



CRIMINAL JUSTICE MATTERS INVOLVING CHILDREN

TRAINING MANUAL FOR JUDGES, PROSECUTORS
AND INVESTIGATORS



Group Development Pakistan

American Bar Association Center on Children
and the Law, American Bar Association Rule
of Law Initiative, and Group Development
Pakistan

INTRODUCTION

Children and youth under the age of 25 make up 52.5% of Pakistan's population today.¹ Nevertheless, our laws and justice system were geared towards adults and usually did not take into account the special circumstances of children in contact or in conflict with the law until the special child protection laws were enacted at the federal as well as provincial levels. The full implementation of those laws is still under question though.

On 19 December 2017, the Lahore High Court inaugurated Pakistan's first specialized court in Lahore to handle all criminal cases involving children as victims, witnesses and/or offenders. "The purpose of establishing the special court is to protect the innocence of children from negative impacts of litigation before traditional courts," LHC Chief Justice (CJ) Syed Mansoor Ali Shah said on inaugurating the first-of-its-kind court in Pakistan.² In 2018, Parliament enacted a new Juvenile Justice System Act (JJSA 2018), to improve the state of juvenile offenders with a focus on their rehabilitation and better access to justice mechanisms. In March 2019, a second Child Protection Court was established in Peshawar to handle all cases related to child protection and welfare, particularly legal custody of destitute and neglected children; reunification of destitute and neglected children with their families; welfare of children; trial of criminal cases involving children as victims, witnesses and/or offenders; and protection of moveable and immovable properties of orphan and neglected children and those at risk.³ Then, on 24 June 2019, the National Judicial Policy-Making Committee (NJPMC) decided in principle to establish Juvenile and Child Protection Courts in every district of Pakistan, starting with the provincial headquarters and Islamabad.

As of April 2019, the two pilot Child Courts in Lahore and Peshawar had decided 33 out of 79 cases in nine months and 40 out of 100 cases in 45 days respectively.

According to the Law and Justice Commission of Pakistan, in 2018 there were 1,199 juvenile offenders and accused in prisons across Pakistan, including 1,081 juveniles incarcerated awaiting or under trial and 118 convicted juvenile offenders.⁴ Of these, 16 were girls and the rest were boys.⁵ In almost all prisons, juvenile offenders were incarcerated with adult prisoners, exposing them to physical and psychological violence and intimidation, sexual abuse, rape, and other

¹ Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan's Children 2018: Violence against Children* (2018), available at <https://www.sparcpk.org/images/sopc18/violence.pdf>.

² Sana Jamal, *Pakistan's first Child Court launched in Lahore*, GULF NEWS, 21 December 2017, available at <https://gulfnews.com/world/asia/pakistan/pakistans-first-child-court-launched-in-lahore-1.2145135>.

³ Waseem Ahmad Shah, *KP gets first child protection court*, DAWN, 17 March 2019, available at <https://www.dawn.com/news/1470119>.

⁴ SPARC, *The State of Pakistan's Children 2018: Juvenile Justice* (2018), available at <https://www.sparcpk.org/images/sopc18/jj.pdf>.

⁵ SPARC, *The State of Pakistan's Children 2018: Juvenile Justice* (2018), available at <https://www.sparcpk.org/images/sopc18/jj.pdf>.

extreme forms of abuse.⁶ Since the lifting of the informal moratorium on the death penalty in 2014, six juvenile offenders have been executed.⁷

The new JJSA 2018 is expected to have a profound impact on the administration of juvenile justice in Pakistan. The following are some of the most significant changes made by the new law:

- ☐ Raised the minimum age of criminal responsibility from 7 to 10 years;
- ☐ Made age determination mandatory in cases involving possible juvenile offenders;
- ☐ Provided for disposal of juvenile cases through diversion;
- ☐ Called for the formation of Juvenile Justice Committees; and
- ☐ Mandated the establishment of Juvenile Rehabilitation Centers for detaining juveniles.

According to the *Cruel Numbers 2018* Report published by non-governmental organization (NGO) Sahil, 3,832 cases of child abuse were reported in Pakistani newspapers in 2018, up more than 11% from 2017.⁸ This amounts to roughly 10 cases of child abuse reported each day.⁹ Of these, 2,327 cases involved child sexual abuse, an increase of 33% from 2017.¹⁰ Various forms of child sexual abuse have been reported, including rape, gang-rape, sodomy, sexual groping and fondling, sexual assault, exposure, voyeurism, trafficking for forced prostitution, and commercial sexual exploitation of children through, for example, production and sale of child pornography.¹¹ Street children are especially susceptible to abuse. Studies provide evidence that up to 90% of street children in Pakistan suffer from sexual molestation, assault, rape, gang rape, or sodomy.¹²

As a State Party to the United Nations Convention on the Rights of the Child and other major international human treaties, Pakistan has committed to protecting the basic rights of children in contact with and in conflict with the law, including the following:

- ☐ The right to be treated with dignity and compassion;
- ☐ The right to be protected from discrimination;

⁶ SPARC, *The State of Pakistan's Children 2018: Juvenile Justice* (2018), available at <https://www.sparcpk.org/images/sopc18/jj.pdf>.

⁷ Justice Project Pakistan (JPP), *Death Row's Children* (2017), available at <https://www.jpp.org.pk/report/death-rows-children-pakistans-unlawful-executions-of-juvenile-offenders/>.

⁸ Sahil, *Cruel Numbers 2018: A Compilation of Statistics on Child Sexual Abuse Cases in Pakistan 1* (March 2019), available at <https://drive.google.com/file/d/1Hwq1cktvfGb16y9iljjWcGLgUJf-g4kF/view>.

⁹ Sahil, *Cruel Numbers 2018: A Compilation of Statistics on Child Sexual Abuse Cases in Pakistan 1* (March 2019), available at <https://drive.google.com/file/d/1Hwq1cktvfGb16y9iljjWcGLgUJf-g4kF/view>.

¹⁰ Sahil, *Cruel Numbers 2018: A Compilation of Statistics on Child Sexual Abuse Cases in Pakistan 2* (March 2019), available at <https://drive.google.com/file/d/1Hwq1cktvfGb16y9iljjWcGLgUJf-g4kF/view>.

¹¹ Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan's Children 2018: Violence against Children* (2018), available at <https://www.sparcpk.org/images/sopc18/violence.pdf>.

¹² Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan's Children 2018: Violence against Children* (2018), available at <https://www.sparcpk.org/images/sopc18/violence.pdf>.

- ☐ The right to be informed;
- ☐ The right to be heard and to express views and concerns;
- ☐ The right to effective assistance;
- ☐ The right to privacy;
- ☐ The right to be protected from hardship during the justice process;
- ☐ The right to safety;
- ☐ The right to special preventive measures; and
- ☐ The right to reparation.

This manual will be used to train judges and prosecutors who will staff the new Juvenile and Child Protection Courts and law enforcement officers who will investigate criminal cases involving children. The following materials are intended to prepare justice sectors actors to execute their functions in justice matters involving children in accordance with Pakistan's international obligations, domestic law, and international and regional best practices. The manual is divided into three major sections **1. Legal Framework; 2. Victim-Centric Investigations; and 3. Standard Operating Procedures.** The content across all three sections covers two general categories of cases, which can overlap: cases involving children in conflict with the law (i.e., children accused of committing crimes) and cases involving children as victims and witnesses of crime, particularly child sexual abuse. It includes readings and reference materials, practical exercises and case studies, and reference and links to outside resources and additional reading.

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ACRONYMS

Acronym	Definition
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
Cr.PC	Criminal Procedure Code/Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CSA	Child Sexual Abuse
CSO	Civil Society Organization
DNA	Deoxyribonucleic acid
FIA	Federal Investigation Agency
F.I.R.	First Information Report
GDP	Group Development Pakistan
ICCPR	International Covenant on Civil and Procedural Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Islamabad Capital Territory
ILO	International Labour Organization
JJSA	Juvenile Justice System Act
KPK	Khyber Pakhtunkhwa province
LEA	Law Enforcement Agency
MOHR	Ministry of Human Rights
NCHR	National Commission on Human Rights
NCSW	National Commission on the Status of Women
NGO	Non-governmental organization
OSPC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
PECA	Prevention of Electronic Crimes Act
PPC	Pakistan Penal Code
SAARC	South Asian Association for Regional Cooperation
SIR	Social Investigation Report
SC	Supreme Court
SPARC	Society for the Protection of the Rights of the Child
TIP	Trafficking in Persons
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAT	United Nations Convention against Torture

UNCRC	United Nations Convention on the Rights of the Child/United Nations Committee on the Rights of the Child
UNICEF	United Nations Children's Fund
UNODC	United Nations Office of Drugs and Crime
UPR	Universal Periodic Review

LEARNING OBJECTIVES

Learning Objectives, Outcomes and Results for Trainings of Judges, Prosecutors, and Police on Child Rights, Child Protection, Child Sexual Abuse, and Juvenile Justice

Objectives

- ☐ Identify the primary provisions of domestic and international law that serve as the foundation for protecting children's rights and safety from child sexual abuse and within juvenile justice systems.
- ☐ Know the main international guidelines on prevention; and Know the cross-cutting principles of children's rights protection, which are applied throughout the manual
- ☐ Understand how, according to international standards, to legally define a child and what constitutes a person being a child.
- ☐ Comprehend and be able to use victim-centric best practices for child sexual abuse and children in conflict with law cases. Understand what practices are better for which case and how overall courts and police station can be more child-friendly.
- ☐ Know and be able to put into practice standard operating procedures for cases of child abuse, including child sexual abuse, and children in conflict with law.
- ☐ Understand the different, varied and special needs of children both psychologically and physically and the different stages a child can be in his/her life.

Outcomes

- ☐ Judges, Prosecutors and Police use and apply domestic laws and international standards in their daily work when dealing with any child.
- ☐ Utilize and implement best practices for victim-centric investigations in their police stations and courts and employ measures to make these spaces more child-friendly.
- ☐ Officers, Prosecutors, and Judges carry out and use the best practices they have learnt in police cases, arrests, trial proceedings and the investigation overall.
- ☐ Demonstrate increased sensitivity to and comprehension of how to deal with victims of child sexual abuse, and the measures/methods that need to be and should be taken when working on a case of child sexual abuse.
- ☐ Participants understand and can demonstrate how to manage cases of child perpetrators and children in conflict with the law from the stage of the initial arrest to the final trial proceedings and conclusion of the case plus the investigation.
- ☐ Implement standard operating procedures for cases involving children particularly cases of child abuse, child sexual abuse, and children in conflict with the law.

Results

- The number of cases received and closed by district child courts increases and more children/child cases are being brought forward and adjudicated in alignment with national and international child safeguarding standards to which Pakistan is signatory.
- Awareness about child rights issues and child abuse, particularly child sexual abuse increases in the judicial and policing communities.
- Improved guidelines and potential legislation regarding the conduct and procedures of the judiciary and police for cases involving children and dealing with children overall.

GUIDING PRINCIPLES

Four Guiding Principles¹³

1. **Non-discrimination:** Children are entitled to protection from discrimination based on their or their parent's or legal guardian's, sex, gender, sexual orientation, religion, race, ethnicity, language, political or other opinion, socioeconomic status, property, disability, birth, or other status. They are deserving of protection and equal treatment as victims.
2. **Best interest of the child:** 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. While the rights of the accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. The best interests of the child should guide how cases are investigated and prosecuted, and child victims' well-being should be considered at every stage of the process. Procedures and processes should be trauma-responsive.
3. **Dignity:** Every child is a unique and valuable human being and, as such, his or her individual dignity, special needs, interests and privacy should be respected and protected. Children have the right to be treated with dignity, respect, and compassion. Children have a right to protection, including from physical and mental violence, neglect, sexual abuse and exploitation and torture, inhuman, or degrading treatment or punishment. The State must ensure that children are provided protection and care as is necessary for their well-being, taking into account the rights and duties of parents, legal guardians, or other individuals legally responsible for them, by taking all appropriate legislative and administrative measures. The investigative and judicial process should accommodate children's special circumstances and the need to protect them throughout the length of the case.
4. **Right to Participation:** Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity. Children have the right to participate in their own cases, including providing testimony as appropriate, expressing their views and ideas during investigative and other phases, and providing victim impact statements related to sentencing.

¹³United Nations Convention on the Rights of the Child art. 2-5, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989) & United Nations Economic and Social Council Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, A/RES/2005/20 (22 July 2005).

Preserving Dignity

- a. The right to be treated with dignity and compassion
- b. Right of protection from hardship in the judicial process (This means protecting children both victims of abuse and children in conflict with the law from the traumatic experience of going through the investigation and judicial process.)
- c. Specific accommodations to protect child throughout the judicial process (right to courtroom modifications to reduce hardship and trauma)

- a. Protecting children (both victims and perpetrators) from all forms of discrimination
 - a. Types of discrimination: Sex, Gender, Religious, Ethnic, Economic, Disability, Race, Sexual Orientation and Political
 - b. General protections from discrimination
 - c. Added protections from discrimination
 - d. Age cannot be used as a discriminatory factor to stop children participating in justice proceedings
 - e. Practical steps to protect children from discrimination

Best Interests of the Child

- a. Need to provide to effective assistance to children
 - a. Financial Assistance
 - b. Legal Assistance
 - c. Counselling
 - d. Health Services
 - e. Social Services
 - f. Educational Services
 - g. Physical recovery services
 - h. Psychological recovery services
 - i. Other services
- b. Need to assure safety of children, even if children are the accused
- c. Right of child to privacy (confidentiality)
- d. Special prevention measures
 - a. Awareness raising, information and public education
 - b. Programs combatting risk factors
 - c. Programs strengthening protective factors (child's lived environment, their mental health and wellbeing)

Children's Right to Participation

- a. Right to express their views and ideas
- b. Reparations for child victims
- c. Victim impact statements

ACTIVITY 1

Activity 1

(10 minutes)

Ask the group to share the first word that comes to their mind when they hear the word “child”.

All mentioned words will be noted down by a co-facilitator on a board.

Then, ask participants to close their eyes for 2 minutes and think of a bad memory from their childhood when they were punished for something they did or did not do. After 2 minutes, participants will be asked if they want to share their story & explain how they felt.

The same exercise will occur for a good memory for something they did well: how did they feel?

Then they will be asked, what is the difference between an adult and a child? Between you then and you now?

The facilitator will conclude with the fact that we tend to forget that children are not adults and that we must always keep their uniqueness and specificities in mind as actors of justice.

Brain Storming

(5-10 mins)

Ask participants to introduce themselves with their name, designation, the district where he/she belongs and mention the following information on the flash card,

1. How many children do they have in their family (not necessarily their own biological children but may be the children of their relative like a brother or sister)?
2. How old is the minimum aged child?
3. What is the maximum aged child among them?
4. If the maximum aged child has any adult siblings what is/are his/her/their age?

DEFINITION OF A CHILD UNDER INTERNATIONAL NORM S (LEGAL, PRACTICAL, UNIFORMITY)

Under the United Nations Convention on the Rights of the Child (UNCRC), a child “means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.¹⁴

¹⁴United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Eighteen is generally accepted as the age of majority, which is the age at which a child attains adulthood and acquires full legal capacity. Individual countries or their internal states/principalities, however, may identify younger ages at which individuals acquire legal capacity.

The term 'child' is widely used in all forms of national legislation, ranging from acts addressing children's status and rights to criminal codes to child welfare or child protection laws. The additional terms 'minor', 'youth', or 'adolescent' may not be universally defined, and the specific use of the

terms may vary by context or different provisions may specify an age limit. Legal capacity can also differ from the age of consent, and some jurisdictions may establish younger ages of consent. For example, in the United States, the age of consent is 18 in federal statutes but varies from 16-18 within the individual states.¹⁵ As discussed further in the next section, Pakistani laws also contain different ages of majority.

Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC), requires States Parties to "adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process." Although the OPSC does not define "child," the definition of a "child" from the UNCRC applies. Moreover, in the context of the criminal justice system, the OPSC specifically states in Article 8(2) that, "States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim."¹⁶ The Committee on the Rights of the Child has also consistently asked States Parties to set an age limit of 18 years for defining a child for all the offences covered by the OPSC.

In its Concluding Observations on the Fifth Periodic Report of Pakistan on 25 and 26 May 2016, the UN Committee on the Rights of Child adopted the following concluding observation: **"The Committee reiterates its previous recommendation that the State party ensure the full harmonization of its legislation as regards the definition of the child so as to define a child as any human being below the age of 18 years. In particular, it recommends amending the Zina and Hadood Ordinances (1979) and the Child Marriages Restraint Acts in all its provinces, in order to align the age of marriage for boys and girls by raising the minimum age of marriage for girls to 18 years."**

<http://docstore.ohchr.org/SelfServices/FilesHandler.aspx?enc=6QkG1d%2fPPRiCAqhKb7yhsj6w6N%2f47zTb2GZCw8ZJMHBo%2fKlxkcysXmslSop1yo0QfaT1E6yAhQmn1FhkSztV8lkZY%2f0FcYdIBPHSpz3tSnn6uT1XlVbgwtgC5kzi77Xw>

¹⁵The United States is not a party to the UNCRC.

¹⁶Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 16 March 2001, A/RES/54/263 (2002), available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

DEFINITION OF “CHILD” IN PAKISTANI LAW S

In the Pakistani legal system, “child” is defined in different laws by different ways; although there is no comprehensive child protection policy or law related to child rights, there exist various federal and provincial level statutes that provide protection to children. It is important to understand that the age helps the child enjoy their rights, which may be political and civil rights or social, economic and cultural rights.

Constitution of Pakistan:

The Constitution of the Islamic Republic of Pakistan has not clearly defined the term “child” but has a few special provisions related to children. For example, Article 11 prohibits child labor under the age of 14 years, and under Article 25-A, children up to age 16 years have a right to free and compulsory education.

The Constitution of Pakistan, while talking about the equality of people in the State, empowers the legislature to enact laws that positively discriminate on the basis of age or gender to protect the rights of women and children and states in Article 25(3), “Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.” But in reality, the situation is far from being perfect.

Pakistan Penal Code:

Pakistan Penal Code 1860 talks about the minimum age of criminal responsibility and sets out the age in these words: “Section 82: Nothing is an offence, which is done by a child under ten years of age[,]” and “Section 83: Nothing is an offence which is done by a child above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”

While another provision of the same code, which talks about the age of child as a defence in cases of corporal punishment, provides, “Section 89: Nothing is an offence which is done in good faith for the benefit of a person under twelve years of age by the guardian or other person having lawful charge of that person.”

Section 328-A is about cruelty to children but has not specified the applicable age.

Section 364-A. Kidnapping or abducting a person under the **age of fourteen** makes the offences punishable if a person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person.

Section 366-A. Procurement of minor girl. Inducing any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be, forced or seduced to illicit intercourse is an offence.

Section 375(v) defines Rape, making consent irrelevant when the victim is under sixteen years of age, in these words “A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions” and one of those is **“with or without her consent when she is under sixteen years of age.”**

Section 377A. Sexual abuse. Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where **age of person is less than eighteen years**, is said to commit the offence of sexual abuse.

Majority Act, 1875

Section 3 of the Majority Act, 1875, provides that a “Person domiciled in Pakistan shall be deemed to have attained his majority when he shall have completed his **age of 18 years** and not before.”

The Guardians & Wards Act, 1890

The Guardians & Wards Act, 1890 endorses the same definition by these words: under Section 3 (1), “minor” means a person who, under the provisions of the Majority Act, 1875, is to be deemed not to have attained his Majority.”

Child Marriages Restraint Act, 1929 and Sindh Child Marriage Restraint Act, 2013

For the purpose of a marriage contract, there are different laws in Pakistan. Sindh and Punjab provinces of Pakistan have made some changes to their child marriages laws, while the other provinces have not changed the Child Marriages Restraint Act, 1929. According to Section 2(a) of this law, “‘child’ means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age”. In its recent legislative step, Punjab has not changed the age of marriage for the girl child, which is the same 16 years, but Sindh has amended and removed the discrimination, defining “child” as a person, male or female, who is under 18 years of age for the purpose of marriage.

Pakistan Citizenship Act, 1951

According to the Pakistan Citizenship Act, 1951, Section 2: "minor" means, notwithstanding anything in the Majority Act, 1875, any person who has not completed the age of twenty-one years.

This overview of a few laws that are in force illustrates how the laws are not in conformity with each other and courts of law must consider different meanings to define terms under the statute.

The Offence of Zina (Enforcement of Hudood) Ordinance, 1979

The Offence of Zina (Enforcement of Hudood) Ordinance, 1979; (which has been amended due to its controversial sections) defines in Section 2(a) "adult" to mean a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty.

The Vagrancy Ordinance, 1958

According to this law, under Section 2(a): "child" means a person under the age of fourteen years.

The Prison Rules, 1978

The Prison Rules 1978, Rule 280 has defined Juvenile and Youthful Offenders as: (i) "Juvenile" in the case of male means a prisoner who at the time of conviction was under 18 years of age and includes "youthful offender". (ii) "Youthful offender" means a male juvenile who, when convicted, was 15 years of age.

In the same rules, the children incarcerated with parents, mostly with mothers, are covered in these words: Rule 326: Women prisoners shall be allowed to keep their children with them in prison till they attain the age of three years. While Amendment by Punjab, Sindh and KP Provinces reads: "Children with mothers. Women prisoners shall be allowed to keep their children with them in prison till they attain the age of "six" years."

The Juvenile Justice System Act, 2018

Section 2(b): "Child" means a person who has not attained the age of eighteen years.

The Prevention of Trafficking in Persons Act, 2018

In 1(a) of this law, "child" means a person under eighteen years of age.

The National Commission on the Rights of the Child Act, 2017

This law also defines "child" as any person below the age of eighteen years.

The Punjab Destitute and Neglected Children Act, 2004

The Punjab Destitute and Neglected Children Act, 2004 has set the age for a child under Section 3(1)(e). "Child" means a natural person who has not attained the age of eighteen years.

The Punjab Restriction on Employment of Children Act, 2016

According to this law, a child is a person who is under age of 15 years. It further elaborates that the person who has attained 15 years but under 18 years will be considered an adolescent.

Khyber Pakhtunkhwa Child Protection Welfare Act, 2010

Section 2(d): "child" for the purpose of this Act means a natural person who has not attained the age of eighteen years.

The Sindh Child Protection Authority Act, 2011

This legislative move in Sindh has clearly defined child in Section 2(g). "Child" means a person who has not attained the age of eighteen years.

The Khyber Pakhtunkhwa Child Protection Welfare Act, 2010

"Child" for the purpose of this Act means a natural person who has not attained the age of eighteen years.

The Balochistan Child Protection Act, 2016

Defines “Child” as a person, either girl or boy, below the age of 18 years.

AGE DETERMINATION AND OUR JUDICIAL SYSTEM

According to a report by the National Institute of Population Studies, only 34% of children in Pakistan under the age of five have been registered.¹⁷ Rates of registration vary drastically between the different provinces with 74% of children in Islamabad Capital Territory (ICT), 46% in Punjab, 25% in Sindh, 23% in Gilgit Baltistan, 10% in KP and less than 8% in Balochistan being registered.¹⁸ Birth registration is also linked to economic status with only 5% registration for children in the lowest wealth quintile.¹⁹ As a result, when a child comes into conflict with the law or in contact with law, they are unlikely to possess any form of evidence to prove their juvenile status and are likely tried and sentenced as adult offenders or do not get justice in accordance with the special provisions of law. In cases where the police choose to record the age of the accused, it is predominantly based on a cursory visual assessment. The low rate of birth registration combined with an absence of protocols prescribing the method for determination of age leads the police to record ages of accused persons based on their observation of their physical appearance in a high number of cases. In practice, police are inclined to record the age of the accused as much higher than it appears. Based on the experience of nongovernmental organizations dealing with cases of juvenile offenders, in cases where the appearance of the accused leaves little doubt of his juvenile status, the police invariably record his/her age as “16/17” whereas, where an accused’s physical appearance does not make his/her age obvious, the police record it as “22/23.”²⁰ It is a common practice to take into consideration four different types of evidence to determine age: Statement in the court under section 342 of Criminal Procedure Code (Cr.PC), Birth Certificate/Form-B, School Leaving Certificate and Medical Evidence where judges had placed reliance on each or rejected otherwise.

¹⁷ National Institute of Population Studies, *Pakistan: Demographic and Health Survey: 2012-2013* (2013), p.19-22, available at <https://dhsprogram.com/pubs/pdf/FR290/FR290.pdf>

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Justice Project Pakistan, *Death Row’s Children: Pakistan’s Unlawful Executions of Juvenile Offenders* (2017), available at <https://www.jpp.org.pk/wp-content/uploads/2017/10/Death-Rows-Children.pdf>

The Juvenile Justice System Act, 2018 has mandated that the police officer, or the investigation officer, make an inquiry to determine the age of any alleged offender who physically appears or claims to be a juvenile. Age shall be determined on the basis of an accused person's birth certificate, educational certificates or any other pertinent documents. In absence of such documents, age of such accused person may be determined on the basis of a medical examination report by a medical officer. Form No. 26.7(1), titled 'Certificate Regarding Identity of an Accused' prescribed in the Police Rules, 1934 also has a column regarding the age of the accused person.

Therefore, it is very important for the police officer to make proper inquiry, in the case of a young accused, about his/her age to determine as to whether the relevant accused person is or is not a "child".

ACTIVITY 2

Activity 2

Distribute the worksheet (Attachment-1) among all the participants and ask them to find the answer from the material (book/handouts/) provided to them. Once they are done with the work ask the participants the following two questions:

- In this worksheet, how many laws have specified the age of majority as 18 years?
- How many laws have specified different age brackets for girls and boys?

ACTIVITY 3

Activity 3

(20 minutes)

Debate as a learning exercise: Divide participants into two groups. Ask each group to spend 10 minutes preparing to debate: "Why age determination?"

Ask one group to argue that "Children should be held accountable for crimes the same as adults because the actions of children have the same impact on the victims and on society." And ask the second group to prepare the argument "Children should not go through the formal judicial system, they should be given a chance. Age determination is necessary to give them the privileged judicial system".

Call each team to the front of the room. Ask each group to argue their position for 5-7 minutes. Keep strict time limits so all the points for debate can be raised.

In the end, the Facilitator will brief the participants about the importance of age determination, its impact during the administration of justice, what are the best practices globally, and what are the international obligations in this regard.

INTRODUCTION TO INTERNATIONAL LAW

“International law ... comprises legal obligations to which States have consented in order to regulate the interactions between them.”²¹ In the narrowest sense, international law is the law applicable between “States”, a term used in international law to connote countries or nation-states, rather than non-state actors. International law, however, increasingly takes into account the behavior of non-state actors, such as pirates, terrorists, non-state armed groups, individuals, and even corporations. There are three generally accepted sources of international law:

- 1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- 2) international custom, as evidence of a general practice accepted as law; and
- 3) the general principles of law recognized by civilized nations.²²

Of these, the first two are the most important.²³ All three are considered “hard law” or forms of international law that are legally binding on states.

“International agreements go by several names, such as ‘charter,’ ‘convention,’ ‘covenant,’ ‘pact,’ ‘protocol,’ ‘statute,’ and ‘treaty.’ ‘Convention’ typically refers to an agreement among many countries, while ‘charter’ or ‘statute’ [is] often [] used for the founding document of an institution, and ‘protocol’ for an agreement supplemental to a principal treaty.”²⁴ “Treaties” are agreements governed by international law and can be “bilateral” (between two States), “multilateral” (between multiple States), or “universal” (treaties to which all States have consented).²⁵ International agreements are binding on their States Parties. In rare instances, such as the Convention on the Prevention and Punishment of the Crime of Genocide,²⁶

²¹American Society of International Law, *Benchbook on International Law* (2014), I.A-1, available at https://www.asil.org/sites/default/files/benchbook/ASIL_Benchbook_Complete.pdf

²²See, e.g., Statute of the International Court of Justice art. 38 (San Francisco, 26 June 1945), 3 Bevans 1179, 59 Stat. 1055, T.S. No. 993, entered into force 24 Oct. 1945, available at <https://www.icj-cij.org/en/statute>

²³American Society of International Law, *Benchbook on International Law* (2014), I.B-2

²⁴American Society of International Law, *Benchbook on International Law* (2014), I.B-3

²⁵American Society of International Law, *Benchbook on International Law* (2014), I.B-3

²⁶United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/genocide.shtml> (last visited August 12, 2019) (noting that “The

international agreements may be considered binding on non-States Parties through a recognized principle of customary international law.²⁷ The following section discusses various types of international agreements, including conventions, covenants, and protocols.

The international community also recognizes a body of international documents, norms and standards, sometimes referred to as “soft law,” which do not impose a specific, binding obligation on a State, but may nevertheless influence the behavior of States or other subjects of international law. Examples of “soft law” include documents promulgated under the auspices of an intergovernmental organization, such as the United Nations’ Guiding Principles on Business and Human Rights;²⁸ international declarations, such as the Universal Declaration of Human Rights;²⁹ and rules, guidelines, and standards promulgated by nongovernmental organizations.³⁰ The following section discusses certain soft law principles such as the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power.

CHILDREN’S RIGHTS UNDER INTERNATIONAL LAW

Children’s rights are human rights. Like other people, children enjoy certain inalienable rights and freedoms under international human rights law.

Modern international human rights law dates back to the post-World War II era of the 1940s. Article 1 of the Charter of the United Nations (the founding document of the United Nations, which was signed on 26 June 1945 and entered into force on 24 October 1945) lists achieving “international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and **in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion**” as one of the purposes of the United Nations. Article 55 similarly states that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Chapter IV of the Charter charges the General Assembly with “promoting international co-operation in the economic, social,

International Court of Justice (ICJ) has repeatedly stated that the Convention embodies principles that are part of general customary international law. This means that whether or not States have ratified the Genocide Convention, they are all bound as a matter of law by the principle that genocide is a crime prohibited under international law.”).

²⁷ See American Society of International Law, *Benchbook on International Law* (2014), I.B-10

²⁸ United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), available at https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

²⁹ Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948), available at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

³⁰ See American Society of International Law, *Benchbook on International Law* (2014), I.B-13 – I.B-14

cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” For its part, the Economic and Social Council may “make recommendations [to the General Assembly, Member States, or the specialized agencies] for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.”³¹

The UN Charter, however, does not define the terms “human rights” and “fundamental freedoms” nor does it enumerate those rights. Instead, on 10 December 1948, the recently constituted United Nations General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) as a common standard of protections for all peoples and all nations.³² It sets out, for the first time, fundamental human rights to be universally protected. The Declaration consists of 30 articles affirming an individual's rights that, although not legally binding in themselves, have been elaborated in subsequent international treaties, economic transfers, regional human rights instruments, national constitutions, and other laws. As per Article 2 of the UDHR, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

All rights proclaimed in the UDHR, save the right to marry under Article 16, apply equally to children as to adults. Moreover, two rights articulated in the UDHR are specifically targeted towards children. Article 25(2) provides that, “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Moreover, under article 26, everyone shall have a right to free elementary education.

The UDHR and the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR) are known collectively as the International Bill of Human Rights. Whereas the UDHR is a non-binding, soft law declaration, most of the rights articulated in the UDHR have been codified in the ICCPR and ICESCR, which are binding on their States Parties.

The UN Charter and UDHR paved the way for other general and specific human rights instruments, including a number of legally binding international human rights treaties. The following section discusses protections for children's rights contained in both hard law international agreements and soft law declarations like the UDHR.

³¹Charter of the United Nations art. 62, para 2, 26 June 1945, 3 Bevans 1153, 59 Stat. 1031, T.S. No. 993, entered into force 24 Oct. 1945.

³²Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948), available at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocol on Sale of Children, Child Prostitution and Child Pornography

In 1989, the United Nations adopted the Convention on the Rights of the Child (UNCRC), which addresses the civil, political, economic, social, health, and cultural rights of those under 18 years of age, recognizing the rights that other international conventions and declarations accord to adults. The UNCRC is the most significant of all international instruments addressing children's rights, including juvenile justice and child sexual abuse, and has four core principles – non-discrimination; devotion to the best interests of the child; the right to life, survival, and development; and respect for the views of the child.

The Convention sets out these rights in 54 articles and three Optional Protocols. One Optional Protocol restricts the involvement of children in military conflicts.³³ Another relates to communications of the Committee on the Rights of the Child,³⁴ and the Optional Protocol on Sale of Children, Child Prostitution, and Child Pornography commits national governments that are signatories to the Convention to protect and ensure children's rights and holds the governments accountable before the international community. States Parties are obligated to develop policies and undertake all actions considering the best interests of the child.

Article 19 of the UNCRC protects children from all forms of abuse, neglect, and exploitation by parents and others, and obligates States to establish prevention and treatment programs. Article 24 promotes high standards of health and access to health care services and requires effective and appropriate measures to abolish traditional practices prejudicial to the health of children. Examples of traditional practices in Pakistan that could be considered prejudicial to the health of children include child marriage, giving of girls to settle disputes, and bacha bazi. Article 34 specifically requires States to protect children from sexual exploitation and abuse including prostitution and involvement in pornography. Article 35 obligates States to prevent the abduction, sale, and trafficking of children. Article 39 directs States Parties to take all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims of neglect, exploitation and abuse.

Article 37 focuses on the detention and punishment of juveniles and prohibits the torture or other cruel, inhuman or degrading treatment or punishment of a child and imposition of the death penalty or life imprisonment without the possibility of release for anyone under the age of 18. It further provides that children should have access to legal and other services/assistance and

³³Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (New York, 25 May 2000), A/54/RES/263, entered into force 12 Feb. 2002, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACRC.aspx>

³⁴Optional Protocol to the Convention on the Rights of the Child on a communications procedure (19 December 2011), A/RES/66/138, entered into force on 14 April 2014, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICRC.aspx>

the right to challenge the legality of any deprivation of his or her liberty before a court or other competent, independent and impartial authority.

Article 40(1) focuses on juvenile justice and particularly the idea that every child accused of a crime deserves to be treated with dignity and respect. It emphasizes that the justice system's treatment of a child accused should consider the child's age/development and promote his/her constructive re-integration into society while also reinforcing his/her respect for the freedoms and human rights of others. The article then goes on to list the guarantees that States Parties shall afford a child accused, such as a presumption of innocence until proven guilty, the right to be informed and made to understand the charges against them and an opportunity to examine or have examined adverse witnesses.

Article 40 further encourages States Parties to promote the establishment of laws, procedures, institutions and authorities that apply to children accused of having infringed the penal law, including establishing a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. Finally, article 40 highlights alternative measures to deal with children in conflict with the law without resorting to a judicial process.

In July 2016, the Committee on the Rights of the Child adopted concluding observations on the fifth periodic report of Pakistan on the Convention on the Rights of the Child. There were 85 observations and recommendations made by the Committee. The relevant recommendations on juvenile justice are stated below:

80. The Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party to:

(a) Revise, as a matter of the highest priority, its legislation and increase the minimum age of criminal responsibility to an internationally accepted level;

(b) Review its legislation with a view to prohibiting cruel and inhuman punishments for any persons below the age of 18 years, including death sentences and lengthy prison terms;

(c) Ensure that the Juvenile Justice System Ordinance of 2000 prevails over all other laws, including sharia law, paying particular attention to sections 11 and 12 (a) of the Ordinance, which both apply “notwithstanding anything to the contrary contained in any law for the time being in force”;¹

(d) Introduce compulsory procedures and mechanisms to establish the age of a child, including a presumption of validity of official records such as birth certificates and placement of the onus on the State to prove adulthood beyond reasonable doubt;

(e) Promote alternative measures to detention, such as diversion, probation, mediation, counselling or community service, wherever possible and ensure that detention is used as a last resort and for the shortest possible period of time, and that it is reviewed on a regular basis with a view to withdrawing it;

(f) In cases where detention, including pre-trial detention, is unavoidable, ensure that children are not detained together with adults and that detention conditions comply with international standards, including with regard to access to education and health services;

(g) Carry out systematic and regular monitoring of detention facilities where children are detained, investigate any reports or allegations of torture or ill treatment of children and ensure that perpetrators receive punishments commensurate with the gravity of their crimes;

(h) Set up, in accordance with the Juvenile Justice System Ordinance of 2000¹, specialist juvenile courts staffed by specially trained juvenile judges, prosecutors, probation officers, defence advocates and other relevant personnel, and ensure that all persons below the age of 18 years are tried exclusively by such courts, without exception;

(i) Ensure the provision of free, qualified and independent legal representation to children in conflict with the law, from the outset and at all stages of the legal proceedings;

(j) Prohibit informal courts, such as jirgas and panchayats, and carry out prompt and effective investigations into decisions taken by such courts and, where appropriate, prosecute their members, in particular in cases of honour killing, under the relevant articles of the criminal law.

The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography is a response to grave concerns about sex tourism and the exploitation and trafficking of children. The Protocol calls on States Parties to cooperate with other States to further the prevention, detection, prosecution, and punishment of crimes of sexual exploitation or trafficking of children.

Article 3(1) of the Optional Protocol provides that States will agree to pass national legislation making sexual exploitation of children a crime subject to universal criminal jurisdiction, giving all States jurisdiction over the crime regardless of where it was committed or the alleged offender's

nationality or whether committed on an individual or organized basis. The OPSC obliges States

Parties to criminalize offering, delivering, or providing a child for sexual exploitation or prostitution and accepting, obtaining, or procuring a child for one of these purposes.

The OPSC defines "sale of children" as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration." Child prostitution means "the use of a child in sexual activities for remuneration or any other form of consideration." Child pornography means "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes."³⁵

No international instrument defines sexual exploitation, and opinions differ on the distinction between sexual exploitation and sexual abuse. In the context of the OPSC, sexual exploitation clearly includes child prostitution and child pornography, which includes the

In concluding observations on Pakistan's fifth periodic report the UN Committee on the Rights of the Child showed serious concerns over the incidents of Child Sexual Abuse and urged that:

37. The State party to take, as a matter of highest priority, measures throughout its territory to:

(a) Adopt appropriate laws that clearly and explicitly define and prohibit child sexual abuse and exploitation;

(b) Initiate a prompt, effective, accessible and child-friendly system for the mandatory reporting of cases of child sexual abuse and exploitation in the home, in schools, in institutions or in other settings, to investigate all reports and allegations of child sexual abuse and exploitation and to punish perpetrators by handing down sentences that are commensurate with the gravity of the crime;

(c) Conduct awareness-raising activities to combat the stigmatization of victims of sexual exploitation and abuse;

(d) Develop programmes and policies focusing on prevention and the recovery and social reintegration of child victims, in accordance with the outcome documents adopted at the world congresses against the commercial sexual exploitation of children.

³⁵Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (New York, 25 May 2000) UN Doc. A/54/RES/263, entered into force 18 Jan. 2002, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

production of child pornography or participation of children in pornographic performances. Another practice that could be considered “sale for the purposes of sexual exploitation” is the so-called “temporary marriage”, still practiced in some parts of the world.³⁶ The United Nations Children’s Fund (UNICEF) has published a “Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography” (https://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf) to promote understanding and effective implementation of the OPSC. It describes the genesis, scope and content of the Protocol, and provides examples of measures taken by States Parties to fulfil their obligations under this instrument.

The UNCRC also established a Committee on the Rights of the Child to monitor the progress of parties to the Convention. The Optional Protocol governing its communications establishes general principles regarding functioning of the Committee, the inquiry procedure when an individual or State Party claims that another State Party is not fulfilling its obligations under the Convention or its Optional Protocols, and general provisions such as international assistance and cooperation. In

Juveniles on Death Row 25. The Committee urges the State party to take, as a matter of highest priority, measures to:

- (a) Order a stay on all executions involving minors and launch a review of all cases where the death penalty was handed down to children or individuals who had committed a crime while under the age of 18 years and where there is, or was, any indication that they were juveniles, with a particular emphasis on how the age of the accused was determined and, where necessary, to reopen inquiries in relation thereto, with a view to either releasing the prisoner or commuting his or her sentence to a prison term. This should also apply to cases where the crime was committed before the entry into force of the Juvenile Justice System Ordinance of 2000 1;
- (b) Establish effective age determination mechanisms in order to ensure that in cases where there is no proof of age, the child is entitled to a proper investigation to establish his or her age and, in the case of conflicting or inconclusive evidence, has the right to the rule of the benefit of the doubt;
- (c) Ensure that all stages of cases involving children, even those concerning terrorism-related crimes or violations of sharia law, including arrest, detention (whether pretrial or post-trial) and trial, are overseen by juvenile courts, in compliance with the Convention and all applicable international standards;
- (d) Provide data on the number of children, and the number of persons alleged to have committed a crime while under the age of 18 years, on death row.

Torture 33. The Committee urges the State party to launch without delay an independent inquiry into all alleged cases of torture and ill-treatment of children, in particular those committed by law enforcement officers, including the Faisalabad district police, and to ensure that those involved in carrying out, ordering, condoning or facilitating these practices are brought to justice and punished using penalties commensurate with the gravity of their crime. The Committee further recommends that the State party review its laws and practices and exempt all children below the age of 18 years from punishment for hadood offences, in particular penalties such as amputation, whipping, stoning or other forms of torture and cruel and degrading punishment.

