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**CHILD PROTECTION LAWS AND ROLE OF CIVIL SOCIETY IN
PAKISTAN**

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Abstract

Globally, especially in eastern cultures, children are expected to be Submissive to their parents. Such a compliant approach towards children may have been successful in providing a limited

part of their needs i.e. Food, shelter, education and health nonetheless the same acquired behavior of a child in general may expose and trap him into exploitation, abuse, and neglect particularly the children out of school, victims of Trafficking, sexual abuse, with disabilities, of less privileged families and those of imprisoned parents. Hence the wisdom of Legislature has enunciated some laws for the protection of children. This study mainly revolves around the Laws mandating child protection both nationally, legislated in Pakistan and those, ratified by Pakistan internationally and also the extent to which Pakistan is signatory. Besides legislature it also highlights what role civil society can play to safeguard children from aforesaid abuses and some challenges faced in the Implementation of Child protection laws.

Methodology

A mixture of Legal and Moral approach has been applied to address the issue. The data is mainly secondary in nature. Original International Documents (downloaded through official websites) have been consulted. Similarly, a different international and municipal statute of Pakistan including Constitution has also been consulted for this study.

1. Introduction

For various reasons reported, in Pakistan a large number of children have been found to be subject of physical abuse (primarily domestic) and hence leading them to quit schools, leave homes or end up living on the street, in jails or performing sex trades for living. A Save the Children & UNICEF study (2005) reported that violence against children is an accepted and inevitable part of South Asian societies, and due to stigma, shame and guilt, it is highly underreported.ⁱ Despite being a Signatory to the “United Nations Convention on The Rights of the Child [UNCRC]” and related Protocols and conventions, Pakistan is the fifth amongst the countries that has a very bleak Picture for its children as they continue to be subjected to violence, lawlessness and denial of Fundamental rights.ⁱⁱ

The reason behind such disappointing figure is that Child protection system in Pakistan is motivated by traditional norms which are influenced by different cultures in different parts of the country. Thus the legislation regarding child protection varies from province to province making it a disjointed system which resulted in an imbalance in international obligations and Social norms regarding child protection. While the global norm regarding the child protection is that it is the process of protecting individual children identified either as suffering or likely to suffer considerable Harm due to abuse or neglect.ⁱⁱⁱ

By the definition of UNICEP the set of laws, policies, regulations and services needed across all social sectors especially social welfare, education, health, security and justice to support prevention and response to protection-related risks. These systems are part of social protection, and extend beyond it. At the level of prevention, their aim includes supporting and strengthening families to reduce social exclusion, and to lower the risk of separation, violence and exploitation. Responsibilities are often spread across government agencies, with services delivered by local authorities, non-State providers, and community groups, making coordination between sectors and levels, including routine referral systems etc., a necessary component of effective child protection systems^{iv}. Hence child protection laws includes right to family environment, Parental care, protection against sexual abuse, right to grow, right to survive (health, nutrition, and shelter), right against Economic abuse(child labor), and right to justice for juvenile.

2. International Statutory procurements of Pakistan regarding Child Protection

Pakistan has ratified a number of International treaties and conventions mandating protection of Child which includes,

- “The International Labour Organization’s Convention 182 on the worst Forms of Child Labour 1999 (ratified on 11, October, 2001)”
- “The Optional Protocol on the sale of children, child prostitution and child pornography (ratified on 26 Sept, 2001)”
- “The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (5 January, 2002)”
- “The SAARC Convention on Promotion of Child Welfare, 2002 (ratified 5 January, 2002)”
- “The International Labour Organization’s Convention 138 on Minimum Ag (ratified 5 July, 2006)”

Besides the aforementioned instruments there are also some other treaties ratified by Pakistan which some way or the other protects a child.

- “Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1996,”
- “The Declaration and Agenda for Action adopted at the issue of the World Congress against Commercial Sexual Exploitation of Children, signed in 1996, and reaffirmed by the Yokohama Global Commitment in 2001”, and
- “The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour Convention (C182), ratified in 2001”.

