relation between rights of the child and the child welfare and starts to put the notice of states towards the need of shielding the rights of children when acting on their behalf in welfare situations.

The Declaration of Children Rights despite of its certain positive features fails to protect children and was then set aside. The text of the Declaration was mostly related with the provisions of children's social, psychological and economic needs, which is more welfare centered. In addition, the Declaration places duties directly upon men and women instead of making children the holders of rights that they can claim against adults. Thus, children were not seen as the rights holders, but more as recipients of adult protection and provision. The text of the Declaration also shows that it was not believed to be binding on States (Fortin, 2009).

It was therefore followed by the Declaration of the Rights of the Child in 1959. This Declaration was of greater importance (Alston & Tobin, 2005).

The document consists of ten guiding principles, but also having finite standing. It did not seek to hold that “rights” listed constituted legal responsibilities. Instead, states were only needed to take note of the principles contained therein, on the basis that they were universally accepted as being applicable to all children (Fortin,2009). To a contemporary view, the substantial weakness of 1959 documents was its negligence to incorporate the first generation human rights, the liberty from state suppression.

Later in 1976, the UN General Assembly, upon the proposal of the UNICEF decided to mark the year 1979 as the international year of the child and asked the states to attribute the year by making contributions to enhance the welfare of children. The Polish government in 1978 by making a contribution to the year presented a new draft of CRC to the Commission on Human Rights of UN. After ten years, the final CRC draft was concluded in 1988 and presented for approval in 1989 to the Commission on the Human Rights. The General Assembly on 1989 adopted the document and in 1990 it was implemented(Fortin.2009).

To sum up it can be said that the child’s rights movement was a combination of different opinions and thoughts, but their central worry was the rights of the children. The child’s rights movement has specifically criticized the image of the child that causes interaction between adults and children. The notion of ‘the image of the child’ refers to the idea that the way we see children and do something towards them is asocial construct, an actively negotiated set of social relationships within which the initial years of human life are constituted. The infantile behavior of children is a biological truth of life however; the ways in which this behavior is understood and made meaningful is a cultural fact (Prout& James, 1990).

## **Section II**

### **The UN Convention on the Rights of the Child**

The UN Convention on the Rights of Child is so far the most complete and well framed document. The Convention was the first attempt to recognize children as individuals completely entitle of human rights, keeping in view their unique needs for shelter and security (Detrick, Doek& Cantwell, 1992).

Small & Limber (2002) state that the uniqueness of the CRC lies in the below mentioned characteristics:

Firstly, the convention is recognized unanimously all over the world and has been endorsed by almost every country. The convention is also pliable and responsive to culture fluctuations more than any other human rights document (Alston, 1994). The unparalleled reputation of the CRC amalgamated with its pliability constituted a strong political mechanism that has impacted intramural constitutional and legal discourses along with professional education within countries (Van Bueren 1999b).

Secondly, the CRC holds and emphasizes on the rights of children including their social, legal, cultural, civil and human rights. However protection of children is viewed as most important objective of the children. They are humans, element of the world's community and possess a special attention in community because of their liberties and human rights. Roche (1999) stated that the convention significantly offers them chances of participation and enhances wider structure of their citizenship.

Thirdly, Melton (1991) and Van Bueren (1999a) argued that the CRC is unique and famous for its logical character. In most of the Articles, it contains essential argument regarding children's dignity.

Lastly, the CRC pioneered the UN Committee on the Rights of the Child and makes it a vital document by developing a set up for evaluation for associate countries. The monitoring apparatus not only create 'naming and shaming' of member countries that refuse to fulfill the CRC in essence; it has also established a distinctive basis of guidance and interpretation to the meaning of the various articles of the Convention and of children's rights in general, a kind of global resource center for theoreticians and activists (Small & Limber, 2002).

Another benefit of the CRC is that it suggests those strategies that meet liberationist approach (process of achieving equal rights). The Convention focuses on the rights of children to participate in the decision-making practices and to develop their own potentials. The CRC does not contain any provision that aims at treating children at par with the adults, nor does it state that even 'mature minors' should be entitled to complete autonomy and freedom in decision-making (Gal, 2011).

## **The General Principles of the CRC**

The CRC denotes a comprehensive outlook according to which its various articles should be enforced inter connectedly (Van Bueren 1999a). Similarly the recognized four “general principles” by the official design for the enactment of the Convention (Hodgkin & Newell 2002) as having a steering position, should be applied to the each one of the article of the Convention (2002). Thus it is necessary to initiate with an elucidation of the four guiding principles of the convention.

### **First Guiding Principle: Equality**

The non-discrimination principle as broached in CRC, Article 2 requires that both *de-jure* and *de-facto* rights should be provided to children. The most important implication of this principle is that governments should treat equally all needy and deprived children in their distribution of goods (Gal, 2011).

