

**The Challenges of Protecting Children's Rights in Iran: The bill on
Protection of Children and Adolescents: a Friend or Foe?**

Navid Rahbar¹

Abstract

The legal system of Iran has not been fully successful in protecting minimum rights of children and youth; and has faced some obstacles in complying with international standards. Different laws and regulations have been introduced in domestic legal system to protect children rights and furthermore, Iran has acceded to different conventions on children's rights. As standards of protection are different in domestic legal system and those set forth in international conventions, this article aims answering this question that how international conventions can be implemented by national courts? This article also examines existing challenges in protecting children's rights in Iran.

Keywords

Right of Children, Legal System of Iran, Protection of Children' Rights, International Standards, National Courts

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1. Associate Professor at Shahid Beheshti University, Attorney at Law, Tehran, Iran.
Email: n_rahbar@sbu.ac.ir

Introduction

Various factors such as poverty, lack of proper education, social norms and cultural problems have contributed to child abuse (physical, sexual maltreatment, neglect, trafficking) in many countries of the Middle East; including Islamic Republic of Iran. Although the government of Iran during the last decade has taken positive steps to protect children and youth, such protection has not been sufficient. In order to provide more protection to children and adolescence, the Bill on Protection of Child and Adolescents (PCA bill) was introduced by Ministry of Justice and was passed by the Board of Ministers on 31 July 2011.

The bill was proposed to fill the existing gaps in Iran's legal system to protect children and youth from abuse or mistreatment. There are some laws and regulations which aim at protecting children and youth in Iran. But some of them are not in compliance with current international standards. There are numerous challenges to reach to international standards set out in conventions and treaties including Convention on the Rights of the Child.¹ Such challenges include, but not limited to, lack of sufficient rules and regulations in existing legal system of Iran, existence of inconformity and inconsistency in law-making process, lack of proper education in family environment, and cultural and social problems in Iran.

This article examines protection of children and youth in existing Iranian legal system and then discusses general status of international conventions in Iran's legal system as well as children rights conventions. At the end, this article examines developments introduced in the Bill on Protection of Child and Adolescents (2011). This article also examines existing challenges that children face in Iran for proper protection set out by international standards.

1. Convention on the Rights of the Child, United Nations General Assembly, Resolution 44/55 (entry into force on 2 September 1990); For instance see the Geneva Declaration of the Rights of the Child of 1924 and Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (articles 23 and 24), International Covenant on Economic, Social and Cultural Rights (article 10) and other relevant instruments of specialized agencies and international organizations concerned with the welfare of children.

Protection of Children and Youth in Existing Iranian Legal System

Protection of children and youth against abuse under the current legal of Iran is not flawless and advocates of children's rights has resorted to provisions in Iran's Civil Code (1928, 1934 and 1935 and future amendments in 1958, 1991), Islamic Penal Code (2013) and other laws and regulations to protect and promote children's rights. It is interesting to note that the term "child abuse" is fairly a new concept in Iran's legal system and this term was utilized for the first time in January 2003 in Protection of Children and Adolescents Act.¹

This part of the Article examines existing protections provided to children under Iran's domestic laws and international conventions which Iran has been accede to. This part also examines scope and applicability of international conventions protecting children against child abuse which have been ratified by Iran's legal system.

Domestic Laws Protecting Children and Youth against Child Abuse

The *Sharia* law has greatly influenced Iran's domestic legal system and the legal system in many instances have followed *Sharia* rules on matters related to children's rights. This section reviews protections and rights granted to children in Iran's Civil Code, Law on Providing Educational Facilities and Tools for Iranian Children and Adolescents, Criminal Procedure Code, Islamic Penal Code and Protection of Children and Adolescents Act.

1. Iran's Civil Code

The Civil Code of Iran defines age of maturity as full 9 years old for girls and full 15 years old for boys according the *Hijri* calendar.² After the Islamic Revolution in Iran, in order to comply with *Sharia*, the age of maturity, from the full age of 18 years old according to Solar (*Shamsi*) Calendar, was reduced to 9 and 15 years according to *Hijri* Calendar respectively for girls and boys.³ As it will be explained later, the discrepancy in defining age of

1. See Section 1.1.5. of this Article on Protection of Children and Adolescents Act.

2. Iran's Civil Code, Article 1210, Note 2.

3. 9 years old based on *Hijri* Calendar year is 98 days less than full 9 years old in *Shamsi* Calendar. 15 years old in accordance with *Hijri* Calendar is 163 days less than full 15 years in *Shamsi* Calendar.

maturity in civil and criminal liability in Iran's legal system is one of the most important challenges for protection of children's rights.

