



REPRESENTING CHILD VICTIMS

TRAINING MANUAL FOR LEGAL AID LAWYERS



Group Development Pakistan

American Bar Association and Group
Development Pakistan

ACKNOWLEDGMENTS AND DISCLAIMERS

ACKNOWLEDGMENTS

The American Bar Association Rule of Law Initiative (ABA ROLI) and Group Development Pakistan (GDP) are grateful to all of those who contributed to the development of this Training Curriculum. ABA ROLI and GDP would especially like to thank Ms. Katherine Kaufka Waltz, Ms. Eva Klain, and Mr. Syed Miqdad Mehdi for authoring “Representing Child Victims: A Training Manual for Legal Aid Lawyers”. We would also like to extend our thanks to the many ABA ROLI and GDP staff, consultants, interns, and advisors who contributed to this initiative, including, but not limited to, Ms. Khadija Ali, Ms. Katherine Carden, Ms. Hillary Forden, Ms. Valerie Khan, Ms. Mariah Nelson, and Ms. Fatimah Shah.

DISCLAIMER

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EXECUTIVE SUMMARY

This manual is intended to train and empower legal aid and pro bono attorneys representing child sexual abuse victims and/or their representatives in legal actions to protect the child victims' and witnesses' rights and to seek redress on their behalf. In order to successfully complete this function, civil attorneys serving in this capacity must understand not only what the domestic and international laws related to children's rights specify, but also the unique characteristics of children and the special considerations involved in their representation.

The approach to representing child sexual abuse victims is grounded in the United Nations Convention on the Rights of the Child (CRC), the most universally adopted human rights instrument in the world. Pakistan signed and ratified the CRC in 1990. There are four overarching principles of the CRC that contribute to a general attitude towards children and their rights, including child crime victims. They are based on the notion that children are equal as human beings. The Four Guiding Principles of the CRC are: non-discrimination, the best interest of the child, dignity, and the right to participation.

The vulnerability of children to various forms of abuse, neglect and maltreatment has been recognized as a critical child protection issue around the world. The UN CRC offers general protection measures to all children, without discrimination. Article 19 requires States to protect children from all forms of physical or mental violence, and specifically mentions "exploitation" and "sexual abuse." Sexual abuse against children is a gross violation of children's rights. Yet it is a global reality across all countries and social groups. It can take many forms and happen in homes, institutions, schools, workplaces, in travel and tourism facilities, within communities. In recognition that children are particularly vulnerable to various forms of commercial exploitation, UN Optional Protocol on the Sale of Children, of which Pakistan is a signatory, provides guidance on protections related to the sale of children, child prostitution and child pornography.

Child abuse includes the physical, emotional, or sexual mistreatment of a child, or the neglect of a child, in the context of a relationship of responsibility, trust or power, resulting in actual or potential harm to the child's physical and emotional health, survival and development. Child sexual abuse robs children of their childhood; physical, mental and emotional health; education; and future livelihood opportunities. In an analysis of 200 letters collected from survivors of child sexual abuse in Pakistan, the non-governmental organization (NGO) Rozan found that children were especially likely to experience feelings of guilt, depression, fear, lack of confidence, and guilty feelings about masturbation. 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". The taboo nature of child sexual abuse in particular allows perpetrators to continue to abuse vulnerable children with impunity, without fear of legal repercussions.

This manual presents, for legal aid and civil attorneys, the definitions of child, child protection and children's rights under domestic and international law, while explaining the typology of child abuse. Obligations of the State and others are presented through both international and domestic legal frames and highlight civil and administrative remedies for survivors of sexual abuse. Also essential to the full understanding of child sexual abuse legal actions is the knowledge of the police role in investigations of child sexual abuse and the roles and

responsibilities of legal aid lawyers within the justice system, including who is entitled to legal representation and the ethical obligations of lawyers toward their clients.

The particular vulnerability of children and their unique characteristics heighten the importance of survivor-centric representation, from communications with clients to understanding the impact of trauma on children's behavior and how these influences can affect a legal case. Outside direct representation, legal aid and civil attorneys can also effect change through advocacy for stronger laws and institutions and by engaging the media in productive and effective means.

This manual comprehensively addresses these issues and collects in one place the numerous resources available to attorneys to effectively advocate on behalf of child sexual abuse victims and their representatives.

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ACRONYMS

Acronym	Definition
ABA	American Bar Association
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women/Committee on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child/Committee on the Rights of the Child
Cr.P.C	Criminal Procedure Code/Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CSA	Child Sexual Abuse
CSO	Civil Society Organisation
DNA	Deoxyribonucleic acid
FIA	Federal Investigation Agency
F.I.R.	First Information Report
GDP	Group Development Pakistan
ICCPR	International Covenant on Civil and Political 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
NCRC	National Commission on the Rights of the Child
NCSW	National Commission on the Status of Women

NGO	Non-governmental organisation
OSPC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
PBC	Pakistan Bar Council
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
WHO	World Health Organization

LEGEND



= Case Law



= International Standards



= Pakistani Statutes



= Practice Pointer

LEARNING OBJECTIVES

Learning Objectives, Outcomes and Results for Trainings of Lawyers to Provide Legal Aid to Children in Cases of Sexual Abuse and Exploitation

Learning Objectives

As a result of this training, participating lawyers should be able to:

- Provide legal assistance in cases involving child victim-witnesses.
- 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.
- 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 makes a person a child.
- Understand child protection, including typologies of abuse, and how a lawyer can protect a child in the criminal justice system.
- Comprehend and be able to use victim-centric best practices in cases involving children, particularly child sexual abuse cases. Understand what practices are most appropriate for which case, how justice systems can be more child friendly, and how you, as the child's lawyer, can advocate for the criminal justice system to be more child friendly.
- Know and be able to put into practice standard operating procedures for cases of child abuse, including child sexual abuse.
- Refer child clients to protective services.
- 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.
- Advocate for the rights of your client and children more generally.

Outcomes

- Lawyers for children apply domestic laws and international standards in their daily work when dealing with any child and advocate for proper application of these legal standards throughout the justice system.
- Legal aid lawyers utilize and implement best practices for victim-centric representation when representing child victims.
- Legal aid lawyers communicate effectively with child clients, adapted to the child client's age and stage of development.
- Legal aid lawyers 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 involving child sexual abuse.

- Lawyers demonstrate ability to implement standard operating procedures for cases involving child abuse, child sexual abuse, and children in conflict with the law.
- Legal aid lawyers have the capacity to provide legal assistance to children during COVID-19.
- Legal aid lawyers advocate with the media and law enforcement to protect the privacy of their child clients.

Results

- More child victim-witnesses are represented by counsel in child sexual abuse cases.
- Awareness about child rights issues and child abuse, particularly child sexual abuse, increases among the legal community.
- More lawyers are capable of providing victim-sensitive representation in cases involving children.
- Improved guidelines and potential legislation regarding the conduct and procedures of the judiciary and police for cases involving children and dealing with children overall.
- Children's rights, especially the rights of victims/victim-witnesses, are respected throughout the justice system.

PURPOSE

Children and youth under the age of 25 make up 52.5% of Pakistan's population today,¹ but the country's laws and justice system were, until recently, geared towards adults. The particular circumstances of child victims of sexual abuse were rarely considered until special child protection laws were enacted at the federal and provincial levels.

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. 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; the reunification of underprivileged and neglected children with their families; the 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.² On 24 June 2019, the National Judicial Policy-Making Committee (NJPMC) decided to establish Juvenile and Child Protection Courts in every Pakistan district, starting with the provincial headquarters and Islamabad.

According to the Cruel Numbers 2019 Report, published by NGO Sahil, 2,846 cases of child abuse were reported in Pakistani newspapers in 2018, a decrease of 26% from 2018.³ This statistic amounts to roughly eight cases of child abuse reported each day.⁴ Of these, 1,559 cases involved child sexual abuse, including rape, gang-rape, sodomy, rape/sodomy and murder, pornography, incest, and attempted rape/sodomy.⁵ 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.⁶

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

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

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

² Waseem Ahmad Shah, *KP gets first child protection court*, DAWN (17 March 2019), available at <https://www.dawn.com/news/1470119>.

³ SAHIL ORGANIZATION, *Cruel Numbers 2019: A Compilation of Statistics on Child Sexual Abuse Cases in Pakistan 1* (2019), available at <http://sahil.org/wp-content/uploads/2020/03/Cruel-Numbers-2019-final.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ *The State of Pakistan's Children 2018: Violence against Children*, *supra* note 1, at 29-31.

This manual will be used to train and empower legal and pro bono attorneys representing child sexual abuse victims and/or their representatives in legal actions to protect the child victims' and witnesses' rights and to seek redress on their behalf. The following materials are intended to prepare private, legal aid and pro bono attorneys to effectively propose all appropriate and available remedies under Pakistan's international obligations, domestic law, and international and regional best practices.

The manual is divided into two major sections: (1) Legal Framework and (2) Roles and Responsibilities of Legal Aid Lawyers. The content across both sections primarily covers cases involving children as survivors/victims of sexual abuse or exploitation and children as witnesses of crime and recognises that cases involving children in conflict with the law (i.e., children accused of committing crimes) overlap. These children are often incarcerated with adult prisoners, exposing them to physical and psychological violence and intimidation, sexual abuse, rape, and other forms of abuse. The manual addresses legal aid and pro bono attorneys' roles on behalf of survivors/victims while their cases move through the criminal justice system and as they represent the child's interests in pursuing civil and administrative remedies and services. It includes readings and reference materials, practical exercises and case studies, reference and links to outside resources, and additional reading.

1.0 LEGAL FRAMEWORKS AND DEFINITIONS

GUIDING PRINCIPLES

The United Nations Convention on the Rights of the Child (CRC) is the most universally adopted human rights instrument in the world. Pakistan signed and ratified the CRC in 1990. The Four Guiding Principles of the CRC are:⁷

- 1) Non-discrimination:** Children are entitled to protection from discrimination based on their own or their parent's or legal guardian's, sex, gender, sexual orientation, religion, race, ethnicity, language, political or other opinions, 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 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 against physical and mental violence; neglect; sexual abuse and exploitation; and torture, inhuman or degrading treatment or punishment. The State must ensure 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 unique 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 significantly 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 cases, including providing testimony as appropriate, expressing their views and ideas during investigative and other phases, and providing victim impact statements related to sentencing.

⁷ G.A. Res. 44/45, United Nations Convention on the Rights of the Child, Art. 2-5 (20 November 1989); ECOSOC Res. 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, U.N. Doc. A/RES/2005/20 (22 July 2005).

Preserving Dignity:

- The right to be treated with dignity and compassion.
- 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).
- Specific accommodations to protect child throughout the judicial process (right to courtroom modifications to reduce hardship and trauma).

Non-Discrimination:

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

Best Interests of the Child:

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

Children's Right to Participation:

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

Activity 1 (10 minutes)

Step 1: 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.

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

Step 3: Repeat step 2 for a good memory of something they did well: how did they feel?

Step 4: Ask, “what is the difference between an adult and a child? Between you then and you now?”

Take-away: 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.

Activity 2 - 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?

Children are not mini adults. Scientific research has shown the brains and bodies of children differ from those of adults. For example, one of the key differences between adult and adolescent brains is the lack of prefrontal cortex development in young brains. Research shows adolescent brains, particularly the prefrontal cortex, are not completely developed until the mid-20s.⁸ This underdeveloped prefrontal cortex means adolescents are not able to contemplate risks and consequences, are not able to control impulses, and their social intelligence is less developed, among other factors, related to their age and development.⁹

⁸ Anne Graffam Walker, Ph.D., *Handbook on Questioning Children: A Linguistic Perspective 3rd Edition*, American Bar Association (May 2013), pg. 6.

⁹ Tyler, M., Understanding Adolescent Brain Development and Legal Culpability, American Bar Association, (2015), retrievable from https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/; Teen Brain: Behavior, Problem Solving, and Decision Making, American Academy of Child and Adolescent Psychiatry, (2016) Retrievable from https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-

These biological differences have dual impact on both the legal culpability of your client, in the cases of children in conflict with the law, as well as their ability to protect themselves from victimization.

As part of your advocacy, you can draw upon international human rights instruments to which Pakistan is a signatory – UN CRC, CRC OPSC, International Labour Organization (ILO) Minimum Age Convention, in addition to national/federal and provincial laws. You can also draw upon scientific literature that describes how brains and bodies of young persons are different than adults.

DEFINITION OF A CHILD UNDER INTERNATIONAL LAW (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 18 years unless under the law applicable to the child, majority is attained earlier.”¹⁰ Therefore, the word “children” refers to boys, girls, adolescents, and young people under 18 years of age.

Eighteen is generally accepted as the age of majority or the age at which a child attains adulthood and acquires full legal capacity. However, individual countries or their internal states/principalities 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.¹¹ As discussed further in the next section, Pakistani laws also contain different ages of majority by statute and province.

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 (OSPC), 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 OSPC does not define “child,” the definition of a “child” from the UNCRC applies. Moreover, in the context of the criminal justice system, the OSPC states explicitly in Article 8(2), “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.”¹² The Committee on the Rights of



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 Haddood 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.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsj6w6N%2f47zTb2GZCw8ZJMHBo%2fKlxkysXmslSop1yo0QfaT1E6yAhOmn1FhkSztV8IkZY%2f0FcydIBPHSpz3tSnn6uT1XIVbgwtgC5kzi77Xw>)

¹⁰ G.A. Res. 44/45, *supra* note 7, at art. 1.

¹¹ The United States is not a party to the UNCRC.

¹² gender Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. A/RES/54/263 (16 March 2001).

the Child has also consistently asked States Parties, including Pakistan, to set an age limit of 18 years for defining a child for all offenses covered by the OPSC.¹³

DEFINITION OF “CHILD” UNDER PAKISTANI LAW

“Child” is not defined consistently under Pakistani law. Although there is no comprehensive national child protection policy or law related to child rights, various federal and provincial level statutes exist that protect children, which vary by age. It is essential to understand the child’s age helps the child enjoy their rights, which may be political and civil rights or social, economic, and cultural rights. The following provides a brief overview of Pakistani laws and their respective definitions of a “child.”

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 labour under the age of 14 years and, under Article 25-A, children up to 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), “[n]othing in this Article shall prevent the State from making any special provision for the protection of women and children.”

PAKISTAN PENAL CODE

Pakistan Penal Code, 1860 addresses the minimum age of criminal responsibility. Section 82 states, “[n]othing is an offence, which is done by a child under ten years of age....” Section 83 states, “[n]othing 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.”

Another provision of the same code talks about a child's age as a defence in corporal punishment cases. Section 89 provides, “[n]othing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person.”

Section 328-A.

This Section is about cruelty to children, but it has not specified the applicable age.

Section 364-A.

Whoever kidnaps or abducts any person under the age of fourteen in order that such 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 shall be punished with death or with imprisonment for

¹³ See, e.g., United Nations Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of Pakistan* ¶ 17, U.N. Doc. CRC/C/PAK/CO/5 (11 July 2016).

life] or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.

Section 366-A: Procurement of minor girl.

Inducing any minor girl under the age of 18 years to go from any place or do any act with the intent that such girl may be, or knowing it is likely she will be, forced or seduced to illicit intercourse is an offence.

Section 375(v).

This Section defines rape as follows: “A man is said to commit rape who has sexual intercourse with a woman” under one of five specified circumstances, including **“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. Under Section 3, a “[p]erson 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. 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.

The laws governing marriage contracts in Pakistan vary by province. Sindh and Punjab provinces have made some changes to their child marriage laws, while the other provinces still follow the Child Marriages Restraint Act, 1929.

