

Challenges to Safeguard Basic Needs, Education and Health of Children: A Comparative Analysis of UNCRC 1989 and Islamic Law

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United Nations Conventions of the Rights of the Child 1989 is the most important on the child rights at present. It is an established fact that nearly all the countries had ratified it. Analyzing eye shows that basic needs i.e. nutrition, housing and clothing, education and health have got the status of necessity of life nowadays, especially for children because they are almost unable to live without these requirements. So, these are considered the major causes of harm and danger to children lives. In presence of this convention, it is an established fact that these problems do not come to an end, instead they increase day by day. So, this works as challenge for the convention. Moreover, it shows that there are some deficiencies in the convention that's why the situation of child comes more severe gradually all over the world. Thus, need is to explore these deficiencies. Islamic law is a complete code of life. Therefore, it is need of the time to identify its principle and rules for protection of child rights especially for their basic needs education and health because it is ready to assist the international community for better care of children. This article is a comparison and analysis of these two systems with the hope that it may help to protect the children.

Keywords: Child Rights, UNCRC 1989, Islāmic Law, Human Rights

United Nations Convention on the Rights of the Child 1989(1)

Although there are many international documents that contain children rights; UNCRC 1989 is a child specific international convention concerning rights of the children. It tells their rights in an inclusive and in depth manner. Further, it is more binding on the state parties than other international documents; a thing makes it different from others. UN General Assembly adopted UNCRC in Resolution 25 session 44 and opened it for signature on November 20, 1989. After ratification of UNCRC 1989 by twenty nations; the required number, it came into force on September 2, 1990. At present, every member of the United Nations has ratified the convention except United States which signed but not ratified the convention.⁽²⁾

There are three optional protocols to UNCRC. First is on involvement of children in armed conflict. It was adopted on May 25, 2000 and came into force on 12 February, 2002.⁽³⁾ The second is on sale of children, child prostitution and child pornography. It was adopted on May 25, 2000 also and came into force on January 18, 2002.⁽⁴⁾ The third is on communication procedure. It was adopted on December 19, 2011 and came into force on April 14, 2014.⁽⁵⁾

Further, UNCRC is an international human right document which gives a task to NGO's to watch the performance in its implementation.⁽⁶⁾ So, all the

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states that ratified the convention are bound to implement it. Importantly, the Committee on the Rights of the Child was established as supervising authority to have a look on the proper implementation of UNCRC by the states parties. This committee is composed of 18 independent experts from several states in the world. Accordingly, the states parties are required to submit reports on progress in the area of child rights in their respective countries. This report, at the first time, should be submitted within two years of UNCRC entering into force in the context of the concerned state. Thereafter, the reports should be submitted every five years. The reports then reviewed by the said monitoring Committee in its regular sessions. After the judgment of progress made by the states parties in achieving the goals of UNCRC and its optional protocols, the Committee, if needed, suggests and recommends the concerned state and the General Assembly on how to meet the objectives of the Convention. Finally, the Committee presents a report to the Third Committee of the UN General Assembly that hears a report from CRC chair. After all this, a proper resolution on the rights of the child may be adopted by the General Assembly.⁽⁷⁾

Islāmic Law, Human Rights and Children

As far Islāmic Law is concerned, it is claimed that Islāmic is complete code of life. A question arises here about the status of human being in Islām. The answer is that Islām granted complete respect and dignity to the human beings. They have been declared as vicegerent by Allāh Almighty. Moreover, all the creatures in the universe have been subjected for human beings. Following verses of Holy Qur'ān are the evidences:

"وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا".⁽⁸⁾

"We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of Our creation."⁽⁹⁾

"وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً..."⁽¹⁰⁾

"Behold, Thy Lord said to the angels: "I will create a vicegerent on earth..."⁽¹¹⁾

"وَسَخَّرَ لَكُم مَّا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ جَمِيعًا مِنْهُ، إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ".⁽¹²⁾

"And He has subjected to you, As from him, all that is In the heavens and on earth: Behold, In that are Signs indeed for those who reflect."⁽¹³⁾

As far children, they are considered gift from Allāh Almighty and source for inner satisfaction. It is important that while emphasizing to regard the elders, the Prophet (PBUH) instigates for treating children in a good way with kindness. They are considered as extension of the humankind and the Prophet (PBUH) encouraged the extension. Following are the evidences for that:

"وَاللَّهُ جَعَلَ لَكُم مِّنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُم مِّنْ أَزْوَاجِكُمْ بَيْنَ وَحَفْدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ ، أَقْبِلِ الْبَاطِلَ يُؤْمِنُونَ وَبِنِعْمَتِ اللَّهِ هُمْ يَكْفُرُونَ".⁽¹⁴⁾

“And Allah has made for you mates (and companions) of your nature, and made for you, out of them, sons and daughters and grandchildren, and for you sustenance of the best: will They then believe In vain things, and be for Allah’s favours?”.⁽¹⁵⁾

"لَيْسَ مِنَّا مَنْ لَمْ يَرْحَمْ صَغِيرَتَنَا ، وَيُوقِرْ كَبِيرَنَا"⁽¹⁶⁾

“He, who does not have mercy for our young ones and respect for our old ones, is not from among us.”

