

**Legal System for Child Protection in Pakistan and its
Comparison Under International Law**

LL.B Thesis

Tahreem Rehman

17042615

Supervisor: Carlos Correa

03/05/2021

Table of Contents

Table of Abbreviations	4
Introduction.....	5
Research Question	6
Methodology and approach	6
Chapter 1: International and Pakistan's National Legal Instruments on the Rights of the Child	7
Chapter 2: Role of International Law in the Domestic Legal Framework.....	9
Chapter 3: Impact of International Children's Rights on Pakistan's Domestic Legal System....	11
3.1 Sexual abuse and exploitation.....	12
International Standards	12
National Legislation of Pakistan:.....	13
Zainab Case	16
3.2 Physical and emotional abuse, neglect, and maltreatment.....	16
International Standards	16
National Legislation of Pakistan:.....	17
3.3 Child Labor	19
International Standards	19
National Legislation of Pakistan.....	20
Case Law.....	22
Chapter 4: Children in Conflict with the Law	24
International Standards	24
National Legislation of Pakistan.....	24
The Juvenile Justice System Ordinance, 2000.....	24
The Juvenile Justice System Act 2018:	25
Pakistan: Juvenile Prisoners (under trial or convicted).....	28
Conclusion	29
Bibliography	30
Primary Sources.....	30
Secondary Sources	31

Table of Abbreviations

UN CRC	United Nations Convention on the Rights of the Child
UN CRC Committee	United Nations Committee on the Rights of the Child
ILO	International Labor Organization
ICT	Islamabad Capital Territory
KP	Khyber Pakhtunkhwa Province
NCCWD	National Commission for Child Welfare and Development
NCRC	National Commission on the Rights of the Child
JJSO	Juvenile Justice System Ordinance
JJSA	Juvenile Justice System Act
PPC	Pakistan Penal Code
OPSC	Optional Protocol to the CRC on the sale of children, child prostitution and child pornography

Introduction

On 14 August 1947, Pakistan, a relatively young nation, declared independence from British Colonial rule in India.¹ Pakistan comprises four provinces: Punjab, Sindh, Balochistan, and Khyber Pakhtunkhwa and the administrative territory of Gilgit Baltistan. All those '*States and territories as are or may be included in Pakistan, whether by accession or otherwise*',² such as Azad Jammu and Kashmir.³

Administratively, Pakistan follows a federal parliamentary system of government based on a trichotomy of power between the legislative, judicial, and executive organs.⁴ The country's jurisprudence is based on the common law system, a feature it inherits from its colonial legacy.⁵ The legal system in Pakistan is derived from the English model by adopting the laws and structures of British India, itself a codified legal system based on nineteenth-century English law.⁶ As a result, the legal system and much of the substantive law of Pakistan will be familiar to any Common Law lawyer.⁷

Pakistan is a dualist state in terms of its international law obligations: the Rules of Business 1973 allow the Cabinet⁸ to sign and ratify international treaties and agreements on behalf of the state, after which the Parliament is tasked with their incorporation via implementing legislation.⁹ In the international arena, Pakistan was collectively recognized as a sovereign state within the community of nations by gaining membership of the United Nations (UN) on 30 September 1947, as per Resolution 108 of the UN General Assembly.¹⁰

This research paper aims to provide an overview of the domestic implementation of Pakistan's international law obligation concerning children's rights. Research shows that children who have never been exposed to violence and who grow up in a safe and supportive atmosphere are less likely to act violently, both in childhood and when they become adults.¹¹ As such, protecting children from violence is a key strategy for promoting peaceful communities and reducing all forms of violence.¹² Despite the fact that Pakistan has ratified the United Nations Convention on the Rights of the Child (UNCRC) and other international

¹ Ahmer Bilal Soofi, 'Part III International Law in Asian and Pacific States, South and Central Asia, 24 Pakistan' in Simon Chesterman, Hisashi Owada, and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OSAIL 2019) 576

² Constitution of the Islamic Republic of Pakistan, 1973, pt. I, art. 1(2) (First Amendment, 1974)

³ Ahmer Bilal Soofi (n1).

⁴ *ibid*

⁵ *ibid*

⁶ Martin Lau, 'Introduction to the Pakistani Legal System, with Special Reference to the Law of Contract' (1994) 1 YB Islamic & Middle E L 3

⁷ *ibid*

⁸ Constitution of the Islamic Republic of Pakistan, 1973, pt. III Ch. 3, art. 91 (Eighteenth Amendment, 2010)

⁹ Ahmer Bilal Soofi (n1)

¹⁰ UNGA Res 108 (30 September 1947) UN Doc A/RES/108 (II)

¹¹ United Nations Children's Fund, 'The Legal Framework for Child Protection in South Asia' (ROSA Kathmandu 2020), 2

¹² UN Committee on the Rights of the Child (CRC), 'General comment No. 13 (2011): The right of the child to freedom from all forms of violence' (18 April 2011) UN Doc CRC/C/GC/13, para. 16.

legal instruments concerning the rights of the child, children in Pakistan still face significant rights violations.

This thesis explores the international convention on the rights of the child and major national legal instruments of Pakistan concerning the rights and status of children. It further analyses the impact of international children's rights on Pakistan's domestic legal system. The primary focus of this paper is to examine the situation of children's rights in Pakistan. It discusses the ratification procedure of International Conventions regarding children's rights in Pakistan, corresponding domestic laws, and their implementation. This paper is relevant for legislators in national jurisdiction who make laws and policies on subject matters concerning the rights of the child, lawyers, and court officials who deal with the juvenile justice system and academics.

Research Question

This thesis revolves around the question, "Does domestic law in Pakistan in regards to children's rights comply with international standards?"

Chapter 1 provides International and National legal instruments on the child's rights in Pakistan. Chapter 2 explains the procedure of how international instruments are incorporated in Pakistan's domestic legal system. Chapter 3 analyzes the rights of a child in Pakistan when it comes to protection against violence and exploitation. It also provides how lawyers and child rights experts deal with children's rights issues in Pakistan. The main content of Chapter 4 concerns the situation of the Juvenile Justice System in Pakistan. The paper ends with a conclusion and a bibliography containing all the sources used.

Methodology and approach

In writing this thesis, the research was done using the doctrinal methodology and social science method, i.e., the interview method.

The doctrinal methodology is defined as 'a way of conducting research which is usually thought of as typical legal research'. Therefore the research was mainly focused on analyzing case law and secondary sources. Furthermore, scholarly articles, journal articles, and reports were read thoroughly to give insight into the research question to review. The methodology chosen for this research comprises a purely legal analysis; this includes the law that is being practiced now. Besides, to distinguish whether there has been an indication as to how the law might be evolving. The doctrinal method is commonly a two-part process. The first part demands finding the sources that are law-related to support the study. Further, in the second part, these sources are interpreted, examined, and analyzed to apply in the research. Within this method, the research question is answered from different perspectives taken from the case laws.

The interview method involved asking open-ended questions to converse with various stakeholders about children's rights in Pakistan. The purpose of the qualitative research

interview was to view how the law is practiced in Pakistan and how children's rights are legally enforced.

Chapter 1: International and Pakistan's National Legal Instruments on the Rights of the Child

Children's rights can be defined as "the rights concerning the protection of the individual child and creation of the conditions in which all children can develop to their full potential."¹³ Laws related to children's rights in Pakistan appear in both general thematic codes and exclusive legislative acts. The existing legislative and policy framework for children's rights comprises provisions of the national constitution, federal and provincial laws, including criminal law and sharia law, children's rights related national policies, and the country's commitments as a signatory of various international treaties and conventions.

Children's rights categorically find mention in the fundamental law of Pakistan, which is the Constitution of Pakistan under the Chapter on Fundamental Rights.¹⁴ Article 11 paragraph 4 of the Constitution explicitly provides that, "*No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.*"¹⁵ Following the Constitution's definition, the federal Employment of Children Act 1991 attempts to regulate the conditions of work for children under 14 years, prohibits them from working in harsh occupations.¹⁶

Furthermore, Article 25-A of the Constitution explicitly stipulates that "*The state shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.*"¹⁷ Since Pakistan is a member of the United Nations, it is worthwhile to reproduce here Article 26(1) of the United Nations Universal Declaration of Human Rights (UDHR): "*Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.*"¹⁸

The Juvenile Justice System Act 2018 protects children who are involved in criminal proceedings. It provides a particular procedure for the arrest, investigation, bail, trial, detention, and rehabilitation of juvenile offenders.¹⁹ Its declaratory provision/preamble, *inter alia*, lays down the purpose of this legislation to protect children in criminal litigation, their rehabilitation

¹³ V. Yates, CRIN Newsletter, Number 18, (London: Children Rights Information Network, (March 2005)

¹⁴ Zaem Mumtaz Bhatti, 'Legal Rights of Children Under Laws of Pakistan' (December 2017) < <https://courtingthelaw.com/2017/12/27/commentary/legal-rights-of-children-under-laws-of-pakistan/> > accessed 10th April 2021

¹⁵ Constitution of the Islamic Republic of Pakistan, 1973, pt. II Ch. 1, art. 11(4) (Eighteenth Amendment, 2010)

¹⁶ Zaem Mumtaz Bhatti, 'Legal Rights of Children Under Laws of Pakistan' (December 2017) < <https://courtingthelaw.com/2017/12/27/commentary/legal-rights-of-children-under-laws-of-pakistan/> > accessed 10th April 2021

¹⁷ Constitution of the Islamic Republic of Pakistan, 1973, pt. II Ch. 1, art. 25A (Eighteenth Amendment, 2010)

¹⁸ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 26(1)

¹⁹ Wajahat Ali Malik, 'The Juvenile Justice System and the Right to Dignity of Juvenile Offenders in Pakistan' (2019) Pakistan Law Review Vol: X, 150

in society, and the reorganization of juvenile courts.²⁰ Section 2(b) of the Juvenile Act provides the meaning of child as, “A person who at the time of the commission of an offense has not attained the age of eighteen years.”²¹ The minimum age of criminal liability in Pakistan is ten years, according to section 82 of the Pakistan Penal Code (PPC) as amended by the Criminal Law (Second Amendment) Act 2016.²²