According to Section 2(a) of the Child Marriages Restraint Act, 1929, “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, maintaining 16 years, but Sindh has amended and removed the discrimination, defining “child” as a person, male or female, under 18 years of age for marriage.

Pakistan Citizenship Act, 1951. Under Section 2, “minor” means, notwithstanding anything in the Majority Act, 1875, any person who has not completed the age of 21 years.

The Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Section 2(a) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, (which has been amended due to its controversial sections) defines “adult” to mean a person who has attained the age of 18 years if a male or, the age of 16 years if a female, or has attained puberty.

The Vagrancy Ordinance, 1958. Under Section 2(a), a “child” means a person under 14 years of age.

The Prison Rules, 1978. The Prison Rules 1978, Rule 280 has defined Juvenile and Youthful Offenders as follows: (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, children incarcerated with parents, mostly with mothers, are covered in Rule 326, "[w]omen prisoners shall be allowed to keep their children with them in prison till they attain the age of three years." The Amendment by Punjab, Sindh and KP Provinces reads "[c]hildren 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.

Under Section 2(b), "child" means a person who has not attained 18 years of age.

The Prevention of Trafficking in Persons Act, 2018. Under Section 1(a), "child" means a person under 18 years of age.

The Zainab Alert, Response and Recovery Act, 2020. Under this Act, a child is a person who has not attained 18 years of age at the time of committing an offence or when reported to be missing or abducted.

The National Commission on the Rights of the Child Act, 2017. Under this Act, a "child" as any person below 18 years of age.

The Punjab Destitute and Neglected Children Act, 2004. Under Section 3(1)(e), "child" means a natural person who has not attained the age of 18 years.

The Punjab Restriction on Employment of Children Act, 2016. Under this Act, a child is a person who is under the age of 15 years. A person between the ages of 15 and 18 years old will be considered an adolescent.

The Punjab Domestic workers Act, 2019. This Act does not define "child" but says, "[n]o child under the age of 15 years shall be allowed to work in a household in any capacity and light work will be allowed for children between 15 to 18 Years."

Khyber Pakhtunkhwa Child Protection Welfare Act, 2010. Under Section 2(d), a "child" is a natural person who has not attained 18 years of age.

The Sindh Child Protection Authority Act, 2011. Under Section 2(g), a "[c]hild" is a person who has not attained 18 years of age.

THE SINDH CHILDREN ACT, 1955.

Under this Act, a person shall be deemed a child if they have not attained 16 years of age.

The Khyber Pakhtunkhwa Child Protection Welfare Act, 2010. For this Act, "child" means a natural person who has not attained 18 years of age.

The Balochistan Child Protection Act, 2016. This Act defines a "child" as a person, girl or boy, below 18 years of age.

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



Practice Pointer

When a conflict of law arises regarding the age of majority of a child, it is always in the child's best interest to advocate for application of the most universally applied definition of the age of a child (under 18), under both international and federal law. For example, if you are representing a 16-year-old victim of sexual abuse in a province that defines the age of consent at 16, it is still important to draw upon internationally defined principles of the age of majority (18) as part of your advocacy. This is important for two reasons: 1) Children receive more protections and rights, benefiting your client, and 2) the process of educating stakeholders, including judges and law enforcement, about international law and principles defining "child" is an opportunity for broader education and advocacy on children's rights issues, beyond just your client. It is important for stakeholders working with children to learn about children's rights and international principles addressing their age and development.

As part of your advocacy, you can draw upon international human rights instruments to which Pakistan is a State Party, such as the UN CRC, CRC OPSC, and ILO Minimum Age Convention - in addition to national/federal and provincial laws. You can also draw upon scientific literature that describes how brains and bodies of young persons are different than adults.

AGE DETERMINATION AND OUR JUDICIAL SYSTEM.

Due to low birth registration in Pakistan, when a child comes into conflict or in contact with the law, they are unlikely to possess any form of evidence to prove their status as a child. According to a report by the National Institute of Population Studies, only 34% of children in Pakistan under the age of five (5) have been registered.¹⁴ 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.¹⁵ Birth registration is also linked to economic status, with only 5% registration for children in the lowest wealth quintile.¹⁶

When the age of a child is in question in Pakistan, it is common practice to take into consideration four different types of evidence to determine age: (1) Statement in the court under Section 342 of the Criminal Procedure Code (Cr.PC), (2) Birth Certificate/Form-B, (3) School Leaving Certificate or any other pertinent document, and (4) medical evidence.

¹⁴ NATIONAL INSTITUTE OF POPULATION STUDIES, *Pakistan: Demographic and Health Survey: 2012-2013*, at 19-22 (2013), available at <https://dhsprogram.com/pubs/pdf/FR290/FR290.pdf>.

¹⁵ *Id.* at 21.

¹⁶ *Id.*

The Juvenile Justice System Act, 2018, has mandated the police officer or the Investigation Officer to make an inquiry to determine the age of any alleged offender who physically appears or claims to be a juvenile. Age shall be determined based on an accused person's birth certificate, educational certificates or any other pertinent documents. In absence of such documents, the age of such accused person may be determined based on 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 accused person's age. Therefore, the police officer needs to make a proper inquiry, in the case of a young accused, about his/her age to determine whether the relevant accused person is or is not a "child."

Arrest, Escape and Custody 1181

FORM No. 26.7 (1).

CERTIFICATE REGARDING IDENTITY OF AN ACCUSED.

Form Police Station _____ district _____

To Sub-Inspector of Police Station _____ district _____

Accused _____, son of _____, caste _____ age _____

_____ description _____, resident of _____

_____ village, or city _____, police station _____

_____ district _____, has to-day been arrested in connection _____

_____ first information report No. _____ under section _____. He gives his _____

and residence as noted above, and states that he is known to _____

_____ and _____ lambardars and respectable men of the village. Kindly _____

_____ for the questions written on reverse of this certificate.

Signature of Station House Officer.

Under Pakistani law, four factors must be considered to determine the age of a child:

1. 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;
2. 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;
3. 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; and
4. In the event that no substantial material is available on record to prove the age of an accused claiming juvenility, the Magistrate may call for the submission of a medical examination report by a medical officer under subsection (2) of Section 8 of the JJSA 2018, to be conducted.



TAHIRA BIBI Versus STATION HOUSE OFFICER and others, PLD 2020 Lahore 811

“(1) All the Nikah Registrars or other persons, who solemnize marriages are under legal obligation to scrutinize the credentials at the time of Nikah as to whether the marriage is solemnized with the free will of the parties and no child is exposed to marriage. Mere submission of oral entries for the purpose of age should not be accepted unless any proof of age from the parties to the marriage preferably which should be in the shape of some authentic document either issued by the NADRA in the form of National Identity Card, B-Form or School Leaving Certificate, Medical Certificate based on ossification test issued by the competent authority and the Birth Certificate validly issued by the Union Council, etc. is produced.”

As the child’s attorney, it is important to advocate for the justice stakeholders to make the proper inquiries about age determination documents to determine whether your client is or is not a “child.” You may also need to seek these documents (school records, medical records) independently to support your client’s case. In addition to these documents, you may also consider soliciting affidavits from the child’s family members, community and faith leaders, or others to attest that your client is, in fact, a child.

DEFINING CHILD PROTECTION AND CHILDREN'S RIGHTS

Contemporary international human rights principles were primarily developed and enacted after World War II; however, the notion of the child as a full subject of rights is still a relatively new concept. While the Universal Declaration of Human Rights (UDHR) proclaims, "childhood is entitled to special care and assistance," advocates and stakeholders worldwide recognised children are uniquely vulnerable members of society and advocated for a human rights instrument that addressed the unique needs of children.

Building off human rights principles espoused in the UDHR, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC) in 1989. The CRC recognises children's bodies and brains work differently than adults. The CRC sets out social, economic, political, civil, health, and cultural rights for children. Today, the CRC is the *most universally adopted human rights instrument in the world*. This recognition of children as rights-holders represents a considerable step forward in history. Nations that ratify the Convention, including Pakistan, are bound to the CRC by law. Under the CRC, the child is no longer considered as 'becoming an adult' with rights, but as a person with his or her own rights.

The principles and rights espoused under the CRC have a significant bearing on the work any attorney working with children should know and apply. In addition to the CRC, other international instruments address children's rights, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other Protocols and Conventions protecting children from sale and prostitution, hazardous labour, and discrimination based on education or disability. These protocols are discussed later in the manual, in the section the International Legal Framework, beginning on page 39.

Children's vulnerability to various forms of abuse, neglect, and maltreatment has been recognised as a critical child protection issue. The UNCRC offers general protection measures to all children, without discrimination. Article 19 requires States to protect children from all forms of physical or mental violence, and specifically mentions "exploitation" and "sexual abuse." Sexual abuse against children is a gross violation of children's rights. Yet, it is a global reality across all countries and social groups. It can take the form of harassment, inappropriate touching, rape, or sexual exploitation in prostitution or pornography. It can happen in homes, institutions, schools, workplaces, in travel and tourism facilities, and within communities. Under Article 34 of the CRC, States Parties undertake "to protect the child from all forms of sexual exploitation and sexual abuse" and particularly to take all appropriate measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity and the exploitative use of children in prostitution and pornographic performances and materials. In recognition that children are particularly vulnerable to various forms of commercial exploitation, the UN Optional Protocol on the Sale of Children, to which Pakistan is a signatory, guides protections related to the sale of children, child prostitution, and child pornography. The sale of children can be both for purposes of forced labour or commercial exploitation (See "Typology" Section below for more details on definitions of various forms of sexual abuse).

Child abuse, especially child sexual abuse (CSA), occurs in various forms and at multiple levels, harming millions of children each year. Research suggests that the incidence of child sexual

abuse is at least 15 – 20% globally, and small-scale research done in Pakistan has produced similar results.¹⁷ Contrary to popular belief, CSA is perpetrated against *both* boys and girls, children in rural, suburban, and urban areas, and across all socioeconomic backgrounds. Out of 2,846 cases of child sexual abuse reported by newspapers in Pakistan in 2019, 54% of victims were girls, and 46% were boys.¹⁸ While children age 6-15 are the most vulnerable to different forms of sexual abuse, research shows that infants through age five (5) are also vulnerable.¹⁹ Perpetrators can be family members, acquaintances, trusted friends, or strangers. In one study, a total number of 3,722 perpetrators were identified in Pakistan in 2019, with the majority being an acquaintance of the child victim.²⁰

Another Pakistani study found that the largest perpetrator groups were relatives (49%), and acquaintances (43%). The smallest perpetrator group was strangers to child victims (7%).²¹ In this particular study, boys indicated they were abused by an older male cousin, while girls were most likely to be abused by uncles, brothers, and male cousins. Researchers speculated this pattern could be because, in Pakistani culture, girls are told to keep a distance from most male individuals for their protection, but this advice often does not extend to uncles and brothers who are considered safe, thereby increasing their vulnerability. Boys are rarely restricted or supervised in their interaction with male members of the family.²² Globally, girls typically report rates of sexual abuse three times higher than boys.²³ However, in some regions, sexual abuse rates reported by boys are close to or higher than those reported by girls. In the Sahil “Cruel Numbers 2019” report, boys reported more sexual abuse incidents than girls.²⁴ Research shows that boys report higher incidents of abuse in Pakistan as they became older.²⁵ Emerging scientific literature suggests that social desirability factors, such as providing answers that are perceived as socially acceptable, may influence what females and males report.²⁶

Children are most likely to be sexually abused by a person known to them, usually an adult or older child who is a family member, relative, family friend, or in a relationship of trust or authority.²⁷ An adolescent’s own intimate partner is the most frequently mentioned

¹⁷ Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse*, at 1 (2007) available at http://rozan.org/sites/default/files/The_Bitter_truth.pdf.

¹⁸ *Cruel Numbers 2019: A Compilation of Statistics on Child Sexual Abuse Cases in Pakistan*, *supra* note 3, at 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Rozan, *supra* note 17, at 7.

²² *Id.*

²³ *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF DIVISION OF DATA, RESEARCH AND POLICY, at 60-61 (September 2014), available at http://files.unicef.org/publications/files/Hidden_in_plain_sight_statistical_analysis_EN_3_Sept_2014.pdf.

²⁴ *Cruel Numbers 2019: A Compilation of Statistics on Child Sexual Abuse Cases in Pakistan*, *supra* note 3, at 7.

²⁵ *Id.*

²⁶ Sobia Masood, *Childhood Exposure to Intimate Partner Violence among Pakistani Young Adults: Impact on attitudes and risk and protective factors* (March 2014) (unpublished PhD thesis, University of Warwick) (on file with the University of Warwick institutional repository).

²⁷ PAULO SÉRGIO PINHEIRO (INDEPENDENT EXPERT FOR THE UNITED NATIONS SECRETARY-GENERAL’S STUDY ON VIOLENCE AGAINST CHILDREN), WORLD REPORT ON VIOLENCE AGAINST CHILDREN, (United Nations Secretary-General’s Study on Violence against Children eds., 2006), available at <https://digitallibrary.un.org/record/587334?ln=en#record-files-collapse-header>.

perpetrator in both low-and-middle-income countries (LMICs) and high-income countries (HICs).²⁸ Children living in an alternative family, residential or foster care, are known to be vulnerable to sexual abuse, as are children involved in domestic labour, hazardous work, and bonded or forced labour.²⁹

International research indicates children who have been exploited are also more likely to have experienced neglect and physical or sexual abuse. In one United States study, at least one-third of young people receiving services as trafficking victims had been involved in the child welfare system, and nearly two-thirds of one NGO's clients had been involved in the juvenile justice system.³⁰ Both research studies and anecdotal information provided by NGOs show that many child trafficking victims have experienced neglect, physical abuse, and sexual abuse.

The overwhelming majority of children coming into conflict with the law are also victims of neglect, exploitation, and social and economic hardship. Children in conflict with the law also suffer from higher rates of sexual abuse and exploitation. Research in the United States reveals that most children who are delinquent also have victim histories. Children who experience both conflicts with the law and victimization generally also experience more additional adversities, lower social support levels, and higher rates of mental health symptoms.³¹ Unfortunately, due to legal inconsistencies and a fundamental lack of understanding of children's victimisation, child sexual abuse victims often end up in the juvenile justice system without access to appropriate services.

²⁸ G. Barker, J.M. Contreras, B. Heilman, A.K. Singh, R.K. Verma, and M. Nascimento, *Evolving Men: Initial Results from the International Men and Gender Equality Survey (IMAGES)*, WASHINGTON, D.C.: INTERNATIONAL CENTER FOR RESEARCH ON WOMEN (ICRW) AND RIO DE JANEIRO: INSTITUTO PROMUNDO (January 2011), available at <https://www.icrw.org/wp-content/uploads/2016/10/Evolving-Men-Initial-Results-from-the-International-Men-and-Gender-Equality-Survey-IMAGES-1.pdf>; Regina Reza, *Annotated Bibliography: Sexual exploitation and sexual abuse against children*, UNITED NATIONS CHILDREN'S FUND, New York (2012).

²⁹ S.R. Banerjee, P. Bharati, T. S. Vasulu et al., *Whole Time Domestic Child Labour in Metropolitan City of Kolkata*, INDIAN PEDIATRICS, vol. 45, at 579–82 (2008); Pinheiro, *supra* note 27.

³⁰ Deborah Gibbs, Jennifer L. Hardison Walters, Alexandra Lutnick, Shari Miller, and Marianne Kluckman, *Evaluation of services for domestic minor victims of human trafficking*, NATIONAL INSTITUTE OF JUSTICE OFFICE OF JUSTICE PROGRAMS (August 2014), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/248578.pdf>.

³¹ *Children's Exposure to Violence and the Intersection Between Delinquency and Victimization*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, at 7 (October 2013), available at <https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/240555.pdf>.