"تزوجوا الودود الولود فإني مكاثر بكم الأنبياء يوم القيامة"⁽¹⁷⁾

“Marry a more affectionate and fertile. I will be pride of your (large number) before the Prophets on the Day of Judgment.”

An important aspect in Islāmic Law is the special status given to female child. Actually, most of the people in pre-Islāmic era used to treat female child with hatred even they bury them alive. Islam condemned this practice of those people and joined their killing with the prohibition of the *Shirk* in a verse of Holy Qur’ān. Instead, Islām enhanced the dignity and respect of the female child. Following are the evidences of this talk:

"وَإِذَا بُشِّرَ أَحَدُهُم بِالْأُنْثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًّا وَهُوَ كَظِيمٌ. يَتَوَارَىٰ مِنَ الْقَوْمِ مِنْ سُوءِ مَا بُشِّرَبِهِ، أَيُمْسِكُهُ عَلَىٰ هُونٍ أَمْ يَدُسُّهُ فِي التُّرَابِ، أَلَا سَاءَ مَا يَحْكُمُونَ"⁽¹⁸⁾

“When news is brought to one of them, of (the birth of) a female (child), His face darkens, and He is filled with inward grief! With Shame does He hide Himself from His people, because of the bad news He has had! shall He retain it on (sufferance and) contempt, or bury it In the dust? Ah! what an evil (choice) They decide on?”.⁽¹⁹⁾

"قُلْ تَعَالَوْا أَنُلِّ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ أَلَا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا، وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِمَّنْ إِمْلَاقَ نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ..."⁽²⁰⁾

“Say: "Come, I will rehearse what Allah hath (really) prohibited you from": join not anything As equal with him; be good to your parents; kill not your Children on a plea of want;- we provide sustenance for you and for them..."⁽²¹⁾

"من عال جارتين حتى تبلغا ، جاء يوم القيامة أنا وهو وضم أصابعه"⁽²²⁾

“He, who brought up two girls - properly - till they grew up, he and I would come - very closely - on the Day of Judgment, and he interlaced his fingers”.

Basic Needs (Nutrition, Clothing and Housing)

A well standard of living is significant for healthy development of the children in all phases of life. In this regard, different studies identify the worst conditions. For instance, a study done by the United Nations observed that in Bangladesh, 2 millions of the children are facing the lack of proper nutrition. The main reason stated was the connection between lack of proper nutrition and starving households with excessive percentage of wasting children. It is said about Bangladesh that “the situation of malnutrition in this country is a silent

emergency”⁽²³⁾ stated by the UNICEF representative Carel De Rooy. Much severely, approximately 50% of the children between 6 months to 2 years of age in Bangladesh were not receiving lowest food frequency.⁽²⁴⁾ On the other hand, the governments of Kenya reports that Kenya’s children are facing more from lack of nutrition and ailment with starvation than ever before.⁽²⁵⁾

Children all over the world, particularly in the developing countries are suffering from like conditions. In fact, these circumstances work as lope holes for child exploitations and abuses of different kinds because some people avail opportunity of children’s hunger and malnutrition to exploit them. As a result, children become prey of their conditions; leave their homes for jobs to earn livelihood. Some are forced to engage in crimes, particularly in prostitution. So, it is important to take care and fulfill needs of children; otherwise, lasting problems begin in the society.

In this regard, UNCRC says:

- “1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.”⁽²⁶⁾

According to article No. 27 Child has a right to promote from satisfactory level of living. This means to meet up mental and physical growth of children. This level of living would also include nutrition, clothing and housing. Further, UNCRC steps to the issue of responsibility of expenses because all these facilities cannot be otherwise extended to the children. The primary responsible person in this regard is the parents and then someone else. They should properly maintain them and afford the expenses of their adequate standard of living, obviously, within their financial capacities. According to Article 18 of the UNCRC, parents and then the legal guardians have the primary responsibility for the upbringing and development of the child but if they are economically and financially incapable, then the state should help them in providing this right to their children which may include the material assistance and support programs.

