



LEGAL FRAMEWORK FOR THE PROTECTION OF CHILD IN PAKISTAN: AN OVERVIEW OF THE INTERNATIONAL BEST PRACTICES

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Every child has rights, whatever their ethnicity, gender, religion, language, abilities or any other status.

Abstract:

This study examines the issues encountered by society's most vulnerable members, namely children, and how they are abused by adults on a daily basis. The research focuses on the fundamental rights that every child is entitled to and offers light on Pakistan's child protection scenario. The article also provides a comprehensive analysis of Pakistan's legal structure, which protects children at both the state and provincial levels. The article also examines the United Nations Convention on the Rights of the Child (UNCRC) and other international child protection laws, as well as the position of children and their rights in other countries. A brief comparative assessment of the condition and application of laws in Pakistan and internationally is also included in the study. The report came to the conclusion that further work in the area of child protection is needed, and that there is still room for improvement.

Key Words: Child Protection, Child Rights, Violence, CRC, NHCR



Violence Against Children:

There are no limits to the violence perpetrated against children, they are mistreated by adults on a daily basis (Beckett). Violence prevails everywhere even in the safest and most trusted of places and all children must be protected from such violence whether they are in their homes, schools. Violence can either be physical, emotional, or sexual and mostly children are subjected to violence by those whom they trust. Societies all over the world are thought of to be child-centered yet this image is soon shattered when one starts to look too closely at the lives of children (Gill, 1971). Children in humanitarian situations are particularly at risk and the abuse that there are subjected to is often intentional. Gender-based violence is on the rise among girls and women during situations of emergencies. Cultural practices like child marriages also pose risk to girls even though it is an internationally recognized human violation. Every kid has the right to be safe from harm, exploitation, and abuse. To protect children's lives and futures, child protection programs prioritize their physical, mental, and psychosocial needs (UNICEF, 2021).

Fundamentals of Child Protection:

Child protection is a life-saving priority for the international humanitarian system. There are 4 principles that are included in the Convention for the rights of child these are: non-discrimination, best interest of the child, the right to survival and development and the views of the child. These principles are fundamental and signal that children too are human beings and should be treated as equals (Armenia, 2019). Child protection also entails that civil registration should be promoted within families and societies. These registrations play a great role in decreasing child protection risks and hence should be promoted (Minimum Standards for Child Protection in Humanitarian Action). Children must be safeguarded from all dangerous situations since they are physically, cognitively, and emotionally undeveloped and unable to protect themselves appropriately.

Child Protection in Pakistan:

Children in Pakistan are subject to a wide range of forms of abuse (physical, psychological, and sexual), as well as economic exploitation and child trafficking (Pakistan, n.d.). Approximately 3.3 million Pakistani children are enslaved in child labor, robbing them of their childhoods, health, and education, and subjecting them to poverty and deprivation ((FBS), 1996). Children are expected to tolerate violence and trust their elders no matter what happens, and they are bound to follow an obedience relationship with respect to their elders no matter how abusive they are towards the children. In the face of recurrent natural and man-made disasters, the issue is aggravated by a lack of awareness and gender-biased social standards. The government's reaction is hampered by a considerable lack of formal statistics on all forms of child exploitation and miscommunication between departments. Government of Pakistan along with UNICEF Pakistan is working to strengthen child protection matters. As a signatory to the United Nations Convention on the Rights of the Child [UNCRC], Pakistan has undertaken to offer special protection to children. Despite being a signatory the country and adopting the Convention one year after it was made it is still fifth among all countries of the world in the list with an extremely grim picture for



its children, as they continue to face violence, lawlessness, and denial of fundamental rights (Mehnaz, 2011). Pakistan follows rulings of Islam hence according to that child protection should be emphasized upon every citizen of Pakistan however sadly that is not the case and children studying in madrassas of the country are subjected to abuse and violence the most. The country has an independently setup organization i.e., Society for the Protection of the Rights of the Child (SPARC) that works to protect the rights of children. Such societies are working tirelessly to provide justice and protection to children who need it the most.

Framework for Protection of Child in Pakistan:

Pakistani Legislation and Government works to create a conducive environment for children. Provisions have been made at both the provincial and federal level for the protection of children in Pakistan.

