

# The Right to Education of a Child: A Comparison of Afghan Law on Protection of Child's Rights and the UN Convention on the Rights of the Child

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**ABSTRACT:** The right to education is one of the fundamental rights of children. It is phrased within the UN CRC, ALPCR (A Law on Protection of Child's Rights), and other universal documents. However, the legal system of Afghanistan articulated the right later than the UN CRC; they included the right in a comprehensive manner which is necessary for the development of children. In addition, the right to education is documented not only within the two documents but it is guaranteed within other universal legal documents too. Moreover, the right to education for children is a significant issue, since children cannot fight for their rights by themselves. So, it is crucial to lay down provisions for the protection of children's rights, especially the right to education. Furthermore, this paper compares the right to education of children, particularly within two documents, CRC and ALPCR. The paper has been written in the analytical-comparative method. Ultimately, it is concluded that ALPCR has comprehensive principles regarding the right to education of children in contrast with the general principles of the UN CRC.

**Keywords:** Afghan Law on Protection of Child's Rights, CRC, Right to Education.

## Introduction

CRC (Convention on the Rights of the Child) is a convention drafted by the UN to protect children's rights throughout the world and commit States to employ their best to improve children's welfare and interests. The CRC was opened for signature, ratification, and accession by UN General Assembly resolution 44/25 of 20 November 1989. In addition, it entered into force on 2 September 1990 and consists of 54 articles that are laid down for child's rights. Further, Article 28 and Article 29 of the CRC (Convention on the Rights of the Child) provide for the right to education of a child and the aims of education. Article 28 articulates the right to education to a broad extent, while Article 29 enshrines the aims of education. This paper analyzes the right to education which is phrased in Article 28 and compares its provisions with ALPCR (Afghan Law on Protection of Child Rights). Moreover, the Afghan Law on Protection of Child Rights consists of 108 articles and articulates child rights throughout Afghanistan. The law has not been ratified by the Afghan parliament due to the child's age controversy; however, it was signed by the president of the time on 20 February 2019 as a legislative degree.

## End of the research

The end of this paper is to examine to which extent the Afghan laws conform with the CRC in the case of the right to education of children.

## Importance

As a child is a vulnerable segment of a community, he/she can be deprived of their rights sometimes. Protecting child rights is an important issue for States; however, some States have drafted provisions in this regard. Firstly, the UN drafted a convention for child's rights, and then Afghanistan drafted a law for child's rights respectively. Since Afghanistan is a member of the UN and has signed the CRC, it is important to compare whether Afghanistan has conformed to its regulations with the UN CRC yet.

## Research Methodology

This paper has been written in the analytical-comparative method. Provisions of ALPCR (Afghan Law on Protection of Child Rights) and CRC (Convention on the Rights of the Child) have been discussed widely and compared. The references are managed in the APA system.

## Question

The main question is how the Afghan Law on Protection of Child Rights included the main principles of the CRC regarding the right to education of children.

## Hypothesis

It is supposed that the Law on Protection of Child Rights and other Afghan Laws not only included all provisions of the CRC regarding Child rights, particularly the right to education of children but also added other valuable provisions which are necessary for the development of children.

This paper begins with an introduction to the right to education of children. Firstly, the right to education is discussed in Article 28 of the CRC and then phrased in the ALPCR. Moreover, a comparison of both legal documents has been conducted and highlighted the main aspects of both documents. In addition, the provisions of other universal documents have also been phrased. To sum up, the paper ends with concluding remarks, and references are managed at the end.

## Right to the education of a Child within the CRC and in Afghanistan

The right to education for children is a basic and fundamental right of children. There were a couple of efforts and finally regulations to legalize the right for children to get an education. As discussed above, the UN drafted a convention for the protection of the rights of children. In Afghanistan, a law has been ratified to legalize the rights of children. The law consists of plenty of rights for children. One of them is the right to education. In addition, the CRC documented the right to education for children as a right. As Article 28 of CRC states: "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;"

This is the first thing that the CRC insists on, although the CRC does not mention whether it is a fundamental right of children. The Afghan Law on Protection of Child Rights enshrines that it is a fundamental right of children. Article 12, (1), -17- states: "(1) according to this and other legislative documents, a child has following fundamental rights: .... 17- education and training." So it is clear that the ALPCR recognizes the right to education as a fundamental right of children while the CRC does not entitle any specific term for the right to education.

In paragraph (b), the CRC provides for secondary education, including general and vocational education. The paragraph insists on the government taking measures to develop this type of education. The article states: "(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;"

In the above provision, available education means, that the requisite resources have been allocated to enable sufficient school places, trained teachers, equipment, books, and other materials, as well as, for example, adequate sanitation facilities, to enable every child to attend school. Accessibility necessitates that no barriers to education exist for any child whether as a consequence of discrimination, physical access, or affordability. (G Lansdown and Z. Vaghri: 252p)

The Afghan Law on Protection of Child's Right provides for the development of secondary education as follow: "The Ministry of Education is obliged to take and apply the following appropriate measures with the aim of access to education for children: 1- paving a way for free and compulsory secondary education at the national level. 2- Development of secondary education, including general and vocational education for free, and providing Financial assistance as much as the government can afford, and in case of need."