Iran's Civil Code in various articles discusses children's rights. Before birth, children do not have any civil rights under the Civil Code. Pursuant to Article 956 of the Civil Code, the capacity to possess rights begins with the birth of a human being and ends with his death. The Civil Code is of the view that a child in the womb will enjoy civil rights provided that it comes into the world alive.¹ It is very unfortunate that in Iran's legal system, no obligation has been defined for parents at pre-birth stage.²

After birth, Iran's Civil Code obliges parents to maintain, guard, train and support children. Maintenance of children is both a right and duty of parents.³ Therefore neither parents can refuse to maintain the child during the time when he or she is responsible for its custody and in case of refusal, the court can force such person to perform its duty to maintain children.⁴ However, if a parent refuses to maintain his children, then only expense of such maintenance can be asked from him.

The most relevant Article for child abuse in Iran's Civil Code is Article 1173 that states: "If the physical health or moral education of the child is endangered as a result of carelessness or moral degradation of the father or mother or any person who is in charge of its custody, the court can take any decision appropriate for the custody of the child on the request of its relatives or its guardian or the public prosecutor."

The Article defines carelessness or moral degradation of either of parents or guardians as follows:

- Harmful addiction to alcohol, drugs, or gambling;
- Moral corruption or prostitution;
- Mental illnesses diagnosed by a medical examiner;

1. Iran's Civil Code, Article 957. In case of abortion or injury to fetus due to injury to mother, the legislator has set monetary damages (*Di'ah*) (Islamic Penal Code, Articles 708-713).

2. Note to Article 306 of the Islamic Penal Code, however, has made this development in protecting child's right that if a fetus comes to the world alive and "it has the ability to continue its life" and the crime before the birth causes death or deficiency, then *Qisas* can be applied.

3. Iran's Civil Code, Article 1168.

4. *Id.*, Article 1172.

- Forcing children into immoral professions, such as prostitution, beggary, or smuggling;
- Repeated physical assault or inappropriate punishment beyond the normal scope.

The vagueness of the Article by using “taking any decisions appropriate” as legal consequence of child abuse and lack of existence of any penalty for parents violating children’s rights as well as lack of existence of jurisprudence on this matter, cultural problems to implement this vague article, provide very naïve protection against child abuse pursuant to Iran’s Civil Code.

Furthermore, parents are obliged to take necessary steps to train their children within the scope of “ability.”¹ As it will be explained in regard to the right of education in following sections, the penalty for such failure of such regulation is not serious.

Moreover, parents are allowed to apply corporal punishment within the “limits of chastisement”.² This issue that what is the exact scope of “limit of chastisement” is not defined. There is not agency in Iran’s legal system to protect children against excessive corporal punishments.³

Child support is an obligation which comes to existence right after the birth. At this stage, father and then grandfather and in case of lack of existence of them or their ability to pay, mother shall pay the child support.⁴

The right to administer children’s affairs including all financial affairs is granted to father and grandfather.⁵ Father and grandfather are considered as natural guardians.⁶ This right granted by the law (which is derived from *Sharia*) conflicts with the right of mother to maintain and raise children in case of divorce or dispute between parents. In such case, the guardianship of father and grandfather is preferred by Iran’s legal system and guardianship of mother is restricted to the age of 7 years old⁷ and it is only limited to

1. *Id.*, Article 1178.

2. *Id.*, Article 1179.

3. This part shall be expanded in the last section of this article (cultural obstacles)

4. Iran’s Civil Code, Article 1199.

5. *Id.*, Articles 1180 and 1183.

6. A child's parent which is the opposite of appointed guardian or legal guardian which are appointed by court or according to a will.

7. Iran’s Civil Code, Article 1169.

maintenance of the children and not administrating their essential (such as marriage)¹ and financial affairs. Therefore, in a family that father is insane or incapable of making proper decisions in regard to his children, their mother cannot make essential decisions for her children and only the grandfather can do so. Such rule might undermine protection of children's rights and result in child abuse.

It is obvious that protections which are granted under the Iran's Civil Code face two major problems. First the legislature has utilized vary vague and broad terms in defining rights of children and obligations of parents to their children and second the legislature has not defined any penalty for violating such rights and due to cultural and social matters, judges might have this tendency not to issue harsh verdicts against parents violating children's rights.

2. The law on Providing Educational Facilities and TOOLS for Iranian Children and Adolescents

The constitution of Iran states that “[t]he government must provide all citizens with free-education up to secondary school, and must expand free higher education to the extent required by the country for attaining self-sufficiency.” Before the Islamic Revolution, in July 1974 the law on Providing Educational Facilities and Tools for Iranian Children and Adolescents law was passed by the parliament. Article 2 of the law also provided for free education at primary and middle school and parents or their guardians were obliged to register them at schools. Implementation of this law was not fully possible and soon private sector started to administer educational services in Iran and receiving tuition fee became wide spreading. Article 4 of the law, provides for fines or even imprisonment for parents in case they ban their children from education.

As this law was passed more than 40 years ago, the courts have not resorted to this law frequently. Furthermore, the scope of this law is limited Iranian nationals and non-Iranian and refugees cannot resort to this law.