The Child Marriage Restraint Act 1929 states that a marriage can only take place when a male is over the age of 18 and a female is over the age of 16.²³ The Sindh Child Marriages Restraint Act 2013 has declared that a marriage can only take place over 18 years of age for both genders.²⁴ However, a similar move by the Federal Government under The Child Marriage Restraint (Amendment) Bill 2017 was rejected by the Senate Standing Committee on Interior.²⁵

Pakistan is a state party to all major UN Conventions related to the child’s rights, including the CRC (ratified in 1990). Other core international instruments it has ratified include the CRC Optional Protocol on the sale of children, child prostitution and child pornography (2011), the CRC Optional Protocol on the involvement of children in armed conflict (2016), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2010), ILO Convention 138 on Minimum Age for Admission to Employment (ratified 6 July 2006) and ILO Convention 182 on the Worst Forms of Child Labour 1999 (ratified 11 October 2001).²⁶

Amongst these international commitments, the UNCRC stands out as it also serves as the national policy guideline on children’s issues.²⁷ In accordance with the UNCRC, ‘Every person below the age of 18 years is a child’.²⁸ Over 47 percent of the total population of Pakistan consists of children less than 18 years of age.²⁹ The UNCRC made it obligatory for the States ratifying the Convention to take all appropriate legislative, administrative, and other measures to implement the rights enshrined in the Convention.³⁰

In 1979, the National Commission for Child Welfare and Development (NCCWD) was established by the Government of Pakistan. The NCCWD is responsible for coordinating, monitor & facilitate the implementation of the United Nations Convention on the Rights of the Child (UNCRC) and other national/ international obligations.³¹ The NCCWD also submits

²⁰ Zaeem Mumtaz Bhatti, ‘Legal Rights of Children Under Laws of Pakistan’ (December 2017) < <https://courtingthelaw.com/2017/12/27/commentary/legal-rights-of-children-under-laws-of-pakistan/> > accessed 10th April 2021

²¹ Pakistan Juvenile Justice System 2018, Section 2(b).

²² Zaeem Mumtaz Bhatti, ‘Legal Rights of Children Under Laws of Pakistan’ (December 2017) < <https://courtingthelaw.com/2017/12/27/commentary/legal-rights-of-children-under-laws-of-pakistan/> > accessed 10th April 2021

²³ *ibid*

²⁴ *ibid*

²⁵ *ibid*

²⁶ < <http://www.ohchr.org> > accessed 9th March, 2021

²⁷ Tahira Jabeen, ‘Pakistan’s Child Protection Legislative and Policy Frameworks: A Critical Review’ (2013) Pakistan Journal of Criminology Vol 5 (2) 161

²⁸ Justice (R) Ali Nawaz Chowhan, ‘The Dismal State of Child Rights in Pakistan’ < <https://pakistanlaw.pk/articles/1399/the-dismal-state-of-child-rights-in-pakistan> > accessed 11th April 2021

²⁹ *ibid*

³⁰ *ibid*

³¹ ‘National Commission for Child Welfare and development’ < <http://www.mohr.gov.pk/Detail/MzFjMTM5ODctODkwYS00NTUyLTk2NjQtMmNjZjEwNzJIN2Fk> > accessed 12th April 2021

mandatory Periodic Reports on the progress of implementation of the UNCRC to the UN Committee on the Rights of the Child, Geneva & other quarters.³²

A National Commission on the rights of the child (NCRC) was established in 2017 to bring the legal system in conformity with UNCRC, following international obligations of the state. The NCRC mandate extends to the whole country and enforces child rights as provided in the United Nations Convention on Rights of the Child. The commission's function is to monitor and examine existing legislation and instruments regarding children's rights and ensure effective implementation in children's best interest. The commission prepares an annual report on child rights in the country and performance of the commission and submits it to the Federal Government, which shall lay the report before each House of Majlis-e-Shoora (Parliament).³³

Chapter 2: Role of International Law in the Domestic Legal Framework

Pakistan's legal system originates from its British common law history, the post-colonial Constitution 1973, and Islamic *sharia* law.³⁴ Pakistan follows the principle of separation of powers, allowing for a clear distinction between the state's executive, legislative, and judicial organs within a federal structure.³⁵ However, the implementation of international law requires all these stakeholders to fulfill Pakistan's obligations actively.³⁶

Article 40 of the Constitution urges the state to “*endeavor to promote international peace and security, foster goodwill and friendly relations among all nations and encourage the settlement of an international dispute by peaceful means.*”³⁷ Additionally, post the 18th Amendment in 2010, the Constitution delegates certain subjects to the provinces while retaining others within the center.³⁸ Children's rights are one of those subjects that are dealt with on the provincial level. Therefore, Pakistan's policies regarding children's rights are province-based and vary from province to province. Subsequently, authority pertaining to ‘international treaties, conventions and agreements and International arbitration’³⁹ rests with the center as specified in the Fourth Schedule of the Constitution.

The legislative organ primarily relies upon the Treaty Implementation Cells (TICs), created at both the provincial and federal levels on the Ministry of Law, Justice and Human Rights initiative in 2013.⁴⁰ The TICs' objective ‘is to enable the Government to implement

³² *ibid*

³³ National Commission on the Rights of the Child Act 2017, Chapter III paragraph 17

³⁴ Ahmer Bilal Soofi, ‘Part III International Law in Asian and Pacific States, South and Central Asia, 24 Pakistan’ in Simon Chesterman, Hisashi Owada, and Ben Saul(eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OSAIL 2019) 599

³⁵ *ibid*

³⁶ *ibid*

³⁷ Constitution of the Islamic Republic of Pakistan, 1973, pt. II Ch. 2, art. 40

³⁸ Ahmer Bilal Soofi, ‘Part III International Law in Asian and Pacific States, South and Central Asia, 24 Pakistan’ in Simon Chesterman, Hisashi Owada, and Ben Saul(eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OSAIL 2019) 600

³⁹ Constitution of the Islamic Republic of Pakistan 1973 Fourth Schedule pt. I

⁴⁰ Ahmer Bilal Soofi (n 38)

conventions and obligations arising from there effectively.⁴¹ A private member's bill was floored in the Senate in 2016 to discuss the establishment of a 'National Commission for International Law and Commitments.'⁴² Though not passed, this shows an inclination on behalf of the legislature members to incorporate and fulfill Pakistan's international law obligations.⁴³

International instruments cannot be directly executable by the Court of law until and unless enabling legislation is made by the Parliament. Ratification is the prerogative of the executor, and until and unless Parliament makes the law that international treaty provides, the Court can make persuasive or interpretative reference to it but cannot directly implement the Convention.

The domestic courts have generally held the view that they cannot enforce international law unless it is explicitly included within domestic legislation, despite no such restriction existing in the Constitution.⁴⁴ Since *Federation of Pakistan v Shaukat Ali Mian*,⁴⁵ however, the courts are leaning towards the view that they may press into service international law conventions if there is no conflict or inconsistency in the existing (domestic) law.⁴⁶

The Constitution of Pakistan lays out the process for enacting legislation. In general, this requires a Bill to be passed by both Houses of Parliament – the National Assembly and the Senate.⁴⁷ Upon Bill's passage through both Houses, it is presented to the President of Pakistan for approval and becomes an Act of Parliament upon receiving such permission.⁴⁸ In the absence of the National Assembly, the President, under Article 89(1) of the Constitution, promulgates statutes.⁴⁹ Under this Article, if satisfied that circumstances exist, the President may render it necessary to take immediate action, make, and promulgate an Ordinance.⁵⁰ Such Ordinances have the same legal force and effect as an Act of Parliament.⁵¹ A similar power is bestowed upon Provincial Governors by Article 128(1) of the Constitution regarding matters falling within the provincial legislative authority.⁵²

Fundamental human rights for the citizens of Pakistan are enshrined in the 1973 Constitution,⁵³ which creates an obligation upon the legislature to protect these rights. Any law (existing or being drafted) in contravention of these rights will be declared void.⁵⁴ Pakistan has ratified most of the major human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination 1965 in 1966; the Convention on the Rights

⁴¹ National Assembly Secretariat, 'Questions for Oral Answers and their Replies' (13 February 2015) <http://www.na.gov.pk/uploads/documents/questions/1423813150_256.pdf> accessed 23 January 2017.

⁴² National Commission for International Law and Commitments Senate Bill 2016.

⁴³ Ahmer Bilal Soofi, 'Part III International Law in Asian and Pacific States, South and Central Asia, 24 Pakistan' in Simon Chesterman, Hisashi Owada, and Ben Saul(eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OSAIL 2019) 600

⁴⁴ *ibid*

⁴⁵ PLD 1999 SC 1026.