Activity 3

Ask participants to describe what they see in the picture.

Question to Participants: Who has the power in this situation? Why?

Other questions for discussion

- Who are the possible offenders in this picture?
- What redress does a child have in this situation?
- What if the photo showed two adults? What redress would be available?
- Is abuse/violence between adults different than the abuse of adults against a child? Why?

Would the answers to these questions be different if it was sexual abuse?



TPOLOGY OF ABUSE

Child abuse includes the physical, emotional, or sexual mistreatment of a child, or the neglect of a child, in the context of a relationship of responsibility, trust, or power, resulting in actual or potential harm to the child's physical and emotional health, survival and development. Child sexual abuse robs children of their childhood; physical, mental, and emotional health; education; and future livelihood opportunities.³² In an analysis of 200 letters collected from survivors of child sexual abuse in Pakistan, the NGO Rozan found children were especially likely to experience feelings of guilt, depression, fear, lack of confidence, and guilty feelings about masturbation.³³ At the same time, crimes against children are often shrouded in silence, either due to tacit cultural approval or because it is a taboo topic associated with "shame" and "dishonour."³⁴ CSA's taboo nature allows perpetrators to continue to abuse vulnerable children with impunity and without fear of legal repercussions.³⁵

There is considerable overlap between the different forms of child abuse, particularly between "sexual abuse," "sexual violence," and "sexual exploitation." Child sexual abuse

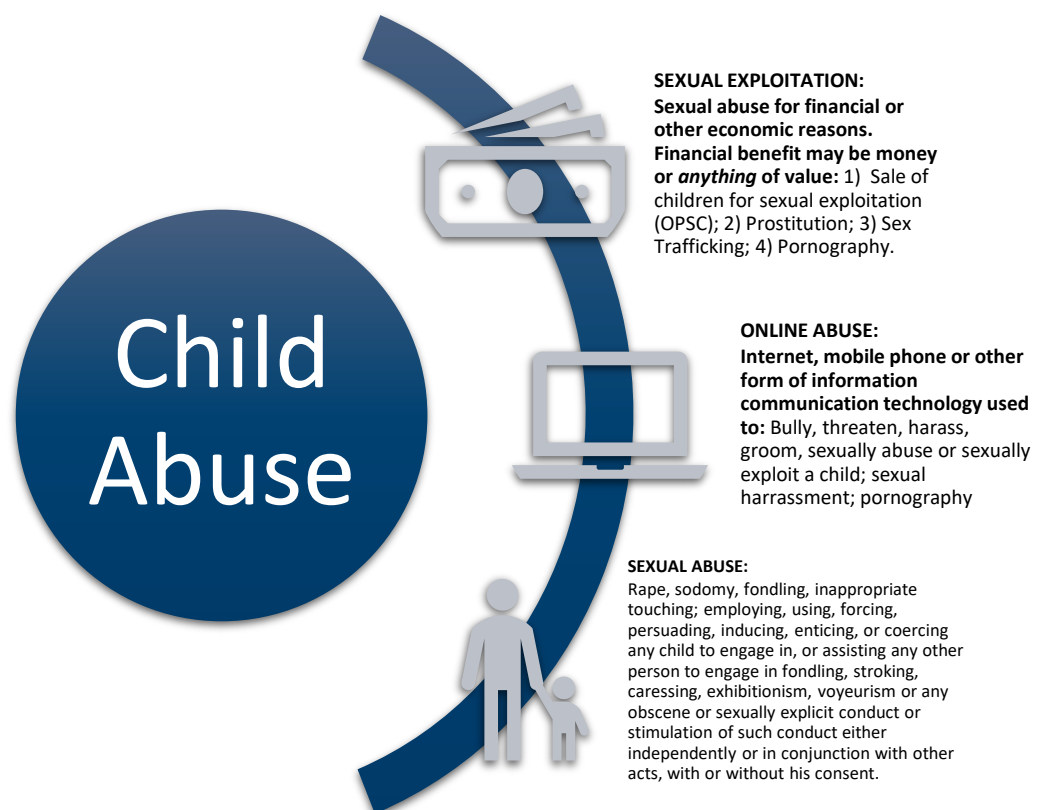
³² *The State of Pakistan's Children 2018: Violence against Children*, *supra* note 1.

³³ Rozan, *supra* note 17, at 11.

³⁴ *The State of Pakistan's Children 2018: Violence against Children*, *supra* note 1, at 27.

³⁵ *Id.*

(also known as “CSA”) refers to a broad range of crimes and maltreatment against children, including sexually violating, injuring, or taking advantage of, or maltreating a person, while sexual exploitation involves sexual abuse for one’s own profit. Child sexual abuse victims may also be victims of several other crimes or have been exposed to physical and emotional violence through both direct victimisation and indirect exposure to violence (eyewitness or other knowledge), also known as “polyvictimisation.” Polyvictimisation includes direct and indirect exposure to violence and affects victims’ resiliency and ability to recover from trauma. Put another way, many of these definitions are legal definitions of a specific criminal act. Children may be victims of multiple criminal acts during their victimisation. These definitions are not mutually exclusive of each other.



The following provides an overview of international and national definitions of various types of abuse.

CHILD ABUSE.

The World Health Organization (WHO) defines child abuse as “[a]ll forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”³⁶

Several other dimensions, such as the degree of social sanction or social censure, also affect the likelihood that given harm will be regarded as child abuse. Global research indicates specific categories of children - such as those in poor health, females, unwanted children, and

³⁶ *Child abuse and neglect by parents and other caregivers*, WORLD HEALTH ORGANIZATION, at 3 (last accessed 30 September 2020).

those born under difficult circumstances or with disvalued traits or under conditions of rapid socioeconomic change - are more vulnerable to maltreatment.³⁷

While there is no direct definition of child abuse in Pakistani law, the Pakistan Penal Code, through article 328-A, defines “cruelty to a child” as the willful assault, ill-treatment, neglect, abandonment, or other act that results in or has potential to harm or injure the child by causing physical or psychological injury.” This definition, while far from complete, does give guidelines for what can be considered child abuse.

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.”³⁸ By this definition, a child can be sexually abused by another child. Child sexual abuse often involves body contact, including but not limited to, 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.”³⁹



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 Child Sexual Abuse According to Pakistani Provincial Law.

Under 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,⁴⁰ stroking,⁴¹

³⁷ G.A. Rep. A/HRC/19/35, at 3-23 (11 January 2012).

³⁸ *Gender Based Violence Against Children and Youth with Disabilities: A Toolkit for Child Protection Actors*, WOMEN’S REFUGEE COMMISSION & CHILD FUND INTERNATIONAL 3 (2016) available at [http://www.ungei.org/GBV-Against-Children-and-Youth-with-Disabilities-Toolkit_\(2\).pdf](http://www.ungei.org/GBV-Against-Children-and-Youth-with-Disabilities-Toolkit_(2).pdf).

³⁹ *Caring for Child Survivors of Sexual Abuse: Guidelines for health and psychosocial service providers in humanitarian settings*, IRC & UNICEF (2012) available at <https://www.unicef.org/media/73591/file/IRC-CSS-Guide-2012.pdf.pdf>.

⁴⁰ *Fondle*, MERRIAM-WEBSTER ONLINE DICTIONARY, available at <https://www.merriam-webster.com/dictionary/fondling> (last accessed 30 September 2020) (“To touch (someone or something) sexually.”).

⁴¹ *Stroking*, MERRIAM-WEBSTER ONLINE DICTIONARY, available at <https://www.merriam-webster.com/dictionary/stroking> (last accessed 30 September 2020) (“To rub gently in one direction.”).

caressing,⁴² exhibitionism,⁴³ voyeurism,⁴⁴ any obscene⁴⁵ or sexually explicit conduct,⁴⁶ or simulation 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, “[s]exual 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.

COMMERCIAL SEXUAL ABUSE.

Commercial sexual abuse means sexual abuse of a minor, entirely or at least primarily, for financial or other economic reasons. The financial benefit may be money or anything of value. Article 37(g) of the Constitution of Pakistan provides protection from all forms of prostitution. Sections 292, 294, and 298 of the Pakistan Penal Code also make it an offence to sell, let to hire, distribute, exhibit, or circulate any “obscene” literature, including any book, pamphlet, paper, drawing, painting, representation, or figure. The Federal Investigation Agency may take cognisance of matters under the Prevention of Electronic Crimes Act, 2016, if any transmission, production, or distribution is made through an information system or procures for himself or another person or without lawful justification possesses material in an information system. The Trafficking in Persons Act, 2018 prohibits recruiting, harbouring, or transporting, or a person, including a child, for compelled labour or commercial sex acts.

Similarly, the Provincial Suppression of Prostitution Ordinance, 1961 prohibits the attraction, attention by words, gestures, willful and indecent exposure of the body for 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 intent to force her to have sexual intercourse with any man other than her lawful husband. Despite the prevalence of commercial sexual exploitation of boys in Pakistan, including as Massage Boys, hiring young

⁴² *Caressing*, MERRIAM-WEBSTER ONLINE DICTIONARY, available at <https://www.merriam-webster.com/dictionary/caressing> (last accessed 30 September 2020) (“To touch or stroke lightly in a loving or endearing manner.”).

⁴³ *Exhibitionism*, MERRIAM-WEBSTER ONLINE DICTIONARY, available at <https://www.merriam-webster.com/dictionary/exhibitionism> (last accessed 30 September 2020) (“A perversion in which sexual gratification is obtained from the indecent exposure of one’s genitals (as to a stranger).”).

⁴⁴ *Voyeurism*, MERRIAM-WEBSTER ONLINE DICTIONARY, available at <https://www.merriam-webster.com/dictionary/voyeurism> (last accessed 30 September 2020) (The practice of obtaining sexual gratification from observing others.”).

⁴⁵ *Obscene*, MERRIAM-WEBSTER ONLINE DICTIONARY, available at <https://www.merriam-webster.com/dictionary/obscene> (last accessed 30 September 2020) (“Abhorrent to morality or virtue.”).

⁴⁶ *Explicit*, MERRIAM-WEBSTER DICTIONARY, available at <https://www.merriam-webster.com/dictionary/explicit> (last accessed 30 September 2020) (“Open in the depiction of nudity or sexuality.”).

boy helpers in the transport industry,⁴⁷ or through Bacha(Baazi⁴⁸, these laws only apply to women.

ONLINE ABUSE.

There is no universal definition of online abuse of children in international law. Online abuse can include using the Internet, mobile phone, or another form of information communication technology to bully, threaten, harass, groom, sexually abuse, or sexually exploit a child.

The Prevention of Electronic Crimes Act, 2018 (PECA), Section 21 provides protection from the offences against modesty of a natural person and minor, and Section 22 defines “child pornography” as “[w]hoever 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[.]”

The Pakistan Penal Code also prescribes punishments for exposure to seduction and child pornography.

SALE OF CHILDREN FOR THE PURPOSE OF COMMERCIAL SEX (CRC OPTIONAL PROTOCOL ON THE SALE OF CHILDREN).

The OPSC defines the 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” (Article 2). It is important not to confuse the sale of children with trafficking. Although the sale and trafficking of children may overlap, they do not always fall in the same category of offences. The sale of children always includes an element of payment and the transfer of a child from one person to another while trafficking may not. In addition, the sale of children may not be for the purpose of exploitation (such as in the case of adoption) and may take place without the child being physically moved.⁴⁹

SEX TRAFFICKING OF CHILDREN.

Under the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution, “trafficking” means the moving, selling, or buying of women and children for prostitution, within and outside a country, for monetary or other considerations with or without the consent of the person subjected to trafficking. Under this convention, “child” is defined as any person under eighteen years of age.

⁴⁷ Tufail Muhammad, *Commercial Sexual Exploitation of Children: A Situation Analysis of the Transport Industry of Pakistan*, SAHIL (2009), available at <http://sahil.org/wp-content/uploads/2014/10/CSEC.pdf>.

⁴⁸ Tufail Muhammad, *Commercial Sexual Exploitation of Children: A Situation Analysis of Pakistan*, SAVE THE CHILDREN SWEDEN (2005), available at <https://resourcecentre.savethechildren.net/node/1359/pdf/1359.pdf>.

⁴⁹ *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, UNICEF INNOCENTI RESEARCH CENTRE (February 2009), available at <https://www.unicef.org/media/66806/file/Handbook-Optional-Protocol.pdf>.

According to the U.S. Department of State Trafficking in Persons Report for 2019, the Government of Pakistan does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government demonstrated overall increasing efforts in 2019 compared to the previous reporting period; therefore, Pakistan remained on Tier 2.

Human traffickers exploit domestic and foreign victims in Pakistan, and traffickers exploit victims from Pakistan abroad. The country's largest human trafficking problem is bonded labour, in which an initial debt assumed by a worker as part of the terms of employment is exploited, ultimately entrapping other family members, sometimes for generations. Children are bought, sold, rented, or kidnapped and placed in organized begging rings, domestic servitude, small shops, and sex trafficking. According to a prominent child rights NGO, most children working in the streets in Pakistan are subjected to forced begging.

Trafficking in Persons Report, U.S. DEPARTMENT OF STATE, at 366, 368-69 (2019), <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

Note: the legal terms “human trafficking” and “smuggling” are often mistakenly conflated and misunderstood, even by government and law enforcement officials. Smuggling is a consensual transaction involving a person transported across an international border without permission. Human trafficking (for labour or sex) includes compelled or coerced labour or sexual services and does NOT require the transportation of persons across international borders. While victims of human trafficking may have initially been smuggled into a country, which violates the law, if they were subsequently exploited/trafficked, then their victimisation takes priority over the offence of smuggling. Smugglers can also be traffickers if once they transport a person across an international border, they subsequently commercially exploit a person for labour or sexual services.

Children are more vulnerable to human trafficking because they are often viewed as more compliant. Some marginalised populations, such as

street children, impoverished children, orphan and vulnerable children (OVC), are also often perceived as “invisible” by systems and are thus more vulnerable to exploitation. In Pakistan, the Prevention of Smuggling of Migrants Act, 2018, deals with smuggling issues, and the Prevention of Trafficking in Persons Act, 2018, deals with trafficking issues.

Pakistani laws also address sex trafficking and exploitation. Article 11 of the Constitution of Pakistan prohibits all forms of slavery, forced labour, human trafficking, employment of children younger than 14 years, and children working in hazardous places. Article 37(g), moreover, prohibits prostitution saying, “[t]he 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 children under 18 years of age for prostitution punishable by 10 years imprisonment or fine or both. The Prevention of Trafficking in Persons Act, 2018 defines “Trafficking in Persons” as, “[a]ny 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.”

SEXUAL VIOLENCE.

“Sexual violence” is an umbrella term used to refer to all forms of sexual victimisation of children. It includes child sexual abuse and exploitation, rape and other sexual assaults, sexual harassment, abuse in pornography, prostitution, trafficking, and female genital mutilation/cutting. It also includes any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed at a person’s sexuality using coercion, by any person, regardless of their relationship to the victim, in any setting, including but not limited to home and work.⁵⁰

VIOLENCE AGAINST CHILDREN.

Violence against children includes all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.⁵¹

Activity 4:

Ask participants to identify the crimes committed against the children in these two scenarios.

Scenario 1:

When Suraiya turned 9 years old, her uncle began sexually abusing her whenever he would visit. He told her it was “their” secret. Suraiya also witnessed domestic violence between her parents and was regularly beaten and physically assaulted by her father. She would spend time away from home as often as she could. When Suraiya was 14, a young shop owner in her neighborhood took interest in her. He provided her gifts and praised her often. They began a relationship. Shortly afterwards, the shop owner told Suraiya she could help their relationship by making money for them so they can run away together. He recruited Suraiya into prostitution. She was raped several times by many men, who paid the shop owner to have sex with her.