But Pakistan regrettably hasn’t yet signed the “Convention against Torture, and other cruel, Inhuman or Degrading Treatment or Punishment (CAT)”. On 15 June 2001 the “Coalition of Non-Government Organizations against Torture (CINAT), which includes OMCT, sent to the Pakistani Minister of Foreign Affairs an appeal for the universal ratification of the CAT”.^v

2.1) Dimensions of Internationally Guaranteed Rights

There are some internationally guaranteed rights Legislated in Convention on the Rights of the Child (hereinafter the Convention) which protects child in several dimensions, socially, legally, economically and psychologically.

2.1.1) Child soldiering

Due to military insurgency on Pak-Afghan and Indo-Pak borders due to unsettled territorial disputes the matter of recruiting Children in Military has been addressed by International conventions. “Article 38 of the Convention on the Rights of the Child (hereinafter the Convention)” states that “States parties shall refrain from recruiting children under fifteen years and that among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years”, States Parties shall give priority to the oldest.^{vi} The Optional

Protocol on children in armed conflict, that Pakistan signed in 2001, further maintains that States parties shall do the possible in order that members of their armed forces who have not attained the age of eighteen years do not take a direct part in hostilities. Besides the state's Armed forces there are some other non-state armed groups organized by madrassas (Islamic Schools), recruiting Children as their soldiers. Sectarian religious groups are also believed to use child soldiers coming from sponsored madrasas or from amongst returning veterans of Conflicts in neighboring countries.^{vii} This issue has also been addressed by the "World Organization against Torture (hereinafter OMCT)". Article 4(1) of the Optional Protocol states that "armed groups that are distinct from the State's Armed forces should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years".

2.1.2) Refugee Children

According to report, the Government is appreciated to bear one of the most open and generous policy towards refugees and has performed much more than should be expected of a Country with limited resources.^{viii} World acknowledges the overburden of refugees on Pakistan comprising of nomads from Afghanistan and internationally displaced persons from Ex-FATA. The Convention on the Rights of the Child is important to refugee children because it sets comprehensive standards. Virtually every aspect of a child's life is covered, from health and education to social and political rights. Some of the standards are specific, for example the articles on juvenile justice (arts. 37 and 40), adoption (art. 21) and family rights (arts. 5, 9 and 14.2). Some social welfare rights are expressly qualified by the State's financial capability. Rights to health (art. 24), education (art. 28), and to an adequate standard of living (art. 27) are called "progressive rights" because they increase along with the State's economic development. However, these social welfare rights are not just principles or abstract goals. Because they are "rights," the prohibition against discrimination (art. 2) means that whatever benefits a State gives to the children who are its citizens; it must give to all children, including those who are refugees on its territory.^{ix}

2.1.3) Non Discrimination

Pakistan is a heterogeneous society comprising of a number of languages, cultures, ethnicities, castes and traditions. So children being subject to those were expected to be treated differently if there were no laws regarding nondiscrimination of children proper rationes praedictas. Hence, the nondiscrimination article, art. 2, requires States to "respect and ensure the Rights set forth in the present Convention to each child within their jurisdiction without discrimination of Any kind, irrespective of the child's ... national, ethnic or social origin ... or other status". In other words, every child within a State's jurisdiction holds all CRC rights without regard to citizenship, immigration Status or any other status.^x

Besides treatment, participation is another aspect of non-discrimination. CRC. Art. 12 provides that: "States Parties shall assure to the child who is capable of forming his or her views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance With the age and maturity of the child."^{xi} In one way or another, nearly every article concerns some aspect of children's participation in society.

Besides above-mentioned principles, there are also some other laws lay down by CRC regarding protecting the rights of children.

