

The light of proposals from relevant law family essay

Law



**ASSIGN
BUSTER**

As a matter of fact, there is no single law that defines the age of a child across the UK. So the definition provided in Article 1 of the UN convention on the Rights of the Child can be used. A child is viewed as " every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." (Convention on the Rights of the Child, 1989). This Convention was ratified by the UK government in 1991. The definition of Rights raises concern as there is no agreement among scholars as to what the term means. Most legal system dictionaries define rights as legal, social, or ethical principles of freedom or irrevocable entitlement; or the fundamental normative rules about what is allowed of people or owed to people. (the Stanford Encyclopedia of Philosophy, 2007). Others define them as an entitlement, which is far different than a privilege or a license which are granted from a legal authority such a law or statute made by a state legislature, or the Congress. The rights of the child are clearly set in the UN Convention on the Rights of the Child (1989) under a number of articles which can be regrouped into four sets: guidelines principles, survival and development rights; Protection rights and Participation rights. This convention has therefore been set to see every child entitled to childhood, education, good health, fair treatment, and to have their voice heard.

Parents' rights also raise concern in the UK, because there is not one single Act of Parliament that actually sets out all the rights and duties that parents have. Their responsibilities are simply set in different Acts such as Education Act, Family Law Act, Children's Protection Act. It is unfortunate to notice that not all situations that parents face when bringing up children are covered by Acts. In addition, a serious observation would reveal that what the law set for

parents are mainly responsibilities, obligations and duties, but not rights at all. Parents have a duty to protect the child from harm, to provide the child with food, clothing and a place to live, to financially support the child, to provide safety, supervision and control, to provide medical care, to provide an education. The society also has responsibilities and rights. It should provide three main things to the child's education: the place where people learn, pay teachers' salaries, provide funding for children to attend schools and provide the law to govern the various aspects of child's life and education, mainly schooling age, the curriculum, assessment procedures. Because of these aspects, the society has some rights. For example it can intervene whenever the rights of the child are hindered. This leads to the limits of the rights of the child, the parents and the society. Examining the UN Convention on the Rights of the child, it can be observed that many rights are not fully implemented. For the sake of space in this assignment, I will refer to just a few articles to illustrate how the rights of a child can be limited. Article 2 for example talks about fighting discrimination. Yet in the UK, discrimination exists in various domains, such as disabled children, poor family children, children from Gypsy and travellers, children from asylum and refugees' families, children from minority communities and many others. Such children are vulnerable and exposed to bullying, limitations on schools days, benefits. In Northern Ireland, children belonging to Travellers are entitled to 100 days of school per year, instead of 185-190 days required for settled children. This is discrimination. Article 12 requires the respect of child's views. In DHC (2000), this right is recognised. However in reality the participation of children in decision making is very limited, especially as

children are not considered as rights-bearers. (Hart, 1997)** It would be observed that children with disability are most of the time not consulted when it comes to matters related to their lives. No strategy has been nationally adopted for advocacy service of children in the UK. Article 24 is for equality for health and health services. The link between health inequalities and poverty and deprivation are pervasive and a recent UNICEF report reinforced this, highlighting the UK's poor performance in relation to child well-being. 76 The rate of infant mortality in the UK, for example, compares badly with that in other western countries. Problems related to mental health, sexual health are a real concern among children Other limits are voluntary and done either by parents or by the government. Some parents stop their children from watching some types of TV programmes when they think that those programmes are not good for their children. This is the case of films of violence or films with insanity. Criticisms can be levelled at this point. To mention just one, we can worry whether our society actually applies democracy, as there seems to be no elements of criticality involved in the child's rights. Quoting Kymlicka (1992), McCowan (2010: 90) states: "the ability and willingness to engage in public discourse about matters of public policy and to question authority are perhaps the most distinctive aspects of citizenship in a liberal democracy, since they are precisely what distinguish citizens within democracy from the subjects in an authoritarian regime." The liberal philosophy would also go against these limits as it argues that people have equal rights, individualism, liberty and justice, as advocated by John Stuart Mill. However, one can also wonder whether it is always wrong to limit other people's rights. Using the liberal theory, it would

be accepted that parents have the rights to up-bring their children the way they want. This is a right given in Article 26 of the United Declaration of Human Rights that stresses the parents' right to choose the kind of education for their child, especially when it is in the interest of the Child as mentioned in Articles 3 and 29(1)(c) of the CRC. Further it can also be justified on the basis of the view that children are incapable of making competent choices. Another instance where limits to the rights can be justified would be in case there is an issue opposing parents to the State in terms of rights. There are instances where parents have a tendency to impose their principles or belief on their children. This usually happens in subjects such as religion, sexual education, creationism in science and other subjects. This is a dilemma, because Article 30 of child's rights stipulates that a child has the rights to learn " about and practice their own culture, language and religion", whenever the practices are not shared by the majority of people in the country. At the same time, talking about freedom of thought, conscience and religion, Article 14 says that Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. This is Mill's liberal philosophy. The state has also put some limits to the child's rights. A number of regulations for example stop the child to do some things, such as voting, driving, marrying at a certain age, etc. A good reason to explain these limit of the child's rights can be found in the say of Hart (1997) who argued that children are not right-bearers as they cannot exercise a choice with competency due to their vulnerability, dependency and incapability to understand their choices. This would be justified if someone uses the social

learning theory advocated by John Locke where a child is considered as an empty vessel who needs to learn everything from experience. In this case education has the role to provide "the character formation necessary for becoming a person and for being a responsible citizen" (Yolton, 1968: 3). This is of course a view Jean Jacques Rousseau would not defend, because for him, a man is born good, but the nature puts evil in him. This gives a different view of education where the only guide for a child will be his own reason without relying on social expectations. A naturalistic education would have the task of reducing the obstacles of civilization with the intention of bringing man as near to nature as possible. If so, then parents have to exercise the right to guide the child, and whenever they fail, the state should step in (Brighouse et al (2010) in which case one has to refer to Mill's theory and justify it in terms of the harm caused to the child. The society has therefore the responsibility to make sure that the child's rights are respected, protected and fulfilled, and this right is provided in Article 4 of CRC. The implications of such views is that parents and children have to give up some of their rights so that everyone can live as a member of a good society. The right to perfect liberty is therefore a utopia, because everyone has to give it up for a society to be secure. This means that the only real rights people are left with are legal rights assigned to us by the government. This is a conflicting situation, and one can go a step further and ask, with Mill, how much power the state has and to what extent its intervention should go, especially when one knows that parents are also given the rights to direct and guide their children as they grow (Article 5 CRC) To sum up, it can be said that the child, the parents and the state all have rights. However

in conflicting situations, the interest of the child should be the first criteria to decide. Further it was noticed that the child and parents have to give up some of their rights for the society to be secure, and hand up the power to the state to intervene in cases of failures. This means that there are limits in those rights. John Stuart Mill liberal theory could justify such an intervention. This led to the purpose of education as different philosophers view a child in different ways. John Locke thinks that children are empty vessels, who have to learn everything from society. In such cases, they are not rights-bearers as some scholars argue. However it was also noticed that Rousseau adopted a different view where a child was born good, but worsened by the society. Such a view would imply that children can be rights-bearers, but need guidance. Whatever the option one takes, the truth is that rights exist, and everyone has to learn their responsibilities and their limits.***This is contrary to Smith (2006) who argues that children have to be recognised as powerful and competent social actors