The Constitution of Pakistan:

The Constitution of Pakistan recognizes the rights of children very well and gives them the opportunity to avail all basic rights. Article 25 of the constitution provides them with equality and states that *“All citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex and nothing in this Article shall prevent the State from making any special provision for the protection of women and children”*. They have been given right to avail compulsory education, the article 25A of the constitution of Pakistan states that *“the state shall provide free and compulsory education to all children of the age of 5 to 16 years of age in such a manner that maybe determined by the law”*. The article 25A is included in the fundamental rights chapter through the 18th Amendment which clearly shows its importance. The Article 11 of the Constitution prohibits slavery and forced labor for minors, it states *“Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form”*. Article 35 also guarantees protection by stating that *“The State shall protect the marriage, the family, the mother and the child”*. Article 37 e also speaks in favor of children by stating that *“the state has to make provisions for securing just and humane conditions of work ensuring that children and women are not employed in vocations unsuited to their age or sex, and for ensuring maternity benefits for women in employment”*. All children are protected because of these laws set in place by Government of Pakistan and the Courts of the country.

National Commission on the Rights of the Child Act, 2015:

This is a pro-children law that extends to the whole of Pakistan and was made to come into effect at once. This commission was prepared to fulfil Pakistan's obligations under International Conventions that it has signed and specifically the UNCRC which is the most important of all. This commission protects, monitors, and promoted the rights of children. It was made necessary for the Commission to prepare an annual report that could closely analyze the situation in the country. The commission also has a function of spreading awareness about child rights among various parts of Pakistan and among various society levels by liaising with earlier setup provincial commissions.



National Commission for Child Welfare and Development (NCCWD):

The Pakistani government established the National Commission for Child Welfare and Development (NCCWD) in 1979 (Rights, n.d.). It became effective from 1st January, 1980 after which in 1991 it housed under the Ministry of Health. However now it is placed with the Ministry of Human Rights and is responsible for coordinating, monitoring, facilitating the United Nations Convention on the Rights of Child which is also referred to as the UNCRC. This commission was established to make Pakistan a child friendly state and to cater to their developmental needs and take every step possible for their protection from abuse, violence, and exploitation. An objective of the commission is to formulate a national policy for child development and welfare in Pakistan which is in harmony with the UN.

Juvenile Justice System Act, 2018:

This Act was made to modify laws regarding criminal cases for juveniles by diversion and special reintegration of underage offenders. This Act was made for children who had not attained the age of 18 years. It offered free legal assistance for children to help them with their cases, established exclusive juvenile court and juvenile justice court. This Act also made sure that any juvenile offender shouldn't be given death punishment, or their hands should not be cuffed in any case. This Act seeks to deal with judicial proceedings in a manner that is in the best interest of the children and rehabilitates their lives through constructive processes.

National Program of Action (NPA):

The National Program of Action (NPA) has been established in Pakistan in 1990s which has set defined benchmarks and indicators to assess progress toward achieving the goals, as well as a method for monitoring progress toward achieving the goals through the construction of a system to track changes in the indicators' status. Its set goals include fighting poverty, putting children first in any case, educating and caring for every child and protecting them from harm, war, diseases and to not let them become a victim of pornography.

The Sindh Child Protection Authority Act, 2011:

This Act was brought into place specifically by the Sindh government to coordinate and resolve issues related to child protection at provincial and district level, to strengthen, support and enhance child welfare institutions (The Sindh Child Protection Authority Act, 2011). The Act will also ensure that children are being provided with the set minimum standards for services that are social, rehabilitative, reintegrative, and reformatory. All in all, this act covered child protection services to the fullest at the provincial level.

The Punjab Destitute and Neglected Children Act, 2004:

This Act was put into place by the Punjab government to “*consolidate the regulation for the rescue, protecting custody, care and rehabilitation of destitute and left out children within the Province of the Punjab*” (The Punjab Destitute and Neglected Children Act, 2004). According to this Act, a Destitute and Neglected Children's Welfare Fund should also be



established, and this money should be used for the care and protection of such children. This Act provides protection to all children except for those who are involved in some sort of criminal lawsuit.

The Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010:

This Act has been established to look after the best interest of the child. Under this Act, a Child Protection and Welfare Commission, Child Protection Unit, Child Protection Court, Child Protection and Welfare Fund were to be established (The Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010). This Act also protects children if they are at risk of child marriages and abuse and prohibits disclosure of children at risk. It is an exclusive and the first law of prevention and response that was implemented in the country.

The Balochistan Child Protection Act, 2016:

The Act provides protection of children from physical and mental violence, maltreatment, exploitation, and injury (The Balochistan Child Protection Act, 2016). One limitation of this Act is that it doesn't cover tribal areas of Balochistan under its umbrella. According to the Act, The Child Protection Commission and the Social Welfare Department should work in harmony together for child protection services.

Implementation and Situation of Child Protection Laws in Pakistan:

Children are vulnerable and sensitive individuals because of their dependency on others to fulfil their basic needs. There are many flaws and setbacks in implementation of laws that have been made by the state.