³⁶United Nations Children’s Fund, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (2009), p.10

accordance with article 44 of the CRC, each State party undertakes to submit periodic reports on the measures taken to give effect to its undertakings under the Convention. The initial report is due within two years following the entry into force of the Convention for the State Party and every five years thereafter.³⁷ The OPSC and the Optional Protocol on the involvement of children in armed conflict (OPAC) require each State Party to submit a report on the measures taken to implement the provisions of the respective Optional Protocol. The initial report under each Optional Protocol is due within two years following the entry into force of the Optional Protocol in the State Party.³⁸ Pakistan submitted its Fifth Periodic Report to the UNCRC in January 2015. The Report was reviewed in May 2016, and the Committee on the Rights of the Child gave its concluding observations at its 2132nd meeting held on 3 June 2016.

Pakistan signed and ratified the UNCRC in 1990. It signed the First Optional Protocol in 2001 and ratified it in 2016. It signed the Second Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in 2001, ratifying it in 2011. Pakistan's status related to 18 separate treaties can be found on the Office of the High Commissioner for Human Rights Ratification Interactive Dashboard (<http://indicators.ohchr.org/>).

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

The Convention against Transnational Organized Crime (the Palermo Convention), which falls under the jurisdiction of the UN Office on Drugs and Crime (UNODC), is supplemented by three protocols, called the Palermo Protocols:

- ☐ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children;
- ☐ The Protocol against the Smuggling of Migrants by Land, Sea and Air; and
- ☐ The Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children has particular relevance for the justice system response to child exploitation and trafficking.³⁹ Its articles provide a comprehensive, international approach in the countries of

³⁷ Committee on the Rights of the Child, *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1(b), of the Convention on the Rights of the Child* art. 1 (23 November 2010).

³⁸ Committee on the Rights of the Child, *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1(b), of the Convention on the Rights of the Child* art. 2 (23 November 2010).

³⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000), available at <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

origin, transit, and destination and include measures to prevent trafficking, punish traffickers, and protect victims with a goal of creating a universal instrument that addresses all aspects of trafficking in persons. Its stated purpose, as set forth in Article 2, is:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3 of the Protocol provides a definition of trafficking in persons that also specifically addresses when the victim is a child:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

In effect, this Article provides that any victim under the age of 18 for the purpose of exploitation is a victim of trafficking in persons regardless of whether the threat or use of force or other coercive means are used.

Additional Articles address:

- Article 5 urges States Parties to criminalize trafficking in persons (TIP) as well as attempting to commit a TIP offence, participating as an accomplice in a TIP offence, and organizing or directing another to commit the offence;
- Part II (Articles 6-8) addresses the protection of victims of trafficking and calls for the establishment of means to provide victims with information on relevant court and administrative proceedings and enable their views to be presented and considered at appropriate stages of criminal proceedings. It also calls for measures promoting the physical, psychological, and social recovery of victims, including appropriate housing; counseling and understandable information about their legal rights; medical, psychological, and material assistance; and employment, educational, and training opportunities.
- Article 9 addresses prevention efforts, urging States Parties to establish comprehensive policies, programmes, and other measures to prevent trafficking and protect victims, engage in research, develop measures to protect the most vulnerable, particularly women and children, and discourage the demand that fosters exploitation.
- Article 10 promotes information exchange and training for law enforcement and other authorities and calls for border measures to be taken. Training should address methods used to prevent trafficking, prosecute the traffickers, and protect the rights of victims. The training should also consider human rights and child- and gender-sensitive issues and encourage cooperation with non-governmental organizations, other relevant organizations, and other elements of civil society.

Pakistan is not a State Party to the Convention against Transnational Organized Crime nor, therefore, to its three Protocols. However, the ***Prevention of Trafficking in Persons Act, 2018*** is largely based on the Palermo Protocol.

International Labour Organization Conventions

Worst Forms of Child Labour Convention (No. 182)

The General Conference of the International Labour Organization (ILO) adopted its Worst Forms of Child Labour Convention, otherwise known as Convention No. 182, on June 17, 1999.⁴⁰ Convention No. 182 requires ILO members who ratify the Convention to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.” Article 3 of the Convention defines the “worst forms of child labour” to include *inter alia*:

⁴⁰International Labour Organization, Worst Forms of Child Labour Convention, C182, (17 June 1999), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 7 outlines practical steps that States Parties can take:

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
 - (a) prevent the engagement of children in the worst forms of child labour;
 - (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
 - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
 - (d) identify and reach out to children at special risk; and
 - (e) take account of the special situation of girls.
3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Pakistan ratified Convention No. 182 on the Worst Forms of Child Labour on 11 October 2001.

Minimum Age Convention, 1973 (No. 138):⁴¹

Pursuant to Article 1 of the Convention, “Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.”

Article 2(1) of the Convention states that each ratifying State shall specify a minimum age for admission to employment or work. Article 2(3) states that the age of entry should not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. Article 2(4) allows, “a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, [to] initially specify a minimum age of 14 years.” Article 2(5) provides, however, that States which specify an age of 14 must give the reason for doing so in report on the application of this Convention. Article 3 sets 18 years as the minimum age for work that is likely to jeopardize the health, safety or morals of young persons.

Pakistan ratified this Convention on 06 July 2006.

International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is an international human rights treaty adopted by the United Nations (UN) in 1966.⁴² It is one of the two treaties that give legal force to the UDHR. The other is the International Covenant on Economic, Social and Cultural Rights (ICESCR) described below.

The ICCPR commits States Parties to protect and respect the civil and political rights of individuals. These rights are fundamental to enjoyment of a broad range of human rights. Each Article to the Covenant relates to a specific right. The specific rights implicated in justice-system responses to child sexual abuse, exploitation, or trafficking would relate to those identified as freedom

UN Human Rights Committee, in its concluding observations in August 2017, urged that:

42. The State party should ensure that the minimum age for marriage is set at 18 years for both girls and boys; intensify its efforts to eradicate forced marriage and related harmful practices, including by carrying out prompt and effective investigations of all reported cases and prosecuting those responsible, if appropriate; and ensure that victims are provided with appropriate remedies and rehabilitation services.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPAK%2fC%2f1&Lang=en

⁴¹ International Labour Organization, Minimum Age Convention, C138 (26 June 1973), available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138

⁴² International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, entered into force 23 March 1976, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

from slavery or forced labor, fair and equitable treatment by the judicial process, freedom of expression (e.g., victims having a voice in their cases), the rights of children, and equality and non-discrimination.

The Articles implicated in child sexual abuse and juvenile justice include:

Article 2 – State parties agree to ensure rights without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. They are also obligated to address any claim of violations of these rights through an appropriate official remedy, determined by competent judicial, administrative or legislative authorities. This corresponds with the UNCRC principle of non-discrimination.

Article 8 –Right to not be enslaved. This Article implicates freedom from trafficking and sexual abuse.

Article 9 – Right to liberty and security of the person. *[Juvenile*

Justice] Article 10 – Rights of detainees. *[Juvenile Justice]*

Article 11 – Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation. *[Juvenile Justice]*

Article 14 –Equality before the courts and tribunals. Right to a fair trial. Although this article mainly addresses the rights of the accused, it's language also provides that all persons are equal before courts and tribunals, and that press and the public may be excluded from all or part of a trial for reasons of morals, public order, or national security or when the interests of the private lives of the parties requires. This may apply to child sexual abuse cases when a courtroom is closed or the court determines publicity would prejudice the interests of justice *[Juvenile Justice and CSA]*

Article 24 –Children's rights. Every child has the right to protection as a minor without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth.

The First Optional Protocol to the ICCPR allows those claiming to be victims of human rights violations to be heard by the Human Rights Committee, which is established by the Covenant. The Committee has the jurisdiction to receive, consider, and hear communications from victims. The First Optional Protocol came into force with the Covenant. The Second Optional Protocol to ICCPR is aimed at the abolition of the death penalty and came into force on 11 July 1991.

Pakistan signed the ICCPR in 2008 and ratified it in 2010. It is not a signatory to either Optional Protocol.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR came into force in January 1976 and is the second treaty to give legal force to the UDHR. It is the global instrument dealing with the protection of what are generally called “social rights,” as distinguished from “civil and political rights”.⁴³

This treaty covers the right to work, to work in fair and just conditions, social security, an adequate standard of living including adequate food, clothing and housing, health, and education. Article 9 recognizes "the right of everyone to social security, including social insurance". It requires parties to provide some form of social insurance scheme to provide for survivors, orphans, and those who cannot afford health care; and to ensure that families are adequately supported. Article 10 specifies that family is the fundamental unit of society, and as such, marriage should be entered into with the free consent of the intending spouses. Without specifying an age, this Article requires that one have reached an age at which they can freely consent to marriage in order to marry. It also addresses measures of protection and assistance on behalf of all children without any discrimination, specifically from economic and social exploitation. The article addresses work that may be harmful to children’s morals or health. Article 12 addresses physical and mental health, while Article 13 invokes the right to education.

Pakistan signed the ICESCR in 2004 and ratified it in 2008.

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

Often described as the international “Bill of Rights” for women, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations in 1979 and came into force in 1981.⁴⁴ It comprehensively addresses women’s rights within political, civil, cultural, economic, and social life. The CEDAW is monitored by the CEDAW Committee established through the Convention.

CEDAW is based on three core principles – equality, nondiscrimination, and the obligations of the State. Equality includes both equality of access and opportunity and equality of results upon access and opportunity. There should not only be equal opportunities for women but also equal

⁴³ International Covenant on Economic, Social and Cultural Rights (New York, 16 Dec. 1966) 993 U.N.T.S. 3, entered into force 3 Jan. 1976, available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

⁴⁴ Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 Dec. 1979), 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980), entered into force 3 Sept. 1981, available at <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

access to those opportunities. States Parties have a responsibility to ensure the practical realization of rights and are therefore obligated to show results.

The principle of nondiscrimination is based on the understanding that discrimination is socially constructed. The definition of discrimination in Article 1 is any act of exclusion, restriction, or distinction with the intent, purpose, or effect of nullifying, impairing, or denying the enjoyment of rights by women. CEDAW mandates both legal and development policy measures to guarantee the rights of women. Basic components of the States Parties' obligations under CEDAW include a formal guarantee of the provision of rights through the law and ensuring the practical realization of those rights.

CEDAW is implicated in the response to child sexual abuse because victims are predominantly, although not exclusively, women and girls. Article 6 explicitly addresses trafficking, requiring States Parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." Article 15 also addresses equality of women before the law, including legal capacity identical to that of men and the same opportunities to exercise that capacity. These Articles are particularly relevant to the discussion of nondiscrimination in the response to children as victims and witnesses before legal tribunals. Article 16(2) further specifies that the betrothal and marriage of a child shall have no legal effect and a minimum age for marriage should be set and that all marriages be entered into an official registry. These provisions aim to combat child marriage and unofficial marriages that may leave a child vulnerable to sexual abuse under the pretense of marriage.

Pakistan acceded to CEDAW in 1996 with the declaration that "The accession by [the] government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan" and the reservation that: "The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention."⁴⁵

Convention on the Rights of Persons with Disabilities (CRPD)

Children with disabilities are three times more likely to be sexually abused than children without disabilities. Their heightened vulnerability stems from a greater likelihood to be dependent on caregivers for activities of daily living; social disabilities that may result in misidentifying certain overtures as "friendly" rather than predatory; and communication challenges that abusers

⁴⁵Art. 29(1) reads: "1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

perceive make disabled children unlikely to report or be believed. The World Health Organization reports that “stigma, discrimination, and ignorance” place people with disabilities at higher risk than those without disabilities. Research shows that children with any type of disability are 3.7 times more likely to experience violence than nondisabled children, and 2.9 times more likely to be victims of sexual abuse.⁴⁶

It is within this context that the Convention on the Rights of Persons with Disabilities (CRDP) contains provisions relevant to the justice system response to child sexual abuse when the victim is a child with disabilities.⁴⁷

In particular, Article 7 specifies:

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

This Article aligns directly with the four guiding principles of nondiscrimination, best interests of the child, the right to dignity and respect, and the right of children to have their views heard in their cases.

Other Articles directly implicated in the response to child abuse when the victim is a child with disabilities include Article 12, which recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, directs State Parties to provide access by persons with disabilities to the support they may need in exercising their legal capacity (e.g., accommodations) and ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse.

Article 13, access to justice, also provides that:

⁴⁶World Health Organization, *Children with disabilities more likely to experience violence* (12 July 2012), available at https://www.who.int/mediacentre/news/notes/2012/child_disabilities_violence_20120712/en/

⁴⁷Convention on the Rights of Persons with Disabilities, May 3, 2008 A/RES/61/106, Annex I (2008), available at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 16(5) provides that, “States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.”

Article 18 (2) states that, “Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.” Because children with disabilities are often abused at a higher rate than their peers, this article can be useful in the determination of age in a child sexual abuse proceeding.

Article 23:

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

Pakistan signed the CRPD in 2008 and ratified it in 2011. Pakistan has not submitted any reports on its implementation of the CRPD to the UN.

South Asian Association for Regional Cooperation (SAARC) Conventions

SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia

Opened for signature on 5 January 2002, the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia aims to unite the States Parties to facilitate and help in the development and protection of the full potential of the South Asian child and establish appropriate regional arrangements to assist Member States, including Pakistan, in facilitating, fulfilling and protecting the rights of the child⁴⁸. The Convention reaffirms the UN Convention on the Rights of Child and obligates States Parties to uphold the best interests of the child as a principle of paramount importance.

The Convention also identifies certain regional priorities for South Asia, including ensuring that appropriate legal and administrative mechanisms and social safety nets and defenses are in place to “[e]nsure that ... national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence” and “[a]dminister juvenile justice in a manner consistent with the protection of the child’s sense of dignity and worth, and with the primary objective of promoting the child’s reintegration in the family and society.”⁴⁹ To this end, the Convention calls on States Parties to promote alternative measures to institutional correction.

SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution

The SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution is intended to “promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation to victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.”⁵⁰ The SAARC Trafficking Convention requires, among other things, that States Parties criminalize trafficking in persons, financing of trafficking, and attempt or abetment of trafficking (Article III); ensure that

⁴⁸ The SAARC Child Welfare Convention defines a child as, “a national of any Member State of the South Asian Association for Regional Cooperation (SAARC), below the age of eighteen years unless, under the national law, majority is attained earlier.”

⁴⁹ SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia art. IV(3), *opened for signature 5 January 2002*, available at http://saarc-sec.org/digital_library/detail_menu/saarc-convention-on-regional-arrangements-for-the-promotion-of-child-welfare-in-south-asia.

⁵⁰ SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution art. II, *opened for signature 5 January 2002*, available at http://saarc-sec.org/digital_library/detail_menu/saarc-convention-on-preventing-and-combating-trafficking-in-women-and-children-for-prostitution.

the confidentiality of the child⁵¹ and women victims is maintained and that they are provided appropriate counselling and legal assistance (Article V); sensitize law enforcement agencies and the judiciary about the offences covered by the Convention and factors that encourage trafficking in women and children; establish protective homes or shelters for rehabilitation of victims of trafficking (Article IX); and make provision for granting legal advice, counseling, job training and health care facilities for victims (Article IX).

Pakistan was one of the original signatories to both SAARC Conventions. Pakistan has also ratified the SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

The Standard Minimum Rules for the Administration of Juvenile Justice (<https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>) was a resolution adopted by the United Nations in November 1985.

The resolution focuses on the treatment of juvenile prisoners and offenders in UN Member States. The rules outlined in this agreement represent the minimum conditions accepted internationally for the treatment of young people/children in conflict with the law. The rules reflect the spirit of juvenile justice and outline principles and practices for the administration and management of juvenile justice in Member States. In the Beijing Rules, the objectives of juvenile justice include promotion of children's welfare and guarantees that decisions in cases of juveniles will be proportional to the child's circumstances and seriousness of his/her crime. The rules go through the different stages of juvenile justice from arrest and investigation to the trial and prosecution to post-trial measures. The rules highlight that putting a child in prison should be the last resort possible and needs to be for the shortest time possible.

Major topics on juvenile justice that these rules address and highlight include:

- ☐ Age of criminal responsibility
- ☐ Rights of juveniles
- ☐ Scope for discretion in the Judicial Process
- ☐ Investigation and prosecution
- ☐ Diversion
- ☐ Adjudication and disposition
- ☐ Disposition measures
- ☐ Least possible use of institutionalization

⁵¹The SAARC Trafficking Convention defines a child as "a person who has not attained the age of 18 years".

Non-institutional treatment and institutional treatment

UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power

The Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>) was a resolution adopted by the United Nations in November 1985.

The Declaration identifies victims of crime as those “who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.” The Declaration is clear that a perpetrator does not need to be identified, apprehended, prosecuted or convicted for a person to be a victim, and that designation applies regardless of the familial relationship between the perpetrator and victim. The term also encompasses those who experience indirect victimization, including the immediate family of the direct victim and those who have suffered harm in intervening to assist a victim or to prevent victimization.

The Declaration embraces nondiscrimination and access to justice and fair treatment with compassion and respect for dignity. It calls for judicial and administrative mechanisms to be established and strengthened to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible, and also promotes the need for victims to be informed of their rights.

The judicial and administrative processes should be responsive to the needs of victims by informing them of their role and status of proceedings. The views and concerns of victims should be allowed to be presented and considered at appropriate stages of the proceedings, victims should be provided appropriate assistance throughout the legal process, and their safety should be assured.

Victims are entitled to fair restitution for the harms they suffered, and laws should reflect restitution as a sentencing option in criminal cases, in addition to other criminal sanctions. Governments should ensure fair restitution and the establishment or strengthening of victim compensation funds should occur. Victims are also entitled to receive the necessary assistance such as health and social services and other relevant services.

The Declaration also addresses the need for police and justice personnel to receive training to sensitize them to the needs of victims and the need to establish proper guidelines and procedures for the appropriate response to victims of abuse.

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the United Nations Convention against Torture (UNCAT)) aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. The Convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (Article 1). The Convention can be applied in the context of prosecutions involving accused juvenile defendants.

State Parties must train and educate their law enforcement personnel, civilian or military personnel, medical personnel, public officials, and other persons involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment, regarding the prohibition against torture (Article 10). Parties also must keep interrogation rules, instructions, methods, and practices under systematic review regarding individuals who are under custody or physical control in any territory under their jurisdiction to prevent all acts of torture (Article 11).

<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

Pakistan signed the UNCAT in 2008 and ratified it in 2010.

General Comments on UN Treaties for CSA

Numerous treaties, United Nations Conventions and programs, and other international initiatives address the sexual exploitation of children through prostitution, sex tourism, pornography, and abuse. All attest to the importance placed on eradication of child sexual abuse within the international community. However, they have various degrees of enforceability and often rely on the voluntary cooperation of signatory States.

Treaty-based mechanisms only bind those having ratified their provisions, and mostly address suppression of trafficking and the slave trade. United Nations charter-based mechanisms, which bind all United Nations members, include the Human Rights Council (<https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>), which is an inter-governmental body responsible for strengthening the promotion and protection of human rights around the world and for addressing human rights violations.

General Comments on UN Treaties for Juvenile Justice

As seen above, various UN treaties, conventions and acts emphasize and focus on methods/ways to improve the practice, institutions, laws, standards/procedures and overall state of juvenile/child justice. Treaties like the UNCRC and ICCPR have specific articles and initiatives addressing the rights of children accused; how they should be treated by police, judges, prosecutors and the judicial system; and the different protection, medical and assistance/support measures to which children are entitled. UN agreements cover all children who have been accused of crime. They also protect children from other forms of abuse that may lead to children coming in contact with the law. This can be seen through numerous agreements such as the CRPD, which protects the rights of children with disabilities, and the Worst Forms of Child Labor Convention which protects children against having to do dangerous and arduous work.

The conventions, treaties and acts in this section are not exhaustive, and new conventions and declarations are regularly being agreed upon on the international stage. Nonetheless, these agreements serve as a benchmark for the agreed upon standards/norms regarding juvenile justice and, given that Pakistan has ratified most of these agreements, they should serve as a guide/instructions on how to improve the juvenile justice system domestically.

UN Human Rights Council

The UN Human Rights Council, which replaced the Commission on Human Rights in 2006, is an inter-governmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe. The Human Rights Council is what is known in the UN system as a “Charter body” (as opposed to a “treaty body”) because it gets its mandate from the UN Charter rather than a specific human rights treaty.

The Human Rights Council presides over the so-called Universal Periodic Review (UPR), a unique process that involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The ultimate aim of this mechanism is to improve the

human rights situation in all countries and address human rights violations wherever they occur.⁵²

Pakistan underwent its last Universal Periodic Review in 2017.

UN Bodies' Recommendations on CSA

The Committee of the Rights of the Child is at the forefront of United Nations actions and recommendations on child sexual abuse. Its work calls for the adoption of important recommendations, including promotion of public information and education on protecting children from sexual violence and capacity-building on the rights of the child, breaking the silence surrounding issues of child sexual abuse and exploitation, and for urgent legislative, policy, and other measures to effectively ensure children's protection. The CRC strongly condemns child abuse and calls for the protection of children against all forms of violence, abuse, and exploitation.

The Committee's 1994 report called for "the need to protect the child as a victim, while ensuring the special protection of those at risk; and the absolute prohibition of activities that are contrary to human values and dignity; that expose children to discrimination and jeopardize child development and education; that involve cruel, inhuman or degrading treatment; or involve the sale of children or situations of servitude."

These core principles influenced the development of new standards such as the International Labor Organization Convention 182 on the Worst Forms of Child Labor and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The United Nations Study on Violence against Children also addressed all forms of violence in all settings, including sexual exploitation and abuse (<https://www.ohchr.org/EN/HRBodies/CRC/Study/Pages/StudyViolenceChildren.aspx>).

The UN Special Rapporteur on the Sale and Sexual Exploitation of Children was mandated in 1990 to analyze the root causes of sale and sexual exploitation of children, identify new patterns of the phenomena, exchange good practices to combat it, promote measures to prevent it, and make recommendations for the rehabilitation of child victims. It is the only mandate of the UN Special Procedures system with an exclusive focus on children.

The Special Rapporteur has four main activities: undertaking country visits, sending individual complaints, writing thematic reports, and conducting awareness-raising and advocacy to promote and protect the human rights of children.

⁵²United Nations Human Rights Council, Universal Periodic Review, last accessed 12 August 2019 at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

Among its special reports, each including key recommendations for action, are examinations of:

Sale and sexual exploitation of children in the context of sports

(<https://www.ohchr.org/EN/Issues/Children/Pages/ChildrenInSports.aspx>)

- ☐ In line with the Optional Protocol on the sale of children, child prostitution and child pornography, invoke the liability of legal persons, in this case sports organizations, and ensure commensurate sanctions against actors who have directly participated in or facilitated the sale and sexual exploitation of children;
- ☐ In line with the Guiding Principles on Business and Human Rights⁵³, ensure the prevention, investigation, punishment and redress of abuses committed by business enterprises, in this case sports institutions, through effective policies, legislation, regulations and adjudication;
- ☐ Enact or implement legislation making it mandatory for sports institutions to undertake background checks of any individual working with children;
- ☐ Guarantee that human rights are a core component of bidding for the organization of major sporting events and that impact assessments are undertaken;
- ☐ As part of prevention efforts, ensure that States hosting major sporting events effectively engage with children and provide space for their meaningful participation;
- ☐ Consider revising codes of conduct and ethics to ensure a systematic approach to child rights violations and the use of standard terminology as well as use and refer to the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse as a seminal document providing clear standard terminology;
- ☐ Set up or implement independent reporting mechanisms for cases of sale and sexual exploitation that provide child-friendly support to children and ensure that these reporting mechanisms are developed and work in tandem with existing national child protection frameworks, as well as explicitly enshrine the reporting obligations of all individuals falling under the authority of sports institutions;
- ☐ Provide comprehensive, systematic training to all individuals falling under the authority of sports institutions on child rights, internal codes of conduct or ethics and policy documents;
- ☐ Coupled with comprehensive training of all individuals falling under the authority of sports institutions, enforce systematic background checks of anyone working with children;
- ☐ Engage constructively with existing multi-stakeholder platforms such as the Centre for Sport and Human Rights and with international child protection guidelines or safeguards.

⁵³ United Nations Human Rights – Office of the High Commissioner, *Guiding Principles on Business and Human Rights*, available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Demand for the sexual exploitation of children

(<https://www.ohchr.org/EN/Issues/Children/Pages/TacklingTheDemand.aspx>)

- ☐ Ratify all relevant regional and international instruments and establish clear and comprehensive legal frameworks which specifically address the demand for child sexual exploitation by providing clear guidance on penalties that are commensurate with the gravity of the offence.
- ☐ Ensure the prosecution and conviction of all intermediaries, such as procurers, traffickers and facilitators in the tourism and entertainment industries, as well as financial and technology sector staff, at every level of the supply chain in order to effectively stem the sexual exploitation of children.
- ☐ Ensure that all the proceeds and assets derived from the sexual exploitation of children are effectively seized and confiscated in order to fund care, recovery and reintegration programmes, which should include compensatory measures for the victims.
- ☐ Ensure that national legislation does not criminalize child victims of sexual abuse and exploitation and ensure that children are not placed on sex offender registers.
- ☐ Ensure that children who are required to participate in criminal justice proceedings are given appropriate support and counselling to assist them at all stages of proceedings, and that they have access to a child-sensitive legal system to avoid their revictimization.
- ☐ Strengthening international cooperation in key areas, by sharing and updating information related to child victims and offenders to effectively investigate and prosecute perpetrators and criminal networks responsible for the sexual exploitation of children, and by promoting active membership of INTERPOL and partaking in and utilizing effectively the Green Notice system, particularly for the identification of travelling sex offenders.⁵⁴
- ☐ Conduct research to map all the levels of the demand factor in order to provide comprehensive and evidence-based data that will feed into comprehensive strategies to eradicate the sexual exploitation of children.
- ☐ Address the underlying causes of the demand factor through comprehensive awareness-raising and education of children, society at large and professionals working with children on gender equality, non-discrimination and the rights of the child.
- ☐ Enforcing and monitoring the compliance of the private sector with international guidelines such as the Guiding Principles on Business and Human Rights, the Global

⁵⁴For more information on INTERPOL's color coded notice system, please see: <https://www.interpol.int/How-we-work/Notices/About-Notices>.

Code of Ethics for Tourism and the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

Information and Communication Technologies (ICTs) and sexual exploitation of children
(<https://www.ohchr.org/EN/Issues/Children/Pages/ICT.aspx>)

- Establish comprehensive legal frameworks by explicitly criminalising specific exploitative activities. The CRC-OPSC provides a minimum standard of protection of children from sexual abuse and exploitation and should be universally ratified. Regional instruments such as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse offer additional protection, e.g. through the criminalization of exploitative activities and the provision of additional procedural rights to the child victims.
- Enhance international cooperation to investigate and prosecute sexual exploitation and sale of children online by expanding and strengthening existing initiatives such as the Virtual Global Taskforce, the #WePROTECT Children Online initiative and the Global Alliance against Child Sexual Abuse Online.⁵⁵
- Create a global permanent multi-stakeholder body to harmonize practices and procedures, share expertise and scale up good practices, and provide technical assistance and capacity-building to States for the development of legislation, policies and strategies to effectively combat and prevent sexual exploitation and sale of children online.
- Empower children and youth through awareness raising and training on the safe use of new technologies and social media, and the creation of child-friendly helplines and hotlines to report online abuse and exploitation.
- Enhance corporate social responsibility involving Internet service and content providers, telecommunications, financial companies and the media in order to strengthen child safety online through prevention and protection programmes.

Care and recovery of child victims

(<https://www.ohchr.org/EN/Issues/Children/Pages/CareAndRecovery.aspx>)

- Adopt and implement clear and comprehensive legislation that criminalizes the sexual exploitation and related sale and trafficking of children, recognizes their legal status as victims to access rights and services for their care, recovery and reintegration, and ensures child-friendly judicial proceedings and remedies, including compensation.
- Establish comprehensive, rights-based and child-centered care, recovery and reintegration programmes, with a gender perspective, through a full range of laws, policies and services that will:

⁵⁵ Pakistan is a member of the WePROTECT Global Alliance (<https://www.weprotect.org>).

- Enable rapid identification of victims and coordinated referral mechanisms;
- Provide specialized training to personnel involved in the identification process; ○ Provide for awareness-raising and outreach to victims and children in vulnerable situations;
- Establish centralized databases for case management to ensure that child victims are identified, linked to services and followed up on a long-term basis;
- Ensure that child victims have access to safe and secure housing, medical and psychological care, legal assistance, education, vocational training, life skills and socioeconomic support, sports and leisure activities, religion and cultural practices by means of an individualized plan that is adapted to the child's needs, as part of his or her life project;
- Empower child victims through child-sensitive procedures and accessible avenues for participation that foster a sense of agency in their care, recovery and reintegration programme, keep them informed and allow them to be consulted on decisions affecting them;
- Whenever possible, involve the family in the care, recovery and reintegration process;
- Allocate consistent funding and adequate resources to provide continuous, comprehensive, high-quality assistance and ensure the sustainability of support services to child victims in the short, medium and long term;
- Promote partnerships and cooperation in the development of programmes, including awareness-raising and education programmes targeted at families, communities and society at large, to change negative attitudes and address stigma and discrimination against child victims, with the involvement of civil society, the private sector, academic institutions and children.
- Provide, through the United Nations and other stakeholders, technical assistance and support to States for the elaboration and implementation of comprehensive, rights-based and child-centered care, recovery and reintegration programmes, as part of effective national child protection systems.

SUMMARY

Child sexual abuse and treatment of juveniles are global problems that have drawn the attention and response of the international community. The international instruments described above are of particular relevance to both sexual crimes against children and the conditions of juveniles/the juvenile justice system. Many, such as the UNCRC and its Optional Protocols, speak directly to the vulnerability of children and the harms stemming from abuse. Others, such as the ICCPR, speak to the victim's right to access the courts, an opportunity to have their views heard, and equality before judicial tribunals. As a signatory to the ICCPR; ICESCR; CEDAW; CRC and its Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography; the ILO

Worst Forms of Child Labour Convention; and the CRPD, Pakistan is well-positioned to use the force of these international agreements to better protect children and hold offenders accountable.

ACTIVITY 1

Activity 1:

Discussion Questions

Divide the participants into five groups and ask them to discuss the following questions for 10 minutes. In the full class, ask each group to answer one of the questions. Whichever group volunteers first gets to choose the question they wish to answer. Continue around the room until all questions have been answered.

- Compare the definition of a child under Pakistan's domestic laws to the definition used in the international conventions that Pakistan has ratified. Is Pakistan's domestic legislation consistent with its international obligations? If not, where are the gaps?
- Do any of the international treaties that Pakistan has ratified directly address child sexual abuse? Which treaties?
- Is "sexual exploitation" defined in international law? In Pakistani domestic law? Can you nevertheless name at least one example of a practice that constitutes "sexual exploitation"? Are there practices we haven't discussed that you think might constitute "sexual exploitation"?
- What are the four Guiding Principles under the UN Convention on the Rights of the Child? Can you suggest something you might do to promote the "Participation" of a child victim in criminal justice proceedings in their case?
- What are the particular safeguards that the ICCPR sets for juvenile accused? Kindly quote at least two of those? Is the Pakistani legislation consistent with those safeguarding obligations?

INTRODUCTION

Article 97 of the Constitution of the Islamic Republic of Pakistan empowers the parliament to make the law. The laws made by the legislative houses, Federal or provincial, are considered binding, and the constitutional courts have powers to interpret the laws made by the parliament. Any law that is inconsistent with the provisions of the constitution or against fundamental rights may be declared void.

The significance of international law as an element of domestic law may only be accepted when it is well understood what obligations are created under international law and how the State is responsible for fulfilling these obligations. The conservative practice of international law within a State, when based on a lack of awareness, operates somewhere between dismissal, ignorance and fear. There is widespread lack of clarity on the nature of international human rights commitments, obligations and laws and their interaction with Pakistan's domestic legal system. International law is viewed as a foreign agenda to the domestic system, a representation of foreign or external influence to be dealt with only in a limited and evasive capacity.

But now in Pakistan, the superior courts are regularly using international law to dispense justice; reliance is made on Pakistan's international commitments, treaties and conventions in various cases. Articles 189, 201, and 203 GG of the Constitution seem to have adopted the doctrine of precedent. By Article 189, "any decision of the Supreme Court shall, to the extent that it decides, a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan". By Article 201, "subject to Article 189, any decision of a High Court shall to the extent it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it". Thus, the decisions of the Supreme Court are binding upon all courts in Pakistan. The decisions of the Federal Shariat Court are binding upon the High Courts and the Courts subordinate to the High Courts, and decisions of High Courts are binding upon all courts subordinate to the High Court.

The Constitution of Pakistan, in the chapter of fundamental rights, protects the rights of an individual. The whole world has agreed on the rights listed in UDHR, rights which are further protected by many international laws, including the ICCPR, the ICESCR, the CEDAW, the CRC, and many others.

SAM PLE JURISPRUDENCE

The following is a list of judgments/cases in which the superior courts relied on international instruments, treaties and laws, in addition to domestic laws and constitutional provisions, to reach their decisions.

<p>2019 PLJ SC 150 NATIONAL COMMISSION ON STATUS OF WOMEN Chairperson, etc.--Petitioners v/s Government of Pakistan</p>	<p>It was stated that it is the duty of the State to be conscious and vigilant of such rights on behalf of all citizens whose rights it is obligated to protect under the Constitution and its international commitments.</p>
<p>2018 PLJ Lahore 508 ASFANDYAR KHAN TAREEN, etc.--Petitioners v/s GOVT. OF PUNJAB</p>	<p>The Court relied upon the Convention on the Rights of Persons with Disabilities (CRPD). Rights of persons with disabilities are provided in the CRPD, to which Pakistan is a signatory.</p>
<p>2018 PLJ Lahore 481 ASGHAR LEGHARI v/s Federation</p>	<p>The Lahore High Court relied on the CRPD --International Law--Charter of United Nations recognizes inherent dignity and worth and equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in world—The Universal Declaration of Human Rights and International Covenants on Human Rights have proclaimed and agreed that everyone is entitled to all rights and freedoms set forth therein, without distinction of any kind—The Convention reaffirms universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination--</p>
<p>2017 PLJ Lahore 875 AMEEN MASIH V/S FEDERATION OF PAKISTAN, etc.</p>	<p>The Court discussed and allowed the writ petition in favor of the petitioner in a detailed order. He relied on the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. https://www.ohchr.org/en/professionalinterest/pages/minorities.asp x</p>

2015 SCMR SC. 1550, MFMY Industries LTD v/s. Federation of Pakistan	One of the most important differences between developed and developing or under developed countries is the respect for adherence to and enforcement of the rule of law. I have no doubt in my mind that this ideal can only be achieved through an independent and capable judiciary, which is beyond reach, control and influence of other branches of the State. The judicature has to act as a neutral umpire who keeps a check on the exercise of power by other organs of the State so as to ensure that the rights of citizens/persons are not affected and trampled contrary to law.	countries for independent influence of neutral are not
2014 PLD Kar. 349. Abdullah v. Cnan Group Spa	National courts should strive for uniformity in the interpretation of treaties/conventions and therefore the case-law developed in other jurisdictions can and ought to be taken into consideration by courts of the States parties to such treaties.	in other by courts of
2014 PLDPesh. 199 Haji Lal Muhammad v. Pakistan	It is by now settled that International Law, unless in direct conflict with the municipal law, ought to be applied and respected by municipal courts in deciding matters arising therefrom.	conflict by
2014 CLDKar. 337 Lakhra Power Generation Company v. Karadeniz Powership Kaya Bey	“[L]egal obligation,” namely, that any breach of [the provisional measures recommended by the international (International Centre for Settlement of Investment Disputes (ICSID)) tribunal] may be taken into consideration by the tribunal [...] the domestic courts should be cognizant that a breach or disregard of the “legal obligation” could, ultimately, result in severe consequences for their State on the international plane.	Centre for be taken into could,
2014 PLJ 2014 Supreme Court 883 SUO MOTO ACTIONS REGARDING SUICIDE BOMB ATTACK OF 22.9.2013 ON THE CHURCH IN PESHAWAR AND REGARDING THREATS BEING GIVEN TO KALASH TRIBE AND ISMAILIES IN CHITRAL	The right to freedom of religion, in which the Supreme Court interpreted Article 20 of the Constitution relating to freedom of religion in light of Article 18 of the ICCPR, and expanded its ambit to include freedom of conscience, thought, expression, belief and faith. The Supreme Court also noted that international human rights standards “serve as moral checks and efforts are continually being made to incorporate these rights into domestic law”.	and faith. rights being
2003 CLDKar. 1797 Suleman v. Manager Domestic Banking, Habib Bank	Indeed we agree with learned counsel for the respondents to the extent that terrorism is a fast growing phenomenon and it is in the wider public interest that all civilized States should make laws and take appropriate measures within their Constitutional system to combat it. We also agree [...] that international obligations to the State ought to be duly honoured.	to the is in the laws and to the

1999 PLJ SC 715 Al-Jehad Trust v. Federation of Pakistan	<p>The Fundamental Rights enshrined in our Constitution in fact reflect what has been provided in [the] Universal Declaration of Human Rights. It may be observed that this Court while construing the former may refer to the latter if there is no inconsistency between the two the two with the object to place liberal construction as to extend maximum benefits to the people and to have uniformity with the comity of nations.</p>	
1993 P L D KHI 93 Najib Zarab Ltd. V. Pakistan	<p>We are of the view that nations must march with the international community and the municipal law must respect rules of international law, even as nations respect international opinion. The comity of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with acts of Parliament.</p>	
1958 PLD SC. 138 Hanover Fire Insurance Co. v. Muralidhar Banechand	<p>Every statute is to be so interpreted and applied as far as its language allows, as not to be inconsistent with the comity of nations, or with the established rules of international law.</p>	
Crl. Appeal No. 154 of 2018 Raja Khurram Ali Khan and another Vs Tayyaba Bibi and another	<p>Infamous child domestic labourer, Tayyaba Torture case in the criminal appeal court relied on the United Nations Convention against Transnational Organized Crime to define Slavery.</p>	

ACTIVITY 1

Activity 1:

(45 minutes)

Material Required: Handouts UNCRC, UDHR, Constitution of Pakistan

Facilitator will divide the participants into 2 groups for the activity and ask group one to compare the fundamental rights in the Pakistan Constitution with those in the UDHR, list all the rights in the constitution, all the rights in UDHR and the rights that are the same in both documents on one chart. Group two will be asked to compare the fundamental rights provided in the Constitution of Pakistan with the UNCRC and list those rights that are available in the constitution, and those that are secure under UNCRC. In presentation: Are any rights included in the Constitution, but not in the UDHR or UNCRC? Are any rights protected by UDHR and UNCRC, but not protected by the Constitution? After the 30 Minutes, each group will present their findings.

ACTIVITY 2

Activity2:

(30 minutes)

Facilitator will divide the participants into 4 groups for the activity and ask each group to read thoroughly any case (from above list) randomly provided by facilitator and answer the following questions:

- What are the brief facts of the case?
- Which international instrument/law was quoted?
- How was the international law/commitment of the State narrated (applied?) in the judgment?

After 15 Minutes, each group will present its findings from the judgments.

NATIONAL LAWS AGAINST CHILD SEXUAL ABUSE

Child sexual abuse harms a child mentally, physically and emotionally. Unfortunately, the Pakistan Penal Code, 1860 (PPC), which is a comprehensive code to deal with crimes in cases of violations of laws or any form of injury to persons, defines sexual abuse very poorly. The terms fondling, stroking, caressing, exhibitionism and voyeurism have yet to be explained, which creates complications in prosecution.

It is the basic principle of the criminal justice system that an offence must be proved 'beyond a reasonable doubt'. The accused is entitled to reap the benefits of the doubt. If there is a lack of evidence or the evidence is not enough to prove the allegations, the courts of competent jurisdiction always grant the accused the 'benefits of doubt'. The practice of compromise among the parties often results in hostile witnesses, which ultimately leads to acquittal of the accused. The "The Criminal Law (Second Amendment) Act, 2016" has made some positive changes in this regard, including raising the minimum age of criminal responsibility and defining and penalizing child pornography, child abuse and child sexual abuse etc.