Scenario 2:

Danish ran away from home when he was 10 years old. His neighbor sexually assaulted him, and he was terrified of what his father would do if he found out, so he ran away. To survive on the streets, Danish begged. He then was offered a job to sell trinkets and household items on the street for an older man. The man beat Danish if he did not earn enough money each day.

⁵⁰ *Hidden in Plain Sight*, *supra* note 26.

⁵¹ G.A. Res. 44/45, art. 19 (20 November 1989).

Pakistan's criminal justice system does not distinguish between differently abled children or children with alternative gender identities, such as transgender or non-binary children, and other child victims, witnesses, or accused. The Transgender Persons (Protection of Rights) Act, 2018 has suggested some measures for the protection of the transgender community, and in Sindh, the Sindh Empowerment of Persons with Disabilities Act, 2018, has also suggested steps for the protection of children with disabilities.

But there is still a need to reform the criminal justice system to protect differently abled and transgender children. For example, Section 377 of the PPC should be repealed and Section 375 should be revised to ensure that rape is defined in gender-neutral terms. To deal the children with disabilities, the Criminal Procedure Code and Qanoon e Shahadat Ordinance should be amended to meet the needs of children survivors of sexual abuse/rape, exploitation, etc., and Police, law enforcement agencies, and the Investigation Wing should be trained, or have specialized police investigators, to enable them to investigate cases of children with disabilities and transgender children, keeping in mind the best interest of the child. It is also recommended that experts be involved during the investigation and prosecutions of cases involving disabled children.

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2018

Article 3 of the UNCRC states “the best interests of the child shall be a primary consideration in all actions”, which is basic ingredient for all the action on the rights of children. The Convention on the Rights of the Child does not directly address the question of legal gender recognition, but the Committee on the Rights of the Child has made various observations regarding State practices and policies that discriminate against transgender children.⁵² Pakistan's recent Transgender Persons (protection of Rights) Act provides that “[a] transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.”⁵³ Although the law does not include a definition of a child, it states that “[e]very transgender person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to let himself or herself registered according to self-perceived gender identity with NADRA on the CNIC, CRC, driving license and passport in accordance with the provisions of the NADRA Ordinance, 2000

⁵² See, e.g., UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined second to fourth periodic reports of Iraq*, 3 March 2015, CRC/C/IRQ/CO/2-4, available at: <https://www.refworld.org/docid/562de4494.html> (The Committee expressed concern about cases of transgender children being persecuted, tortured, and killed by non-State militias with impunity. The Committee expressed concern that courts consider the sexual orientation or gender identity of a victim as a mitigating factor); see also UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined second and third periodic reports of Serbia*, 7 March 2017, CRC/C/SRB/CO/2-3, available at <https://www.refworld.org/docid/58e76fc14.html> (the Committee expressed concern regarding the widespread instances of violence in schools perpetrated against transgender children); see also UN Committee on the Rights of the Child (CRC), *Concluding observations on the second periodic report of South Africa*, 27 October 2016, CRC/C/ZAF/CO/2, available at: <https://www.refworld.org/docid/587ce86b4.html> (the Committee expressed concern regarding discrimination against transgender children in accessing basic services and child protective services, and their increased exposure to violence, abuse, and harassment); see also UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third to fifth periodic reports of Cameroon*, 6 July 2017, CRC/C/CMR/CO/3-5, available at: <https://www.refworld.org/docid/59c90dd24.html> (the Committee expressed concern about the State party's rejection of the identity of transgender children).

⁵³ The Transgender Persons (Protection of Rights) Act, 2018, Section 3 available at http://www.senate.gov.pk/uploads/documents/1521612511_419.pdf.

(VIII of 2000) or any other relevant laws.”⁵⁴ It is also worth noting that the law prohibits discrimination against transgender persons including by “the denial or discontinuation of or unfair treatment in, educational institutions and services thereof”⁵⁵ and obligates the Government to take steps to provide free and compulsory education and transgender children under the age of 16.⁵⁶

THE SINDH EMPOWERMENT OF ‘PERSONS WITH DISABILITIES’ ACT, 2018:

The Provincial Assembly of Province of Sindh passed the Sindh Empowerment of ‘Persons with Disabilities’ Act, 2018 to promote and ensure full and effective inclusion of persons with disabilities in the community and to put in place a legal and institutional framework to protect the rights of persons with disabilities in line with the UN Convention on the Rights of Persons with Disabilities. This law reiterates Pakistan’s commitment, as a State Party to the CRPD, to respect and protect the rights of persons with disabilities, including. inclusive education; protection from atrocities, violence, abuse and exploitation; protection of rights to live in communities; transportation and mobility; political participation; protection of property rights; guardianship; etc.

The law contains several provisions addressing the rights and needs of children with disabilities, including:

Section 5: Women, children and elderly people with disabilities.

(1) In view of the extraordinary vulnerability of women, children and senior citizens with disabilities, the Government shall take special measures to ensure that such women, children and elderly people enjoy their rights equally with all others.

(2) The Government shall ensure that women, children and senior citizens with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disabilities.”

Section 9: Equity in education.

This section of the Act provides that “[t]he Government shall endeavor that all educational institutions funded or recognized by it provide inclusive education to the children with disabilities” and details the steps the Government should take towards achievement of this objective.

Section 12: Adequate Standard of Living and Social Protection.

(1) The Government shall with the advice of the Council and within the limits of its economic capacity shall formulate exclusive schemes and programs for ensuring the right of adequate living standards and social protection of ‘Persons with Disabilities’ to enable them to live independently or within the community.

(2) The Government while devising these schemes and programs shall give due consideration to the diversity of disabilities, gender, age, and socio-economic status.

⁵⁴ *Id.* at Section 3-3.

⁵⁵ *Id.* at Section 4-A.

⁵⁶ *Id.* at Section 8-3 (“The Government shall take steps to provide free and compulsory education to transgender persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan.”).

(3) The schemes under sub-section (1) shall provide for;

...

b) facilities for children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;

...

Section 15: Right to home and family.

(1) No person with disabilities, especially a child/woman/senior citizen, shall be separated from his/her family on the grounds of disabilities unless a court of law requires him/her to be so separated in his/her best interest.

(2) Government 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, Government through the 'Authority' shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

(3) Government shall ensure that a child shall not be separated from his/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 disabilities of either the child or one or both of the parents.

(4) Where the immediate family of a child with disabilities is unable to take care, the 'Authority' in coordination with the 'Court' shall make an effort to provide alternative care within wider family and failing that at a setup suitable for his/her safe living.

The law also contains provisions intended to protect persons with disabilities from violence and abuse and to provide access to justice for persons with disabilities who come in contact or conflict with the law.

Section 8: Freedom from Exploitation, Violence and Abuse.

(1) The Government shall take measure to protect 'Persons with Disabilities' from all kinds of exploitation, violence and abuse.

(2) Whenever such an act is committed against any person with disabilities and the information of such act is communicated to the 'Authority' or any relevant law enforcement agency, the concerned agency on receipt of such information, shall immediately take necessary action to curb such act and to take appropriate measures under law to lodge the affectee of the abuse, violence, or intolerance, as the case may be, to safe place for protected housing. No cost shall be recovered from such affectee if for lodging in safe place in such situation.

(3) In case of need for legal aid such aid shall be made available by the "Authority" to such affectee at public expense.

(4) The Court on receipt of information or complaint about exploitation, violence or abuse towards any person with disabilities shall inform the aggrieved person of;

- a) his/her right to apply for protection under sub-section (2);
- b) the particulars of the nearest institution working for the rehabilitation of 'Persons with Disabilities';
- c) the right to free legal aid; and
- d) the right to file a complaint under the provisions of this Act or any other law dealing with such offence or prevent its occurrence as the case maybe or pass any such order as deemed fit for the protection of such person with disabilities including an order.

(5) If the Court finds that the alleged act or behavior constitutes an offence under this Act or Pakistan Penal Code, or under any other law for the time being in force, Court shall take cognizance of the case as may require.

Section 18: Access to justice.

(1) The Government shall ensure that the 'Persons with Disabilities' have effective access to the justice system in the country on equal basis with others in courts of law, tribunals, police and other law enforcement agencies.

(2) Government shall endeavor that all judicial officers are adequately trained to ensure effective access to justice for 'Persons with Disabilities'.

(3) The Government shall provide free and effective legal aid to the 'Persons with Disabilities', whenever needed. The Government shall arrange free legal aid services, and interpreters for early disposal of their cases.

Resources for Lawyers Representing Children with Special Needs:

American Bar Association, *Children with Disabilities and Sexual Abuse: Risk Factors and Best Practice*

→ (https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/april-2016/children-with-disabilities-and-sexual-abuse--risk-factors-and-be/)

Child Fund International, *Gender-Based Violence against Children and Youth with Disabilities: A Toolkit for Child Protection Actors*

→ ([http://www.ungei.org/GBV-Against-Children-and-Youth-with-Disabilities-Toolkit_\(2\).pdf](http://www.ungei.org/GBV-Against-Children-and-Youth-with-Disabilities-Toolkit_(2).pdf))

INTRODUCTION TO INTERNATIONAL LAW AND THE UN SYSTEM

“International law ... comprises legal obligations to which States have consented in order to regulate the interactions between them.”⁵⁷ 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 considers the behaviour 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 recognised by States;
- 2) international custom, as evidence of a general practice accepted as law; and
- 3) the general principles of law recognised by civilized nations.⁵⁸

Of these, the first two are the most important.⁵⁹ All three are considered “hard law” or forms of international law 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.”⁶⁰ “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).⁶¹ 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,⁶² international agreements may be considered binding on non-States Parties through a recognised principle of customary international law.⁶³ The following section discusses various types of international agreements, including conventions, covenants, and protocols, as they relate to the representation of child victims of sexual abuse and exploitation.

The international community also recognises 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 behaviour of States or other subjects

⁵⁷ Diane Marie Amann ed., *Benchbook on International Law*, AMERICAN SOCIETY OF INTERNATIONAL LAW, at I.A-1 (2014), available at https://www.asil.org/sites/default/files/benchbook/ASIL_Benchbook_Complete.pdf.

⁵⁸ See, e.g., Statute of the International Court of Justice, art. 38, ¶ 1.

⁵⁹ Amann, *supra* note 57, at I.B-2.

⁶⁰ *Id.* at I.B-3.

⁶¹ *Id.*, at I.B-3.

⁶² *Genocide*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, available at <https://www.un.org/en/genocideprevention/genocide.shtml> (last accessed 30 September 2020) (noting “[t]he International Court of Justice (ICJ) has repeatedly stated 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”).

⁶³ Amann, *supra* note 57, at I.B-10.

of international law. Examples of “soft law” include documents promulgated under the auspices of an intergovernmental organisation, such as the United Nations’ Guiding Principles on Business and Human Rights;⁶⁴ international declarations, such as the Universal Declaration of Human Rights;⁶⁵ and rules, guidelines, and standards promulgated by nongovernmental organisations.⁶⁶ 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.

Activity 5:

Distinguishing between soft law and hard law
(15-20 minutes)

The facilitator will distribute several notecards among the participants (several to each participant) containing each of the international laws discussed in the manual written on one card. Working together, the participants should sort the cards into two stacks – Soft Law and Hard Law. The facilitator will then go through the piles and ask for each card whether others agree and discuss why.

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, 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

⁶⁴ *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (2011), available at

https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf.

⁶⁵ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (10 December 1948).

⁶⁶ Amann, *supra* note 57, at I.B-13 – I.B-14.

the specialized agencies] for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.”⁶⁷

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 protection for all peoples and nations.⁶⁸ 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, “[e]veryone 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, “[m]otherhood 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, including Pakistan. The UN Charter and UDHR paved the way for other general and specific human rights instruments, including several legally binding international human rights treaties. The following section discusses protections for children’s rights in both hard law international agreements and soft law declarations like the UDHR.

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, recognising the rights 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: (1) non-discrimination; (2) devotion to the best interests of the child; (3) the right to life, survival, and development; and (4) respect for the views of the child. The UNCRC is also the most universally adopted human rights instrument in the world, which has significance for any attorney working with children.

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

⁶⁷ U.N. Charter art. 62, ¶ 2.

⁶⁸ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (10 December 1948).

18 separate treaties can be found on the Office of the High Commissioner for Human Rights Ratification Interactive Dashboard (<http://indicators.ohchr.org/>).

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 programmes. Article 24 promotes high standards of health and access to health care services and requires adequate and appropriate measures to abolish traditional practices prejudicial to children's health. Examples of traditional practices in Pakistan that could be considered prejudicial to children's health 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.

The UNCRC also includes three Optional Protocols. One Optional Protocol restricts the involvement of children in military conflicts.⁶⁹ Another relates to communications of the Committee on the Rights of the Child,⁷⁰ 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.

The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography is a response to grave concerns about the sale of children for sexual exploitation (sex tourism, pornography, prostitution) and the sale of children for forced labour. The Protocol calls on States Parties to create internal mechanisms to prevent child exploitation, protect victims, and prosecute offenders, as well as encourage State Parties to cooperate with other States to further the prevention, detection, prosecution, and punishment of crimes of sexual exploitation or trafficking of children.

OSPC Definitions “Sale of children” means “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.”

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 organised basis. The OPSC obliges States Parties to criminalise offering, delivering, or providing a child for sexual

⁶⁹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, U.N. Doc. A/54/RES/263 (2000).

⁷⁰ G.A. res. 66/138, U.N. Doc. A/RES/66/138 (2011).

exploitation or prostitution and accepting, obtaining or procuring a child for one of these purposes.

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 includes at least child prostitution and child pornography, which includes the 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.⁷¹ 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” to promote understanding and effective implementation of the OPSC.⁷² It describes the genesis, scope, and content of the Protocol, and provides examples of measures taken by States Parties to fulfill their obligations under this instrument.

The UNCRC also established a Committee on the Rights of the Child to monitor Parties’ implementation of the Convention. The Optional Protocol governing its communications establishes general principles regarding the functioning of the Committee, the inquiry procedure when an individual or State Party claims another State Party is not fulfilling its obligations under the Convention or its Optional Protocols, and general provisions such as international assistance and cooperation. Per 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.⁷³

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.⁷⁴ 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.

OPTIONAL PROTOCOL ON COMMUNICATIONS PROCEDURE TO THE CONVENTION OF THE RIGHTS OF THE CHILD.

The ability of individuals to make a complaint about violations of their human rights is particularly significant for child sexual abuse victims. This ability gives meaning to the rights contained in the various human rights treaties. Eight of the nine human rights treaties establish a “treaty body” (Committee) of experts to monitor States Parties’ implementation of the treaty provisions. The Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child and its two Optional Protocols by States Parties. On 19 December 2011, the UN General Assembly approved a third Optional

⁷¹ *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, *supra* note 49, at 10.

⁷² *Id.* at vii.

⁷³ 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, CRC/C/58/Rev.3 (3 March 2015).

⁷⁴ *Id.*

Protocol to the Convention on the Rights of the Child on a Communications Procedure, allowing individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol entered into force in April 2014.

INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS.

*Worst Forms of Child Labour Convention (No. 182).*⁷⁵

The General Conference of the International Labour Organization (ILO) adopted its Worst Forms of Child Labour Convention, which includes sexual exploitation and sex trafficking and is otherwise known as Convention No. 182, on June 17, 1999.⁷⁶ Pakistan ratified Convention No. 182 on the Worst Forms of Child Labour on 11 October 2001. 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 trafficking and sexual exploitation:

- (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.⁷⁷

Article 7 outlines practical steps States Parties can take to eliminate the worst forms of child labour:

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;

⁷⁵ International Labour Organization (ILO), *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.