The NCCWD since its inception has recommended countless modifications and emendations to existing laws and practices prevailing in the country. The implementations made have also been accepted by the courts of Pakistan and have also been made a part of the Constitution of Pakistan (Sana Younus, 2018). However, the on-ground situation is quite different as these laws are not being implemented to their fullest potential. There exists lack of inter-departmental consistency which causes problems in the functioning of NCCWD and other departments working in the child protection sector. Lack of clarity is one of the main reasons why workers and the state itself is so behind when it comes to providing adequate rights to children of Pakistan.

As mentioned earlier, according to the Constitution of Pakistan children have the right to get free education and shouldn't be engaged in acts of labor and child marriages yet the on-ground situation especially in the rural areas of Pakistan is quite different. Effective results cannot be produced in Pakistan until child abuse is not considered to be a major offence as it makes the future of the country very vulnerable. Traditional values of the country make matters worse as child related matters are considered to be something to be dealt with in the house and not in court. The media houses of Pakistan have emphasized the difficulty of putting legislative measures into effect, such difficulties in turn make Pakistan a country that offers worst child protection systems in South



Asia.

A few percentages of children, 20.88%, have access to fundamental rights as they live in urban areas (Ozturk, 2019). Other children must become bread earners for their families from a very young age to bear the costs of physical and emotional costs of poverty. According to the Kid's Rights Index Pakistan is placed at 147th position in 2020 out of a total of 182 countries in which education ranking has the lowest score because children are busy in becoming bread earners and thus cannot focus on their education.

The practical application of legislation, such as assuring access to child-friendly justice, is frequently hampered by a lack of capacity building among professionals who work with and for children, as well as under-resourcing of enforcement authorities. The implementation of existing laws and regulations, as well as the harmonization of Pakistan's legal framework with the UN Convention on the Rights of the Child, require sincere efforts (Shujat, 2015).

Framework for the Protection of Child Internationally:

Children have the same human rights as everyone else, but their vulnerable status gives them a special place in the society and the United Nations framework and regional treaties and laws. Some best international practices are mentioned below:

The United Nations Convention on the Rights of the Child (UNCRC):

It is the most comprehensive treaty on the rights of child in the world and it focuses on 4 aspects of children rights i.e., participation by children in decisions affecting them, protection of child against discrimination, prevention of harm to children, provision of child's basic rights (Children's Rights , n.d.).

The best interest of child was to be considered a primary consideration in all actions and their right to life should be recognized. Their right to freedom to expression must be respected and should be allowed to participate in cultural and recreational activities (Jebb, 1989).

The Convention has 54 articles that serve that cover all aspects of a child's life and is the basis of all of UNICEF's work and is the most ratified treaty in the world (What is the UNCRC? , n.d.). A deep principle is contained in this treaty: that children are not only objects that belong to their parents and for whom decisions are made, nor are they people in training. Rather, they are human beings with their own set of rights.

Child Protection Act, No. 80/2002:

Iceland is a country that has secured the first rank in children rights and protection. Iceland introduced a Child Protection Act in 2002 which is still in place and is being implemented with full force. The main objective of this Act was: ***"The goal of this Act is to ensure that children who are living in deplorable conditions or who are putting their health and development at risk***



receive the assistance they require. Efforts must be made to achieve the Act's goals by bolstering families' child-rearing roles and, where appropriate, implementing measures to protect individual children" (Child Protection Act, 2002). This Act is a comprehensive one and consists of 100 articles which are even more in number than the UNCRC which shows how extensive it is and how much protection it provides to children.

African Charter on the Rights and the Welfare of the Child:

The Charter consists of 48 articles that cover every possible extent of the lives of African Children. It establishes rights for children and establishes standards for their treatment (Using the African Charter on the Rights and Welfare of the Child to address child marriage, 2017). Even though the situation in Africa is not optimum for African children and is somewhat critical due to cultural, economic and many other factors yet governments still try to impose the law as much as possible. Like every other Act by any country of the world the African Charter also in its Article 4 states that: "In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration". The essence of this Act is more or less the same as the above mentioned UNCRC and Irish Child Protection Act.

National Commission for Protection of Child Rights (NCPCR):

Our neighboring country India much to everyone's surprise there isn't a law or an act for India's 40% population rather a Commission has been set up that goes by the name of NCPCR which was set up in 2007 to ensure that laws, programs etc. are in consonance with the Constitution of India and the UNCRC. To reach every child, it wants a deeper penetration into communities and households, and it anticipates that the field experiences will be taken into account by all higher-level authorities (National Commission for the Protection of Child Rights , 2007).