Following this, we see that several countries introduced different schemes with different criteria and rules to pay allowances for children. These schemes are sometimes called as family allowances or child benefit. For example, the eldest child in the United Kingdom is paid £20.70 per week and the other children are paid £13.70 per child.⁽²⁷⁾

Coming to Islāmic Law, it recognizes children's right of breast-feeding from birth to two years and the responsibility in this regard rests with mother. To guard right of child in this regard, Islām further provides in case of divorce or due to any other reason where someone other than the mother fosters the child, the father is liable to supply basis of life like clothes and food to the fostering woman. He is also responsible to compensate the fostering mother if so needed. Obviously, this is subject to detailed rules and regulations stipulated by Islāmic Law.⁽²⁸⁾ This right is also recognized by the Covenant of the Rights of the Child in Islam.⁽²⁹⁾ Although the period of suckling ends at two years of age as it is clear from the coming verse, the child continues with the right to proper nutrition to the satisfactory level because this is essential for child's adequate development and constant development. For this reason; Islām persuades to spend on children. Holy Qur'ān says:

"وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ، وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ، لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعُهَا، لَا تُضَارُّ وَالِدَةُ بَوْلِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ، وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ، فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا، وَإِنْ أَرَدْتُمْ أَنْ تَسْرَضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ، وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ." (30)

"The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. but He shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be Treated unfairly on account of Her child. Nor father on account of His child, an heir shall be chargeable In the same way. if They both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. if ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. but fear Allah and know that Allah sees well what ye do."⁽³¹⁾

The Prophet (PBUH) said:

عَنْ عَائِشَةَ أَنَّهَا قَالَتْ : جَاءَتْنِي مِسْكِينَةٌ تَحْمِلُ ابْنَتَيْنِ لَهَا فَأَطْعَمْتُهَا ثَلَاثَ تَمَرَاتٍ فَأَعْطَتْ كُلَّ وَاحِدَةٍ مِنْهُمَا تَمْرَةً وَرَفَعَتْ إِلَيَّ فِيهَا تَمْرَةً لِتَأْكُلَهَا فَاسْتَطَعْتُهَا ابْنَتَاهَا فَشَقَّتِ التَّمْرَةَ الَّتِي كَانَتْ تُرِيدُ أَنْ تَأْكُلَهَا بَيْنَهُمَا فَأَعْجَبَنِي شَأْنُهَا فَذَكَرْتُ الَّذِي صَنَعْتُ لِرَسُولِ اللَّهِ -صلى الله عليه وسلم- فَقَالَ : إِنَّ اللَّهَ قَدْ أَوْجَبَ لَهَا بِهَا الْجَنَّةَ أَوْ أَعْتَقَهَا بِهَا مِنَ النَّارِ.⁽³²⁾

“Ā'ishah (RAA) reported: “A poor woman came to me carrying her two daughters. I gave her three dates. She gave a date to each

of them and then she took up one date and brought that to her mouth in order to eat that, but her daughters expressed desire to eat it. She then divided the date that she intended to eat between them. This – kind - treatment of her impressed me and I mentioned her act to Allāh's Messenger (PBUH). Thereupon he said: Verily Allāh has assured Paradise for her, because of (this act) of her, or He has rescued her from Hell-Fire.”

"دِينَارٌ أَنْفَقْتَهُ فِي سَبِيلِ اللَّهِ وَدِينَارٌ أَنْفَقْتَهُ فِي رَقَبَةٍ وَدِينَارٌ تَصَدَّقْتَ بِهِ عَلَى مِسْكِينٍ وَدِينَارٌ أَنْفَقْتَهُ عَلَى أَهْلِكَ أَعْظَمُهَا أَجْرًا الَّذِي أَنْفَقْتَهُ عَلَى أَهْلِكَ".⁽³³⁾

“Of the *Dīnār* you spent for the sake of Allāh – in Allāh’s path - and *dīnār* you spent to set free a slave, and *dīnār* you spent in charity for needy, and *dīnār* you spent on your family, the one yielding the greatest reward is that which you spent on your family.”

Right of children to nutrition, clothing and housing is specifically recognized by Principle No. 6 of Declaration on the Rights and Care of the Child in Islām.⁽³⁴⁾ Moreover, looking into history of Islāmic state, we see that it was paying a sort of allowance to the children at the time of ‘Umar Bin Al-Khaṭṭāb (RAA).⁽³⁵⁾

Education

The reality is that children are future of their nations. If they are well brought up, they may contribute to make future of their nations. No one can deny that valuable education which develops child’s physical and mental capabilities is the basic and essential ingredient of child’s bringing up. Therefore, children should have approach to education because it is the only component that constructs children behavior and develops them for the human dignity. Furthermore, it is the education that shields the children from increased threats around them like poverty, diseases, exploitation and abuses.

UNCRC says:

- “1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.”⁽³⁶⁾

UNCRC places high consideration on education. The children according to UNCRC have the right to good quality education without discrimination especially with regard to primary education. It should be made free and compulsory. UNCRC emphasized on the wealthy countries to assist the developing countries in achieving this goal. The reason is that the people in developing countries suffer from poverty which affects the right of education because the poor parents send their children to earn the livelihood instead of sending their children getting education. In fact, education looks like a big problem especially in those countries.

This convention instigates for free and compulsory primary education. All the costs in this connection must be borne by the state. As for secondary and higher education, they must also be accessible to all. This would include both general and vocational education. As far as the technical and scientific education, they should be assisted too. The states parties should offer scholarships in this regard according to their abilities.