⁷⁶ *Id.*

⁷⁷ International Labour Organization (ILO), *Worst Forms of Child Labour Convention*, C182, art. 3 (17 June 1999).

- (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.⁷⁸

Minimum Age Convention, 1973 (No. 138):⁷⁹

Pursuant to Article 1 of the Convention, “[e]ach 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.” Pakistan ratified this Convention on 6 July 2006.

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 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, States that specify the age of 14 must give the reason for doing so in a report on this Convention's application. Article 3 sets 18 years as the minimum age for work that is likely to jeopardize young persons' health, safety, or morals.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR).

The ICCPR is an international human rights treaty adopted by the UN in 1966.⁸⁰ 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. Pakistan signed the ICCPR in 2008 and ratified it in 2010. It is not a signatory to either Optional Protocol.

The ICCPR commits States Parties to protect and respect the civil and political rights of individuals. These rights are fundamental to the enjoyment of a broad range of human



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%2fCO%2f1&Lang=en)

⁷⁸ *Id.* at art. 7.

⁷⁹ International Labour Organization (ILO), *Minimum Age Convention*, C138 (26 June 1973).

⁸⁰ 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967).

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 from slavery or forced labour, 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 include:

Article 2 – States Parties agree to ensure rights 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. 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 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 require. This may apply to child sexual abuse cases when a courtroom is closed, or the court determines publicity would prejudice the interests of justice.

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 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 aims to abolish the death penalty and came into force on 11 July 1991.

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 international instrument dealing with the protection of what are generally called "social rights," as distinguished from "civil and political rights."⁸¹ Pakistan signed the ICESCR in 2004 and ratified it in 2008.

This treaty covers the right to work, work in fair and just conditions, social security, and an adequate standard of living, including adequate food, clothing and housing, health, and education. Article 9 recognises "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 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

⁸¹ 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19; 6 I.L.M. 360 (1967).

can freely consent to marriage in order to marry. It also addresses protection and assistance measures on behalf of all children without 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.

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 1981.⁸² 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 be not only equal opportunities for women but also equal access to those opportunities. States Parties have a responsibility to ensure the practical realisation 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 an act of exclusion, restriction, or distinction with the intent, purpose, or effect of nullifying, impairing, or denying women's enjoyment of rights. 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 realisation of those rights.

CEDAW is implicated in child sexual abuse response 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 women's equality 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 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 the CEDAW in 1996 with the declaration that "[t]he 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:

⁸² 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980).

"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."⁸³



The CEDAW Committee recently responded to Pakistan's Fifth Periodic Report and identified issues particularly relevant to child sexual abuse. It noted and welcomed progress achieved since Pakistan's fourth periodic report in 2013 in legislative reforms, in particular the 2016 adoption of the Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act and the Criminal Law (Amendment) (Offences relating to Rape) Act, both in 2016.

The Committee recommended Pakistan raise awareness of the Convention, in collaboration with the media and civil society, with particular emphasis on the concept of substantive equality, and most relevant to this manual, strengthen legal training and capacity-building programmes for judges, prosecutors, lawyers and other law enforcement officials to ensure the Convention, the Optional Protocol, the Committee's general recommendations and views on individual communications and its findings from inquiries are made an integral part of systematic professional training. Inclusion in such trainings enables those legal professionals to apply the provisions of the Convention directly and/or interpret national legislation in line with the Convention.

In regard to access to justice, the Committee noted that, while progress has been made in the establishment of a gender-based violence court in Lahore and 16 family courts in Punjab, parallel legal systems and informal dispute resolution mechanisms, including jirgas and panchayats, are formally recognised, incorporated into the mainstream judicial system and subjected to judicial and administrative overview. The Committee expressed concern that these systems may discriminate against women and girls, who may have limited awareness of their rights and, face physical and economic barriers in accessing those rights.

The Committee also called on Pakistan to ensure cases of trafficking are effectively investigated and prosecuted and those found guilty are adequately punished; increase funding for NGOs running shelters providing medical, psychological and social reintegration services to victims of trafficking; continue to raise awareness about the criminal nature and risks of trafficking in women and girls, provide training to the judiciary, law enforcement officers and border police on the early identification of women and girls who are victims of trafficking, and ensure victims are referred to appropriate services; and provide training on gender-sensitive treatment of trafficking victims to the judiciary, law enforcement officials, social workers and medical professionals working with victims of trafficking.

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD).

Children with disabilities are three (3) times more likely to be sexually abused than children without disabilities. Their heightened vulnerability stems from a greater likelihood of being dependent on caregivers for daily living; social disabilities that may result in misidentifying certain overtures as "friendly" rather than predatory; and communication challenges that abusers perceive make disabled children unlikely to report or be believed. The World Health Organization reports that "stigma, discrimination, and ignorance" places people with disabilities at higher risk than those without disabilities. Research shows that children with

⁸³ Art. 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 organisation 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."

any type of disability are 3.7 times more likely to experience violence than non-disabled children, and 2.9 times more likely to be victims of sexual abuse.⁸⁴

Within this context, 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.⁸⁵

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, the 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 response to child abuse when the victim is a child with disabilities include Article 12, which recognises 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:

- 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.”

⁸⁴ *Children with disabilities more likely to experience violence*, WORLD HEALTH ORGANIZATION (12 July 2012), available at https://www.who.int/mediacentre/news/notes/2012/child_disabilities_violence_20120712/en/.

⁸⁵ A/RES/61/106, Annex I.

Article 18 (2) states that “[c]hildren 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.” Children with disabilities are often abused at a higher rate than their peers. Attorneys representing child victims with disabilities can use a registration made in keeping with this Article in determining the age of a child in any sexual abuse proceeding related to his or her victimization.

Article 23 provides in part that:

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.

5) States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

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.

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.⁸⁶ Its articles provide a comprehensive, international approach in the countries of origin, transit, and destination. They include measures to prevent trafficking, punish traffickers, and protect victims, to create a universal instrument that addresses all aspects of trafficking in persons. Its stated purpose, as outlined in Article 2, is:

⁸⁶ G.A. res. 55/25 (2000); Raja KHURRAM ALI KHAN VS TAYYABA BIBI, 2019 YLR-ISLAMABAD 98 (11 June 2018) (The Chief Justice Islamabad High Court referred to the Palermo Protocol to define human trafficking).

- (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 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 criminalise trafficking in persons (TIP) as well as attempting to commit a TIP offence, participating as an accomplice in a TIP offence, and organising 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 victims' physical, psychological, and social recovery, including appropriate housing, counseling, 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 victims' rights. The training should also consider human rights and child- and gender-sensitive issues and encourage cooperation with non-governmental organisations, other relevant organisations, and other civil society elements.

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

Note: trafficking in persons and smuggling are distinct legal terms that are often conflated. Smuggling does not equal trafficking. However, a person could be smuggled and subsequently trafficked. Moreover, trafficking in persons can occur internally and across borders, and affects nationals, foreign national children, and stateless children.

Activity 6:
(45 minutes)

Material Required: Handouts UNCRC, UDHR, ICCPR, Constitution of Pakistan.

The facilitator will divide the participants into 3 groups for the activity.

Group 1 will be asked 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 2 will be asked to compare the fundamental rights provided in the Constitution of Pakistan with the UNCRC and list those rights available in the constitution, and those secure under UNCRC.

Group 3 will compare the Constitution to the ICCPR (Article 6 to Article 27).

After 45 minutes, each group will present their findings.

In presentation: Are there any rights included in the Constitution, but not in the UDHR, ICCPR or UNCRC? Are any rights protected by UDHR and UNCRC, but not protected by the Constitution?

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 child⁸⁷. The SAARC Convention reaffirms the UNCRC and obligates States Parties to uphold the best interests of the child as a principle of paramount importance.

The Convention also identifies specific regional priorities for South Asia, including ensuring that appropriate legal and administrative mechanisms and social safety nets and defences 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”.⁸⁸

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.”⁸⁹

The SAARC Trafficking Convention requires, among other things, that States Parties criminalise trafficking in persons, financing of trafficking, and attempt or abetment of trafficking (Article III); ensure that the confidentiality of the child⁹⁰ and women victims is maintained and that they are provided appropriate counseling 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 the 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.

⁸⁷ 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.”

⁸⁸ SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia art. IV(3).

⁸⁹ SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution art. II.

⁹⁰ The SAARC Trafficking Convention defines a child as “a person who has not attained the age of 18 years.”

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 Power⁹¹ 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 explicit 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 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 promotes the need for victims to be informed of their rights.

The judicial and administrative processes should be responsive to victims' needs by informing them of their role and status of proceedings. Victims' views and concerns 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 victims' needs and the need to establish proper guidelines and procedures for the appropriate response to victims of abuse.

UN TREATY BODIES.

Treaty-based mechanisms only bind those having ratified their provisions. These include the Committee on the Rights of the Child, the Committee on the Elimination of All Forms of Discrimination against Women, the Human Rights Committee, and others to which Pakistan is a signatory. The Committees of experts established to monitor implementation of the treaty provisions by States Parties are the vehicles through which States Parties can be held accountable.

⁹¹ G.A. res. 40/34 (1985).

Generally, there are three main mechanisms for bringing complaints of violations of UN human rights treaties, including the UNCRC, to a UN treaty-body:

*Individual communications.*⁹²

Anyone can lodge a complaint with a Committee against a State that is a Party to the treaty, through ratification or accession and, in the case of the CRC, if the State Party accepted the Committee's competence to examine individual complaints, either through ratification or accession to the third Optional Protocol. As of April 2014, the CRC could consider individual complaints that allege a violation of an individual's rights under the Convention or its Optional Protocols.⁹³ Article 7 of the Optional Protocol details the admissibility requirements for communications. As of January 2020, 46 States were party to the Optional Protocol. However, Pakistan is not among them. Pakistani children, therefore, cannot currently lodge individual complaints with the Committee.

State-to-State complaints.

State Parties can complain to the relevant treaty body (Committee) about alleged violations of the treaty by another State Party that has made a declaration accepting the competence of the Committee's competence for this purpose. Article 12 of the third Optional Protocol sets out the procedure for a State Party to complain about violations committed by another State Party to the Convention. This procedure is the broadest in scope because it does not require individual child victims to come forward with a complaint. Both States concerned must have made declarations accepting this procedure, or the complaint will not be considered. However, this inter-State complaint procedure is rarely used.

*Inquiries.*⁹⁴

A Committee monitoring a Convention can initiate an inquiry if it receives reliable information that a State Party is systematically violating rights under the Convention. The Committee invites the State Party to co-operate in a review of the information by submitting observations. Based on the available information, the Committee may designate one or more of its members to conduct an inquiry and report urgently to the Committee. A visit to its territory may occur if warranted and with the consent of the State Party. The findings of the designated member(s) are then examined by the Committee and sent to the State Party, along with any comments and recommendations, with a request for it to submit its own observations on the Committee's findings, comments, and recommendations within a specific time frame (usually six months). If requested, the State Party can also inform the Committee of the measures taken in response to the inquiry. The inquiry procedure is confidential, and the State Party's cooperation is sought at all stages of the proceedings.

Other human rights treaties described below also have similar mechanisms in place for States Parties, such as the International Covenant on Civil and Political Rights, Convention on the

⁹² More information about individual complaints can be found at: *23 Frequently Asked Questions about Treaty Body Complaints Procedures*, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), available at <https://www.ohchr.org/Documents/HRBodies/TB/23FAQ.pdf>.

⁹³ G.A. res. 66/138, U.N. Doc. A/RES/66/138 (2011).

⁹⁴ *Human Rights Bodies – Complaints Procedures: Inquiries*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#inquiries> (last accessed 30 September 2020).

Elimination of All Forms of Discrimination against Women, Convention on the Rights of Persons with Disabilities, and the Convention on Economic, Social and Cultural Rights.

UN CHARTER BODIES.

United Nations charter-based mechanisms, which bind all United Nations members, include the Human Rights Council,⁹⁵ an inter-governmental body responsible for strengthening the promotion and protection of human rights worldwide and for addressing human rights violations.

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 promoting and protecting all human rights worldwide. 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 all UN Member States' human rights records. 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 it has taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the Council's main features, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. This mechanism aims to improve the human rights situation in all countries and address human rights violations wherever they occur.⁹⁶ Pakistan last underwent a Universal Periodic Review in 2017.

UN Bodies' Recommendations on CSA.

The Committee on 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 the 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 Labour Organization Convention 182 on the Worst Forms of Child Labour and the Optional

⁹⁵ *Welcome to the Human Rights Council*, UNITED NATIONS HUMAN RIGHTS COUNCIL, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (last accessed 2 October 2020).

⁹⁶ *UPR Sessions*, UNITED NATIONS HUMAN RIGHTS COUNCIL, available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (last accessed 30 September 2020).

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.⁹⁷

The UN Special Rapporteur on the Sale and Sexual Exploitation of Children was mandated in 1990 to analyse 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.

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

*SALE AND SEXUAL EXPLOITATION OF CHILDREN IN THE CONTEXT OF SPORTS:*⁹⁸

- 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 organisations, 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 Rights⁹⁹, 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 organisation 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 standard terminology;

⁹⁷ *The United Nations Study on Violence against Children*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://www.ohchr.org/EN/HRBodies/CRC/Study/Pages/StudyViolenceChildren.aspx> (last accessed 2 October 2020).

⁹⁸ *Sale and sexual exploitation of children in the context of sports*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://www.ohchr.org/EN/Issues/Children/Pages/ChildrenInSports.aspx> (last accessed 2 October 2020).

⁹⁹ *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 64, at 29.

- 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.

TACKLING THE DEMAND FOR THE SEXUAL EXPLOITATION OF CHILDREN:¹⁰⁰

- Ratify all relevant regional and international instruments and establish clear and comprehensive legal frameworks that specifically address the demand for child sexual exploitation by providing clear guidance on penalties 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 to fund care, recovery, and reintegration programmes, which should include compensatory measures for the victims.
- Ensure that national legislation does not criminalise child victims of sexual abuse and exploitation and ensure that children are not placed on sex offender registers.
- Ensure that children required to participate in criminal justice proceedings are given appropriate support and counseling to assist them at all stages of proceedings and have access to a child-sensitive legal system to avoid their revictimization.
- Strengthen 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 the Green Notice system effectively, particularly for the identification of traveling sex offenders.¹⁰¹

¹⁰⁰ *Tackling the demand for the sexual exploitation of children*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://www.ohchr.org/EN/Issues/Children/Pages/TacklingTheDemand.aspx> (last accessed 2 October 2020).

¹⁰¹ For more information on INTERPOL's colour coded notice system, see <https://www.interpol.int/How-we-work/Notices/About-Notices>.

- 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 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.
- Enforce and monitor private sector compliance with international guidelines such as the Guiding Principles on Business and Human Rights, the Global 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:¹⁰²

- 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 criminalisation of exploitative activities and 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. Pakistan is a member of the WePROTECT Global Alliance (<https://www.weprotect.org>).
- Create a global permanent multi-stakeholder body to harmonise 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 creating 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 to strengthen child safety online through prevention and protection programs.

¹⁰² *Sexual exploitation of children and Information and Communication Technologies (ICTs)*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *available at* <https://www.ohchr.org/EN/Issues/Children/Pages/ICT.aspx> (last accessed 2 October 2020).