The CRC does not provide for free secondary education; however, the Afghan Law provides for free secondary education and articulates that the government should provide poor students with financial assistance in case of need and affordable to the government. The Afghan Law articulates and categorizes free education in its 49<sup>th</sup> article as follows: "(1) Primary education is compulsory in Afghanistan. (2) Pre-school education; primary and secondary education; and formal technical, vocational, artistic, and Islamic education are free in governmental educational institutes." It shows that primary education is compulsory in Afghanistan. Everyone should get primary education and there is no excuse at all. In the case of free education in Afghanistan, the governmental educational institutes are responsible for providing free primary and secondary education; free vocational, technical, artistic, and Islamic education, and even free pre-school education. The CRC does not articulate the type of education in such categories.

The CRC articulates higher education in its article 28: "(c) Make higher education accessible to all on the basis of capacity by every appropriate means;" in the above article, the CRC provides for the right to higher education for children, however, it is not mentioned whether it's for free. The Afghan Law of Higher Education provides higher education for free in governmental institutions. Article 56 of the Law of Higher Education of Afghanistan states: "According to law and regulations, graduates of 12th, 14th and its equivalent can get admission as a student in one of the higher educational institutes after passing admission test (known as Kankor) successfully". Article 57 articulates: "(1) to pave way for higher education in the level of graduates programs (Master and Ph.D. programs); the respected programs are organized in higher educational institutes. (2) the terms and conditions of admissions and fees of students which enshrine in paragraph (1) of this article and type of graduates programs (Master and Ph.D. programs) are articulated in a separate legislative document." As the fee mentioned is just for graduate programs, the undergraduate programs are free of fee. In addition to fee exemption, undergraduate students, who are studying in governmental institutions, are also receiving monthly stipends or hostel accommodation according to law. Article 59 of the Law of Higher Education of Afghanistan states: "student of higher education institute has the following rights and privileges: ... 6- according to provisions, taking advantage of the hostel during undergraduate program studying." However, the Afghan law provides for free higher education for governmental educational students, but the CRC does not mention whether the right is free.

The right to education of children not only consists of primary education that is free and compulsory, but it also includes the availability and accessibility of educational and vocational information and guidance. As paragraph (1) –d- of Article 28<sup>th</sup> of the CRC states: "(d) Make educational and vocational information and guidance available and accessible to all children". The Afghan Law on Protection of Child's Rights articulates this provision in the same manner in article 54 (3): "Provision of educational and vocational information and necessary guidance and making accessible to children (is the responsibility of Ministry of Education)." These are the same provisions, as it seems that Afghan law has quoted the same article of the CRC.

Moreover, Article 54 (5) of the Afghan Law on Protection of Child's Rights and Article 28 (e) of the CRC both have the same provisions with a bit of a difference. Article 28 (1) –e- of the CRC states: "(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates." And article 54 (5) of ALPRC

articulates: “Drafting and applying meet schemes to encourage children to attend schools and to reduce failure rates and drop-out rates in schools (is the responsibility of Ministry of Education).” There is just one difference the Afghan Law furthers the term “to reduce failure rate”, which is not mentioned in the CRC.

Alongside the above tasks that the CRC laid down for states, there are other tasks for states to fulfill. The major one is to make school discipline appropriate for children’s dignity. The CRC states in article 28 (2): “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.” This task is laid down in ALPCR for the Ministry of Education of Afghanistan. Article 52 of ALPCR states: “Ministry of Education shall take all measures to ensure that discipline of schools and formal and private Madrasas is administered in a way consistent with the child's human dignity and personality”. The text is the same but is contextualized with Afghanistan’s terms and conditions i.e. it furthers formal and private Madrasas.

Article 28 (3) of the CRC also submits tasks to States for getting rid of ignorance and illiteracy throughout the world, while the ALPCR submits the task to the Ministry of Education of Afghanistan to eliminate illiteracy throughout the country and to attract international financial assistance toward achieving this goal. Article 28 (3) states: “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.”

The principle of equal and non-discrimination opportunity, which is related to the right to education, is articulated in international human rights law and is asserted in Article 28 of the CRC.

Article 28 (2) of the CRC constitutes an important innovation in respect of the right to education. It requires that any school discipline must be administered in a manner consistent with the child’s dignity and in conformity with all other rights in the Convention. This requires that discipline must never violate the child’s best interests, the right to non-discrimination, or the right to be heard. Furthermore, it must not violate, for example, the right to protection from all forms of violence or cruel, inhuman, degrading treatment, or, indeed, the rights to play and recreation, to health, cultural expression, or freedom of religion. (G Lansdown and Z. Vaghri: 254p)

However, Article 28 differs from Article 13 in several significant ways. It expands the scope of the right to education to include obligations on States Parties to encourage school attendance and reduce drop-out rates, to ensure that school discipline is administered in a manner consistent with the child’s dignity, and to promote and encourage international cooperation in matters relating to education. It lacks any reference to the right of parents to choose an education for their children in conformity with their moral or religious convictions, although this issue is addressed in Article 29, the aims of education. (G Lansdown and Z. Vaghri: 248p.)

