



RESEARCH PAPER

Violation of Convention on the Rights of Children (CRC) in United States of America

¹Ammara Khanam ²Shazia Hassan* ³Tajwar Waseem Khan

1. Lecturer, The Institute of Legal Studies, (TILS) Lahore, Punjab, Pakistan
2. Lecturer, The Institute of Legal Studies (TILS), Lahore, Punjab, Pakistan
3. Lecturer, The Institute of Legal Studies, (TILS) Lahore, Punjab, Pakistan

***Corresponding Author** shaziahassan@tils.edu.pk

ABSTRACT

This study critically analysis the contents of Convention on the Rights of Children (CRC) and their violations in United States of America. The prevalent child rights violations in the USA include early marriage, low education attainment, risk of domestic and sexual violence are all interlinked to early child marriage and child rights violations. For the purpose of exploring the research question, the researchers reviewed mainly the case laws and the research work available on the subject. The methodology of the research is secondary. After diving deep into the subject and analysis of the literature the researchers came out with result that USA is violating the contents of CRC that must be discouraged and cured by following certain parameters. Policy and decision-making, leadership, and reforms should be addressed in order to guarantee child rights violations to be undermined

Keywords: Convention on the Rights of Children (CRC), Human Rights Watch (HRW), Rights of Children, Violations

Introduction

Millions of children are compelled to serve as soldiers in armed conflicts, work long hours in challenging conditions, frequently abused by the people who are supposed to care for them and do not have access to quality education in United States of America. Juveniles endure inhumane conditions and assaults on their dignity while living in institutions or detention centers. According to United Nations (UN) declaration on the rights of children Principle 4 states that every child should be protected, provided the medical services, and enjoy the benefit of social security. There are various organizations working for the Convention on the Rights of Children (CRC), including Human Rights Watch (HRW) which is the focus of the study working under the wing of United Nations.

According to Human Right Watch under federal law of USA among 39 states, teenagers who did not possess the right to vote, take drugs or to serve on a jury are considered as adults and are resultantly sentence to life without parole. A juvenile is considered to be handed a death sentence if they are convicted of life without parole. To convict juveniles with life sentence is unfair if they do not get the chance of parole as it fails to provide security to victims. It has confused the distinctive meaning between adults and children, their observation and medical reports could be distorted. In the USA many of the issues covered by the Convention on Rights of child (CRC) are left on to the states, not the federal government, and vary greatly from state to state. Mississippi, Wyoming, Oklahoma, Georgia, and Washington are few states with the worst level of children rights violations. In 43 states of USA, child marriage has been permitted. Within years of 2000-2018, more than million children some young at even 10 years of age in the USA has been married. Afterwards the first state of USA which prohibited child marriage was Delaware and Massachusetts was the seventh state which declared minimum age for marriage at 18 years.

Prevalent Child Rights Violations in the USA

The prevalent child rights violations in the USA include early marriage, low education attainment, risk of domestic and sexual violence are all interlinked to early child marriage and child rights violations. In 16 states, corporal punishment in child detention facilities is still legal. It has been discovered that corporal punishment is not only harmful to a child's development but also ineffective in changing child's behavior. Despite the CRC's strict prohibition, the USA remains only nation that imprisons children under the age of 18 with life sentence without giving them the possibility of parole. People more than 14,000 were serving life sentences without parole in the beginning of 2020 for the crimes they committed as children, some as young as 13 years. From 14% of the youth population in the USA, Black individuals account for 62% among those who are serving life sentence without parole for the offences committed as children. As per international standards for children's rights, no child should be prosecuted like an adult. However, approximately 53,000 juveniles are prosecuted to adult courts each year in the USA. 28 states of USA has any age limits to moving minors to adult courts and no individual state precludes attempting juveniles in adult courts. Not an individual USA state precludes prosecuting juveniles in adult courts, and just 28 states have any age limits on moving minors to adult courts. States of USA like Colorado, Nebraska, Maryland, California, and Massachusetts give the baseline for age limits more than ten years.

For crimes committed before the age of 18 years, the USA remains the only nation to enforce life sentences with no possibility of parole. Such juvenile sentencing is against accepted norms of CRC, including several other treaties which USA is also a part of. HRW argues that international practice, public opinion, or treaty obligations support invalidating all the juvenile life sentencing. They are of the view that although 8th amendment is governed by International Law, the Court must take into account contemporary standards of decency while practicing it as a matter of constitutional law of USA. As a result, amici believe that international law and the practice regarding the life sentence for juvenile offenders are particularly pertinent for reconsideration.

