

Rights of the child and protective

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Human history is replete with incidents of human tragedies. These tragedies include devastation/destruction wrought by wars and armed conflicts - both inter and intra-nation - inflicting untold sorrow and suffering on the human beings. These wars and conflicts were neither divinely ordained nor inevitable; rather they were avoidable, if the underlying causes and factors had been timely addressed and resolved. Non-observance of minimum standards of civilised behaviour by individuals and nations, which often resulted in gross and blatant violations of human rights, is a recognised cause of such conflicts and the resulting bloodshed and destruction. Human rights violation is thus a, if not the primary, cause of much of the human agony and pain.

As civilisation advanced and human consciousness increased, more and more attention was directed towards tackling the underlying factors and currents responsible for the recurring crises and conflicts in the world. The issue of human rights violation, therefore, came to the forefront and became a focal point of attention for every discourse/conference at national and international level, on preventing conflict and creating an era of peace, happiness and progress. Consequently, several human rights instruments were found. Such international instruments clearly recognise the predicament of children. Being weak and vulnerable to abuse and exploitation, they need special care and attention. The instruments accordingly contain appropriate measures for survival, protection and development of children.

The covenant of the League of Nations, taking due notice of the exploitative nature of the then prevailing (world) economic order, obliged the member states to strive for creating and maintaining "fair and humane conditions of labour for men, women and children", and demanded of its members to "entrust the League with the general supervision over the execution of agreements with regard to trafficking in women and children." The covenant commitment was, indeed, a reiteration of an earlier (similar) undertaking, made in the Constitution of the International Labour Organisation, 1919. In the Charter, the peoples of the United Nations reaffirmed their "faith and

fundamental human rights, in the dignity of human person and equal rights for men and women" and obligated the organisation to work for promoting "respect for human rights and fundamental freedoms without discrimination".

This general commitment to preservation and protection of human rights was further augmented by the Universal Declaration of Human Rights 1948, adopted unanimously by the General Assembly of the United Nations. The declaration contains clear and specific provisions as regards the rights and interests of children, and accordingly proclaims that childhood is entitled to "special care and assistance", and that all children, without any distinction or discrimination, "shall enjoy social protection". The declaration further reinforces the right of a child to free and compulsory (elementary) education and asks the signatory state-parties to set up appropriate educational institutions for technical, professional and higher education for children.

The declaration obliges the parties to ensure equal access to such institutions. The declaration - a historic document setting standards for achievements in the field of human rights - had a wide influence on the global human rights movement and inspired several domestic as well as regional and international human rights instruments. Such instruments include the two International Covenants on Human Rights; the European Convention on Human Rights, 1950, the Inter-American Convention on Human Rights 1969; and the Human Rights Charter of the Organisation of African Unity.

Most importantly, the declaration paved the way for enactment of two binding covenants, namely, the Covenants on Economic, Social and Cultural Rights, 1966, and the Covenant on Civil and Political Rights, 1966. Both these covenants contain specific safeguards for the welfare and protection of children. The Covenant on Economic, Social and Cultural Rights, 1966, states that state protection and assistance should be provided to the family, particularly, working mothers should be given maternity benefits and parents be assisted in educating their children. The covenant prohibits economic and social exploitation of children and forbids their employment in harmful and dangerous professions and occupations.

The covenant further recommends that state-parties should fix a

minimum age below which the employment of children be prohibited, and such prohibition be enforced by law. Similarly, the Covenant on Civil and Political Rights, 1966, besides expressing the need for protection of family by the state and society, recognises the right of child to have a "name" and "nationality". The covenant also emphasises the need for special law and procedure for the trial and rehabilitation for juvenile offenders.

Apart from enactment of general (international) human rights instruments, certain other instruments of specialised character, focusing exclusively on child rights; were also adopted. These include the Geneva Declaration of the Rights of Child, 1924. This declaration affirmed the need for special care and attention to child welfare. It was later on reviewed with a view to further enlarging its scope and contents. The revised draft, called the Declaration of the Rights of the Child, 1959, was duly adopted by the General Assembly of the United Nations. Enumerating certain essential rights of the child, the declaration obliged the family, society, governmental and non-governmental organisations to work for realisation and enforcement of such rights.

The convention: With a view to focussing attention on the problems of neglect, abuse and exploitation of children and in order to mobilise support for taking additional measures for their welfare, the international community observed the year 1979 as the International Year of the Child. This year, Poland presented a proposal for a new and more comprehensive international convention on the rights of the child. The proposal received favourable response and soon consultations started for drafting such an instrument. The deliberations stretched over a decade, and after hectic efforts and intricate negotiations, a final draft was agreed upon. The draft was presented to the General Assembly and received its (unanimous) approval on November 20, 1989.

The draft convention was then put up for ratification. Nine months later, the convention received the required number of (20) ratifications. On September 2, 1990, it came into force. This was the speediest entry into the affairs of any international human rights treaty. This speed and momentum was retained in subsequent years, and in a short span of four years, since its enforcement, the conven-

tion has been ratified by 167 state-parties. In terms of number of accessions, the convention stands only second to the Charter of the United Nations.