It is good that different states aimed for free primary education. For instance, Mabel Agyemang; the judge of High Court in Swaziland,⁽³⁷⁾ has ordered the government for compliance with their constitution by offering primary education as free. His order was:

“I make a declaration that every Swazi child of whatever grade attending primary school is entitled to education free of charge at no cost and no requirement of any contribution of any such child regarding tuition, supply of text books and all inputs that ensure access to education”.⁽³⁸⁾

Government's Lawyers argued that free education has been offered by the government. This was in shape of offering the concerned books and free education to orphans and weak children. The judge refused and disagree with the argument and respond:

“I reiterate that the context in which the word “free” appears in section 29(6) of the constitution as an adjective to describe the word “education” leaves no ambiguity to the reader.”⁽³⁹⁾

Looking to Islāmic Law, it provides the children right to education after provision of basic necessities. In Islām, education has the chief importance. We see that first verse revealed in Holy Qur'ān by Allāh Almighty is:

"اقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ".⁽⁴⁰⁾

"Proclaim! (or read!) In the name of Thy Lord and Cherisher, who created."⁽⁴¹⁾

And there are many verses of Holy Qur'ān and *aḥādīth* of the Prophet (PBUH) which makes the masses to keep in their minds their duties, likewise to remember children right to education. In addition to that, there are verses and *aḥādīth* that make the education as obligatory. The Prophet (PBUH) has said:

"طلب العلم فريضة على كل مسلم".⁽⁴²⁾

(Quest of knowledge is obligation upon every Muslim).

Islām Encouraged for both religious and general education to children. Some evidences are quoted in the following: the Prophet (PBUH) says:

"علموا الصبي الصلاة ابن سبع سنين واضربوه عليها ابن عشر".⁽⁴³⁾

"Teach the minor to pray when he is of seven, and beat him – if he does not pray - when he is of ten years."

"إِنَّ فِي خَلْقِ السَّمَاوَاتِ وَالْأَرْضِ وَاخْتِلَافِ اللَّيْلِ وَالنَّهَارِ لَآيَاتٍ لِّأُولِي الْأَلْبَابِ".⁽⁴⁴⁾

"Behold! In the creation of the heavens and the earth, and the alternation of night and day,- there are indeed Signs for men of understanding."⁽⁴⁵⁾

While defining the men of understanding, Allāh Almighty says in the next verse:

"وَيَتَفَكَّرُونَ فِي خَلْقِ السَّمَاوَاتِ وَالْأَرْضِ...".⁽⁴⁶⁾

"...and contemplate the (wonders of) creation in the heavens and the earth..."⁽⁴⁷⁾

This verse is a proof that Islām does not abandon the general education owing to the fact that the observation of heavens and earth is not feasible unless a person has scientific knowledge and education. It means that it is not possible just by having the religious education.

We find that at advent of Islām, *masjid* was the heart of all the religious, educational and political activities. *Maktabas* and *Madāris* located in different mosques played a central role in education. Even at present, *Madāris* are located in many regions belong to Muslims which play a significant job in educating all the children and adults. They increase the awareness rate without any need for high expenditures because these don't require unnecessary requirements. Importantly, these *Madāris* do not demand the finance from their governments.

Besides this, Islāmic state's history shows that elementary schools with compulsory education were established at the time of Khalīfah 'Umar Bin Al-Khaṭṭāb (RAA) and were sponsored by the treasury.⁽⁴⁸⁾ As for the higher education, it was Nizāmiyah University of Baghdad⁽⁴⁹⁾ which started university education of both arts and science. It was offered to all the students indiscriminately with no cost⁽⁵⁰⁾ as it was totally on grants and scholarships. The result was that Muslim scholars added and contributed to the growth of humankind in every field. Al-Azhar University in Cairo is another example of the oldest university of Islāmic world.⁽⁵¹⁾

Health

No one can deny importance of health. The illness influences the employment and vocation of the ill person. Otherwise, he may be more dynamic if he is well. Moreover, a healthy beginning of life is very important for children's wellness and growth. Their life may be saved and can be put away from continual ailment only if they have been given good health care. Health of children must be taken carefully because this age is highly important. It is because the growth and health at this moment is controlled by many aspects around the children due to their vulnerability. On the other hand, they may be more beneficial for his state if his health was taken care of. For this reason, children's health care seems very necessary and clear. That's why UNCRC stresses on children's health care.

UNCRC says:

- “1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre - natal and post - natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.”⁽⁵²⁾

According to the convention, the health of children should be taken care of. In this regard, the state should allow them to approach the medical services. It is responsibility of the states to give remarkable importance on principal and

preventive health care, for example, the immunization which works as preventive health care. Because it is a fact that immunization at early in life is a better way to save the children against some ailments.⁽⁵³⁾ The states parties must try to eliminate the practices harmful for health of the child. The assurance has to be taken by the states parties that the children are not prohibited to have right to get services of health care. These services contain healthful food, safe drinking water and safe environment and the necessary information in this regard. The education concerning health to both parents and their children is also made obligatory on the state. Moreover, the states parties should make sure that the children have approach to all information which can support their mental and physical health. Article 17 reads:

“States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health”.