In Pakistan, there are different laws that provide protection for children from different forms of abuse and exploitation. We will take a look into all these as follows:

Constitution of The Islamic Republic of Pakistan, 1973:

Although there is not any exclusive article on child rights in the chapter on fundamental rights in the Constitution of the Islamic Republic of Pakistan, there are some safeguards provided through clauses such as, e.g., Article 11 of the Constitution of Pakistan, which prohibits all forms of slavery, forced labor, human trafficking, employment of children younger than 14 years and working of children in hazardous places, and Article 25, which states that all citizens are entitled to equal protection of law and empowers the State to make special provision for protection of women and children. Article 25(1) of the Pakistani Constitution states that "all citizens are equal before the law and entitled to equal protection of law". Article 25(3) elaborates positive discrimination for women and children that, "Nothing in this Article shall prevent the State from making any special provision for the protection of women and children". Article 25-A provides that the State shall provide free and compulsory education to all children of the age of five to sixteen years, meaning that the minimum age of employment should be at least 16 years. Article 35 provides that the State shall protect the family and the child.

Pakistan Penal Code (PPC):

292A. Exposure to seduction. Whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, a film, video or a computer generated image or attempts to do the aforementioned act, shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend up to seven years or with fine which shall not be less than one hundred thousand rupees and may extend up to five hundred thousand rupees, or with both.

292B. Child pornography. (1) Whoever takes, permits to be taken, with or without the consent of the child or with or without the consent of his parents or guardian, any photograph, film, video, picture or representation, portrait, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of obscene or sexually explicit conduct, where—

- (a) the production of such visual depiction involves the use of a minor boy or girl engaging in obscene or sexually explicit conduct;
- (b) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in obscene or sexually explicit conduct; or
- (c) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in obscene or sexually explicit conduct; is said to have committed an offence of child pornography.

(2) The preparation, possession or distribution of any data store on a computer disk or any other modern gadget, shall also be an offence under this section.

The law not only criminalizes the production of child pornographic material by using any method but also criminalizes mere possession of child pornographic material.

292C. Punishment for child pornography. Whoever commits an offence of child pornography shall be punished with imprisonment of either description for a term which shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees.

354. Assault or criminal force to woman with intent to outrage her modesty.

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 354 of the PPC protects a woman against indecent assault as well as safeguards public morality and decent behavior. This section punishes an assault, or use of criminal force, on any woman with the intention or knowledge that the woman's modesty will be outraged. In the PPC, there is no specific definition of a male child or female child. The word 'woman' denotes a female human being of any age. Indeed, a girl aged six years has been held by Courts in Pakistan to be a 'woman' for purposes of Section 354 and 354-A.

354A. Assault or use of criminal force to woman and stripping her of her clothes.

Whoever assaults or uses criminal force to any woman and strips her of her clothes and, in that condition, exposes her to the public view, shall be punished with death or with imprisonment for life, and shall also be liable to fine.

The scope of the section 354-A, however, is limited as there must be two conditions; firstly, stripping off the woman's clothes, and secondly, the woman should be exposed to the public view.

365B. Kidnapping, abducting or inducing woman to compel for marriage etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punished as aforesaid.

366A. Procurement of minor girl.

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit inter-course with another person shall be punishable with imprisonment, which may extend to ten years and shall also be liable to fine.

This section specifically states that the age of minority will continue until the girl reaches 18 years of age and any person procuring such a minor will be punished as per this section.

366B. Importation of girl from foreign country.

Whoever imports into Pakistan from any country outside Pakistan any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

This section protects girls under 21 years of age and treats them as victims of trafficking when they are brought to Pakistan from another country.

377. Unnatural offences.

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine.

377A. Child sexual abuse.

Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse.

377B. Punishment for sexual abuse.

Whoever commits the offence of sexual abuse shall be punished with imprisonment of either description for a term which shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees.

Despite these amendments, the legal interpretation and understanding of trial courts may remain in question as the terms used in the new sections have not been defined, which will create challenges for the prosecution during the trial stage. But at least now the different forms of

sexual abuse like fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct are part of the penal code.

498B. Prohibition of forced marriage.

Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term, which may extend to seven years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

Provided that in the case of a female child as defined in the Child Marriage Restraint Act, 1929 (XIX of 1929), or a non-Muslim woman, the accused shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than five years and shall also be liable for a fine which may extend to one million rupees.

Rape:

The definition of rape, as per Section 375 of the PPC, covers both an adult woman and a girl-child/minor. Section 375 PPC uses the expression “sexual intercourse”, but the term “intercourse” has not been defined in the PPC.

A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,

- (i) against her will;*
- (ii) without her consent;*
- (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt;*
- (iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or*
- (v) with or without her consent when she is under sixteen years of age.*

376. Punishment for Rape.

(1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine

(1A) Whoever commits an offence punishable under sub-section (1) or sub-section (2) or section 377 or section 377B and in the course of such commission causes any hurt punishable as

an offence under section 333, section 335, clauses (iv), (v) and (vi) of sub-section (3) of section 337, section 337C, clauses (v) and (vi) of section 337F shall be punished by death or imprisonment for life and a fine.

(2) When rape is committed by two or more persons in furtherance of a common intention of all, each of such persons shall be punished with death or imprisonment for life.

(3) Whoever commits rape of a minor or a person with mental or physical disability shall be punished with death or imprisonment for life and a fine.

(4) Whoever being a public servant including a police officer, medical officer or jailor, taking advantage of his official position, commits rape shall be punished with death or imprisonment for life and fine.

Prevention of Electronic Crimes Act, 2016 (PECA):

Section 19A- Child Pornography

(1) Whoever intentionally produces, offers or makes available, distributes or transmits through an information system or procures for himself or for another person or without lawful justification possesses material in an information system, that visually depicts --

- (a) a minor engaged in sexually explicit conduct;
- (b) a person appearing to be a minor engaged in sexually explicit conduct; or
- (c) realistic images representing a minor engaged in sexually explicit conduct; or
- (d) discloses the identity of the minor,

shall be punished with imprisonment for a term which may extend to seven years, or with fine which may extend to five million rupees or with both.

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances, including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

The Federal Investigation Agency (FIA) has the jurisdiction to lodge a First Information Report (F.I.R.) and investigate when an accused is charged under the Prevention of Electronic Crimes Act, 2016 (PECA). The major difference between section 19A PECA and section 292B PPC is that,

under 292B mere possession of child pornography is an offence, whereas under 19A PECA, a person will only be punished if it is proved that child pornographic material was kept intentionally and without any lawful justification or reasons. Secondly, section 19A PECA empowers the FIA to remove/destroy such material from any platform on request of the child or his guardian.

Activity 1:

Quiz Competition

Organize participants into 3 teams. After a brief presentation on the topic of Child Sexual Abuse, including the definition, give the handout of the relevant clauses of Pakistan Penal Code, 1860 and Prevention of Electronic Crimes Act, 2016 Section 19A- Child Pornography, to each group.

Give 20 minutes to the groups for reading and understanding the information provided in the handout. The facilitator will go to each group to know if they have any difficulty to understand the content.

Then, the facilitator will give the following instructions before starting the quiz.

Each group must answer each question within 10 seconds.

Answer only after consulting other group members – The first answer from any team member will be considered as final answer!

Each team will be asked a question one by one. If a group fails to answer within the time limit or gives the wrong answer, the question will be given to the next group (whose turn is next) as a bonus question. Then the same group will answer its own question also. If this group answers wrong or fails to answer its own or bonus question, it would be shifted to the next team with the same principle.

Each question will be asked once and will be repeated again, after asking the first time, to allow participants to understand the question. After that, the question will not be repeated even if the question is carried forward as a bonus question.

For each correct answer, write “1” point for that team on a flip chart to keep score.

Continue till the end of the questions (five rounds).

Co-facilitator will keep the time and mark the score on a flip chart placed on the notice board.

At the end, announce the winning group.

The set of questions to be asked is annexed as Activity 1 Annexure.

ACTIVITY 2

Activity 2:

Understanding Criminal Law (Amendment Offences Relating to Rape) Act, 2016 (__minutes)

Facilitator will provide printed handout to reach participant and ask them to go through the contents of the handout.

Participants will be given the option to ask questions if they have any confusion regarding the information in the handout.

Measuring level of learning (10 minutes)

After participants read the handout in 20 minutes, the facilitator will give participants a page having a matching game (Annexed 2). Participants will be asked to match the points given in one column with the relevant/correct points given in the second column and write the number in the empty column.

Participants will be given 10 minutes to solve this matching game. After 10 minutes, the facilitator will share the correct sequence, and each participant will check how many did they match correctly.

LOCAL/PROVINCIAL LAWS TO ENSURE THE PROTECTION OF CHILDREN

The 18th constitutional amendment has empowered the provinces to address the issue of children and make laws for their own jurisdictions; Sindh, Khyber-Pakhtunkhwa (KP), Balochistan and Punjab have taken legislative steps in their provincial territories.

Along with the PPC, some local laws also apply in cases of child sexual abuse, for example,

Punjab Destitute & Neglected Children Act, 2004

Punjab Destitute & Neglected Children Act, 2004 has also covered child sexual abuse in the following section:

40. Exposure to seduction. – *Whoever secures custody of a child ostensibly for any purpose but exposes such a child to the risk of seduction, sodomy, prostitution or other immoral conditions,*

shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.

Unfortunately, due to a lack of awareness and training on child protection issues, the cases are mostly not registered with these local laws in the first instance. This law itself also has an issue of practicality because, although it was passed in 2004 and a few amendments were passed in 2007 and 2017, still the rules and regulations to implement this law and SOPs have not been prepared. There is also ambiguity created when this law makes punishable some heinous nature crimes against children, but Section 23(3) bars the court to apply the Qanun-e-Shahadat Order, 1984 (P.O. No. X of 1984), which is a serious gap in implementation.

Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010

In 2010, the Province of KP promulgated within the jurisdiction of the province this special and comprehensive law related to child protection. It defined child sexual abuse in section 2(y): “sexual abuse” means employing, using, forcing, persuading, inducing, enticing, or coercing any child to engage in, or assisting any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or stimulation of such conduct either independently or in conjunction with other acts, with or without his consent.

In sections 50 and 53, it also penalizes the culprits of seduction and sexual abuse:

50. Exposure to seduction.---Whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, a film, video or a computer generated image or attempts to do the aforementioned action, shall be punished with rigorous imprisonment of either description for a term which may extend to seven years or liable to fine which may extend to ten hundred thousand rupees, or with both.

53. Sexual abuse. --- Whoever commits an offence of sexual abuse shall be punished with imprisonment for a term which may extend to fourteen years and shall not be less than seven years and shall also be liable to fine which shall not be less than ten hundred thousand rupees.

Sindh Children Act, 1955

Sindh province was the only province having a special law addressing children. The Sindh Children Act deals with both categories of children, including Child in Contact and Conflict with Law. This Act deals with special offenses in respect of children where police can take cognizance under the following sections, which are further elaborated in the section on street children and vagrancy in this section. Section 48 deals with punishment for cruelty to children, Section 49 deals with

employing children for begging, Section 50 deals while being drunk in charge of a child, Section 51 deals with giving intoxicating liquor or dangerous drugs to a child, Section 56 deals with causing or encouraging seduction, Section 59 deals with exploitation of child employees.

Sindh Child Protection Authority Act, 2011

In 2011, the Sindh Government promulgated the Sindh Child Protection Authority Act. This law primarily calls for the establishment of the authority and dealing with children in need of special protection. Section 15 links the Police with Child Protection Units at the District level to provide assistance, and 15(3)A provides that a station house official shall provide appropriate police assistance to the child protection officer whenever required.

The Balochistan Child Protection Act, 2016

The Balochistan Assembly passed much better and comprehensive child protection legislation in November 2016, which was endorsed by the Governor of Balochistan. The purpose was to provide a law for the protection of children in Balochistan from all forms of physical or mental violence, injury, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and matters incidental thereto. This act also established a Child Protection Commission within the Social Welfare, Special Education, Literacy, Non-Formal Education and Human Rights Department for providing vision, policy guidelines, appropriate strategies for child protection, analysis of trends and adjusting policies and measures for the protection of children. This act promises that all state bodies, agencies and organizations, public and private, social welfare institutions and civil society organizations shall safeguard and promote the best interests of the child in need of protection.

The Balochistan Child Protection Act, 2016 empowers the courts established under the West Pakistan Family Court Act, 1964 (Act No XXXV of 1964) to adjudicate matters related to custody, placement orders and alternative care. This act has also defined the “use of children in audio or visual images of child sexual abuse” as sexual abuse and exploitation but doesn't define or criminalize child pornography.

Child Marriages

In the Indo-Pak subcontinent, during 1929, the Child Marriages Restraint Act, 1929 was introduced. The law was drafted by the legendary lawyer, Quaid-e-Azam Muhammad Ali Jinnah. The same law, with few amendments, still exists in the statutes of many parts of the country. According to this law, the minimum age of marriage for males is 18 years and 16 years for females. Child Marriage is punishable with imprisonment for an adult male above 18 years of age who contracts marriage with a child, a person who solemnizes a child marriage, or a parent or guardian who does not act to prevent a child marriage. Punjab has introduced a few amendments for its proper implementation. In the rest of Pakistan, the same old version of the law is still applicable.

In 2014, the Sindh Assembly promulgated the Sindh Child Marriages Restraint Act, 2013, against child marriages in the province. It makes the offence of child marriage cognizable, non-bailable and non-compoundable. The law intends to protect the rights of children according to the commitment Pakistan has made by ratification of the UNCRC. It was a good effort but remains silent about the rehabilitation and recovery mechanisms for those who have already fallen victim to this epidemic.

Child Prostitution

The Constitution of the Islamic Republic of Pakistan, in Chapter 2 - Principles of Policy, Article 37(g), clearly prohibits prostitution. It says, *"The State shall prevent **prostitution**, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements."*

Child prostitution is also a criminal offence under the Penal Code, which makes abduction, trafficking and procuring of children under the age of 18 for the purposes of prostitution punishable by 10 years imprisonment or fine or both. **The Provincial Suppression of Prostitution Ordinance, 1961** prohibits the attraction, attention by words, gestures, willful and indecent exposure of the body for the purpose of prostitution of a girl younger than 16 years of age. The Ordinance prohibits brothels and makes it illegal to keep or detain any woman against her will, at any place, with the intent to force her to have sexual intercourse with any man other than her lawful husband. These laws apply to women and are irrelevant to the prostitution of boys.

Two provincial laws in Punjab and KP also protect children from abuse and exploitation. Section 40 of the Punjab Destitute and Neglected Children Act, 2004 has laid down the punishment for the person whosoever involves children in prostitution or exposure to seduction with three years' imprisonment or fifty thousand Rs. fine or both. While in KP, the punishment is seven years or ten hundred thousand Rs. or both for the person who gets involved in or exposes to seduction any child for sexual activity.

Activity 3:

Ambassadors Game

Print the information from this module and also provide the handbooks/copies of laws enlisted in the provinces about child protection. Divide participants into four groups (each is named as a province, Punjab, KP, Sindh, Balochistan).

Punjab: Punjab Destitute and Neglected Children Act, 2004, Child Marriage Restraint Act, 1929 (amended Punjab 2015).

Sindh: Sindh Child Protection Authority, 2011, Sindh Children Act, 1955, Sindh Child Marriage Restraint Act, 2013

Balochistan: The Baluchistan Child Protection Act, 2016, Child Marriage Restraint Act, 1929

Khyber Pakhtunkhwa: The Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010

Allow groups 5-10 minutes to read about their respective provincial laws and make the summary of the major points on the page/Chart. Ask groups to nominate an Ambassador and co-Ambassador who will travel to the other provinces to teach about the laws that exist in their territory. Ask the Ambassadors to go clockwise to visit the next province. Give Ambassadors 5-7 minutes to teach the key points about his/her provincial law, and to learn the key points of the laws of the province he/she is visiting. Ask all Ambassadors to move again to the next province for 5-7 minutes, and again exchange the information, until they return home. In this process each ambassador will visit the other three provinces and will learn about their local laws and share their own laws that exist in their own province. Now assign each group to present on one topic (not their original topic) for 3-5 minutes with all the participants.

OTHER NATIONAL LAWS TO PROTECT CHILDREN

Juvenile Justice System Act, 2018 (Main Law for Juvenile Justice in Pakistan)

The first law regarding Juvenile Justice, the Juvenile Justice System Ordinance, was introduced in 2000 but had problems of enforceability, practicality and was considered vague in nature. It was turned down once by the Lahore High Court (Farooq Ahmad Vs. The State: 2015 LHR), but the federal government appealed in Supreme Court and got the decision stayed. In May 2018, the Juvenile Justice System Act, 2018 (JJSA 2018) was passed and assented by the president and the

bill became a law in Pakistan. The text of the law is available at: http://www.senate.gov.pk/uploads/documents/1519204805_211.pdf. The purpose of this law is to overcome the shortcomings of the Juvenile Justice System Ordinance, 2000, to ensure the best interests of the child and establish a separate justice system for children in conflict with law so that they are not dealt with in the same way as the legal system deals with adults. According to a nongovernmental organization, Society for the Protection of the Rights of the Child (SPARC), there were 615 juveniles behind bars during 2017.

The new law has a comprehensive definition of a juvenile, provides better relief to a child who comes into conflict with the law and suggests an alternate system of diversion by forming the Juvenile Justice Committee to protect children from victimization. For this purpose, the JJSA 2018 has suggested the provision of free legal assistance to victims and accused children at the state expense. Arrested juveniles must be kept in an observation home and shall be interrogated under the supervision of Superintendent of Police/SDPO by a police officer not below the rank of Sub Inspector, assisted by a Probation Officer or by a Social Welfare Officer, notified by the Government, who would prepare a Social Investigation Report.

The JJSA 2018 is now the main law in terms of child/juvenile justice in Pakistan. All relevant laws and domestic agreements that pertain to juvenile justice are already stated or referenced within this law like the Pakistan Penal Code, the Constitution of Pakistan, and any provincial/regional laws. This should be the go-to legal reference in matters relating to children accused/children in conflict with law.

The law is comprehensive but still there is need of a lot of work. The provinces have to develop their rules for implementation and infrastructure for separate courts, Juvenile Rehabilitation Centers, remand homes/observation homes, free legal assistance mechanisms and SOPs for diversion.

National Commission on the Rights of Child Act, 2017

In September 2017, the National Commission on the Rights of Child Act, 2017 was passed, with an aim to protect child rights in Pakistan. The National Commission on the Rights of the Child will consist of a chairman, who will be not be less than forty-five years of age and having experience of not less than fifteen years working in the field of child rights, beside other ex-officio members from the law division, foreign affairs division, interior division, chairperson of National Commission on Human Rights (NCHR), chairperson of the National Commission on Status of

Women (NCSW), and chairpersons of provincial commission on rights of children. It will also include six members, one each from each province, ICT and the Federally Administered Tribal Areas, out of which two members shall be women and one from a minority group, all having

experience of not less than ten years of work in the field of child rights. The commission will also have two child members (one boy and one girl not below the age of 15 years).

The Commission shall perform the following important functions:

- ☐ Examining of existing or proposed legislation and administrative instruments, examine international instruments and undertake periodical review of existing policies and programs on child rights;
- ☐ Liaising with provincial commissions set up under provincial laws and other concerned provincial organizations;
- ☐ Reviewing law or policy, or practice, currently in force for protection of child rights and recommend measures for their effective implementation;
- ☐ Inquiring into violation of child rights and recommending to the relevant agency or department initiation of proceedings in such cases;
- ☐ Sponsoring, steering, encouraging research and maintaining a database relating to children;
- ☐ Providing knowledge and awareness for national policy and strategic action for its remedy; spreading awareness and promoting dialogue on child rights;
- ☐ Advising the Federal Government to sign, ratify or accede to any such proposed international treaty, protocol, etc.;
- ☐ Inquiring into complaints of violations of child rights that may call for information or reports from the Federal Government, civil society organizations and autonomous or concerned bodies and in this regard the Commission shall have the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) for enforcing the attendance of any person and compelling the production of documents.

The government was bound to constitute the commission within six months of the enactment of this Act but has not yet done so, a worrisome delay.

The Prevention of Trafficking in Persons Act, 2018

The purpose of this act was to combat trafficking in persons, especially women and children. The law is much improved compared to an older law on the subject as it provides protection to the trafficked person as a victim and has also defined the victim as “a person against whom an offence under this Act is committed regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.”

Similarly, in Section 3 it defines “Trafficking in Persons” and its punishment as, “Any person who recruits, harbours, transports, provides or obtains another person, or **attempts to do so, for compelled labour or commercial sex acts through the use of force, fraud or coercion, commits**

an offence of trafficking in persons and shall be punished with imprisonment which may extend to seven years or with fine which may extend to one million rupees or with both”.

The law has also penalized the abetment and criminal conspiracy in relation to trafficking crimes. The best part of this legislation is it does not put criminal liability on the victim or his or her parents or guardians. It has empowered the police to recognize the issue and investigate under this act when the issue is internal trafficking. Whenever a case extends beyond the geographical boundaries of Pakistan, the FIA will take the lead on the matter. Under the law, a magistrate of the first class shall try the offence punishable under this act. All the offences under this law are cognizable and non bailable. This law provides special provision for the safety of victims and witnesses of offences and also suggests compensation to the victims.

This law also suggests the Federal Government develop awareness raising campaigns to promote and strengthen development programs and national and international cooperation in order to address the root-causes of trafficking in persons, and the special vulnerabilities of women and children.

ACTIVITY 4

Activity 4:

The Prevention of Trafficking in Persons Act, 2018 & National Commission on the Rights of Child Act, 2017 Time (-- minutes)

Materials Required

- Printed material (summaries of each law on 2 charts) on 2.5x 3.5 feet chart/flex.
- These charts will be fixed in the hall on four different locations.

Facilitator will briefly share the laws from this module (may be through PowerPoint presentation). After the brief presentation, Facilitator will divide the participants into 4 groups for the Gallery Walk.

Assign the topics to each group and make them stand before 1 chart/flex each.

Group 1: chart/flex The Prevention of Trafficking in Persons Act, 2018 (Section 1 to 6)

Group 2: chart/flex The Prevention of Trafficking in Persons Act, 2018 (Section 7 to 8)

Group 3: chart/flex National Commission on the Rights of Child Act, 2017 (Chapter 1 to 2)

Group 4: chart/flex National Commission on the Rights of Child Act, 2017 (Chapter 3 to 5)

Ask each group to read the chart/flex carefully and note points in five to six minutes.

After five or six minutes, each group will be asked to move to the next chart/flex in a clockwise direction.

Again, each group will be asked to read the chart/flex carefully and note points in five to six minutes.

After five or six minutes each group will be asked to move to the next chart/flex in a clockwise direction.

This process will be repeated till all 4 groups have gone through all 4 charts/flex.

Sharing by participants (15 minutes)

Invite each group and ask them to give a presentation on the information gathered. Facilitator will randomly decide which topic each group has to provide information on. Facilitator will give feedback if they miss any important information.

POLICE ROLE IN INVESTIGATIONS OF CHILD SEXUAL ABUSE CASES

Chapter 25 of the Police Rule, 1934 specifies that an officer in charge of a police station is empowered by section 156, Criminal Procedure Code, to investigate any cognizable offence which occurs within the limits of his jurisdiction.

Further, he is also empowered under Section 157(1) of Criminal Procedure Code to deputize a subordinate to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offenders. Any police officer may be so deputized under this section, but where a police officer under the rank of assistant sub-

inspector is deputized, the investigation shall invariably be taken up and completed by the officer in charge of the police station or an assistant sub-inspector at the first opportunity.

In investigations, the interviewing of witnesses, complainant/victims, interrogation of accused/suspects, personal searches, searches of vehicles and premises, and the interception of correspondence and communications are required to be conducted, among others, within the ambit of the following fundamental and constitutional rights.

The officer in charge of a police station is under a statutory obligation to register a case where the complaint discloses the commission of a cognizable offence⁵⁶. After its registration, the investigating officer collects evidence to unearth true facts. The accused has a right to be heard and to lead his defence to prove his innocence if he has been falsely implicated⁵⁷. He also has the right to be dealt with in accordance with the law. The onus of proof lies upon the prosecution to prove the charge, and if proved after trial in court beyond any shadow of doubt, the accused is convicted and sentenced to undergo a prison sentence with or without a fine.

If information is received about the commission of a cognizable offence in his jurisdiction, the officer in charge of a police station is empowered under section 157 Cr.P.C to initiate an investigation, either himself or by deputizing a subordinate officer under intimation to the Magistrate. Similarly, the officer in charge of a police station is also empowered to decline to investigate a case if sufficient grounds, in his view, do not exist.

It is the duty of a Police Officer to summon a witness or an accused for recording their statements during the investigation of a case (section 160 Cr.P.C). An investigating officer investigating a cognizable offence can examine any person who is presumed to be acquainted with the facts and circumstances of the case. Such person is bound to answer all the questions relating to the case, other than questions the answers to which would have a tendency to expose him/her to a criminal charge. The police officer is required to reduce in writing any statement made to him in the course of an examination.

The State has the responsibility to protect the citizens against crime. The Police Order, 2002 and the Khyber Pakhtunkhwa Police Act, 2017 categorically make clear, with reference to the matters of women and children, that;

- ☐ It shall be the duty of every police officer to aid individuals who are in danger of physical harm, particularly women and children⁵⁸;
- ☐ Prevent harassment of women and children in public places⁵⁹;

⁵⁶1992 P Cr.LJ 1989

⁵⁷2005 YLR 1545

⁵⁸S.2(d), The Police Order, 2002.

⁵⁹S.3(r), The Police Order, 2002.

- Police officer shall make every effort to - (a) afford relief to people in distress situations, particularly in respect of women and children;⁶⁰
- Guide and assist members of the public, particularly the poor, disabled or physically weak and children who are either lost or find themselves helpless on the streets or other public places.⁶¹

A victim of crime has the right to the protection of the law; to be treated in accordance with the law (Article 4 of the Constitution); and to be treated equally without discrimination (Article 25 of the Constitution). He is entitled to compassionate treatment, free access to justice and to get an F.I.R. registered if a cognizable offence has been committed (section 154 Cr.P.C) . It is the responsibility of the Police to investigate the case and bring the perpetrators of crime to justice. The complainant/victim has to be kept informed of the progress of the investigation and is to be protected against any threat to security of his person (Article 9 of the Constitution). A witness to the commission of an offence is entitled to the protection of law (Article 4 of the Constitution) and to confidentiality of information. He plays an important role in the criminal justice system and facilitates the dispensation of justice by the Courts.

When the accused has been arrested and prime facie evidence has been produced, it shall be incumbent on the investigating officer to send the case for trial without delay, whether the investigation is complete or not. Witnesses should invariably accompany such challans/reports, and the Court should be asked to take up the case at the earliest possible moment in accordance with High Court Rules and Orders, Chapter 3(10) Volume IV, in order to record the evidence and thereafter to grant such detention or remand under the provisions of section 167 or 344, Criminal Procedure Code, as may be found necessary. Evidence obtained subsequently shall be produced before the Court by a subsidiary challan. Superintendents should call up investigating officers for an explanation in all cases where the provisions of this rule appear to have been disregarded.⁶²

⁶⁰S.4(2a), The Police Order, 2002.

⁶¹S.3(c), Khyber Pakhtunkhwa Police Act, 2017.

⁶²Rule 25.56(3), Police Rules, 1934.

Important Points of Consideration in Case of Sexual Assault, Sodomy and Rape.

Criminal Law (Amendment Offences Relating to Rape) Act, 2016 has obligated and made special provision for the investigation officers, prosecutors and courts

- A public servant who fails to carry out proper investigation or fails to pursue the case in Court shall be punished with imprisonment of 3 years or a fine or both.
- Whosoever hampers or misleads, jeopardizes or defeats any investigation, inquiry or prosecution or issues a false or defective report shall be imprisoned for up to 3 years or a fine or both.
- Disclosure of the identity of a victim of rape is also prohibited u/s 376A. Similarly, disclosure of the identity of a victim of an offence falling under sections 354A, 376, 376A, 377 or 377B PPC is also prohibited.
- A medical examination by a registered medical practitioner employed in a hospital run by the Government may be compelled of an arrested person accused of an offence of rape, unnatural offence or sexual abuse under section 376, section 377 and section 337. In the case of a female victim, the medical examination shall be performed by a female registered medical practitioner.
- It is compulsory for an investigating officer to record the statement of a victim (Section 336B, section 354, section 354A, section 376 or section 509 of PPC) in the presence of a female police officer, a female family member of victim, or any other person with consent of the victim.
- It is also compulsory for Police to record a F.I.R of such offence in the presence of a female police officer. A distressed victim's statement shall be recorded at her residence/complainant residence or at a convenient place of her choice.
- Free legal aid will be offered to the victims with the assistance of Provincial Bar Councils.
- DNA should be collected from persons accused of offences under sections 376, 377 and 377B PPC and from victims with the consent of the victim or his or her guardian. It is the duty of the investigating officer to send the samples of DNA to a forensic laboratory as soon as possible.
- The Court is bound to conclude the trial of an offence related to rape in three months. Appeals shall be decided in 6 months as per section 417(5) Cr.P.C.
- Trials for offences under sections 354A, 376, 376A, 377 or 377B PPC shall be conducted in camera. The Court may use video links or screens for the protection of the victims and the witnesses.

Punjab Forensic Science Agency is working with a mission to receive physical evidence from law enforcement agencies, on criminal and civil cases, analyze and provide accurate results

of forensic analysis in a timely manner, and testify in COURTS OF LAW on analytical findings for the people. The agency is providing the services to law enforcement agencies all over Pakistan. The difficult Zainab murder case was one of the successes credited to this agency. The agency has issued the following guidelines regarding the Collection of Biological Evidence in sexual abuse cases:⁶³

Immediate response (within 72 hours) · Victim of sexual abuse should be examined within 72 hours by an experienced medical professional.

Following guidelines should be practiced for the medical examination:

- ☐ Ask the victim not to go in the washroom, and if she has to go, then she should not wash or clean the vaginal area.
- ☐ Ask the victim about the full account of the incident and try to get any biological material from any area where biological evidence may be present.
- ☐ Ask the victim if the offender placed his mouth on different areas of her body. If those areas are not yet washed, collect the swabs from those areas and pack them separately.
- ☐ Ask the victim, did the offender use tissue/cloth or anything else to clean himself. If yes, collect that.
- ☐ Collect at least 2-3 vaginal swabs (internal and external) and also the clothes and bed sheets of the victim.
- ☐ Ask the victim if the offender raped her in anal area; if yes then collect 1-2 anal swabs.
- ☐ If accused is in custody, ask him if he washed himself. If not, then get his penile swab.
- ☐ If the victim has bleeding from her vaginal area during the examination, try to avoid too much coating of blood on the swab. Take the swab by keeping in view presence of seminal material on the swab and not the blood of the victim.
- ☐ Ask the victim, does she already know the suspect? If yes, what is the relationship?

Protect yourself from contaminating the evidence material by wearing neat gloves, face masks and disposable caps.

Items to be collected

- 2-3 Vaginal swabs.
- 2-3 Rectal/anal swabs in case of anal sex.
- 2-3 Oral swabs in case of oral sex.
- Clothes of victim and bed sheets.
- Swabs from kissing area.
- Buccal swabs of victim.

⁶³Punjab Forensic Science Agency, *Introductory Booklet* (2012), available at <https://pfsa.punjab.gov.pk/system/files/PFSAGuidelinesEnglish.pdf>

- Buccal swabs of the suspect(s).
- Documents including request letter, F.I.R copy, Medico-Legal Certificate copy, Road certificate (chain of custody), answers of questions asked from the victim, covering letter with complete description of items sent, any other supporting document, etc.
- Photographs of the suspect(s) / victim(s) taken at the time of sample collection.

Note: Buccal swabs of the suspect(s) / victim(s) will be collected by the agency.

Packing: Dry swabs at room temperature and pack them in a paper/manila envelope made from thick paper and label it with case number (F.I.R and Medico Legal Certificate NO.), victim's name, signature and seal.

ACTIVITY 5

Activity 5:

Divide the participants in three groups and ask the participants to reflect and give their views in a group and write their responses on a chart:

- What are the duties of an officer in charge of a police station for the investigation of the crime?
- What are the police laws Punjab and KP have suggested for women and children?
- What are the rights of an accused provided in the Constitution?
- Discuss in detail the important point (to preserve the evidence) from the guidelines of the Punjab Forensic Agency in the cases of abuse.
- What are the obligations of investigation of sexual abuse offences under the Criminal Law (Amendment Offences Relating to Rape) Act, 2016?

2.0 VICTIM-CENTRIC INVESTIGATIONS

VICTIM-CENTRIC INVESTIGATIONS PRACTICES FOR CHILD (SEXUAL) ABUSE

Child abuse, especially child sexual abuse (CSA), occurs in various forms and at multiple levels. It robs children of their childhood; physical, mental and emotional health; education; and future livelihood opportunities.⁶⁴ In an analysis of 200 letters collected by the non-governmental organization (NGO) Rozan from survivors of child sexual abuse in Pakistan, they found that children were especially likely to experience feelings of guilt, depression, fear, lack of confidence, and guilty feelings about masturbation.⁶⁵ At the same time, crimes against children are often shrouded in silence, either due to traditional tacit cultural approval, or due to being a taboo topic associated with “shame” and “dishonor”.⁶⁶ The taboo nature allows perpetrators to continue to abuse vulnerable children with impunity, without fear of legal repercussions.⁶⁷

Law enforcement and justice sector professionals can make it easier for children to report abuse and collect better evidence by adopting investigative tactics that are developmentally, culturally, and gender appropriate for children. The following chapter will introduce participants to the concept of victim-centric investigations, including initial contact with a child victim, forensic interviewing, and medico-legal examinations. It also introduces scientific research conducted on topics such as how children experience abuse, how children disclose abuse, and memory and suggestibility, which should be taken into consideration when interviewing/collecting evidence from child victims.

⁶⁴Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan’s Children 2018: Violence against Children* (2018), available at <https://www.sparcpk.org/images/sopc18/violence.pdf>

⁶⁵Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.11, available at http://rozan.org/sites/default/files/The_Bitter_truth.pdf

⁶⁶Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan’s Children 2018: Violence against Children* (2018), available at <https://www.sparcpk.org/images/sopc18/violence.pdf>

⁶⁷Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan’s Children 2018: Violence against Children* (2018), available at <https://www.sparcpk.org/images/sopc18/violence.pdf>

How Children Experience Abuse: The Child Sexual Abuse Accommodation Syndrome, Roland Summit's CSAAS (the Child Sexual Abuse Accommodation Syndrome):⁶⁸

When a child discloses abuse, he or she is often met with skepticism, alienation, and lack of credibility or acceptance. The child sexual abuse accommodation syndrome is an attempt to provide context and increase understanding and acceptance of the child's allegations within the complex dynamics of sexual victimization in the majority of cases when the perpetrator is in a kin or trusted relationship with the child victim. For example, in an analysis of 200 letters written by survivors of child sexual abuse in Pakistan, the NGO Rozan found that 92% of perpetrators were known to the victims; in 49% of cases the perpetrator was a relative of the victim and in 43% of cases he/she was an acquaintance. Only 7% of perpetrators were strangers to their victims.⁶⁹

Understanding the syndrome challenges myths and prejudices and allows for acceptance and advocacy for the child. The syndrome accounts for five common behavioral categories in how child victims experience sexual abuse:

- ☐ **Secrecy**
- ☐ **Helplessness**
- ☐ **Entrapment and accommodation**
- ☐ **Delayed disclosure**
- ☐ **Recantation/retraction**

Secrecy:

- ☐ The child's experience of sexual abuse is often that it happens in secrecy, no one else is around and no one is to know. Rozan noted in its study that, "In Pakistani society females are brought up in such a way where they have few opportunities to disclose their abuse, which makes them silent, further internalizing the anger, shame and guilt, which can lead to depression."⁷⁰
- ☐ The perpetrator puts the entire burden of keeping this secret on the child:
 - "You can't tell anyone about this because this is just our little secret";
 - "This is something special just between us; if you tell I won't be able to love you anymore in that special way."
- ☐ It's usually done by way of threats and intimidation:

⁶⁸R. C. Summit, *The Child Sexual Abuse Accommodation Syndrome* (1983), 7 Child Abuse and Neglect, 177, available at <https://www.abusewatch.net/Child%20Sexual%20Abuse%20Accommodation%20Syndrome.pdf>

⁶⁹Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.7, available at http://rozan.org/sites/default/files/The_Bitter_truth.pdf

⁷⁰Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* 12 (2007), available at http://rozan.org/sites/default/files/The_Bitter_truth.pdf

- “If you tell, I will go to jail”;
- “If you tell, you will go to jail (because this is your fault)”;
- “If you tell, Ammi will be sad.” (Rozan reported one case in which the perpetrator told the child victim that her mother would die if she disclosed the abuse. Because of her tender age, she believed him and kept silent.⁷¹);
- “If you tell, I’ll have to go away, and you and Ammi won’t be able to live here anymore”;
- “If you don’t let me do this, I will have to do this with your little sister”.
- Can also be promises of gifts or treats:
 - “If you let me do this and don’t tell anyone, we can go for ice cream”.
- Any reality linked to the abuse is given to the child by the perpetrator:
 - “This is how fathers and daughters show love to each other”;
 - “This is normal – all kids do this.” (The perpetrator may even show the child pornography that depicts children in an effort to groom the child and lower his/her inhibitions.)
- The child learns early in the abuse relationship that the safety and security of the family depends on the child keeping this secret.

Helplessness:

- Often the next thing the child learns is that he/she is helpless to stop the abuse or escape the situation.
- Children will generally hide and not fight during an abuse event.
- Unspoken gestures are as powerful as words.
- As this feeling of helplessness sets in, the child will need to learn how to live with the secret, the abuse, and her/himself.

According to Rozan’s research, 7.5% of CSA survivors who wrote to them reported feelings of helplessness. This included 6.8% of boys and 8.1% of girls.⁷²

Entrapment and accommodation:

- The child feels trapped in this cycle of abuse.
- The child then begins to accommodate to the abuse and may actually initiate sexual encounters in an effort to take back some of the power.

⁷¹Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* 12 (2007), available at http://rozan.org/sites/default/files/The_Bitter_truth.pdf

⁷²Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.11, available at http://rozan.org/sites/default/files/The_Bitter_truth.pdf

- ☐ The child at this stage may begin self-harming or engaging in self-destructive behaviors.
- ☐ If the child did not seek help from the initial abuse, to him/her there is no future way out.
- ☐ The only healthy thing left to do is to accommodate the continued abuse.
- ☐ The very same person who must be turned to for love and validation is the one responsible for the abuse/deceit.

Delayed/unconvincing disclosure:

- ☐ Disclosure is a process, not an event.
- ☐ Disclosure can be purposeful or accidental.
- ☐ The cacophony of experiences/beliefs/lack of evidence makes disclosure hard to believe for others.

Recantation/retraction:

- ☐ After disclosure, many child/adolescent victims are dismayed to learn that everything they feared about disclosure comes true.
- ☐ Family breaks up, disbelief, judgment, Ammi is angry/crying.
- ☐ This can lead the child to panic and want to “fix it all”. Saying “I made it up” is the best way they see to do that.
- ☐ Recantations can be very detailed, and often very convincing

Source: R. C. Summit, *The Child Sexual Abuse Accommodation Syndrome* (1983), 7 Child Abuse and Neglect, 177, available at

[https://www.abusewatch.net/Child%20Sexual%20Abuse%20Accommodation%20Syndrome. pdf](https://www.abusewatch.net/Child%20Sexual%20Abuse%20Accommodation%20Syndrome.pdf)

INITIAL CONTACT WITH A CHILD VICTIM: BRIEF AND COM PASSIONATE CONTACT

When first responders respond to the scene of a child abuse case, the first thing they need to determine is the safety level of the victim. This is not the time for a full-scale forensic interview to gather the facts necessary for a successful prosecution, but rather to ask minimal questions of the child and the non-offending caregiver(s) to determine the level of support and safety factors.

- Minimal facts interview
 - Determine the safety of child victim:
 - What is the makeup (composition and structure) of the family?
 - Who and where is the perpetrator?
 - What is the level of support in the home for the child victim?
 - Is there also domestic violence in the home, which may affect the level of non-offending caregiver support?
- Law enforcement/first responders
 - Remove items that may cause distress to the child (e.g., weapons, badge, hat)
- Child-friendly interaction (described below)
 - Down to child's level
 - Short, concrete sentences
- Social services
 - The goal is the safety of the child victim
 - Sometimes removing the child from the home is warranted (Develop a protocol for how removal issues will be addressed: First: kinship care; relatives where the child will be safe and away from any abusive situations; Second: outside caregivers/child protection system) (Section 24 of the Punjab Destitute and Neglected Children Act, 2004⁷³ and Section 16 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 address care options for child victims⁷⁴)

⁷³According to Section 24 of the Punjab Destitute and Neglected Children Act, 2004, "A child protection officer may take into custody a destitute and neglected child and produce him before the Court within twenty-four hours of taking the child into such custody: Provided that where a destitute and neglected child is in the custody of his parent or guardian, the officer shall not take him into custody but shall in the first instance, make a report to the Court: Provided further that the first proviso shall not be applicable in case of a child who is found begging or is a victim of an offence alleged to have been committed by his parent or guardian."