3. The Law on Criminal Procedure for Public and Revolutionary Courts

The new law on Criminal Procedure for Public and Revolutionary Court became enforceable in June 2015. The law provides some minimum rights for children in the judiciary. The law requires establishing particular police

1. *Id.*, Article 1143.

for¹ children and youth. The law also allows for NGO's protecting children's right to ask the prosecutor to initiate investigation for crimes against children.² They can also be present in all court session and they can appeal from court's decisions.³

Crimes investigation for children should be conducted by children and youth courts and police does not have authority to initiate such investigation.⁴ Juvenile's court shall rule of crimes which were committed by persons below full age of 18 years old according to *Shamsi* Calendar.⁵ Note 1 of Article 304 of the law defines children as persons under age of religious maturity.

As noted in previous sections, age of maturity is defined in Civil Code as full 9 years old for girls and full 15 years for boys according the *Hijri* calendar.⁶ Note to Article 304, however, expands the scope of jurisdiction Juvenile Courts to persons under age of 18. The note states that crimes shall be prosecuted under general rules and regulations. This does not mean that children under age of 18 are exempted from punishments. Only softer criminal procedure shall apply to them. The law provides for some protection for children at Juvenile Courts. Such protection include allowing attendance of guardian of the child at court hearings⁷ or holding court hearing without presence of youth and children committing crimes.⁸ As it will be explained in the next section, commitment of crimes under age of 18 and above the age Islamic maturity shall be prosecuted according to regular rules and regulations. This inconsistency in definition of age of maturity age, deriving from *Sharia* rules, has affected proper implementation of international standards in protecting, respecting and promoting rights of children.

1. Criminal Procedure for Public and Revolutionary Courts Law, Article 31. The police force is about to establish such force.

2. Criminal Procedure for Public and Revolutionary Courts Law, Article 66.

3. *Ibid.*

4. Criminal Procedure for Public and Revolutionary Courts Law, Article 285 notes 1 and 2.

5. Criminal Procedure for Public and Revolutionary Courts Law, Article 304.

6. Iran's Civil Code, Article 1210, Note 2.

7. Criminal Procedure for Public and Revolutionary Courts Law, Article 412

8. *Id.*, Article 414.

4. Islamic Penal Code

Islamic Penal code of Iran was revised by the Parliament and was approved by Council of Guardian in April 2013. The new Islamic Penal Code expressly states that there is no criminal responsibility for minors.¹ The law defines maturity age in compliance with *Sharia* regulations as full 9 years for girls and full 15 years for boys according to *Hijri* Calendar.

The new Penal Code, however, in some instances has not discriminated between genders for reducing the punishments and a gradual nature for punishment of crimes has been taken into consideration for persons committing crime under age of 18.

The punishment of crimes for persons under age of 18 has been categorized into two groups and different age brackets. These age groups are composed of 9-12, 12-15 and 15 to 18 without discrimination between genders. The following chart summarizes the new development in Islamic Penal Code to provide more protection to offenders under age of 18.

Age Groups	Crimes punishable with <i>Hadd</i> and <i>Qisas</i>	Crimes punishable with <i>Ta'zir</i>
9-12 (<i>Shamsi</i> Calendar)	-	The court can apply the following punishments: A. Delivering the offender to his parents or legal guardians and obtaining an obligatory note for chastisement and caring of the offender. (The court can also ask for social counselor or psychologist or send the offender to cultural and educational centers , take necessary steps for his addiction, etc); B. Delivering the offender with persons or legal entities in case of ineligibility of parents or guardians. C. Advising the offender by the court (Article 88)

1. Islamic Penal Code, Article 146.

Age Groups	Crimes punishable with <i>Hadd</i> and <i>Qisas</i>	Crimes punishable with <i>Ta'zir</i>
12-15 (<i>Hijri</i> Calendar)	The offender should be a minor and in that case the court provides for written notice and obtaining obligatory note from the offender not to repeat the crime and imprison in Juvenile prison from three months up to a year. (Note 1 to Article 88)	In addition to the above mentioned punishments, providing written notice and obtaining obligatory note from the offender not to repeat the crime and imprisonment in Juvenile prison from three months up to a year. (Note 1 to Article 88)
15-18 (<i>Shamsi</i> Calendar)	In crimes punishable with <i>Hadd</i> or <i>Qisas</i> , if an adult person under age of 18 does not understand the wrongdoing or there would be a doubt in his maturity or understanding of situation, punishments can be applied in accordance to punishments defined for minors which is maximum 5 years imprisonment. (Article 91)	Gradual punishment from 2 to 5 years imprisonment in, 1 to 3 years imprisonment, 3 months to one year imprisonment (all in juvenile court), fines and providing public services. (Article 89)

However, the law states that if a *minor* commits a crime which results in *Hadd* or *Qisas* punishment¹ and he is between ages of 12 to 15 according to

1. Punishments have been categorized into *Hadd*, *Qisas*, *Diah*, and *Ta'zir*. *Hadd* is a punishment which its causation, quality, quantity and its type have been defined in *Sharia* (Islamic Penal Code, Article 15). *Hadd* includes crimes such as sodomy [لواط], lesbianism [مساحقه], pimping [قوادى], sexual malicious accusations [قذف], intoxication [مستی], waging war against Allah and spreading corruption in the land