⁴⁶ Ahmer Bilal Soofi, 'Part III International Law in Asian and Pacific States, South and Central Asia, 24 Pakistan' in Simon Chesterman, Hisashi Owada, and Ben Saul(eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OSAIL 2019) 600

⁴⁷ <<https://www.nyulawglobal.org/globalex/Pakistan.html>> accessed 10th April 2021

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² *ibid*

⁵³ Constitution of the Islamic Republic of Pakistan, 1973, pt. II Ch. 1

⁵⁴ Constitution of the Islamic Republic of Pakistan, 1973, pt. II Ch. 1 , art. 8(1)

of the Child 1989 in 1990; the Convention on the Elimination of All Forms of Discrimination against Women 1979 in 1996; the International Covenant on Economic, Social and Cultural Rights 1966 in 2008; the ICCPR 1966 and the Convention against Torture 1984 in 2010; and the Convention on the Rights of Persons with Disabilities 2006 in 2011.⁵⁵

Pakistan has made efforts to harmonize its domestic legislation with its international human rights obligations and institutionalize the frameworks for human rights protection.⁵⁶ For instance, in 2012, Pakistan established the National Commission on the Status of Women⁵⁷ to help safeguard women's rights and the National Commission for Human Rights.⁵⁸

However, Pakistan's commitments are not being fully implemented, and there are still some areas where the government may want to concentrate more. In July 2017, the UN Human Rights Committee, in its Concluding Observations on Pakistan, appreciated Pakistan's ongoing efforts to advance human rights and encouraged Pakistan to enhance further human rights protections concerning, *among other things*, violence against women, abortion, sexuality-based discrimination, and child marriages.⁵⁹

Chapter 3: Impact of International Children's Rights on Pakistan's Domestic Legal System

By ratifying the Convention on the child's rights and other legal instruments, the state party is responsible for harmonizing its legislative framework with the international standards provided in the Convention and other legal instruments. The Convention offers the state party a basic framework as a guide in policymaking and implementation. Children's protection from all forms of violence, abuse, neglect, and exploitation is a fundamental right guaranteed by the Convention on the Rights of the Child (CRC).⁶⁰

To assess Pakistan's compliance in aligning national child protection legislation with international standards, this chapter discusses the international standards provided in UNCRC and the harmonization of Pakistan's legislative framework with the Convention regarding sexual abuse, physical abuse, and child labor.

⁵⁵ Ahmer Bilal Soofi, 'Part III International Law in Asian and Pacific States, South and Central Asia, 24 Pakistan' in Simon Chesterman, Hisashi Owada, and Ben Saul(eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OSAIL 2019) 590

⁵⁶ *ibid*

⁵⁷ Established under National Commission on the Status of Women Act 2012.

⁵⁸ Established under National Commission for Human Rights Act 2012.

⁵⁹UN Human Rights Committee, 'Concluding observations on the initial report of Pakistan' (23 August 2017) UN Doc CCPR/C/PAK/CO/1 paras 9–48. Ahmer Bilal Soofi (n 52).

⁶⁰United Nations Children's Fund, 'The Legal Framework for Child Protection in South Asia' (ROSA Kathmandu 2020), ii

3.1 Sexual abuse and exploitation

International Standards

According to the international standards, national criminal laws should have comprehensive provisions penalizing all types of sexual exploitation of minors, providing equal protection to girls and boys.⁶¹ This requires an appropriate age of consent to sexual activity for girls and boys, balancing the need to protect the child with recognition of their evolving capacities.⁶² The state must ensure that rape and other sexual offenses should be defined as acts based on the lack of freely given consent.⁶³ The consent of a child (over the statutory age of consent) should be invalidated if force, coercion, or threats were used, or the perpetrator abused a position of trust, authority, or situation of vulnerability or dependence (including mental or physical disability).⁶⁴

Article 34 UNCRC obliges states to “*protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall, in particular, take all appropriate national, bilateral, and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.*”⁶⁵ Sexual offenses should be defined broadly to encompass all contact and non-contact sexual acts and all penetrative and non-penetrative sexual acts, applicable equally to boys and girls.⁶⁶ According to the UN Committee on the rights of the child, sexual harassment should be described as unwelcome sexual behavior such as physical contact and advances, sexually colored remarks, showing pornography, and sexual demands, whether by words or actions.⁶⁷

⁶¹ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 25

⁶² UN Committee on the Rights of the Child (CRC), ‘General Comment No. 20 on the Implementation of the Rights of the Child during Adolescence’ (6 December 2016) UN Doc CRC/C/GC/20, para. 40; UNGA ‘United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice’ (25 September 2014) UN Doc A/C.3/69/L.5, para. 11(a);

⁶³ UN Committee on the Rights of the Child (CRC), ‘General comment No. 13 (2011): The right of the child to freedom from all forms of violence’ (18 April 2011) UN Doc CRC/C/GC/13, para. 25; UN Committee for the Elimination of All Forms of Discrimination against Women, ‘General Recommendation No 35’ on ‘Gender based violence against women, updating general recommendation No. 19’ (26 July 2017) UN Doc CEDAW/C/GC/35, para. 29(e).

⁶⁴ UN Committee for the Elimination of All Forms of Discrimination against Women, ‘General Recommendation No 35’ on ‘Gender based violence against women, updating general recommendation No. 19’ (26 July 2017) UN Doc CEDAW/C/GC/35, para. 29(c); UNGA ‘United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice’ (25 September 2014) UN Doc A/C.3/69/L.5, para. 111(b);

⁶⁵ UNGA Res 44/25, Convention on the Rights of the Child (CRC) (20 November 1989) art 34

⁶⁶ *ibid.*, art. 34;

⁶⁷ UN Committee for the Elimination of All Forms of Discrimination against Women, ‘General Recommendation No 19’ in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies’ (29 July 1994) UN Doc HRI/GEN/1/Rev.1, para. 18.

Furthermore, Article 3 UNCRC requires: “*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*”.⁶⁸

State parties are also required to address commercial sexual abuse of children under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC).⁶⁹ The use of a child in sexual acts for remuneration or some other kind of reward should be considered a distinct crime.⁷⁰ The law should include provisions to penalize offering, soliciting, obtaining, procuring, or providing a child for these activities.⁷¹

The state should also have a distinct and well-defined offense of child pornography “*defined as any representation, by whatever means, of a child engaged in actual or simulated explicit sexual activities or any indication of the sexual parts of a child for primarily sexual purposes*”⁷² that penalizes producing, distributing, disseminating, importing, exporting, offering, selling and accessing or possessing child pornography.⁷³ Provisions should also be in place to criminalize misuse of technology to sexually abuse or exploit children, including sharing sexually explicit content with children and online solicitation or ‘grooming’ children.⁷⁴

National Legislation of Pakistan:

In Pakistan, statutory rape is defined as an act committed by a male against a female, and therefore the age of consent applies only to girls.⁷⁵ The age of consent established through penal code offenses of statutory rape is 16 years.⁷⁶ In Pakistan, the age of consent for girls under the offense of rape is 16 years, while the age of consent for non-penetrative acts under

⁶⁸ CRC (n 62) art 3

⁶⁹ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 25

⁷⁰ *ibid*

⁷¹ UNGA ‘Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography’ (25 May 2000) UN Doc A/RES/54/263 arts. 2(b), 3.1(b);

⁷² UNGA ‘Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography’ (25 May 2000) UN Doc A/RES/54/263, arts. 2(c), 3.1(c);

⁷³ UN Economic and Social Council ‘Resolution 2011/33 Prevention, protection and international cooperation against the use of new information technologies to abuse and/or exploit children’ (28 July 2011), para. 6

⁷⁴ UN Committee on the Rights of the Child (CRC), ‘General comment No. 13 (2011): The right of the child to freedom from all forms of violence’ (18 April 2011) UN Doc CRC/C/GC/13, para. 31; UN Economic and Social Council ‘Resolution 2011/33 Prevention, protection and international cooperation against the use of new information technologies to abuse and/or exploit children’ (28 July 2011), para. 4; UNGA ‘Report of the Special Rapporteur on the sale of children, child prostitution and child pornography’ (22 December 2014) UN Doc A/HRC/28/56, para 38; UNGA ‘United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice’ (25 September 2014) UN Doc A/C.3/69/L.5, para 11(c)

⁷⁵ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 26

⁷⁶ Pakistan Penal Code (Act XLV of 1860), Chapter XVI-A, s. 375(v), Protection of Women(Criminal laws Amendment)Act 2006.

the violation of “sexual abuse” is 18 years.⁷⁷ Therefore, Pakistan lacks a clear and consistent age of consent for sexual activity.⁷⁸ Concerning the offense of rape, the Pakistan Penal Code 1860 states that *consent is not valid when obtained by putting the woman in fear of death or hurt*, but it does not explicitly address the use of coercion, abuse of authority, or abuse of a position of vulnerability or dependence.⁷⁹ The Pakistan Penal Code (PPC) only recognizes child rape after an act of penetration is established with forensic evidence.⁸⁰

The Pakistan Penal Code 1860 penalizes penetrative acts under the offense of rape and carnal intercourse against the order of nature.⁸¹ The Code specifies that mere penetration is enough to constitute sexual intercourse⁸², but it is not clear if this includes all penetrative acts (with any body part or object). Non-penetrative acts are penalized under the offense of sexual assault, which prohibits fondling, stroking, caressing, exhibitionism, voyeurism, or any obscene or sexually explicit act with a person under the age of 18, with or without their consent.⁸³ The Code also provides that kidnapping or abducting anyone under the age of 14 will be dealt with life imprisonment and shall be liable to a fine.⁸⁴

The Pakistan Penal Code 1860 has separate offenses for child pornography and prohibits all acts as required by the OPSC, but none clearly defines child pornography. Pakistan limits child pornography to depictions of children engaged in obscene or sexually explicit conduct.⁸⁵ Pakistan’s cybercrime laws contain child pornography offences, and the country has passed legislation to counter grooming, online solicitation, and other aspects of online safety.⁸⁶ For example, Pakistan’s Prevention of Electronic Crimes Act of 2016 ‘criminalizes the use of information systems to transmit explicit images of an individual or to cultivate or induce a person to engage in sexual conduct, cyberstalking, cyberbullying, and use of intimate images to threaten or extort a child’.⁸⁷

As a signatory to UNCRC, Pakistan has a legal obligation to protect child victims of sexual abuse and exploitation. Moreover, the state has a responsibility to provide rehabilitation and counseling services to child victims of abuse. The perpetrators of abuse cannot be protected against the interests and well-being of the child victims. Additionally, the state should prosecute and punish perpetrators of these offenses. The Government of Pakistan has responded in comprehensive legislation in protecting children against sexual abuse and

⁷⁷ Pakistan Penal Code (Act XLV of 1860), Chapter XVI-A, s. 375(v), Protection of Women(Criminal laws Amendment)Act 2006; Pakistan Penal Code (Act XLV of 1860), Chapter XVI-A, s. 377A.