Implementation and Situation of Child Protection Laws Internationally:

As it is the most ratified convention the UNCRC should be the most inspiration and guiding pathway for every government of the world to take action regarding children and their safety. The Convention monitors situations by a team of independent experts which are known as the '**UN Committee on the Rights of the Child**'. The Committee is made up of 18 experts from different countries and don't represent their country rather they work independently. Governments must report to this Committee and should notify of the situation of children and measures taken for their protection. These reports are to be submitted every 5 years by countries and meet all the standards that the Committee requires. After reviewing it provides recommendations and better implementation tips to governments. Almost all countries of the world actively submit their reports to the UNCRC, and it is binding on all of them.

Countries like Bangladesh, Afghanistan, Bhutan don't explicitly address rights of children and thus implementation of the Convention remains patchy throughout the South Asian region. Government instability and lack of resources make it difficult for child rights to be implemented with full force and thus causes deprivation of protection in children.



Comparison of International and Pakistani Child Protection Laws:

Pakistan has ratified the UNCRC and is expected to have a strong child protection system yet according to the values of the citizens of the state matters related to children are private affairs that are expected not to be dealt on a governmental level which is quite different to the situation abroad as internationally both governments established bodies and independently established bodies work together to solve issues related to children and to provide them with maximum protection and comfort.

According to data collected over the years foreign assistance for children is highest in Khyber Pakhtunkhwa province yet the province still is far behind and is less efficient when it comes to looking after the long-term sustainability of the child protection system (Khosro). Specific administrative structures with defined lines of responsibility are essential for laws to be executed in Pakistan, however, this is not the case (Jabeen, Child Protection Legislation in Pakistan: Bringing International Child Rights Obligations and Local Values Together Tahira J, 2016). There are problems regarding the ownership of departments and their relationships with each other which cause disruptions in the child protection system here in Pakistan.

The constitution of Pakistan advocates bans on the service of kids (under the age of 14) in any factory, mine etc. Moreover, slavery, forced labor and all forms of manipulation are eradicated.

In the United States of America (USA), many initiatives have been carried out. The states of US played an active role in this regard. A total of 28 states passed laws for the elimination of child labor and child protection in 1899. Two laws under a constitutional amendment prohibiting child labor were passed too. Its ratification was taken in 1924 and the Congress proposed it. In 1938, the "Fair Labor Standard Act" was passed by the Congress. This law was aimed against child labor. It was primarily aimed at fixing working hours for children during school hours as well as to define the range of age for work.

The department for Education (DfE) is responsible for child protection in England. It sets out policy, legislation and statutory guidance on how the child protection system should work. Local safeguarding partners are responsible for child protection policy, procedure and guidance at a local level (Child protection system in England, 2020).

In Canada, under the Chapter C-5.1 Child Protection Act, children are entitled to protection from abuse and neglect. The children have basic rights and fundamental freedoms no less than those of adults, and a right to special safeguards and assistance in the preservation of those rights and freedoms. Parents have the right and responsibility for the care and supervision of their children, and children should only be removed from that care and supervision when other measures have failed or are inappropriate (CHILD PROTECTION ACT). Western countries are ahead of South Asian countries mainly because laws are implemented as soon as they are made with full force. Moreover, support, risk assessments and social auditing are practices that are actively done abroad



that help children get their basic rights.

Pakistan over the years has passed and promulgated laws for child protection, however, the practical application of these laws has not been much of a success. Various reasons account for the lack of success of the safeguard of child protection of laws, foremost of which are the scarcity of the concern and interest of the important stakeholders in this regard. Additionally, the general masses are not apprised of the essence and importance of child protection laws. This culminates in the general population being least interested in the topic of child protection thereby resulting in no substantial debate or criticism (Fozia, 2016).

If Pakistan is to develop a sound framework to ensure child protection, it needs to be well apprised of the drawbacks and try to rectify the above-mentioned fault lines in the system at hand. Only then will the country be able to have an infrastructure that would ensure the protection of the children.

Conclusion:

The situation in Pakistan regarding child protection is not optimum, strengthening of laws and commissions is required. Jurisdiction here is not entirely in line with the international standards which it should be for better results. People should understand that systematic efforts on the part of stakeholders are required to fulfil child protection obligations. Communities should work together to make future better for their next generations (Jabeen, Child Protection Legislation in Pakistan: Bringing International Child Rights Obligations and Local Values Together , 2016). To keep children safe from harm is a critical issue on which legislation should be made stricter both in Pakistan and internationally. Every country in the world should enforce their laws and along with that should work with organizations like UNICEF and Save the Children to provide and ensure maximum protection only then can a change be seen across the world.



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