Human Rights Watch (HRW). Human Rights Watch (HRW) is working under UN which protects the privileges of juveniles in 100 nations around the world including the USA, protecting the rights of juveniles, creating awareness, handle different forms of abuse, and obtain justice. Children in different states of USA encounter the issues like racism, inequality of rights, psychological problems and other various issues. Due to Covid-19 they have been facing financial issues as well. Due to HRW they are raising the issues of human rights violations pertaining to children and protecting their rights and providing them a security and freedom to lead a healthy life. Rights of Juveniles in USA are not perverse which violates Article-2 of Convention on the Rights of the Child (CRC).

Human Rights Watch is considered as one of the most active and socially participating non-governmental organization and have a proper research and developmental teams for the issues like child rights violations. It also provides maximum facts and reports which are necessary to use as evidences for making recommendations to bring workable outcomes of the raised issues and also most importantly secure the lives of affected victims. Their paper work and report analysis is considered as effective and is also detailed to understand the facts. Each and every step is strictly monitored and statute performance is followed with the acknowledgement of designated persons. In cases of *Miller v. Alabama* and *Jackson v. Arkansas*, HRW has joined 25 organizations in submitting amicus curiae to the USA Supreme Court

Human Rights Watch incorporate the morals such as compassion along with the goals provided by Criminal Justice System of the USA such as rehabilitation in juvenile courts. To create a criminal free society rehabilitation is preferred and remarkably

significant. Juveniles in rehabilitation center get free education, prevented from criminal activities, taught moral values, and have the access to the basic necessities of life.

Literature Review

According to the report in state of California the judgement was passed on 301 minors for life imprisonment, however they were not sentenced to death because Supreme Court of USA declared it unlawful to give capital punishment to minors in 2005. The minors who committed the offences were not given any rights pertaining to freedom of speech or to have the right of parole. The judgement which was passed remained unchangeable.

One cannot overstate the advantages of parole. It is abundantly clear that the procedure followed by parole ultimately results in safer communities and result in lower levels of crime in society. The primary objective of parole programs is to try to correct juvenile behavior before they become adults. It works well because it is easy to influence a child's behavior than an adult's behavior. This indicates that the number of criminal activities will also decrease if the potential criminals are greatly reduced while they are still young. A community with fewer violent crimes is safer than one with more violent crimes. Subsequently juvenile parole greatly aids in the development and maintenance of a safer community.

In the case of *Graham v. Florida*, the defendant attempted to rob and committed armed burglary with assault while he was 16 years old. He pleaded guilty to the charges, even though he was a juvenile but was charged as an adult. He was later found guilty of violating the terms of his probation and given the maximum punishment of life sentence without no possibility of parole. Due to this, he could not be freed except through executive clemency. As a juvenile who did not commit or intend to commit homicide, the defendant explained that the life sentence with no option to parole was unjust, cruel and unusual sanction.

In *Miller v. Alabama*, a 14 years old was found guilty of murder in both of the underlying cases and given a mandatory life sentence with no possibility to parole. Sentences by high courts were upheld in Alabama and Arkansas but Supreme Court ruled against it. 8th Amendment of the USA constitution prohibits condemning a plan that commands life in prison with no probability to parole especially offenders who are juveniles. Sentencing is different for children and adults because of the constitutional purposes. Minor's recklessness, impulsivity, and careless risk-taking behaviors are a result of their lack of maturity and sense of irresponsibility. They lack the ability to escape horrific, violent environments and are more susceptible to negative influences. The actions of children are not proof of irreparable depravity. To prevent sentencing court as penalty schemes for juveniles and determining sentence for a juvenile seems appropriate. Sentence for life without parole like death sentences also call for individualized sentencing. The states' Court presented its arguments this way to decide whether to try defendant juvenile as an adult; courts and prosecutors adequately take into account his/her age, background, and the circumstances of his/her crime. There are numerous states who are employing necessary transfer systems or delegate decision-making to prosecutors rather than courts.