⁷⁸ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA 2020), 343

⁷⁹ *ibid*, 344

⁸⁰Violence against children <<https://www.sparcpk.org/SOPC2019/VAC.pdf>>

⁸¹ Pakistan Penal Code (Act XLV of 1860), Chapter XVI-A, s. 377; United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA 2020), 344

⁸² Pakistan Penal Code (Act XLV of 1860), Chapter XVI-A, s. 375, Protection of Women(Criminal laws Amendment)Act 2006; United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA 2020), 343

⁸³ Pakistan Penal Code (Act XLV of 1860), Chapter XVI-A, s. 377A.

⁸⁴ Pakistan Penal Code (Act XLV of 1860), Chapter XVI-A, s. 364A.

⁸⁵ Pakistan Penal Code (Act XLV of 1860), Chapter XIV, s. 292B (Criminal Law Amendment Act 2019); Pakistan Prevention of Electronic Crimes Act, 2016, s.22(1);

⁸⁶ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 28

⁸⁷ Pakistan Prevention of Electronic Crimes Act, 2016, Sections 20–24; United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA 2020), 343

exploitation; however, in Pakistan, child sexual offenses are not defined in gender-neutral terms. As such, statutory rape provisions do not provide equal protection for boys and girls.⁸⁸

In writing this thesis, interviews were conducted with various stakeholders to discuss how laws are being practiced in Pakistan and challenges regarding children's rights. According to the interviewee, Mr. Haider Imtiaz⁸⁹, "there is a threat paradigm to children's rights in Pakistan, i.e., violence in the form of domestic abuse and sexual abuse. Law enforcement mechanisms and situations of law and order and the criminal justice system are not effective enough to provide a safe environment."

Recently he filed a Petition in the Islamabad High Court on behalf of an organization that provides legal aid to sexual abuse victims. The Petition subject is about the notorious incidents in Islamabad Capital Territory, reflecting the ineffectiveness of law and order. He mentioned the *Farishta Bibi* case, a minor girl kidnapped, raped, and murdered in Islamabad. In this case, the family informed the police of their missing child the same day, but the police did not pay any attention; First Information Report (FIR) was registered with delay. Shortcomings of law and enforcement and investigation of the incident lead to a judicial inquiry that generally revealed the unfortunate representative of the criminal justice system. He held this opinion that inordinate delay in registering FIR, initial mechanism of reporting such incidents is weak.

Regarding the policing system, he maintained that overall, police lack discipline as there is no check and balance. They should provide priority to urgent cases. At the same time, the negligence of supervisory officers is often observed. Overall system in the country is the same, more or less not just in Islamabad. Police have capacity issues, no funds for investigation, and no resources, leading to a lack of performance. Even if the FIR was registered in the *Farishta Bibi* case, there were fewer chances of immediate action because there were no resources for urgent action to save the child.

He further stated that investigation flaws were also observed after the incident took place. The person accused/ nominated by the family was granted bail, and the trial is still pending. The pending trial is due to lack of evidence as for bodily injuries body post-mortem report is required. In the given case, there was a delay in the post mortem report due to the medicolegal officer not being available in the hospital for medical examination. *Farishta Bibi's* case is a representative example of how the law and enforcement system functions in Pakistan. Powerful/privileged individuals have easy access. For the commoner, there is no protection available.

He had the opinion that crimes increase when criminal-minded people know that they can get away easily. Failure of the criminal justice system leads to an environment of impunity, leading to a rise in crime. Even if the culprit is caught due to flaws in the criminal justice system: no substantial evidence is collected by the police properly, prosecution not representing their case correctly; therefore, the judicial system is slow. The culprit will be granted bail, and the chances of conviction are low. The overall conviction rate in Pakistan is hardly 4-5 percent.

⁸⁸ United Nations Children's Fund, 'The Legal Framework for Child Protection in South Asia' (ROSA Kathmandu 2020), 69

⁸⁹ Interview with Haider Imtiaz, Advocate of High Court in Pakistan, (Microsoft Teams 10th April 2021)

He maintained that the severity of punishment in such cases is not the solution; debate should be about how to strengthen the criminal justice system. It is not the severity of the sentence but its certainty, which creates deterrence in society.

Zainab Case

In early 2018, a seven-year-old girl, Zainab, was raped and murdered in Kasur, Punjab province, Pakistan. Several related child murders occurred in Kasur before Zainab's case, but her death proved to be a turning point. Zainab's case is one of those rare cases where justice was served, and the perpetrator was convicted. The case sparked public outrage and protests complaining of the police's inability to convict the perpetrator who raped and murdered seven girls before Zainab in Kasur.

After Zainab's death, the Pakistan National Assembly tabled a new child protection bill. Zainab Alert, Response and Recovery bill, 2019⁹⁰ makes provisions for protecting missing and abducted children under eighteen years, including raising an alert, responding, and recovering missing and abducted children in the premises of Islamabad Capital Territory (ICT). This bill will pave the way for setting up Zainab Alert, Response and Recovery Agency (ZARRA), where the child-missing case will be reported, and it will generate an automatic alert.

The bill starts on a right note by identifying a 'child' as someone below the age of 18 and a 'missing child' as someone whose whereabouts are not known regardless of the circumstances or the amount of time since the child went missing.⁹¹ It further requires establishing a Zainab Alert, Response and Recovery Agency and a Director-General to administer the agency's functions. However, the bill fails to mention the time limit in which these two actions will be completed.⁹²

3.2 Physical and emotional abuse, neglect, and maltreatment

International Standards

Article 19 of the CRC obliges States *'to guarantee legal protection of children from all forms of physical or mental violence, injury or abuse and neglect or negligent treatment while in the care of parents, legal guardians, or any other person who has the care of the child.'*⁹³ State parties are required to provide a clear definition of physical abuse under national legislation, described as the use of any physical force intended to inflict pain or discomfort, however light.⁹⁴

⁹⁰ Zainab Alert, Response and Recovery bill, (2019)

<http://www.na.gov.pk/uploads/documents/1556103569_454.pdf> accessed 15th April 2021

⁹¹ 'The Zainab Alert bill' *The Express Tribune* (25th January 2020) <<https://tribune.com.pk/story/2143900/6-zainab-alert-bill-3>> accessed 15th April 2021

⁹² *ibid*

⁹³ UNGA Res 44/25, Convention on the Rights of the Child (CRC) (20 November 1989) art 19 para 1

⁹⁴ *Ibid* art. 40 para 4; UNGA United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Res 40/33 (29 November 1985) UN Doc A/RES/40/33, art 18; UN Committee on

According to UN CRC guidelines, physical abuse of children should be punished under national criminal laws as an offense of causing harm or assault, and should not be justified on the grounds of reasonable correction of a child.⁹⁵ Specifically, corporal punishment and other inhuman or degrading punishment or treatment of children should be prohibited in the home, in schools, in children’s residential care facilities, and other places of custody or detention.⁹⁶

According to international standards, non-physical forms of child abuse should also be clearly defined and prohibited, including mental or emotional abuse⁹⁷ and neglect or negligent treatment.⁹⁸ The CRC prohibits life imprisonment “without the possibility of release.” The UN CRC Committee strongly recommends that States parties abolish all forms of life imprisonment for offences committed by persons under 18.⁹⁹

In accordance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention), legislation is also required to prohibit torture or other cruel, inhuman, or degrading treatment of children for the purposes of obtaining information or extracting a confession, or as a form of discipline, control, or sentencing within the criminal justice system.¹⁰⁰

National Legislation of Pakistan:

According to the UNICEF, 2020 report on the legal framework of child protection in South Asia, legislative action was taken regarding physical and emotional abuse by the provinces in Pakistan. Sindh province Prohibition of Corporal Punishment Act, 2016 expressly and entirely prohibits all use of physical force against children, however light, in all settings.¹⁰¹ Pakistan’s Khyber Pakhtunkhwa provincial Child Protection and Welfare Act, 2010 prohibits corporal punishment.¹⁰² Still, it defines this narrowly as the use of physical force that causes a “high degree” of pain or discomfort.¹⁰³ The penal Code in Pakistan includes a broad justification for the use of reasonable force against a child by a parent, guardian, or another person with the supervision of the child.¹⁰⁴

the Rights of the Child (CRC), ‘General comment No. 10 (2007): Children’s Rights in Juvenile Justice’ (25 April 2007) UN Doc CRC/C/GC/10, para. 70;

⁹⁵CRC (n 93) art. 37(a); UN CRC Committee (n 94), para 71

⁹⁶ CRC (n 93) art. 37(a); UN CRC Committee, (n 94), paras. 75–76.

⁹⁷ CRC (n 93) art. 37(a); UN Committee on the Rights of the Child (CRC), ‘General comment No. 10 (2007): Children’s Rights in Juvenile Justice’ (25 April 2007) UN Doc CRC/C/GC/10, para. 77

⁹⁸ CRC (n 93) art. 37(c); UN, UNGA ‘United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice’ (25 September 2014) UN Doc A/C.3/69/L.5, para 38

⁹⁹ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 107

¹⁰⁰ CRC (n 93) art. 37(c);

¹⁰¹ Sindh Prohibition of Corporal Punishment Act, 2016, s. 2(c), 3(1); United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 22

¹⁰² Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, s.2(m), 33, 34

¹⁰³ibid

¹⁰⁴Pakistan Penal Code (Act XLV of 1860), Chapter IV, s. 89; however, the Supreme Court has ruled that a more specific provision allowing for parental correction under the previous Children’s Act 1992 was unconstitutional (Writ number 57 of the year 2061 (2005), Ale (CVICT) et al v Government).