⁷⁴According to Section 16 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 "(1) The Court may issue orders in respect of handing over the custody of a child at risk that is brought before him, either to his parents, guardian, a suitable person or a Child Protection Institution, as the case may be. (2) The Court shall, informs the child at risk of the situation and obtain his views before making an order in respect of his custody and care. (3) The Court shall, before making an order in respect of protection and care of a child at risk, consider continuity in his upbringing and take into consideration the ethnic, religious, cultural, linguistic background and all other relevant factors in the best interest of the child at risk. (4) While making the orders under this Chapter, the Court shall prefer keeping the child at risk in parental care, or extended family care, or non-kinship care than placement of a child at risk in a Child Protection Institution. (5) The Court shall monitor the status of the child at risk through reports submitted by the Child Protection Officers, any officer authorized by the Commission or through requiring the appearance of a child at risk and the person responsible for his custody and care before itself."

Questions to ask the child victim and non-offending caregiver in a minimal facts interview:

- ☐ Who lives in the home with you?
- ☐ Who is the perpetrator in relation to the child victim and the non-offending caregiver?
- ☐ Is there a safe place you can go?
- ☐ Who have you felt safe to talk to about this?

Find out from non-offending caregiver the level of support for child in the home –

- ☐ What was your reaction to the disclosure?
- ☐ Siblings – what is their reaction?
- ☐ What's the level of support in the home?

ACTIVITY 1

Activity 1:

Small group exercises
(15 minutes)

Practice conducting a minimal facts interview with your colleagues. The Facilitator will divide the class into pairs. In your pairs, take turns trying to get as much information from your partner to determine safety in five minutes. The purpose of this contact is not to conduct a formal forensic interview, but rather to determine the safety of the child and address any safety concerns.

DELAYED FOLLOW-UP INTERVIEW AND QUESTIONING

Once the level of support for the child and the child's safety are determined, it's time to focus on the formal investigation and formal forensic interview that will form the basis of prosecution.

The purpose of this section is to recognize and understand that child victims of abuse are not mini-adults. Child victims will engage in behaviors that are counterintuitive to those behaviors we would normally expect. Most child victims of abuse will at some point recant the allegations of abuse. Delayed disclosure is a common phenomenon in child victims, as is denial in the face of definitive evidence, piecemeal disclosures, and unconvincing disclosures. Child victims of abuse will also often have a flat affect when discussing and describing incidents of abuse.

Memory and suggestibility issues are also necessary considerations when conducting a child interview, which is why knowledge of the current research is important. Learning to interview children using short, concrete sentences and open-ended questions is an important framework for any protocol.

- Bring the child victim to a police station or meet directly where the child resides or another place he/she feels comfortable (e.g., school) for a formal interview as soon as possible
 - Within 24-48 hours if possible
- A trained forensic interviewer should conduct the questioning (Interviewer needs to be trained in: Child Development; How to talk to children – simple and concrete sentences; Memory and suggestibility, as well as the protocol developed or adopted by the jurisdiction).
- Establish a protocol for use in the jurisdiction
 - Should be recognized within the jurisdiction;
 - If you deviate from protocol, you should be able to explain why.
- Interviews should be conducted in a safe, neutral, and child-friendly environment
 - Child-sized furniture
 - White board/flip chart as demonstrative aids
 - Noise free
 - Without any interruptions such as phone, bells, or child's play area that may distract the child. Location should be as distraction-free as possible.
 - Meet the child's physical needs also:
 - Snack
 - Drink
 - Nap
- Interviewer should have knowledge of children's disclosure process using the research from Sorenson and Snow cited and outlined below.
- Recognize the common counterintuitive behaviors seen in child victims:
 - Delayed disclosures
 - Recantation
 - Flat affect
 - Ambivalence towards the perpetrator

HOW CHILDREN DISCLOSE

How Children Disclose (Sorenson & Snow Research Study “How Children Tell: The Process of Disclosure in Child Sexual Abuse:”⁷⁵

In an analysis of sexual abuse disclosures by a large number of children from three to 17 years of age, who were eventually confirmed as credible victims, the large majority at first denied the abuse. The authors describe disclosure as a process with definable phases and characteristics – seldom the single instance that typical investigations consider disclosure to be. The study was conducted in the state of Utah in the United States by Teena Sorensen, a Licensed Psychiatric Nurse Specialist and doctoral student at the University of Utah, and Barbara Snow, D.S.W., a Licensed Clinical Social Worker. The authors retrospectively analyzed clinical notes, conversations, audio and videotapes, and reports from 630 cases of alleged child sexual abuse in which the authors had been involved as therapists or evaluators between 1985 and 1989.

Their findings were:

- ☐ Disclosure is a process, not an event.
- ☐ There are two types of disclosure: **Purposeful** and **Accidental**.
- ☐ Purposeful means that children CHOOSE to tell at that moment (**Adolescent and teen victims are more likely to disclose purposefully, and it is usually coupled with a triggering event in the adolescent or teen’s life.**).
- ☐ Accidental means that children don’t CHOOSE to tell but rather the disclosure is unintentional (**Toddlers/children under the age of five or six are more likely to disclose accidentally.**).
- ☐ Children’s disclosures move from **denial** (the child’s initial statement that he/she has not been abused) to **tentative** (partial, vague or vacillating disclosures) to **active** (admission by the child that he/she has been experiencing or has experienced in the past an abusive scenario).
 - **Denial:** Very common in child abuse victims; after all, they have been told or threatened not to tell. In half to three-fourths of cases studied, children have initially denied being abused. Most of those never tell until much later in life.
 - **Tentative:** Most children will “test the waters” by making a vague or vacillating statement about the abuse. Depending on the reaction of the listener, the child will either move into active disclosure or recant the allegation. Children in the tentative disclosure phase often appear confused, uncertain and inaccurate. **Examples of Tentative Disclosure include:**

⁷⁵T. Sorensen, & B. Snow, *How Children Tell: The Process Of Disclosure in Child Sexual Abuse* (1991), 70 Child Welfare: Journal of Policy, Practice, and Program, 3, available at <http://www.nccpeds.com/rotations/AFCCP/Reading%20List/Child%20disclosure/sorenson%20and%20snow%20disclosure%20article.pdf>

- **Forgetting:** statements that they no longer remember the event or scenario;
- **Distancing:** statements that indicate it happened to someone else, or that it happened a long time ago;
- **Empowerment:** statements like “he tried to do that to me but I kicked him and ran away”;
- **Minimizing:** statements that indicate “it happened only once”;
- **Dissociating:** statements like “he touched me and then I went into the pink forest”;
- **Discounting:** statements like “never mind”; or “I was only kidding”.
- **Active:** Children in active disclosure are able to give detailed, coherent, first-person accounts of the abuse.
- **Recantation:** approximately ¼ (22%) of children in the Sorenson and Snow study recanted their abuse. Of that 22% of children who recanted, 92% reaffirmed their allegations over time. The most common reasons children recant are:
 - Pressure from the perpetrator;
 - Pressure from family;
 - Negative personal consequences (removal from their home, etc.);
 - Having to retell multiple times (the reason why one interview by a trained forensic interviewer is best);
 - Judicial proceedings; and
 - Investigative agencies or departments charged with the protection of children (e.g., Child Protection & Welfare Bureau in Punjab and Child Protection & Welfare Commission in KP).

Source: T. Sorensen, & B. Snow, How Children Tell: The Process Of Disclosure in Child Sexual Abuse (1991), 70 Child Welfare: Journal of Policy, Practice, and Program, 3, available at <http://www.nccpeds.com/rotations/AFCCP/Reading%20List/Child%20disclosure/sorenson%20and%20snow%20disclosure%20article.pdf>

MEMORY AND SUGGESTIBILITY

A common response to a child’s disclosure of sexual abuse is that his or her memory is faulty or that he or she was subject to suggestive questioning. It is important to understand and apply the known science about children’s memory and suggestibility in forensic interviews and investigations.

Studies have shown that:

- ☐ Younger children (ages 4-6) are more susceptible to suggestion than older children (7-10).
- ☐ After age 10, children are no more suggestible than adults.
- ☐ To avoid suggestibility in a forensic interview, ask short, concrete questions:
 - “Who lives in your home with you?”
 - “Did this happen one time or more than one time?”
- ☐ Use open ended, narrative questions:
 - “Tell me more about that.”
 - “Tell me everything you can remember, whether you think it’s important or not”.
- ☐ Do not use leading or suggestive questioning:
 - DO NOT ASK: “He took your pants off, didn’t he”?
- ☐ If you must ask a focused question, follow it up with “tell me more about that” and encourage a narrative response.

INTERVIEW TECHNIQUES FOR CHILD INTERVIEW ERS

Taking into consideration the research conducted on how children experience and disclose abuse and on memory and suggestibility among children, the following are recommended techniques for conducting successful interviews with child abuse victims:

- ☐ Use an established protocol recognized in your jurisdiction;
- ☐ Use open-ended questions;
- ☐ Follow up with more focused questions;
- ☐ Limit use of leading and suggestive questioning;
- ☐ Use child-friendly language;
- ☐ Use the child’s own words for body parts;
- ☐ Give the child pre-interview instructions:
 - **Correct me if I make a mistake.** With younger children, it may help to give an example (e.g., Question: “If I said you were 30, what would you think?” Answer: “I’m NOT 30! I’m 6.” Let them know that’s what you want them to do – to tell you when you’re wrong and correct you.)
 - **Say “I don’t know.” Don’t guess.** Use this question to illustrate: “If I asked you what I had for breakfast this morning, what would you say?” The child should say “I don’t know.” Follow up by saying that’s what you want them to say when they don’t know the answer.
 - **Say “I don’t understand.”** Be clear that it’s ok for the child to speak up and say he doesn’t understand something. It is especially important in the court

process where words are often long and have different meanings (court = place to decide legal issues AND place to play basketball).⁷⁶

- ☐ First: get a history from the child's caregiver
 - Why is the child being seen?
 - Who is responsible for the child's safety?
 - What did the child tell you?
- ☐ Second: talk to the child
 - What happened?
 - Who did this?
 - What part of the perpetrator's body touched what part of your body?
 - Did he/she use any objects?
 - Were you made to touch their body?
 - What part of your body touched what part of their body?
 - Did this happen once or multiple times?
 - Some children will only be able to answer the question: "Did this happen one time or more than one time"?
 - Do you know if this happened to anyone else?
 - Who else might have been present?
 - Who else did the child tell or does anyone else know about what happened?
 - When did this happen (if the child is able to give that information – if not, use the child's experiences to narrow down a time frame; such as schooling, holidays, birthday or the like)?
 - Where did the event or events occur (location of the scene as well as the room inside the location)?

Video recording the Interview

Whether to video record an interview will depend on your jurisdiction's protocol and the availability of equipment, both during the investigative phase and in the courtroom. Some considerations include:

Pros:

- ☐ Captures the child's emotions during disclosure
- ☐ Captures the child's words
- ☐ Captures the child's demeanor
- ☐ Captures the child at the age of abuse

⁷⁶Claire Chiamulera, *Representing Child Abuse Victims: Forensic Interviewing Tips* (2017), American Bar Association, available at https://www.americanbar.org/groups/public_interest/child_law/resources/videos/representing-child-abuse-victims--forensic-interviewing-tips/ (quoting article by Julie Kenniston, MSW, LISW).

- ☐ Takes the pressure off note-taking
- ☐ Team members (law enforcement; prosecution) can participate via Closed-Circuit Television (CCTV) or one-way mirror

Cons:

- ☐ Bad disclosures and bad interviews are memorialized
- ☐ Potential technological issues

The Supreme Court of Pakistan in a landmark judgment (*Salman Akram Raja v. Government of Punjab*) has held that “Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court.”⁷⁷

Non-Judgmental Environment for a Child Interview by the Interviewer

It is important for the environment during a child interview to be non-judgmental so that the interview elicits accurate, complete, and sound information. Some suggestions for achieving a supportive environment include:

- ☐ Use a conversational tone
- ☐ Watch your facial expressions
- ☐ Do not react with emotion, no matter what the child tells you
- ☐ Use the child’s own words/language for body parts

What to ask a child sex abuse victim (Interviewing)

- ☐ ***Build rapport***
- ☐ ***Who lives in the house with the child***
- ☐ ***What are the child’s names for body parts?***
 - Use those words during the rest of your questioning.

⁷⁷PLJ 2013 SC. 107.

Ask: "Hi Nadia – my name is Salma and my job is to talk to kids to make sure they're safe."

- "Tell me about you."
- "What class are you in?"
- "What school do you go to?" ○
- "What's your teacher's name?"
- "Tell me your favorite thing about school?"
- Focus on:
 - What the child likes to do;
 - School class/activities;
 - Sports.

Ask: "Nadia, do you live in a house, a flat, or something else?"

The purpose here is to give the child a choice, the third choice "or something else" will allow the child to answer if the child's reality is not one of the choices you give her.

- ☐ "Nadia, who lives in your home with you?"
- ☐ "Do you stay anywhere else?" – "Who lives there"?

The goal here is to identify who is believed to be the perpetrator.

- ☐ If you haven't gotten to the alleged perpetrator, ask about other places:
 - School
 - Mosque/Church/other House of Worship
 - Sports
 - Places the child visits
 - Friends' homes
 - School bus/van

- ☐ ***Does the child get touches that she likes?***

Ask: “Nadia, do you get touches that you like?”

- “What touches do you get that you like?”
- “Who gives those to you?”
- “What are those touches?”
- “Who gives you those touches?”

- ☐ ***Does the child get touches that she doesn’t like?***

Ask: “Nadia, do you get touches that you don’t like?”

- “What touches do you get that you don’t like?”
- “Who gives you those touches?”
- “What are those touches?”
- “Who gives you those touches?”

Another way to approach the subject of inappropriate touching is to ask:

- ☐ ***Are there parts of the body that no one is supposed to touch?***
 - Have the child show on an anatomical drawing.
- ☐ ***Has anyone who wasn’t supposed to ever touched you in those parts?***
 - Once the child discloses, ask open ended questions about those touches.
 - What part of perpetrator’s body touched what part of your body?
- ☐ ***Once the child discloses, get as much sensory detail as possible –***
 - How did it feel?
 - What did it look like?
 - How did it smell?
 - What did you hear?
 - What did it taste like?

Other details:

- ☐ Children may have special physical or mental needs or a combination of both. The engagement of an interpreter or other expert may help to understand the child's situation.
- ☐ Who?
- ☐ Where?
- ☐ What part of perpetrator's body touched what part of the child's body?
- ☐ Technology – grooming materials
 - Did the perpetrator show the child pornography?
 - Did the perpetrator contact the child through the internet/social media?
- ☐ Were any photographs or videos taken?
- ☐ How many times (one time – more than one time, depending on child's age)?
- ☐ Under clothing/over clothing?
- ☐ Sensory detail can be a great indicator of whether there is penetration: hurt?
- ☐ Was the child made to touch the perpetrator's body?
- ☐ What part of the child's body touched what part of the perpetrator's body?
- ☐ Was the child touched by anyone or anything else (alternative hypotheses: "Has anyone else"?)

- ☐ Closing – safety check
 - "If this ever happens to you again, who can you tell?"
 - Give suggestions if the child is stuck (can you tell your mom?/teacher?/trusted adult?).

What NOT to ask a child sexual abuse victim

- ☐ DO NOT ASK anything that assigns blame to the child. As it is, Rozan's research found that guilt was the most commonly reported psychological/emotional effect of CSA on Pakistani child victims, with 42.7% of the children studied reporting feelings of guilt.⁷⁸ Examples of questions not to ask include:
 - Why didn't you tell anyone?
 - Did you ever say "no" or "stop"?

- ☐ DO NOT ASK anything the child can't answer. Examples:
 - Why did he do these things to you?
 - How many times did it happen?
 - Specific dates and times

⁷⁸Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.11, available at http://rozan.org/sites/default/files/The_Bitter_truth.pdf

- Better to use experiences in the child's life:
 - ☐ birthday;
 - ☐ holidays;
 - ☐ school and/or class;
 - ☐ color of the house.
- ☐ Avoid correcting the child's actions unnecessarily during the interview.
- ☐ Avoid correcting nervous behavior as it may slow down the pace of the interview or stop the proceeding.

Use of Female Investigative Officers

- ☐ Necessary in the case of a sexual abuse investigation

Advocates and Counselors

- ☐ Communication facilitators between child abuse professionals and the child victim's family;
- ☐ Assist with logistical issues pertaining to investigation and prosecution;
- ☐ Provide guidance and assistance with community resources.

Referral to Community Resources

- ☐ Telephone helplines (counseling services, youth helplines, women help line etc.)⁷⁹;
- ☐ Mental health professionals;
- ☐ Counselling services;⁸⁰
- ☐ Support groups.

⁷⁹For example, Child Protection & Welfare Bureau, Punjab's child-helpline (1121, <https://cpwb.punjab.gov.pk/helpline>), NGO Rozan's helpline (0800-22444, <http://rozan.org/?q=contacts>), NGO Sahil's helplines (<http://sahil.org/free-counseling-services/>)

⁸⁰PLJ 2013 SC. 107, "Every police Station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counselling. A list of such organizations may be provided by bodies such as the National Commission on the Status of Women. Each Police Station is to maintain a register of such organizations."

ACTIVITY 2

Activity 2:

The facilitator will show a short training video showing an interview with a child victim. Ask the participants to think about the technique the interviewer used on their own for one (1) minute. After that, ask the participants to pair up with the person next to them and discuss their observations about the video for another 5 minutes. What did the interviewer do well? What mistakes did he/she make? What could have been done better? Next, participants should form groups of 4 and discuss the interview for another 5 minutes. To close, the facilitator will ask for volunteers to identify a good practice used in the video or some way in which the interview could have been improved.

IMPORTANCE OF CONDUCTING A MEDICO-LEGAL EXAMINATION OF A CHILD SEX ABUSE VICTIM

As provided for in Pakistani law,⁸¹ a medico -legal examination of a child sexual abuse victim is an essential component of the investigation. A medico-legal examination of the child is an important source of information and evidence, including⁸² possible forensic evidence;

⁸¹See for example, Rules and Orders of the Lahore High Court, Volume 3, Chapter 18, *Medico-legal Work*, available at <https://www.lhc.gov.pk/system/files/volume3.pdf>

⁸²PLJ 2013 SC. 107

- (a) Every police Station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counseling. A list of such organizations may be provided by bodies such as the National Commission on the Status of Women. Each Police Station is to maintain a register of such organizations. On receipt of information regarding the commission of rape, the Investigating Officer (IO)/Station House Officer (SHO) should inform such organizations at the earliest of:
- Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape cases;
 - As soon as the victim is composed, her statement should be recorded under Section 164, Code of Criminal Procedure, 1898, preferably by a female magistrate.
 - Trials for rape should be conducted in camera and after regular Court hours.
 - During a rape trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.
 - Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court.

- ☐ The purpose is to perform a physical examination and collect swabs or other samples from the body to send to a forensic lab;
- ☐ Information and evidence gathered allows the Medico Legal Officer to form an opinion as to what happened to this child;
- ☐ Even if no forensic evidence is found on the child, medical experts can explain why it doesn't exist ("It's normal to be normal").

Physical exam of child's body (exterior):

- ☐ Use diagrams - All Medico-Legal reports come with a diagram.;
- ☐ Note any bruising;
- ☐ Note any lacerations;
- ☐ Does the child identify any parts of his/her body that hurt?

Physical exam of child's body (interior genital region) –

- ☐ Make sure the child knows what you are doing at all times;
- ☐ Ask permission to look at child's genital region:
 - Explain that the purpose is to make sure the child is safe;
- ☐ Use the frog position to get the best view of the child's outer vaginal region;
- ☐ Use special scopes for any photographs of interior injuries (bruising, lacerations, healed tears);
- ☐ If most recent experience warrants, swab the child's vagina for DNA.

"It's normal to be normal":

- ☐ Children heal very rapidly;
- ☐ Female child's genitals are warm and moist – healing is quick;
- ☐ Very unusual to see any physical injuries, even with penetration.

3.0 STANDARD OPERATING PROCEDURES (SOPS)

SOPS FOR CHILDREN IN CONFLICT WITH THE LAW/JUVENILE ACCUSED PERSONS

Those SOPs abide by four fundamental principles inherent to child justice:

1. Best interests of the child
2. Dignity
3. Right to be heard/Participation
4. Non-Discrimination.

Those SOPs are designed to guide justice practitioners about how to treat children in conflict with the law ('juvenile accused') during the following phases: **arrest, diversion and trial**. The aim is to enforce restorative justice, in line with the existing Pakistani legal framework and international standards.⁸³

ARREST

Key concepts for the arrest of a child in conflict with the law:

- ☐ The benefit of doubt always goes to the child;
- ☐ The arrest must be aligned with the legal age of minimum criminal responsibility, which is currently 10 years in Pakistan. Hence, under Section 82 of the Pakistan Penal Code, 1860 ('PPC') no child less than 10 years of age can be arrested or charged for a crime in our country;
- ☐ If there is no proof of age, the police must follow an age determination protocol, and if it cannot be established that the child is above the legal minimum age of criminal responsibility, then the child must not be arrested;
- ☐ All children in conflict with the law must be treated equally;
- ☐ Presumption of innocence, right to be informed about the charges, right to remain silent, right to legal counsel, right to the presence of a parent/guardian, right to cross-examine witnesses appearing against the accused and right to appeal to a higher authority should be guaranteed at all stages of the proceedings since they are fundamental procedural rights and guaranteed through legislation, *inter alia*, Juvenile Justice System Act, 2018;

⁸³ In case of any provision of the SOPs is in conflict with the domestic legislation, the provision of the law should be preferred.

- ☐ Contact with the Law Enforcement Agencies (LEAs) should be managed in a manner that respects the specific legal status of a juvenile, promotes his/her well-being, avoids any harm, and always seeks the best interests of the child as defined in the Juvenile Justice System Act, 2018;
- ☐ Information and legal advice should be provided to the child in an age appropriate manner and via a language that the child can understand;
- ☐ Upon arrest of a child in conflict with the law, his/her parents/guardians must be immediately contacted by the LEAs and, whenever this notification is not possible, the child should be sent to an observation home⁸⁴ and the parents or guardians should be informed of the child's arrest within the shortest possible time thereafter;
- ☐ Throughout the proceedings, the juvenile should have a right to be represented by a lawyer and may request free legal aid. The legal aid provided to the child should focus on upholding the best interests of the child and be accessible, age-appropriate, gender-sensitive, multidisciplinary, effective and responsive to the specific legal and social needs of the child (this is especially important when a child is differently able or belongs to a marginalized group);
- ☐ Any interview with a child in the absence of his/her lawyer or any other legal aid service provider and parent/guardian, should be prohibited;
- ☐ The privacy, personal data and dignity of the child should be protected in accordance with the law;
- ☐ Members of the Law Enforcement Agencies who frequently deal with children in conflict with the law should be specifically trained and mentored;
- ☐ Maximum efforts should be made to deal with juvenile offenders without resorting to a formal trial and using diversion options instead;
- ☐ The background and circumstances of the child in conflict with the law and the conditions under which the offence has been committed should be properly investigated and documented to facilitate pertinent adjudication.

Usually the first interaction that a child has with the justice system when he/she comes in conflict with the law is with the police or any other law enforcement official. It is crucial that this first contact should be **fair**. To this effect, the police/law enforcement official should:

a) *Ensure the child understands and receives adequate information:*

- ☐ Explain to the juvenile in a simple language and in a dialect that he/she can understand why he/she is being placed in custody and the offence that he/she allegedly committed;

⁸⁴ An observation home, according to the Juvenile Justice System Act 2018, is a place where a juvenile is kept temporarily after being apprehended by police as well as after obtaining remand from Juvenile Court or otherwise for conducting inquiry or investigation for the purposes of this Act. Juvenile Justice System Act 2018, Definitions Section (p).

- ☐ Inform the juvenile of the reason for such custody and advise the juvenile of his/her constitutional rights in a language or dialect understood by him/her;
- ☐ The arresting officer should properly identify himself/herself and present proper identification to the juvenile (via a card, etc.);
- ☐ The probation officer should explain to the child and the child's parents or guardian the consequences of the child's act with a view towards counseling and rehabilitation, diversion from the criminal justice system, and reparation, if appropriate.

b) *Ensure the child's dignity and protection:*

- ☐ Under no circumstances use vulgar or profane words and/or sexually harass or abuse, or make sexual advances towards the juvenile;
- ☐ Avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint unless absolutely necessary, and only after all other methods of appeasement and control have been exhausted and have failed;
- ☐ Refrain from subjecting the juvenile to greater restraint than necessary for his apprehension;
- ☐ Avoid violence or unnecessary force;
- ☐ Immediately after apprehension, place the juvenile in an observation home;
- ☐ At least two persons accompanying the juvenile should of the same sex as the juvenile;
- ☐ Take the child immediately to the proper medical and health officer for a thorough physical and mental examination, in presence of a child protection officer, or probation officer (both of the same sex as the juvenile) and preferably with the presence of the parent/guardian;
- ☐ Under no circumstances should a juvenile be kept, placed or imprisoned with any adult inmate and any inmate who is not of the same sex.

c) *Inform parents and guardians:*

- ☐ Immediately, after apprehension, inform the arrested juvenile's parents or guardian and the concerned probation officer of such arrest. Where such notification of the parents/guardians is not possible within this timeframe, inform the within the shortest period of time.

d) *Follow an age determination protocol*

Determine the age of the child pursuant to Section 8 of the Juvenile Justice System Act, 2018, in the prescribed manner. Under the Pakistani law, these are factors that must be considered to determine the age of a child:

- ☐ Official documents or documents attested by government institutions may be given preference unless conflicting evidence is produced, in which case the benefit of the doubt should always be given to the accused person claiming juvenility;
- ☐ In case no documentation or conclusive evidence regarding the age of the accused person claiming juvenility is available, the probation officer or social welfare officer - as the case may be- should conduct a social investigation to investigate the social circumstances regarding the age and help determine the claim of the juvenility of such accused person;
- ☐ While determining the age, the Special Board (established under the JJSA 2018) should consider the Social Investigation Report (SIR) as a relevant document for conducting the age determination examination;
- ☐ Additionally, if no substantial material is available on record to prove the age of an accused claiming juvenility, the Magistrate may direct an age determination medical exam under subsection (2) of the Section 8 of the JJSA 2018, to be conducted by the Special Board. The Special Board should submit the report of its findings in writing to the Magistrate or the Juvenile Court, as the case may be, within seven days after the receipt of the order to conduct the age determination medical examination.

e) Ensure legal representation for the child

- ☐ Once apprehended, a child is to be immediately advised of his/her right to legal counsel. He/she must be informed about the procedure to access this free legal aid.

f) Secure pre-trial assessment

Soon after arrest, the police or any other relevant law enforcement official should conduct the child's assessment, in collaboration with the probation officer and/or any relevant social worker attached to the court, keeping in mind:

- ☐ The child's suitability for diversion
- ☐ The risk of reoffending
- ☐ Possible bail
- ☐ Sentencing
- ☐ Content of diversion programs and other interventions for juvenile offenders
- ☐ Changes in a child's needs and risks over time.

This assessment aims to gather information on the accused juvenile to assist the probation officer or social worker or child protection officer and the relevant police officer to make a recommendation to divert the case, send the child back with his/her parents/guardians, or organize a temporary placement. The assessment is also needed to ensure that the competent authority, in this case the magistrate, the Juvenile Justice Committee and later, the juvenile judge, are informed of relevant facts about the child: social and family background, educational

history, emotional and mental health, behavioral patterns. This assessment will basically constitute the SIR.

DIVERSION

Key concepts for diversion:

- ☐ The international legal framework that has been ratified by Pakistan encourages the enforcement of measures for children in conflict with the law that avoid resorting to judicial proceedings, provided human rights and legal safeguards are fully respected⁸⁵.
- ☐ Maximum efforts should be made to deal with juvenile offenders without resorting to the formal trial system whenever it serves the best interest of the child.
- ☐ Any diversion must require the consent of the child or his/her parent/guardian.
- ☐ When diversion is applied, children have a right to legal aid at every stage of the process.
- ☐ Juvenile accused should be provided an explanation of “diversion” and informed of the non-judicial proceedings available to them and what they entail.
- ☐ A variety of dispositions that fall under the ambit of restorative justice must be available to ensure that the child in conflict with the law is dealt in a manner which is appropriate to his/her well-being, age, maturity and proportionate with the nature of the offence and the child’s circumstances.
- ☐ Diversion should be used only when there is compelling evidence that the child committed the offence, that he/she voluntarily admits responsibility without any pressure, preferably shows remorse, and that the admission will not be used against the child in any subsequent legal proceeding.
- ☐ The police and magistrate and, more precisely, the Juvenile Justice Committee should be empowered to dispose of such cases without recourse to formal hearings.

a) Police report on diversion

- ☐ The investigation officer should submit a report to the Juvenile Court, on the prescribed form, along with the report under section 173 of the Code, by providing the following, but not limited to, details regarding:
 - ☐ Whether the case was eligible for Diversion under the Act;
 - ☐ Whether the case was referred for Diversion;
 - ☐ What efforts have been made to resolve the matter through Diversion;

⁸⁵United Nations Convention on the Rights of the Child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, United Nations Standard Minimum Rules for Non-custodial Measures, International Covenant on Social Economic and Cultural rights and International Covenant on Civil and Political Rights.

- ☐ The statements of the parties to the dispute recorded by the Juvenile Justice Committee; and
- ☐ The order of the Juvenile Justice Committee.

b) Social Investigation

- ☐ Upon information about the F.I.R. registered against a Juvenile or the arrest of a juvenile, whichever is earlier, the Probation Officer should contact the juvenile, his parents or guardian and investigation officer as soon as practically possible and inform the juvenile about his rights, possibility of resolution of the case through Diversion as well investigate about his social circumstances, if so required. The initial Social Investigation Report should be submitted to the Court within 24 hours.
- ☐ The comprehensive SIR may be submitted within 14 days from the date of the registration of the F.I.R. or from the arrest of the Juvenile, whichever is earlier.
- ☐ The Juvenile Court may order the Probation Officer to hold an inquiry into the social circumstances of the Juvenile, as and when so required.
- ☐ For the purposes of social investigation, the Government may notify a Social Welfare/Child Protection Officer, where Probation Officer is not available for any reason.

c) DIVERSION management via the Juvenile Justice Committee

- ☐ The Juvenile Justice Committee should dispose of the cases through diversion upon referral from the police, prosecution or the Juvenile Court, as the case may be, within a period of one month from the date of the referral.

d) Diversion and factors for its determination

- ☐ If, during the conferencing, mediation, conciliation or any other proceedings under Section 9 of the Act, the juvenile voluntarily admits the commission of the act, the Juvenile Justice Committee should develop an appropriate and desirable diversion program. Such admission should not be used against the juvenile in any subsequent judicial, quasi-judicial or administrative proceedings. The diversion program should be effective and binding if accepted by the concerned parties. The acceptance should be in writing and signed by the concerned parties and the appropriate authorities. The Probation Officer or Social Welfare Officer, as the case may be, should supervise the implementation of the diversion program.
- ☐ The Probation Officer or Social Welfare Officer, as the case may be, should submit a report to the Juvenile Justice Committee on the completion of diversion program, and when so required by the Juvenile Justice Committee or by the Juvenile Court.
- ☐ In determining the appropriate and desirable diversion, the following factors should be taken into consideration:
 - The nature and circumstances of the offense charged;

- The frequency and the severity of the act;
- The circumstances of the child (e.g. age, maturity, intelligence, mental health etc.);
- The influence of the family and environment on the growth of the juvenile;
- The reparation of injury to the victim;
- The weight of the evidence against the juvenile;
- The safety of the community;
- The best interest of the child as defined under clause (a) of section 2 of the Act.
- The juvenile's feelings of remorse for the offense he/she committed;
- The parents' or legal guardians' ability to guide and supervise the child;
- The victim's view about the propriety of the measures to be imposed; and
- The availability of community-based programs for rehabilitation and reintegration of the child.

e) Diversion Programs

The diversion program should include adequate and child sensitive socio-cultural and psychological responses and services for the child. Under subsection (2) of the Section 9 of the Act, diversion may be resorted to by the following diversion programs, such as, but not limited to:

At the level of Investigation:

- ☐ Restitution of property;
- ☐ Reparation of the damage caused;
- ☐ Indemnification for consequential damages;
- ☐ Written or oral apology;
- ☐ Care, guidance and supervision orders;
- ☐ Counseling for the child in conflict with the law and the child's family;
- ☐ Attendance in trainings, seminars and lectures on:
 - anger management skills;
 - problem solving and/or conflict resolution skills;
 - values formation; and
 - other skills which will aid the child in dealing with situations which can lead to repetition of the offense;
- ☐ Participation in available community-based programs, including community service;
- ☐ Participation in education, vocation and life skills programs;
- ☐ Confiscation and forfeiture of the proceeds or instruments of the crime.

At the level of the prosecution and the court:

- ☐ Diversion programs specified under paragraphs (a); and

- ☐ Written or oral reprimand or citation;
- ☐ Fine;
- ☐ Payment of the cost of the proceedings;
- ☐ Institutional care and custody; or
- ☐ The Juvenile Court, keeping in view the facts and circumstances of the case and after recording reasons, may pass an appropriate order as it deems fit.

The Juvenile Justice Committee should prescribe a time limit for completion of diversion proceedings. The Juvenile should present himself to the Juvenile Justice Committee at least once a month, outside school timing and preferably not on school days, for reporting and evaluation of the effectiveness of the program. Failure to comply with the terms and conditions of the contract of diversion, as certified by the Probation Officer or Social Welfare Officer, or child protection officer should give the offended party the option to institute the appropriate legal action.

TRIAL & SENTENCING

Key Concepts of trial and sentencing for children in conflict with the law:

- ☐ In all proceedings involving children, maximum efforts should be made to guarantee a speedy response while respecting rule of law;
- ☐ A juvenile accused should be dealt with the competent authority (in Pakistan, relevant police officer, juvenile magistrate, juvenile justice committee, juvenile judge) in accordance with the law and the principles of a fair trial and if convicted, should be entitled to appeal to a higher authority;
- ☐ Juvenile courts should be specialized and separate tribunals that are non-intimidating, child and gender-sensitive;
- ☐ Juvenile judges should respect the fundamental right of the child to be heard and express his/her views and remember the moto “nothing about children, without children”;
- ☐ Children are entitled to their own legal counsel and to free legal aid provided by the state. This legal aid should be accessible, uphold the best interest of the child, be age-appropriate, gender sensitive, multidisciplinary, effective and responsive to the various needs of the child, especially if the child is a differently able one or belongs to a marginalized group;
- ☐ Right to privacy and dignity of the child must be protected in all stages of the trial: no personal data about the child, no photo, no name should be made public or shared with media unless authorized by the court for very specific and extraordinary circumstances that serve the best interest of the child;

- ☐ Any reaction towards the juvenile accused should be proportionate to the offence allegedly committed by the juvenile, but also to the circumstances of the accused and the alleged offence.
- ☐ The treatment met by the juvenile accused should primarily aim at his/her reformation, reintegration as well as social rehabilitation;
- ☐ No juvenile offender should be awarded the death penalty;
- ☐ No life imprisonment without parole should be awarded to juvenile offenders;
- ☐ Institutionalization of juveniles should always be considered as a last resort;
- ☐ All personnel dealing with cases of juveniles must access specialized training and mentoring, and maintain a high level of professional competence;

Trial

Juvenile courts:

- ☐ The Juvenile Court should ensure that appropriate arrangements for the Juvenile are made in the courtroom, such as, but not limited to, providing elevated seats and assistance for children with disabilities, video linkage;
- ☐ The courtroom layout should ensure that, in so far as possible, the juvenile should be able to sit close to his or her parents or guardian or lawyer during all proceedings, always keeping in view the best interest of the child;
- ☐ It is advised that one day prior to the trial, the juvenile, accompanied by his/her parents/guardian, legal counsel and probation or child protection officer, should be given a “tour of the premises” and be explained, in a simple language that the child can understand, the trial proceedings, who will be there, what will be their role and what to expect;
- ☐ Within the courtroom, or within another room connected to the courtroom via video linkage, the juvenile must be accompanied by his/her parents/guardian and a support person such as the probation officer, or the child protection officer;
- ☐ If the child shows signs of distress, it is the duty of the judge to let the child take a pause or even reschedule the hearing so that the child can be in a situation where he/she can give her best evidence;
- ☐ Where applicable, and with due regard for the rights of the complainant, the Juvenile Court should not allow cross-examination of a juvenile by any person other than the complainant or prosecutor under the supervision of the judge, who should have the duty to prevent the asking of any question that may expose the juvenile to intimidation, hardship or undue distress and that may put at risk the best interest of the child;

- Ideally, questions to be asked to a juvenile, should be submitted to the judge and the prosecutor in writing and the age and child sensitivity of those questions should be assessed;
- The Juvenile Court, taking into account the best interests of the child, at the request of a juvenile, his parents or guardian, his lawyer, or other appropriate person designated to provide assistance or on its own motion, may order one or more of the following measures to protect the privacy as well as the physical and mental well-being of the juvenile, and to prevent undue distress and secondary victimization:
 - Expunging from the public record any names, addresses, photos, workplaces, professions or any other information that could be used to identify the juvenile;
 - Forbidding the prosecution or defence lawyer from revealing the identity of the juvenile or disclosing any material or information that would tend to identify the juvenile;
 - Ordering the non-disclosure of any records that may enable to identify the juvenile, until such time as the court may deem appropriate;
 - *Holding* closed sessions;
 - Efforts to conceal the features or physical description of the child giving testimony or to prevent distress or harm to the juvenile, including testifying:
 - behind an opaque shield;
 - using image or voice altering devices;
 - through examination in another child sensitive place, transmitted to the courtroom by means of closed-circuit television and video linkage;
 - by way of videotaped examination of the juvenile prior to the hearing, in which case the counsel for the accused should attend the examination and be given the opportunity to examine the child witness or victim;
 - through a qualified and suitable intermediary, such as, but not limited to, an interpreter for children with hearing, sight, speech or other disabilities or impairments.
- At any stage of proceedings, the Juvenile Court may in the best interest of a child's decency or morality, direct any person to withdraw from Court for such period as the Court may direct;
- If at any stage of proceedings, the Juvenile Court is satisfied that the attendance of the juvenile is not essential for the purposes of the trial, the Juvenile Court may dispense with the attendance and proceed with the case in absence of the juvenile;
- When a juvenile who has been brought before the Juvenile Court is found to be suffering from serious illness, whether physical or mental, and requires treatment, the Court should send such juvenile to a hospital or a relevant medical institution where treatment should be given to the juvenile at the expense of the State.

Legal assistance:

- ☐ The Juvenile Court should ensure that each child avails legal assistance;
- ☐ Where it appears to a Juvenile Court or to the juvenile that a legal practitioner appointed by the State to conduct a case of juvenile is not competent or diligent, or not child and/or gender sensitive, the Court may order the engagement of any other legal practitioner, for reasons to be recorded by the Court, for the purpose, at the State expense;
- ☐ A panel of legal practitioners, trained in the rights of the child, should be constituted by the Sessions Judge for the purpose of providing legal assistance to the juvenile at State expense; whereas, a legal practitioner should not be appointed for more than two cases of juveniles at the same time;
- ☐ The legal practitioner, appointed to defend the case of a juvenile, should be entitled to receive a fee determined by the Session Judge subject to the minimum limit of Rupees ten thousand and not exceeding Rupees twenty thousand;
- ☐ The case of a juvenile should not be dealt by the same legal practitioner successively at the State expense unless otherwise asked for by the Juvenile Court.

Sentencing**Proportionality**

The juvenile judge must ensure that the sentence is proportionate to the offense that was committed and to the child's level of responsibility. In order to assess this, the judge must take into consideration:

- ☐ Is the juvenile suffering from any mental impairment? From any mental health disease?
- ☐ Has the juvenile already committed an offence before? Which type? How many times? When? Why?
- ☐ What harm was done to the victim? Could the child foresee/assess the harm that would result from his/her act? Was it intentional?
- ☐ Was the child previously convicted for an offence?
- ☐ Any other aggravating or mitigating circumstances pertaining to the child and the offence he/she committed.
- ☐ Is there any risk that the child may relapse?
- ☐ What are the chances of the juvenile hurting others?
- ☐ Restorative justice should always prevail.

Adjudicating and disposing of cases

While issuing a sentence, the judge must remember that his main purpose will be to positively reform the child and makes him/her accountable for his/her acts. Sanctions must be meaningful, safe, dignified, age and gender appropriate, culture sensitive and must contribute to the rehabilitation and reintegration of the juvenile offender into society as a positive citizen.