To provide the equality, justice and dignity to all the juveniles Human Rights Watch has been working worldwide. From the investigation of HRW to differentiate the challenges of juvenile justice system worldwide, they found the children were detained sometimes with adults and sometimes for no offense committed in USA. Effective alternatives to imprisonment that has been utilized by different nations includes: day treatment, parental release with activity restrictions, or shelter care in small group homes. HRW discovered that state authorities deprived children of their liberty arbitrarily and illegally in a variety of nations, including Brazil, Bulgaria, Guatemala, India, Kenya, and Rwanda. Additionally, state authorities failed to provide juveniles with fair hearings. Even though the number of violent

juvenile offenders decreased in other parts of the world, the United States' sentencing trend of imprisoning children continued. USA's Federal Bureau of Investigation (FBI) statistics showed that less than 5% of juvenile arrests in 1996 were for violent offenses. The majority of states in the USA continued to incarcerate a large number of children for non-violent offenses, despite the fact that the percentage of violent juvenile offenders decreased. It has been demonstrated that incarceration is more expensive than using community placements and is less effective at reducing future delinquency among juveniles. The National Council on Crime and Delinquency found that less than 14% of young inmates in 28 states of juvenile correction centers were being held for serious violent crimes. The report in 1995 regarding Juvenile Justice office and Delinquency Prevention of the US Department of Justice highlighted that more than 8% of all juvenile detainees were held for status offenses, which are acts that won't be considered as crimes if committed by adults.

Convention on the Rights of Child (CRC) has also been violated due to imposed global crises like Covid-19 pandemic restrictions which somehow limited the workings of organization i.e., Human Rights Watch. Due to the lockdown imposed by pandemic, the precautionary measures taken had severe consequences on the rights of children. The concerned rights of children violations revolved around right to liberty and right to thought and expression, to education, physical and mental health, protection, social security, and to live in violence free environment inclusive of right to play. As children were confined to their houses and juveniles were restricted to their detention centers: homes and detention centers became overly crowded which further accelerated the spread of Covid-19. The reported events included physical assaults, mental and physical torture, and discrimination targeted minors in the USA. The systematic investigation reported on distress caused by children rights violations Covid-19 pandemic. Investigation agreed that vulnerable groups are very likely to experience mental distress during global crises like Covid-19 pandemic. Juveniles, low-income individuals, and psychiatric patients, who were more likely to self-harm and suffer from mental health issues struggled the most during Covid-19 imposed restrictions.

Human Rights Watch focused on the limited access of information provided to the people regarding the spread of Covid-19 further caused harm by putting the lives of minors in danger towards Covid-19. Furthermore, the vulnerable population like women and children experienced various kinds of abuse during Covid-19 imposed lockdowns. Juveniles were exposed to the harsh conditions where the accessibility decreased and they were restricted to their cells. Additionally, the consequences of the violations gave rise to developmental retardations among children, the learning gap, growth impairments and other related issues. Raised risk factors for child rights violations also pushed children into exploitative situations where they were indulged into child labor in order to support themselves especially while living in detention centers. HRW was also unable to take into account the forced sexual abuse experienced by juveniles while detained in detention centers and child trafficking which has been a major concern during pandemic.

Human Rights Watch elaborated the action taken by higher officer of UN on the rapid spread of Covid-19 and called for immediate action to stop its spread from rampaging through detention facilities which also held juveniles. One of the highest rates of Covid-19 infection in the world is found at Ohio's Marion Correctional Institute in the USA. Nearly half of the children held at a juvenile detention center facility in similar state tested positive. To stop the dispersion of Covid-19, the restrictions were placed on detention centers to help protect juveniles from the virus, whilst enforced restrictions frequently had other negative effects. Children were detained to their cells for at least 23 hours a day and were prohibited from having face-to-face family contact in many facilities. The kind of isolation due Covid-19 resembled solitary confinement.

UN experts believed that confinement for more than 15 days which is solitary in nature for adults and that it should be completely outlawed for juveniles. Simultaneously,

almost all educational programs were suspended in the USA. Judge in the state of Maryland in the USA instructed the courts which are local in order to look for an alternatives for child detention centers for juveniles. Additionally to examine the orders given for detention centers after every 2 weeks during Covid-19 times. The recommendations made by health authorities include children must have access to proper hygienic and sanitary conditions and medical services even if imprisoned. They should also have access to sufficient room so that social distancing can be enabled along with that Covid-19 screening can be done. Respect for interdependence and indivisibility of every child's right should be given significance and comprehensive and uniform national approach must be taken by the juvenile justice system of the USA.

Conclusion

Human Rights Watch uses research findings related to violations of children rights and discuss with the officials of UN and state members of the USA which effects policy on different range of platforms, and advocate for the necessary actions on human rights crises. The mission of HRW is to guarantee that considerations of the human rights remain at the center of the various debates, branches, and mechanisms of the UN, in accordance with the Human Rights up Front framework.