Nowadays, the main reason for child mortality is the absence of children's health assistance. It may be failure on states part in the form of non-provision or inadequacy of medical assistance and health services to children in need. Likewise, it may be on the part of the parents in the form of financial inability or negligence. According to a report by UNICEF,⁽⁵⁴⁾ almost 30,500 children; boys and girls, less than five years of age die a day due to actually preventable diseases.⁽⁵⁵⁾ So, the reason remains with the parents or the state in offering services to the children in need. For example, Karola and Juergen, a German couple visited District Ladakh of Jammu and Kashmir in 2003. They met a child suffering from brain damage. So, they realized existence of many children left without any medication in that area. This was the reason they started Ladakh-Hilfe; a non-profit organization. Occupational therapists and professional physiotherapists from around the world were sent by the organization to Ladakh as volunteers. In 2008, 'Rewa Society, Ladakh Disabled Children Group' was established by the inhabitants in association with the organization. Now, both the societies work in that region to facilitate those children who are suffering from physical problems by equipping them with necessary skills so that they become independent.⁽⁵⁶⁾ Another example is a Filipino boy Danlee Suangco who was heart patient at the age of twelve. The condition of his family was very poor with financial trouble. As a result, Danlee had no check-up since his illness was known to the parents. Seeing their situation, Emily Sarmiento; a neighbor of Danlee, helped him out by writing to BOES⁽⁵⁷⁾ hoping that someone may sponsor his treatment⁽⁵⁸⁾.

Talking about Pakistan, it is a government scheme to provide immunization to the children to resist some ailments with free of charge. For example, vaccine against Polio which is provided to all the children time to time accords to the orders of the government.⁽⁵⁹⁾ Another example is Australia, where free immunization is offered under the National Immunization Program.⁽⁶⁰⁾

UNCRC says:

- “1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”⁽⁶¹⁾

This article give right of survival. Definitely, this is not possible with lack in provision of health services.

Talking about Islāmic law, Muslim Jurists have view that Islāmic *Sharī‘ah* came to preserve its five objectives. These are called *maqāṣid al-sharī‘ah* (objectives of *Sharī‘ah*). First of these objectives is preservation of religion, second is preservation of life, third is preservation of sense, fourth is preservation of honor and fifth is preservation of property. We may assume that safeguarding health is within the meaning of preservation of life. Thus, Islām promotes doing whatever is essential to safeguard human life and its proper growth. Accordingly, where Islām makes it mandatory to preserve the life by prohibiting the murder, it provides also the general principles for health due to the reason that health has an important character in protection of the life. In this regard, Islām emphasized on purity and cleanliness to the extent that it was made as element of belief (*iīmān*) because main reason of many diseases is impurity. Following *aḥādīth* are the evidences:

" الطُّهُورُ شَطْرُ الْإِيمَانِ ... " ⁽⁶²⁾.

“The cleanliness is half of the faith...”

"إِنَّ اللَّهَ طَيِّبٌ يُحِبُّ الطَّيِّبَ ، نَظِيفٌ يُحِبُّ النَّظَافَةَ ... " ⁽⁶³⁾.

“Allāh is pure and likes pure; He is clean and likes cleanliness.”

An important example in this regard is, when a Muslim does ablution five times a day, it assists him to remain clean and healthy. So, worships in Islām also protect the health. Trying to minimize effects of bubonic plague, the Prophet (PBUH) guided as follow:

"إِذَا سَمِعْتُمْ بِالطَّاعُونِ فِي أَرْضٍ فَلَا تَدْخُلُوهَا وَإِذَا وَقَعَ بِأَرْضٍ وَأَنْتُمْ بِهَا فَلَا تَخْرُجُوا مِنْهَا." ⁽⁶⁴⁾.

“If you hear about a plague in a land, do not enter it, but if it breaks out in the land while you are in it, do not leave that land.”

Particularly with regard to children, Islām starts concerning their health from the time he is embryo. In this stage, the children require unique kind of food which is not possible without offering high-quality food and diet to the mother. In Islāmic law, father of the child is duty bound to provide the mother of the child what is necessary and to tolerate the expenditure in this regard.

Then, the right of breast feeding is a great example of children’s health care which is for 2 years. If they get any ailment, reasonable cure should be given in proper period. The Prophet (PBUH) persuaded timely treatment from illnesses. The Ḥadīth reads:

"إِنَّ اللَّهَ أَنْزَلَ الدَّاءَ وَالِدَوَاءَ وَجَعَلَ لِكُلِّ دَاءٍ دَوَاءً فَتَدَاوُوا وَلَا تَدَاوُوا بِحَرَامٍ".⁽⁶⁵⁾

"Indeed Allāh has sent down the disease and the cure (medicine), and he has appointed a cure for every disease.

