

A critical analysis of the convention on the rights of the child (CRC), 1989 in the light of Islamic Law

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Abstract

This present research endeavor critically compares the rulings in Shari'ah, as well as, the law prevailing in Islamic States with the provisions of Convention on the Rights of the Child (CRC). Moreover, it argues certain discrepancies among the provisions of CRC, Shari'ah and the law prevailing in Islamic States; allowing the states to practice according to their domestic or religious rulings, thereby leading sometime to contradiction with CRC. However, a perception, though wrongly generated by some western legal experts, exists that Islamic law is adversative to the protections provided by international human rights law. This perception proclaims that Islamic law is a formidable impediment to the universal realization of the international human rights law. Frequently, this notion is pronounced in relation to children. However, it is entirely a wrong perception as Shari'ah exclusively initiates unprecedented venture by declaring certain basic rights for the protection of child. Being a qualitative research, content analysis technique is followed for the investigation of the issue. While doing so, the available secondary data is critically analyzed.

Keywords: *Child protection; Shari'ah; Convention on the Rights of the Child.*

Introduction

The protection of the children's rights, of course, accelerated under the scope of International Law in 20th century. Primarily, Geneva Declaration of the Rights of Child¹ was adopted in 1924. Then, the UDHR referred to childhood as "entitled to special care and assistance."² In 1959, a new Declaration proclaimed distinct rights for the child, like right to receive free and compulsory education, right to skill development for social responsibility as well as protection from foster, religious, racial and other types of discriminations.³ Later on, the year 1979 was characterized as International Year of the Child. Finally, CRC was adopted by General Assembly resolution 44/25 of 20 November 1989. It is a first international treaty, which articulates the entire complement of rights of the child.⁴ Parties to this Convention are 196 states⁵; inscribed a most widely ratified human rights treaty in the history.

Moreover, it is a wrong conception that children's rights are exclusively modern phenomenon, though overlooked in Islam. The primary source of *Shari'ah*, Holy *Qurān* itself has initiated unique venture by declaring basic rights for the protection of child as right to life⁶⁷, nourishment^{8 9}, property¹⁰ and freedom of conscience. *Qurān*, unequivocally, forbids the prevailing unfriendly customary practices in the world, such as, infanticide in pre-Islamic societies due to the fear of poverty or in the case of daughters, to avoid ignominy.¹¹

This Convention is a first international instrument that has recognized a child as a visible individual rights holder in the history of International Law.¹² A definition of "child" under it is limited to "the child in post-natal human form".¹³ However, vulnerability, as the recognition of unborn child, is apprehended under *Shari'ah* while CRC and other human rights treaties are completely silent on the issue. In Islamic Law, deficient or incomplete capacity is proven, too, for the fetus. By virtue of deficient capacity, the unborn acquires certain rights i.e. inheritance, bequest, parentage and etc. Contrary to this, it is not liable for the satisfaction of rights owed to others.¹⁴ Additionally, for the protection of fetus, mother should not use things, injurious to child's health, such as, cigarette etc. However, a child after birth owns, as per Islamic law, a complete capacity for acquisition (*ahliyat-ul- wajūb*) of rights and obligations, but he lacks the capacity for execution (*ahliyat-ul- adā*) before attaining the age of legal or actual puberty. These rulings of *Shari'ah* clearly go hand to hand with the principle of "best interest of child" as established by CRC. Even, biological studies also reveal an undisputable fact, that an unborn baby can feel pain by 20 weeks post-fertilization.¹⁵ In Islamic law, as quoted by all the four Schools of Thought (particularly by Hanafi¹⁶), that soul is to be puffed in the fetus after 120 days.¹⁷

Definition of the Child - Approach of CRC and Shari'ah

Article 1 of the Convention (CRC) defines a child as a person under the age of eighteen, unless the law of a specific country prescribes distinct legal age for adulthood.¹⁸ It has been encouraged by the Committee on the Rights of the Child to review the majority age in the domestic laws of state parties and enhance the level of protection for all children under 18 years.¹⁹ According to Islamic Jurists, on the other hand, an adult is a person who acquires a complete capacity (*ahliyah*) for the acquisition of all kinds of rights (*huqūq*) and obligations (*wajibāt*). This stage is linked with external standard and signs of puberty. In the absence of external signs, it is presumed, by the majority of jurists, at the age of fifteen in both males and females. While according to Abū Hanīfah, puberty is presumed for female at the age of seventeen and for male at eighteen years. Another restriction for the attainment of complete capacity is also quoted as *rushd* (maturity of actions).²⁰ However, different age limits, from fifteen to eighteen, are defined in distinct perspectives in domestic legislations of Muslim countries.²¹ Sudan, for instance, in its report, observes

the same criteria as established by Muslim jurists for adulthood. As prescribed, adulthood is not merely a child's age, but a child's maturity (*Boulough*). Maturity, herein, is marked in two ways in the Sudan report:

*"The first is the appearance of the usual outward "signs of maturity," such as puberty, the growth of pubic hair and, in the case of young girls, menstruation and the ability to conceive. The second is the attainment of full legal age, a subject on which jurists hold differing views and on which other positive laws are also at variance."*²²

Consistent with the provision of Article 1, several Muslim states have legislated the majority age as eighteen years. However, the age of maturity for criminal responsibility for boys is fifteen years as considered by some Muslim states such as Syria, Sudan, and Iran. Interestingly, Saudi Arabia and Oman state that "Art. 1 is totally in harmony with Islamic law with regard to the definition of the child."²³

Non-discrimination, Minority Rights and Freedom of Religion

Article 2 applies to "to each child within the jurisdiction without discrimination of any kind". Further, it elaborates that proper measures shall be promulgated by the State Parties to protect children from all kinds of discriminations or punishments based on discriminated standards. In addition to it, Article 30 assures minority or indigenous children's rights while prohibiting each type of discrimination with them. It further adds the right to learn and practice their language, culture and religion. Similarly, Article 5 of the Covenant on The Right of The Child in Islam 2004 guarantees the right to equality to all children of the state parties.²⁴ According to Article 14, child has a right to think and believe according to his wants, and to practice his religion until he does stop others from enjoying their rights. Parents, too, should help and guide their child in these matters. It supports child's right to examine his beliefs, and at the same time, restricts his right of expression with respecting the rights and freedoms of others. Freedom of religion, being an important issue, can be widely discussed under the scope of Article 18 of ICCPR.

Qurān, on the other hand, describes children as the "comfort of our eyes."²⁵ It also forbids all types of discriminations among people while saying, "we created you from the same male and female, and rendered you distinct peoples and tribes that you may recognize one another. The best among you in the sight of Allah is the most righteous."²⁶ The Prophet Muhammad (SAW) has also forbidden discrimination among human beings while stating that none of Arab is superior to non-Arab and vice versa except in terms of *taqwā*.²⁷

A particular conflicting area is the status of *Shari'ah* in relation to the child conceived out of matrimony. A right of child to legitimacy is pivotal in *Shari'ah*, therefore, be associated naturally to one father and one mother. Although, maternity is obvious by the fact of birth while doubt may be raised to paternity. Thus, maternal legitimacy is considered as an inalienable right.

In order to shut down any doubt, the legitimacy of father is limited within the confines of marriage.²⁸ Hence, any conception starts within wedlock is accepted as paternally legitimate except any contradiction is proved thereby. A child conceived outside the wedlock is a child of adultery or fornication under Islamic jurisprudence. The descent of illegitimate child is derived from the mother only. The main consequence of this principle is the sustainment of maternal legal inheritance rights to the mother, while, paternal inheritance rights to the adulterous father is striped as it is deprived of legal paternity. A strong argument, to compel a state to guarantee the special protection, may be established that innocent child should not be vicariously imperiled due to an illegal act of de-facto parents. However, Islam does not accept it due to recognition of family rights through marriage institution. So on, unmarried persons or illegitimate children may be entitled to individual rights but do not qualify for family rights.²⁹ Having said that, most Muslim states like Egypt, Indonesia, Syria, Iran, and Tunisia have satisfactory provisions for the recognition of child born out of wedlock (genetic imprinting tests etc.). Child takes the father's name and father has to share the responsibility of the child.³⁰ Still, majority of Muslim states like Oman, Pakistan, Tunisia and Malaysia classifies it illegitimate birth and discuss it under *Hūdūd* code. Tunisia and Malaysia have also moved a reservation to article 2 of the convention.³¹

Minority rights and the principle of freedom of belief are recognized in Islam as *Qurān* states: "there is no compulsion in religion."³² Another verse defines: "The truth is from your Lord. So whoever wills let him believe, and whoever wills let him disbelieve."³³ The principle, describing no compulsion in religion, is not limited to freedom of practicing one's own religion. It also provides, by the same way, considerable economic, cultural, and administrative rights. A period of fighting of Arab and Jewish inhabitants of Medina guarantees that Muhammad (SAW) had declared religious freedom for Muslims, pagans and Jews in the Constitution of Medina. Islamic Caliphate, too, guaranteed religious freedom for non-Muslim communities under the condition of acceptance of *dhimmi* status. However, same political rights were not guaranteed to *dhimmi*s as were guaranteed to Muslims, nevertheless, they had enjoyed equality in property and contract laws.³⁴ Additionally, Islam permits practice of culture and language while remaining within the moral boundaries, and forbids their right to profess religion under Islamic State. Oman does not bound itself to article 30 that allows a child of religious minority to profess his religion.³⁵ Moreover, *Shari'ah* does not permit to a Muslim child and adult to choose a religion other than his father's religion. During the preparatory discussion of the Convention, Bangladesh introduced this concern to the conference while stating, "Article 14 appears against the traditions of major religious systems of the world and in particular to Islam."³⁶ Many Muslim states Bangladesh, Maldives, Malaysia, Morocco, Brunei, United Arab Emirates, Syria, Oman, Jordan, Iraq, Qatar, Iran and Saudi Arabia have made reservations to this Article. Jordan and Iraq insist