Human Rights Watch works with the members of General Assembly, the Security Council, the Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR), and other key departments of UN Secretariat. They advocate for child rights protection, responsibility for violations one in the past, and the measure taken to prevent future violations. HRW uses media coverage gained from published reports to hold people accountable who violate human rights and for reform purposes. The rights to early abortions, child labor, war crimes, and child trafficking are among the organization related causes like protection of children rights. HRW objectives related to children rights rests on provision of education to children, sanitary environment in detention centers, secure and protected environment, social security, skill development by using preventive and therapeutic measures. Human Rights Watch also offers online submissions outlining key issues that should be taken into consideration with the support of the Convention on the Rights of the Child's decision in order to draft a General Comment regarding the rights of children in the digital world.

Keeping in view the above discussion, the responsibility of the Human Rights Watch in protecting the Convention of Rights of Child in the USA is vital and some loopholes can be addressed by using research findings from the work by HRW. The organization has adopted different remedial measures to protect the life of juvenile offenders by eliminating corporeal punishments for juveniles in the USA. Additional rehabilitation centers and detention centers developed by the USA to provide the guidance to delinquent children further requires legal aid especially for juveniles and the favorable opportunities within the centers. CRC has illustrated the protection and security of children due to which child trafficking, sexual abuse, and child labor has reduced in which HRW played significant role within the USA.

Policy and decision-making, leadership, and reforms should be addressed in order to guarantee child rights violations to be undermined. The USA can work on the establishment of juvenile justice system which is based on children rights in order to prevent the violations of rights of children and to promote child's sense of worth and to preserve their dignity. The juvenile system should be able to respect the age of juvenile along with their developmental stages and rights to meaningful contribution to society. These are ways in which national and local legislation, policy makers, and practitioners fully reflect the principles and provisions postulated by of the Convention on the Rights of the Child (CRC) and the rules in juvenile justice system set by the UN. Additionally, every child should receive information related to their rights and the establishment of relevant

procedures should be done from the time of initial contact with the Criminal Justice System and are additionally reminded of their duties in order to obey the law. HRW is providing academic scholarship and started the campaign in different countries including USA. For example, HRW demanded the prime minister of Greece to conduct the campaign for unsanitary conditions in detention centers for juveniles.

In order to protect children rights, HRW put forth the guidelines that each nation should make individual efforts in order to protect the children rights, including the USA. The New York state appointed a legal caretaker/guardian for taking care of children who belonged to low socio-economic status and must be living away from parents due to parents being Covid-19 positive. Differential aids, relief and economic security programs were added to mitigate the children rights violations including juveniles. HRW ensured the sufficient availability of facilities pertaining to health, goods and services provided to juveniles in detention centers irrespective of their gender or race. During the times of global crises like Covid-19, closure to academic institutions led to the disruptive learning and education of many students. The issue was handled by ensuring children have their routine and emotional support to cope with sudden change from physical education to online education. Students were provided with material to aid their online education. With low income families, the HRW ensure all children were given the basic life necessities along with education.

The USA government also incorporated 24 hours online consultation and helplines were established to provide support regarding mental health. The issues like child abuse and exploitation, domestic and sexual violence are also addressed. The state government of the USA presently provides guidelines in detail related to video conferences and the system allows the anonymous online reporting of crime which assist in different forms of abuse reporting. Additionally, the federal government of USA has given 24 hours hotline service for reporting the domestic violence and services like live-chat for the situations in which the perpetrator also reside with the victims: which further facilitate the issues pertaining to the reporting of abuse. The attempts to secure the rights of children are still in progress in the USA for civil society and juveniles. Though it requires strict attention and it should be a significant part of governmental plan in reaction to and for Covid-19 recovery so that the mitigation plans must be executed.

In order to effectively address the child rights violations and to prevent them in future. Remedial measures must be effective so that child rights violations is minimized in USA. Victims and their legal representatives must have access to legal remedial measures. Therefore, the implementation of the Convention on the Rights of the Child (CRC) by USA must be in cooperated effectively. Impact of CRC on national jurisprudence constitutes two ways to assess the extent to which the right to a remedy has been realized. Remedial measures should include a variety of preventative measures that address the root causes to prevent further violence. The two strategies includes: preventative approach and a therapeutic or rehabilitation approach. In preventive approach, the factors that lead to delinquency are addressed and in therapeutic approach, juveniles are assisted in becoming part of society again. Preventive measures forms and motivates a group of organizations working on preventative projects including HRW. Resultantly, these measures establishes child guidance clinics to provide children who are delinquent in their behavior and educate the family as well. Enhance the social settings for children living in slums, and bustling markets, etc to stop them from criminal activities. Furthermore, predictive testing in schools for assessing potential offenders and treating them appropriately. In order to prevent children from becoming delinquent as a result of economic exigencies the issues of beggary and poverty must be eliminated or controlled from the society, and the general economic standards of the population must be raised.

