The Role Of International Humanitarian Law In Context Of Children In Afghanistan

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ABSTRACT

The problems that children face in Afghanistan, the state of the justice system there, and the role of international humanitarian law in protecting children in armed conflict are discussed in this paper. It also looks at a unique structure in Afghanistan, known as 'Bacha posh.' The challenges that children face as a result of conflict, their incarceration, their access to education, and the plight of children separated from their families are all addressed in this article.

KEY WORDS

International Humanitarian Law, Children of Afghanistan, Bacha posh, ICRC, Conventions

INTRODUCTION

“Afghanistan is place of wild beauty and also a place of extreme cruelty”

International Humanitarian Law is a branch of International Law which seeks to limit the effects of armed conflict by protecting persons who are not participating in hostilities, and by restricting and regulating the means and methods of warfare available to combatants. Afghanistan is a country which is facing various conflicts during the past 35 years. The armed conflict in Afghanistan affected the population of the country. Around one million people were killed and more than two million of them were physically and psychologically damaged. Combatants have shown a lack of sufficient concern for sparing and protecting the lives and property of Afghans not involved in the fighting and for minimizing the impact of the war on the civilian population. In most cases, women and children who were not at all a part of the war became the victims. Children in Afghanistan faced serious issues like poverty, lack of Government services and corruption, child marriage, honour killings of girls, health problems, drugs addiction, they were not allowed to get education especially for girls, etc. International Humanitarian Law had played a vital role in protecting and safeguarding the rights of children who are innocent and unaware of the war and its consequences.
International Humanitarian Law: meaning

International Humanitarian Law is part of international Law, which is the body of rules governing relations between states. International Law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. International Humanitarian Law is part of international law, which is the body of rules governing relations between states. It also applies to armed conflicts.

The situation in Afghanistan

Widespread conflicts are taking place all over the districts and villages of Afghanistan. The Afghan population has been facing this problem for the past 35 years and most of them lost their life and others lived as half dead. The wars changed the country, destructed and damaged it by all means which resulted over 5 million of its population became the Refugees and displaced persons. Innocent Afghans became the victims during war, as they were not given the respect as provided in International Humanitarian law. They were subjected to torture and inhuman treatments. Children in Afghan faced a number of issues like poverty, lack of Government service and corruption, low levels of Birth registration, child marriage, honour killings of girls, health problems and drug addiction, restricted access to education especially for girls and secondary level, sexual exploitation (the and abuse including the traditional practices of bad (offering a girl in payment of an offense) and bacha bazi tradition of dressing young boys as girls and using them in dancing ceremonies, often with sexual undertones); child labour and economic exploitation; child trafficking, and forced recruitment and use by armed groups.

The detention of children has raised and doubled in the year 2008 to 2014. More than 196 boys were detained in Juvenile Rehabilitation centres charging various offences against tem like charges related to national security, alleged association with armed groups etc.

According to a report by UNICEF, Afghanistan is the “worst place to be born in the world”. The children in Afghan are subjected to extreme poverty and violence. They are facing various problems.


Problems Faced by Afghan Children

1) **Poverty**

Afghanistan is the poorest country in the world as per UN statistics. 46% of the Afghan population are living below the poverty line, 370 per year will be the Gross National Income per citizen. If we compare it with the earnings of a teacher or Judge in our country, they are earning 50 dollars per month. Thus we can imagine the situation of the face of poverty in Afghan. Due to this very less income, children are not able to get sufficient food which leads to poverty.

2) **Health**

Since the economic condition is weak in Afghan, and poverty is ruling them, obviously the health condition of children will be pathetic for sure. Child mortality rate is high in Afghan when compared to other countries. Also as per international records, life expectancy at birth is also considered to be the lowest in Afghan. Another shocking report is that out of 8 mothers, 1 dies during delivery as most of the delivery is taking place in the home itself. Afghan women are not allowed to go out for hospital purpose. As the delivery takes place in home, they will not be getting proper medical assistance and dies. 87% of the birth takes place in mother’s home itself and 35% of the newborns are underweight. Hospitals are very less in Afghanistan and if anyone is in need of any hospital assistance, they have to travel across hundreds of kilometers. Lack of equipment and training is also another draw back in medical field. Thus the health facility is also poor in Afghan which will seriously affect the health of children.