that the freedom of religion in this article conflicts with Muslim Legal Tradition. Iraq made reservation, which reads as follows: “as allowing a child to change his or her religion runs counter to the provisions of the Islamic *Shari‘ah*.”³⁷

Best Interests of the Child

Article 3 configures the best interest of child as a primary concern in deciding the matters that may affect him/her. These decisions may include budget, policy and law makings. *Shari‘ah* always prefers the interest of child within the family and society. Islamic jurisprudence also debates on the right and interest of fetus.³⁸ Hanafi School authorizes a minor to make certain financial transactions as are divided into three types³⁹.

- The transactions falling under the category of purely beneficial transactions, e.g. gift and etc. Child may exercise these but with the permission of *wali*/guardian.
- Exercise of purely harmful transactions are not permitted to child, as granting of divorce, charity, manumission, loan, making of trust, bequest and etc.
- Transactions, which vacillate between profit and loss. For instance, sale, hire, partnership and etc. These are deliberated valid if ratified by his/her *wali*.

A person without puberty is not a *mukallaf* thus, not liable to criminal offence. However, some suitable form of *tadīb* may be given to child over seven in *hūdūd* and *qisās* cases.⁴⁰

Protection of Child Rights by the Government

Under Article 4, the government has a duty to take all available measures, insuring that all rights of the children are respected, protected and fulfilled. After ratification, governments are indebted to safeguard the minimum standards agreed by the Convention. States must assist families to guard children’s rights and should build, by the same way, an environment for their potential growth under Article 5. Nevertheless, it limits the State’s duty to implement rights; “to the maximum extent of their available resources”. Covenant on The Rights of the Child in Islam outlines social living standards for child under Article 14; including benefit from social security, exemption from tariffs and taxes, as well as advantage of living standards; suitable to mental, physical and social development of the child.⁴¹ Further, Article 42 of CRC makes liable the governments and adults to provide knowledge of child rights to children. Moreover, Article 26 defines social security and permits the poor or needy child to take help from the government directly or through the guardian. Children have a right to privacy under Article 16 with condition to check upon them by their parents. It includes safeguard from attacks to their way of life, good name and families. This privacy includes family, home,

correspondence, honour, reputation, name, person and body as addressed by the Human Rights Committee.⁴² Article 41 prescribes that, if a country contains higher legal standards than those referred in CRC, the higher legal standards shall always prevail.

Holy *Qurān* clearly shows an importance for the support of needy in these wordings: “and would not encourage the feeding of the indigent!”⁴³ Further, it supports, in *Surah Al-Nisā*, the right of vulnerable at the time of division of property.⁴⁴ Similarly, Holy Prophet (SAW) has elaborated the obligation of *sultan* towards care and support of vulnerable in the society by stating, “Caliph is a shepherd over the people and shall be questioned about his subjects.”⁴⁵ According to the *Hadith*, a ruler is a protector of the needy in state. An incident is quoted vividly from the reign of Caliph Umar Farooq as he used to patrol in the streets of Madina to know about deserving people. Once he was patrolling at night and saw a woman boiling an empty pot, while hungry children, sitting beside her, were weeping. He provided her a bag of flour and uttered the words; *children were weeping for being hungry and were not able to sleep.*⁴⁶ Islamic state is always responsible to Allah Almighty for the protection of vulnerable of society as per *Shari’ah*.

The *Qurān* particularly highlights the need to ensure privacy of individuals while quoting about abhors spying. It states: “And spy not on each other.”⁴⁷ The teachings of Prophet (SAW) are also a guiding framework. A man came to see Prophet Muhammad and sought permission for entry while he was standing in front of the door. The Prophet (SAW) said, “Stand aside: the object of the Commandment for seeking permission is to prevent the look inside the house.”⁴⁸ He has also forbidden the reading of others’ letter without permission. *Qurān* also prohibits scoffing, defamation and offensive nicknames. State officials are guaranteed to violate the right to privacy in due process of conducting reasonable searches or investigations.⁴⁹

Position on Parental Guidance, their Responsibilities and State Assistance

Article 5 defines that State parties are indebted to respect the responsibilities of parents in relation to guidance of their children in using their rights properly, and in a way consistent with the growing abilities of the child. It also imposes an obligation on states to assist and defend families in fulfilling their vital role as the nurturers.