In general, adjudication should always ensure that:

- ☐ After taking responsibility, the child agrees to and can amend and repair the damage caused to a person and society in general;
- ☐ Positive social values would be reinforced for the child;
- ☐ Parents/guardians are adequately and safely involved in the decision and that a consensus is built towards the rehabilitation and reintegration of the juvenile offender in society;
- ☐ The level of involvement of the juvenile offender in the commission of the offence is clarified;
- ☐ Any example that demonstrates the juvenile offender's attempt to make amends is taken into consideration;
- ☐ The fundamental principles of the Beijing Rules, including those that demand the following, are taken into consideration:
 - restriction on the child's liberty should be limited to the minimum;
 - restriction on the child's liberty should occur only for a serious offence that involves an act of violence against someone else or in cases of repeated serious crimes and when there is a lack of any other alternative; and
 - Corporal punishment can never constitute an acceptable sentencing.

Provision of assistance

Since restorative justice must be applied for juveniles, it is important that the sentencing and the measures taken to dispose of the case ensure that the child will be availed the following support services:

- ☐ Lodging, health and food
- ☐ Education
- ☐ Protection
- ☐ Development and psychological support

Those services will be available whether within or outside the rehabilitation centers as envisaged under the JJSA 2018.

Implementation of disposition

The juvenile judge may, whenever appropriate, issue supervision orders and monitor the juvenile offender's rehabilitation and the efficiency of the measures proposed to the child. This monitoring can be done on a periodic basis determined by the court and strengthened by the judge issuing a sentencing contract between the court and the child, and in agreement with the parents/guardian, to motivate the child and make him/her the agent of his/her own rehabilitation.

Additionally, other measures such as community service, fines, medical treatments, refraining from certain activities or limiting the child's mobility or interactions, may be ordered by the juvenile judge.

ACTIVITY 1

Activity 1:

Mock sessions

Divide participants into 6 groups.

The first three groups will be given the duty to mock a trial in 30 mn.

Each of those three groups will be given a case scenario to mock.

The three other groups will be given a duty to observe the judicial process (group 4 will observe group 1, group 5 will observe group 2, group 6 will observe group 3).

After each mock trial, the observation group will share its comments. The corresponding court decision will be shared with all participants and discussion will follow for each case.

The standard operating procedures (SOPs) presented in this document abide by four fundamental principles inherent to child justice as stated under the United Nations Convention of the Rights of the Child:

- 1. The best interests of the child;**
- 2. Dignity;**
- 3. The right to be heard/participation; and**
- 4. Non-discrimination.**

The SOPs set forth best practices and legal obligations from Pakistani law and the consensus of contemporary knowledge and relevant international and regional norms, standards and principles embodied in the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. As a rule, children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs.⁸⁶ Children who suffer harm as a result of crime and abuse of power may suffer additional hardship when assisting in the justice process. “Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.”⁸⁷ These SOPs aim to guide justice practitioners in Pakistan to effectively investigate, prosecute, and adjudicate cases of child abuse, particularly child sexual abuse (CSA), and to work with child victims/witnesses of CSA during the three stages of the justice process: reporting and investigation; trial; and post-trial.

Definition of Child Abuse:

While there is not a direct definition of child abuse in Pakistani law, the Pakistan Penal Code, through article 328 A, does define cruelty towards a child as, “328A. Cruelty to a child.— Whoever willfully assaults, ill-treats, neglects, abandons or does an act or omission or commission, that results in or has, potential to harm or injure the child by causing physical or psychological injury to him...”. This definition, while far from complete, does give a guideline for what can be considered as child abuse.

⁸⁶ Economic and Social Council (ECOSOC) Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, A/RES/2005/20 (22 July 2005), available at <https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/documents/2005/resolution-2005-20.pdf>

⁸⁷ ECOSOC Res. 2005/20, Annex ¶10, U.N. Doc. A/RES/2005/20 (22 July 2005).

Definition of Child Sexual Abuse:

“Child sexual abuse is defined as any form of sexual activity with a child by an adult or by another child who has power over the child. By this definition, it is possible for a child to be sexually abused by another child. Child sexual abuse often involves body contact. This could include sexual kissing, touching, and oral, anal or vaginal sex. Not all sexual abuse involves body contact, however. Forcing a child to witness rape and/or other acts of sexual violence, forcing children to watch pornography or show their private parts, showing a child private parts (“flashing”), verbally pressuring a child for sex, and exploiting children as prostitutes or for pornography are also acts of sexual abuse.” ⁸⁸

According to the Pakistan Penal Code, Article 377A, “Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse” .

Other Definitions of Sexual Abuse According to Pakistani Provincial Law

According to section 2(y) of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, “Sexual abuse” means employing, using, forcing, persuading, inducing, enticing, or coercing any child to engage in, or assisting any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or stimulation of such conduct either independently or in conjunction with other acts, with or without his consent.

According to section 2(w) of the Balochistan Child Protection Act, 2016, “Sexual abuse and exploitation” includes:- (i) the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (ii) the use of children in commercial sexual exploitation; (iii) the use of children in audio or visual images of child sexual abuse; and (iv) child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage.

⁸⁸International Rescue Committee & UNICEF, *Caring for Child Survivors of Sexual Abuse: Guidelines for health and psychosocial service providers in humanitarian settings*, available at https://www.unicef.org/pacificislands/IRC_CCSGuide_FullGuide_lowres.pdf

Key concepts and values⁸⁹:

- The best interest of the child and his/her safety and well-being must always prevail in any decision taken by the court that directly or indirectly impacts the child victim/witness;
- Child victims and witnesses should be enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding their safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;⁹⁰
- All stages of the justice process should be carried out by trained professionals,⁹¹ who should be child and gender sensitive, inclusive and should focus on avoiding any form of secondary victimization. “Child-sensitive” denotes an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views;⁹²
- Investigation of crimes involving child victims and witnesses should be expedited and trials should take place as soon as practical, unless delays are in the child’s best interest;⁹³
- According to the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, child victims and witnesses and their parents or guardians, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, *inter alia*:⁹⁴
 - The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;

⁸⁹ Penal Reform International, *Protecting children’s rights in criminal justice systems: A training manual and reference point for professionals and policymakers* (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf>

⁹⁰ ECOSOC Res. 2005/20, Annex ¶1(b), U.N. Doc. A/RES/2005/20 (22 July 2005).

⁹¹ ECOSOC Res. 2005/20, Annex ¶9(b), U.N. Doc. A/RES/2005/20 (22 July 2005). (The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime defines “professionals” as “persons who, within the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system and for whom these Guidelines are applicable. This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and, where appropriate, defence lawyers; diplomatic and consular staff; domestic violence programme staff; judges; court staff; law enforcement officials; medical and mental health professionals; and social workers[.]”)

⁹² ECOSOC Res. 2005/20, Annex ¶9(d), U.N. Doc. A/RES/2005/20 (22 July 2005).

⁹³ ECOSOC Res. 2005/20, Annex ¶30(c), U.N. Doc. A/RES/2005/20 (22 July 2005).

⁹⁴ ECOSOC Res. 2005/20, Annex ¶19, U.N. Doc. A/RES/2005/20 (22 July 2005).

- The procedures for the adult and juvenile criminal justice processes, including the role of child victims and witnesses; the importance, timing and manner of testimony; and ways in which “questioning” will be conducted during the investigation and trial;
- The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
- The specific places and times of hearings and other relevant events;
- The availability of protective measures;
- The existing mechanisms for review of decisions affecting child victims and witnesses; and
- The relevant rights for child victims and witnesses’ pursuant to the UNCRC and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
- All meetings, interviews, and hearings should be conducted in a safe child and gender sensitive environment that enables the child victim/witness to give his/her best evidence⁹⁵;
- Avoid unnecessary contact between the child victim/witness and the justice system, as this may contribute to secondary victimization and unwarranted trauma/stress for the child⁹⁶;
- No child victim/witness should experience any form of discrimination; all children are equal before the law in accordance with the Constitution of Pakistan⁹⁷;
- The child’s right to privacy and dignity should be protected and ensured at every stage of the justice process;
- All child victims/witnesses, once declared competent to testify by the relevant court, should be availed of their fundamental right to participate in the judicial process, be involved in the related decision-making processes that directly impact them and be allowed to express their views and opinions that should be taken into consideration by the competent authority⁹⁸; and

⁹⁵See, e.g., ECOSOC Res. 2005/20, Annex ¶14, U.N. Doc. A/RES/2005/20 (22 July 2005) (“All interactions ... should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands.”).

⁹⁶UN Office on Drugs and Crime (UNODC), *Justice in Matters Involving Child Victims and Witnesses of Crime. Model Law and Related Commentary* (2009), Article 13(2) & Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice (“Kindness and friendliness towards children aid in their protection. Repeated interviews, intimidating settings and procedures, discrimination: a plethora of such practices augment the pain and trauma of children who may already be in great distress.”).

⁹⁷CONST. art. 25, sec. 1. (All citizens are equal before law and are entitled to equal protection of law.).

⁹⁸See, e.g., United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989) & ECOSOC Res. 2005/20, Annex ¶18(d), 18, U.N. Doc. A/RES/2005/20 (22 July 2005).

- Child victims and witnesses should have access to and be availed of child, culture and gender sensitive legal, medical, psychological and financial support services in line with the laws and policies of Pakistan to ensure reparation as well as their healing, rehabilitation and reintegration.⁹⁹;

Those key values, as well as the holdings of the Supreme Court of Pakistan in *SALMAN AKRAM RAJA and another—Petitioners Versus GOVERNMENT OF PUNJAB*, should be reflected in the way the three stages of the justice process articulated below are conducted by actors of the justice sector.

FREE SERVICES AVAILABLE TO CHILDREN IN PAKISTAN

Some of these services may include free legal aid and access to the victims' fund provided for by the Ministry of Human Rights (MOHR). (Ministry of Human Rights, Human Rights Relief and Revolving Fund (http://www.mohr.gov.pk/index.php/home/pps_page/6.) There is also the Women's Center for victims of violence, where victims can access free medical, legal and counselling services. (Shaheed Benazir Bhutto Center for Women (http://www.mohr.gov.pk/index.php/home/pps_page/19.) Even though this is stated as a Women's Center, it is still useful for children who have suffered violence, particularly females and adolescent girls who have been abused. The MOHR also has a helpline (1099), through which victims can access legal advice on human rights violations, including violations against children. The MOHR also has a "Women in Distress and Detention Fund", which has the main purpose of providing financial and legal assistance to women languishing in jails on account of different allegations and those who face extreme hardship. This fund can be extremely useful for juvenile girls who may have been falsely accused of a crime, especially a sexual crime and those who are facing abuse within the prison environment. (http://www.na.gov.pk/uploads/documents/1513247333_242.pdf.) Finally, free medico-legal and forensic examinations within public hospitals and labs are available to children through the Ministry.

Moreover, multiple civil society organizations (CSOs) like the Society for the Protection of the Rights of the Child (SPARC) and Sahil have extended counselling and legal aid services to both victims of CSA and children accused in prison. (SPARC (<http://www.sparcpk.org/CSC.html>), Sahil (<http://sahil.org/free-counseling-services>), <http://sahil.org/free-legal-aid/>, <http://sahil.org/juvenile-rehabilitation>.) Sahil, for example, has launched a Direct Line for Counseling at +92-51-2850574 and set up counselling centers under the name Jeet Healing Centers in many Pakistani cities like Lahore and Abbottabad. (Sahil (<http://sahil.org/free-legal-aid/>.)

⁹⁹ UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, A/RES/2005/20 (22 July 2005), available at <https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/documents/2005/resolution-2005-20.pdf>; UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, (1985) available at: <https://www.refworld.org/docid/3b00f2275b.html> ; and United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187, (2013) available at: <https://www.refworld.org/docid/51e6526b4.html> (Principles 4-5, Guidelines 7-8)

Supreme Court of Pakistan held in PLJ 2013 SC 107 SALMAN AKRAM RAJA and another—Petitioners Versus GOVERNMENT OF PUNJAB that:

- (a) Every Police Station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counseling. A list of such organizations may be provided by bodies such as the National Commission on the Status of Women. Each Police Station to maintain a register of such organization. On receipt of information regarding the commission of rape, the Investigating Officer (IO)/Station House Officer (SHO) should inform such organizations at the earliest.
- (a) Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape cases.
- (b) As soon as the victim is composed, her statement should be recorded under Section 164, Code of Criminal Procedure, 1898, preferably by a female magistrate.
- (c) Trials for rape should be conducted in camera and after regular Court hours.
- (d) During a rape trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.
- (e) Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court.

REPORTING AND INVESTIGATION

Reporting

The first point of contact for a child victim/witness with the justice system may be a helpline, a child protection officer, a police officer, or a medico-legal officer. Existing helplines and relevant State institutions in Pakistan, such as the National/Provincial Commission on the Status of Women, National/Provincial Commission on Human Rights, National Commission on the Rights of the Child, Ombudspersons, Child Protection and Welfare Bureau in Punjab, and the Khyber Pakhtunkhwa Child Protection and Welfare Commission, Sindh Child Protection Authority, Sindh Human Rights Commission, and Balochistan Child Protection Commission, should report crimes against children or cases of child abuse that have been notified to them by a child victim/witness or their parent/guardian or any other citizen to the police.

- ☐ Whenever possible, a support person (preferably same sex and gender as the child in the context of Pakistan) and/or parent or guardian, should reach out/accompany the

child after the abuse has been reported or notified to the police/investigating officer. The police should preferably be the ones to assign this support person. (This will be after the abuse has been reported and the child is going for their first interview or formal interaction with the police.);

- ☐ The first point of contact needs to use language and terminology that is easily understood by the child victim;
- ☐ The initial meeting should aim to make the child victim as comfortable as possible and avoid undue stress or anxiety. To this effect, the point of contact may initially thank the child for coming or speaking up, reassure the child that he/she is safe, proceed with an introduction and ask the child general questions such as but not limited to his/her name, how he/she travelled, how was the travel, where he/she comes from, ask if he/she goes to school, what he/she likes doing, etc.;
- ☐ The first point of contact should then ask about the child victim's health and well-being, how he/she is feeling, if he/she hurts anywhere, if he/she thinks he/she can answer some questions or if he/she prefers to do it at some other point in time;
- ☐ A first account of the alleged offence can then be obtained by inviting the child victim to sit in a room/place where he/she feels comfortable, share a first uninterrupted account of events in the presence of the guardian/parent (whenever possible or safe, depending upon circumstances) and/or a support person;
- ☐ If the child victim is not able to continue with the first account, the interview can be paused, and the account can start again when the child feels better.

Please refer to the "Victim-Centric Investigations" Chapter *infra* for further guidance on interviewing child victims and witnesses of crime, including conducting minimal facts interviews and forensic interviews.

First Information Report

Any investigation into child abuse and child sexual abuse usually begins with a formal complaint/report filed with the police. In Pakistan, this is called a First Information Report or F.I.R. This report can be submitted by the guardian of the child victim, by a friend or relative, or by anyone who wants to report the abuse (NGO worker, social worker, medical professional, teacher, etc.). The referrer must first file an application for a F.I.R. at a police station and then, when the application is approved, complete the report detailing the incident/abuse that occurred.

Contents to be included in an F.I.R. by the Investigating Officer:

- ☐ Referrer's details (Full Name and Address);
- ☐ Victim/survivor's details (Full Name, Address and Age);

- ☐ Details of concern (date, time and location of the abuse);
- ☐ The facts/events of the incident as they happened;
- ☐ Details of any witnesses (names and addresses);
- ☐ Suspect(s)' details and names of any other person involved in the incident; and
- ☐ Who made the referral (Police, NGO worker, social worker, reporter, victim, person victim knows, etc.). This first disclosure may be filed by the victim or by anyone else and then submitted to the police.

A Report completed for/by a child requires special attention when getting a description of the incident/events and the specific abuse or crime that took place (Children obviously have a harder time explaining, understanding and conveying abuse, particularly sexual abuse, to people. Some may not even know that they were abused.).

Providing support services

According to the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, “[child victims and witnesses ... should have access to assistance provided by professionals ... [.] This may include assistance and support services such as financial, legal, counselling, health, social and educational services necessary for the child’s reintegration. All such assistance should address the child’s needs and enable him or her to participate effectively at all stages of the justice process.”¹⁰⁰

Upon notification and reporting of a crime against a child, existing helplines, relevant State institutions and the police should take appropriate measures envisaged in the applicable laws and regulations to refer the child complainant to appropriate support services that serve the best interests of the child. In Pakistan, this assistance may consist of legal aid, placement with a family member or in a child protection institution, protection by the police, medical assistance, financial aid or any other form of support envisaged under relevant Pakistani child protection laws.¹⁰¹ For example, the Criminal Law (Amendment Offences Relating to Rape) Act, 2016 added language to the Criminal Procedure Code (Cr.P.C.) requiring that free legal aid be provided to victims of offences under articles 354A, 376, 377, and 377B of the PPC with assistance from the provincial bar councils.¹⁰² Child victims are also entitled to free legal aid as a right under the JSA 2018.¹⁰³

¹⁰⁰ ECOSOC Res. 2005/20, Annex ¶22, U.N. Doc. A/RES/2005/20 (22 July 2005).

¹⁰¹ Sec. 18, 20, 28, 29 Punjab Destitute and Neglected Children’s Act, 2004; Sec. 10, 12, 13, 25, 26, KPK Child Protection and Welfare Act, 2010; Sec. 20, 26, Sindh Children Act, 1955, Sec. 18, Sindh Child Protection Authority, 2011; Sec. 15(1), Balochistan Child Protection Act, 2016; S. 161A, Code of Criminal Procedure, 1898 (Act V of 1898), Juvenile Justice System Act, 2018; and S.3(1), ICT Child Protection Act, 2018

¹⁰² S. 10, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016. & S. 161A, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁰³ S.3(1), Juvenile Justice System Act, 2018.

The police are required to inform the victim of his/her right to free legal assistance and provide the victim with a list of lawyers maintained by the Provincial Bar Council.¹⁰⁴ It is important that the initial point of contact takes into consideration the child's views and concerns or special needs before organizing assistance for the child victim. If some of the child victim's needs cannot be met, the initial point of contact must explain to the child victim why and what may happen next.

Relevant State Institutions:

- ☐ Child Protection Welfare Bureau in Punjab
- ☐ KP Child Protection and Welfare Commission
- ☐ Sindh Child Protection Authority
- ☐ Balochistan Child Protection Commission

The child protection helpline 1121 is available in Punjab, Sindh, Khyber Pakhtunkhwa (KPK) and the Islamabad Capital Territory (ICT).

Instant Protection of Victim

Disclosing abuse can make the victim/child vulnerable to attack, intimidation and further abuse, particularly if the abuser is a relative, parent or lives with them. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from the risk before, during and after the justice process.¹⁰⁵ Police officers should assess the victim's safety needs, including during the investigation and judicial process, and implement the necessary measures for the child's protection. After reviewing the report and assessing the elements of the case, the main goal for the investigators should be the immediate safety of the victim; a child protection order may be sought with the court.

A victim of crime has the right to the protection of the law; to be treated in accordance with the law (Article 4 of the Constitution); and to be treated equally without discrimination (Article 25 of the Constitution). The State has the responsibility to protect citizens against crime. The Police Order, 2002 and the Khyber Pakhtunkhwa Police Act, 2017 make clear that, with reference to the matters of women and children, it shall be the duty of every police officer to aid individuals who are in danger of physical harm, particularly women and children, and to prevent harassment of women and children in public places:

¹⁰⁴S. 10, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016. & S. 161A, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁰⁵ECOSOC Res. 2005/20, Annex ¶132, U.N. Doc. A/RES/2005/20 (22 July 2005).

- ☐ Police Officer shall make every effort to - (a) afford relief to people in distress situations, particularly in respect of women and children¹⁰⁶; and
- ☐ Guide and assist members of the public particularly the poor, disabled or physically weak and children who are either lost or find themselves helpless on the streets or other public places.

Professionals who come into contact with children should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses.¹⁰⁷

Investigating and interviewing

Ideally, the investigation should be conducted as soon as possible by an adequately trained police officer who will first organize the interview with the child victim/witness in an appropriate place.

Planning Meeting

After the initial report has been reviewed, one option is to hold a planning meeting to chart the way forward for the investigation. The purpose of the planning meeting is to decide WHAT should be done, WHEN and by WHOM (investigator, lawyer, social worker, etc.). Individuals/bodies that should be involved in meeting include:

- ☐ Investigator(s) in charge of the case;
- ☐ Prosecutor/legal consultant;
- ☐ Child's social worker, psychologist, probation officer; and
- ☐ Sometimes a human rights body (In the context of Pakistan National Commission on Human Rights).

Priorities for the case should be established by the investigating team, focusing on the following methods/factors for prioritization:

- ☐ Safety of the victim;
- ☐ Gathering evidence that may be tampered with or lost;
- ☐ Arresting the suspect if there is a risk they may escape;
- ☐ Taking a forensic interview of the victim and any other witnesses, according to the established protocol; and

¹⁰⁶S. 4(2)(a), Police Order, 2002.

¹⁰⁷ECOSOC Res. 2005/20, Annex ¶134, U.N. Doc. A/RES/2005/20 (22 July 2005).

- ☐ Evaluating the information known and gathered up until this point.

It is recommended that the first planning meeting be held at the start of the investigation and then more can be scheduled if there is a need by the investigators. The meeting should be held at a time when all those involved in the investigation stop and evaluate the information/points of the case before going forward.

Possible next steps the investigation can take following the first planning meeting include:

- ☐ Getting a Medico Legal Report;
- ☐ Taking statements of victims, witnesses and suspects;
- ☐ Collecting evidence; or
- ☐ Arresting or apprehending the suspects.

The listed steps can proceed simultaneously or even before a meeting can be scheduled, as nothing should hinder the quality, accuracy and work of the investigation. Thus, if it is required, as in most sexual abuse cases, that evidence be collected immediately, then it should be done so. As well as taking statements, any other matter that might seem urgent should be completed.

Taking Statements of Child Victims, Witnesses and Suspects

Taking statements is important for any police officer working on child sexual abuse cases. The skill of interviewing and noting down the information that victims, witnesses and suspects provide is crucial for collecting sufficient/substantial evidence and for understanding the circumstances/events of the case. Under the Cr.P.C., an investigating police officer may, by order in writing, require the attendance before himself of any person who appears to be acquainted with the facts of a case under investigation.¹⁰⁸ There are two types of statements under Pakistani law: statements before police under section 161 of the Cr.P.C. and statements before magistrate under section 164. Under section 161, an investigating officer may examine orally any person who appears to be acquainted with the facts and circumstances of the case. The witness is legally bound to answer all questions relating to such case put to him by such officer, other than questions “the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture”¹⁰⁹. Under section 164, a Magistrate may “record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.”¹¹⁰ Section 164(1A) further provides that, “Any such statement may be recorded by such Magistrate in the presence of the

¹⁰⁸S. 160, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁰⁹S. 161(2), Code of Criminal Procedure, 1898 (Act V of 1898).

¹¹⁰S. 164(1), Code of Criminal Procedure, 1898 (Act V of 1898).

accused, and the accused given an opportunity of cross-examining the witness making the statement.”

Noting Down the Statements

The investigating officer shall make a separate record for each person whose statement he/she records.¹¹¹

- ☐ Police officers should never rush through a statement;
- ☐ The police officer should try and note down the story as close to the witness’s description as possible; and
- ☐ The police officer should try to get the story and the circumstances/facts of the case clear in his/her mind before trying to discern if a crime/offence was committed. This is meant to stop the police officer from jumping to conclusions on the case. Furthermore, this a good practice to employ when taking statements from children because, oftentimes, a child’s account of events can be disjointed and unclear, so it is up to the investigating officer to piece together the facts/timeline of the case.

Taking Child Victim’s Statement

One of the key elements of an investigation is the child victim/witness’s interview. The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime advise that professionals:

“Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location...”¹¹²

In the context of Pakistan, the interview will not be pre-recorded. It should be child and gender sensitive, and the child victim/witness should be prepared for it. Ideally, the interviewer (a police officer) should conduct the interview in the presence of a support person (child protection officer or an assigned child psychologist preferably of same sex and gender as the child) as well as the parent/guardian, provided it may not harm the child¹¹³. The interviewer should also ensure that appropriate arrangements are made to facilitate the child’s communication: the environment should be comfortable for the child and a translator should be arranged if required. It is important to involve the child as much as possible, ask for his/her views while planning this interview.

¹¹¹S. 161(3), Code of Criminal Procedure, 1898 (Act V of 1898).

¹¹²ECOSOC Res. 2005/20, Annex ¶130(d), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹¹³It is different when one of the parents/guardians is the alleged or one of the alleged child abuser(s).

Location of Interview

Since the events that have to be recounted by the child are highly traumatic, ensuring that the location for the interview is a conducive one is very important. Interviews should be held in a child-friendly environment and a private, quiet and calm room or location that ensures the utmost privacy and respect for the victim. The location should not be:

- ☐ At the crime scene;
- ☐ Utilized for other means during the interview;
- ☐ An area where the suspect can see the victim, or the victim can see the suspect; or
- ☐ A place where many people are let in during the interview; only the necessary people should be allowed into the room/area.

The Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 added language to section 154 of the Cr.P.C. allowing distressed victims, including child victims, of acid attacks, assaults against modesty, forced removal of a woman's clothes, rape, or sexual harassment to be interviewed by the police in their homes or in another convenient location of the victim's choosing rather than in a police station.¹¹⁴

In the event that a detained juvenile offender/suspect is being sexually abused, the investigation team will see the child in the detention center/jail. If the suspect works in the jail, the juvenile may be shifted to another detention facility, according to the jail manual and rules. If the accused is another inmate, he may also be shifted to another facility or put in an isolation cell, according to the jail manual.

Personnel who Conduct the Interview (Statements During the Investigation u/s 161 of the Cr.P.C.)

¹¹⁴S. 8, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016.

When conducting the interview, there should be at least two police officers and a support person/social worker/psychologist of the same sex as the victim to meet the child's wants and needs. According to the PPC, it is compulsory for an investigating officer to record (note down) the statement of a victim of an offence under sections 336B, 354, 354A, 376 and 509 of PPC in the presence of a female police officer or a female family member of victim. One police officer should be asking the questions, while the other is recording and noting down the information. The police officers can switch roles in order to both interact and engage with the child, as long as the child is comfortable with the change. (Switching interviewers should be discouraged if one police officer has developed a good rapport with the child.) The personnel conducting the interview should also be trained in using communication aids, such as dolls or drawings, in case the child is too young or too traumatized to verbally express what happened to him/her. Additional sensitivity should be given to children with disabilities, children from socio-economically deprived backgrounds, children from vulnerable groups or non-binary children.

To ensure that the child can give his/her best evidence, the interview should be structured

Section 154 of Criminal Procedure Code of Pakistan;

'Provided that if the information is given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by an Investigating Officer in the presence of a female police officer or a female family member or any other person with the consent of the complainant, as the case may be:

Provided further that if the information is given by the woman against whom an offence under section 336B, section 354. section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860), is alleged to have been committed or attempted is distressed, such information shall be recorded by an investigating Officer, at the residence of the complainant or at a convenient place of, the complainant's choice, in the presence of a police officer or family member or any other person with the consent of complainant, as the case may be"

according to the three steps listed underneath:

Introduction & Rapport

- The interviewer should make the child victim/witness as comfortable as possible and avoid undue stress or anxiety for the child victim/witness. To this effect, the interviewer may initially thank the child for coming, proceed with introductions and ask him/her general questions such as how he travelled, how was the travel, where he/she comes from, ask if he/she goes to school, what he/she likes doing, etc.;

- The interviewer should use a language and terminology that is easily understood by the child victim and the support person or the parent/guardian. If the child suffers from a speech or hearing impairment or does not speak the same language as the interviewer, a relevant translator may be called in;
- The interviewer should ask about the child victim/witness's health and well-being, how he/she is feeling, and if he/she thinks he/she will be able to answer some questions or if he/she prefers to do it at some other point in time. The interviewer should explain to the child victim/witness the purpose of the interview, who will be there, how long it will take, how it will be recorded and how the gathered information will be used. The interviewer should provide the child basic instructions on how to respond to questions (see Chapter 1 on Victim-Centric Investigations above);
- The interviewer should show care, empathy with and respect to the child victim/witness and reassure the child victim/witness that he/she is very brave for going through this process. It is important that the interviewer tells the child victim/witness that the interviewer is aware that it is not easy, and that the interviewer is very thankful that he/she came to the meeting and that whatever happened to him/her is not his/her fault;
- The interviewer should explain to the child victim/witness that, for the interview, it is important to:
 - always tell the truth;
 - listen to the questions carefully;
 - tell when a question confuses him/her;
 - say if he/she does not know the answer to a question.

Obtaining information

- The interviewer should encourage the child victim/witness to share a free account of events, with no interruption;
- "Details, further information or continued free recall - once the child has stopped- should be encouraged by responses such as *"and then what happened" ?*"¹¹⁵;
- DO NOT ask questions that direct the child victim/witness towards a certain answer (no leading questions);
- Keep questions as open ended, simple and short as possible;
- The interviewer should avoid repeating the same questions, as this can be intimidating and disturbing for the child.

¹¹⁵Penal Reform International, Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf>

Multiple interviews are not recommended and should be avoided. Special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, hearings and, specifically, unnecessary contact with the justice process.¹¹⁶

Details to include in victim's statement:

- ☐ Offence to be charged (This is to be decided by the investigating officer, not the child – the officer will take the victim's statement and then decide the legal course of action.);
- ☐ Date, time and place of the offence;
- ☐ Description of suspect conduct;
- ☐ Identification of the suspect;
- ☐ Description of the scene of the crime;
- ☐ If the child victim saw anyone before, during or after the crime/abuse was committed; and
- ☐ Date of the complaint and signature/an equally appropriate measure for children who are illiterate or have a disability.

The details above are of course age-dependent. Some younger children will only be able to tell the officer 'who' and 'what'. Dates and times are complex theories – for younger children, officers can ask questions regarding time of year; i.e. hot/cold; holidays; school or vacation/holiday time, rather than specifically date and time.

Additional measures for children who are illiterate or have a disability to verify the statement:

- ☐ Take a recording/video of the victim verifying the statement;
- ☐ Have the victim's lawyer or support person or social worker sign on their behalf; and/or
- ☐ Remove the necessity of a signature and take a verbal agreement instead, with the police officer to verify and corroborate the statement.

Things to do in an interview with a child victim:

¹¹⁶ECOSOC Res. 2005/20, Annex ¶31(a), U.N. Doc. A/RES/2005/20 (22 July 2005).

- ☐ DO be gender, developmentally and linguistically sensitive and respectful of the child victim.
- ☐ DO conduct the interview in the language in which it is easiest for the child victim to communicate.
- ☐ DO maintain privacy and confidentiality.
- ☐ DO accept and believe the victim's experiences.
- ☐ DO take pauses/breaks when the child shows signs of distress; reschedule if needed.
- ☐ DO provide the victim with updates on the investigations and any trial proceedings.
- ☐ DO understand, recognize and implement the wants/wishes of the child victim.
- ☐ DO try to sit at the same level as the child.
- ☐ DO acknowledge the child victim's efforts and thank him/her for his/her help.

Things not to do in an interview with a child victim:

- ☐ DO NOT hold the interview in a large, formal area filled with people.
- ☐ DO NOT conduct the interview with a victim who is distressed, scared or visibly sobbing or requires medical attention.
- ☐ DO NOT make the victim speak if they don't want to.
- ☐ DO NOT blame the victim, judge their experience or say they aren't telling the truth.
- ☐ DO NOT ever threaten, intimidate, yell or physically or mentally abuse the child victim.
- ☐ DO NOT conduct the interview with negative facial expressions and movements, as that indicates to the child that they may have done something wrong, adding to their stress, anxiety and guilt.
- ☐ DO NOT make promises to the child and only stick to your efforts and commitments.
- ☐ DO NOT initiate physical contact with the child (do not initiate a hug or make the child sit in your lap).

*Closure*¹¹⁷

- ☐ The interviewer should thank the child victim for his/her cooperation and acknowledge his/her distress, pain and experience;
- ☐ The interviewer should ask the child victim if there is anything else that he/she would like to add or ask;

¹¹⁷ Penal Reform International, Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf>

- ☐ The interviewer should again inform the child victim/witness about how the information he/she has given will be used during the justice process and explain to the child victim/witness what the next steps will be;
- ☐ The interviewer should also inform and guide the child victim/witness about available support systems and structures to report an abuse, file a complaint, access legal aid and be involved in trial proceedings (even if it was already done during the first point of contact).¹¹⁸

Statements of Witnesses

The investigating officers should visit the crime scene and talk to anyone who saw, heard or smelt anything before, during and/or after the offence. The investigating officer should also speak to others who may be able to give information about the child victim's mental and physical state before and after the offence. Examples of witnesses and relevant people with whom investigators should speak include:

- ☐ Eye-witnesses;
- ☐ Initial reporters;
- ☐ First responders;
- ☐ Other people to whom child made statements;
- ☐ Relatives and family members, including non-offending parent or caregiver;
- ☐ Neighbors and other people in the community;
- ☐ Teachers, doctors or psychologists who had contact with the child before and after the abuse;
- ☐ Any other person who can provide relevant information on the case (e.g., on suspect's personality, criminal records).

Interviewing witnesses is also a good way to determine the age of victims, witnesses and suspects. Especially for children in Pakistan who don't usually have state or federal documentation or certification of when they were born (i.e., passport, national identity card, birth certificate), asking witnesses and people in the community is a good way to identify not only the victim's age but also the suspect's age, which is important if the suspect is a juvenile.

Besides the statement, police officers will also note down the contact details of witnesses so that they can be reached to testify in trial proceedings.

¹¹⁸Since Pakistan is a federation, child protection laws vary according to provincial legislations and so do support mechanisms & structures for child victims/witness of CSA or any other abuse.

Interviewing Suspects

The police should take the statement of the suspect(s) so that he/she can give their account and perspective on the events of the case. The suspect has the right to give a statement and tell their side of the story or to be quiet and say nothing (both are rights of the suspect).¹¹⁹

Before beginning the interview, the investigating officer should caution the suspect(s) and state to the suspect(s) their rights and responsibilities:

- ☐ Right to be silent and say nothing at all,¹²⁰ as whatever they say can be used against them in court;
- ☐ Right to seek legal assistance from a lawyer during the interview, investigations and court proceedings;¹²¹
- ☐ Right to not be deprived of life or liberty save in accordance with law;¹²²
- ☐ Inviolability of dignity of man
 - The dignity of man and, subject to law, the privacy of home, shall be inviolable; ○ No person shall be subjected to torture for the purpose of extracting evidence;¹²³
- ☐ Right to be informed of the grounds for arrest;¹²⁴
- ☐ Right to be brought before a magistrate within 24 hours;¹²⁵
- ☐ Right to a fair trial.¹²⁶

Method of interviewing a suspect:

- ☐ Let the suspect give an uninterrupted and open account of his/her side of the story, noting down any discrepancies in the information being provided by the suspect;
- ☐ Then have a question and answer session to interview the suspect, asking probing and specific questions to the suspect in order to clarify any discrepancies in the information provided by the suspect;

¹¹⁹See, e.g., CONST. art. 13, S. b (“No person shall, when accused of an offence, be compelled to be a witness against himself”); S. 161(2), Criminal Procedure Code, 1898 (Act V or 1898).

¹²⁰See, e.g., CONST. art. 13, S. b (“No person shall, when accused of an offence, be compelled to be a witness against himself”); S. 161(2), Criminal Procedure Code, 1898 (Act V or 1898).

¹²¹CONST. art. 10, S. 1 (“No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.”).

¹²²CONST. art. 9.

¹²³CONST. art. 14.

¹²⁴CONST. art. 10, S. 1.

¹²⁵CONST. art. 10, S. 2; S. 60, 61, Code of Criminal Procedure, 1898 (Act V or 1898).

¹²⁶CONST. art. 10A.

- ❑ Don't be intimidated or threatened by suspects who are wealthy and have high position in the community;
- ❑ Do not scare, intimidate or suggest the suspect to confess to the crime (if this is done then the suspect's statement will not be allowed in court);¹²⁷
- ❑ Do not make the suspect sign the statement. As per section 162 of the Cr.P.C., statements made to police officers in the course of an investigation do not need to be signed. Nor may these statements be used in any inquiry or trial for any offence under investigation at the time when the statement was made, other than at the request of the accused for the purpose of contradicting a witness's testimony.¹²⁸

If the suspect wishes to confess, he/she should be taken before a magistrate. Magistrates of the First and Second Class, who are not police officers and have been empowered by the Provincial Government, may record statements and confessions made by the accused. Confessions, as opposed to statements to the police, should be recorded and signed. A Magistrate should only record a confession if he/she believes it was made voluntarily and should explain to the person making it that he/she is not bound to make a confession and that it may be used as evidence against him/her.¹²⁹

Medical Examinations

When a complaint/case of CSA or abuse is received by the police, it is crucial that the victim(s) are immediately put in contact with and receive necessary medical services at a hospital or health center. The purposes of having the victim receive medical attention are:

- ❑ To give immediate medical assistance/help to the child victim – This includes testing and treatment/mitigation of things like sexually transmitted diseases, infections, broken bones, stitching, HIV/AIDs and pregnancy. Giving medical care and help should be the first priority of medical professionals;
- ❑ Collect forensic evidence. Evidence that can be collected by a medical professional includes:
 - Blood, semen and other fluids or DNA found on the victim or his/her clothing¹³⁰;
 - X-ray images of broken bones;

¹²⁷ CONST. art. 10, S. 1 ("No person shall be subjected to torture for the purposes of extracting evidence.").

¹²⁸ See S. 162, Code of Criminal Procedure, 1898 (Act V of 1898).

¹²⁹ See S. 164, Code of Criminal Procedure, 1898 (Act V of 1898).

¹³⁰ Vol. 3, Chapter 18, Part C of the Rules and Orders of the Lahore High Court contains instructions for transferring blood stained articles to the Serologist of the Government of Pakistan in Islamabad for analysis. The Serologist at Islamabad has been appointed by the Government of Pakistan to carry on the medico-legal work of distinguishing human blood from other blood.

- Clothes, accessories and undergarments the victim was wearing at time of examination (physical appearance of the victim); and
- Photos of the victim and his/her injuries, such as bruising and lacerations.

Reports from medical examinations can have strong evidentiary value. According to section 510 of the Cr.P.C., a report from a Chemical Examiner or Assistant Chemical Examiner to Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any Serologist, fingerprint expert or fire-arm expert appointed by Government may be used as evidence in any inquiry, trial or other proceeding without calling the report's author as a witness. The Lahore High Court rules further provide that a Medical Officer should be consulted as to the articles to be sent to the Chemical Examiner for chemical analysis.¹³¹

In cases of child sexual abuse, both the victim and the accused should usually undergo a medical examination, provided the victim or his/her parent or guardian consents. Under the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, medical examinations are explicitly provided for when a person is arrested on a charge of having committed or attempted to commit rape, sexual abuse, or unnatural offences and there is reason to believe that material evidence could be collected through a physical examination of the person. If necessary, the suspect may be forced to submit to an examination by a medical practitioner.¹³² DNA should be collected from the arrested person as part of the medical examination and sent for analysis by a forensic laboratory as soon as possible.¹³³

Medical evidence should also be collected from the body of a victim, but unlike the accused, a victim may not be compelled to submit to a medical examination.¹³⁴ Section 164A of the Cr.P.C., added by the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, provides that in cases of rape, sexual abuse, or unnatural offences, the victim shall be examined by a registered medical practitioner as soon as possible following the commission of the offence, provided that

¹³¹Rules and Orders of the Lahore High Court, Volume 3, Chapter 18, *Medico-legal Work*, available at <https://www.lhc.gov.pk/system/files/volume3.pdf>

¹³²S. 53A, Code of Criminal Procedure, 1898 (Act V of 1898). (“(I) When a person is arrested on a charge of committing an offence of rape, unnatural offence or sexual abuse or an attempt to commit rape, unnatural offence or sexual abuse under section 176, section 377 and section 377B respectively and there are reasonable grounds for believing that an examination of the arrested person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose”)

¹³³S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164B, Code of Criminal Procedure, 1898 (Act V of 1898).