Thus, make treatment but use nothing unlawful."

The Maintenance in Islāmic Law; Obligation, Conditions and Limits

According to Islāmic law, duty to provide maintenance to children is on the father. Importantly, this is not optional but obligatory in nature.⁽⁶⁶⁾ The following Ḥadīth is an evidence of this talk where the Prophet (PBUH) has permitted Hind (RAA) to get what is necessary for them; herself and the child, out of her husband Abū Sufyān's assets without getting his consent.

عن عائشة أن هنداً بنت عتبة قالت يا رسول الله إن أبا سفيان رجل شحيح وليس يعطيني ما يكفيني وولدي إلا ما أخذت منه وهو لا يعلم فقال: " خذي ما يكفيك وولدك بالمعروف".⁽⁶⁷⁾

" 'Ā'ishah (RAA) narrated that Hind Bint 'Utba said: "O; the Messenger of Allāh, indeed Abū Sufyān is a miser person and does not give me what is sufficient for me and my child except what I take - of his property - without his knowledge". He said: "Take what is sufficient for you and your child in equitable terms."

The important point here is that the father on fulfillment of this duty gets the guaranteed reward. On the other hand, in case of not fulfilling the said duty, the father will be detained⁽⁶⁸⁾ till the time he provides maintenance to his children. Furthermore, he becomes sinful. The Prophet (PBUH) said:

"إذا أنفق الرجل على أهله يحتسبها فهو له صدقة".⁽⁶⁹⁾

"If a man spends on his family sincerely for Allāh's sake, for him, it is a charity (he gets reward of alms-giving."

"كَفَى بِالْمَرْءِ إِثْمًا أَنْ يَحْبِسَ عَمَّنْ يَمْلِكُ قُوَّتَهُ".⁽⁷⁰⁾

"For a man, it is enough sin that he withholds the subsistence from one whose master he is."

However, there may be circumstances whereby the father is incapable to maintain his child. Therefore, father's obligation is dependent on two conditions. First is father's ability to maintain his child either because of his property or his capability to earn. It signifies that someone else may be the responsible to maintain such child in case of disability of the father. Second is the child if he owns no assets and does not have an ability to produce for him. So, in case if some assets are under ownership of the child due to inheritance, gifts...etc. his assets should maintain him. No one else is under obligation to maintain such wealthy child because here exist no rationalization for this obligation. Actually, the reason for maintaining children is their incompetency to get for their livelihood and here the reason has been resolved.⁽⁷¹⁾

As for the limit of maintenance, the child can receive maintenance to the extent of fulfillment of its requirements because this right is due to the needs of the child. Therefore, the obligation comes to an end whenever the needs are fulfilled.⁽⁷²⁾ Its evidential basis is the *Ḥadīth* mentioned above where Hind

(RAA) was allowed by the Prophet (PBUH) to take what is necessary for her and her child from the property of her husband.⁽⁷³⁾ This *Hadīth* suggests also that the responsibility terminates whenever the necessities are satisfied.⁽⁷⁴⁾ Another point is that provision of maintenance relies on the financial capability of the person under duty.⁽⁷⁵⁾ Allāh Almighty says:

"لِيُنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ، وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ، لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا، سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا".⁽⁷⁶⁾

“Let the man of means spend according to His means: and the man whose resources are restricted, let Him spend according to what Allah has given Him. Allah puts no burden on any person beyond what He has given Him. After a difficulty, Allah will soon grant relief.”⁽⁷⁷⁾

Furthermore, the obligation to maintain the children goes on in case of male child till he reaches his puberty and in case of female child till she marries.⁽⁷⁸⁾ It is because general presumption is that the male child can get for himself on achieving puberty. However, if he proves to be unable due to any reason like insanity, his right of maintenance will remain intact to the moment of his ability. As for female child, generally the duty of her father to maintain her shifts towards her husband.⁽⁷⁹⁾

Islāmic Law has very important feature here. It is when the father is incapable to maintain his child, and the child also owns no assets, even then the child remains safe. Someone else will be responsible to maintain such child after the responsibility of the father. Muslim jurists have a long arguments and debates in this regard. Summarizing their opinions, child's legal heirs would be under liability to maintain the child if his father fails to maintain. The reason behind is that the legal heirs succeed the deceased if he left property, in return, this right to get advantage demands them in return to take care for such a person's when alive. This concept is summarized in a maxim of Islāmic Law i.e. *Al-Ghurm Bi Al-Ghunm*.⁽⁸⁰⁾ Moreover, if the legal heirs are also missing or incapable to maintain then the responsibility comes to child's relatives. They will be held responsible to maintain. After all, if no one is available, then, the child should be maintained out of Islāmic state's treasury.⁽⁸¹⁾