Subsequently, *Qurān* mentions parental guidance in many verses: “protect yourselves and your families from a Fire whose fuel is people and stones.”⁵⁰ Islam considers parents as a primary source for ethical and essential religious guidance of the children. As stated in Holy *Qurān*: “those who believed and whose descendants followed them in faith, We will join with them their descendants.”⁵¹ Apart from the father, *Shari’ah* enables responsibility of good care and growth upon the mother as mentioned by Prophet Muhammad: “A woman is the shepherd of the house of her husband.”⁵² A woman is a shepherd of household and so upon the children.

Further, Islam teaches parents to pray before the birth of child for its righteousness.⁵³ This shows the responsibility of parents before and after the birth of a child as per Islamic rulings. In addition to it, OIC has also mentioned this duty of parents in Article 20 of Covenant on Rights of The Child in Islam.⁵⁴ Further; a state responsibility has been mentioned above.⁵⁵ Under the concept of *Kafālah* in *Shari'ah*, an Islamic state is *kafil*/responsible for the rights of vulnerable in society.

Article 18 imposes sharing of common responsibilities between parents for bringing up a child, and an obligation upon governments to respect these responsibilities through providing supporting services to parents like childcare services. A question arises, herein, in respect of parents' share of common responsibilities under *Shari'ah*. *Qurān* states: "Men are in charge of women by (right of) what Allah has given one over the other and what they spend (for maintenance) from their wealth. So righteous women are devoutly obedient, guarding in (the husband's) absence what Allah would have them guard."⁵⁶ The word 'in charge' interpreted, herein, as 'liable to fulfill financial responsibilities of wife and children'. Woman just has to care and guard; while all other types of responsibilities are possessed in man.

Registration, Name, Nationality, Survival and Development

According to Article 7, children have a right to an officially registered name and a nationality. In addition, Article 8 states about preservation of identity of a child and his official records.

Islam, on the other hand, gives a right to the child and imposes, at the same time, a duty on parents to name with a good meaningful name. Prophet (SAW) said: "Whoever is graced with a child should give him a beautiful name and beautify his characters".⁵⁷ At another occasion, he asserted, "Surely you will be called on the Day of Judgment according to your names and (the names of) your fathers."⁵⁸ Some of Islamic States have made reservations to article 7. UAE acknowledges that acquiring a nationality is an internal issue, so should be regulated by national legislation.⁵⁹ Tunisia considers that article 7 is not to be interpreted to prohibit the implementation of domestic legislation of nationality and, in particular, when it is forfeited.⁶⁰ Kuwait and Oman⁶¹ acknowledge to grant nationality to parentless children to safeguard the right of the child born in Kuwait, as stipulated by the Kuwaiti and Oman's Nationality Laws. None of Islamic State has made any reservation to Article 8. Moreover, article 7 of Covenant on the Right of the Child in Islam affords an obligation to state parties to safeguard the child's identity comprising his name, nationality and family relations according to domestic laws. It also deals for resolving the issue of statelessness of a child, born to any citizen outside the territory or within the territories.⁶²

Article 6 provides a right to life to every child. The duty imposed on the state is to confirm the survival and healthy development of children

within the state. No Islamic state has made reservation to this article except Tunisia.⁶³ While looking at the condition of survival, Islam prevents the killing of children exclusively (after or before birth). *Qurān* explicitly warns, "Do not kill your children for fear of poverty."⁶⁴ Apparently, birth control is trended for economic reasons in poorer countries, but the truth is that it is done actually to prevent an increase in population. Some Islamic writers proclaim that the growth of population can never be an impediment to economic development nor it does cause poverty.⁶⁵ However, it is a work force of nation. Several rich states, such as Germany, France, England, Belgium, Holland, Japan and Italy have a high density of population. According to Mawdudi, the solution to this problem is not the reducing of number of mouths instead; they should allocate their energy to constructive tasks to increase in the production of wealth.⁶⁶

Separation from Parents, Family Reunification, Refugee's Rights, Foster Care, *Kafālah* and Adoption

Article 9 guarantees a right to live and to stay connected with both parents when they do not live together save it is bad for children. Where separation occurs by an action of the country like detention, deportation, exile or death of any parent or both of them, the State shall provide the other parent the child and the information of whereabouts of the absent family member, except such is detrimental to the wellbeing of the child.