That the convention received such an overwhelming response in such a brief period of time, demonstrates the concern of international community towards the on-going neglect, deprivation and exploitation of children, and reflects its determination to take urgent and effective measures for improving their status and conditions of life. Seen in this context, the convention is indeed a noble and laudable achievement of mankind, setting worthy principles and ideals to be realised. That Pakistan is an earlier signatory to the document is a matter of pride and pleasure, but ratification also entails responsibility. Ratification of an international instrument implies the state-party's solemn commitment to feel bound by its provisions and bring its legislation in conformity with such provisions. It further obliges the state to enforce and implement the same.

The government of Pakistan is, therefore, bound to honour and implement the convention and, accordingly, is accountable for any breach/violation of its provisions.

It has been four years since the government conveyed its ratification of the convention to the general secretary of the United Nations. Four years may not be a long time for transforming all the principles and rules of the convention into legislative enactments and policy dictates, bearing in mind the diverse nature of rights and freedoms enumerated therein and restraints on the resources needed for implementing the same.

Four years, however, is sufficient time to gauge the intentions of the government and know the seriousness and earnestness with which the goals and objectives of the convention are being pursued. This article presents a comprehensive study of the convention provisions vis-a-vis national legislation, with a view to pinpointing gaps, anomalies and contradictions in our laws, particularly, in the areas of child labour. It analyses the legislation recently enacted, apparently, in compliance with the directions stipulated in the convention. It also examines its impact on the life and status of children. Necessary amendments/ additions to the national legislation, with a view to making it compatible with the convention, are suggested herein.

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Scope: The scope of the convention is fairly wide and comprehensive. It includes all essential civil, social, educational, economic, health and cultural rights, regarded crucial for a civilised existence. The convention also guarantees certain essential fundamental freedoms, such as the freedom of conscience, thought, expression, information, association, religion etc, generally considered vital for the harmonious development of human personality. The convention contains safeguards against neglect, discrimination, abuse, deprivation, exploitation, torture, cruelty and inhumane or degrading treatment or punishment, and provides for due care, protection and rehabilitation of the victims of such excesses. The convention obliges individuals (parents, guardians), legislative bodies, executive authorities and judicial tribunals that, while taking any action, their primary consideration should be to secure the "best interest of the child." An important feature of the convention is its treatment of the child, not as a dependent entity or protected/shielded body, but an independent person, possessing a separate identity and individuality. Accordingly, the convention obliges the state-parties that, while deciding upon measures of child welfare, views of the child must be obtained and given due weight.

Child labour: The convention obliges the state-parties to take appropriate legislative, administrative, social and economic measures so as to protect children from economic exploitation. It, therefore, prohibits the employment of children in professions/occupations which are hazardous or which interferes with their education, or are harmful to their health or physical, mental, spiritual, or social development. As per the convention and other international human rights instruments, the measures required to be taken include:

Provision for a minimum age or minimum ages for admissions to employment; provision for appropriate regulation of the hours and conditions of employment; provision for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article (i.e. Article 32 of the convention).

The reference to "other international instruments" is significant in that the state-party, by ratifying the convention, impliedly accepts the related provisions in other international instruments - the relevant

ILO Conventions, even though these may not have been ratified by such state-party. Elsewhere, too, the convention provides that when other higher national or international standards, relevant to the rights of the child, are available, the state-party shall adopt such higher standards.

Both the constitution and subordinate legislation contain specific provisions which prohibit child labour, fix minimum age for employment and provide regulatory framework for the working child. Article 3 of the Constitution requires the state to "ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability, to each according to his work." Article 11 prohibits "forced labour" and the employment of children below 14 years of age, in "any factory or mine or any other hazardous employment." The constitution further compels the state to protect the "child" and make provisions for securing "just and humane conditions of work ensuring that children... are not employed in vocations unsuited to their age...". Several statutes regulate the conditions of child employment. These include the Mines Act, 1923, the Merchant Shipping Act, 1923, the Factories Act, 1934, the Shops and Establishments Ordinance, 1969, and the Employment of Children Act, 1991.

The legislation, apart from being sketchy and outmoded, contains several loopholes. It also lacks in clarity as to the definition of work and age of admission to employment. Besides, the supervision/monitoring mechanism and implementation procedure are weak and deficient. Furthermore, the penal provisions are meek and mild, thus, unable to adequately prevent or deter the offenders.

The laws in their present format and application do not at all conform to the standards prescribed by the convention. There is, therefore, a dire need for reviewing the legislation so as to bring it in conformity with the principles set by the convention. Needless to say, there still remains vast areas where labour has not yet been regulated, rendering the working child vulnerable to possible abuse and exploitation. There is, therefore, also a need for expanding the protective legislation to such uncharted areas.

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