3) **Education**

Unfortunately, Schools in Afghan, especially girls school are the subjects of serious terrorist attacks. Even the abolition of Taliban had made a way to school for Afghan children, developments have to be made in ensuring security of children and projecting their right to education. Only 28% of the Adult population is literate and only 60% of Afghan children are sent to school. Another issue is that schools are not having the basic infrastructure to provide education to the children.

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4) Child Labour
In the economic structure of an Afghan family, child plays an important role. Child’s economic contribution means a lot to them. Since they follow patriarchal system, Afghan women are not allowed to go out even for hospital cases and thus they are not allowed to go out to work also. So the only earnings will be from the side of men and that will not be sufficient to run a family. Thus they depend on children even if they are too young, they are forced to work outside their homes. The family depends upon the income of children even if it means child is left begging on the streets. Around 20% of children are expected to work in streets for themselves and for taking care of their families. They are forced work on the streets in summer as well as in winter in which the temperature rise upto 40 degree C in summer and which may fall into -20 degree C in winter, which results in serious diseases and affects their health conditions. Child labour like street vendors, water carriers, cardboard collectors, shoe polishers, taxi solicitors, domestic servants, assistance in boutiques, are the kind of jobs done by Afghan children 6.

4) Violence and exploitation
Violence and exploitation are common in Afghan especially on children. Most of the children are facing sexual abuse. Sexual abuses are happening beyond expectations. More than 1500 cases are reporting each year and no complaints are made to the police authorities or courts due to political influences. Around 250 children were killed in 2009 terrorist attack. Mostly young Afghans are made victims of violence 7.

5) Child soldiers.
Children were brain washed and forced to join in terrorist groups and national police. They were given training to handling weapons, and finally they were forced to sent to war. Under Tliban regime, thosanda of children under the age of 18 were recruited to the terrorist groups. Even child at the age of 6 were recruited as suicide bombers. Fortunately, the Government had taken steps to stop recruiting children as child soldiers by signing an agreement with United Nations to stop the recruitment of children into the national police 8.

6 Child Labour available at: https://www.dol.gov/agencies/ilab/resources/reports/child-labor/afghanistan, Last visited on 26th September 2020


8 Child soldiers available at: natoassociation.ca/a-special-report-on-child-soldiers-in-afghanistan/, Last visited on 27th September 2020
6) **The orphaned child**

   The number of orphan children increased in Afghan due as a result of armed conflict which damaged the country. When the children loses their parents, they are taken up by the members of family or certain others in village. Only a few children are left without adopting since Afghan culture is mainly based on Muslim culture, its an obligation to help children in need. But unfortunately, some adoptive parents treat them as slaves and even they discriminate between their children and the adopted children and also they were not given proper education. Children were forced to work for their adoptive families as a gratitude. A national protection for the children had already been launched to improve the situation.  

7) **Disabled children**

   As a result of various land mines, which are unable to recognize, resulted in regular accidents and due to the unexpected blasts of the mines, children are handicapped. It is very difficult to find out such sites which are hiding mines. Number of awareness programs and land mine clearance programs have been conducted by the Government and other NGO’s with aim of releasing the Afghan soil from land mines.

8) **Child Marriages**

   Child marriages are one of the major problems faced by children of Afghan. Girls are the major victims of this practice. As per the reports and interviews, about 40% of young women got married before the age of 18. Child marriage will also create serious health issues to the young women as they will not be capable to handle the early pregnancy.

9) **Right to identity**

   Since most of the birth takes place in the home itself, only 6% of the birth are officially recorded in Afghanistan. As a result of this, Afghan children does not have official identity and nationality. Thus they are invisible in the eyes of society.  
   