Shari'ah defines *hadānah* as raising, nursing and bringing up a child, and further includes in it, an occupation of carrying and rearing. It is also known as *Kafālah*.⁶⁷ *Hadānah* is considered a collective obligation/*fardh kifāyah* of Muslim community. Nevertheless, *Mālikī fiqh* describes it as a personal obligation/*fardi'ain* of father. Mother has a personal obligation to *hadanah* for first two years of suckling, if the father does not have financial means to pay a wet-nurse or there is no father. Further, where a child does not accept the milk except of mother, she can be forced to be the custodian. The female custodian has a responsibility of upbringing, protecting, feeding and taking care of the child. While, the father as a natural guardian has a duty to determine major decisions for the child's life e.g. education, religious upbringing, medical consent, future career and consent to marriage. *Hadānah* is a right to be vested upon a completely qualified relative of the child. However, an entitlement to custody is based on the highest priority of protection by ward's interest. The protection of an interest of child is most significant than the claim of *ahl al-hadānah*. The mother has an initial claim to *hadanah*, as far as, she is qualified as stated by Ibn Qudāmah, Al-Shafāi, Al-Nawawi and Al-Marghināni.⁶⁸ When mother is disqualified or dead, the majority of jurists hold the opinion that the right will go to maternal grandmothers.⁶⁹ Although jurists vary on the position of paternal grandmother, however, the prevailing view is that paternal grandmother comes after the maternal grandmother. Imam Ahmad acquires opposite position upon the issue and argues that she is connected to

the male agnate (*asabah*).⁷⁰ Abu Hanīfa, Imam Ahmad (in his one opinion) and Shurayh give preference to the maternal relation (uterine sister) than the paternal. The majority of jurists agree upon the view that maternal aunt comes after sisters and paternal grandmother. Afterwards, in default of the maternal aunt *hadānah* will pass to the paternal aunt (Hidaya). The *Shafi'i* placed the niece in quite a high position in the priority order as after the maternal aunt and before the paternal aunt. While, *Hanafis* distinguish between the daughter of sister and the daughter of brother. The daughter of the sister comes after the sister in priority order. While, the daughter of a brother, comes after the maternal aunt. According to all the four schools of thought, if all female relatives are absent or disqualified then, entitlement devolves to the male agnate. The priority is as follows: the paternal grandfather, full brothers, sanguine brothers, sons of full brothers, sons of consanguine brothers, their descendants, paternal uncles and sons of paternal uncles.⁷¹

Furthermore, a child should be legitimate to apply the concept of *hadānah*. The jurists are agreed upon the custody of child under the age of seven to the mother. While, their opinions vary for the age of discernment. *Shafi'i* jurists give a choice to both male and female children as to whom they would prefer to stay with. Moreover, if child refuses to choose, preference will be given to mother.⁷² *Hanbali* jurists give this right of choice only to the male child and support their view by Prophetic traditions.⁷³ If the child does not prefer either parent or prefer both of them together, then matter will be decided by lot. *Hanafi* Jurists and *Imam Mālik* do not agree upon the right of choice. *Imam Mālik* gave more right to the mother, pending the son reaches the age of puberty. *Hanafi* jurists proclaim that when a boy achieves an independence status then the father gains more right to the boy.⁷⁴ Supplementary to it, jurists differ in opinion with regard to the duration of female child custody. *Shafi'i* jurists do not differentiate between a boy and a girl in this matter. The *Hanafi* and *Māliki*⁷⁵ jurists are of the opinion that a girl should be with her mother until she attains puberty.⁷⁶ Statutory law of Islamic countries differs with *Shari'ah* in various perspectives. In Pakistan, in *Sultana Begum vs. Mir Afzal*, Karachi High Court defined custody as the "upbringing of a minor child by the mother or by someone legally entitled to it".⁷⁷ Custody of a child generally rests with the mother⁷⁸ in tender age; later it goes to the father.⁷⁹ In the judgement, Court construed breastfeeding as a reason to grant custody to the mother. It is contrary to the traditional principles of Islamic law. As, if a mother refuses to suckle the child after divorce; the father is obliged to engage a wet nurse and the mother cannot be deprived from custody on this ground.⁸⁰ Further, Section 17 of the *Guardians and Wards Act 1890*, declares the 'welfare of a minor' as a principal consideration.⁸¹ It is also considered in the interests of the child to live with his/her siblings.⁸² Islamic states have not made any reservation in relation to article 9 and 10. Apart from this, right of visitation of non-custodial parents is also prescribed under

Article 9 (3) of CRC, as well as, by the courts of Pakistan in distinct judgments while keeping in view the interest of minor. There is also consensus of Islamic Jurists upon the right of child visitation of non-custodial parent, and custodial parent cannot interfere with this right.⁸³