Hijri calendar, the court can imprison from three months up to a year or receive a written notice at judge's discretion.¹ For crimes, punishable by *Tazir*, which is committed by a person between ages of 15 to 18, imprisonment between three months up to five years or fines have been identified pursuant to seriousness of *Tazir* by the legislator.² The judge has this discretion to decrease the amount of punishment in accordance to report of Juvenile Court³ and in crimes punishable by *Tazir* the judge can also change the punishment to home arrest.⁴

One of the developments in Islamic Penal Code is Article 91 of the law. The article states that in crimes punishable with *Hadd* or *Qisas*, if an adult person under age of 18 does not understand the wrongdoing or there would be a doubt in his maturity or understanding of situation, punishments can be applied in accordance to punishments defined for minors which is maximum 5 years imprisonment. This means in order to reduce the punishment, crime offender under age of 18 and above age of *Islamic* maturity age has burden of proof. The court is allowed to obtain evidence for such claim from any source which it desires.⁵ However, this rule does not apply to punishment of *Diah* and a person above age of *Islamic* maturity age shall pay the *Diah* in full.⁶

As one can notice, the age of maturity has not changed in the law and inconsistency between use of *Hijri* and *Shamsi* Calendar leads to confusion and providing less protection for children in applying gradual punishment for person under age of 18.

of Allah [محرابه و افساد فى الارض] and theft [سرقت]. *Qisas* is a punishment for premeditated crimes against a person or his body (Islamic Penal Code, Article 16). *Diah* is a monetary punishment which has to be paid to the victim defined in *Sharia* for non-premeditated crime (Islamic Penal Code, Article 17). *Tazir* is a punishment for crimes which have not be defined in *Hadd*, *Qisas*, or *Diah*, but the legislator has defined punishment for violation of forbidden acts under *Sharia* (محرمات) or governmental orders and rules.

1. Islamic Penal Code, Article 88, Note 2.

2. *Id.*, Article 89.

3. *Id.*, Article 90

4. *Id.*, Article 91.

5. *Id.*, Article 91, Note.

6. *Id.*, Article 92.

Other than crimes committed by minors as discussed above, the Islamic Penal Code has not provided specific protections for crimes against children and adolescence for child abuse. Furthermore, it is clear that there exists inconsistencies in age of maturity in Islamic Penal Code and this is a serious obstacle to promote children's rights.

5. Protection of Family ACT

The Protection of Family Act was passed on 27 February 2013 to establish Family Court in the Judiciary. Lack of existence of family courts and judges specialized in family law disputes was a serious challenge in protecting children's rights. Regarding children's rights, the Act mainly discusses the issue of guardianship.¹ The important development about this Act is introduction of "Best Interest of the Child" to Iran's legal system. Article 45 of the Act provides that interest of children and youth shall be observed by courts and enforcement authorities in all decisions. As noted above, the scope of this act is very limited in children's rights and it is only limited to matter of guardianship. Therefore, application of this article to all other matters other than guardianship might not be accepted by courts.

6. Protection of Children and Adolescents Act

The term "child abuse" as a civil crime for the first time was used in the Protection of Children and Adolescents Act of December 2002.² After almost a decade after accession of Iran to Convention on the Rights of the Child in 1991, this law was passed on 16 December 2002 and was ratified by the Council of Guardian on 1 January 2003. The protection under this law was granted to all individuals below the age of 18.³ The law specifically prohibits "any kinds of abuse leading to physical, mental or moral damage to the child endangering their physical or mental health"⁴ as well as "any kind of trading, selling or exploitation of children for the commitment of criminal actions such as smuggling is prohibited."⁵

The law also expands its scope to neglecting mental and physical health and wellbeing of the child or preventing the child from their education. This

1. Articles 40-47 of Protection of Family Act
2. Protection of Children and Adolescents Act, Article 5
3. *Id.*, Article 1.
4. *Id.*, Article 2.
5. *Id.*, Article 3.

crime can be sentenced to 3 months and a day to 6 months of imprisonment or to payment of up to ten million Rials.¹ All individuals, institutes or centers responsible for providing care to children who witness a case of child abuse are obliged by this law to report the case to the judicial sources in charge of legal follow-up and decision making.²

The law also determines punishment of imprisonment from 6 months to a year, or payment of ten to twenty million Rials fine for committing any kind of trading, selling or exploitation of children for the commitment of criminal actions such as smuggling.³

The law specifically excludes corporal punishments by parents under Article 1179 of Iran's Civil Code and Article 59 of the Islamic Penal Code of 1991 from the scope of this law.⁴ Therefore, parents can apply corporal punishment against their children within "limits of chastisement".⁵ Paragraph 1 of Article 59 of the Islamic Penal Code of 1991 states that "the acts committed by parents and legal guardians of minors and insane people in order to chastise or protect them provided that chastisement and protection are exercised within the customary limit" shall not be considered as crime. As noted in previous section, this issue that what constitutes "limit of chastisement" is not defined and there is no special agency in Iran's legal system to protect children against excessive corporal punishments.⁶ Utilizing Utilizing of such vague and broad notion by the legislator is in contradiction with promoting, protecting and enhancing the rights of children.