- Right to juvenile justice (arts. 37 and 40)
- Right to adoption (art. 21)
- Family rights (arts. 5, 9 and 14.2).
- Right to health (art. 24),
- Right to education (art. 28), and
- Right to an adequate standard of living (art. 27)

3. Municipal Legislative Policy to Protect Children

Pakistani societies has been influenced Hindus Joint Family System. The Outdated conventional and patriarchal system of Pakistan's tribal society can be a barrier to adequate child protection by its attempt to protect the guilty.^{xiii} "The Human Rights Commission of Pakistan reported in 2014 that Pakistani children are susceptible to Exploitation, abuse, violence due to severe Weakness in the legal and social protection Framework."^{xiii} Due Military Insurgency at Pak-Afghan border in Ex-FATA and Kashmir, a number of examples of internal displacements, hundreds of casualties by brutal massacre of APS, Peshawar, victims of domestic violence, sexual abuse, human Trafficking, minor marriages, out of school children, street children and annually huge number of Flood victims can be found which makes it imperative for the state to steer its attention towards Child protection in a legal as well as administrative manner. State had somehow been successful in legal war against the aforesaid offences but how far the asserted legal principles are applied, is a matter of Fact. In certain matters concerning Children's rights, Pakistani provinces seem to have been more active and more progressive than the Federal State. According to Anees Jillani and Zarina Jillani, the "Punjab Children Act, 1952 and the Sindh Children Act, 1955" were among the first child related legislations that Attempted to bring child centered concerns into laws.^{xiv}

3.1) Providing Special Legal Value

"The age of Majority Act, 1975" gives a special legal value to a person who has not yet attained the age of 18 years. They are considered to be minors and incompetent to enter into agreements, marriage and other legal obligations subject to Guardians and wards Act in which it extends to 21 years. While it is limited to 15 years when it comes to Labour.

3.1.1) Protection from Criminal Trial, Sentence and Detentions

For Penal purposes, it becomes 7 years. Section 83 of Pakistan Penal Code, states that a child between seven and 12 years of age can only commit an offence when he has "attained sufficient maturity of understanding to judge of the nature and the consequences of his conduct".¹⁵ For the purpose of Criminal Trial, The Juvenile Justice System Ordinance 2000 further guarantees special protection to all youth offenders, defined as persons under 18 years. According to article 3(1) of the Juvenile Justice System Ordinance, "every child who is accused of the commission of an offence or is a victim of an offence shall have the right of Legal assistance at the expense of the State". And Article 10(1.a) of the same Ordinance states that "where a child is arrested for commission of an offence, the officer in charge of the police station in which the child is detained shall, as soon as may be, inform the guardian of the child, if he can be found, of such

arrest and inform him of the time, date and name of the juvenile court before which the child shall be produced.” Article 12 of the Juvenile Justice System Ordinance 2000, deals with orders that shall not be passed with respect to a child”, and paragraph (a) states that “no child shall be awarded punishment of death [...]”. The Juvenile Justice System Ordinance for the purpose of arrest and bail mandates special treatment for children under the age of 15 years. Article 10(5) states that, if arrested for an offence punishable with Imprisonment of less than ten years, the child under 15 years shall be treated as if he was accused of commission of a bailable offence. Further, “no child under the age of 15 years shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code [of Criminal Procedure]”.

3.1.2) Protection from minor Marriage

The Child Marriage Restraint Act, 1929 restricts marriage under 18 years of age for a male and less than 16 years for a female. Under these ages, marriages will bear penal consequences with fine and imprisonment.

3.1.3) Protection from Child Labour

The Children (Pledging of Labour) Act, 1933 declares a person less than 15 years as a Child and states that any agreement to pledge the labour of a child shall be void. Article 11(3) of the Constitution of 1973 lower this age limit by prohibiting employment of child below the age of 14 in any hazardous employment. The Employment of Children Act, 1991 follows the definition of the Constitution and attempts to regulate the conditions of work for children less than 14 years and to forbid their employment in harsh occupations.