The Prohibition on Corporal Punishment Act, 2016 of Sindh province in Pakistan expressly states that ‘the defense of reasonable correction under the Penal Code does not apply and therefore entirely prohibits all forms of corporal punishment of children.’¹⁰⁵ Child protection laws in Khyber Pakhtunkhwa, Balochistan, Islamabad Capital Territory, and Sindh provinces include broader definitions of violence against children, but primarily to determine whether a child needs care and protection and not for the purposes of prohibiting or punishing such violence.¹⁰⁶

‘Neglect or negligent treatment’ of children is clear and well defined in the child protection laws in the Pakistan jurisdictions of Balochistan and Gilgit-Baltistan.¹⁰⁷ The Balochistan Child Protection Act 2016 defines neglect or negligent treatment broadly to include physical neglect, psychological or emotional neglect, neglect of children’s physical or mental health, and educational neglect.¹⁰⁸

Wilful abandonment of children under the age of 12 is prohibited under the penal Code in Pakistan.¹⁰⁹ The offense of ‘cruelty’ to a child in Pakistan includes neglect.¹¹⁰ The child protection legislation in the Pakistan jurisdictions of Balochistan, Gilgit-Baltistan, and ICT has comprehensive definitions of ‘mental violence’ and “psychological harm.”¹¹¹ The definitions comprehensively include all forms of persistent harmful interactions with the child as subjecting or exposing a child to scaring, terrorizing, and threatening behavior that may result in psychological trauma.¹¹²

Children’s right to protection against torture and other cruel and inhuman treatment is constitutionally entrenched in Pakistan.¹¹³ The Constitution states that “*no person shall be subjected to torture for the purpose of extracting evidence*”.¹¹⁴ However, Pakistan lacks a comprehensive law defining and prohibiting torture in line with international standards. A Torture, Custodial Death, and Custodial Rape (Prevention and Punishment) Bill was drafted in 2015 but not enacted.¹¹⁵

The Juvenile Justice System Act, 2018 does not expressly clarify that children are not subject to punishment for offenses under the Hudood Ordinances¹¹⁶ (intended to implement Sharia law).¹¹⁷ The UN Committee on the Rights of the Child expressed concern in its 2016 Concluding Observations to the Government’s report under the CRC that sharia law allows

¹⁰⁵ Sindh Prohibition of Corporal Punishment Act, 2016, s. 2(c), 3(1).

¹⁰⁶ Balochistan Child Protection Act, 2016, s.5; Islamabad Capital Territory Child Protection Act, 2018, s.5; United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 340

¹⁰⁷ Balochistan Child Protection Act, 2016, s.2(r);

¹⁰⁸ *ibid*

¹⁰⁹ Pakistan Penal Code, 1890, s.328;

¹¹⁰ Pakistan Penal Code, 1860, s.328A;

¹¹¹ Balochistan Child Protection Act, 2016, s.2(t); Islamabad Capital Territory Child Protection Act, 2018, s.2;

¹¹² *ibid*

¹¹³ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 24

¹¹⁴ Constitution of the Islamic Republic of Pakistan, 1973, pt. II Ch. 1 , art. 14(2)

¹¹⁵ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 343

¹¹⁶ The Hudood Ordinances were introduced to implement Sharia law and enforce punishments found in the Quran such as stoning to death.

¹¹⁷ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 343

children to be punished for hadood offenses that include amputation, whipping, stoning, and other types of barbaric and degrading punishment. It recommended that the Government review its rules and procedures and exclude all children under the age of 18 from punishment for hadood offenses, in particular penalties such as amputation, whipping, stoning, and other acts of torture, as well as cruel and degrading treatment.¹¹⁸

Therefore Pakistan's legislative framework is weak in compliance with international standards as in some provinces, physical abuse of children is not clearly defined and prohibited. Pakistani federal laws do not include a comprehensive definition of the physical abuse of a child.¹¹⁹ Moreover, Pakistan lacks a comprehensive law restricting and prohibiting torture or other inhuman or degrading treatment of children in line with international standards.

3.3 Child Labor

Pakistan is a signatory to the United Nations Convention on the Rights of the Child, which requires state parties to ensure that children are protected from all forms of economic exploitation and hazardous or harmful work. Pakistan has ratified ILO's Minimum Age Convention (C-138) and Worst Forms of Child Labour Convention (C-182), which prohibits working children in their tender age and banning the worst forms of child labor, respectively.¹²⁰

International Standards

According to international child labor standards, the minimum age for work or employment should be established in law, which is at least 15 and is the same as compulsory schooling.¹²¹

Children employed in the formal and informal sectors, like domestic work, should be subject to child labor laws.¹²² If the state permits children under the minimum age to engage in 'light work,' the minimum age for this should be at least 13, and the law should define and regulate the types of light work in which children can engage.¹²³ Provisions should also be in place to govern permissible work by all children under the age of 18, including the hours and conditions of employment,¹²⁴ to ensure that any work done by children does not deprive them of compulsory education or interfere with their education or vocational training.¹²⁵ Countries must also clearly define and prohibit children's engagement under 18 in the worst forms of

¹¹⁸ *ibid*

¹¹⁹ United Nations Children's Fund, 'The Legal Framework for Child Protection in South Asia' (ROSA Kathmandu 2020), 340

¹²⁰ Child labor < <https://www.sparcpk.org/SOPC2019/Child%20Labour.pdf> > accessed 20th April 2021

¹²¹ UNGA Res 44/25, Convention on the Rights of the Child (CRC) (20 November 1989) art. 32.2(a); ILO Convention 138, art. 2(3).

¹²² ILO Convention C189: Domestic Workers Convention (100th Session Geneva 1st June 2011) entered into force 5th September 2013, (ILO c189) art 4.1

¹²³ ILO Convention C138: Minimum Age Convention (58th Session Geneva 6th June 1973) entered into force 19th June 1976, (ILO c138) art 7(1)

¹²⁴ UNGA Res 44/25, Convention on the Rights of the Child (CRC) (20 November 1989) art 32.2 (b);

¹²⁵ ILO Convention 189 (n 113) art. 4.2.

child labor¹²⁶ and issue detailed regulations defining prohibited hazardous or harmful work.¹²⁷ Violations of child labor laws should be punishable by appropriate penalties, and it should be a criminal offense to involve children in the worst forms of child labor (including slavery or practices similar to slavery, debt bondage and serfdom, forced or compulsory labor, and use of children for illicit activities such as drug trafficking).¹²⁸

National Legislation of Pakistan

In Pakistan, child labor legislation has been devolved to the provincial governments due to the 18th Amendment to the Constitution. In Pakistan, the minimum age for employment is 14 under federal law, and in Khyber Pakhtunkhwa and Sindh provinces and 15 in Punjab.¹²⁹ Other Pakistan provinces have not yet enacted child labor laws, and as such, the federal law applies. In Pakistan (federal and Khyber Pakhtunkhwa province), the minimum age for employment does not apply to children working in the informal sector, including domestic and agricultural work.¹³⁰

Under the ILO Minimum Age Convention (No. 138), ‘a Member State whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years’.¹³¹ Pakistan has declared the minimum age as 14 following this exception.

Pakistan’s Khyber Pakhtunkhwa province enables children to engage in light work from the age of 12.¹³² Labor laws limit the types of jobs that children under the age of 18 can do and the hours and conditions in which they can do it. Some Pakistani provinces (Khyber Pakhtunkhwa, Punjab, and Sindh) prohibit children from working at night, limit the number of hours they can work per week, and ensure at least one complete day off work per week, and prohibit or restrict children from working overtime.¹³³ However, under Pakistan’s federal law, these restrictions apply only to children under 16, not under 18.¹³⁴

Under the Federal Employment of Children Act 1991, children who have not completed their 14th year cannot work for more than three hours without a one hour rest or for more than seven hours per day; cannot work between 7 pm and 8 am; cannot work over-time and are entitled to one day off each week.¹³⁵ These restrictions apply only to children working in an

¹²⁶ ILO Convention 138, art. 3; ILO Convention C182: Worst Forms of Child Labour Convention (87th Session Geneva 1st June 1999) entered into force 19 November 2000, (ILO c182), art 3-4

¹²⁷ *ibid*

¹²⁸ CRC (n 114) art. 32.2(c); ILO Convention 182, arts. 3, 7(1).

¹²⁹ Pakistan Employment of Children Act, 1991, s. 3; Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s.2(1)(b); Punjab Restriction on Employment of Children Act, 2016, s.3; Sindh Prohibition of Employment of Children Act, 2017, s.3(1).

¹³⁰ Pakistan Employment of Children Act, 1991, s. 3; Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s.2(d).

¹³¹ Article 2.4.

¹³² Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s.2(1)(j), 3.

¹³³ Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s.6–8; Punjab Restriction on Employment of Children Act, 2016, s.5, 6; Sindh Prohibition of Employment of Children Act, 2017, s. 3(1).

¹³⁴ Pakistan Employment of Children Act, 1991, s.7.

¹³⁵ *ibid*

“establishment”, defined as a shop, commercial establishment, workshop, factory, farm, hotel, or restaurant.¹³⁶ However, there are no similar regulations on work conditions for adolescents (15 to 18 years).¹³⁷ Children’s work hours in Pakistan’s Punjab province must be arranged to not interfere with the hours of any school or vocational training program in which the child is enrolled. Employers in Sindh province are obligated to ensure that adolescents under the age of 16 attend compulsory schooling.¹³⁸

The minimum age for hazardous work in Pakistan is 15 years old, which is not in accordance with international standards. In Khyber Pakhtunkhwa, Punjab, and Sindh, the minimum age for hazardous work is 18.¹³⁹ Lists of prohibited dangerous forms of work are generally comprehensive, although the national list does not include brickmaking and domestic work in Pakistan.¹⁴⁰

The penalty for breaching the Employment of Children Act 1991 is comparatively light (up to one year imprisonment); however, provincial child labor laws provide sufficiently strict terms of imprisonment reflecting the gravity of the offenses. Slavery and forced or bonded labor are penalized under the Penal Code 1860 (s.74, 370, 371), the Bonded Labour System (Abolition) Act 1992 (s.4), the Prevention of Trafficking in Persons Act 2018 (s.3(1)) and under provincial child labor laws. Federal laws do not address children’s use for illegal activities, but Punjab and Sindh provinces do.¹⁴¹ In Pakistan, the minimum age for employment is not in accordance with international standards, and the state lacks harmonization of the labor laws.