Moreover, the provision of education for all has significant resource implications and, accordingly, Article 28 is subject to progressive realization. The text affirms that States Parties must, with a view to achieving the right progressively, make primary education compulsory and free to all. The obligations on secondary education are lower, requiring that States Parties encourage its development, accessibility, and availability to all, including through the provision of free education and financial support. Higher education must be made available by all appropriate means, and education and vocational guidance should be available to all children. (G Lansdown and Z. Vaghri: 248,249pp)

In addition, non-discrimination and free and compulsory primary education for all have also been re-affirmed as core obligations by the Committee on the Rights of Persons with Disabilities. The Committee on the Rights of the Child has not explicitly articulated any core obligations. However, it consistently recommends that States Parties endorse these measures as an immediate core obligation, not subject to progressive realization, particularly in respect to fits demands that budget allocations are sufficiently directed to the implementation of the right to education (G Lansdown and Z. Vaghri: 249 p)

Furthermore, the Convention does not define the word education. However, the Committee makes clear that education extends beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children...to develop their personalities, talents, and abilities and to live a full and satisfying life within society. Accordingly, education is not confined to those levels elaborated in Article 28. It is interpreted as beginning at birth and extends to the provision of preschool education. Although silent on ages for starting or finishing school, the Committee has asked States Parties to establish minimum and maximum ages for compulsory education, encouraged the inclusion of early childhood education and care, and suggested that the end of compulsory education should coincide with the minimum age for employment. Furthermore, the Committee has interpreted the article to apply to regular and non-formal education and has recommended non-formal education for children who have difficulty attending schools (G Lansdown and Z. Vaghri: 249 p)

Notwithstanding, Article 28 provides for the right of a child to education, other articles set forth regulations related to the right to education, for instance, articles 2, 3, 6, and 12. The right of the child to be heard is fundamental to the right to education. The Committee has affirmed that children should be listened to and engaged through a participatory pedagogy within the classroom and that schools should adopt a culture of respect for the right of the child to be heard. In addition, States Parties must ensure that children have opportunities to influence decisions from their individual education to the way their school is run, through class and school councils, and representation on school boards, and also in the development of broader education legislation and policy. Finally, children must have the opportunity to be heard in any disciplinary proceedings. (G Lansdown and Z. Vaghri: 250p.) Ultimately, Articles 4, Articles 13-17, Article 19 (1), Article 23 (3), Article 24 (e), Article 29, Article 30, Article 31, and Article 32 also have links with Article 28 and articulate the right to education for children.

### **Right to the education of Children within other universal documents**

It is worth mentioning to explain the right to education of children is not only phrased in CRC, but other declarations, for example, the Universal Declaration of Human Rights, and the Declaration of the Rights of the Child Convention Against Discrimination in Education, have also set forth the right.

Article 26 (3) of the UN Universal Declaration of Human Rights (1948) enshrines the exclusive right of parents to choose the kind of education for their children. The article states: “(3) Parents have a prior right to choose the kind of education that shall be given to their children.”

In addition, Principle 7 of the UN Declaration of the Rights of the Child (1959) articulates the right of the child to access education for free. The principle follows: “The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education that will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society...”

Moreover, Article 5 of the UN Convention Against Discrimination in Education (1960) also provides for the right to education for children. Article 13<sup>th</sup> of the International Covenant on Economic, Social, and Cultural Rights (1966), also sets forth the right to education for all for free and categorized primary, secondary, and higher education as accessible, and affordable.

Furthermore, Article 22 of the UN Convention Relating to the Status of Refugees (1951) also provides for the right to education for refugees’ children and obliges contracting states to articulate education to children of refugees.

Finally, Articles 7 and 24 of the UN Convention on the Rights of Persons with Disabilities (2006), Article 10 of the UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 4 (3) UN Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities (1992), Article 30 of International Convention on the Protection of the Rights of all Migrant Workers and their Families (1990), and other contracts and declaration have provides for right to education of children.

## Conclusion

The Afghan Law on Protection of Child Rights enshrines the right as a fundamental right of a child, while the CRC does not provide for whether it is a fundamental right.

Apart from the above, CRC does not mention free secondary education, just provides for general and vocational education as a compulsory education, while the Afghan Law not only provides both types of education for free but also provides for formal Islamic, vocational, technical, artistic, and pre-school education for free in governmental educational institutions.

Ultimately, the Afghan law not only provides for free primary and secondary education but also provides for free education at the level of higher education alongside free accommodation and hostels. However, the CRC provides free primary education for children, while it does not mention whether a child is entitled to get free education at the level of secondary education or higher education. Finally, it depends on States regulations and financial status to make the environment for children to get free education to the meet extent.

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