CARE AND RECOVERY OF CHILD VICTIMS:¹⁰³

- Adopt and implement clear and comprehensive legislation that criminalises the sexual exploitation and related sale and trafficking of children, recognises 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-centred care, recovery, and reintegration programmes, with a gender perspective, through a full range of laws, policies, and services that will:
 - Enable rapid identification of victims and coordinated referral mechanisms;
 - Provide specialised training to personnel involved in the identification process;
 - Provide for awareness-raising and outreach to victims and children in vulnerable situations;
- Establish centralised databases for case management to ensure child victims are identified, linked to services, and followed up on a long-term basis;
- Ensure 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 through an individualised 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 developing 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, involving 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-centred care, recovery and reintegration programmes, as part of effective national child protection systems.

¹⁰³ *Care and recovery of child victims*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *available at* <https://www.ohchr.org/EN/Issues/Children/Pages/CareAndRecovery.aspx> (last accessed 2 October 2020).

SUMMARY

Child sexual abuse is a global problem that has drawn the attention and response of the international community. The international instruments described above are of particular relevance to sexual crimes against children and the pursuit of civil remedies, such as restitution, on behalf of child victims. Many, such as the UNCRC and its Optional Protocols, speak directly to children's vulnerability 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 afford them the opportunity to enforce their rights and pursue civil remedies against their abusers.

PAKISTAN'S OBLIGATIONS UNDER INTERNATIONAL LAW AND THE SIGNIFICANCE OF INTERNATIONAL LAW IN THE JUDICIAL SYSTEM

Through signing and ratification, State Parties to international treaties, conventions, and covenants accept obligations and duties to respect, protect, and fulfill human rights. Pakistan has ratified seven out of nine core human rights conventions and takes responsibility to put into place domestic measures and legislation compatible with its treaty obligations and duties.

These seven conventions are,

- (1) the International Covenant on Civil and Political Rights (ICCPR), ratified on 23 June 2010;
- (2) the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified on 17 April 2008;
- (3) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), acceded to on 12 March 1996;
- (4) the Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified on 21 September 1966;
- (5) the Convention on the Rights of Persons with Disabilities (CRPD), ratified on 5 July 2011;
- (6) the Convention on the Rights of the Child (CRC), ratified on 12 November 1990; and
- (7) the Convention against Torture (CAT), ratified on 23 June 2010.

The significance of international law as an element of domestic law may only be accepted when the obligations created under international law and how the State is responsible for fulfilling them are understood. As a State Party to numerous international conventions and agreements, Pakistan is bound by these instruments. Pakistan's domestic law reflects many of the international conventions and agreements, and some text of the domestic law closely corresponds to treaty provisions. Application of international law provisions, therefore, complements domestic law and may further support its international obligations.

International law can sometimes seem complex and challenging to interpret in legal practice, and it can lead to misunderstandings about what each right means and how the Convention applies in the real world. This chapter has tried to clarify common misconceptions on the nature of international human rights commitments, obligations, and laws and their interaction with Pakistan's domestic legal system. The following section discusses the domestic application of Pakistan's international human rights obligations and provides examples of cases in which Pakistan's courts have relied on or cited international human rights treaties to which Pakistan is a State Party in reaching their decisions.

2017 UNIVERSAL PERIODIC REVIEW (UPR) OF PAKISTAN.

The UN Human Rights Council uses the Universal Periodic Review (UPR) to improve the human rights situation in each of the 193 United Nations (UN) Member States'. Under this mechanism, the human rights situation of all UN Member States is reviewed every five years. Pakistan underwent its last review in 2017.

The national report submitted by Pakistan indicated the government had set up comprehensive institutional mechanisms to ensure implementation of laws and policies and promote and protect human rights and fundamental freedoms in response to numerous accepted recommendations from the previous UPR in 2012. Pakistan established the National Commission for Human Rights (NCHR), a statutory authority to monitor human rights, and enacted legislation, including criminalising domestic violence and addressing gaps in its anti-honour killing bill.

Pakistan's Fifth Periodic Report on the Convention on the Rights of the Child, submitted in May 2016, was also reviewed as part of the UPR.

Child rights-related recommendations from the 2017 UPR include:

- Continue efforts to combat trafficking in human beings, particularly the exploitation of children, by reinforcing the fight against traffickers;
- Continue efforts to strengthen the institutional mechanisms to combat and prevent trafficking of persons, especially children;
- Continue to raise the level of protection of human rights of vulnerable groups, with particular reference to eliminating child labour;
- Continue to adopt measures that would further promote and protect the rights of the child; and
- Develop a comprehensive child protection policy to fully reflect the realities of children in national plans and programmes.

PAKISTAN'S FIFTH PERIODIC REPORT UNDER THE UN CONVENTION ON THE RIGHTS OF THE CHILD.

Pakistan submitted its fifth periodic report under the UN Convention on the Rights of the Child in 2016. The report covered general measures of implementation, the definition of a child, civil rights and freedom, family environment, alternative care, and other topics.

The national report noted the Penal Code had been amended to protect children from abuse in all respects, and federal and provincial assemblies had passed laws such as the Child Marriage Restraint Act and the Right to Education.¹⁰⁴ Pakistan established a Ministry of Human Rights in November 2015 and on May 15, 2017, the Senate passed the National Commission on the Rights of the Child Act. Under this Act, the Commission is empowered to examine existing laws relating to children's rights, recommend future legislation, monitor children's rights in the country, and coordinate with provincial governments and civil society organisations.¹⁰⁵ The National Commission for Child Welfare and Development had been placed within the Ministry of Human Rights, and all provinces now also have departments for human rights. The report noted that the Prime Minister had in 2015 approved the National Action Plan to Improve Human Rights, focusing on several policy interventions to ensure the full enjoyment of children's rights.

¹⁰⁴ CONST. Article 25A (Provincial laws to ensure free and compulsory education); Punjab Free and Compulsory Education Act, 2014; The Sindh Right of Children to Free and Compulsory Education Act, 2013; The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act 2017; The Balochistan Compulsory Education, Bill 2014.

¹⁰⁵ S.155, National Commission on the Rights of the Child Act (XXXII of 2017) available at: http://www.senate.gov.pk/uploads/documents/1510816131_552.pdf.

Committee Experts noted the progress made in strengthening the policy and legislative framework in Pakistan but raised concerns about the laws' inconsistencies with the provisions of the Convention on the Rights of the Child. They also noted an inconsistent and conflicting definition of the child throughout the legislation and across provinces. In particular, the Anti-Terrorism Act affected the definition of the child. The passage of the 18th Constitutional Amendment had led to significant differences in the level of protection of children and growing disparities among provinces and territories. Girls continued to face systematic and institutionalised discrimination and gender-based violence, and children with disabilities were often denied access to health and education. The Committee encouraged Pakistan to ratify the remaining two Optional Protocols to the CRC on children in armed conflict and individual communications. The third optional protocol on individual communications provides a mechanism for individual complaints of violations of the Convention.

EXAMPLES OF OTHER MECHANISMS TO WHICH PAKISTAN IS SUBJECT.

Pakistan is also subject to other mechanisms related to protecting children's rights, including those related to the Committee on the Elimination of Discrimination against Women,¹⁰⁶ Human Rights Committee,¹⁰⁷ and the Committee on Economic, Social and Cultural Rights.¹⁰⁸

CITATIONS TO INTERNATIONAL LAW IN COURT JUDGEMENTS.

Article 97 of the Constitution of the Islamic Republic of Pakistan empowers the Parliament to make the law. 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 inconsistent with the provisions of the Constitution or against fundamental rights may be declared void. Articles 189, 201, and 203 GG of the Constitution seem to have adopted the doctrine of precedent. Under 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." Article 201 provides that, "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 Supreme Court's decisions are binding upon all courts in Pakistan, the decisions of the Federal Shariat Court are binding upon the High Court and the Courts subordinate to the High Court, and decisions of High Courts are binding upon all courts subordinate to the High Court.

Pakistan's superior courts are beginning to use international law to dispense justice; reliance is made on Pakistan's international commitments, treaties, and conventions in various cases. The following is a list of judgments/cases in which the superior courts have relied on international instruments, treaties, and laws, in addition to domestic laws and constitutional provisions, to reach their decisions.

¹⁰⁶ United Nations Convention on the Elimination of All Forms of Discrimination against Women, *Concluding observations on the fifth periodic report of Pakistan*, U.N. Doc. CEDAW/C/PAK/CO/5 (10 March 2020).

¹⁰⁷ United Nations International Covenant on Civil and Political Rights, *Concluding observations on the initial report of Pakistan*, U.N. Doc. CCPR/C/PAK/CO/1 (23 August 2017).

¹⁰⁸ United Nations Economic and Social Council, *Concluding observations on the initial report of Pakistan*, U.N. Doc. E/C.12/PAK/CO/1 (20 July 2017).



Examples of Pakistani Courts Citing to International Law

P L D 2020 Lahore 489 Before Tariq Saleem Sheikh, J NASIRA---Petitioner Versus JUDICIAL MAGISTRATE and 5 others--- Respondents	The court discussed in detail the provisions of the International Covenant on Civil and Political Rights (ICCPR), 1966, and referred to a few other international instruments while deciding the forced religious conversion case of a child, Pumy Muskan.
2020 PLD Lahore 739 MUHAMMAD IQBAL alias BALI Versus PROVINCE OF PUNJAB through Secretary Home, Punjab and 6 others-	The court granted relief to the petitioner and was of the opinion that in this case the petitioner was not begging for anything over and above the legal or constitutional mandate. Rather, he was only seeking enforcement of a government policy executed in the light of the United Nations Convention on the Rights of the Child, 1989 (UNCRC), the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the Presidential Notification.
2019 PLJ SC 150 NATIONAL COMMISSION ON STATUS OF WOMEN Chairperson, etc.--Petitioners v/s Government of Pakistan	It was stated that the State must 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.
2018 PLJ Lahore 508 ASFANDYAR KHAN TAREEN, etc.-- Petitioners v/s GOVT. OF PUNJAB	The Court relied on 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.
2018 PLJ Lahore 481 ASGHAR LEGHARI v/s Federation	The Lahore High Court relied on the CRPD and other provisions of international law. —The Charter of the United Nations recognises the 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 the world. The Universal Declaration of Human Rights and International Covenants on Human Rights have proclaimed and agreed everyone is entitled to all rights and freedoms set forth therein, without distinction of any kind. The CRPD 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—
2017 PLJ Lahore 875 AMEEN MASIH V/S FEDERATION OF PAKISTAN, etc.	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.aspx
2015 SCMR SC. 1550, MFMY Industries LTD v/s. Federation of Pakistan	One of the most important differences between developed countries 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 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 the rights of citizens/persons are not affected and trampled contrary to law.

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.
2014 PLD Pesh. 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.
2014 CLD Kar. 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 cognisant that a breach or disregard of the “legal obligation” could, ultimately, result in severe consequences for their State on the international plane.
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 international human rights standards “serve as moral checks and efforts are continually being made to incorporate these rights into domestic law”.
2003 CLD Kar. 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 [...] international obligations to the State ought to be duly honoured.
1999 PLJ SC 715 Al-Jehad Trust v. Federation of Pakistan	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 this Court, while construing the former may refer to the latter, if there is no inconsistency between 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.
1993 P L D KHI 93 Najib Zarab Ltd. V. Pakistan	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 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.

1958 PLD SC 138 Hanover Fire Insurance Co. v. Muralidhar Banechand	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.
2020 PLD 146	In the infamous Tayyaba Torture case (child domestic labour), the criminal appeal court relied on the United Nations Convention against Transnational Organized Crime to define Slavery.

Activity 7 (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 LEGAL FRAMEWORK FOR CHILD PROTECTION

In Pakistan, recently established child courts handle justice matters involving the following non-mutually exclusive “categories” of children:

CHILDREN AS VICTIMS OR COMPLAINANTS:

Ideally, every stakeholder who might encounter a child victim should receive appropriate training and skills to be able to quickly refer the child to designated points of contact in the legal system. A lawyer may help protect a child victim from further harm, trauma, or victimisation by linking the child with the services he/she may need to reach a full physical and psychological recovery, including custody or removal of the child from any place which is not in the best interest of a child. A legal aid provider may guide the child and provide free legal advice to discuss their rights and the available remedies for pursuing these rights violations. Children should be able to initiate legal proceedings directly; through a parent, guardian, or next friend; or through a chosen or appointed legal representative.

CHILDREN AS WITNESSES:

A lawyer may ensure a child witness’s safety then the child agrees to testify in court, and may facilitate measures to keep the child at ease and avoid the complexities of cross-examination in adversarial legal systems, such as the use of audio-visual or closed-circuit television technology, prerecorded testimony or live communication from a remote location.

CHILDREN AS OFFENDERS.

A juvenile offender or child apprehended by the police and suspected of wrongdoing should be facilitated according to law as special protections are given through the Juvenile Justice System Act, 2018. A legal aid provider may facilitate a child to have special treatment provided by law, such as free legal aid, detention, bail, diversion, or release on probation.

Please note, these categories are not mutually exclusive. Children can be victims AND victim-witnesses, or victims, victim-witnesses AND offenders.

DOMESTIC LEGAL FRAMEWORK TO ADDRESS CHILD SEXUAL ABUSE

Child sexual abuse harms a child mentally, physically, and emotionally. In Pakistan, different laws protect children from different forms of abuse and exploitation:

CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Although there is no 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 various clauses. Article 11 prohibits all forms of slavery, forced labour, human trafficking, employment of children younger than 14 years, and children working in hazardous places. Article 25 states that all citizens are entitled to equal protection of the law and empowers the State to make special provision for protection of women and children. Article 25(1) of the Pakistani Constitution states, “all citizens are equal before the law and entitled to equal protection of law.” Article 25(3) allows for positive discrimination for women and children, noting “[n]othing in this Article shall prevent the State from making any special provision for the protection of women and children.” Article 25-A provides the State shall

provide free and compulsory education to all children five to 16 years, meaning 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).

The Pakistan Penal Code includes several offences related directly or indirectly to sexual abuse, including illegal touching, physical and mental harm, wrongful restraint, kidnapping and abduction, wrongful confinement, forced marriage, unnatural offences, forced prostitution, and attempting offences, including aiding and abetting. Here, we will look into some of these, which may protect children from sexual abuse.



Practice Pointer

Your client may be a victim of one or more of the following crimes. While you are not the prosecutor, you should be knowledgeable of the statutory elements of the offences as they relate to your client's victimization. You may need to advocate for certain offences to be charged. Also understand what a) sentences and b) victim protections coincide with various punishable offences as they relate to your client.

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 criminalises the production of child pornographic material by using any method but also criminalises 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 and 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 a female child. The word 'woman' denotes a female human being of any age.¹⁰⁹ 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 Section 354-A is limited by the two conditions that must be met; firstly, stripping off the woman's clothes, and secondly, the woman should be exposed to the public view.¹¹⁰

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 states explicitly 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.

¹⁰⁹ Penal Code [Pakistan], Act No. XLV, Sec. 10 (6 October 1860). (The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age).

¹¹⁰ 2009 SCMR 913.

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 if 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 not 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.

Legislatures introduced the Criminal Law Amendment Act of 2016 to protect children from sexual abuse and exploitation. For the first time in Pakistan's history, this Act introduced child sexual abuse offences by inserting Sections 337-A and 377-B to the Pakistan Penal Code of 1860.

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. 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.

498-B. 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 10 years but shall not be less than five (5) years and shall also be liable for a fine which may extend to one million rupees.

375. Rape.

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.

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



Criminal Law (Amendment) Ordinance, 2020

On December 14, 2020, President Arif Alvi promulgated the Criminal Law (Amendment) Ordinance, 2020, amending the rape provisions in the Pakistan Penal Code, 1860 (Act XLV of 1860) with immediate effect. The Criminal Law (Amendment) Ordinance amends the definition of rape in the PPC to make it gender neutral and to provide a detailed anatomical definition of rape, removing some of the ambiguity caused by the use of the term “intercourse” in the former definition. It is worth noting that the revised definition includes several physical acts that would not have qualified as rape under the previous definition.