Mr. Iqbal Detho¹⁴², a member of the National Commission on the rights of the child in Pakistan, believes that Pakistan has laws, policies, and institutions but lacks how to translate those legal frameworks into practical implementation. Challenges include suffering from lack of resources and the technical capacity of the duty bearers to realize those rights given and those legal frameworks for the right holders who can enjoy those rights.

The legal system is evolving in Pakistan. A child has now become a standalone priority, and previously it was not. It is still part and parcel of the social welfare department, which is very much in its orientation a welfare-based approach to rights. The Constitution has very progressive rights enshrined through its precursors in UDHR, ICCPR, ILO convention.

¹³⁶ *ibid*, s2

¹³⁷ United Nations Children’s Fund, ‘The Legal Framework for Child Protection in South Asia’ (ROSA Kathmandu 2020), 349

¹³⁸ Punjab Restriction on Employment of Children Act, 2016, s. 5(3); Sindh Prohibition of Employment of Children Act, 2017, s.22(1).

¹³⁹ Pakistan Employment of Children Act, 1991; Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, s. 3(2); Punjab Restriction on Employment of Children Act, 2016, s.2; Sindh Prohibition of Employment of Children Act, 2017, s. 3(2).

¹⁴⁰ Pakistan Employment of Children Act, 1991, Schedule; Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, Schedule of prohibited occupations and processes; Punjab Restriction on Employment of Children Act, 2016, Schedule of hazardous work; Punjab Prohibition of Child Labour at Brick Kilns Act, 2016, s.5; Sindh Prohibition of Employment of Children Act, 2017, Schedule of hazardous work.

¹⁴¹ Punjab Restriction on Employment of Children Act, 2016, s.11(3)(c); Sindh Prohibition of Employment of Children Act, 2017, s.14(1)(c).

¹⁴² Interview with Iqbal Ahmed Detho, Member of National Commission on the Rights of the Child (NCRC) in Pakistan and represents Sindh province (Zoom 16th April 2021)

He maintained that Pakistan has made significant progress towards legislative framework and realization among the stakeholders for a holistic approach is evolving. Some people say it has suffered after the 18th Amendment, and some say it has not.

One of the issues that have emerged as a result of Covid is that inequality has been exposed, and the gap has increased between the poor and the rich. A child depends on adults for their health, education, and livelihood. When the primary caregiver is passing through specific difficulties, the children are the sufferer of the secondary violations. When 22.2 million children were out of school, that magnitude has gone up. The children landing into the work due to the inequality-related economic situation has put a halt on realizing their rights. This is not a structural issue, but in a way, it has affected.

Regarding the violation against children and child sexual abuse cases, Parliament and the Government have responded in very comprehensive legislation. In 2015, Pakistan penal code was enacted, and many other special laws. Laws have been passed, but we still see issues of domestic child labor, maidservant, related issues with child labor, and bondage labor which are the direct outcomes of poverty, inequality, and unemployment.

Case Law

According to a report published in 2012, over 12.5 million children in Pakistan are involved in child labor.¹⁴³ That means around 10 percent of the country's populace is engaged in child labor. Often, cases in Pakistan go unreported as children serving as domestic help rarely manage to make the count. Nevertheless, despite these statistics, many parts of society continue to believe that child labor does not exist and employ a child under the age of 14 as domestic help. Tayyaba's torture case, reported in 2016, sparked outrage in Pakistan, which had more to do with the torture she allegedly received than the fact that a 10-year-old was the domestic helper.¹⁴⁴

The case concerned the alleged ill-treatment of Tayyaba, a ten-year-old girl sent to work for the judge and his wife in Islamabad, Pakistan's capital, by her family, who struggled to make ends meet after her father lost a finger.¹⁴⁵ She was one of an estimated 12 million child workers in the country.¹⁴⁶ In Pakistan, children are not permitted to work in most industries, but there is no law prohibiting them from working inside homes in the vast majority of the region.¹⁴⁷ Tayyaba had worked at the house for two years when neighbors alerted police.¹⁴⁸ The girl was discovered with extensive injuries, which the Pakistan Institute of Medical Science said included burns to her hands and feet.¹⁴⁹

¹⁴³ 'Child labour — a forgotten issue' *The Express Tribune* (17th June 2017)

<<https://tribune.com.pk/story/1437447/child-labour-forgotten-issue-letter> > accessed 15th April 2021

¹⁴⁴ *ibid*

¹⁴⁵ 'Tayyaba abuse case: Pakistan judge and wife's sentences cut' *BBC News* (10th January 2020)

<<https://www.bbc.com/news/world-asia-51060569> > accessed 15th April 2021

¹⁴⁶ *ibid*

¹⁴⁷ *ibid*

¹⁴⁸ *ibid*

¹⁴⁹ *ibid*

The majority of criminal cases in Pakistan are brought by victims or their relatives rather than the government. That means they will drop charges for certain crimes simply by saying they pardon the criminals “in the name of God.”¹⁵⁰ Victims or their relatives in Pakistan have the legal right to forgive offenders in various serious crimes. Most legal experts agree that the primary motivation for or such “forgiveness” usually is financial, and the informal payment of money to victims is not illegal.¹⁵¹ In the given case, however, the family was told the crime did not allow them to withdraw charges.

Tayyaba’s case was eventually taken to Court. The Supreme Court of Pakistan took suo-moto notice of this case, and on the directions of the Supreme Court, the trial of this case was held in Islamabad High Court. The accused couple was found guilty and sentenced to one year in prison and a fine of Rs 50,000/- each by the trial court. Under Section 328-A of PPC, which is in accordance with UNCRC, “*whoever wilfully assaults, ill-treats, neglects, abandons or does any act of omission or commission, that results in or has, potential to harm or injure the child by causing physical or psychological injury to him shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend up to three years, or with fine which shall not be less than twenty-five thousand rupees and may extend up to fifty-thousand rupees, or with both*”.¹⁵²

After that, the judgment of the Islamabad High Court was challenged in the Supreme Court of Pakistan. The Supreme Court maintained the sentence of accused persons in this case. The landmark Judgement on the Tayyaba torture case has set an example of justice delivery on child domestic laborers in Pakistan. As previously, all reported cases did not have any convictions by the Court.

Tayyaba’s father attempted to get the case dismissed with the assistance of his counsel. In this case, however, the Supreme Court overturned his decision and ordered a trial. Tayyaba told authorities she had been beaten, but her father, Azam, was adamant that the couple who employed her could not be the ones to blame. “They have not placed any pressure on us,” he said, denying that he was paid to drop the lawsuit.¹⁵³ When Tayyaba came to give evidence in Court, she repeated the claim that she had been beaten.¹⁵⁴

The case illustrates a systemic issue, which gives little or no importance to a statement given by such a victimized minor who was not deemed under-aged while being sent away from home to earn. However, under cross-examination, she contradicted herself and withdrew the claims.¹⁵⁵ The Court observed that Tayyaba seemed to be answering every question asked by the defense lawyers with a simple “yes, sir.”¹⁵⁶ Tayyaba’s case drew a lot of media attention, which helped close the legal “loophole” that meant children could be hired as domestic servants in Islamabad.¹⁵⁷ The new rule, however, only extended to the capital and not to the whole country. Implementing the law is often a challenge in Pakistan. Many believe that as long as

¹⁵⁰ ‘Tayyaba abuse case shines light on Pakistan’s child maids’ *BBC News* (9th June 2018) <<https://www.bbc.com/news/world-asia-44397432>> accessed 15th April 2021

¹⁵¹ *ibid*

¹⁵² Pakistan Penal Code (Act XLV of 1860), Chapter XVI, s. 328A

¹⁵³ Tayyaba abuse case shines light on Pakistan’s child maids’ *BBC News* (9th June 2018) <<https://www.bbc.com/news/world-asia-44397432>> accessed 15th April 2021

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*

¹⁵⁶ *ibid*

¹⁵⁷ *ibid*

low-income families are willing to send their children to work and wealthier families ready to hire them, the problem will persist.

Chapter 4: Children in Conflict with the Law

In Pakistan, Juvenile justice legislation explicitly takes precedence over all other national laws that may impact handling children in conflict with the law.¹⁵⁸ Children's due process rights are guaranteed under the federal Constitution, criminal procedure laws, and juvenile justice legislation.¹⁵⁹

International Standards

After Pakistan ratified UNCRC on 12 November 1990, which provides the basic framework needed for Juvenile Justice System in Articles 37, 39, and 40, the state must have a coherent set of laws on juvenile justice. According to UNCRC guiding principles, the state is required to protect the best practice interest of the child, protect the inherent dignity of the child, the right to participation of the child, and non-discrimination.¹⁶⁰ The UN CRC requires that the child's best interests must be a primary consideration (Article 3), which is equally applicable in cases of juvenile justice, which the CRC addresses in Article 40: "*A child in conflict with the law has the right to receive treatment which promotes the child's sense of dignity and worth, takes the child's age into account and aims at his or her reintegration into society. The child is entitled to basic guarantees as well as legal or other assistance for his or her defense. Judicial proceedings and institutional placements shall be avoided wherever possible*".