   Thus these are the main problems faced by Afghan children

   Afghans are by nature warriors. Afghan was never conquered or colonized. In 1979, Russia invaded Afghanistan and that war lasts for decades. 10 years later Russians were defeated by Afghan Mujahideen. Thus they got out from Russian control. But then the mujahideen commanders turned

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10 Ibid

each other and Afghanistan turned into a civil war. As a result, 6 million people were killed. Next came Taliban promoting peace and stability. But they supported Bin Laden and Al Qaeda which created another war. All these wars seriously affected Afghan people. Afghanistan is the 4th poorest country in the world. 10 million anti-personal mines were ready to explode. Another tragic situation is that every month at least 20 children reach in emergency hospital in Kabul seeking medical assistance for mine explosions. Most of them lost their legs and hands and 600 thousand children were killed by mines. Kabul is the place in which the only hospital with ICU for the whole country. Afghan children go to garbage areas which led them to sickness and serious stomach aches and due to the lack of money and medical assistance, the children die. Girls help their mothers in homes while the boys have to work outside the homes in extreme cold weather. If a woman loses her father or husband, she is also forced to beg in streets. No reliable electricity or proper drainage system or clean surroundings for the Afghan people. Due to the continuous wars children became orphans and life in orphanage is also harsh but when compared to others at least they get hot meals daily. By Afghan standards, being orphan makes them lucky one.

**Judicial system and Juvenile Justice in Afghanistan**

The Judicial framework for children in Afghanistan is very strong. But its implementation is weak. The attitude by the police towards girls and boys is a major challenge in the country. Major crimes and minor offences are not differentiated in Afghan criminal law. There is no alternative to prison for a child offender even though Penal Code for persons under the age of 18 is there which was adopted in the year 2005. There is no difference between major and minor crimes.

**From Fear to Hope: A Story of an Afghan Girl in Conflict with Law**

“My first few days in the Juvenile Rehabilitation Center were the most scary time of my life. I didn’t knew anyone. I didn’t know who to trust. I was lost and my head was swirling with so many thoughts…of the worst things that could happen to a child who had violated the law.” Mina was admitted to the Juvenile Rehabilitation Centre in the first week of April 2014. Her alleged involvement in an illicit relationship was both controversial and challenging for War Child UK social workers. She was found one morning with a man inside her room in her uncle’s house. However, for Mina’s social worker, Rahima, it was like many cases - the result of the absence of social protection mechanisms for young girls. Rahima’s role was to prepare Mina’s case file, to meet with the Multi-Disciplinary Team and then to follow up on Mina’s further care recommendations including a Social

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Inquiry Report. While Rahima handled Mina’s case, she provided monthly counselling sessions with a focus on problem solving, coping with stress and social stigma and building resilience. She also assessed the progress in Mina’s case, and ensured Mina’s reintegration into her family. Mina stayed at the Juvenile Rehabilitation Centre for only three months and this short duration was attributed to the skillful development of her Social Inquiry Report by Rahima, which the judge considered to be factual and comprehensive and with data doublechecked for credibility. By first week of July 2014, Mina was freed. She is now 18 and happily engaged, has her own beauty parlour in her husband’s home and works part time in a beauty salon.

International law plays an important role in protecting the rights of children in Afghanistan

**BACHA POSH- She is my son**

Women are not at all free in Afghan.No personal freedom is available to them.Women to follow strict rules until the end of the day.Bacha Posh is associated with female children who were dressed like males if there is no male children in families.A father who is not having a boy child is called” mada posh”,the most shameful nick name that can be given to a man.Being changing female child to a male child,they are forced to work as a boy, like selling water,collecting plastics,begging in streets etc.Some girls when they grew up,changes their identity by wearing male costumes by themselves eventhough they are having male children in their families only for enjoying the boys rights.

International Humanitarian Law by various organs had played an important role in supporting children.A brief analysis of activities of such organs;

**Role of ICRC**

It is an international Humanitarian organisaation.Initially it concentrated on the wounded soldiers but now it covers almost all areas of warfare.ICRC was established in the year 1864 at the Geneva Convention in Switzerland and has been recognized s a non-combatant organization in international laws of war through the Geneva convention mandates.Geneva convention established the red cross and red crescent emblems as protected,non-combatants entities during warfare.It is the oldest and most honoured organization and also one of the most widely recognized organization in the world.The official mission statement says that The International Committee of the Red Cross(ICRC) is an impartial,neutral,and independent organization whose independently humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. ICRC have played a major role in protectinf and helping the children.
1) Reuniting children with families
ICRC helps in finding the near relatives of children of conflict. Due to the sudden attacks of war, children are separated from their families and they will be in danger without finding their family members. Here ICRC plays a vital role in searching for next of kin and reuniting families.