As the Ordinance has not yet been enacted by Parliament, the authors have decided to reproduce the new sections here while leaving the previous PPC sections untouched for the time being.

“375. Rape.- A person **(A)** is said to commit “rape” if **A—**

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of another person **(B)** or makes **B** to do so with **A** or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of **B** or makes **B** to do so with **A** or any other person; or

(c) manipulates any part of the body of **B** so as to cause penetration into the vagina, urethra, anus or any part of body of **B** or makes **B** to do so with **A** or any other person; or

(d) applies his mouth to the vagina, anus, urethra or penis of **B** or makes **B** to do so with **A** or any other person, under the circumstances falling under any of the following seven descriptions:

- *firstly*, against **B’s** will;
- *Secondly*, without **B’s** consent;
- *thirdly*, with **B’s** consent, which has been obtained by putting **B** or any person in whom **B** is interested, in fear of death or of hurt;
- *fourthly*, with **B’s** consent, when **A** knows that **A** is not **B’s** husband and that **B’s** consent is given because **B** believes that **A** is another man to whom **B** is or believes herself to be lawfully married;
- *fifthly*, with **B’s** consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by **A** personally or through another of any stupefying or unwholesome substance, **B** is unable to understand the nature and consequences of that to which **B** gives consent;
- *sixthly*, with or without **B’s** consent, when **B** is under sixteen years of age;
- *seventhly*, when **B** is unable to communicate consent.

Explanation 1.- For the purposes of this section, “vagina” shall also include *labia majora*.

Explanation 2.- Consent means an unequivocal voluntary agreement when **B** by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that if **B** who does not physically resist to the act of penetration, it shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Explanation 3.- In this Chapter:-

“person” means a male, female or transgender;

“rape” includes “gang rape”.

Exception.- A *bonafide* medical procedure or intervention shall not constitute rape.



Criminal Law (Amendment) Ordinance, 2020

3. Insertion of new section 375A of Act XLV of 1860.—In the Penal Code, after section 375, the following new sections shall be inserted, namely:

“375A. Gang rape.—Where a person is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be guilty of the offence of gang rape and shall be punished with death or for imprisonment for the remainder period of natural life or imprisonment for life and fine.”

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.



Criminal Law (Amendment) Ordinance, 2020

On December 14, 2020, President Arif Alvi promulgated the Criminal Law (Amendment) Ordinance, 2020, amending the rape provisions in the Pakistan Penal Code, 1860 (Act XLV of 1860) with immediate effect. It is worth noting that the revised definition includes several physical acts that would not have qualified as rape under the previous definition.

4. Amendment of section 376 of Act XLV of 1860.—In the Penal Code, in the existing section 376,
(a) in sub-section (1), after the words “twenty-five years” the words “or for imprisonment for the remainder period of his natural life” shall be inserted;
(a) sub-section (2) shall be omitted.

376A. Disclosure of identity of victim of rape, etc.

(1) Whoever prints or publishes name or any matter which may make known identity of 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.



Criminal Law (Amendment) Ordinance, 2020

5. Insertion of new section 376B of Act XLV of 1860.—In the Penal Code, after section 376A, the following new sections shall be inserted, namely:

“376B. Exceptional first offenders or repeat offenders.— Whoever is convicted of an offence under sections 375, 375A and 376 may be subjected to chemical castration through a court order, irrespective of the applicable punishment:-

- (i) in exceptional circumstances in respect of the first reported offence of section 375; or
- (ii) in case of a repeat convict of an offence under section 375.

Explanation.— “Chemical castration” means a process, duly notified by Rules framed by the Prime Minister, whereby a person is rendered incapable of performing sexual intercourse for any period of his life, as may be determined by the court, through administration of drugs which shall be conducted through a notified medical board.”.

509. Insulting modesty or causing sexual harassment:

Whoever,-

- (i) intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman;
- (ii) conduct sexual advances, or demand sexual favors or uses verbal or non-verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of workplace, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behaviour, or conducts such behaviour with the intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment; shall be punished with imprisonment which may extend to three years or with fine up to five hundred thousand rupees or with both.

Explanation. 1 __ Such behaviour might occur in public place, including, but not limited to, markets, public transport, streets or parks, or it might occur in private places including, but not limited to workplaces, private gathering, or homes.

Explanation. 2 __ Workplace means, the place of work or the premises where an organization or employer operates, this may be a specific building, factory, open area or a larger geographical area where the activities of the organization of carried out. Sexual advances may occur after working hours and outside workplace. It is the access that perpetrator has to the person being harassed by virtue of a job situation or job related functions and activities.

CRIMINAL LAW (AMENDMENT) (OFFENCES RELATING TO RAPE) ACT, 2016.

In 2016, Pakistan's parliament enacted the criminal law amendments to deal with rape offences, including of the rape of minors and/or persons with disabilities, to ensure justice for sexual offences. In cases of rape or gang rape, a registered medical practitioner employed in a Government hospital shall examine the accused to collect medical evidence, including DNA evidence, from the accused's body. If the victim consents, he/she shall also undergo a forensic examination by a medical practitioner. An Investigating Officer shall take the statement of a female victim of rape or other sexual offence in the presence of a female police officer or a female family member of the victim. Victims of sexual offences shall be provided free legal aid (if needed) by the Provincial Bar Council.

Most importantly, a trial for rape/sexual offence shall be concluded within three (3) months, failing which the matter shall be brought to the notice of the Chief Justice of the High Court for appropriate directions. Appeals from trial judgments in sexual offence cases will be concluded in six months. All trials under the Act will be conducted in camera, i.e., privately, and will not be made public. Public servants (e.g., police) who fail to properly investigate a case involving a sexual offence will be punished with imprisonment of three years or fine or both.

Amendments to deal with the cases of sexual offenses

The Criminal Law Amendment (Offences Relating to Rape) Act, 2016 amended Pakistan's Code of Criminal Procedure to add and revise sections to facilitate effective investigation of sexual offences and to make the law more victim-centric:

Inserted Section 53A. Examination of person accused of rape, etc. by medical practitioner.

(1) 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 376¹¹¹, section 377¹¹² and section 377B¹¹³ respectively and there are reasonable grounds for believing that an examination of this 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

¹¹¹ Penal Code [Pakistan], Act No. XLV, Section 376 (6 October 1860).

¹¹² Penal Code [Pakistan], Act No. XLV, Section 377 (6 October 1860).

¹¹³ Penal Code [Pakistan], Act No. XLV, Section 377-B (6 October 1860).

authority to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

- (a) the name and address of the accused and of the person by whom he was brought;*
- (b) the age of the accused;*
- (c) marks of injury, if any, on the person of the accused,*
- (d) the description of material taken from the person of the accused for DNA profiling; and*
- (e) other material particulars in reasonable detail.*

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report. The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate through Public Prosecutor referred to in section 173 as part of the report referred to in that section.

The italicized subsections were added to **Section 154. Information in cognizable cases:**

Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant ; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the [Provincial Government] may prescribe in this behalf [:]

Provided that if the information is given by the woman against whom an offence under section 336B¹¹⁴, section 354¹¹⁵, section 354A¹¹⁶, section 376¹¹⁷ or section 509¹¹⁸ 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:

¹¹⁴ Penal Code [Pakistan], Act No. XLV, Section 336-B (6 October 1860).

¹¹⁵ Penal Code [Pakistan], Act No. XLV, Section 354 (6 October 1860).

¹¹⁶ Penal Code [Pakistan], Act No. XLV, Section 354-A (6 October 1860).

¹¹⁷ Penal Code [Pakistan], Act No. XLV, Section 376 (6 October 1860).

¹¹⁸ Penal Code [Pakistan], Act No. XLV, Section 509 (6 October 1860).

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.



Practice Pointer:

As the attorney for the child victim, you should consult with your client, both male and female, and immediately request a female police officer, family member or other person with consent of victim, and cite to this amendment and law as necessary for any interviews with your client. Boy victims who have been abused by a male may also prefer a female officer.

The italicized subsection was added to **Section 161. Examination of witnesses by police:**

(1) Any police officer making an investigation under this Chapter 1 [or any police - officer not below such rank as the [Provincial Government] may, by general or special order, prescribe in this behalf, acting on the requisition of such officer] may examine orally any person supposed to be acquainted with the facts and circumstances of the case [:]

Provided that a statement of a 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, shall be recorded by an Investigating Officer, in the presence of a female police officer or a female family member or other person of her choice.

(2) Such person shall be 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.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.

Inserted **Section 161-A. Legal representation of the victim of rape, etc.**

(1) Where an offence under section 354A, section 376, section 377 or section 377B of the Pakistan Penal Code, 1860 (Act XLV of 1860), has been committed or attempted to be committed, the police officer, after recording the information under section 154, shall inform the victim against whom such offences have been committed or attempted to be committed, of his or her right to legal representation.

(2) If the victim requires free legal aid the police officer shall provide the list of lawyers maintained by the Provincial Bar Councils for this purpose.

Inserted **Section 164A Medical examination of the victim of rape, etc.**

(1) Where an offence of committing rape, unnatural offence or sexual abuse or attempt to commit rape, unnatural offence or sexual abuse under section 376, section 377 or section 377B respectively of the Pakistan Penal Code, 1860 (Act XLV of 1860) is under investigation, the victim shall be examined by a registered medical practitioner, in the case of female victim by a female registered medical practitioner, immediately after the commission of such offence:

Provided that in all cases, where possible, the female victim shall be escorted by a female police officer or a family member from a place of her convenience to the place of medical examination.

(2) The registered medical practitioner, to whom such victim is sent shall, without delay, examine him or her and prepare a report of the examination giving the following particulars, namely: -

- (a) the name and address of the victim and of the person by whom she was escorted;*
- (b) the age of the victim;*
- (c) the description of material taken from the body of the victim for DNA profiling;*
- (d) marks of injury, if any, on the body of the victim;*
- (e) general mental condition of the victim; and*
- (f) other material particulars in reasonable detail.*

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the victim, or of his or her natural or legal guardian to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall without delay forward the report to the investigation officer who shall forward it to the Magistrate along with other requirements as specified under clause (a) of sub-section (1) of section 173.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or of any person authorized under sub-section (4).

Explanation. *In this Section, "registered medical practitioner" means a medical practitioner who possesses any qualification recognised as such under the Pakistan Medical and Dental Council Ordinance, (XXXII of 1962) and whose name has accordingly been entered in a Register*



Practice Pointer

As the attorney for the child victim, you should advocate for a female medical practitioner. Again, boy victims who have been abused by males may also prefer a female medical practitioner to examine them. Always consult with your client first. You may also need to describe the process and prepare your client for what to expect with the exam, and how the information will be used. Assure your client of their right to privacy and confidentiality.

maintained by the said Council and has been authorised by the Government to conduct such examination.

Inserted Section 164B. DNA test.

(1) Where an offence under section 376, section 377 or section 377B of the Pakistan Penal Code, 1860 (XIV of 1860), is committed or attempted to have been committed or is alleged to have been committed Deoxyribonucleic Acid (DNA) samples, where practicable, shall be collected from the victim, with his or her consent or with the consent of his or her natural or legal guardian, and the accused during their medical examinations conducted under section 164A, within optimal time period of receiving information relating to the commission of such offence.

(2) The DNA samples collected under sub-section (1) shall at the earliest be sent for investigation to a forensic laboratory where at these shall be properly examined and preserved:

Provided that the confidentiality of such examination shall at all times be observed.

Inserted Section 344-A. Conclusion of trial.

The Court shall, upon taking cognizance of a case under sections 35' A, 376, 377 and 377B of the Pakistan Penal Code, 1860 (Act XIV of 1860), decide the case within three months failing which the matter shall be brought by the Court to the notice of the Chief Justice of the High Court concerned for appropriate directions.

The Criminal Law Amendment (Offences Relating to Rape) Act added the italicized subsections to **Section 352. Courts to be open.**

The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

(1) Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub-section (1), the trial of offences under sections 354A, 376, 376A, 377 and 377B of the Pakistan Penal Code, 1860 (Act XIV of 1860) shall be conducted in camera.

Provided that the Presiding Officer, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the Court.

(3) Where any proceedings are held under sub-section (2), the Government may adopt appropriate measures, including holding of the trial through video link or usage of screens, for the protection of the victim and the witnesses

(4) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish or broadcast any matter in relation to any such proceedings, except with the permission of the Court."

The Criminal Law Amendment Act added a new sub-section 5 to **Section 417. Appeal in case of acquittal.**

(1) Subject to the provisions of subsection (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(2A) A person aggrieved by the order of acquittal passed by any court other than a High Court, may, within thirty days, file an appeal against such order.

(3) No application under subsection (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under subsection (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under subsection (1).

(5) An appeal against an order of conviction or acquittal under sections 354A, 376, 376A, 377 or 377B of the Pakistan Penal Code, 1860 (Act XLV of 1850) shall be decided within six months.



Anti-Rape (Investigation and Trial) Ordinance, 2020

During a parliamentary recess in December 2020, President Arif Alvi promulgated the Anti-Rape (Investigation and Trial) Ordinance, 2020 to ensure expeditious redressal of rape and sexual abuse crimes in respect of women and children through special investigation teams and special Courts providing for efficacious procedures, speedy trial, evidence, etc. Although not yet permanently enacted by Parliament, the Ordinance expands on, and in some cases supersedes, the protections for victims enacted through the Criminal Law Amendment (Offences Relating to Rape) Act, 2016. The Anti-Rape (Investigation and Trial) Ordinance provides *inter alia*:

- ❖ Provides for the establishment of Special Courts to try the scheduled offences (Section 3);
- ❖ Provides for establishment or designation of Anti-Rape Crisis Cells in public hospitals to conduct medico-legal examinations and collect forensic evidence in connection with scheduled offences (Sections 4 and 5);
- ❖ **Tasks the new Legal Aid and Justice Authority with providing legal assistance to victims of the scheduled offences and makes the Fund established under the Ordinance available to fund legal services for victims. The Special Committee established under the Ordinance shall also approve panels of advocates and volunteers in each district or, if necessary, in any tehsil, for the provision of legal, financial, or other assistance either on pro bono or on fee basis (Section 6);**
- ❖ Provides for the designation or appointment of a Prosecutor General and Special Prosecutors to prosecute the scheduled offences (Section 7);
- ❖ Provides for the establishment of a victim and witness protection program for scheduled offences. The victim and witness protection program shall be empowered to implement the following witness protection measures: (i) special security arrangements for witnesses and victims; (ii) concealment of identity; (iii) distance recording of testimonies through video-conferencing, audio-video links and by the use of modern devices; (iv) re-location of victims and witnesses; (v) provision of reasonable financial assistance; (vi) compensation to legal heirs of protected victims and witnesses; (vii) safe-houses, dar-ul-amans etc.; and (viii) such other measures as may be necessary and ancillary (Section 8);
- ❖ **Provides for Independent Support Advisers to accompany the victim during court proceedings, in to order to reduce the risk of duress, victimization of any nature, or any adversity inflicted or likely to be inflicted upon the victim (Section 11);**
- ❖ Provides for the trial of scheduled offences in-camera (Section 12);
- ❖ **Prohibits use of the two-finger virginity test for the purpose of medico-legal examination of a victim of a scheduled offence. Under the Ordinance, the two-finger virginity test shall have no probative value (Section 13);**
- ❖ **Makes evidence to show that the victim of a schedule offence is generally of immoral character inadmissible at trial (Section 13);**
- ❖ Protects victims from direct cross-examination by the accused. (An opportunity of cross examining the victim shall be given to the counsel for the accused and not the accused himself, or the Court may itself put questions to the victim or any questions framed by the accused may be given to the Presiding Officer of the Court who may put such question ... to the victim.) (Section 14);
- ❖ Provides for the trial of scheduled offences within four (4) months with no more than two (2) adjournments (Section 16);
- ❖ Provides for compensation of the victims of scheduled offences (Section 17);
- ❖ Appeals should be decided as soon as practicable and preferably within six (6) months with no more than two (2) adjournments (Section 18);
- ❖ Provides for the establishment of a fund to carry out the purposes of the Ordinance (Section 20);
- ❖ **Makes it a crime punishable by up to three (3) years' imprisonment and a fine for an entrusted public servant to carry out an investigation properly or diligently or causes the conduct of false investigation or fails to pursue the case in any court of law properly and in breach of duties (Section 22);**
- ❖ Allows for the preparation of a national register of sex offenders (Section 24);
- ❖ Prohibits the disclosure of the identify of a victim of a scheduled offence (Section 26).