Article 8 of the law notes that should the crimes subject to this law be included in other legal laws, or be subject to a higher (more) punishments by another law, based on the case, the punishment enshrined by the *Sharia* or the most severe punishment shall be applied.

As explained in Islamic Penal Code section, the concept of child abuse was not defined in Islamic Penal Code. And therefore, only crimes which are subject to *Hadd* or *Qisas* or *Diah* might have more serious punishments. As

1. *Id.*, Article 4.

2. *Id.*, Article 6.

3. *Id.*, Article 3.

4. *Id.*, Article 7.

5. Iran's Civil Code, Article 1179.

6. This part shall be expanded in the last section of this article (cultural obstacles).

child abuse has not been defined in Islamic Penal Code and its scope is much broader than crimes subjects to *Hadd* or *Qisas* or *Diah*, more protection of children's rights against child abuse is needed. One should keep in mind that the penalty determined under the Protection of Children and Adolescents Act is a maximum sentence up to a year of imprisonment or payment of 20 million Rials.¹

There are also other laws granting limited protection to children. For instance Labor Act, approved by The Expediency Discernment Council, in Article 79 prohibits employment under age of 15 years old² or some protection shall also be granted to young workers between ages of 15 and 18 years old.³ The Law on Protection of Women and Children without Guardian also passed in November 1992 and provided limited protection for children without guardians. Boys under age of 15 years old and girls who are not married are under protection of this law.⁴ The protection granted under the law is in regard to financial, social and cultural support including educational or consulting assistance.⁵

Relevant International Conventions

Direct implementation of international conventions within a legal system is one of the most fascinating subjects of law. This section discusses the status of relevant international conventions in Iran's legal system and it examines the hierarchy and applicability of such international conventions by the Judiciary.

1. International Conventions Having Force of the Law

Principle 77 of the Constitution of Iran provides that "international treaties, protocols, contracts, and agreements must be approved by the Islamic Consultative Assembly [Parliament]." The Constitution does not mention the hierarchy of international treaties and local laws. However, it requires the Executive branch to submit the signed international treaties,

1. 20 Million Rials equal to \$600 to \$700 USD.

2. This shall be calculated according to *Shamsi* Calendar.

3. Labor Law, Articles 80-84 (providing medical examinations, or requiring 30 minutes less work or prohibition of hard and excessive works and etc.).

4. The Law on Protection of Women and Children without Guardians, Article 2, Note 1.

5. *Id.*, Article 4.

protocols, contracts, and agreements to the Parliament for approval. Article 9 of Iran's Civil Code states that: "treaty stipulations which have been concluded between the Iranian Government and other government in accordance with the Constitution shall have the force of law." This means that those conventions and treaties after approval of the Parliament shall have the same effects as laws or regulations passed by the Parliament. It is essential to discuss this matter that what happens when a convention obtains "the force of the law." In such case the convention become the law of the land and it should be enforced by the Judiciary in legal system of Iran. As the "self – executing" mechanism does not exist in Iran's legal system, such approval by the Parliament makes international conventions and treaties applicable within Iran.

Before the Revolution, Iran has joined the International Covenant on Civil and Political Rights¹ in June 1975. The Covenant requires member states to protect children against discrimination and grant them "the right to such measures of protection as is required by his status as a minor, on the part of his family, society and the State".² Iran has also acceded to International Covenant on Economic, Social, and Cultural Rights³ in June 1975. The Covenant has is still in force in Iran's legal system. Similar to International Covenant on Civil and Political Rights, paragraph 3 of the Covenant states that: "Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law."

1. United Nations General Assembly, Resolution2200A (XXI) (adopted and opened for signature, ratification 16 December 1966 and entry into force 23 March 1976).

2. United Nations General Assembly, International Covenant on Civil and Political Rights (16 December 1966, United Nations, Treaty Series, Vol.999 p.171), Article 24.

3. United Nations General Assembly, Resolution2200A (XXI) (adopted and opened for signature, ratification 16 December 1966 and entry into force 3 January 1976).

Iran has acceded to the Convention on the Rights of the Child¹ in 1991 and in March 1994 the Convention was approved by the Parliament. Iran is also a party to Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (approved by the Parliament on 31 July 2007 and ratified by Council of Guardian on 8 August 2007).²

Now we have to answer this question whether in lack of conflict between domestic laws and international conventions or in case of silence of domestic law whether a judge can implement the international standard set out in the international convention which is approved by the Parliament?