3.1.4) Protection against Torture and Degrading Treatment

Article 37(a) of the Convention states that “no child shall be subjected to torture or other cruel, Inhuman or degrading treatment or punishment”. The Juvenile Justice System Ordinance 2000 in its article 12(b) provides that “no child shall be [...] handcuffed, put in fetters or given any corporal punishment at any time while in custody”. Section 366-A of the Pakistan Penal Code deals with procurement of minor girls and maintains that whoever induces any minor girl under the age of eighteen years into an act that force or seduce her to illicit intercourse is punishable with imprisonment which could extend to ten Years and liable to fine^{xv}. The Sindh Children Act, 1955 and the Punjab Children Ordinance, 1983 also redress the matter of Sexual abuse. These laws hold that it is a crime to allow a child between the age of four and 16 years to frequent a brothel not being the home of the child, or to abet, cause or encourage the seduction or prostitution of a girl under 16 years or encourage anyone other than her husband to have sexual intercourse with her. These offences are punishable with imprisonment up to two years and with fine.^{xvi}

3.1.5) Child Trafficking

The Legislature of Pakistan has redressed the matters of Child abduction, sale or trafficking and such laws are which are enunciated in article 11(2) of the Constitution which states that “all forms of forced labour and traffic in Human beings are prohibited”. The sale and purchase of children for purposes of prostitution is restricted by sections 372 and 373 of the Pakistan Penal Code, and such sale or purchase is an offence punishable with up to ten years imprisonment and fine. Section 364-A of the code grants life imprisonment or capital punishment for kidnapping or

abduction of children under 10 years. The zina Ordinance prohibits enticing, leading away, concealing or detaining a female person for illicit intercourse (no differences with regard to ages), and punishes it with imprisonment up to 25 years, 30 strips and fine.

4. Role of Civil society in protection of Child

The future of any nation is dependent upon the experiences of the children that grow up in its Society.^{xvii} Henceforth protecting a Child is everybody's responsibility. Having briefly highlighted the Laws protecting Children it is well settled that Legislature has performed its job precisely, handing over the prescribed, unambiguous and unequivocal laws to the Executive for its implementation. Besides the Laws enforcement agencies, it's the moral as well as well as religious duty of Civil society comprising of households, trades, professional associations, social movements and community unions to perform an unforced collective action to make sure the Protection of Children from the abuses strictly restricted in the Books of Law. Because the Civil society organizations are sometimes considered the "third sector", after government and business (respectively), in their influence on the political life of states. In the United States, for example, the most important social campaigns have originated in civil society, such as those for human rights, women's rights, the environment and consumer protection.^{xviii} The innovative progress the Internet and other communication resources and information technology has provided the activists with resources and opened new platforms for civil society promote Children rights implementation. Social networking sites can be consumed as a medium for young Public to exchange ideas, thoughts and information about the promotion of Child rights and inform each other about the threats to Children rights.^{xix} A Facebook search lays down over Five hundred results for youth groups and organizations dedicated their lives to networking e.g. The Amnesty International Youth Program; a Facebook group joined by millions of activists exchanging their ideas about different dimensions of Human rights with special privileges to women and children rights. They assert their voice and advocate the rights of children with disabilities, refugees, or victims of violations such as sexual abuse. Child Rights Information Network (CRIN), a global network for children's rights, undertakes advocacy campaigns and leads international children's rights coalitions, striving to make Human rights enforcement mechanisms accessible for all. Civil society must perform community based child protection to meet the purpose in a more profound manner. It may be performed by grouping of people, often volunteers, who aim to improve the protection and wellbeing of children in a village, urban neighborhood or other community – for example, a camp for internally displaced people (IDPs), a temporary settlement or migrant community.^{xx} They focus on child sexual abuse and exploitation and prevent children from such infringements by;^{xxi}

- Awareness raising and community mobilization on children's rights, child protection and care issues, and the benefits of children's participation.
- monitoring and acting as watchdogs for child protection
- identifying vulnerable children and families
- Support to care-givers and members of the extended kin network around positive parenting practices
- supporting the community in livelihood, social protection and education provision

- advocating to local and national government for better service delivery, policy improvements and effective implementation of laws and programs for child protection. The Child protection may also be promised by the Response, rehabilitation and Reintegration towards such abuses. Being responsible citizens we are able to;
- Identify locations or borders where children are at high risk of sexual assault or trafficking
- refer the cases to available local services (sexual and reproductive health services, other medical, Legal, judicial, psychosocial, etc.)
- provide and individual care to children affected by sexual abuse and exploitation through mediation, counseling, Informal education provision and other practical actions.