¹³⁴See S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164A (4), (7), Code of Criminal Procedure, 1898 (Act V of 1898); S. 25.19, Punjab Police Rules, 1934.

the victim or his/her parent or guardian has consented to the examination.¹³⁵ If the victim is a girl, she must be examined by a female medical practitioner. In cases other than those under sections 376, 377, or 377B of the PPC, “Female Assistant or Sub-Assistant Surgeons in Government service shall only be required to do medico-legal work ... when the woman or girl concerned refuses to be examined by a male doctor. When a female doctor is summoned by a Court[,] she must attend.”¹³⁶ The Police Rules, 1934 further state that, “No examination by a medical officer [of those parts of a living woman’s body that, if exposed, would violate her modesty] shall be made without her consent and without a written order from a magistrate, addressed to the medical officer, directing him to make such examination.”¹³⁷ If the victim is a woman or girl, she should, where possible, be escorted to the examination by a female police officer or a family member.¹³⁸ As with the medical examination of the accused, DNA should be collected during the medical examination of the victim.¹³⁹ When the examination is complete, the victim should be permitted to wash up using toiletries provided by the hospital. Hospitals should also have clothing for the child to put on if his/her own clothing is taken as evidence.¹⁴⁰

The police should ensure that a medical legal report (MLR) is issued by an appropriate and qualified medical professional/medico-legal officer with necessary skills and experience to examine a child who has been sexually abused. The Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 requires that the medical examination be conducted by a “registered medical practitioner”, which the Act defines as “a medical practitioner who possesses any qualification recognized as such under the Pakistan Medical and Dental Council Ordinance, 1962 (XXXII of 1962) and whose name has accordingly been entered in the Register maintained in this behalf under the said Ordinance and has been authorized by the Government to conduct such examination[.]”¹⁴¹ The Police Rules, 1934 provide that, “(1)When a medical opinion is required in police cases, the persons to be examined shall be produced before the highest medical authority available on the medical staff of the district.”¹⁴² Most medico-legal examinations will be conducted by dedicated staff in nominated district hospitals with the jurisdiction to conduct such examinations, but the Court (trial or Magisterial) may order the constitution of a special medical board, including a pediatrician, gynecologist, etc., if there is a need.

¹³⁵See S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164A (4), (7), Code of Criminal Procedure, 1898 (Act V of 1898)

¹³⁶S. 25.22, Punjab Police Rules, 1934.

¹³⁷S. 25.22, Punjab Police Rules, 1934.

¹³⁸S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164A, Code of Criminal Procedure, 1898 (Act V of 1898).

¹³⁹S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164B, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁴⁰See PLJ 2013 SC 107 (citing guidelines issued by the Delhi High Court in the Delhi Commission of Women case).

¹⁴¹S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016

¹⁴²S. 25.19, Punjab Police Rules, 1934.

When taking a child to receive medical help/assistance, an investigating officer should:

- ☐ Have an officer of the same sex and gender take the victim(s) to the hospital/health center for the examination;¹⁴³
- ☐ Explain to the victim the reason and purpose for the medical examination;
- ☐ Allow a relative/family member to come with the victim, if the victim wants them to be there;
If the victim allows it, and with extreme discretion, witness the medical examination making sure to record any indications of penetration or sexual intercourse (semen, injuries to the genitals and surrounding body parts); and
- ☐ Receive the medicolegal report.

Medical Examination Reports:

Medical practitioners who examine suspects and victims in cases of rape, unnatural offences, or sexual abuse under PPC sections 376, 377, and 377B are required to prepare reports detailing the findings and conclusions of their examinations. Once the report is complete, the medical practitioner is required to immediately transmit the report to the investigating officer, who will forward it to the Magistrate.¹⁴⁴

The report from a medical examination of the suspect shall include the following, in addition to the exact date and time of the examination:

- ☐ Name and address of the accused and of the person by whom he was brought;
- ☐ Age of the accused;
- ☐ Marks of injury, if any, on person of the accused;
- ☐ Description of material taken from the person of the accused for DNA profiling; and
- ☐ Other material particulars in reasonable detail.¹⁴⁵

The report from a medical examination of the victim shall include the following, in addition to the exact date and time of the examination:

- ☐ Name and address of the victim and of the person by whom she was escorted;
- ☐ Age of the victim;
- ☐ Description of material taken from body of the victim for DNA profiling;
- ☐ Mark of injury, if any, on body of the victim;

¹⁴³This is required in the case of female victims of crimes under PPC sections 376, 377, or 377B, also see S. 164A. Code of Criminal Procedure Code, 1898 (Act V of 1898).

¹⁴⁴S. 53A (4), 164A (6), Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁴⁵S. 53A, Code of Criminal Procedure, 1898 (Act V of 1898).

- ☐ General mental condition of the victim; and
- ☐ Other material particulars in reasonable detail.¹⁴⁶

Preservation of Medical Evidence:

- ☐ Medical evidence needs to be put in a sealed container or bag to avoid it being contaminated or thrown out as inadmissible evidence;
- ☐ The container should be labeled with the name of victim, name of the medical professional and the location/time the examination was conducted; and
- ☐ Kept in a secure, temperature-controlled location where it will not be lost, stolen, misused or ruined by the elements.

Hospitals should cooperate with the police to preserve samples likely to putrefy in their pathological facility until the police are able to complete their paperwork for dispatch to the forensic lab for testing.¹⁴⁷

Special considerations when conducting medical examinations of children in cases of child sexual abuse:

In reality, outright physical evidence/proof of sexual abuse is not necessarily found in children who have been sexually abused. A genital examination with normal findings cannot refute the possibility that the child has been sexually abused. This is because sexual abuse of children does not always involve visible physical harm, and children's bodies heal quickly. Thus, in many cases, a medical examination, particularly of the genitals and anus, of a child who been sexually abused may have normal findings. Indeed, in most instances, the medical examination doesn't refute or confirm the possibility of sexual abuse.

That said, medical evidence that, when found on a victim, strongly indicates a possibility of child sexual abuse includes:

- ☐ Significant anal scarring or dilation;
- ☐ Bruising and lacerations of the labia;
- ☐ Scarring and lacerations of the posterior fourchette not involving hymen;
- ☐ Hymenal cleft extending more than 50% of the width of hymenal rim;
- ☐ Sperm found on child's body; and/or
- ☐ Intentional, blunt and penetrating injury to the vaginal or anal openings.

¹⁴⁶Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁴⁷See PLJ 2013 SC. 107 (citing guidelines issues by the Delhi High Court in the Delhi Commission of Women case).

Collecting Physical Evidence

Along with taking statements from witnesses, officers should also be collecting any evidence and materials they see as relevant to the case. The evidence collection process must be aligned with forensic safeguarding procedures. Four main areas where the police can start to search and collect physical evidence are:

Crime Scene

Police officers need to visit the crime scene as soon as possible to collect physical evidence from the scene. Police should take photos and make sketches of the crime scene because the scene can change with the passage of time. Whenever possible, secure the crime scene as soon as possible.

If possible, the investigating officer should ask a dedicated forensic science team to assist in collecting physical evidence from the crime scene. Pakistan's provinces have established specialized units to collect forensic evidence. For example, in 2017, Khyber-Pakhtunkhwa province added a new section 25.13A to its Police Rules, 1934, providing for the establishment of the following in every district:

- ☐ Mobile Forensic Lab for the preservation and collection of evidence from crime scene;
- ☐ Cellular Forensic Unit for forensic examination of mobile data; and
- ☐ Finger Print Unit for lifting the finger prints for identification.¹⁴⁸

The investigation office or Station House Officer may call on the mobile forensic unit to respond to a crime scene to collect and preserve evidence found at the scene. The Mobile Forensic Lab shall assist the Investigation Officer in processing the scene of crime, particularly in the following tasks:

- ☐ Photography of the crime scene;
- ☐ Geo-tagging of the scene of crime through smart phone;
- ☐ Collection of physical and trace evidence;
- ☐ Packaging of physical evidence;
- ☐ Lifting of fingerprints and footprints; and
- ☐ Any other evidence.¹⁴⁹

The Punjab Forensic Science Agency plays the same role in Punjab province. Its mission is "To receive physical evidence from law enforcement agencies, on criminal and civil cases, analyze

¹⁴⁸S. 25.13 A, Khyber Pakhtunkhwa Police Rules, 1934, *amendments available at* <http://kppolice.gov.pk/act2017/rules.php>.

¹⁴⁹S. 25.13 B, Khyber Pakhtunkhwa Police Rules, 1934, *amendments available at* <http://kppolice.gov.pk/act2017/rules.php>.

and provide accurate results of forensic analysis in timely manner, and testify in COURTS OF LAW on analytical findings for the people of Punjab.”¹⁵⁰

On the Victim

Victims should be instructed not clean their clothes or change their outfits before the medical exam, as evidence like bodily fluids may be washed away and thus cannot be collected by the medical professional. Clothes and undergarments should be taken by the investigating officer and put in a safe and secure location.

Police and/or medical practitioners should take photos of the victim’s injuries with the consent of the victim. Explain to the victim why this is necessary for the investigation. **Photos of genital areas should only be taken by a medical professional.** These photos should be kept extremely confidential and private and shared only with essential personnel who need the photos to further the investigation.

On the Suspect

If the police officer arrests the suspect quickly and immediately, they need to search the suspect in order to collect evidence on their person. As noted above, suspects arrested for sexual offences should undergo a medical examination.¹⁵¹

If the suspect refuses to turn over evidence, the investigators should get a search warrant to search the suspect’s home/office and take things from his/her possession.

Suspect’s Home, Office or Vehicle

When searching a suspect or the suspect’s home, office or vehicle, investigators should look for:

- ☐ Anything described by the child in his/her statement;
- ☐ Grooming materials;
- ☐ Pornography;
- ☐ Photos (print or electronic) and videos of the child victim and/or other children;
- ☐ Weapons used to threaten the child;
- ☐ Items left by the child, such as drawings or clothing;

¹⁵⁰The Punjab Forensic Science Agency, Overview, <https://pfsa.punjab.gov.pk/overview>, last visited 25 August 2019.

¹⁵¹S. 53 A, Code of Criminal Procedure, 1898 (Act V of 1898).

- ☐ Computers, flash drives, phones, and other digital devices;
- ☐ Bank records;
- ☐ Phone records;
- ☐ Work records corroborating times available to spend with the victim;
- ☐ Etc.

Making an Arrest

It is the police officer's responsibility to make or not make an arrest. Victims and witnesses of abuse should never be consulted or given a choice on whether the perpetrator should be arrested or not.

- ☐ The victim should never go along with the police officers when they are arresting the perpetrator(s) as seeing the perpetrator can be very unsettling for the victim, especially if the person being arrested is a family member or close friend.
- ☐ Police officers need to state the reasons, in the charge sheet/challan, for making or not making an arrest.
- ☐ The victim's contact details should be taken by the police officers in order to let the victim know when the perpetrator has been arrested and in case the perpetrator is released from prison.

Conditions for Immediate Arrest of Suspect:

The Cr.P.C. has tabulated offences into "cognizable" and "non-cognizable" offences. With respect to cognizable offences, there is no need of a warrant to make an arrest. According to Schedule II of the Cr.P.C.: Tabular Statement of Offences, individuals suspected of child sexual abuse-related crimes may be arrested without a warrant.¹⁵²

Police officers should immediately arrest a suspect if they have reason to believe that:

- ☐ The suspect has attempted to tamper with evidence or influence witnesses or the victim;
- ☐ The suspect is attempting to run away or escape;
- ☐ If the crime happens in front of and in the vicinity of the police/police officers;

¹⁵²See Schedule II: Tabular Statement of Offences, available at <https://www.punjabpolice.gov.pk/system/files/Schedule-II-Tabular-Statement-of-Offences.pdf>, indicating that arrests may be made without a warrant for offences under sections 354, 354-A, 364-A, 366-A, 366-B, 367, 372, 376 (unless the suspect is married to the alleged victim), and 377.

- ☐ If the person/suspect is positively identified as committing a serious offence like rape or murder;
- ☐ If the police officer has reasonable cause to believe that the suspect has committed the crime or is about to carry out the crime;
- ☐ If the suspect cannot be found or is declared absconder (he/she has fled the area);
- ☐ If the suspect refuses arrest and attempts to flee from the police; or
- ☐ If the legal representative of the suspect obstructs/stops the police from arresting their client.

Rights of the Adult Suspect

- ☐ No person shall be deprived of life or liberty save in accordance with law.¹⁵³
- ☐ The suspect shall be told at the time of his/her arrest why they are being arrested (reasons for the arrest);¹⁵⁴
- ☐ The suspect shall have the right to consult and be defended by a legal practitioner of his choice;¹⁵⁵
- ☐ The suspect shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate;¹⁵⁶
- ☐ No person shall be detained in custody beyond the said period without the authority of a magistrate;¹⁵⁷ and
- ☐ The suspect shall be entitled to a fair trial and due process.¹⁵⁸

Bail Conditions if the Suspect is an Adult

Bail may be granted by the police or the Court, depending upon the nature of the offence. Police may only release an accused on bail when the suspected crime is a bailable offence as specified in the Cr.P.C.¹⁵⁹ Most offences of a sexual nature are non-bailable, so only a Court of competent jurisdiction can grant bail. In the case of non-bailable offences, an accused shall not be released on bail if there are reasonable grounds to believe that he is guilty of an offence punishable with

¹⁵³ CONST. art. 9.

¹⁵⁴ CONST. art. 10, S. 1.

¹⁵⁵ CONST. art. 10, S. 1.

¹⁵⁶ CONST. art. 10, S. 2.

¹⁵⁷ CONST. art. 10, S. 2.

¹⁵⁸ CONST. art. 10A.

¹⁵⁹ See S. 496, Code of Criminal Procedure, 1898 (Act V of 1898).

death or imprisonment for life or imprisonment for ten years.¹⁶⁰ In cases of child sexual abuse, where bail is available, the Court may consider bailing a suspect, ensuring that:

- ☐ The suspect will not intimidate, scare or harm the victim and witnesses;
- ☐ All evidence related to the case has been collected and examined, and so cannot be manipulated; and
- ☐ The suspect will appear in court on the dates and times he/she is required.

Bail Conditions if the Suspect is a Child

If the accused is a child, the JJSA 2018 will apply in addition to the Cr.P.C., and the child may be released on bail by the Court.

Section 6 of the JJSA 2018 sets out the conditions for release of a juvenile on bail. As with the Cr.P.C., the JJSA 2018 recognizes a distinction between bailable and non-bailable offences. Under the JJSA 2018, a juvenile accused of a bailable offence shall be released on bail by the Juvenile Court, if not already released under section 496 of the Cr.P.C., unless there is reason to believe that release will bring the juvenile in association with criminals or expose him/her to any other danger.¹⁶¹

The JJSA 2018 further classifies criminal offences into three different categories: MINOR, MAJOR, and HEINOUS.

1) Minor offence means an offence for which maximum punishment under the Pakistan Penal Code, 1860 is imprisonment up to three years with or without fine. A juvenile is entitled to bail in minor offences, with or without surety bonds, by the Juvenile Court as a matter of right.

2) Major offence means an offence for which punishment under the Pakistan Penal Code, 1860 is imprisonment of more than three years and up to seven years with or without fine. Bail shall also be granted in major offences, with or without surety bonds, by the Juvenile Court.

3) Heinous offence means an offence which is serious, brutal, or shocking to public morality and which is punishable under the Pakistan Penal Code, 1860 with death or imprisonment for life or imprisonment for more than seven years, with or without fine. A juvenile of less than sixteen

¹⁶⁰See S. 497, Code of Criminal Procedure, 1898 (Act V of 1898). (“(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.”).

¹⁶¹S. 6(1), Juvenile Justice System Act (2018).

years of age is entitled to bail in heinous offences, but bail is at the discretion of the court if the juvenile is more than sixteen years of age.¹⁶²

Even when the case is handed to the Court, police officers and investigators can still voice their views on whether the suspect should receive bail. The investigators should oppose bail if they believe it is very likely that:

- ☐ The suspect will scare and intimidate victims or witnesses or try to manipulate trial proceedings; or
- ☐ The person will commit the same crime again if given bail.

Investigators may also express an opinion on bail conditions.

Seeking Pre-trial Advice of Prosecution:

Police should immediately bring the incidence of a crime to the of attention of the prosecution by providing a copy of the F.I.R. to the prosecutor or by informing the prosecutor through a mutually shared IT networking system or by any available telecommunication facility, whatever is first available.

- ☐ The investigator should share his/her observations from the first visit to the crime-scene with the prosecutor.
- ☐ The prosecutor should provide pre-trial advice as to the preservation and collection of evidence in accordance with best crime scene preservation practices.
- ☐ Police should seek pre-trial advice from the prosecutor on *inter alia* identification parades, remand and pre-trial bail matters.
- ☐ Pre-trial advice, assistance and support minimizes the need for curing remedial and non-remedial defects in the Police reports and minimizes the number of cases deemed not fit for trial.¹⁶³

¹⁶²S. 6(1), Juvenile Justice System Act, 2018; S. 496, 497 Code of Criminal Procedure, 1898 (Act V of 1898), (“(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought-before a Court, he may be released on bail but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.”).

See Code of Criminal Procedure, 1898 (Act V of 1898), S. 496 to 502, which deal with all matters related to bail and conditions on bail or any limitation, if any, will be found there

¹⁶³Punjab Criminal Prosecution Service and Punjab Police, Standard Operating Procedures: Effective Police Prosecutor Co-Operation in the Province of Punjab, available at <https://pg.punjab.gov.pk/system/files/Police%20Prosecution%20Cooperation.pdf>.

Decision to Charge the Suspect

Following the investigation, the investigating officer and officer in charge of the police station should consider whether there is enough evidence to charge the suspect with a crime. The decision to charge a suspect with a crime should be evaluated based on:

- ☐ The amount and quality of evidence accumulated (Is there enough reliable evidence for the case to go to court?);
- ☐ The nature and seriousness of the crime;
- ☐ The decision to charge the suspect should not be swayed by:
 - The position the perpetrator holds in society/the community;
 - Intimidation and force by the suspect, his/her family and other outside forces to drop the case; or
 - The child victim. Once the case is reported to the police, the decision to charge the case to Court should be made by the authorities. In this case, the decision to proceed to Court should be taken by the police, with permission from the Court.

If the officer in charge of the police station concludes that there is sufficient evidence or reasonable grounds to charge the suspect with a crime, the officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or send him for trial. If the offence in question is bailable, the officer shall take security from the suspect for his appearance before a Magistrate at a later date.¹⁶⁴ The officer in charge of the police station shall also, through the Public Prosecutor, forward to a Magistrate empowered to take cognizance of the offence, a report setting forth:

- ☐ The names of the parties;
- ☐ The nature of the information;
- ☐ The names of the persons who appear to be acquainted with the circumstances of the case;
- ☐ Whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties; and
- ☐ The action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.¹⁶⁵

If, on the other hand, it appears to the officer in charge of the police station or to the investigating officer that there is not sufficient evidence or reasonable ground of suspicion to justify

¹⁶⁴ Code of Criminal Procedure, 1898 (Act V of 1898), S. 170.

¹⁶⁵ Code of Criminal Procedure, 1898 (Act V of 1898), S. 173.

forwarding the accused to a Magistrate, the officer shall, if the suspect is in custody, release him/her on his/her executing a bond, with or without sureties.¹⁶⁶

In case the officer in charge and/or prosecution decide that the case should not proceed to Court (lack of evidence), it is the responsibility of the investigators to:

- ☐ Tell the victim(s) that their case will not go to court;
- ☐ Tell the victim they can choose to pursue the case either through:
 - A private lawyer who takes their case on; or
 - By being a complainant through their guardian.

Drafting of Police Report u/s 173

Upon completing the investigation, gathering all the relevant evidence, interviewing all witnesses, suspects and victims and deciding to proceed to court, the investigating officer, in consultation with the other officers and his superiors, should draft the police report. A police report/challan involves different components, including identifying the crime and detailing of parts/elements of the offence(s) committed. Whatever is contained in the police report under section 173 as to the guilt or innocence of any accused person is a mere opinion of the investigation officer and is not binding upon the Court.

A police report/challan should include:

- ☐ The exact offence with which the perpetrator is being charged;
- ☐ The specific law that details the punishment/consequences for the offence;
- ☐ Specifics of the offence;

FORM No. 25, 57 (2).
FINAL REPORT UNDER SECTION 173, CRIMINAL PROCEDURE CODE.

District _____ Final report No. _____, dated _____ 19
Police Station _____ in first information No. _____
dated _____ 19

1. Name and address of complainant or informant.
2. Nature of charge or complaint.
3. Description of property stolen, if any.
4. Name and addresses of accused person, if any.
5. If arrested, date and hour of arrest.
6. Date and hour of release and whether on bail or recognizance.
7. Property (including weapons) found, with particulars of where, when and by whom, found and whether forwarded to Magistrate.
8. Brief description of information or complaint, action taken by police with result, and reasons for not proceeding further with investigation.

Despatched at _____ A.M. or P.M. on _____ 19

Signature of Investigating Officer

N.B.—The magistrate should record his order on the back.

¹⁶⁶Code of Criminal Procedure, 1898 (Act V of 1898), S. 169.

- ☐ Name of perpetrator(s);
- ☐ Location and date of when and where the offence occurred;
- ☐ The police and judicial jurisdiction and area;
- ☐ Details and particulars of the offence;
- ☐ Sex, age and name of victim(s);
- ☐ Signature of the investigating officer who decided to prosecute; and
- ☐ Signature of the prosecutor.

The police report u/s 173 constitutes the charge sheet, and it prepared on the form prescribed by the provincial governments. Usually it has the following format as mentioned in Police Rules, 1934, Form No. 25.56;

FORM No. 25. 56 (1)
CHARGE SHEET.

District _____ Charge Sheet No. _____, dated _____, 19 ____

Police Station _____ in first Information No. _____
dated _____.

1	2	3	4	5	6	7
Name, address and occupation of complainant or informant.	Name and addresses of accused persons not sent up for trial, whether arrested or not arrested, including absconders (show absconders in red ink).	NAMES AND ADDRESSES OF ACCUSED PERSONS SENT FOR TRIAL		Property (including weapons) found, with particulars of where, and by whom, found and whether forwarded to Magistrate.	Name and addresses of witnesses	Charge or information Name and offence and circumstances connected with it, in concise detail, and under what section of the law charged
		In custody.	On bail or recognizance.			

Despatched at _____ A.M. on _____, 19 ____
P.M.

Signature of investigating officer.

The format of challan or report u/s 173 has following columns, as prescribed in Form No. 25.57(2) in Police Rules, 1934.

- | | |
|-------------|---|
| Column No.1 | Name and address of the Informant/complainant |
| Column No.2 | Nature of charge or complaint |
| Column No.3 | Description of property if stolen, etc. |
| Column No.4 | Name and address of the accused persons, if any |
| Column No.5 | If arrested, details of arrest time and date |

Column No.6	Date and hour of release, if released on bail
Column No.7	Property (including weapons) found, with all particulars, when, where, from whom and whether forwarded to magistrate.
Column No.8	Brief description of information, or complaint, action taken by police with result and reasons for not proceeding further with investigation.

Police Report/Challan:

173. Report of police-officer. (1) Every investigation under this Chapter shall be completed, without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall, [through the public prosecutor]

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case. and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given. Provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under section 154, the officer in charge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the court decides that the trial should not so commence.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial:

'(5) Where the officer in charge of a police-station forwards a report under sub-section (1), he shall along with the report produce the witnesses in the case, except the public servants, and the Magistrate shall bind such witnesses for appearance before him or some other court on the date fixed for trial'.

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost

When selecting the offence(s) with which to charge the perpetrator(s), the police officer should examine the degree and gravity of the offence. If the conduct alleged implicates more than one criminal offence, the suspect should be charged with all offences supported by the evidence.

Indeed, the police must mention in the F.I.R. all offences made out from the narrated story in the complaint. There is a compulsory section in the F.I.R. that defines the offence according to the penal code or any other law.

Being specific with the offences charged avoids undue delay and holdups in trial proceedings. Failing to be sufficiently specific with the offence charged can cause the case to be dismissed by the judge or inadvertently lead to a stronger case for the defense, which may result in an acquittal or more lenient sentence(s).

The drafting of the police report under section 173 of Cr.P.C. is, or ought to be, the culminating point in the investigation of the case. Its purpose is to complete the investigation without any unnecessary delay and requires the officer in charge of the police station to send a report to the area magistrate. But if the investigation has not been completed within 14 days of the F.I.R., then the officer in charge shall forward an interim report/challan to the Court, which is empowered to start proceedings on the basis of interim report, unless for the reasons to be recorded, the Court decides that the trial should not be so commenced

Handing Over Case to Prosecutors

After the decision to charge has been made, the police officer should hand over the case and the charge sheet to the prosecution so that they can begin to prepare the child's case for court. In the handover of the case to the prosecution, the investigating officer should:

- ☐ Give a case file to the prosecution. This file should include:
 - All statements by the witnesses, suspects, and victims;
 - The charge sheet;
 - List any photos, videos and exhibits; and
 - Any and all actions taken by the police since the time of the original complaint or report by the victim.
- ☐ Go over with the prosecution the overall investigations conducted, the details of the case and the special needs, wants and requirements of the victim(s);
- ☐ Assist the prosecution in going over the case and developing a strategy for court proceedings;
- ☐ Attempt to build trust and understanding between the prosecutor and the victim(s);
- ☐ If necessary, increase the prosecution's willingness and belief in prosecuting the case;
- ☐ Select a police officer to be the liaison for victims and witnesses on the progress of the case during court proceedings; and
- ☐ Continue investigating the case. The investigation by police is not over just because the case has been charged to court. Police should continue to collect evidence and

question people, particularly because charges can still be added or changed up until the first trial session.

TRIAL

This stage should be conducted by specifically trained justice professionals and should always be child and gender sensitive.

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime recommend that trials involving children take place as soon as practical, unless delays are in the child's best interest.¹⁶⁷ Undue delay can contribute to revictimizing the child victim; prolonged breaks in the trial proceedings contribute to a child victim/witness's stress and anxiety. Prolonging the case can also damage the investigation and the prosecution. The longer the case is delayed, the more chances there are that the child will have a harder time remembering accurately the events of the crime and details of what happened. Lastly, a speedy trial allows the child victim/witness to start his/her healing/recovery process earlier and therefore more efficiently.

In Pakistan, Courts shall decide cases involving assault or use of criminal force to woman and stripping her of her clothes, rape, unnatural offences, or sexual abuse within three months of taking cognizance of the offence.¹⁶⁸ The JJSA 2018 further provides that Juvenile Courts shall decide any case involving juvenile defendants within six months of taking cognizance of an offence unless an extension is obtained from the High Court.¹⁶⁹ One solution that has been applied in Pakistan so far is to refer cases of child abuse that have been pending for a long time to specialized courts (such as child courts), or other courts, on a priority basis. This has notably been the case for the specialized child courts in Lahore and in Peshawar.

Pre-trial

The pre-trial stage should start with an initial meeting between the child victim/witness and the prosecutor. In the context of Pakistan, it would be ideal to have a prosecutor of the same sex and gender as the child victim/witness.

¹⁶⁷ ECOSOC Res. 2005/20, Annex ¶130(c), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹⁶⁸ Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, S. 12.

¹⁶⁹ Juvenile Justice System Act, 2018, S. 4(8) and 4(9).

- A support person (preferably same sex and gender as the child victim/witness in the context of Pakistan) and/or parent or guardian should accompany the child victim/witness for the initial meeting;
- The initial meeting should aim to make the child victim/witness as comfortable as possible and avoid undue stress or anxiety. To this effect, the prosecutor may initially thank the child victim/witness for coming, proceed with introductions and ask the child general questions, such as how he/she travelled, how was the travel, where he/she comes from, ask of he/she goes to school, what he/she likes doing, etc.;
- The child victim/witness needs to be put at ease before he/she can answer any questions or provide information on the case. Prosecutors should ask about the child victim/witness' health and well-being, how he/she is feeling, and if he/she thinks he/she can answer some questions or if he/she prefers to do it at some other point in time;
- The prosecutor should use a language and terminology that is easily understood by the child victim/witness. It is also better to sit at the same eye level as the child victim/witness;
- The initial meeting should focus on getting to know the child victim/witness, his/her needs (especially if he/she is a differently abled child), and what he/she expects from the trial, what he/she is worried about. The prosecutor should also explain why he/she is here, and how he/she will help the child victim/witness;
- If possible, the Prosecutor should be assisted by a child psychologist or other child mental health specialist to talk with the child victim/witness. The Court may order a public institute to assist on a case-by-case basis.¹⁷⁰ There are examples of courts in Lahore asking for assistance from mental health professionals;
- Communication aids may be used to facilitate discussion with the child victim/witness;
- The meeting between the child victim/witness and the prosecutor should take place preferably where the child victim/witness feels most comfortable and with a few toys around, with some snacks or food that makes the child victim/witness at ease (e.g., some cookies, etc.).

It is equally crucial to prepare the child victim/witness for court proceedings, which includes ensuring that he/she is fully informed of the justice process he/she will go through, what are the next steps and that he/she is supported enough to deal with a rather challenging experience.

¹⁷⁰See also PLJ 2013 SC 107 (holding that "Every Police Station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counseling. A list of organizations may be provided by bodies such as the National Commission on the Status of Women. Each Police Station to maintain a register of such organization.")

It is again important to remember that the prosecutor should show care, empathy with and respect for the child victim/witness and reassure the child victim/witness that he/she is very brave for going through this process. The prosecutor should tell the child that the prosecution is aware that it is not easy, and that the prosecutor is very thankful that the child came to the meeting and that whatever happened to the child is not the child fault.

The prosecutor should acknowledge the child victim/witness's distress, pain and experience. Preparation and any meeting with the prosecutor and the child victim/witness should take place in private, in a separate room, with another person (preferably of the same sex and gender as the child) sitting on the opposite side from the prosecutor, whom the victim trusts, such as a parent/guardian, doctor or nurse, interpreter or support person assigned by the government. It is better if all those adults sit at the same eye level as the child victim/witness, as mentioned earlier.

The prosecutor should explain that, while giving testimony or any statement/oral evidence in court, the child victim/witness should:

- ☐ Always tell the truth;
- ☐ Listen to the questions carefully and answer what is asked only;
- ☐ Say when a question confuses him/her;
- ☐ Say if he/she does not know the answer to a question; Understand that the defense attorney's role is to ask questions that can be annoying; and
- ☐ Remain calm since he/she is safe in the court (hopefully a child court) and surrounded by people who are there to protect and help him/her.

Ideally, the prosecutor may ask the Court for the list of questions to be asked of the child victim by the defense attorney, in order to examine those and make sure that they are not intentionally repetitive, harassing, intimidating or confusing. The prosecutor should then go over the envisaged questions with the child victim/witness to make him/her understand:

- ☐ What each question means;
- ☐ Why is the defense asking this question;
- ☐ The different ways in which the child victim/witness can respond to each question, without, however, telling the child what to say;
- ☐ That the child may be forced to answer questions they don't like if the answers to those questions are relevant to the case;¹⁷¹
- ☐ What to do if the child victim/witness does not want to answer the question;¹⁷²

¹⁷¹Qanoon-e-Shahadat Order (1984), S. 142.

¹⁷²While a child victim or witness may be compelled to answer questions that are relevant to the facts in issue in the case, the Qanoon-e-Shahadat Order, 1984, witnesses may not be required to answer questions that are not relevant to the proceeding. The Court may also forbid questions that it considers scandalous or indecent or that

- In certain situations, or in the case of an improper question, the court may stop or warn the witness that he/she is not obliged to answer.
- How to tell the prosecutor if he/she (the child) is feeling scared and wants the questioning to stop; and
- That there will be interruptions, objections and some noise in the courtroom, with a few people coming in and going out. That is normal, and the child should not be scared (note that if the trial takes place in a specific child court environment, as it is sometimes the case in Pakistan, the court environment will be more serene for the child victim/witness).

Pakistan: Qanoon e Shahadat Order 1984

Article 143. Court to decide when question shall be asked and when witness compelled to

answer Article 144. Question not to be asked without reasonable grounds

Article 146. Indecent or scandalous questions not allowed Article

148. Questions intended to insult or annoy not allowed

Privacy

Information about a child's involvement in the justice process should be protected. This can be achieved by maintaining confidentiality and restricting disclosure of information that could lead to the identification of a child victim or witness.¹⁷³ This protection is essential since any release of information regarding a child's identity could have grave consequences, such as putting the child victim/witness (or one of his/her family members) at risk of reprisals or retaliation. Divulging the identity of a child victim/witness may also cause additional distress to the child or generate a strong stigma and put the child in a situation that he/she would perceive as humiliating.

In cases of CSA, the Court has a legal duty to protect the privacy of the child victim. Printing or publishing the identity of a victim of assault or use of criminal force to woman and stripping her of her clothes (PPC S. 354-A), rape (PPC S. 376), disclosure of identity of victim of rape, etc. (PPC

are intended to annoy or insult or, if intended to discredit the witness, are not based on reasonable grounds to believe that the imputation is well-founded. Qanoon-e-Shahadat Order (1984), S. 143-146, 148.

¹⁷³ECOSOC Res. 2005/20, Annex ¶127, U.N. Doc. A/RES/2005/20 (22 July 2005).

S. 376-A.), unnatural offences (PPC S. 377), or sexual abuse (PPC S. 377-B) is prohibited by law and punishable by up to three years in prison plus a fine.¹⁷⁴

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime recommend that, “[m]easures be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child’s testimony[.]” In Pakistan, trials for offences under sections 354-A, 376, 376-A, 377, and 377-B of the PPC shall be conducted in camera, and the Government may adopt appropriate measures for the protection of the victim and witnesses such as holding the trial through video link or using screens. Information relating to trials conducted in camera cannot be printed, published or broadcast without the permission of the Court.¹⁷⁵

In addition, the child victim/witness’s privacy can be ensured via the following means enshrined in Pakistani law¹⁷⁶:

- ☐ Remove from any public document, release or record any information that may help people to locate/identify the child victim/witness;
- ☐ Strictly ban any lawyer (defense and prosecution), court staff, police officers, support person, psychologist etc. from mentioning or discussing the identity of the child victim/witness or releasing any information or document, etc. that may reveal the child’s identity;
- ☐ Issue an order for all materials (documents, photos, addresses), which may help in identifying the child, to be strictly confidential until the Court allows otherwise;
- ☐ Take measures to hide the physical appearance of the child victim/witness when he/she gives testimony:
 - Use technology that changes the victim/witness’s voice and his/her image, if he/she is testifying through a video linkage;
 - Hide the child victim/witness from people’s view using a screen, shield or a glass through which one can only see on one side;¹⁷⁷
 - Use another room to give the testimony and then present the testimony in the courtroom through a video linkage, or put the accused and the child in two different rooms connected via video linkage;¹⁷⁸ and
- ☐ Ensure that hearings/sessions in the court (hopefully a child court) are closed to the

¹⁷⁴Criminal Law (Amendment) (Offences Relating to Rape) Act (2016), S. 6; Pakistan Penal Code, 1860 (Act XLV of 1860), S. 376A.

¹⁷⁵Criminal Law (Amendment) (Offences Relating to Rape) Act (2016), S. 13; Code of Criminal Procedure, 1898 (Act V of 1898), S. 352. See also PLJ 2013 SC 107 (holding that “Trials for rape should be conducted in camera and after regular Court hours.”).

¹⁷⁶Sindh Witness Protection Act, 2013 and Punjab Witness Protection Act, 2018

¹⁷⁷PLJ 2013 SC 107 (holding that in rape case, “During a trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.”)

¹⁷⁸PLJ 2013 DC 107 (holding that “Evidence of rape victims should be recorded, and in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court.”).

public and only limited to individuals necessary for the proceedings (as it is already the case under JJSA 2018 and the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016).

376A. Disclosure of identity of the victim of rape etc.-

(l) Whoever prints or publishes the name or any matter which may make known the identity of the victim, against whom an offence under sections 354A, 376, 376A, 377 and 377B is alleged or found to have been committed, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

(2) Nothing in sub-section (1), extends to any printing or publication if it is

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by or under the order of Court; or

(c) by or with the authorization in writing of the victim; or

(d) by or with the authorization in writing of natural or legal guardian of the victim, where the victim is dead or a minor or of unsound mind:

Explanation - Printing or publication of the judgment of any High Court, the Federal Shariat Court or the Supreme Court in law journals does not amount to an offence within the meaning of this section.

Arranging the Presentation of the Child Victim/Witness's Testimony in Court

“Age should not be a barrier to a child’s right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.”¹⁷⁹

Pakistan’s laws also recognize the capacity of children to testify in court. According to Article 3 of Qanoon e Shahadat Order, 1984, a child witness is a competent witness, provided that the Court considers that he is not prevented from understanding the question put to him or from

¹⁷⁹ECOSOC Res. 2005/20, Annex ¶18, U.N. Doc. A/RES/2005/20 (22 July 2005).

delivering rational answers to the questions put on him.¹⁸⁰ Where the Court has, by questioning the child concerned, fully satisfied itself that the child witness is capable of understanding the questions put to him and of giving rational answers to those questions, he shall not only be deemed a competent witness, but his evidence may also be considered as valid evidence in the eyes of the Court.¹⁸¹ The Supreme Court has observed, however, that, "In principle conviction can be based upon the testimony of an intelligent and understanding child witness yet the Courts have generally preferred to adopt the settled principle of prudence and the rule of care attached to the sole testimony of a child witness despite child's intelligent disposition".¹⁸² In other words, the testimony of a child should ideally be corroborated by other physical or testimonial evidence.

Establishing Competency

In criminal proceedings, when a child is expected to give testimony, the competency of the child victim or witness to testify must be established. Competency requirements, however, should not serve as an obstacle to the admissibility of relevant evidence from children. A child of any age may have basic competency, i.e., the ability to perceive, remember, and communicate an event. Additional truth-lie competency refers to a child's understanding of the difference between the truth and a lie, as well as the importance of telling the truth. Asking a child to promise to tell the truth increases honesty.¹⁸³

¹⁸⁰Qanoon-e-Shahadat Order (1984), S. 3 ("All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years... [.]")

¹⁸¹It was held in "PLJ 1998 Cr. C. (Karachi) 468 (DB)" that, "Witnesses of tender age if intelligent enough do not ordinarily speak lies and their evidence carries higher value than ordinary witnesses, reason being that they are generally considered to be innocent and oblivious of motives and evil considerations." The same views were expressed in other Supreme Court judgments about child witnesses like Farman State vs. Hussain PLD 1995 Sc1 and Abdullah Shah vs. State 1968 SCMR 1968. In the case of "Amjad Javed v. The State" (2002 SCMR 1247), the Court held that consistent credible, confidence inspiring and straight forward ring of truth and innocence statement of a child witness could safely become basis of conviction provided the same had been corroborated by other evidence, i.e., circumstantial, medical, recovery and reports of serologist, etc. Similarly, in the case of "Muhammad Jamal vs. State" (1997 SCMR 1595), confidence inspiring testimony of a child, supported by medical evidence and last seen evidence, was relied upon to maintain the conviction. Muhammad Abbas vs State, 2018 PcrLJ537 Lahore High Court Lahore ("Art 3 Child witness competence testimony of child witness was related to his capacity and competency to understand the questions and then address them rationally – Tender age solely was no ground to discredit the testimony of witness, if otherwise it was proved that he was mature enough to understand the consequences of his statement".).

¹⁸²PLJ 2011 SC 375

¹⁸³Thomas Lyon, *Assessing the Competency of Child Witnesses: Best Practice Informed by Psychology and Law* (2011), available at https://www.researchgate.net/publication/229460714_Assessing_the_Competency_of_Child_Witnesses_Best_Practice_Informed_by_Psychology_and_Law

The competency of a child witness can be established through questions that show the child is able to understand the questions put to him or her as a witness and is able to answer those questions and be understood.¹⁸⁴

To establish basic competency, attorneys can ask questions about a benign event and show the child's ability to perceive, remember, and communicate. When legal proceedings require examination of a young child's truth–lie understanding, the best approach includes asking the child whether certain statements are the truth and getting a promise from the child that he or she will tell the truth.

During a competency determination, questions should be limited to whether the child victim or witness meets minimal requirements of competency. Questions should not relate to contested facts of the alleged abuse but uncontested facts that can be used to show the child's ability to recall events accurately and relate them. Questions should be chosen based on the child's age and developmental abilities. Other recommendations include avoiding philosophical questions such as, "What is the difference between right and wrong?" The questions should be sensitive to cultural and religious differences.

Examples of appropriate questions include:

- ☐ What is your name?
- ☐ How old are you?
- ☐ Do you go to school?
- ☐ What is the name of your school?
- ☐ What is the name of your teacher?
- ☐ Can you count to 20?
- ☐ Do you have any brothers or sisters?
- ☐ Do you have any grandparents?
- ☐ What street do you live on?
- ☐ If I said you were wearing [earrings, trousers, a hat, etc.] today, would that be a lie or the truth?
- ☐ Do you promise to tell the truth today?¹⁸⁵

Conditions for Testimony

Once the prosecution has decided that the child victim/witness needs to testify in court and once they have prepared him/her, the prosecution should start making arrangements for the child victim/witness's appearance in court, the presentation of evidence, as well as the post-trial

¹⁸⁴A. Evans & T. Lyon, *Assessing Children's Competency to Take the Oath in Court: The Influence of Question Type on Children's Accuracy* (2012), 36 *Law Human Behaviour*, 195.

¹⁸⁵American Prosecutors Research Institute, *Investigation and Prosecution of Child Abuse*, (2nd ed., 1993).

assistance and care for child victims/witnesses, if and whenever needed, and in accordance with the applicable law. The victim may seek protection through the respective provincial child protection laws. A witness may get relief in Punjab under The Punjab Witness Protection Act, 2018, in Sindh under The Sindh Witness Protection Act, 2013, and in Balochistan, under the The Balochistan Witness Protection Act, 2016.