While talking about utilization of Islāmic states' treasury, Al-Kāsānī said that one part is for health services and medication for the needy, maintenance of *laqīt* and of a person unable to get for himself with the condition that his responsible is also missing or unable as well.⁽⁸²⁾ It means that responsibility of the state cannot be refused. Organizations found in the country should also provide assist the parents in maintaining their children in a proper way. In the era of ‘Umar Bin Al-Khaṭṭāb (RAA) for example, a kind of allowance were paid to children which positively affected the health and financial safety of the children.⁽⁸³⁾

Comparison between UNCRC and Islāmic Law

A consensus has been developed that children's have right to adequate standard of living. Their wide-ranging development is primarily important for

their well being. Article 27 of UNCRC, article 14 of the Covenant on the Rights of the Child in Islām⁽⁸⁴⁾ and article 107 of Mithāq Al-Urah fī al-Islām,⁽⁸⁵⁾ all have consensus on this right for children's growth and for their physical, psychological, mental and social development.

UNCRC entrusted the main responsibility for provision of basic needs i.e. nutrition, clothing and shelter on the parents. The states parties were also demanded to help out the parents in this regard, obviously, according to their existing sources. In addition to that, responsibility of the state has been provided by the convention to guarantee that this right is well provided to the children.⁽⁸⁶⁾ By this, the responsibilities in this regard occur on the parents and then the state. However, in Islāmic Law it is on the father basically. Afterwards, the responsibility transfers to the legal heirs and relatives respectively and on the state at the end. Obviously, all this is subject to detailed rules provided in Islāmic Law. Analyzing the issue, we see that rules of Islāmic Law in this regard make the relationship among the relatives more strong and make the children more protected. Secondly, they make responsibility of the concerned state less which is better for the state, especially for the developing countries where the state cannot afford all kinds of the responsibilities.

Talking about education, the main responsibility devolves on the state according to UNCRC. It actively instigates to make primary education free of cost and mandatory. For the secondary and higher education, UNCRC suggested provision of financial support if required. Further, wealthy states should retain in their mind the conditions of rising states.⁽⁸⁷⁾

Same is the case with Islāmic Law. The free of charge and mandatory primary education is not strange in Islāmic Law rather it is an important program if implemented by the state. A maxim of Islāmic Law says:

"الأصل في المنافع الحل وفي المضار التحريم."⁽⁸⁸⁾

"The original rule for the beneficial issues is permissibility and for the harmful issues is prohibition."

The maxim recommends that a useful and risk free issue is allowed unless clearly affirmed as unlawful by the Islāmic law. Obviously, if primary education made free and mandatory, it gives out a rich purpose. For this, the article 12 of the Covenant on the Rights of the Child in Islām, and article 114 of Mithāq Al-Urah fī Al-Islām tells the same. It is important to note that Islāmic state use to offer free education or otherwise to award scholarships. The same case has been applied in the University of Baghdad as discussed earlier.⁽⁸⁹⁾

As far health and its provision are concerned, it is concerned inside the borders of responsibility of the state according to UNCRC. The state should make sure that children as a whole have admissibility for health care services. In this regard, the state must guarantee to provide safe drinking water and healthy food which is essential to stay well. These have been provided in article 24 of UNCRC. However, we don't find a clear provision about expenditures occurring while giving the health services. It is correct that the state is under obligation to offer medical assistance according to UNCRC but purpose of UNCRC is ambiguous. We don't know whether the medical assistance contain

of medical services only or include the financial support as well. Probably, UNCRC tells about right to have access to health care services only.

However, Islāmic Law enforces the duty for maintenance of children basically on the father unlike UNCRC where it is on parents or the state. Therefore, father is basically duty bound to tolerate all the expenses e.g. expenses of basic needs, education and health. As for responsibility of parents and state, it cannot be denied in Islāmic Law but it is considered secondary in nature and considered with the rules given by Islāmic Law. Stand of Islāmic Law regarding responsibility of the state may easily be understood from the saying of ‘Umar Bin Khaṭṭāb (RAA) who said: “If a scabies-stricken goat is left to roam along the bank of a canal in a condition in which oil is not rubbed on its body (by way of treatment), it is feared that on the Day of Judgment, God will enquire ‘Umar about it.”⁽⁹⁰⁾

Article 27 (3) of UNCRC clearly identifies that maintenance contains of basic needs only i.e. nutrition, clothing and housing. Contrarily, the maintenance in Islāmic Law is a broader term which means each necessity of the child. It may be in the form of basic needs or in any other form such as expenditures of education and health.⁽⁹¹⁾ Hence, the maintenance has a broader scope in Islāmic Law than the UNCRC. By this, Islāmic Law seems to be much clearer.

UNCRC and Islāmic Law also differ regarding end of maintenance responsibility. The child in UNCRC is defined as: “...human being below the age of eighteen...”⁽⁹²⁾ Accordingly, the obligation according to UNCRC goes on to 18 years of age. However, Islāmic Law connects end of responsibility mainly through puberty, maturity and capacity to earn with regard to male child and marriage with regard to female child.