In economically less privileged country like Pakistan, Poverty becomes barrier to Child Protection. Most of the abuses are committed against children from lower class families who live from hand to mouth. They either are financially too weak to raise their voices against the violence being unable to bear fees required for Criminal Proceedings or their voices are coercively absorbed by their upper stratus. Thus our Lawyer Community should adopt a Child centered approach to redress such abuses by not charging the victims of Child abuses from lower class. They should also support them in lodging reports and initiating Criminal Proceedings against the culprits. The behavior attitude of individuals towards children also plays a role in their protection. As per the teachings of Sunnah, Children are considered as the priceless treasures from Allah. Holy Prophet (SAW) said, “He who does not show mercy (towards his children), no mercy would be shown to him.” (Sahih Muslim). Hazrat Anas (RA) narrates, “I served the Prophet saw for ten years, and he never said to me, ‘Uff’ (a minor harsh word denoting impatience) and never blamed me by saying, “Why did you do so or why didn't you do so?” Hence it’s our moral as well as religious duty to show affection towards children and make them feel safe and secured rather than scolding them for their minor mistakes excessively and making them go through the path of recidivism.

As previously discusses, the legal framework of child protection in Pakistan has been addressed in a precise, unambiguous, unequivocal manner protecting a Child in many dimensions. However, community-based child protection policies and mechanisms can also play a vital role in child protection. They besides the well settled laws stage a significant character in practically protecting children from hazards and making them a useful and productive slab of the society.

ⁱMasood et al. 2012; Mehnaz, 2011; Solotaroff and Pande, 2014

ⁱⁱMehnaz, 2011

ⁱⁱⁱRoyal College of Pediatric and Child Health, 2016.

^{iv}United Nations Economic and Social Council (2008), UNICEF Child Protection Strategy, E/ICEF/2008/5/Rev.1, par. 12-13.

^vAppeal for the Universal Ratification of the UN Convention against Torture: Pakistan. In its letter addressed to Mr Abdus Sattar, Minister of Foreign Affairs, CINAT underlined the importance for Pakistan to urgently sign and ratify the CAT in order to prevent and combat torture.

^{vi}Article 38 of Convention on the Rights of the Child.

^{vii}Pakistan report of the CSUCS, December 2001.

^{viii}"Progress Report on the implementation of the Convention on the Rights of the Child", Government of Pakistan, p. 98

^{ix}UNHCR, Refugee Children, Guidelines on Protection and Care p. 6

^xArt. 2 of Conventions on the Rights of Child.

^{xi}Art. 12 of Convention on the Rights of the Child.

^{xii}(Jabeen, 2016)

^{xiii}(Jibeem and William, 2014).

^{xiv}Anees Jillani, Zarina Jillani, "Child Rights in Pakistan", Society for the Protection of the Rights of the Child, Islamabad, January 2000, p. 58

^{xv}Section 83 of Pakistan Penal Code.

^{xvi}Anees Jillani, Zarina Jillani, "Child Rights in Pakistan", Society for the Protection of the Rights of the Child, Islamabad, January 2000, p. 162.

^{xvii}(Hobbs et al., 1993

^{xviii}Lester, M., Salamon, „The Rise of the Nonprofit Sector“, p. 109, Foreign Affairs, July/August 1994, NO. 73411, New York.

^{xix}Information available at: www.crin.org/about/index.asp, accessed on 25 May 2010.

^{xx}International Save the Children Alliance Cambridge House Cambridge Grove London W6 0LE UK First published 2008 © International Save the Children Alliance 2008

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