Theoretically, the conventions which have been approved by the Parliament have the “force of law” and it can be applied like any local law in courts. However, in order to analyze force of law of international organization in a legal system, one should examine the substance of obligations of member states in international conventions, the reservations made by member states and common practice in one legal system. In analyzing the substance and content of obligations, one should take into considerations the following factors:

- Whether the obligation under the international convention is procedural or substantive;
- Whether the obligation under the international convention has been defined broadly and vaguely or in details and it is designed to be implemented directly by member states;
- Whether there is a common practice to directly implement content of an international treaty without having local laws.

Therefore, if a commitment under an international convention is defined vaguely or broadly and no sanctions have been designed for violating such rights and such practice is not common to implement those conventions, the implementation of such commitment directly within a legal system is not practical.

1. Convention on the Rights of the Child, United Nations General Assembly, Resolution 44/55 (entry into force on 2 September 1990).

2. United Nations General Assembly, Resolution A/RES/54/263 (25 May 2000 and entry into force on 18 January 2002).

Theoretically, international conventions approved by the Parliament can be applied directly within Iran's legal system. However, pragmatically, insufficiency of knowledge of international law of judges and contesting parties, lack of existence of common procedure to directly implement those conventions as well as cultural and social factors (*Sharia*, education, social environment and etc.), which will be discussed, have made the direct implementation of those conventions almost impossible.

Challenges to Implement Convention on the Rights of the Child (CRC) in Iran's legal system

Now it is necessary to examine implementation of the Convention on the Rights of the Child in Iran's legal system. As noted above, Iran acceded to the Convention in 1991 and in March 1994 the Convention was approved by the Parliament. The Board of Ministers of Iran appointed the Ministry of Justice as the National Body for the Convention (NBCRC) in January 2010.¹ NBCRC has established four working groups (Monitoring and Controlling Working Group, Legal and Judicial Working Group, Training and Information Working Group and Protection and Coordination Working Group).

It is essential to examine the reservations made by Iran as an impediment to implement the Convention. Such reservations were objected by different member states. Iran upon ratification of the Convention made the following reservation: "The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect."²

1. Islamic Republic of Iran, the Third Periodic Report on the Convention on the Rights of the Child (1 March 2013). Available at: http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-IRN-3_en.pdf (last visited 27/09/2013).

2. United Nations Treaty Collections, Chapter IV Human Rights, Conventions on the Rights of the Child, Reservations. Available at: http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-11&chapter=4&lang=en#EndDec (last visited 27/09/2015); Upon signature of the Convention, Iran also made the following reservation: "[t]he Islamic Republic of Iran is making reservation to the articles and provisions which may be contrary to the Islamic Shariah, and preserves the right to make such particular declaration, upon its ratification".

Many governments including Australia, Denmark and Italy objected to Iran's reservation. For Instance government of Denmark noted that "because of their unlimited scope and undefined character these reservations are incompatible with the object and purpose of the Convention and accordingly inadmissible and without effect under international law. It is the opinion of the Government of Denmark that no time limit applies to objections against reservations, which are inadmissible under international law."¹

Such conflict between *Sharia* and the convention has been reflected in definition of age of maturity. For the purposes of the Convention, Article 1 defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." As discussed earlier, the Civil Code of Iran defines age of maturity as full 9 years for girls and full 15 years according the *Hijri* calendar.² This means that civil and criminal liability of a child initiates long before age of 18 years old. However, as discussed in the New Islamic Penal Code some considerations were taking into account when a judge applies punishment to children under age of 18 in case of *Hadd*, *Qisas*, *Diah* and Ta'zir. The legislator due to existing international pressures and realizing the fact that it is necessary to increase the age of maturity in various acts have tried to increase the age of maturity from 9 and 15 years old in according to *Hijri* calendar to full 18 years old pursuant to (Solar) *Shamsi* Calendar.³ Nonetheless, the Parliament

1. United Nations Treaty Collections, Chapter IV Human Rights, Conventions on the Rights of the Child, Reservations. Available at: http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en#EndDec (last visited 27/09/2015); The Government of Australia in objection to Iran's reservation noted that "Austria could not consider the reservation made by the Islamic Republic of Iran as admissible under the regime of article 51 of the [said Convention] and article 19 of the Vienna Convention on the Law of Treaties unless Iran, by providing additional information or through subsequent practice, ensures that the reservation is compatible with the provisions essential for the implementation of the object and purpose of the [said Convention].", id.

2. Iran's Civil Code, Article 1210, note 2.

3. For instance see Article 84 of Labor Law (1990) [limiting the age of working in harsh work environment to 18]; See also Article 220 Note 1 of Criminal Procedure for Public and Revolutionary Courts (1999) [establishing Juvenile Courts for

was not able to change the age of criminal and civil liability to age of 18. Even in regard to age of marriage, after various amendments, finally the Expediency Discernment Council was able to increase the age of marriage to full 13 years old for girls and full 15 years old for boys according to *Shamsi* Calendar. Before that age, the marriage is subject to the permission of her guardian, provided that her expediency observed by the competent court.