Moreover, Article 10 supplements to Article 9 through the concept of family reunification generally, and particularly, if one family member lives in a distinct state. Article 8 of the Covenant on the Right of the Child in Islam, also speaks about family cohesion and impose duty on the states to protect the family from causes of disintegration.⁸⁴ So on, *Shari'ah* also permits reconciliation after divorce but with certain restrictions; firstly, it should be made within the period of *'Idah*, and secondly, where three pronouncements are not fulfilled. *Qurān* has also stated about the reconciliation.⁸⁵ Article 22 deals with refugee children and grant them a right of protection and help, to be fulfilled by the state. Additionally, the state shall co-operate with the UNs and other competent organizations in tracing the parents or their family members for reunification of a child with family. Islamic law related to the obligation of the government is briefly prescribed under Article 4. Article 20 indebted a state to safeguard and assist a child deprived of his family environment, and to ensure alternative care for him in accordance with the laws of the country. This care may comprise foster placement, adoption, *Kafālah* or placement in appropriate foundations. Article 21 elaborates further, that in case of adoption or foster care, a primary concern must be what is best for a child. Adoption creates a permanent parent-child relationship⁸⁶ and it ceases to apply if agreements of adoption has not been signed before the child attains the eighteen years of age.⁸⁷ Many Muslims say that adoption is forbidden under Islam.⁸⁸

Foster care is similar to *Kafālah* and thus, is permitted as an alternative care method in Islam. However, foster children are not allowed to wed with other foster siblings, but under *Kafālah*, they may wed with someone of that family. *Kafālah* is derived from the word which means 'to feed', thus acknowledged as an Islamic method of 'adoption' that means sponsorship.⁸⁹ It is a voluntarily taking care of child's maintenance and education; in the same way a parent would do for his own child.⁹⁰ It is known as a best alternative care arrangement for child under Islam, whose parents have died or, are incapable to grant the essential maintenance. Natural parents make care arrangements through mutual agreement for nurturing of their child and do not give up their parental rights.⁹¹ Raising a non-genetic child is allowed and encouraged in Islam. However, the child does not become a true child⁹², and remains non- *mahram* to the members of the adoptive family, and will be named after the biological father. Children have no right in inheritance under the foster care and *Kafālah*. However, adoptive parents may bequeath property rights on their children. Therefore, Islam provides non-mergence of the property of adoptee with the adoptive family, in order to safeguard the best interests of orphan.⁹³ Turkey prescribes full inheritance right in its'

statute law,⁹⁴ but it is contradictory to Islamic Traditional law. In Indonesia, obligatory bequest is granted to the foster child, and in Egypt, mandatory bequest for the orphaned grandchildren is guaranteed.⁹⁵ On the other hand, one third of the property may be granted in will under Islam, so it is not a big issue. Brunei Darussalam expressed its reservations to Article 20 paragraph 3 and Article 21. Bangladesh, Oman, UAE and Kuwait have made reservations to article 21.⁹⁶

Respect for the Views of the Child, Freedom of Expression, Freedom of Association and Access to Information

Article 12 encourages adults to listen the children's views and offer opportunity to them to participate according to their level of maturity in decision-making. Although, it does not prefer the view of child upon adult. The CHR imposes duty on adults to develop sensitivity towards child's ways of communication. Further, state parties are required to develop good practices to assess the capacity of child in this regard.⁹⁷ Moreover, every child has a right to freedom of expression under 13. He is guaranteed with a right to get and share information under Article 17, unless the information damages to him or others. This right is constrained with respecting the rights, freedoms and reputations of others, as well as, the national security, public health, morals and public order. UAE appreciates the functions assigned to mass media but restricts the interpretation of this article within the limits of domestic statutes and cultural values.⁹⁸ Islam does not prohibit including children in decision-making, rather does not make the opinion of children authority upon their parents. In the same way, children have an advantage to freedom of expression while remaining within an ambit of Islamic rulings and morals. Islam restricts freedom of expression to the extent of social disorder and blasphemy.⁹⁹

Article 15 assures the right to join associations, as long as, it does not infringe others rights or damage their reputation. The concept of making of association is praiseworthy in Islam and, is subsequent to the principles: the offering of an honest advice (*Nasīhah*), the need to consult (*shurā*), the right to criticize, the right to express an opinion and etc. Speech, action or making of association encouraging conspiracy against legal authority is a punishable offence.¹⁰⁰

Children with Disabilities, Review of Treatment and Health Services

Article 23 provides a right to special support to children with disabilities. Covenant of OIC, Article 16 deals with disabled children and their special needs.¹⁰¹ Article 24 of CRC imposes a duty to provide good quality health, pure drinking water, healthy food, clean environment and information for staying healthy. It imposes duty on developed countries to help poorer countries in achieving these rights. Article 15 of Covenant of OIC prescribes that the child is entitled to physical and mental care, and emphasizes on

providing care to the mother since pregnancy.¹⁰² Additionally, Article 25 of CRC explains the duty of State to recognize the periodic treatment of children cared by local authorities.