Generally discussing the maintenance duty, we analyze that person of the child is not the reason behind this duty, rather, it is incompetency of the child to get for itself. So, making someone duty bound for maintaining the child will have no justification after end of this reason whatsoever the child age may be like 12, 15, 18...etc years of age. Therefore, stating end limit of maintenance duty at the age of eighteen seems to be unjustified because child’s idiocy or stupidity may stay longer after his 18 years. Likewise, it is probable that the child proves to be mature enough to earn for self. Should a foolish child be disregarded after 18 in the former case? And should a mature person before eighteen years be provided maintenance in the later one? We get no answer in UNCRC. Islāmic Law on the other hand, relates end of maintenance duty with the puberty and maturity of the child as explained earlier.

There are other issues where we may assume that UNCRC is mute where Islāmic Law explains them out. For example, the case where a child owns wealth and child’s all requirements can be satisfied out of that wealth. Here, Islāmic Law does not oblige the father to maintain his child.⁽⁹³⁾ It is because there is no justification for father’s obligation in this case. This matter was ignored by UNCRC and we get it silent in this regard.

Conclusion

After comparison and all discussion it is concluded that United Nations Convention on the Rights of the Child 1989 is a very good struggle and great effort by the international society for protection of child rights. However, there rights are violated everywhere with no difference between developed and developing countries in this regard. Therefore, there are certain deficiencies in the convention like other man made laws. So, it seems proper to take help from Islamic Law, firstly because it is revealed law and secondly it appears to be more practical. Moreover, it provides both general principles and specific rules in this regard. The entire of this article aimed for proper preservation of children rights to make them fruitful citizens who benefit and promote their nations.

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- (72) Al-Kāsānī, ‘Alā’uddīn. Badā’i’ Al-Ṣanā’i’ Fī Tartīb Al-Sharā’i’. vol. 4 (Karachi: H. M. Saeed Company, 1910), 38. [Hereinafter referred to as Badā’i’ Al-Ṣanā’i’].
- (73) Fathul Al-Bārī Sharḥ Ṣaḥīḥ Al-Bukhārī, vol. 10, 433, Ḥadīth No. 5364.
- (74) Al-Fiqh Al-Islāmī Wa Adillatuhu, vol. 10, 7418.
- (75) Muntaṣar Sa’id Ḥamūdah, Ḥimāyat Ḥuqūq Al-Ṭifl Fī Al-Qānūn Al-Duwalī Al-‘Ām Wa Al-Islāmī. (Iskandariah: Dār Al-Jāmi’ah Al-Jadīdah, 2007), 269.
- (76) Al-Qur’ān 65 / 7.
- (77) The Holy Qur’ān with Arabic Text, 1685.
- (78) ‘Abd Al-Ḥalīm ‘Aways ed., Mawsū’at Al-Fiqh Al-Islāmī Al-Mu’āṣir, vol. 3 (Al-Manṣūrah: Dār Al-Wafā’, 2005), 41. [Hereinafter referred to as Mawsū’at Al-Fiqh Al-Islāmī Al-Mu’āṣir].
- (79) Al-Mabsūṭ, vol. 5, 223.
- (80) Aḥmad Al-Zarqā’, Sharḥ Al-Qawā’id Al-Fiqhiyyah (Damascus: Dār Al-Qalam, 1989), 437.
- (81) Mawsū’at Al-Fiqh Al-Islāmī Al-Mu’āṣir, vol. 3, 41-42.
- (82) Badā’i’ Al-Ṣanā’i’, vol. 2, 68.
- (83) www.haythammanna.net/Human%20Rights%20en/Child%20Rights%20in%20Arab%20Islamic%20Culture.htm. Visited on 16-08-2016.
- (84) This document was adopted in Yemen, June 2005 by 32nd Islamic Conference of Foreign Ministers.
- (85) This document was adopted in Cairo, September 2007 by International Islamic Committee for Mother and Child; a committee of International Islamic Council for Mission and Relief.
- (86) UNCRC. Article 27.
- (87) Ibid. Article 28.
- (88) Ya’qūb ‘Abd Al-Wahhāb, Qā’idat Al-Yaqīn Lā Yazūl Bi Al-Shak, (Al-Riyāḍ: Maktabat Al-Rushd, 2000), 139-160.
- (89) Encyclopedia of Quranic Studies, vol. 16, 318-319.
- (90) Al-Ghazālī, Al-tibr Al-Masbūk, 17, quoted in Encyclopedia of Quranic Studies, vol. 19, 338.
- (91) Mawsū’at Al-Fiqh Al-Islāmī Al-Mu’āṣir. vol. 3, 41.
- (92) UNCRC. Article 1.
- (93) Al-Fiqh Al-Islāmī Wa Adillatuhu, vol. 10, 7359.