In few instances, the Parliament was able to expand scope of protection children's rights under age of 18 years old or to take into consideration factors that might reduce punishments for minors. This procedure has been objected by the Council of Guardian in many instances and only in matters which were not significant; the Parliament was able to grant more protection to children under age of 18.

This discrepancy in defining age of maturity in Iran's legal system is one of the most important obstacles for protection of children's rights.

General principle underlined in Articles 2 of the Convention on non-discrimination against children is reflected in Principle 20 of the Constitution of Iran. The Principle states that "[a]ll citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria."

Article 2 of the Convention expressly emphasizes that non-discrimination shall be applied to "to *each child within their jurisdiction* without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." Issue of illegal immigrant from neighboring countries and persons without nationality have jeopardized implementation of non-discriminatory behavior under the Convention. In Iran, many illegal immigrants live without proper documentations and they face serious problems in obtaining education, insurance and social security and even litigating before courts to sue for their rights. Furthermore, the non-discriminatory treatment shall be applied regardless of the sex of children. However, defining different age of maturity for girls and boys is an obvious example of such discrimination.

persons under age of 18); See Article 1 of Protection of Children and Adolescence Act (2002) [applying the protection to children under age of 18].

Taking into account the “the best interests of the child” as expressed in Article 3 of the Convention is an important obligation which shall be observed by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. As noted in previous section, the best interest of the child is connected not only to legal protections granted by the law, but also to the cultural and social factors. The issue of determination of maturity age in marriage or criminal responsibility is an obvious example of not taking into account the best interest of the child.

The bill on Protection of Youth and Adolescents

The bill on Protection of Youth and Adolescents (PCA bill) was introduced by Ministry of Justice and was passed by the Board of Ministers on 31 July 2011. This bill was proposed to Legal and Justice Commissions as well as Training and Research – Social – Health Care and Remedy and Cultural Commissions to be examined and passed by the Parliament on 19 November 2011.

Due to existing deficiency in Iran’s legal system to protect children against child abuse and to implement international standards, the bill was proposed to the parliament. The PCA bills pays more attention to victims of child abuse and provide more protection to children who are at risk or victims or witness of crimes and includes any person who is under age of 18 regardless of its sex, nationality and etc.¹

Article one defines key terms introduced in the Bill. Maltreatment is defined as any voluntary act or omission which endangers physical or psychological, social and moral health of the child which includes abuse, imprisonment, sexual abuse, insult and threat and put the child in harsh and non-common environment. The Article also defines exploitation, trading, prostitution, pornography and even dangerous situations.²

1. PCA Bill, Article 2.

2. See Article 3 for more expansion of the scope of dangerous situations which includes lack of guardianship or failure in performing legal obligations toward the children; Affliction of either of the parents or legal guardians to any diseases, behavioral, mental and personality disorders or contagious incurable bodily diseases; imprisonment or their harmful addiction to alcoholic drinks, narcotics drugs or gambling; pimping or establishing prostitution centers by either of the parents or legal guardians or being public known for their ethical corruption and prostitution;

The bill also establishes Protection Units under supervision of public prosecutor in Judiciary system for cooperation with other governmental braches and conducting research and supervision implementation of the law.¹ The bill has expanded the scope of crimes for child abuse. Neglect of parents in providing educational facilities (fine and/or imprisonment)²; Threatening, inducing or contemplating children or adolescence from running away from home or school (fine and/or imprisonment)³; neglecting children which results in death, deficiency or any damages to children(imprisonment and fine)⁴; committing illicit acts which are not subject to *Hadd* punishment (imprisonment) and if it results in physical and physiological damages both imprisonment and *Diah*⁵; Making obscene materials available to children (imprisonment or fine)⁶; exploitation or trading of children and youth (imprisonment)⁷; trafficking, transferring and buying and selling body organs (imprisonment and *Qisas*)⁸; educating, assisting, forcing, inducing a child to suicide (*Qisas*, *Diah* and imprisonment and fine)⁹; Marriage with children without observing Article 1041 or 1043 of the Iran's Civil Code (*Diah* and imprisonment)¹⁰; not informing authorities with knowledge of commitment of crime against children without having any danger against himself or others (fine)¹¹; disclosure of identification of victims of crime through media or distribution of pictures or film (fine and/or

continuous aggression of parents and guardians or other family member against each other; neglecting registration of birth and birth certificate without justification; depriving children from education; abandonment of a child as well as separation which leads to abandonment and etc.

1. *Id.*, Article 4.

2. *Id.*, Article 7.

3. *Id.*, Article 8.

4. *Id.*, Article 9.

5. *Id.*, Article 10.

6. *Id.*, Article 11.

7. *Id.*, Article 12.

8. *Id.*, Article 13.

9. *Id.*, Article 14.

10. *Id.*, Article 15.

11. *Id.*, Article 16.

imprisonment)¹; utilizing children and youth in committing or crimes or facilitating or educating or inducing to commit crime and etc. (fine and imprisonment)². The bill also sets out punishment for authorities and legal entities.³

Judicial protection has also been introduced in the new bill which includes Juvenile and preferably assignment of female judges and involvement of social workers in the legal process.⁴ After almost a year, the bill has not been passed by the Parliament yet.