National Legislation of Pakistan

The Juvenile Justice System Ordinance, 2000

Pakistan promulgated the Juvenile Justice System Ordinance (JJSO) in 2000¹⁶¹ as a requirement of UNCRC to provide protection to the minors involved in criminal litigation and

¹⁵⁸ Pakistan Juvenile Justice System Act, 2018, s. 23;

¹⁵⁹ United Nations Children's Fund, 'The Legal Framework for Child Protection in South Asia' (ROSA Kathmandu 2020), vi

¹⁶⁰ UNGA Res 44/25, Convention on the Rights of the Child (CRC) (20 November 1989)

¹⁶¹ Juvenile Justice System Ordinance, 2000 (XXII of 2000)

rehabilitate and reintegrate them back into society.¹⁶² The JJSO laid down the criteria to be followed at all stages of the juvenile offenders' trial proceedings.¹⁶³

According to international standards, children should not be put through the same legal process as adults who have committed crimes or infringed the law.¹⁶⁴ While some progress has been observed in legislation related to juvenile justice, Pakistan still lags according to international standards, which results from poor implementation of existing child protection laws, procedures, and institutions and a general lack of awareness on critical issues of children by all relevant stakeholders.¹⁶⁵

Juvenile offenders continue to be treated like hardened criminals, thereby deflecting attention and focus away from rehabilitation to punishment.¹⁶⁶ The existence of conflicting laws further compounded the problems in the implementation of the law, some of which could not be overridden by the JJSO, as its Article 14 states that the JJSO is "in addition to and not in derogation of any other law for the time being in practice."¹⁶⁷

A report by Amnesty International states that the implementation of the JJSO 2000 was "very slow in the five years following its promulgation. Some of its provisions were not implemented at all, others only very haltingly and partially."¹⁶⁸ It is also seen that persistent inconsistency in the laws regarding the treatment of juvenile offenders leads to a disregard of the child's best interests.¹⁶⁹ For example, the JJSO prohibited the death penalty –both in its sentencing and imposition – for juvenile offenders. However, since the informal moratorium lifted on the death penalty in 2014,¹⁷⁰ six juvenile offenders have been executed, despite credible evidence demonstrating that they were minors at the time of their alleged crime¹⁷¹.

The Juvenile Justice System Act 2018:

On 22 May 2018, the Parliament passed the Juvenile Justice System Act, 2018, repealing the JJSO 2000, which the Lahore High Court struck down in 2004 for substantive and procedural defects.¹⁷² It is an improvement in the law, aiming to empower the state to make special provisions for the legal protection of child offenders, bringing the law into conformity

¹⁶² 'The State of Pakistan's Children' < <https://www.sparcpk.org/SOPC%20-%202019.html> > accessed 20th April 2021

¹⁶³ 'The State of Pakistan's Children' < <https://www.sparcpk.org/SOPC%20-%202019.html> > accessed 20th April 2021

¹⁶⁴ Muhammad Shahid Shafiq, Iqbal Ahmed Detho 'Tool Kit to Implement The Juvenile Justice System Act, 2018' (December 2018) United Nations Office on Drugs and Crime (UNODC) ix

¹⁶⁵ Muhammad Shahid Shafiq, Iqbal Ahmed Detho 'Tool Kit to Implement The Juvenile Justice System Act, 2018' (December 2018) United Nations Office on Drugs and Crime (UNODC) ix

¹⁶⁶ *ibid*

¹⁶⁷ *ibid*

¹⁶⁸ Amnesty International, 'Pakistan: Amnesty International's comments on the Lahore High Court judgement of December 2004 revoking the Juvenile Justice System Ordinance' (Report) (2005) AI Index: ASA 33/026/2005

¹⁶⁹ Society for the Protection of the Rights of the Child, 'The State of Pakistan's Children' < <https://www.sparcpk.org/SOPC%20-%202019.html> > accessed 20th April 2021

¹⁷⁰ The moratorium on the death penalty was lifted in December 2014, following the terrorist attack on the Army Public School, Peshawar by the TTP.

¹⁷¹ Justice Project Pakistan (JPP) report: "Death Row's Children" (2017)

¹⁷² Muhammad Shahid Shafiq, Iqbal Ahmed Detho 'Tool Kit to Implement The Juvenile Justice System Act, 2018' (December 2018) United Nations Office on Drugs and Crime (UNODC)

with modern concepts of diversion and reformation and also seeking to ensure that the new law overrides previous contrary or conflicting provisions, as stated in Articles 23 and 25 of the JJSA, which the JJSO 2000 did not do.¹⁷³

Juvenile Justice System Act 2018 overcomes the shortcomings of Juvenile Justice System Ordinance 2000 both substantively and in procedural terms. It has identified minor, major, and heinous offenses. The juvenile is entitled to bail in all these categories of offenses except for egregious crimes where the age limit for such entitlement has been fixed at more than 16 years.¹⁷⁴

The Act has formally legalized the age determination issue. The most crucial factor that leads to the execution of juvenile convicts in Pakistan is the lack of implementation of age determination protocols and the low birth registration rate of juveniles.¹⁷⁵ Juvenile justice legislation guides on making accurate age determinations based on all available documentation and, where necessary, a medical report.¹⁷⁶

The most important sections of the JJSA 2018 are the determination of the child's age; setting a higher minimum age of criminal responsibility (although it is still not in accord with the UN CRC); disposal of cases through diversion; formation of Juvenile Justice Committees (JJs); and setting up Juvenile Rehabilitation Centres (JRCs).¹⁷⁷

Pakistan also includes an explicit guarantee of children's right to free legal aid, requiring the state to appoint a lawyer at its expense for any unrepresented child in conflict with the law.¹⁷⁸ In Pakistan, juvenile justice laws give the police or prosecutors discretion to issue a warning, promote reconciliation, or refer the child to a "diversion" program depending on the nature and circumstances of the offense as an alternative to initiating formal criminal proceedings.¹⁷⁹

According to JJSA, a new mechanism was introduced, i.e., diversion – out of court settlement without judicial proceedings. Juvenile justice committee to be made, and the case will be referred to committee for a speedy trial. Restorative punishment will be awarded and no imprisonment, first time introduced in Pakistan in JJSA. According to this law, an exclusive child court will be introduced. At the same time, exclusive Courts have not been established so far.

The main challenge is the pending enactment of the new Rules of business for carrying out the provisions of the JJS Act of 2018, e.g., allocation of resources, training police investigators, training the judiciary handling juvenile cases, establishment of juvenile courts,

¹⁷³ The State of Pakistan's Children' < <https://www.sparcpk.org/SOPC%20-%202019.html> > accessed 20th April 2021

¹⁷⁴ Muhammad Shahid Shafiq, Iqbal Ahmed Detho 'Tool Kit to Implement The Juvenile Justice System Act, 2018' (December 2018) United Nations Office on Drugs and Crime (UNODC) page 37

¹⁷⁵ Wajahat Ali Malik, 'The Juvenile Justice System and the Right to Dignity of Juvenile Offenders in Pakistan' (2019) Pakistan Law Review Vol: X, page 154

¹⁷⁶ Pakistan Juvenile Justice System Act, 2018, s. 8

¹⁷⁷ Society for the Protection of the Rights of the Child, 'The State of Pakistan's Children' < <https://www.sparcpk.org/SOPC%20-%202019.html> > accessed 21st April 2021

¹⁷⁸ Pakistan Juvenile Justice System Act, 2018, s. 3.

¹⁷⁹ Pakistan Juvenile Justice System Act, 2018, s. 9.

establishment of Juvenile Justice Committees and Juvenile Rehabilitation Centres.¹⁸⁰ As in the previous case of JJSO, the establishment of Juvenile Courts was a very delayed process.¹⁸¹

The time frame for disposal has been increased to 6 months compared to 4 months that was not met in most of the cases in JJSO 2000.¹⁸² Safeguards of arrest and detention of Juveniles at separate Police lock-ups or observation homes are also difficult to be adhered to in those areas where physical infrastructure is inadequate or police stations away from the District as per section 5 of JJSA.¹⁸³ Therefore, there is a need for practical steps for juveniles. Role of probation is missing; a specialized cadre of Probation Officers for “Juveniles” is not envisaged, which needs to be operationalized, adding the community restoration component.¹⁸⁴

According to the interviewee, Mr. Wajaht Ali Malik,¹⁸⁵ laws in Pakistan are made according to international standards. When it comes to implementation, the justice system is not fully functional in line with international standards. Different stakeholders, e.g., police, judiciary, their capacity building is required. They should be trained on how to provide special treatment to the child.

According to JJSA, when a child is arrested, he or she cannot be kept in the police station. The legislation prohibits the use of handcuffs, and joint trial is not allowed with an adult, but these features are ignored in reality. In Pakistan, under 18 children are treated in the same way as an adult. Torture and abuse are committed on the child, whereas law prohibits this treatment. Juvenile rehabilitation centers are still non-existent in Pakistan. Sources, budgeting, and continuous government commitment required to protect children’s rights. To implement juvenile justice laws, child courts, rehabilitation centers, and observation homes are needed.

Currently, in Pakistan, there are 11 child courts in total. Seven courts are in KPK and two recently made in Karachi, and one is made in Quetta, Balochistan, and 1 in Lahore, Punjab, made with civil society help but not made following JJSA. These courts are dealing with both cases; child as an offender and child as a victim are dealt in the same courts. Adoption issues or family matters are dealt with in these courts. Also, child sexual abuse cases are dealt with in these courts too.

One of the drawbacks of the system is corruption. It is widespread in the policing system; therefore, the system is not transparent. Often necessary remedies available might not be made available to the victim. Torture and inhumane treatment is committed to render confessional statement. According to a report, torture is committed against children based on false allegations and severe beating by police. When State institutions are committing such abuses/acts, how can we expect a proper transparent system would exist to protect children. State institutions, e.g., police, judiciary, and legislature, should safeguard children’s rights, and the best possible solution should be provided. According to UNCRC guiding principles, the

¹⁸⁰ Society for the Protection of the Rights of the Child, ‘The State of Pakistan’s Children’ < <https://www.sparcpk.org/SOPC%20-%202019.html> > accessed 22nd April 2021

¹⁸¹ Muhammad Shahid Shafiq, Iqbal Ahmed Detho ‘Tool Kit to Implement The Juvenile Justice System Act, 2018’ (December 2018) United Nations Office on Drugs and Crime (UNODC) page 37

¹⁸² *ibid*

¹⁸³ *ibid*

¹⁸⁴ *Ibid*, page 46

¹⁸⁵ Interview with Wajahat Ali Malik, Advocate of the High Court in Pakistan (Zoom, 14th April 2021)

state is required to protect the child's best interest. By just making laws, children will not be protected; therefore, proper fulfillment is required.