Islam defines distinct physical and mental disabilities. Certain physical disabilities do not make a person incompetent. While, mental disability creates a legal incompetency in relation to social as well as moral duties. The society, under Islam, is dutiful to assist, assess and respect the people with intellectual disabilities, and give him, too, an equal opportunity. *Qurān* protects the right of needy as stated: "And in their wealth there is acknowledged right for the needy and the destitute".¹⁰³ Prophet Muhammad said, "There is no disease created by Allah, except He also has created its treatment."¹⁰⁴ Parents have to care for the health of their children in order to bring them to the world healthy. It is also forbidden by Allah Almighty to take a life that He has made sacred.¹⁰⁵ Prophet recommends avoidance of consanguineous marriages. The parents are dutiful to be patient and teach their children as per the obligation of learning under Islam.¹⁰⁶ An incident shows the supporting of disables by Muslim society. A man complained to Caliph Omar about the physical disability of his son and difficulty to reach the mosque. He ordered to place a nearby shelter to the mosque for him.¹⁰⁷ By the 9th century, with the advancement of Islamic medical practices, the unsound was treated with kindness, and pain was relieved through walking in parks, gardens and story telling. Equal medical attention was guaranteed to the prince and the poor. Mobile clinics and medical licensing were also introduced. Islamic physician, Ibn Sinna, known as Avicenna, has also written for the health of the disables and practiced psychotherapy. Another Islamic physician, Al-Hafez has published his research on disabilities in the year 1500.¹⁰⁸ Further, Islam has always emphasized to eat healthy and wholesome diet,¹⁰⁹ as well as, to refrain from what is foul.¹¹⁰ Healthy nutrition is consists of a balanced diet, and excess in food is prohibited as it leads to different diseases.¹¹¹

Right to Education, Goals of Education, Leisure and Playing

Children have been guaranteed with a right to free primary education under Article 28. Rich states should help underdeveloped states in achieving this right. Government has an obligation to review the discipline policies and eliminate all abusive disciplines. Article 12 of Covenant on the Right of the Child in Islam guarantees certain educational and cultural rights.¹¹² *Sharī'ah* has precisely elaborated the right of a person to education. *Qurān* encourages to make prayer: "My Lord! Increase me in knowledge."¹¹³ In another verse, it is clarified to mankind that educated and uneducated are not equal.¹¹⁴ Prophet (SAW) said that guiding a person is better for anyone than "a whole lot of red camels."¹¹⁵ According to *Hadīth*: "acquiring education is compulsory on each Muslim".¹¹⁶ Scholars have agreed on the point that women have an obligatory share in education. Article 31 guarantees the right to relax and play. An

outdoor game is an essential physical activity for the good health of a child. Prophet Muhammad was used to race with his wife Aisha. He has wrestled with his Companions. Anas ibn Mālik (RA) narrated: "The Prophet came to some children who were playing: He saluted them."¹¹⁷ Article 13 of Covenant of OIC grants the child a right to rest, play and exercise legitimate cultural and social activities.¹¹⁸

Safeguards from all Forms of Violence and Rehabilitation of Victims

Physical or mental abuse is also forbidden. Governments should safeguard the children from abuse and neglect by parents or guardian. Any discipline, involving violence or harming their welfare and development, is unacceptable under Article 36. Distinction between excessive and abusive sorts of punishments are already defined in domestic laws. According to the USA Centers for Children and Families and Department for children and Families, child abuse is child maltreatment.¹¹⁹ Increasingly, OIC has fulfilled its role to eliminate all types of exploitations.¹²⁰ Article 17 of the Covenant of OIC makes responsible the state parties to safeguard children from illegal use of drugs, intoxicants, smuggling, kidnapping, torture, sexual abuse, participation in trafficking and armed conflicts.¹²¹

Islam views childhood with aspiration and hope. Progeny is a gift from Allah to His faithful servants.¹²² The Prophet has advised all Muslims to be affectionate to their children and said: "He is not one of us who does not show tenderness to the young".¹²³ Thus, corporal punishment is not allowed, and alternative methods of disciplining should be used such as giving advice, admonition, withdrawing rewards and denial of playtime etc. The hitting, mentioned in hadith in respect to daily prayers, is not a corporal punishment. Nevertheless, it is a trick, which, the father might use for the betterment of child. Further, it should be interpreted by another saying of Prophet: "And for their disciplining, hang a stick, so it could be seen by all members of the household."¹²⁴ Manawi says when the family could see the stick; they will not commit bad things.¹²⁵