Although it is a difficult moment for the child victim/witness, in the context of Pakistan, usually, the child victim/witness will have to testify at at least one hearing in the court. The child's participation in hearings and trials should be planned ahead of time, and every effort should be made to ensure continuity in the relationships between children and the professionals, such as support persons, investigators, and prosecutors, in contact with them.¹⁸⁶ Professionals should approach child victims and witnesses with sensitivity. Child sensitive procedures can include modified court environments that take child witnesses into consideration, such as the child courts that Pakistan has established in Lahore and Peshawar, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.¹⁸⁷

The conditions for the child victim/witness to testify should be child and gender sensitive as well as inclusive. Ideally, in the context of Pakistan, the Court should be a specific child court, which is separated from other courts and child friendly (decorated with child sensitive colours, equipped with child appropriate furniture and toys, preferably articulated around two separate entrances (one for the accused, one for the child victim/witness), and with a waiting area that may have to be gender segregated (depending on the physical structure and the cultural norms of the area)).

Under section 11 of the JJSA 2018, in cases involving children in conflict with the law, the Juvenile Court may, in the best interest of a child's decency or morality, direct any person to withdraw from the Court for such period as the Court may direct. Similarly, the JJSA 2018 provides that, if at any stage of proceedings, the Court is satisfied that the attendance of the juvenile defendant is not essential for the purposes of the trial, the Court may dispense with the attendance and proceed with the case in absence of the juvenile.¹⁸⁸ When allowable under other prevailing laws, and consistent with the rights of the accused, it is recommended that courts implement similar procedures with respect to child victims and witnesses. The JJSA 2018 further provides that, when a juvenile who has been brought before the Juvenile Court is found to be suffering from serious illness, whether physical or mental, and requires treatment, the Court should send such child to a hospital or a medical institution where treatment should be given to the child at the

¹⁸⁶ECOSOC Res. 2005/20, Annex ¶130(b), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹⁸⁷ECOSOC Res. 2005/20, Annex ¶130(d), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹⁸⁸Juvenile Justice System Act (2018), S. 11(4).

expense of the State.¹⁸⁹ In the case of child victims and witnesses who may not come under the direct supervision of State authorities or the Court, the Court should inform them about the appropriate institution/places to receive the appropriate medical and psychological support.

Protective Measures:

Where the safety of a child victim/witness may be at risk, appropriate measures should be taken to protect the child from such risk before, during and after the justice process and to ensure that those risks are reported to appropriate authorities.¹⁹⁰

If the health and safety of the child victim/witness, at any stage of the judicial process, is determined to be in danger, the court can issue specific protection procedures, according to the applicable laws.¹⁹¹ These procedures may include:

- ☐ Having no direct contact between the child victim/witness and the accused person at any point during the judicial process;
- ☐ Requesting the police or any other relevant law enforcement agency to protect the child victim/witness and keep confidential the location of the child victim/witness;
- ☐ Place the child under custody of a family member, a foster family or a child protection institution certified by the State;¹⁹²
- ☐ After arriving at the location of the trial, hide the whereabouts of the child victim/witness and do not disclose those without permission from the victim/witness and the prosecution. Preferably, in case of danger, there should be a safe location where the child victim/witness can stay for the duration of the trial, but if this is not being possible, it is paramount that the victim's safety and privacy are protected throughout the trial.¹⁹³

Apart from the specific child protection laws, a child victim/witness is also protected through the

¹⁸⁹ Juvenile Justice System Act (2018), S. 11(5).

¹⁹⁰ ECOSOC Res. 2005/20, Annex ¶132, U.N. Doc. A/RES/2005/20 (22 July 2005).

¹⁹¹ Punjab Destitute and Neglected Children's Act, 2004, KP Child Welfare and Protection Act, 2010, Sindh Children Act, 1955, and Sindh Child Protection Authority, 2011, Balochistan Child Protection Act, 2016 Sindh Witness Protection Act 2013, The Balochistan Witness Protection Act, 2016, The Witness Protection, Security and Benefit Act, 2017, The Punjab Protection of Venerable Persons Rules, 2015, Punjab Witness Protection Act, 2018

¹⁹² ICT Child Protection Act, 2018

¹⁹³ KP Child Protection and Welfare Act, and Juvenile Justice System Act 2018, S. 13

special witness protection laws both at federal and provincial levels.¹⁹⁴

Support Person:

In accordance with Article 3(1) of the UNCRC, which states that, “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”, it is recommended that a support person be provided for child victims and witnesses during the trial process to satisfy the best interests of the child. We recommend that the following be replicated in the Pakistani context:

- Throughout the trial, the child victim/witnesses should be with a qualified person assigned by the Court, who the child victim/witness can talk to and who can guide the child victim/witness through the judicial process, to mitigate risk of secondary victimization and trauma. There are already support officers in the court staff who can be assigned to the child victim/witness.

The support person and/or the child victim/witness should be able, at any time, to ask the Court to take a break from proceedings or even postpone the hearing if the child victim/witness needs to stop or cannot continue any longer.

Child Friendly and Conducive Environment in Courtroom

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime advise that courts adopt the following measures in cases involving child victims and witnesses: “modified court environments that take child witnesses into consideration, recesses during a child’s testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child’s testimony.”¹⁹⁵ In 2009, the United Nations Office of Drugs and Crime (UNODC) promulgated a Model Law on Justice in Matters involving Children, based on the UN Guidelines. The Model Law was developed by UNODC in cooperation with the United Nations Children’s Fund (UNICEF) and the International Bureau for Children’s Rights and was reviewed at a meeting of experts representing different legal traditions. It is intended to assist States in adapting their national legislation to the provisions contained in

¹⁹⁴Sindh Witness Protection Act, 2013, The Balochistan Witness Protection Act 2016, The Witness Protection, Security and Benefit Act 2017, The Punjab Protection of Vulnerable Persons Rules 2015 or Punjab Witness Protection Act 2018

¹⁹⁵ECOSOC Res. 2005/20, Annex ¶130(d), U.N. Doc. A/RES/2005/20 (22 July 2005).

the Guidelines and in other relevant international instruments and as a tool for drafting legal provisions concerning assistance to and the protection of child victims and witnesses of crime, particularly within the justice process.¹⁹⁶

Pakistan has not yet enacted legislation based on the Model Law. However, certain provisions of the Model Law may nevertheless be instructive for judges, prosecutors, and investigators in Pakistan. For example, the Model Law contains the following provisions for child sensitive waiting areas for child victims and witnesses and courtroom facilities, at least some of which have already been implemented in the Lahore and Peshawar child courts.

Waiting area at court premises¹⁹⁷

- ☐ The court should ensure that child victims and witnesses can wait in appropriate waiting areas equipped in a child-friendly manner, such as having toys and things to play with for children, colorful walls, etc.;
- ☐ Waiting areas used by child victims and witnesses should not be visible to or accessible to persons accused of having committed a criminal offence;
- ☐ Where possible, the waiting areas used by a child should be separate from the waiting area provided for adult witnesses and the accused;
- ☐ The court may, if appropriate, order a child victim or witness to wait in a location away from the courtroom and invite the child to appear when required; and
- ☐ The court should give priority to hearing the testimony of a child victim or witness in order to minimize their waiting time during the court appearance.

Courtroom facilities

- ☐ The court should ensure that appropriate arrangements for child victims or witnesses are made in the courtroom, such as, but not limited to, providing elevated seats and assistance for children with disabilities;
- ☐ Equipment and materials for video and camera-assisted interviews/testimonies, if possible, should be arranged and workable before the child comes to the court. Materials like screens to protect the victim's identity and appearance from the media, public and the accused should be set-up before the trial begins;
- ☐ The courtroom layout should ensure that, in so far as possible, the child shall be able to sit close to his or her parents or guardian, support person or lawyer during all proceedings; and

¹⁹⁶United Nations Office of Drugs and Crime, *Justice in Matters involving Children: Model Law and Commentary* Preface ¶13 (2009).

¹⁹⁷United Nations Office of Drugs and Crime, *Justice in Matters involving Children: Model Law and Commentary* art. 24 (2009).

- ☐ If permitted, the child can conduct their testimony and presentation of evidence from a different room while a video monitor allows the accused to see the victim. This way the victim is not in the same room as the accused.

Questioning and Cross-Examination of the Victim

All child victims/witnesses of sexual abuse who come to testify in court should be treated with respect as well as child and gender sensitivity and utmost care. Judges and prosecutors should be ready and willing to intervene if they feel that a child victim/witness of sexual abuse is being treated unfairly or harassed during their testimony.

The judge should start the hearing of the child victim/witness's testimony by welcoming the child, taking care of introductions, asking general questions to the child, building trust, maintaining a balance between extracting information, respecting the rights of the accused,¹⁹⁸ and maintaining the dignity and privacy of the child victim/witness.¹⁹⁹

The judge may also allow the child victim/witness to sit next to him/her (at an appropriate distance, keeping local gender norms as well as the child's feelings in mind), in order to make the child feel comfortable.

The judge should invite the prosecutor to proceed and monitor the trial and ensure that there is a respectful, child/gender sensitive and tolerant atmosphere in the court. As necessary and compatible with Pakistani law and the rights of the accused, child victims and witnesses should be interviewed and examined in court out of sight of the alleged perpetrator.²⁰⁰

Wherever feasible and appropriate, and upholding the accused's rights, cross-examination of the child victim/witness should not be conducted by the alleged offender him or herself.²⁰¹ Rather, the lawyer for the accused may conduct the cross-examination, but this examination should be monitored closely by the Court (the judge) to make sure that the questioning does not scare, intimidate, humiliate or cause additional trauma to the child victim/witness. Hence, it is important that the presiding judge ensures that:

- ☐ Only relevant questions are asked;
- ☐ The same questions are not asked repeatedly;

¹⁹⁸S.16, Juvenile Justice System Act.2018; S.343, Criminal Procedure Code 1898

¹⁹⁹S.5, Punjab Witness Protection Act 2018 and Sindh Witness Protection Act.2013.

²⁰⁰See ECOSOC Res. 2005/20, Annex ¶31(b), U.N. Doc. A/RES/2005/20 (22 July 2005).

²⁰¹See, e.g., ECOSOC Res. 2005/20, Annex ¶31(b), U.N. Doc. A/RES/2005/20 (22 July 2005).

- ☐ Questions that are scandalous or indecent are not asked;²⁰²
- ☐ Questions that appear to be intended to insult or annoy the victim/witness are not asked;²⁰³
- ☐ No visually or verbally disguised threat is directed at the child (such as yelling at the child, making gestures at the child, or looking aggressively at the child);
- ☐ Especially for cases of sexual abuse, the judge should never allow anyone to a) infer that the child has consented to the activity²⁰⁴ or b) ask about his/her sexual history before or after the abuse.²⁰⁵

Overall, for a cross-examination, the judge should:

- ☐ Allow victims to take breaks if they are distressed. The prosecutor should push for this to happen if the child victim/witness is feeling overwhelmed;
- ☐ Limit the number of people the child victim/witness meets during the trial process to the ones who are absolutely required to be present in the courtroom; and
- ☐ Thank the child victim/witness for sharing evidence with the Court.

The prosecution should:

- ☐ Allow the child victim/witness to settle into the questioning before going directly into the traumatic event of narrating/recalling sexual abuse;
- ☐ After the child victim/witness has testified, have a debriefing meeting with the child victim/witness and a support person once again to thank the child victim/witness and acknowledge his/her bravery, to help reduce the victim's anxiety and fear and calm him/her down;
- ☐ Explain that they may need the child victim/witness to appear in court again to provide further evidence and clarify why;
- ☐ Explain to the child victim/witness what the next step will be and why; and
- ☐
- ☐ If possible, arrange for a toy or reward be given to the child victim/witness.

Circumstantial and Corroborating Evidence

Medical and DNA Evidence

²⁰²Qanoon-e-Shahadat Order (1984), S. 146.

²⁰³Qanoon-e-Shahadat Order (1984), S. 148.

²⁰⁵See, e.g., Penal Reform International, *Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers* 69, <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf> (last visited 7 Sept. 2019).

A medical witness/medical professional's testimony in court is extremely important to the Court and the overall case, as it provides insight into the type and severity of the abuse that the victim experienced. A medical witness can also help establish the method in which the abuse was carried out, with what objects/weapons and, judging from the severity of the injuries and from scarring or bruising on the victim, whether the abuse was repeated. Through presentation of medical evidence by professionals, the accused can also be directly linked to the crime by the presence of his/her DNA on the victim's body, clothing, vehicle, residence, etc. Medical witnesses can also corroborate other prosecution evidence that the accused was in the same vicinity or with the victim at the time of abuse. If available, medical evidence should always be presented in cases of child abuse and child sexual abuse, and the Court should facilitate the presentation of this evidence by setting up exhibits, preparing digital media (live a TV) for the display of pictures and reports of the medical examiner. The prosecutor should keep in mind, however, that medical evidence can mostly be used as corroborating evidence only.²⁰⁶

The medical practitioner who conducts the post-mortem or medico-legal examination should, if possible, testify at trial. However, medical evidence can also be admitted without the witness having to testify. Under section 509 of the Cr.P.C., a deposition of a civil surgeon or medical witness may be given in evidence in any inquiry, trial or other judicial proceeding, even if the deponent is not called as a witness at trial, as long as the deposition was taken and attested in the presence of a Magistrate and the accused.²⁰⁷ Of course, the Court may summon and question the witness on the contents of his/her deposition if deemed necessary.²⁰⁸

Similarly, a medical examiner's report may be admitted as evidence at trial even if the medical examiner does not testify. Medical evidence discovered during an investigation, be that a body, a wound or the nature of injuries, should be documented in a report of the postmortem examination and/or the medico-legal examination. Usually the medico-legal officer who conducts the postmortem or medico-legal examination should appear in court to testify to the facts, but under section 510 of the Cr.P.C., a report from a chemical examiner, serologist, fingerprint expert or firearms expert appointed by the Government, may be used as evidence in any inquiry, trial or other proceeding, without calling the expert as a witness.²⁰⁹ As with depositions, "the Court may, [if it considers necessary in the interest of justice], summon and

²⁰⁶ State vs. Muhammad Sharif 1995 SCMR 635. 647

²⁰⁷ S. 509(1), Code of Criminal Procedure, 1898 (Act V or 1898).

²⁰⁸ S. 509(2), Code of Criminal Procedure, 1898 (Act V or 1898) ("(2) Power to summon medical witness. The Court may, if it thinks fit, summon and examine such deponent as to the subject matter of his deposition").

²⁰⁹ S. 510, Code of Criminal Procedure, 1898 (Act V or 1898) ("Report of Chemical Examiner, Serologist etc. Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or any Serologist, fingerprint expert or firearm expert appointed by Government, 2 [or of the Chief Chemist of the Pakistan Security Printing Corporation, Limited.] upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code.").

examine the person by whom such report has been made.”²¹⁰

Expert Witnesses

Providing evidence through expert witnesses and professionals is a very important method of giving evidence in trial proceedings. These witnesses are important because they have knowledge of the different facets of sexual assault and the impact sexual assault can have on victims. Expert testimony can also help the Court better understand the facts of the case or provide support for the victim’s behavior after the sexual abuse. The testimony of these witnesses can be key, as it can provide crucial evidence to the Court and the judge, proving both physical and psychological abuse.²¹¹

An expert witness may be able to provide psychological or behavioral testimony beyond the knowledge of the trier of fact. Examples may include testimony about child development, post-traumatic stress disorder, dynamics of abuse or behavioral characteristics of abused children.²¹² When a child is disabled, an expert may be able to explain the disability and the child’s behaviors or reactions to the abuse. An expert may also be able to explain a child’s behaviour when the defense is using it to discredit his or her testimony.

The best qualified expert should be identified for testimony. Some considerations in choosing an expert include practical experience, education, specialized training, professional licenses, teaching experience, knowledge of relevant literature, or the ability to communicate well in court.²¹³

Other Witnesses

Besides expert and medical witnesses, who provide professional expertise and evidence to the court, there are also public witnesses. These witnesses are people who may have seen, heard or noticed something related to the crime or the crime itself. The testimony of this kind of witness is equally as crucial as expert or medical witnesses as it aides the prosecution and the Court in establishing a timeline of events and whereabouts of the victim and accused, which can be corroborated and confirmed by medical evidence. These witnesses can also give insight into the behavior and mindset of the accused and victim (Were they are acting differently than usual? Were they late to work or not? Were they where they were supposed to be? Did they seem

²¹⁰S. 510, Code of Criminal Procedure, 1898 (Act V or 1898).

²¹¹Chapter 3 Opinions of Third Person when relevant of the Qanoon-e-Shadat Order 1984

²¹² American Prosecutors Research Institute, *Investigation and Prosecution of Child Abuse*, (2nd ed., 1993), 374.

²¹³*Id.*, at 384.

anxious or jittery?). Thus, testimony of witnesses to the crime/offence is extremely vital in the development and understanding of any particular case.

Other witnesses can provide evidence that strengthens the prosecution case. For example, a teacher's testimony may be relevant to show the chain of disclosure (if the child confided in him or her), or to show changes in the child's behaviour or grades that may result from the emotional trauma of the abuse. A supportive teacher may also be able to serve as a character witness if the child's reputation for truthfulness is attacked.

If a child protection worker is involved in the case, the worker may be able to testify about the child's disclosure or what the child told the worker. A child protection worker can also be helpful if the child has recanted because he or she could describe what was said before (prior consistent or inconsistent statements), what type of pressure was exerted on the child to recant, or whether the defendant admitted or corroborated aspects of the child victim's testimony in statements to the worker.²¹⁴ Police officers can also provide important information, especially if they talked with the child. They can describe the investigative process, and any evidence that was collected.

Preparation for these additional prosecution experts can be the same as in the SOPs for witnesses, including adequate review of their notes and other preparation for in-court testimony.

Physical Evidence

Real evidence in the legal sense means material, physical matter such as a body, wound, fingerprint, a bloodstain, etc. For example, the recovery of the dead body provides the best evidence of the death of a victim, of his/her identity and the means by which he/she was killed. It is a most crucial part of evidence, which needs to be collected from the crime scene or any other place.

"In all cases in which articles²¹⁵ are brought up in evidence, the custody of such articles, throughout the various stages of the inquiry must be clearly traced and established. Evidence must be recorded on this point, and the evidence should never leave it doubtful as to what person or persons have had charge of the articles at any stage of the proceedings. All such articles must be distinctively marked, and any reference to them in the record must be so clear as to leave no room for doubt as to the special articles referred to."²¹⁶

²¹⁴*Id.*, at 397.

²¹⁵This quote has been extracted from a chapter in the High Court Rules related to References to the Chemical Examiner, and particularly post-mortem examinations of bodies. As such, in this context "articles" should largely be understood to refer to medical evidence, and particularly bodily fluids and parts.

²¹⁶Rules and Orders of the Lahore High Court, Volume 3, Chapter 18 *Medico-legal Work* S. 11, available at <https://www.lhc.gov.pk/system/files/volume3.pdf>.

Photographs, Videos and Digital Evidence

Under Section 164 of Qanoon e Shahadat Order, evidence that has become available because of modern devices, etc. may be admitted as evidence at trial. In such cases, as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.

Corroboration

“Corroboration” includes evidence of any kind that may tend to support the evidence of any witness in any kind of case or matter. For example, medical evidence by itself does not establish the identity of the culprit, but it can be used as corroborative evidence.²¹⁷

Defence and Rebuttal Evidence

The defence plea may be a total denial. The accused may set up a plea of alibi, which means that at the time of occurrence, he was at a place other than the place of occurrence and, therefore, could not have participated in the crime. Or, the accused may plead one of the general exceptions contained in PPC sections 76 to 106 or a special exception, if he can produce any.

Though the burden of proof is on the prosecution, the Court must also consider the evidence adduced by the defence, which may have one of three results:

- ☐ The Court believes the accused’s innocence;
- ☐ The evidence creates doubt in the mind of the Court, which may also result in acquittal; or
- ☐ The evidence strengthens the case for the prosecution.

Some common defences in child sexual abuse cases include those claiming nothing occurred, that the child is fantasizing or lying, or that the child is mentally ill. Each of these can be addressed and overcome. If the defendant claims the child is fantasizing, focus on the level of detail a child may have provided that would not be within the child’s sexual knowledge. Sensory detail about sounds or smells can also help dispel that the child’s account is just a fantasy.

If the defendant claims the child is lying, show how that child likely does not have the level of sophistication to cause a result such as the prosecution (i.e., a young child would not likely know that a report would achieve a certain result). Furthermore, given the often-unpleasant experience of going through the court process, the child’s motive to lie is not matched by the

²¹⁷ Mehmood Ahmad vs. State 1995 SCMR 127, 133.

intended outcome. Gather and argue all the facts supporting the most plausible explanation for the child's allegation – he or she is telling the truth.²¹⁸

Other common defences include that the child is mentally ill. If this is a likely defence, the prosecution should raise it in the case in chief, especially if any emotional problems are repercussions from the abuse. Expert testimony can also help explain any mental health issues the child may have been addressing prior to the abuse, why that may have made him or her a target for the abuse, or how these issues may affect the child's ability to provide accurate testimony.

If the abuse is raised in the context of a custody case, determine to whom the child first disclosed or what benefit could be gained by the accusation, and have the non-offending parent testify so that it does not appear that the prosecution is hiding a potential motive.

The defence may also raise issues such as whether the child was brainwashed by the process through leading questions or suggestive interviews. This is where the conduct of the investigation is most important to show that all proper protocols and SOPs were followed.

Additional defences include: the child misinterpreted an innocent interaction as sexual or the child was abused but by someone else. Each of these defences can be addressed; the prosecution can use the evidence or testimony of the child to show that the abusive event was not innocent (for instance, the touching was sexual or for the defendant's gratification) or to prove through scientific evidence (DNA or presence of a sexually transmitted infection) that the accused is the only plausible abuser.

There are also some situations and cases where the burden of proof of a particular fact can be shifted to the accused. The elaboration of this rule can be seen in Qanoon e Shahadat Order, 1984 CHAPTER IX "OF THE BURDEN OF PROOF."

Cross-examination of the Defendant

Before cross-examining a defendant, it is essential to not only have a theory of the case in mind, but to also know every aspect of every statement, report, and piece of evidence. The theory of the case may not rely on testimony from the defendant, but the prosecutor should know exactly what would benefit the case and have all the questions prepared in advance.

The cross-examination should be no longer than what would benefit the case, keeping in mind the defendant's demeanour and level of responsiveness. A prosecutor can use cross-examination to corroborate or confirm details or portions of a child victim's statement, confront the

²¹⁸*Id.*, at 447.

defendant about any attempts to flee prosecution, raise previous denials or statements when the accusations were made, or reveal any threats or bribes the defendant made.

Hearsay and other out-of-court statements

Hearsay is mostly not relevant in a court of law, and the Court does not usually give weight to hearsay evidence, but certain exceptions may apply. These exceptions may include out-of-court statements offered for a purpose other than the truth of their content, a prompt complaint or outcry around the time of an event, prior consistent statements made by the complainant, a statement of identification of an assailant, or statements made during the course of a medical examination for diagnosis or treatment.

In principle, evidence from a witness as to what he or she heard immediately at the time of an incident would be admissible under principle of ‘res gestae’, even if the statement is hearsay.²¹⁹ In a sodomy case, the Federal Shariate Court held that, “Disclosure made by victim to prosecution witnesses regarding incident being a statement made under immediate influence of transaction is admissible as res gestae under Article 19 of Qanun-e-Shahadat Order 1984”.²²⁰ In short, hearsay and out of court statements can be relevant if corroborated by the immediate facts of the case.

POST-TRIAL

Sentencing

While no sentence can take away the pain and loss suffered by the child victim of sexual abuse, sentencing is still very important for the victims of sexual abuse. Sentencing gives a sense of justice and closure to the child victims through the official recognition that a gross violation of their rights has occurred and that they are not to blame for it. This recognition helps to restore some dignity and personal growth back to the victim and, in some cases, can actually be the impetus for victims of sexual abuse to try and move on from the abuse and continue their lives.

In order to champion the rights of victims, courts should seriously consider during sentencing the impact of the perpetrator’s actions and conduct on the victims of sexual abuse. They should also keep in mind the impact of the sentence on the child victims.

²¹⁹ 1988 CLC 525

²²⁰ PLJ 2001 FSC 46

Furthermore, whenever possible, punishments, orders and sentences that push the rehabilitation and re-integration of the child victim should be promoted. One example of orders/sentences that promote the rehabilitation of the victim are sentencing circles where, after the sentence is delivered, the offender is presented to a group of respected community members, the victim and his/her family, offender's peers and offender's family. This is done both to make the offender realize and see the harm/damage he/she has caused to the community and to the victim and for the community to understand/accept the damage that has been done to the victim. For the victim, it gives him/her validation and acknowledgment by the community of the harm done to him/her, and a sense of justice for the victim by the community and the offender having to face the damage/harm that has been done by them. Only through aiding the victim in overcoming their trauma and abuse can the justice system truly be effective and prevent future abuse and victimization of children. Although this is not currently a widespread practice in Pakistani courts, certain courts, particularly the newly established Child Courts, within the country have begun to incorporate the community of the victim and offender (which may include their friends, parents, associates, elders, etc.) into the sentencing process. More work, however, is needed for this technique to become a standard practice.

Keeping a Victim Informed of the Progress of their Case

The prosecution and court's role and duties to the victims and witnesses does not end at the conclusion of the trial or the imposition of a sentence. Many victims are interested in the results of the cases in which they were involved, and the result is likely to affect their emotional state. Particularly in cases of trial decisions that go against the victim or that provide harsh sentencing, the outcome could severely impact the victim's mental well-being and overall health. In lieu of this outcome, the prosecution team should:

- ☐ Prepare the victim for the chance that the judge does not accept some or most of the victim's testimony, and emphasize that this is not the victim's fault but rather due to a lack of evidence and strength of the overall case;
- ☐ Visit the victims and witnesses to explain the outcome of the case and have a social worker or counselor with them to assist the victim/witness if necessary;
- ☐ Present all available options to the victim/witnesses to challenge the outcome of the case and steps they can take for further legal action against the perpetrator, particularly the appeal process for cases, as most people do not understand that a decision is not final after the verdict of one court. The case can still be challenged through an appeal and moved to a higher court (See Appeals Section);
- ☐ Explain the appeal process and procedures surrounding challenging the Court's decision and bringing the case to a higher court; and
- ☐ Reinforce the idea that. if the result is not what the child expected, it is not his/her

fault.

Even when the decision is favorable for the victim, they might think that the sentence is too lenient for the perpetrator or too harsh (especially if the preparator is a close family member or guardian to whom the child is emotionally attached) and believe that it is their (the victim's) fault that the sentence is too little or too harsh. The prosecutor needs to explain that the sentencing decision has nothing to do with the victim but rather the permissible evidence available in the case, and that there are avenues to challenge even a favorable decision through the legal process.

Appeal

In most cases, a person convicted of a crime at trial has a right to appeal. Acquittals may also be appealed under certain circumstances. The Public Prosecutor may appeal an order of acquittal when directed by the Provincial Government.²²¹ A complainant may also appeal an order of acquittal when granted special leave to do so by the High Court, and other persons aggrieved by the order of acquittal may file an appeal against such order, provided the appeal is filed within 30 days.²²²

An appeal against an order of conviction or acquittal in a case of assault or use of criminal force to woman and stripping her of her clothes, rape, disclosure of the identity of a rape victim, unnatural offence, or sexual abuse shall be decided within six months.²²³ Any person convicted by a Juvenile Court may file an appeal in accordance with the terms of the Cr.P.C. If the offender is a juvenile, his/her parents or guardians may also proffer an appeal on behalf of the juvenile. Finally, the Government or any aggrieved person may, in accordance with section 417 of the Cr.P.C., file an appeal against an order of acquittal within 30 days of the acquittal.

Closure

This part is critical for the child victim/witness's healing process and for his/her rehabilitation and reintegration. The child victim/witness should be thanked by the prosecutor/support person for his/her contribution in the justice process. If required, the child victim/witness should be given access to adequate support services. He/she should also be informed of the outcome of the trial, and if the outcome is not what the child was expecting, he/she should be informed about what led to the decision and reassured that people know that he/she (the child) did his/her best.

²²¹Code of Criminal Procedure, 1898 (Act V of 1898), S. 417(1).

²²²Code of Criminal Procedure, 1898 (Act V of 1898), S. 417(2, 2-A).

²²³Criminal Law (Amendment) (Offences Relating to Rape) Act (2016), S. 14; Code of Criminal Procedure, 1898 (Act V of 1898), S. 417(5).

Reparation

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime advise that, “Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.”²²⁴

Reparation is key to the child victim/witness feeling that he/she has obtained justice and that his/her pain has been recognized and redressed by the State institutions that are supposed to protect him/her and uphold the rule of law. It is a critical element for the child victim/witness to build and later on lead a healthy life. It can consist of financial reparation for material loss or damages that have occurred due to the crime, medical or psychological services, or getting recognition for the suffering that he/she has endured.²²⁵

Currently in Pakistan, there is no formal procedure/standards for reparations. The MOHR does have a Human Rights Relief and Revolving Fund for victims of human rights violations,²²⁶ and victims can apply to this fund through the MOHR’s regional directorates. Certain NGOs like Sahil and SPARC also offer child victims legal assistance and legal aid so that they can fight for reparations in their cases. These NGOs also lobby with legislators and the State to introduce laws regarding topics like reparations and other issues important to child rights and child protection. However, so far, no bill/section of a bill establishes clear guidelines for reparations.

Restitution processes for child victims/witnesses may also occur: in Pakistan, these are usually directed towards the child victim/witness via his/her parent/guardian and may be monitored by the support person who may report to the court afterwards. Article 544A of the Cr.P.C. deals with one form of restitution, namely compensation (mainly financial) to the victims from the perpetrators of the crime. This is the main article that deals with any type of restitution, and it is usually given as part of the sentencing procedure.²²⁷

²²⁴ ECOSOC Res. 2005/20, Annex ¶135, U.N. Doc. A/RES/2005/20 (22 July 2005).

²²⁵ Penal Reform International, *Protecting children’s rights in criminal justice systems: A training manual and reference point for professionals and policymakers* (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf>.

²²⁶ Human Rights Relief and Revolving Fund (http://www.mohr.gov.pk/index.php/home/pps_page/6).

²²⁷ Code of Criminal Procedure, 1898 (Act V of 1898), S. 544-A (“Compensation of the heirs to the person killed, etc.: (1) Whenever a person is convicted of an offence in the commission whereof the death of, or hurt, injury or mental anguish or psychological damage, to any person is caused, or damage to or loss or destruction of any property is caused, the Court shall, when convicting such person, unless for reasons to be recorded in writing, it otherwise directs, order the person, convicted to pay to the heirs of the person whose death has been caused, or to the person hurt or injured, or to the person to whom mental anguish or psychological damage has been caused, or to the owner of the property damaged, lost or destroyed, as the case may be, such compensation as the Court may determine, having regard to the circumstances of the case.”).

Lastly, restorative justice processes can be used to address the harm done to the child victim/witness when deemed appropriate and in the child's best interest.²²⁸ This may, for example, be the case when one of the family members is involved in the abuse and to avoid further trauma for the child victim/witness. Restorative justice is a form of criminal justice that involves rehabilitation of the victims and offenders through dialogue and reconciliation, either with one another or with the community at large. In child sexual abuse cases, direct dialogue between the child victim and offender may prove to be too difficult for the victim and counter-intuitive. This does not mean restorative justice processes have no value in child sexual abuse cases because the victim can still reconcile his/her own trauma and feelings towards the abuse even if that is not directly with the offender. One way in which this can be done is through sharing/support circles and groups where victims of sexual abuse can communicate with other survivors and share their emotions and feelings about the abuse. Another method can be to provide/extend counselling and support services to the victim's family, particularly if the offender was a family member. This is because abuse, especially sexual abuse, doesn't simply affect the victim; it also has a profound impact on the victim's loved ones who may be experiencing guilt, anger and a sense of helplessness regarding the abuse. Thus, group counselling and psychological support for both the victim and his/her family are extremely important in the rehabilitation process for the victim. Sahil, through their Jeet Healing Center (JHC), offers counselling services for both the victim and the family.²²⁹ Providing support to the family/loved ones of the victim significantly helps rehabilitation of the victim as it can enable greater communication, openness and understanding about the victim's trauma and abuse.

²²⁸Penal Reform International, *Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers* (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf>

²²⁹Sahil's counselling services (<http://sahil.org/free-counseling-services/>)

ACTIVITY 1

Activity 1:

Mock sessions

Divide participants into 6 groups.

The first three groups will be given the duty to mock a trial in 30 min.

Each of those three groups will be given a case scenario to mock.

The three other groups will be given a duty to observe the judicial process (group 4 will observe group 1, group 5 will observe group 2, group 6 will observe group 3).

After each mock trial, the observation group will share its comments. The corresponding court decision will be shared with all participants and discussion will follow for each case.

CONCLUSION

The Standard Operating Procedures on Child Sexual Abuse and Child Abuse are a tool to assist judges, prosecutors, police officers/law enforcement officials and professionals to conduct effective investigations and judicial proceedings in cases involving child sexual abuse and child abuse. These procedures put the best interest of the child in front of everything else and strive to make the investigation and judicial ordeal less stressful and trauma-inducing for the children involved in the process. The objective/goal of these SOPs is that they will be accepted, understood and used by police and justice officials across Pakistan to improve the method, ways and procedures through which they conduct investigations and judicial proceedings in cases involving child sexual abuse and child abuse and that, in conjunction with the entire training curriculum, can make a tangible difference in the status of child sexual abuse/child abuse within the Pakistani context.

HANDOUTS

Definition of “Child” - Attachment-1

	Relevant Law	Who is a child/what is the age for adjudication under this law?	Relevant Section
1	CONSTITUTION OF PAKISTAN, 1973 PROHIBITION THE CHILD LABOR		
2	CONSTITUTION OF PAKISTAN, 1973 RIGHT TO FREE AND COMPULSORY EDUCATION		
3	THE PREVENTION OF TRAFFICKING IN PERSONS ACT, 2018		
4	THE JUVENILE JUSTICE SYSTEM ACT, 2018		
5	THE OFFENCE OF ZINA (ENFORCEMENT OF HUDDOD) ORDINANCE, 1979		
6	THE CHILD MARRIAGE RESTRAINT ACT, 1929 (MALE/FEMALE)		
7	SINDH CHILD MARRIAGE RESTRAINT ACT, 2013		
8	KHYBER PAKHTUNKHWA CHILD PROTECTION WELFARE ACT, 2010		
9	THE NATIONAL COMMISSION ON THE RIGHTS OF THE CHILD ACT, 2017		

10	THE BALOCHISTAN CHILD PROTECTION ACT, 2016		
11	PAKISTAN PENAL CODE, 1860 SEXUAL ABUSE OF CHILDREN		
12	THE SINDH CHILD PROTECTION AUTHORITY ACT, 2011		
13	THE PUNJAB DESTITUTE AND NEGLECTED CHILDREN ACT, 2004		
14	THE ICT CHILD Protection Act 2018		
15	THE PUNJAB RESTRICTION ON EMPLOYMENT OF CHILDREN ACT, 2016		

Universal Periodic Review 2017

Sr. #	Recommendation Number	Country	Recommendation	Status
1.	6.23	Georgia	Ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure	Noted
2.	6.27	Honduras	Accede to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	Noted
3.	6.66	Portugal	Establish a National Action Plan for the Implementation of Security Council Resolution 1325 on Women, Peace and Security, as well as explicitly criminalize the recruitment and use of children in hostilities	Noted
4.	6.78	Nepal	Continue implementing measures to safeguard the rights of women, children and other marginalized and vulnerable segments of the society	Accepted
5.	6.97	Ghana	Consider conducting an assessment of the effects of air, water and soil pollution on children's health with a view to designing a well-resourced strategy to address the situation	Accepted
6.	6.101	Paraguay	Step up efforts to prevent child casualties in counter terrorism operations, using every method to protect their rights	Accepted

1.	6.102	Poland	Protect the rights of the child more effectively, particularly during counter-terrorism activities, and by desisting from death sentencing and executing juveniles	Noted
2.	6.189	Djibouti	Continue efforts to combat trafficking in human beings, particularly the exploitation of children, by reinforcing the fight against traffickers	Accepted
3.	6.190	Maldives	Continue its efforts to strengthen the institutional mechanisms to combat and prevent trafficking of persons, specially that of children	Accepted

1.	6.191	(Turkey)	Continue to raise the level of protection of human rights of vulnerable groups, with particular reference to eliminate child labour	Accepted
2.	6.192	Russian Federation	Undertake the necessary steps for the effective implementation of the National Framework Programme to combat child and bonded labour	Accepted
3.	6.194	Republic of Korea	Strengthen monitoring its domestic labour condition to eliminate practice of bonded labour and unlawful child labour	Accepted
4.	6.207	Albania	Strengthen its efforts to promote food security and eradicate all forms of malnutrition, and ensure quality education to all children through inclusive policies	Accepted
5.	6.211	Angola	Strengthen its public health system with a view to provide free, quality, basic health services to all and reduce child mortality	Accepted
6.	6.215	Islamic Republic of Iran	Prioritize policies and programmes on nutrition, vaccination, and health workers to reduce maternal, neonatal, and child mortality and make sufficient budgetary allocations	Accepted
7.	6.216	Kyrgyzstan	Take additional tangible steps to protect children, in particular, to address the critical nutritional and health-care needs	Accepted
8.	6.223	Georgia	Step up efforts to ensure provision of free and quality primary and secondary education	Accepted

1.	6.224	Kazakhstan	Continue current efforts to ensure that all children, without discrimination, enjoy the right to education	Accepted
2.	6.225	Kyrgyzstan	Intensify efforts to ensure that all children enjoy the right to education and protection from discrimination and violence	Accepted
3.	6.226	Norway	Implement federal and provincial laws on the right to education to ensure universal access	Accepted
4.	6.227	Bahrain	Strengthen efforts to ensure the access of children to their compulsory education	Accepted
5.	6.228	Bulgaria	Step up efforts to ensure access of all children to quality education, regardless of social status, gender and ethnicity	Accepted
6.	6.229	Oman	Undertake more efforts to ensure equal access to elementary and secondary education for both genders	Accepted

1.	6.230	Syrian Arab Republic	Increase government spending on education to provide compulsory public and private education	Accepted
2.	6.231	Thailand	Take measures to further promote the right to education, including by ensuring that school facilities and well-trained teachers are sufficiently provided throughout the country	Accepted
3.	6.232	Bosnia and Herzegovina	Continue its efforts to increase enrolment rates at all levels of education, in particular continue to improve equal access to education for all children, regardless of gender, income level, or background	Accepted
4.	6.233	Singapore	Continue to invest resources to ensure that all children between 5-16, in particular girls in difficult regions, have access to quality basic and secondary education	Accepted
5.	6.234	Spain	Ensure a better and greater access of women and girls to education with the aim of empowering them	Accepted
6.	6.235	Argentina	Take urgent measures to protect women and girls against discrimination and gender disparity, in particular by ensuring their access to education	Accepted
7.	6.237	South Sudan	Redouble its efforts to improve condition of schools facilities in the rural areas	Accepted
8.	6.248	Thailand	Effectively enforce the existing as well as new laws to promote and protect the rights of women and children as well as religious	Accepted

1.	6.249	Italy	Strengthen efforts to prevent and combat all forms of discrimination and violence against women and children by means of reinforcing the relevant legal framework, running awareness campaigns and ensuring that perpetrators are brought to justice and victims receive appropriate help	Accepted
2.	6.251	Maldives	Continue to implement additional measures to prevent discrimination against women and girls	Accepted

1.	6.253	Ecuador	Strengthen its efforts to combat discrimination and violence against women and girls to achieve the exercise of their rights under conditions of equality	Accepted
2.	6.255	Bangladesh	Expedite the finalization of the National Policy on Ending Violence Against Women and Girls ()	Accepted
3.	6.256	South Africa	Speed up the finalization of its National Policy on Ending Violence against Women and Girls	Accepted
4.	6.257	Djibouti	Intensify its efforts to combat violence and discrimination against women and girls by ensuring that perpetrators are prosecuted and punished	Accepted
5.	6.266	Iceland	Abolish harmful customary practices against young girls in line with its commitments in the Convention on the Elimination of All Forms of Discrimination against Women	Accepted
6.	6.268	Austria	Take effective measures to ensure the full implementation of the Anti-Honour Killings Bill and the Anti-Rape Bill and raise the legal age of marriage to 18 years in all provinces	Accepted
7.	6.271	New Zealand	Continue its efforts towards eradicating discrimination and violence against women and girls, including by the full implementation of the anti-rape and anti-honour killing laws with thorough investigation and prosecution of all violations of those laws	Accepted
8.	6.273	Bahrain	Work on raising the legal marriage age to 18 years	Accepted
9.	6.274	Iceland	Make 18 years the minimum age of marriage for women and men	Noted

1.	6.275	Australia	Enact and enforce legislation that facilitates women's social, political and economic empowerment, including in relation to child marriage and forced conversion	Noted
2.	6.276	Denmark	Amend the Child Marriage Restraint Act to include an equal minimum age of marriage of 18 years for all individuals	Noted

1.	6.277	Namibia	Take concrete steps aimed at increasing the minimum marriage age for girls from 16 to 18	Noted
2.	6.278	Belgium	Set the legal minimum age to marry at 18 years for males and females in all provinces, and ensure that the law is effectively enforced	Noted
3.	6.279	Brunei Darussalam	Continue to adopt measures which would further promote and protect the rights of the child	Accepted
4.	6.280	Mongolia	Develop a Comprehensive Child Protection Policy with a view to fully reflect the realities of the children in the national plans and programmes	Accepted
5.	6.281	Cuba	Consider the implementation of the necessary safeguards for the protection of children against corporal punishment	Accepted
6.	6.282	Algeria	Take necessary measures to include, in the domestic judiciary systems, international standards with respect to juvenile justice	Accepted
7.	6.283	Germany	Take measures to considerably reduce the number of stunted children and out-of-school children, and end child labour by developing indicators and a timeline for the implementation of the recent legislation against child labour	Noted
8.	6.284	China	Consider the implementation of programmes and policies for the empowerment of young people	Accepted

Domestic Legal Framework Activity. 1 Questions for the Activity:

- 1.** Specify any three rights from the Constitution of Pakistan which particularly mention children.
- 2.** What section of the Pakistan Penal Code deals with child pornography and what is child pornography?
- 3.** What is the punishment for the offence of Exposure to Seduction according to the Pakistan Penal Code?
- 4.** What acts are punishable under section 377-A of the Pakistan Penal Code?
- 5.** What is the punishment for Child Sexual Abuse under section 377-B?
- 6.** What section of the PPC prohibits the forced marriage of a child and non-Muslim?
- 7.** A man who has sexual intercourse with a woman under 16 years with her consent is said to commit rape. Yes or No?
- 8.** Section 366A prohibits the procurement of a girl. What is the age of a girl defined in this section?
- 9.** Under Section 365-B, of PPC what is the punishment for kidnapping, abducting or inducing a woman to compel marriage, etc.?
- 10.** Which article of the Constitution recommends positive discrimination for women and children? Article-14, Article 25-A or Article 25-(1)?
- 11.** What section of the PPC is applicable to the offence of importation of a girl from a foreign country?
- 12.** Which section of the Prevention of Electronic Crimes Act, 2016 deals with child pornography?