Inconsistency in Legislative Apparatus and Cultural and Social Factors as the Main Obstacles

Inconsistency in legislative process in Iran is also a serious challenge to promote and protect children's rights. In order to explain this issue, it is necessary to explain legislation process in Iran.

All laws and regulation shall be passed by the Parliament as a proposed bill.⁵ Followed by, pursuant to Principles 4 and 91 of the Constitution of Iran, the proposed bill passed by the parliament must be approved by the Council of Guardian⁶ and Signed by the President before coming effective.⁷ effective.⁷

The Guardian Council must review the proposed bill within a maximum of ten days from its receipt with a view to ensuring its compatibility with the

1. *Id.*, Article 17.

2. *Id.*, Article 18.

3. *Id.*, Articles 19-20.

4. *Id.*, Articles 24-46.

5. Iran's Constitution, Article 125 (“[t]he President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organizations, after obtaining the approval of the Islamic Consultative Assembly”).

6. *Id.*, Arts. 4 and 91.

7. *Id.*, Article 123 (“[t]he President is obliged to sign legislation approved by the Assembly or the result of a referendum, after the legal procedures have been completed and it has been communicated to him. After signing, he must forward it to the responsible authorities for implementation”).

criteria of *Sharia* and the Constitution.¹ If the Council finds the legislation incompatible, then it will return it to the Assembly for review. Otherwise the legislation will be deemed enforceable.²

The main objective of Guardian Council of the Constitution is “to safeguard the Islamic ordinances and the Constitution” and “to examine the compatibility of the legislation passed by [the Parliament] with Islam.”³ The composition of the Council is as follows:

1. Six Islamic Faqih (experts in Islamic law) who are conscious of the present needs and the issues of the day, to be selected by the Leader;

2. Six jurists, specializing in different areas of law, to be elected by the Islamic Consultative Assembly from among the Muslim jurists nominated by the Head of the Judicial Power.⁴

If the Parliament does not observe Council of Guardian’s point of view, then the matter shall be referred to the Expediency Discernment Council. Pursuant to Principle 112 of Iran’s Constitution, the Expediency Discernment Council shall meet at any time the Council of Guardian decides that a proposed bill of the Parliament to be against the principles of *Sharia* or the Constitution, and the Parliament is 'unable to meet the expectations of the Council of Guardian. The permanent and temporary members of this Council shall be appointed by the Supreme Leader. This Council was created to solve the conflict between the Parliament and Council of Guardian.

As noted before, *Sharia* does not support few international standards set out in international conventions and treaties such as increase of age of maturity and non-discriminatory treatment of both genders, expanding responsibility of guardians and providing more guardian rights to mother of a child, increase the age of marriage for minors, acceptance of moral damages for minors and etc. The PCA bill, to a great extent, reflects obligations under the Convention on the Rights of the Child. Such inconsistency between Islamic values and those international standards are among main challenges to pass the PCA bill and to comply with obligations

1. *Id.*, Article 94.

2. *Id.*

3. *Id.*, Article 91.

4. *Id.*

under the Convention for the Rights of the Child. As understood, legislation structure of Iran's legal system is not flexible toward such development.

Implementation of international standards set out in the Convention on the Rights of the Child faces serious challenges such as cultural and social impediments. A law cannot be implemented successfully in a legal system, unless cultural values support implementation of such law. "Existence of variant cultures and cultural and ethnic sensitivities", "the dispersion of villages", "immensity of the country and shortage of immediate resources" are among challenges undermining successful implementation of the Convention on the Rights of the Child.¹ One of the best example of social factors as an impediment to implement the Convention is issue of corporal punishment for the purpose of chastisement. Many parents might still confuse the notion of chastisement with child abuse. Some factors including the lack of adequate education among parents about the limits of chastisement, along with the absence of a competent agency to punish violations of children's rights; have contributed to expansion of child abuse in Iran.

Navid Rahbar

Conclusion

Protection of children's rights will not be fulfilled without full support of legislative, executive and judiciary power in a domestic legal system. Lack of integrity in domestic legal system along with social and cultural factors can seriously jeopardize protection of children's rights. However, this should not stop our legal society including lawyers, judges, academic environment from utilizing existing laws and regulations in favor of children. Legal society has this obligation to interpret current rules and regulations in a manner that fully protect best interest of children in Iran. Compliance with international standards and enforcement of conventions in domestic legal system can be one of those solutions. As noted above, one also should consider social and cultural factors in interpreting and implementing laws and regulations protecting children's rights. Therefore, education of children's rights to families and legal societies is a key to fully protect children's rights.

1. Islamic Republic of Iran, the Third Periodic Report on the Convention on the Rights of the Child (1 March 2013). Available at: http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-IRN-3_en.pdf (last visited 27/09/2013), p.7.

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