2) Tracing missing persons and promoting respect for the right to education
During war, people will be scattered out of fear and threat. Families will be separated in war threat and finding them is really a difficult task. ICRC plays an important role here to find the missing persons and also providing the children with proper education.

3) They makes effort for the release of children
Children who were found from the war place will be taken by ICRC and they will be released accordingly to their families.

4) Food aid, storage and distribution of food
ICRC also plays a vital role in providing food and storage of food and distributing the food items to those who are in need.

5) Construction of shelters

6) Distribution of blankets and clothing

7) Health care and health maintenance

8) Disease prevention

9) Provision of drinking water
Availability of drinking water is also another problem faced by the people. ICRC provides drinking water to those in need.

**Role of United Nations Conventions on the Rights of the Child**

The Government of Afghanistan ratified the UN CRC in 1994 thereby made a progress over the past 15 years. The main aim of this convention is to improve the health condition and education of children. It also played an important role in the welfare of children.
1) UNICEF helps in protecting children from practices such as child marriage.

Girls were not allowed to study or go out of their home. Young girls were forced to marry due to the patriarchal system prevailing. Thus UNICEF helps in protecting children from practices such as child marriage.

2) Domestic abuse

Children are facing serious abuses in their homes. They are forced to remain in home and not allowed to go to schools instead they are facing abuses in their homes. UNICEF helps in protecting and preventing children from domestic abuses.

3) Child labour

UNICEF plays an important role in protecting children from child labour.

**UNCRC-The United Nations Convention On the Right of Child.**

It is the most widely ratified international human rights treaty and complete statement of children’s rights. There are 54 Articles for the protection of children and Optional protocols like;

1) Optional Protocol on the involvement of children in armed conflict.

This protocol is for increasing the age of children from 15 to join in armed conflicts and also children below the age of 18 are not allowed to take direct part in armed conflicts.

2) Optional protocols on a communications procedure

This allows the children to submit complaints to the United Nations if their rights are violated.

**Role of Geneva convention on the rights of children**

Among the Geneva conventions, The fourth Geneva convention plays an important role for the protection of civilian persons in time of war. It was adopted in the year 1950. The first three conventions focused on combatants. But the fourth Geneva convention is exclusively for the humanitarian protection for the civilians in war zones. It specifically talks about the children in war zones.

Some of the provisions for children are;

1) General protection of Children, as member of Civilian population.

2) Special protection of children as members of civilian population.

3) Right to care and Aid

4) The child and his family

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16 Ibid
5) The cultural environment of the child
6) The education of children
7) The personal rights of the child
8) Respect of preferential treatment for children
9) Arrested, detained or interned children
10) Orphaned or separated children
11) Children taking part in hostilities, etc.

Thus international Humanitarian Law plays an important role in treating and protecting the children as well as elders in Afghan as well as all over the world.

CONCLUSION

International Humanitarian Law is really a blessing to the world and also especially for children in armed conflicts. When looking into the history of Afghan war, Afghan children cannot remember a time when wars were not being forced Afghan soil. Even though the wars are a part of their life, they actually don’t know the reason why the wars happened. They only know that they have been born in a country where people cannot live with peace. Misery, poverty and never ending conflicts were part of their life. In the words of Afghan children, war is usual, they attack and kill each other. Wars made their life horrible, they lost their families, they were thrown as orphans. They are living in slum areas without proper sanitation facilities, without a roof for their homes, in extreme cold weather begging in streets with bare foot, no shoes, no sandals, no bread. But still there are children who wanted to study, become a doctor to treat people. They also need good playgrounds instead of sinking mud in which if the play, they will fell down for sure. As a child they also need toys to play but no money to buy a toy. In their little minds, they are comparing them with other children living in other countries with clean streets, good house, nice parks to play and facilities for education. Thus to fulfill their dreams and protecting them from warfare, and maintaining peace, International Humanitarian Law plays an important role.