Pakistan: Juvenile Prisoners (under trial or convicted)

In Pakistan, the law prohibits children from being imprisoned, but it does not prohibit the use of other custodial orders, and it gives the courts broad discretion in deciding whether or not to send a child to a rehabilitation facility.¹⁸⁶ Anyone under the age of 18 is protected from the death penalty in Pakistan, and this exemption extends to anyone under the age of 18 at the time of the crime.¹⁸⁷ In Pakistan, children are not specifically exempted from being imprisoned for life.

In Pakistan, juvenile justice laws do not allow corporal punishment but do not expressly prohibit it.¹⁸⁸ For certain crimes, Sharia punishments can be applied to children. The UN Committee on the Rights of the Child expressed grave concern in its 2016 Concluding Observations to Pakistan's CRC Report that "Sharia law allows children to be subjected to punishment for hadood offenses, including amputation and whipping, stoning, and other forms of cruel and degrading punishment."¹⁸⁹

Many children and adults who were accused of crimes they committed as children have received arbitrary or punitive punishments, in violation of international law, which states that imprisonment of children must be in "conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period."¹⁹⁰

The reported numbers of juvenile prisoners in Pakistan are housed in overcrowded adult prisons, in miserable conditions.¹⁹¹ Children under 18 are vulnerable to all forms of violence by adult prisoners, prison staff, and their peer groups. In 2019 there were 1,424 juvenile cases reported across Pakistan, including 1,209 cases of trial juveniles and 215 cases of convicted juveniles.¹⁹²

¹⁸⁶ Pakistan Juvenile Justice System Act, 2018, s.15, 16(2);

¹⁸⁷ Pakistan Juvenile Justice System Act, 2018, s.16;

¹⁸⁸ United Nations Children's Fund, 'The Legal Framework for Child Protection in South Asia' (ROSA Kathmandu 2020), 57

¹⁸⁹ UN Committee on the Rights of the Child 'Concluding Observations on the fifth periodic report of Pakistan' (11 July 2016)

¹⁹⁰ Human Rights Watch 'Children Behind Bars: The Global Overuse of Detention of Children' <<https://www.hrw.org/world-report/2016/children-behind-bars>> accessed 22nd April 2021

¹⁹¹ Society for the Protection of the Rights of the Child, 'The State of Pakistan's Children'

< <https://www.sparcpk.org/SOPC%20-%202019.html> > accessed 22nd April 2021

¹⁹² *ibid*

Conclusion

In conclusion, the above research reveals that domestic law in Pakistan regarding the rights of the child does not fully comply with international standards. The existing laws and policies indicate certain gaps and inconsistencies in Pakistan's child rights legislative frameworks. The interviews have further shown that there has been some uncertainty about the exact position of each government, ministry, or agency since the 18th Amendment to the Constitution in 2010, which devolved certain subjects to the provinces.

While legislation alone would not end violence against children, a strong legislative structure is necessary for a well-functioning child protection system and prompt and efficient prevention, early intervention, and response programs for children. Therefore, better cooperation and a greater internal recognition and understanding of Pakistan's international legal obligations could be the only way to resolve this ambiguity. Through effective coordination at the provincial level and successful cooperation with the Federal Ministry of Human Rights, the implementation of international treaties can be ensured.

Bibliography

Primary Sources

International Law

UNGA Res 44/25, Convention on the Rights of the Child (CRC) (20 November 1989)

UN Committee on the Rights of the Child (CRC), 'General comment No. 13 (2011): The right of the child to freedom from all forms of violence' (18 April 2011) UN Doc CRC/C/GC/13

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

UN Committee on the Rights of the Child (CRC), 'General Comment No. 20 on the Implementation of the Rights of the Child during Adolescence' (6 December 2016) UN Doc CRC/C/GC/20

UNGA 'United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice' (25 September 2014) UN Doc A/C.3/69/L.5

UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 35' on 'Gender based violence against women, updating general recommendation No. 19' (26 July 2017) UN Doc CEDAW/ C/GC/35

UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 19' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' (29 July 1994) UN Doc HRI/GEN/1/Rev.1

UNGA 'Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (25 May 2000) UN Doc A/RES/54/263

UN Economic and Social Council 'Resolution 2011/33 Prevention, protection and international cooperation against the use of new information technologies to abuse and/or exploit children' (28 July 2011)

UNGA United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Res 40/33 (29 November 1985) UN Doc A/RES/40/33

UN Committee on the Rights of the Child (CRC), 'General comment No. 10 (2007): Children's Rights in Juvenile Justice' (25 April 2007) UN Doc CRC/C/GC/10

ILO Convention C189: Domestic Workers Convention (100th Session Geneva 1 June 2011) entered into force 5 September 2013, (ILO c189)

ILO Convention C138: Minimum Age Convention (58th Session Geneva 6 June 1973) entered into force 19 June 1976, (ILO c138)

ILO Convention C182: Worst Forms of Child Labour Convention (87th Session Geneva 1 June 1999) entered into force 19 November 2000, (ILO c182)

National Law

Constitution of the Islamic Republic of Pakistan, 1973

Pakistan Juvenile Justice System Act, 2018

Pakistan Penal Code (Act XLV of 1860)

Pakistan Prevention of Electronic Crimes Act, 2016

Zainab Alert, Response and Recovery bill, (2019)

<http://www.na.gov.pk/uploads/documents/1556103569_454.pdf>

Sindh Prohibition of Corporal Punishment Act, 2016

Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010

Balochistan Child Protection Act, 2016

Islamabad Capital Territory Child Protection Act, 2018

Pakistan Employment of Children Act, 1991

Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015

Punjab Restriction on Employment of Children Act, 2016

Sindh Prohibition of Employment of Children Act, 2017

Juvenile Justice System Ordinance, 2000 (XXII of 2000)

Case Law

Federation of Pakistan v Shaukat Ali Mian, PLD 1999 SC 1026.

Raja Khurram Ali Khan and another Vs Tayyaba Bibi and another CrI. Appeal No. 154 of 2018

Secondary Sources

Books

Ahmer Bilal Soofi, 'Part III International Law in Asian and Pacific States, South and Central Asia, 24 Pakistan' in Simon Chesterman, Hisashi Owada, and Ben Saul(eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OSAIL 2019)

Muhammad Shahid Shafiq, Iqbal Ahmed Detho 'Tool Kit to Implement The Juvenile Justice System Act, 2018' (December 2018) United Nations Office on Drugs and Crime (UNODC)

Articles

Martin Lau, 'Introduction to the Pakistani Legal System, with Special Reference to the Law of Contract' (1994) 1 YB Islamic & Middle E L 3

V. Yates, CRIN Newsletter, Number 18, (London: Children Rights Information Network, (March 2005)

Zaeem Mumtaz Bhatti, 'Legal Rights of Children Under Laws of Pakistan' (December 2017) < <https://courtingthelaw.com/2017/12/27/commentary/legal-rights-of-children-under-laws-of-pakistan/> > accessed 10 April 2021

Wajahat Ali Malik, 'The Juvenile Justice System and the Right to Dignity of Juvenile Offenders in Pakistan' (2019) Pakistan Law Review Vol: X, 150

Tahira Jabeen, 'Pakistan's Child Protection Legislative and Policy Frameworks: A Critical Review' (2013) Pakistan Journal of Criminology Vol 5 (2) 161

Justice (R) Ali Nawaz Chowhan, 'The Dismal State of Child Rights in Pakistan' < <https://pakistanlaw.pk/articles/1399/the-dismal-state-of-child-rights-in-pakistan> > accessed 11 April 2021

<<https://www.nyulawglobal.org/globalex/Pakistan.html>> accessed 10 April 2021

Violence against children <<https://www.sparcpk.org/SOPC2019/VAC.pdf> >

'The Zainab Alert bill' *The Express Tribune* (25 January 2020)

<<https://tribune.com.pk/story/2143900/6-zainab-alert-bill-3> >accessed 15 April 2021

Child labor < <https://www.sparcpk.org/SOPC2019/Child%20Labour.pdf> > accessed 20th April 2021

Child labour — a forgotten issue' *The Express Tribune* (17 June 2017)

<<https://tribune.com.pk/story/1437447/child-labour-forgotten-issue-letter> > accessed 15 April 2021

'Tayyaba abuse case: Pakistan judge and wife's sentences cut' *BBC News* (10 January 2020)

<<https://www.bbc.com/news/world-asia-51060569> > accessed 15 April 2021

'Tayyaba abuse case shines light on Pakistan's child maids' *BBC News* (9 June 2018)

<<https://www.bbc.com/news/world-asia-44397432> > accessed 15 April 2021

Human Rights Watch 'Children Behind Bars: The Global Overuse of Detention of Children'

<<https://www.hrw.org/world-report/2016/children-behind-bars>> accessed 22 April 2021

Reports

United Nations Children's Fund, 'The Legal Framework for Child Protection in South Asia' (ROSA Kathmandu 2020)

UN Human Rights Committee, 'Concluding observations on the initial report of Pakistan' (23 August 2017) UN Doc CCPR/C/PAK/CO/1

UNGA 'Report of the Special Rapporteur on the sale of children, child prostitution and child pornography' (22 December 2014) UN Doc A/HRC/28/56

The State of Pakistan's Children' < <https://www.sparcpk.org/SOPC%20-%202019.html> > accessed 20 April 2021

Amnesty International, 'Pakistan: Amnesty International's comments on the Lahore High Court judgement of December 2004 revoking the Juvenile Justice System Ordinance' (Report) (2005) AI Index: ASA 33/026/2005

Justice Project Pakistan (JPP) report: "Death Row's Children" (2017)

UN Committee on the Rights of the Child 'Concluding Observations on the fifth periodic report of Pakistan' (11 July 2016)