



Children's Right and Thai Family Law

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Abstract

Thailand has become a signatory state to the Convention on the Rights of the Child since April 26, 1992. This Convention is the pillar of the rights of the children. It is considered the masterpiece of the United Nations. Thailand and other signatory states commit to abide by the Convention according to international legal principles. Therefore, it needs to set the practicable policies and legal framework which contributes to children's right and quality of life. However, at present, Thai society is facing problems of family violence, broken homes, street children and exploitation of children as well as unscrupulous profiteering from children. In this way, family law is very important, to child development according to the Convention since it determines criteria and a framework for parents regarding their behavior towards children and determines the appropriate rights and duties that parents and children should equality according to guidelines in the Convention.

Keywords: *Convention on the Rights of the Child, Children's right, Family violence, Family law*

1. Introduction: Concepts of the Rights of the Child

The concepts behind proclaiming the rights of the child started with those lawyers in natural law school who considered that children's rights are universal and absolute rights and must be absolutely protected and certified with no exception. The influence of such concepts as well as the social interest in the problems of violation of children's rights and child abuse effected the first Declaration on the Rights of the Child in Geneva, in 1924. However, the 1924 Declaration was couched in terms of what must be done for children; they must be fed, nursed, helped. It was considered that children were the objects of concern, but did not have their own rights (Flekkoy, 1999). Later on, even in the United Nations Universal Declaration of Human Rights of December 10, 1948, it was considered that children needed special protection but not that they had rights of their own to get services. They neither had civil nor political rights. Any rights they may have are protection but not liberating (Flekkoy, 1999). It was only on December 20, 1959 when the first sign of civil and political rights for children appeared in the 1959 UN Declaration on the Rights of the Child, which states that a child is entitled from his birth to a name and a nationality (Flekkoy, 1999).

The United Nation has been promoting recognition of the rights of the child according to the Declaration among members so the protection of the rights is comprehensively practiced all over the world. However, according to the principles of international law a declaration is simply an announcement of some principles in general, not an agreement, convention or international rule. Therefore, a declaration, instead, it is an ethical commitment in international politics. More importantly, a declaration does not provide a mechanism of practice for the signatory in addition, in cases where the rights of the child are violated in a given country, no attempt has been made to try to correct the situation or enforce the declaration.

2. Objectives

- 1) To study the international framework for the protection of children's rights as stipulated in the Convention on the Rights of the Child.
- 2) To study patterns or guidelines for child rights protection that are suitable for the context of Thailand.



3. Materials and Methods

In this study, the researcher chose to use a documentary research method to collect data by looking at documents, books, textbooks, academic articles, and other relevant and reliable internet media. This information was then analyzed and put together to create new knowledge.

4. Results and Discussion

4.1 Convention on the Rights of the Child: The Pillar of the Rights of the Child.

As the Declaration on the Rights of the Child did not produce any international legal commitment so that signatory states are forced to abide by the Declaration. The United Nations especially United Nations Children's Fund (UNICEF) tried to draft the Convention on the Rights of the Child so that the ideas would be effectively put into practice in the country of signatory states.

The Convention draft was completed in 1989 and became effective on September 2, 1990 (along with so-called "doctrine of integral protection") (Grosman & Herrera, 2006).

At present, more than 120 countries have signed in approval of the Convention, including Thailand which became a signatory state to the Convention on April 26, 1992. The Convention consists of 54 articles aiming essentially at protecting the following four rights of the child.

1. **Survival Rights.** There are the fundamental rights to survive and grow up as quality adults by means of sufficient and nourishing food, shelter, and public health services.
2. **Protection Rights.** These rights protect children from being physically or mentally abused or exploited. Children also hereby have rights in the family, the right to have their own name and nationality and the right to justice when faced with charges and trials.
3. **Development Rights.** With these rights, children are invited to appropriate development by means of education, access to information, play, recreation, and various cultural activities. They also have the right to think develop their mental ability, and to believe in a religion.
4. **Participation Rights.** With these rights, children can express their opinion, discuss their life, participate in social activities, and participate in the decision-making procedures in the family, school, and community.

This Convention has become the pillar of the rights of the child. It is considered the masterpiece of the United Nations this decade. It commits the signatory states to abide by the Convention according to international legal principles. Regarding this, the U.N. has set up the Committee on the Rights of the Child to see that the rights of the child are appropriately suspected in the country of signatory states and to ensure that the rights of the child really are in existence, genuinely in practice and are no longer merely words in the Convention.

4.2 Children's Rights and the Family

The United Nations is the world organization whose duty is to maintain world peace and order, to eliminate warfare, starvation, suffering, abuse, and exploitation. However, it is well known that world peace and prosperity can never be achieved without co-operation from member countries in appreciating the importance of the family institution. This is because in every society, the family is the fundamental unit and the center that is primarily responsible for children, Society has a duty to help the family so that it can provide children with care, protection, security, and a quality life.

Therefore, member countries need to help set practicable policies and a legal framework which contributes to children's quality life so that children may live with warmth and security. At present, the world is facing problems of family violence, broken homes, street children, abandoned children, exploitation of children, child prostitution, as well as unscrupulous profiteering from children.

Governments should realize how important and how severe these problems are, search for methods of correction and prevention in co-operation with both the private and the public sectors.