The rehabilitation strategies are not designed to retaliate against the offender or punish them. The strategy aims to provide delinquent children with appropriate guidance

and instruction so that they can get access to the life of normal children and never engage in delinquent behavior again. 13 Juvenile Rehabilitation (JR) used a treatment and individual management model that is based on competencies. Throughout the duration of the juvenile's stay in the JR continuum of care, the model emphasized on working on accountability, skill development, and assessment of skills. As the minors returned to their home communities, JR specified the interventions for each individual in residential care and for their families.

Juvenile Rehabilitation established the Integrated Treatment Model (ITM) group which was tasked with creating a Cognitive Behavioral Treatment (CBT) based techniques and research-based treatment models. The group worked onto generalize and maintain positive changes among children. To ensure the progress of intervention plans and adhere to the model, clinical consultation system was created. The model has been tailored for use in both residential and community settings within juvenile justice continuum of care. Motivational techniques has been used and engagement of both youth and families were assessed. Psychological treatment models has been used as remedial measures for juveniles like Integrated Treatment Assessment (ITA), Family Therapy, Substance Use Disorder, and Aggression Replacement Training (ART).

The United States of America must also stop imposing life sentences with no possibility of parole on juvenile offenders. Human Rights Watch specifically suggests to federal government to eliminate the death penalty for juveniles accused of breaking federal laws. They require the state to cease the life with no parole sentences for juvenile offenders before federal government provides funding for programs of states under the Juvenile Justice System and the Delinquency Prevention Act. Human Rights Watch put forward recommendations for states and federal correction departments that while allocating cells within correctional facilities, the mental and physical maturity of incarcerated juvenile offenders must be taken into account and addressed accordingly. In addition to this, facilities like social and mental health services must be provided to assist juvenile offenders in coping with their lengthy sentences and adjusting to prison conditions. They should be provided education, allowed to visit their families, opportunities must be provided to build character and skill building.

References

- Calvin, E. (2015, July 7). *When I Die. . .They'll Send Me Home.* Human Rights Watch. <https://www.hrw.org/report/2012/03/01/when-i-die-theyll-send-me-home/youth-sentenced-life-prison-without-parole> 560 US 48, 130 S Ct 2011 (2010), 567 U.S. 460
- Carl, T. (2005). *International Implications of the United States Ratifying the CRC*, presentation by, Save the Children,
- Committee on the Rights of the Child, (2003). *General Measures of Implementation of the Convention on the Rights of the Child*, UN Doc. No. CRC/GC/2003/5 (2003), para. 39, 65
- Dubey, S., Biswas, P., Ghosh, R., Chatterjee, S., Dubey, M. J., & Chatterjee, S. (2020), Psychosocial impact of COVID-19. *Diabetes Metab Syndr Clin Res Rev.* 14:779–88. doi: 10.1016/j.dsx.2020.05.035
- Lawrence, A., Andrew, S. Hammond & Scott M. Thompson. (2010). *U.S. Ratification of the CRC and Reducing Child Poverty*, Child Welfare League of America, Ed. 89, 5
- Moitra, M., Rahman M., Collins P., Gohar F., Weaver M., Kinuthia J. (2020). Mental Health Consequences of Health care Workers in the context of COVID-19: a scoping review to draw lessons for LMICs and fragile settings. *Front Psychiatry.*
- OHCHR. (2010). *Convention on the Rights of the Child.* <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
- Rehman, U., Shah Nawaz, M. G., Khan, N. H., Kharshiing, K. D., Khursheed, M., & Gupta, K. (2020). Depression, anxiety and stress among Indians in times of covid-19 lockdown. *Community Mental Health J.* 1–7. doi: 10.1007/s10597-020-00664-x
- U. N. (1989). *Convention on the Rights of the Child.* United Nations, Treaty Series, 1577.
- Xie, X., Xue, Q., Zhou, Y., Zhu, K., Liu, Q., & Zhang, J. (2020). Mental health status among children in home confinement during the coronavirus disease 2019 outbreak in Hubei Province, China. *JAMA Pediatr.* 174:898–900. doi: 10.1001/jamapediatrics.2020.1619
- Zhou, S. J. Zhang, L. G., Wang, L. L., Guo, Z. C., Wang, J. Q. Chen, J. C. (2020). Prevalence and socio-demographic correlates of psychological health problems in Chinese adolescents during the outbreak of COVID-19. *Eur Child Adolesc Psychiatry.* 29:749–58. doi: 10.1007/s00787-020-01541-4