Moreover, Article 34 prohibits sexual abuse to children and imposes duty on states to safeguard them from all of its forms. Islam also considers prostitution as a form of sexual exploitation and thus forbids it. In *Sharī'ah*, if a man had sex with a female child, he will be given *had* punishment. If a minor is forced into sex by a person and, sedated before sex, a heavier punishment is to be imposed under Islam than sodomy for the active partner, but no punishment for the minor.¹²⁶ Later, CRC prohibits hazardous child labor under Article 32. It does not prohibit appropriate ways of helping of children to their parents at home. *Qurān* states: "Allah desires for you ease. He desires not hardship for you."¹²⁷ The Baku Declaration 2013 emphasized on the need to take compulsory steps against abusive child labor and forced begging.¹²⁸

Islam may not recognize particularly all the cruel practices of modern

world but thus, prohibits all. While, in respect of the child, Prophet Muhammad stated: "who does not show mercy to younger ones, is not from us."¹²⁹ This narration clarifies that all bad practices are prohibited in Islam. Article 37 forbids cruel detention of the children as it leads to exploitation. Furthermore, Article 11 prevents to take out children illegally from their own country. Optional Protocol on The Sale of Children, Child Prostitution and Child Pornography has forbidden kidnapping for financial gain, and many Muslim states have followed it.¹³⁰ Article 33 states prohibition of drug abuse for children and urge governments to protect children from using these harmful drugs. Islam completely forbids the use of drugs¹³¹ and their transaction: "indeed, intoxicants, gambling, stone alters and divining arrows are from the work of Satan, so avoid it that you may be successful."¹³² Article 38 imposes responsibility on the states to forbid the recruitment under fifteen years in armed forces. Optional Protocol on The Involvement of Children in Armed Conflict bans on compulsory recruitment under eighteen. In Islam, defensive *jihad* is considered a collective obligation on all adult men. Here, the conflict may arise in relation to the age of puberty and the majority age in Islam.¹³³ No reservation to this article is made by any Muslim State; as majority of the Muslim states consider minority until eighteen as per their domestic laws. Moreover, The Optional Protocol on the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000 have been ratified by twenty-three OIC's states. This ratification necessitates to deposit a binding declaration to set the minimum age in domestic law.¹³⁴

Juvenile Justice

Article 40 of CRC guarantees the right to legal assistance and just treatment to children; accused of breach of law. According to Islamic jurisprudence, there are two age categories for the purposes of criminal liability, minor and adult. In order to be subject to criminal punishments, an individual must be an adult, i.e. having full mental and physical capacity. In addition, Muslim jurists considered that if a child commits fixed crimes, he will be subjected to disciplinary punishments, rather than binding punishments. Yet most Muslim-majority states have set eighteen as the age of majority, following the Ottoman precedent and in line with the CRC, too. Only a few define the age of majority as equivalent to puberty. It is eighteen in every Muslim majority state with the exceptions i.e. the age of majority is fifteen in Bahrain, Somalia and Yemen, sixteen in Bangladesh and Qatar, and puberty in Iran and Saudi Arabia. In Iran, puberty is officially defined as fifteen years for boys and nine years for girls although, in practice, Iranian judges do not always apply these ages. Muslim majority states have independent juvenile courts as Afghanistan's 1976 criminal law regulates juvenile courts, Egypt has established separate courts in 1950, Syria in 1953, Iraq in 1962, Lebanon in 2002, Malaysia in 1947 and Pakistan in 1955.¹³⁵ Tunisia made reservation to article 40 paragraph 2 (b) (v)¹³⁶ and Malaysia to

article 40 (3) & (4)¹³⁷ and stated, these would be applied according to domestic legislations.

Conclusion

CRC is a historic document and a part of an integrated system of rights enforced under international human rights law. The implementation of the principles defined in the Convention can help to improve the condition of children in underdeveloped countries. Further, the interpretation of the Convention in the light of the norms and principles of *Shari'ah* does not go against the objectives of the instrument. Many provisions of *Shari'ah* facilitate the implementation of the articles of the Convention. Some of the Articles, however, clash with the basic principles of *Shari'ah* and, therefore, cannot be implemented by Muslim Countries. Contradictions and commonalities of rights of child, mentioned by CRC and *Shari'ah*, are critically discussed above respectively from article 1 to 41. Article 42 to 54 of CRC discuss with the positive and negative obligation of the state parties to implement the measures for the safeguard of the rights prescribed in the Convention. It is apparent that the United Nations, through its instruments, is not asking Muslim countries to alter the fundamentals of their religion. The Muslim countries are, therefore, have the option to make the CRC's rules and regulation in line with the principles, rules and regulations of *Shari'ah*.



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