Where family security and unity are lacking, the community should provide assistance for failing parents so that the family can try to rebuild security and resume its role more fully. Meanwhile, foster families



and adoption should be arranged when necessary so that children can have a brighter, better, and more fulfilled life.

Love and warmth in the family and the community can be achieved only when human integrity is truly respected. The child is the heart of the family. Parents and the community have a duty and responsibility to provide foster care and protection. They must realize that children are essential resources that need to be well looked after. Children should be raised in such a way that they can grow physically and mentally prosperous.

4.3 Children's Rights and Family Law

The Convention on the Rights of the Child provides rights over themselves to children, putting all children under international law. These rights are related to parents, guardians, and the state. The Convention states that parents have certain rights and duties, but not rights over children. This is in the phrase, "in the best interest of the child." (Convention on the Rights of the Child, Article 3(1) "... in all actions covering children... the best interest of the child shall be primary consideration")^{This} suggests that at least the child's interest must take priority over

The adult's interest including that of the parents. Most of all, this Convention admits that the family is the fundamental social unit and natural environment for children's well being and growth. In order that children can develop fully and with integrity, they should grow up in a happy, loving, and understanding family environment.

In this way, family law is very important, to child development according to the Convention on the Rights of the Child since it determines criteria and a framework for parents regarding their behavior towards children and determines the appropriate rights and duties that parents and children should equally have according to guidelines in the Convention.

The existing family law sees that children are part of the family. Protection and child care are something given to children by parents, family and the government, not the birth rights that children are entitled to (Bainham, 2016).

However, now, the view that children do not have any rights of their own has changed according to international law. It is thus necessary that family law be modified so that children's survival, protection, development, and participation rights may be realized and so that children, the world most valuable resource will grow up and become society's quality power.

4.4 Thai Family Law and The Concept of the Best Interest of the Child.

In Thailand, the Civil and Commercial Code was promulgated in 1934, the provisions of Book V concerning the Family Law, laying down the code of practice regarding rights and duties of parents (Thai Contracts, n. d.). Parents are bound to maintain their children and to provide a proper education for them during their minority. When the children are sui juris, parents are bound to maintain them only when they are infirm and unable to earn their living. A child is subject to parental power as long as he or she is not sui juris. However, the parents may be deprived of parental power by court order if they misuse parental power or exercise the power with malice. Such provisions indicate that the absolute power of parents over their children was terminated. What remain are rights and duties towards each other. Book V was amended in 1976 and 1990. The amend provisions still insist on the principles concerning rights and duties between parents and children. However, custom and tradition in Thai society which have been practiced since time immemorial, which consider that parents have power over children and children belong to parents, is still seen in the rural areas. This is a problem in present Thai rural society. However, under the Constitution of the Kingdom of Thailand that was enacted in 2017 provided in Article 71 that the state should provide assistance to children, youth, women, the elderly, persons with disabilities, indigent persons and underprivileged persons to be able to have a quality of living, and shall protect such person from violence and unfair treatment as well as provide treatment rehabilitation and remedies to such injured persons (Office of the Council of State, 2017).



Besides, Thailand has established the Juvenile and Family Court since 1991 and revised in 2010 by the law that was changed from the old juvenile Court since 1951. It is a specialized court and has the power of adjudication and order in the following cases:

1. The juvenile delinquency case
2. The family affairs case
3. The child protection cases

Under the power of the Central juvenile and Family Court in Bangkok Metropolitan and the Provincial Juvenile and Family Court in every province of Thailand, I believe that “the Principle of the Best Interest of the Child” will be taken into account by the Constitution most certainly.

5. Conclusion

According to the aforementioned studies, Thailand is another country that prioritizes the preservation of children's and adolescents' rights, which are regarded as a socially valuable resource. Thailand's important strategy for providing protection is to apply both domestic and international law, including the Convention on the Rights of the Child. However, when formulating measures to protect children and adolescents, one of the most important factors that must always be considered is that the interests of children and adolescents are of the utmost importance. Another crucial social institution for the protection of children and adolescents is the school. However, many parents today may not have sufficient time for their offspring due to economic constraints. Working for breakfast Inadequate education or employment opportunities, as well as interference from social media, impact the time spent providing for their children. These are all significant challenges facing Thai society, and thorough preparation should be made for them.

6. References

- Bainham, A. (2006). *The International Survey of Family La*. Bristol: Jordan Publishing.
<https://www.amazon.com/International-Survey-Family-Law-2006/dp/1846610176>
- Flekoy, M. G. (1999). *A Voice of Children*. London: Jessica Kingsley-Publisher.
- Grosman, C. P., & Herrera, M. (2006). The New Law for the Integral Protection of Childhood and Its Impact on Family Law. In, *The International Survey of Family Law*. Bristol: Jordan Publishing.
- Office of the Council of State. (2017). *Constitution of the Kingdom of Thailand*. Retrieved from http://web.krisdika.go.th/data/outside/outside21/file/Constitution_of_the_Kingdom_of_Thailand.pdf
- Thai Contracts. (n. d.). *Civil and Commercial Code of Thailand, Book V: Family*. Retrieved from <https://www.samuiforsale.com/other-miscellaneous/index-civil-and-commercial-code-of-thailand.html>