The Convention has set the equality principle and as per this principle child should be tackled with respect realizing his/her unique environment, physical characteristics, desires and advantages. This wide range of equality is parallel to Minow's (1990: 375-377) relational rights approach, under which she calls for taking the perspective of the 'other' and changing institutions in order to enable their full inclusion.

### **Second Guiding Principle: The Best Interests of the Child**

The child best interests principle must be upheld at any cost by all those public and private sector actors undertaking activities relating to children. In numerous ways the best interests principle in CRC Article 3 seems easy to grab as it relates to the welfare of children undoubtedly an uncontested value, even amid those who object to children's rights terminology. The Convention; however, steps ahead and makes the state duty bound to always give primacy to the best interest of children (Gal, 2011).

Brennan and Noggle (1997) said that parents need to consider children rights earnestly even if these are in contrast with the well being of the child. Parents therefore, should breach their child's rights only when such breach is completely essential to safeguard the interests of children, and only to the

required amount. Parents must respect the aspirations of the child until and unless it is not in contradiction to the interests of children

Thus this principle itself, as it looks in the CRC, might be interpreted as providing an essential function to the aspirations of the child, and in fact be understood in away constant with their proposition. As to the extent of the child's own competing rights, nevertheless, the views should possibly be extended utmost influence in accordance with the maturity and age of the child, and as long as these desires are not jeopardizing the interest of the child (Gal, 2011).

### **Third Guiding Principle: Life, Survival and Development**

Cruelty and sexual oppression specifically endanger children's right to survival and development (Hodgkin & Newell 2002). Article 6 relating to survival and development is strongly linked to Article 19 concerning protection against child abuse (Gal, 2011).

This article also makes the state bound to undertake actions to eliminate the crimes against children in order to ensure their full development. States should undertake amicable steps to restore the development of the child, even at the cost of other interests. Permitting them to engage in decision-making might for instance aid them to learn the exercise of 'modest power they actually have' and to build up their own thinking (Rayner 2002). In addition to this, reacting in a receptive, empowering and sensitive way to children's loss may boost their development from their victimization (Murray 1999).

### **Fourth Guiding Principle: Participation**

This principle in Article 12 of CRC is comparatively a latest idea and possibly the most contentious among the guiding principles, as it signifies an increase of the rights rhetoric ahead of those propagating the welfare and protection of children. This is not essentially an adversary to protection & welfare. In real it is debatable that the welfare of children is conditioned, in addition to other things, on their chances to fully participate in decision-making practices, as such chances enhance children's self-respect, trust in others and strong feelings of being honored (Flekkoy & Kaufman 1997). Ochaíta and Espinosa (1997) regarded participation to have firm academic

and developmental factors and similarly can be considered as an additional fundamental want in the development of a child

This principle of participation is reasonable not only for its developmental and academic worth in children's development; it is also said to be generally productive to democratic culture. Firstly, practice in mutual decision-making practices aids children turn into potential capable participants who are patient to views of others and who value others and themselves. These qualities can't be imparted theoretically; they require to be progressively gained through experiencing mutual decision-making and problem-solving practices. Secondly, including children in decision-making practices advances the current environment of the child - the family, the school and the community - through acquiring extra knowledge on the child's viewpoint and strengthening democratic value within themselves (Flekkoy& Kaufman, 1997).

In a publication of UNICEF, Lansdown (2001) states that children's participation is necessary. Children are naturally not rigid in their move towards the future and therefore participation may propose new concepts and innovative solutions.

In conduct, the principle of participation consists of two features. Firstly, it confers children to share their views openly in all affairs influencing them. This has been mentioned in UDHR (Article 19) and in the ICCPR (Article 9(1)). The CRC Article 12 on the other hand a new feature of participation, which was not included in any child focused document before (Detrick, Doek& Cantwell, 1992). It goes further and asked that children's opinion should be given maximum weight and preference besides allowing them to freely express their views (Hodgkin & Newell 2002).

Therefore, while not establishing a right to do free decisions, Article 12 does mean that the more grown-up the child is, the more value should be given to his or her views (Gal, 2011). It is worth mentioning that the participatory principle is applicable to all subjects affecting the child (Pais 1997).

## **Conclusion**

It looks like that the CRC can be perceived in a manner which fulfills the core concerns of both liberationists and protective approaches. The CRC is a useful instrument on which States reports regularly and much has been



penned on it. Most essentially, the CRC has been acknowledged as the wide-ranging document on international level safeguarding the rights of children universally. The CRC is the first document that symbolizes children as Human beings, entitled to rights of their own, which they may practice according to their abilities and potentials without neglecting the wellbeing of children and the significance of their family and community linkages.

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