- 13.** Who can report for removal, destruction of or blocking access to information that is prohibited under the Prevention of Electronic Crimes Act 2016?
- 14.** Who is empowered to lodge a First Information Report (F.I.R) under the Prevention of Electronic Crimes Act, 2016?
- 15.** Who has jurisdiction to lodge a F.I.R. for the offence of Child Pornographic Material under section 292-B of the PPC? Police or FIA?
- 16.** When rape is committed by two or more persons in furtherance of a common intention, what is the punishment for this act? Under what section of the PPC?
- 17.** If a public servant, like a police officer, medical officer or jailor, takes advantage of his official position and commits rape, what punishment does the law suggest for him? Death, Life Imprisonment or other?

Domestic Legal Framework – Activity 2

Matching Game

Q. No.	Word/Phrase	Correct Match	Matching Word/Phrase
1	Criminal Law (Amendment Offences Relating to Rape) Act		Shall be punished with death or imprisonment of life and fine
2	Section 55 PPC. Sentence of imprisonment for life under 354A, 376, 376A, 377 or 377B or where the principle of Fasad-fil-arz is applicable		Shall be concluded in 3 months
3	Free legal aid will be offered to the victims of the offence		Shall be punished with imprisonment of 3 years or fine or with both.
4	Appeals under section 354A, 376, 376A, 377 or 377B PPC		Disclosure of the identity of a victim of rape is also prohibited
5	Rape of minor or person with mental or physical disability shall be punished with		376, 377 and 377B PPC
6	Victims of the offence of rape, unnatural offence or sexual abuse or attempt to commit these offences shall be examined by		Punishment shall not be commuted.
7	Trial under section 354A, 376, 376A, 377 or 377B PPC		Shall be concluded in 6 months

8	A DNA test is compulsory in offences		Under section 354A, 376, 377 or 377B PPC
9	Section 376 A		Registered medical practitioner
10	A public servant who fails to carry out a proper investigation		Was passed in 2016

Activity Hand out:

2.2 Criminal Law (Amendment Offences Relating to Rape) Act, 2016

Criminal Law (Amendment Offences Relating to Rape) Act, 2016 was passed in 2016. This amendment inserted some new sections and amended other sections of the PPC in order to make the laws for the offence of rape stricter.

Section 55 of the PPC is amended so that when a sentence of imprisonment for life is passed for offences mentioned under sections 354A, 376, 376A, 377 or 377B or where the principle of Fasad-fil-arz is applicable, then **punishment shall not be commuted**.

Under section 166 PPC, any **public servant who fails to carry out proper investigation** or fails to properly pursue a case in Court shall be punished with imprisonment of 3 years or fine or with both.

Punishment under section 186 PPC has been increased to imprisonment of one year and fine of fifty thousand rupees. Whoever **hampers or misleads, jeopardizes or defeats any investigation, inquiry or prosecution or issues a false or defective report** shall be imprisoned for up to 3 years or with a fine or with both.

Section 376 of the PPC is also amended; whoever while **committing rape causes hurt punishable** under section 333, section 335, clauses (iv), (v) and (vi) of section 337, section 3337C, (v) and (vi) of section 337F shall be punished with death or imprisonment for life and fine.

Also, **whoever commits rape of a minor or a person with mental or physical disability** shall be punished with death or imprisonment for life and a fine. It further states that whoever being a **public servant** including a police officer, medical officer or jailor, taking advantage of his official position, commits rape shall be punished with death or imprisonment for life and fine.

Through this amendment, now **disclosure of the identity of a victim of rape is also prohibited** u/s 376A and similarly disclosure of the identity of victim of an offence falling under section 354A, 376, 376A, 377 or 377B PPC is also prohibited.

The 2016 amendment also inserted a new section 53A into the Criminal Procedure Code, 1898 (Cr.P.C.) authorizing a compelled **medical examination of an arrested person accused of the offence of rape**, unnatural offence or sexual abuse under section 376, section 377 and section 337 by a registered medical practitioner employed in a hospital run by the Government.

Section 154 of the Cr.P.C. is also amended to make it compulsory for an investigating officer to record the statement of a female victim of an offence under section 336B, section 354, section 354A, section 376 or section 509 of PPC in the **presence of a female police officer**, another female family member of the victim, or any other person with consent of the victim. Similarly, it is also compulsory for Police to record the F.I.R. of such offence in the presence of a female police officer. If the victim is distressed, the victim's statement shall be recorded at her residence/complainant residence or at a convenient place of her choice.

Free legal aid will be offered to the victims of offences committed under sections 354A, 376, 377 or 377B PPC with the assistance of Provincial Bar Councils.

Victims of the offence of rape, unnatural offence or sexual abuse or attempt to commit these offences shall be **examined by a registered medical practitioner and, in case of a female victim, by a female registered medical practitioner** immediately after the commission of such offence.

Now under this amended law, a DNA test **is compulsory in offences under sections 376, 377 and 377B**. Where practicable, DNA samples should be collected from the accused and from the victim, with his or her consent or that of his or her guardian. It is the duty of the investigating officer to send the samples of DNA to a forensic laboratory as soon as possible.

A new section 344A is inserted in the PPC which provides that the **court is bound to conclude the trial of offences related to rape in three months**. Appeals shall be decided in 6 months as per section 417(5) Cr.P.C.

Trials for offences under sections 354A, 376, 376A, 377 or 377B PPC **shall be conducted in camera. Courts may use video links or screens for the protection of the victims and the witnesses**. Proceedings in the cases of the above-mentioned offences shall not be published, broadcasted or printed except with permission of the court.

The Code of Criminal Procedure's schedule is also amended for the explanation of the amended sections of the PPC.

CASE STUDIES

CASE STUDY 1

F.I.R No. 271/99 dated.

According to Complainant “B”, on 20-08-2019 at about 10.00am his son “F”, aged four years, went out of his house to play. The boy didn’t return home, where upon at about zuhur prayer, he along with Master, a few others and Abdul Rehman set out to search for the minor but failed to trace him. On 25-08-2019, “N” informed the complainant that on 24-08-2019 around 11:00am he had seen “F”, the minor, going along with “M”, his neighbour. According to the complainant, he pursued the matter with “M”, but “M” denied having taken the young boy. But they continued to search for the child, and then on 26-08-1999, Mr. “Y”, who owns a cattle shed to the south of the house of the accused, aforesaid raised hue and cry for having a foul smell. He saw the roof of the cattle shed and found that the dead body of minor “F” was lying there.

According to the complainant, he along with other respectable and other neighbours reached there and found that the dead body of “F” was lying on the roof of the cattle shed in a white bag.

There was a string around the neck of the dead body, and it was emitting a foul smell. The complainant stated that he was positive that his son was killed after sexual abuse by “S”, his sons “M”, and “T”, who then threw the body on the roof of the cattle shed because “N”, father of the complainant, had about two months earlier vacated from a shop that he rented from “S”. According to the complainant, due to that grudge, the accused committed the offence. The case was registered on the basis of a written complaint submitted by the complainant and the investigation was taken up by the S.H.O.

In the police investigation, two accused, “M” and “T”, were found guilty while their father “S” was found innocent by the police, but the trial court summoned him for the trial as well and later acquitted him.

The prosecution produced 12 witnesses against the appellant, and the learned trial court on 10-02-2000 concluded and held the accused “M” guilty u/s 302/377 PPC. and awarded the death penalty with imprisonment of six months. The second accused “T” was acquitted from the charges of 377 and was sentenced to 14 years’ imprisonment for the murder charges.

On 09-07-2001, the appeal in high court for both the convicts was heard by the Lahore High Court-Bahawalpur Bench, but the High Court dismissed the appeal against the conviction and sentence, confirming the death sentence of “M” while allowing the appeal of the other accused

and released “T”, the younger brother of the main accused.

The Supreme Court granted the leave to appeal and decided the appeal on 13-06-2002. The court maintained the death sentence for the accused “M” and the appeal was dismissed.

Date of F.I.R.	26-08-1999
Trial Court Judgment:	10-02-2000
High Court Judgment:	09-07-2001
Supreme Court Judgment:	13-06-2002
Compromise in Trial Court Judgement:	2

The case of terrified 14/15 years old Mst. "A"

Mst. "A" lodged a complaint at the Police station that she is living in the locality for the last ten years with four daughters and two sons. That on 24th May her younger daughter "S", aged between 14 and 15 years old, went outside to see her younger brother who had gone to the Hotel/Tandoor to bring the rottis/bread. When "S" reached the adjoining street of Mst. "A"'s house, "B", who lived with "A's" neighbours, caught "S" with the help of another, started penetration in the private part of "A's" daughter with his finger. As he proceeded removing his own clothes, "A's" daughter started crying loudly and made a noise. First, "A" reached the place of the incident. Seeing her at the entrance of the street, both boys ran away.

-On this complaint, the police lodged an F.I.R. and started the investigation, but on the 4th of May, the victim revealed before the Judicial magistrate her statement, under section 164 of Cr.PC, that it was not only attempt but they removed her clothes and also raped her and that at the time of FIR she was terrified and couldn't record the full statement. The MLC report also confirmed the incident of sexual abuse.

As the statement under section 164 was under oath, the lawyer from the defence side also asked some questions in the court for cross-examination:

Following are the few questions from 14-year-old "S" in the court room:

How many Brothers and Sisters do you have?

Is it correct your two sisters are married? Can you please name those two sisters?

Is it true your elder sister namely "Ashi" did court marriage?

Is it true that at that time your family approached the police to initiate the same sort of litigation?

What is the name of your sister "Ashi's" husband?

Was her husband "Imi" also your neighbour?

Is it correct you love the accused "B" and wanted to marry him?

Is it correct "B" doesn't like you and had no interest in you?

Has your brother also contracted a love marriage?

Is it correct, your next-door neighbour, accused "B", had no interest in you and had refused your proposal, so that you and your mother in revenge planted the story and registered the complaint against him?

Is it correct your mother and father also did love marriage and used to live in Karachi?

Is it true, as your family had a history of love marriages, you also wanted to get married with "B" and on refusal from him and his parent, you lodged the complaint?

Where were your male family members at the time of incident?

In this case, the accused's pre-arrest bail couldn't be confirmed from Court of Session, but the High Court granted him the bail before arrest.

Accused of Rape and Convicted of Child Sexual Abuse

The Father of “H” reported to police that his daughter was feeling pain in the stomach but despite of having gotten examination from the different hospitals could not get relieved from the pain. On 28-06-2017 she revealed that in fact two accused namely “AY” and “MI” had raped her some days ago and it was also witnessed by the “SR”. Police registered the F.I.R. on 29- 06-2017 with the offence of Rape u/s 376 of Pakistan Penal Code. Both the accused persons were also less than 18 years of age.

“H” stated in her examination-in-chief that after removing her clothes, both the accused persons also removed their own clothes and started performing dirty acts with her, firstly fingered her and then they put their genital organs in her mouth. She did not level allegations of penetration sufficient enough to constitute offence of sexual intercourse against her will and without her consent.

Both the accused persons were medically examined by Dr. Xyz who vide MLC’s of both the accused persons found an opinion that there was nothing to suggest that both the accused persons were not able to perform the sexual acts.

“SR” the star witness said that house of victim “H” had four stories whereas his house had three. The occurrence was alleged to have committed at the top roof of the house of the girl, and he viewed the happening of this incident from his three story building and the court held that this is not possible, the police also arrested the witness who spent one whole night with the other accused, but released later it also created a doubt on the part of prosecution, as if the release was reward of the statement against accused persons.

Another medical officer, Dr. TR, examined victim of this case on 28.06.2017, and stated the history of change of clothes and bath was described by her. Hymen was found absent but orifice admits one finger. Neither any cervical tear or fresh bleeding was present nor any mark of violence, torture, bruise and abrasion was found. But despite all these observations, she as Pw.5, says that recent sexual activity could not be ruled out. She further opined that medico legal case findings were consistent with habitual use of sexual activity.

The court sentences both accused namely, (i) “AY” and (ii) “MI” u/s 377- B of PPC, inserted by Criminal Law (Second Amendment) Act, X of 2016, with simple imprisonment up to two years each only and a fine of five hundred thousand rupees (Rs.5,00,000/-) each. In default of payment of fine, both the accused persons have to undergo a simple imprisonment of four months each. The convicts shall be entitled to all the benefits u/s 382-B of Cr.P.C.

The court taking into consideration, the mental anguish, the psychological and the terrible subjective physical and emotional transformation the victim girl might have undergone and the

probable everlasting stigmatization of her character, the court stood by her bravery and courage in facing agony of trial, thus, at least in monetary terms, dares to wipe out her tears by awarding her compensation u/s 544-A Cr.P.C., of Rs. 1,00,000/- (total 2 Lac) to be paid by each of the convicts.

CASE STUDY 4 (ON THE NEXT PAGE)

**IN THE NAME OF ALLAH, THE ALMIGHTY, THE MOST MERCIFUL,
THE MOST BENEFICENT**

**IN THE COURT OF MUHAMMAD AKHTAR BHANGOO,
ADDL; SESSIONS JUDGE/CHILD COURT, LAHORE**

FIR No.140/17 Dated:29.06.2017
Registered u/s. 376 PPC
With Police Station Lohari Gate, Lahore
Date of decision..19-03-2019

The State

Versus

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

J U D G M E N T :-

This occurrence was reported by a father [REDACTED] on 28.06.2017, told to him by his [REDACTED] [REDACTED] that she was feeling pain for last many days in her stomach and he, despite having got her examined from hospitals, could not get her pain relieved. However, she, thereafter, told him that infact, two accused namely [REDACTED] and [REDACTED] committed her rape and this occurrence was witnessed by [REDACTED]. Police registered this FIR at 12.40 A.M on 29.06.2017.

2. Police submitted report u/s 173 of Cr.P.C against accused persons [REDACTED] on 29.06.2017, by treating them juvenile and placing their names in column No.3. After delivery of copies u/s 265-C of Cr.P.C, to the accused persons, they were charge sheeted on 07.12.2017, u/s 376 PPC, which they denied to.

3. Thereafter, the prosecution produced following witnesses:

1. Sajjad Khan SI, being scribe of FIR as PW.1
 2. Muhammad Yousaf s/o Miraj Din being complainant/informer as PW.2
 3. [REDACTED] aged 16 years
being victim as PW.3
 4. [REDACTED] Riaz as eye witness
of the occurrence as PW.4
 5. Dr. Tooba Rani who medically examined victim,
As PW.5
 6. Shahid Mehmood ASI, being I.O of the case
as PW.6
 7. Noureen Kashif Zafar, who medically examined both the
accused persons as PW.7
 8. Mushtaq Ahmad SI, being scribe of police
proceedings as PW.8
 9. Mr. Umer Nawaz Warraich
Learned Area Judicial Magistrate
who recorded statement of victim as
witnesses u/s 164 of Cr.P.C as PW.9.
4. In documentary evidence, prosecution has produced followings:

1. Certified copy of FIR No.140/147 as Ex.PA
2. Application filed by PW.2 with his thumb
impression and signatures respectively,
for registration of FIR as Ex.PB
Ex.PB/1,
Ex.PB/2
3. Upon application filed by PW.2,
police proceedings as Ex.PB/3
4. MLC of victim prepared by PW.5 as Ex.PC
Ex.PC/1
5. Report and opinion of Pw.5 upon back
of PFSA report as Ex.PD
& Ex.PD/1
6. Site plan of the place of occurrence
without scale prepared by PW.6 as Ex.PE

- | | | |
|-----|---|-----------------------------|
| 7. | MLC No. 1999/17 of accused [REDACTED]
as to his potency, prepared and signed
by PW.7 as | Ex.PF
Ex.PF/1
Ex.PF/2 |
| 8. | MLC No. 2000/17 of accused [REDACTED]
as to his potency, prepared and
signed by Pw.7 as | Ex.PG
Ex.PG/1
Ex.PG/2 |
| 9. | Application for statement of victim
u/s 164 of Cr.P.C. before PW.9 as | Ex.PH |
| 10. | Complete record of statement of victim
u/s 164 of Cr.P.C. including cross
examination by the accused as | Ex.PJ |
| 11. | Application by I.O for obtaining copy
of statement u/s 164 of Cr.P.C. and
permission of the Court respectively as | Ex.PK
Ex.PK/1 |

5. Thereafter, on 04.02.2019, learned DDPP for the State closed evidence on behalf of prosecution.

6. Statements of both the accused u/s 342 of Cr.P.C were recorded wherein they neither opted to be examined as defence witnesses on oath as provided u/s 340 (2) of Cr.P.C in disproof of the charge/allegations made against them nor they wanted to produce any evidence in their defence.

7. Following was the reply of accused [REDACTED] to question, "Why was this case registered against him; and why have the PWs deposed against him":-

"The complainant deposed against me due to the malafide intention to grab the inherited property situated adjacent to house of the complainant. Pws are related inter se, therefore, deposed falsely".

8. And following was the reply of accused [REDACTED] to question why this case registered against him; and why have the PWs deposed against him":-

“The Pws deposed agasint me due to quarrel took place between me and [REDACTED] (real son of complainant), therefore, deposed falsely”.

9. After conclusion of trial, [REDACTED] learned DDPP duly assisted by learned counsel for the complainant Mr. [REDACTED] Advocate, advanced arguments by contending that prosecution has been able to bring the guilt home to the accused persons beyond any reasonable show of doubt, hence, accused persons be convicted and sentenced in accordance with law.

10. [REDACTED], Advocate, learned counsel for the defence appointed at the State expense, advanced arguments that complainant of the case is not the eye witness; that eye witness [REDACTED] is not probable in the ordinary course of nature; that simple statement of victim is not inspiring confidence of the court and prosecution story is not free from doubts, therefore, both the accused persons be acquitted.

11. With the able assistance of both the sides, I have perused the available record. My findings are as under;

12. Both the accused persons were medically examined by Dr. [REDACTED] who vide MLC's Ex.PF and Ex.PG of both the accused persons founded an opinion that there was nothing to suggest that both the accused persons were not able to perform the sexual acts. There are certain discrepancies about obtaining consent of the minor accused persons for medical examination but neither these MLC's have been challenged anywhere by the accused persons nor they have taken the defence that they are impotent. In such situation, findings of this medical officer are sufficient to establish that both the accused persons are capable of performing sexual activities, specially in absence of any special plea of psychological impotence.

13. Pw.5, [REDACTED], examined victim of the case namely [REDACTED] on 28.06.2017, then aged 16 years. History of change of

clothes and bath was described by her. Hymen was found absent but orifice admits one finger. Neither any cervical tear or fresh bleeding was present nor any mark of violence, torture, bruise and abrasion was found. But despite all these observations, she as Pw.5, says that recent sexual activity could not be ruled out. She further opined at that medico legal case findings were consistent with habitual use of sexual activity per vagina. She categorically ruled out possibility of self-satisfaction in sexual activity by using some instruments.

14. Neither any mark of violence was found nor any sign of rape or Zina Bil Jabar in the form of any bruise, abrasion was available. If orifice still admits only one finger as to how it can be relied upon that victim was involved in habitual sexual activity per vagina.? No seminal material was detected. Opinion of Pw.5, in such circumstances, is self-contradictory. Mere history of rape should not lead a professional like her to reach a conclusion of rape. All the observations recorded by her are belying her opinion of habitual sexual activity. It is astonishing that in absence of any sign of use of force in Zina Bil Jabar or mark of violence specially in view of statement of victim that she made a hue and cry, how an opinion of sexual activity per vagina could be found out by the Pw.5.? Pw.3, the victim girl herself has limited her allegations to oral sex and fingering, therefore, opinion of the medical officer as to habitual sexual activity, does neither lend any disadvantage to prosecution nor any advantage to defence.

15. Complainant is father of the victim but from Ex.PB and from his statement as Pw.2, he does not appear to be a witness to the occurrence. It was described by her victim daughter to him. Therefore, his evidence is just to put the law into motion and would not extend any help to prosecution to prove this case to have seen the occurrence. One of the witnesses to this occurrence, has been shown a 12/13 years aged boy namely [REDACTED] who has been examined as Pw.4. It is the

prosecution case that [REDACTED] was witnessing everything from his adjacent roof. Statement of Pw.4, reveals that firstly, he wrongly described date of occurrence as 29th but, thereafter, filled in his lacuna through prosecution by rectifying it as 25th. He says that house of [REDACTED] had four storeys whereas his house had three. The occurrence was alleged to have committed at the top roof of house of victim girl, therefore, in view of number of storeys qua statement of Pw.4, he would be incapable to witness this occurrence from roof of his third floor to the adjacent roof of the 4th floor of the victim girl.

16. Although, it was not prosecution's case but it has been established in his cross-examination as Pw.4 that he was detained in police station along with present two accused persons for one night. Mushtaq Ahmad, SI, while appearing as Pw.8 before whom, the complaint was firstly filed and who prepared details of injuries of [REDACTED] Yousaf vide rapt no.7 dated 28.06.2017 before registration of this case, deposed that initially, there were three accused persons namely [REDACTED] [REDACTED] and Pw.4 who were mentioned in above said rapt. Pw.2 in his statement mentioned this witness in the last line of his examination-in-chief. It looked like he forgot or atleast, he needed to recall it whether there was any witness. Similar is the case of victim girl who did not voluntarily described name of the witness in her examination-in-chief but seemed to have been led by the prosecutor, therefore, did not inspire confidence in the court as to presence of Pw.4 on the place of occurrence at the time of occurrence. Since, Pw.4 is established to have remained in the police custody for one night along with the accused persons and now, is standing in the row of witnesses, therefore, the possibility that he is paying his debt of release from this case as accused, while standing himself as witness, cannot be ruled out. It also does not appeal to reason that he might have seen the commission of occurrence of Zina Bil Jabar, with his own eyes and

remained silent for many days. His evidence is very dangerous to be relied upon in his status as the eye witness of the occurrence.

17. Medical evidence is always corroborative in nature and it only comes to support the ocular account. Therefore, absence or negative form of DNA report or lack of competency of WMO while making observations regarding victim, does not destroy the case of prosecution. There is no denying to the fact that solitary confidence inspiring statement of a victim girl is sufficient to hold conviction of the accused. There cannot be a possibility in the ordinary course of nature of an eye witness of an occurrence of Zina who alleged to have seen the complete episode of forcible commission of Zina and if at all, any such witness is alleged, even then a serious question mark is on his credibility as a human of good nature that he remained silently observing this highest alleged form of atrocity against women. So without perusing the statement of victim girl, no advantage of Pw.4 can be extended to defence.

18. Ex.PB reveals the allegations of rape. But these allegations were described by a father of victim girl who is neither eye witness of the occurrence nor deposing direct evidence. Pw.9 is Learned Area Magistrate who recorded the statement of victim girl on oath u/s 164 of Cr.P.C. as Ex.PJ. Ex.PJ reveals that [REDACTED] leveled allegation of Zina Bil Jabar and threats to kill in case of disclosure. She was cross-examined by accused [REDACTED] and [REDACTED] but cross examination did not seem to have challenged the sexual activity. Although, there is no clear evidence as to provision of any lawyer to the accused persons for any cross-examination on statement u/s 164 of Cr.P.C. but apart from it, this statement at the maximum is her version recorded before Magistrate.

19. She while appearing as Pw.3 in her examination-in-chief shook the moral foundations of our social fabric when she said that

after removing her clothes, both the accused persons also removed their and started performing dirty acts. The word, “dirty acts”, being vulnerable to variant connotations, created confusion as to performance of sexual activity per vagina. But the 16 years old minor witness/victim girl offered an exemplary daring clarification when she said that both the accused persons, firstly fingered her and then they put their genital organs in her mouth. She did not level allegations of penetration sufficient enough to constitute offence of sexual intercourse against her will and without her consent. She modified allegations of Zina with explicit sexual activity against her will but verily, she did not altogether uprooted the prosecution version of use of her body in sexual activity. This is her first statement before trial court.

20. She at the time of this occurrence was 16 years of age. There is no reliable evidence as to her habitual involvement in sexual activities. No reliable evidence as to her bad character is available in the file. In view of attending circumstances, she appears to be a girl of normal prudence with the family background of ordinary stature. She does not appear to be suffering from any mental infirmity. Allegations of fingering or oral sex are very rare phenomenon qua rampant frequent omnipresent allegations of rape in observation of daily routine while putting the criminal law into motion. There seems no reason as to why she would depose such words if this had not happened. Whatever earlier told by father, by a witness or by her before any forum, cannot be termed a hindrance in her way to speak truth before trial court.

21. She might have told under a shield of shyness, a more convenient and less shameful word of rape to her father, to the Magistrate but such allegations as leveled by her in her examination before court, are speaking volumes of pain, grief, ridicule and psychological trauma, she underwent as a result of this occurrence. This traumatic psychological impulse, ultimately led her to cross all

barriers of women decency, normally prevalent in our society. Access to justice by a women in pseudo-pride fed society entangled in male chauvinism is highly restrictive from the very out set when they even cannot disclose what happened to them without inviting public scrutiny and shame on to themselves and their families as well. Matter would not end here in courts, the stigma or the imputability attached to the victim girl's character, would firstly deprive her of chances of routine marital ties, secondly would create unsurmountable hurdles to cross, for her other sisters and family as well, and might eventually, would result into forced migration from their locality to a far off place to avoid ridiculous staring eyes of their fellow human beings lowering down them in estimation of respect. It is very painful to go on imaginary journey with the victim girl as to what traumatically distressful reality of doubts as to her character or credibility, passes by her when she levels allegations of forced sexual activity in society like ours. Such statements reflect the highest magnitude of agony, the victim girl was suffering from. Her words of sexual activity as alleged by her, are speaking louder than any question of improvement.

22. Neither any credible evidence as to quarrel of accused [REDACTED] with brother of victim, namely, Adnan nor any document as to inherited property or any evidence showing proof of intention or effort of father of the victim to snatch property of accused [REDACTED] has been produced. In view of absolute failure of defence to justifiably indicate any mala fide behind these allegations, this court safely holds in view of psychological barriers of womanhood in terms of morality and shyness that the nature of allegations by Pw.3 in her examination, eliminates all motives to falsehood. Although, technically speaking charge of rape in absence of any evidence of penetration sufficient enough to constitute culpable sexual intercourse is not made out, therefore, charge u/s 376 PPC is dropped but at the same time, Section 237 of Cr.P.C empowers any criminal court if it appears in

evidence that an accused committed a different offence for which he might have been charged under the provision of that section, he may be convicted of the offence which he shown to have committed, although he was not charged with it. In view of above discussion, prosecution is held successful on solitary statement of victim girl as Pw.3 to prove that she had been engaged by both the accused persons in obscene and sexually explicit conduct. Since she is less than 18 years of age, therefore, it is held that prosecution has established offence u/s 377-A of PPC punishable u/s 377-B of PPC beyond any reasonable shadow of doubt. Thus, this court convicts the accused persons, [REDACTED] and [REDACTED] u/s 377-B of the PPC.

23. Now let us discuss the quantum of punishment. Victim girl was minor at the time of occurrence. But both the accused persons in absence of any evidence to the contrary are also less than 18 years of age even now. Both the accused are juvenile by all means. They are entitled to all the benefits being juveniles. There is no evidence that they are record holders rather being first offenders would, of course, be given an opportunity to mend their ways in future, therefore, in view of all the circumstance of this case, this court sentences both accused namely, (i) [REDACTED] son of [REDACTED], [REDACTED]
[REDACTED]
[REDACTED] u/s 377-B of PPC, inserted by Criminal Law (Second Amendment) Act, X of 2016, with simple imprisonment upto two years each only and a fine of five hundred thousand rupees (Rs.5,00,000/-) each. In default of payment of fine, both the accused persons have to undergo a simple imprisonment of four months each. The convicts shall be entitled to all the benefits u/s 382-B of Cr.P.C.

24. By justice, it may be understood to mean the restoration of a victim's dignity and her reintegration into society, while the offender is held accountable for his actions but it is not very difficult to imagine as to what would happen with a future of the victim girl in our society. By taking into consideration, the mental anguish, the psychological and the terrible subjective physical and emotional transformation the victim girl might have undergone and the probable everlasting stigmatization of her character, this court is under a legal and moral obligation to stand by her bravery and courage in facing agony of trial, thus, atleast in monetary terms, dares to wipe out her tears by awarding her compensation u/s 544-A Cr.P.C., of Rs. 1,00,000/- (total 2 Lac) to be paid by each of the convicts. This compensation is to be paid by the both convicts in the form of saving certificates in the name of victim girl. Since both the convicts are minors, therefore, in absence of their capacity to pay independently, their fathers/guardians if any, are held under a legal obligation to pay on their behalf respectively as they have failed to perform their parental duties in bringing up their children. Duly appointed guardian of victim in accordance with law will be entitled to make use of this amount for the welfare of victim in accordance with law after permission from Guardian Court appointing him/her as guardian, if there be any need prior to it being matured or victim when she attains majority in accordance with law. The compensation payable shall be recoverable as arrears of land revenue. In case of default to pay compensation, the convicts, [REDACTED] and [REDACTED], shall suffer from simple imprisonment for a period of four months. Imprisonments imposed in default of fine or compensation will run concurrently. Warrants of execution of sentences awarded to both the juvenile convicts in the name of Incharge of Borstal Institution established under the Punjab Juvenile Justice System Rules, 2002 be issued accordingly immediately through the concerned Superintendent Jail .

25. One of the main purposes of Juvenile Justice System of the country is the rehabilitation of juvenile at conflict with law, therefore, intention of legislature is to be given respect in its letter and spirit. Under section 11 of Juvenile Justice System Ordinance 2000, Incharge of concerned Borstal Institution will produce both the convicts before Juvenile Court on first working day after three months from today for an appropriate order by this court as to whether further imprisonment will be unnecessary or not or as to whether the convicts be sent on probation for the remaining period of imprisonment etc. The Incharge Borstal Institution will be duty bound to submit a detailed reports as to physical, mental, psychological, intellectual moral, religious, educational and social development of juvenile convicts, during this period of detention. He will be duty bound to take care of health, hygiene and all legal requirements of the convicts in accordance with law. He is also directed to submit his report as to what measures, he has taken to improve the mental caliber of the juveniles and to develop and promote natural instincts and skills. His report shall also indicate as to whether further detention of the convicts or their release on probation is necessary or not. Concerned Probation Officer will also help him in preparing these reports by making use of all available sources so that appropriate order as to further detention or release on probation of delinquent juveniles be made. Copy of this judgment be sent to the Chief Secretary and Secretary Home to the Government, Province of Punjab to ensure compliance of detention of convicts in borstal institution in accordance with Juvenile Justice System Ordinance 2000 and rules made there under in 2002. Copy of this judgment has been supplied to the convicts free of cost and to prosecutor as per rule. Probation Officer did not take any interest in submitting social investigation report in this case, therefore, a copy be also sent to the concerned for future guidance. Unless specifically authorized by this court, no proceedings conducted by this court for

juvenile accused person [REDACTED] and [REDACTED] shall be published in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published. Ahlmad, Abu Bakar is directed to consign the file to the record room.

Announced:
19.03.2019

Muhammad Akhtar Bhangoo
Addl: Sessions Judge/Child Court/
Juvenile Court, Lahore.

Certificate:

Certified that this judgment consists of 13 pages. Each page has been dictated, corrected and signed by me.

Announced:
19.03.2019

Muhammad Akhtar Bhangoo
Addl: Sessions Judge/Child Court/
Juvenile Court, Lahore.

ACTIVITY ANSWERS

Definition of a Child - Attachment 1 Answers:

	Relevant Law	Who is a child/what is the age for adjudication under this law?	Relevant Section
1	CONSTITUTION OF PAKISTAN, 1973 PROHIBITION THE CHILD LABOR	14 Years	Article 11
2	CONSTITUTION OF PAKISTAN, 1973 RIGHT TO FREE AND COMPULSORY EDUCATION	16 years	Article 25-A
3	THE PREVENTION OF TRAFFICKING IN PERSONS ACT, 2018	18 Years	Sec 1(a)
4	THE JUVENILE JUSTICE SYSTEM ACT, 2018	18 Years	Sec 2(b)
5	THE OFFENCE OF ZINA (ENFORCEMENT OF HUDOOD) ORDINANCE, 1979	M: 18 Years F: 16 Years or Puberty	Sec 2 (a)
6	THE CHILD MARRIAGE RESTRAINT ACT, 1929 (MALE/FEMALE)	M: 18 F: 16 Years	Sec 2 (a)
7	SINDH CHILD MARRIAGE RESTRAINT ACT, 2013	18 Years	Sec 2 (a)
8	KHYBER PAKHTUNKHWA CHILD PROTECTION WELFARE ACT, 2010	18 Years	Sec 2 (d)
9	THE NATIONAL COMMISSION ON THE RIGHTS OF THE CHILD ACT, 2017	18 Years	Sec 2 (b)

10	THE BALOCHISTAN CHILD PROTECTION ACT, 2016	18 Years	Sec 2 (e)
11	PAKISTAN PENAL CODE, 1860 SEXUAL ABUSE OF CHILDREN	18 Years	Sec 377-A
12	THE SINDH CHILD PROTECTION AUTHORITY ACT, 2011	18 Years	Sec 2 (g)
13	THE PUNJAB DESTITUTE AND NEGLECTED CHILDREN ACT, 2004	18 Years	Sec 3 (e)
14	THE KHYBER PAKHTUNKHWA CHILD PROTECTION AND WELFARE ACT, 2010	18 Years	Sec 2 (d)
15	THE PUNJAB RESTRICTION ON EMPLOYMENT OF CHILDREN ACT, 2016	15 Years	Sec 2 (c)

Domestic Legal Framework Activity.1 Answers:

1. Specify any three rights from the Constitution of Pakistan which particularly mention children.

- a. Article 11 of the Constitution of Pakistan prohibits all forms of slavery, forced labour, human trafficking, employment of children younger than 14 years and child labor in hazardous places.
- b. Article 25 states that all citizens are entitled to equal protection of the law and empowers the state to make special provision for the protection of women and children.
- c. Article 25(1) of the Pakistani Constitution states that “all citizens are equal before [the] law and entitled to equal protection of law”. Article 25-A provides that the state shall provide free and compulsory education to all children aged five to sixteen years, meaning that the minimum age of employment should be at least 16 years.
- d. Article 35 provides that the state shall protect the family and the child.

2. What section of the Pakistan Penal Code deals with child pornography, and what is child pornography?

292B. CHILD PORNOGRAPHY. “any photograph, film, video, picture or representation, portrait, or computer-generated image or picture” of a minor engaging in obscene or sexually explicit conduct or a visual depiction that appears to show a minor engaging in obscene or sexually explicit conduct.

3. What is the punishment for the offence of Exposure to Seduction according to the Pakistan Penal Code?

292A. EXPOSURE TO SEDUCTION. Whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, a film, video or a computer generated image or attempts to do the aforementioned act, shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend up to seven years or with fine which shall not be less than one hundred thousand rupees and may extend up to five hundred thousand rupees, or with both.

4. What acts are punishable under section 377-A of the Pakistan Penal Code?

- a. Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse.

5. What is the punishment for Child Sexual Abuse under section 377-B?

- a. Imprisonment not less than fourteen years and may extend up to twenty years and with fine that shall not be less than one million rupees

6. What section of the PPC prohibits the forced marriage of a child and non-Muslim?

- a. 498-B

7. A man who has sexual intercourse with a woman under 16 years with her consent is said to commit rape. Yes or No?

- a. Yes

8. Section 366-A prohibits the procurement of a girl. What is the age of a girl defined in this section?

- a. 18 years

9. Under Section 365-B of the PPC, what is the punishment for kidnapping, abducting or inducing a woman to compel marriage, etc.?

- a. Imprisonment for life, and shall also be liable to fine

10. Which article of the Constitution recommends positive discrimination for women and children? Article-14, Article 25-A or Article 25-(3)?

- a. Article 25(3)

11. What section of the PPC is applicable to the offence of importation of a girl from a foreign country?

- a. 366 B

- 12. Which section of the Prevention of Electronic Crimes Act, 2016 deals with child pornography?**
- a. 19-A
- 13. Who can report for removal, destruction of, or blocking access to information that is prohibited under the Prevention of Electronic Crimes Act, 2016?**
- a. VICTIM/AGGRIEVED PERSON. PARENTS/GUARDIANS.
- 14. Who is empowered to lodge a First Information Report (F.I.R.) under the Prevention of Electronic Crimes Act, 2016?**
- a. FEDERAL INVESTIGATION AGENCY (FIA)
- 15. Who has jurisdiction to lodge a F.I.R. for the offence of Child Pornographic Material under section 292-B of the PPC? Police or FIA?**
- a. POLICE
- 16. When rape is committed by two or more persons in furtherance of a common intention, what is the punishment for this act? Under what section of the PPC?**
- a. Sec. 376 be punished with death or imprisonment for life.
- 17. If a public servant, like a police officer, medical officer or jailor, takes advantage of his official position and commits rape, what punishment does the law suggest for him? Death, Life Imprisonment or other?**
- a. Death or Life Imprisonment

Domestic Legal Framework – Activity 2

Matching Game Answers

Q. No.	Word/Phrase	Correct Match	Matching Word/Phrase
1	Criminal Law (Amendment Offences Relating to Rape) Act	5	Shall be punished with death or imprisonment of life and fine
2	Section 55 PPC. Sentence of imprisonment for life under 354A, 376, 376A, 377 or 377B or where the principle of Fasad-fil-arz is applicable	7	Shall be concluded in 3 months
3	Free legal aid will be offered to the victims of the offence	10	Shall be punished with imprisonment of 3 years or fine or with both.
4	Appeals under section 354A, 376, 376A, 377 or 377B PPC	9	Disclosure of the identity of a victim of rape is also prohibited
5	Rape of minor or person with mental or physical disability shall be punished with	8	376, 377 and 377B PPC
6	Victims of the offence of rape, unnatural offence or sexual abuse or attempt to commit these offences shall be examined by	2	Punishment shall not be commuted.
7	Trial under section 354A, 376, 376A, 377 or 377B PPC	4	Shall be concluded in 6 months

8	A DNA test is compulsory in offences	3	Under section 354A, 376, 377 or 377B PPC
9	Section 376 A	6	Registered medical practitioner
10	A public servant who fails to carry out a proper investigation	1	Was passed in 2016