PREVENTION OF ELECTRONIC CRIMES ACT, 2016 (PECA).

Section 21. Offences against modesty of a natural person and minor¹¹⁹.—

(1) Whoever intentionally and publicly exhibits or displays or transmits any information which,

(a) superimposes a photograph of the face of a natural person over any sexually explicit image or video; or

(b) includes a photograph or a video of a natural person in sexually explicit conduct; or

(c) intimidates a natural person with any sexual act, or any sexually explicit image or video of a natural person; or

(d) cultivates, entices or induces a natural person to engage in a sexually explicit act, through an information system to harm a natural person or his reputation, or to take revenge, or to create hatred or to blackmail, shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to five million rupees or with both.

(2) Whoever commits an offence under subsection (1) with respect to a minor* shall be punished with imprisonment for a term which may extend to seven years and with fine which may extend to five million rupees:

Provided that in case of a person who has been previously convicted of an offence under subsection (1) with respect to a minor shall be punished with imprisonment for a term of ten years and with fine.

(3) 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 subsection (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.

Section 22- 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,

¹¹⁹ *The Prevention of Electronic Crimes Act [Pakistan], Act No. XL, Section 2(1)(xxiv) (19 August 2016) ("‘minor’ means, notwithstanding anything contained in any other law, any person who has not completed the age of eighteen years;”).*

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 he 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.

(3) 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 subsection (l) 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 significant 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 or her guardian.

Activity 8

Understanding Criminal Law Amendment Act (Offences of Rape) Act, 2016

(20 minutes)

Facilitator will provide printed a handout to each 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 (20 minutes)

After participants read the handout in 15 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 5 minutes to solve this matching game, after which the facilitator will share the correct sequence, and each participant will check to see how many questions they matched correctly.



Mere lack of DNA report was not sufficient to secure acquittal.

ZAHID and another Versus The STATE, 2020 S C M R 590.

On appeal against the judgment passed by the Sindh High Court, the Supreme Court decided that, in a case of rape charged under PPC Section 376, the absence of a DNA report was not sufficient to secure an acquittal because there was substantial corroboratory evidence to secure the conviction of the petitioners beyond reasonable doubt. Petitioners were dealt with leniently with regard to their sentences. Consequently, leave to appeal was declined, and this petition is dismissed.



Victims of rape and sodomy entitled to compensation under S.544-A, Cr.P.C.

❖ **Dr. ANWAR ZADA---Petitioner Versus The STATE etc.
2017 P Cr. L J 1510**

While laying a child patient on a bed for purposes of an ultrasound, the Petitioner, a doctor, caught hold of the child, kissed his lips and tried to insert his finger into the anus of the child.

The Petitioner was directly charged in the FIR for commission of the offence- Penal Code (XLV of 1860), Ss. 377 & 511---Khyber Pakhtunkhwa Child Protection and Welfare Act (XIII of 2010), S. 53---Sodomy, attempt to commit offences punishable with imprisonment for life, sexual abuse---Bail was denied.



Child victim of an offence was competent to testify as a witness.

❖ **The STATE Versus AAMIR HUSSAIN SHAHE
2019 Y L R 2171 (ISB)**

Accused was charged with raping a ten-year-old girl child. The Islamabad High Court decided that the learned trial court, for good reasons and after adopting precautionary measures, was satisfied that the victim was competent to testify and that her deposition could be relied upon. There is nothing on record to even remotely indicate that the victim or the other witnesses had any reason to falsely implicate the Appellant. The sentence was confirmed and appeal for acquittal was dismissed.



Statement cannot be thrown aside merely because the witness was a minor, age of twelve years.

❖ **MUHAMMAD SIDDIQUE Versus The STATE
2018 P Cr. L J 1538 (BAL)**

Accused was charged with Kidnapping or Abducting with intent to secretly and wrongfully confine a person and, unnatural offence. Victim appeared as a witness. Court ruled that victim-witness is a minor, but at the time of his examination-in-chief, the Court found the soundness of his mind and his statement cannot be thrown aside merely on the ground of his being a minor of twelve years. Rather, alone his statement is enough to establish the charge against the appellant. Criminal Revision was dismissed.



Directions of Islamabad High Court for Implementation of Child Marriages Restraint Act, 1929

❖ **Mst. ALISHBA BIBI Versus The STATE and others, PLD 2020 Islamabad 28**

In a matter of child marriage in Islamabad, the Islamabad High Court passed the following directions that should strictly be followed for the implementation of the Child Marriages Restraint Act;

Before parting with the instant judgment, this Court feels it necessary to issue the following directions to the authorities concerned to curb the evil of child marriages from the society as well as to ensure the protection of rights of minorities as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973:-

i) The District Administration/license issuing authority of **Nikah Registrar shall enlighten** the Nikah Registrars about the terms of Child Marriage Restraint Act, 1929 as well as punishment for violation of terms of Child Marriage Restraint Act, 1929.

ii) If any complaint is filed against the Nikah Registrar in terms of Child Marriage Restraint Act, 1929, who solemnizes marriage for facilitating and registering any marriage of any person against her or his wishes, the Chief Commissioner, Islamabad Deputy Commissioner, Islamabad and the Chairman Union Council shall **revoke license of the Nikah Registrar** and submit a complaint before the competent Court for criminal prosecution of the Nikah Registrar and any other person, who is involved in such kind of crime.

iii) The Chief Commissioner, Islamabad, Deputy Commissioner, Islamabad and the Chairman Union Council are also **under legal obligation not to issue any license** to any such individual as Nikah Registrar, who is involved in such type of mal practice and till conclusion of the said complaint by the competent Court, his license shall be suspended till final judgment of the Trial Court and if the Nikah Registrar is civil servant, departmental action shall also be taken against him.

iv) All the Nikah Registrars or other persons, who solemnize marriages are under **legal obligation to scrutinize the credentials** at the time of Nikah as to whether the marriage is solemnized with the free will of the parties and no child is exposed to marriage.

v) The Family Court in terms of the West Pakistan, Family Courts Act, 1964 are also bound to give their findings in such type of cases and if a Family Court comes to the conclusion that the marriage has been registered in violation of law, the **Family Court shall refer the complaint** to the concerned Magistrate to proceed in terms of Child Marriage Restraint Act, 1929 against the persons, who have solemnized and registered such marriage.

vi) IG, Islamabad Police, all the DPOs and the SHOs are under obligation to protect rights of the minorities by all means and if any complaint is filed by any of the family members or by parents of the minor that he or she has been forced to convert his or her religion, such complaint shall be taken up on priority basis and statement of the effectee shall be recorded by the Magistrate at first instance as such kind of practice will bring bad name to the state of Pakistan.

vii) Federal Government shall fulfill its constitutional obligation to protect the minors as well as children in terms of international covenants and commitments and to establish Child Protection Bureau and Child Protection Homes to provide protection to such kind of minors, who are exposed to cruelty, inhuman behavior and infringement of child rights by family members, care givers or their employers if any.

viii) The NADRA Authorities as well as the Registration Authorities of the Government while issuing Marriage Registration Certificate are bound to link Birth Registration Certificate to their system in order to avoid any conflicting age contents and to avoid legal complications.

ix) Every birth entry as well as marriage certificate should be recorded in the NADRA registration record and in case of conflict of date the subsequent document shall not be registered unless valid order from the competent Court or the authority is not placed before the relevant officer. (

x) Mere submission of oral entries for the purpose of age should not be accepted unless valid documentary proof of Union Council of birth certificate is produced.

COMPENSATION IN CRIMINAL PROCEDURE CODE

544. Expenses of complainants and witnesses.

Subject to any rules made by the Provincial Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial, or other proceeding before such Court under this Code.



Practice Pointer:

As the attorney for a child victim or witness, you should ask the court to order the convicted person to pay compensation 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 harm has been caused. The compensation payable under the law is recoverable as an arrears of land revenue and the Court may further order that, in default of payment., an order may also be made by an Appellate Court or by a Court when exercising its powers of revision as has been held by superior courts in various cases. Compensation awarded under Section 544-A Cr.P.C. is mandatory in addition to any sentence.

544-A. Compensation to the heirs of 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, and

(2) The compensation payable under subsection (1) shall be recoverable as [an arrear of land revenue] and the court may further order that, in default of payment or of recovery as aforesaid, the person ordered to pay such compensation shall suffer imprisonment for a period not exceeding six months, or if it be a Court of the Magistrate of the third class, for a period not exceeding thirty days.

(3) The compensation payable under subsection (1) shall be in addition to any sentence which the court may impose for the offence of which the person directed to pay compensation has been convicted. (4) The provisions of sub-sections (28), (2C), (3), and (4) of section 250, shall, as far as may be, apply to payment of compensation under this section.

(5) An order under this section may also be made by an appellate Court or by a Court when exercising its powers of revision.

545. Power of Court to pay expenses, compensation out of fine. (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or

otherwise a sentence of fine, or a sentence of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied:

- (a) in-defraying expenses properly incurred in the prosecution;
- (b) in the payment of any person of compensation for any loss, [injury or mental anguish or psychological damage] caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by such person in a Civil Court;
- (c) when any person is convicted of any offence which includes theft, criminal misappropriation, breach of trust, or cheating or of having dishonestly received or retained or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal be presented, before the decision of the appeal.

Activity 9 Understanding the Criminal Justice System Quiz Competition

Organise participants into 4 teams. After a brief presentation on the topic of Child Sexual Abuse, including the definition, distribute the handout of the relevant clauses of Pakistan Penal Code, 1860, relevant provisions of Criminal Procedure Code, 1898, and Prevention of Electronic Crimes Act, 2016 Section 21 / 22- Child Pornography, to each group.

Give 25 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 then repeated to ensure 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.

ZAINAB ALERT, RESPONSE, AND RECOVERY ACT, 2020.

The law was enacted in 2020 to make provision for raising alert, response, and recovery of missing and abducted children. The idea was to prevent child sexual abuse by implementing an expedient response mechanism, as it had been observed that in previous cases of child sexual abuse, the delayed response of State machinery put the child's safety and life at risk. This law will reduce these risks by issuing alerts, quick responses of law enforcement, swift recovery, and rehabilitation of missing children, investigations, and adjudications in such matters.

The Zainab Alert Act defines a child as a person who is under 18 years of age.

The Act has envisaged establishing a Zainab Alert, Response, and Recovery Agency (ZARRA), headed by a Director-General appointed by the Prime Minister. The management staff of ZARRA should be suitably equipped with managing databases, conducting planning and monitoring of programmes, analysing data, preparing reports, and coordinating with all other officers. The law also requires that, where a case of a missing or abducted child is reported, the police to whom the case is reported shall immediately, and not later than two hours after the complaint is lodged, inform ZARRA of the missing child incident through any available means of communication, such as call, fax, email or ZARRA mobile App, and provide daily status updates on the case and all available details. ZARRA, for its part, will have the power to activate so-called "Zainab Alerts" by SMS, MMS, television tickers, radio announcements, social media alerts, and any other available media when a child is reported missing or abducted in the Federal Capital Territory. "Zainab Alerts" will include information on the physical characteristics of the missing or abducted child as well as any other data that would help in the child's identification, to inform the public at large and all concerned agencies to which these alerts will be issued.

Upon receiving information that a child is missing, 'the officer in-charge of the police station will reduce the same into writing in the same manner as prescribed for a cognizable offence under Section 154 of the Code of Criminal Procedure', and will be mandated to start an investigation of the case and recover the missing child. ZARRA shall, wherever required, coordinate the efforts of the concerned police stations and other federal and provincial agencies, authorities, or departments. In case the ZARRA office receives a direct complaint of a missing or abducted child, it shall coordinate immediately with the local police station and other ZARRA offices.

The legislation also provides for criminal prosecution of a police officer for failing to respond promptly to a complaint involving a missing or abducted child or of a public official who willfully delays or hinders an investigation. After enacting this law, the police shall launch an investigation as well as search, rescue, and recovery operations, immediately upon receipt of information. Police will be bound to register an FIR within two hours of a child being reported missing by his/her parents. The police will inform ZARRA immediately and keep providing ZARRA the latest case status and all available details on a daily basis. The police officer shall ensure that the mandatory information about the missing child's whereabouts, as required in Schedule "A" of this Act, is an integral part of the complaint. Police officials failing to comply with their duties will be punished with imprisonment of up to two years and a fine of one hundred thousand rupees.

The law recommends concluding sexual abuse, rape, kidnapping, and murder cases involving children within three (3) months. The sentence handed down to child sexual abusers would be under the relevant sections of the Pakistan Penal Code.

CHILD PROSTITUTION.

The Constitution of the Islamic Republic of Pakistan, in Chapter 2 - Principles of Policy, Article 37(g), clearly prohibits prostitution. It says, “[t]he 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 Pakistan Penal Code, which makes abduction, trafficking, and procuring children under 18 years of age for prostitution punishable by ten years of 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 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. Punishment for the person whosoever involves children in prostitution or exposure to seduction with three years’ imprisonment or fifty thousand Rs. fine or both.

These laws apply to women and are irrelevant to the prostitution of boys.

JUVENILE JUSTICE SYSTEM ACT, 2018.

According to the Society for the Protection of the Rights of the Child (SPARC), there were 615 juveniles behind bars during 2017.



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.

Pakistan’s first law regarding Juvenile Justice, the Juvenile Justice System Ordinance, was introduced in 2000 but had enforceability and practicality problems and was considered vague in nature. It was struck 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 the JJSA 2018 is to overcome the shortcomings of the Juvenile Justice System Ordinance, 2000, to ensure the best interests of the child, and to 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.

This law has a clear definition of a juvenile, provides better relief to a child who comes into conflict with the law, and suggests an alternate diversion system by forming the Juvenile

Justice Committee to protect children from victimisation. For this purpose, the JJSA 2018 has suggested providing free legal assistance to victims and accused children at the State expense. Arrested juveniles must be kept in an observation home. They 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.

Although the focus of the JJSA is on juvenile accused, the law also guarantees child victims the right to legal assistance from a State-funded lawyer with at least seven years' standing at the Bar.

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 improved compared to an older law on the subject. It protects human trafficking victims, defined as "a person against whom an offence under this Act is committed regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted." Similarly, Section 3 defines "Trafficking in Persons" and its punishment as, "[a]ny 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 penalised abetment and criminal conspiracy in relation to trafficking crimes. The best part of this legislation is that it does not put the criminal liability on the victim or his or her parents or guardians. It has empowered the police, for the first time, to recognise and investigate internal trafficking in persons. Whenever a case extends beyond Pakistan's geographical boundaries, the FIA will take the lead on the matter. Under the law, a magistrate of the first class shall try an offence punishable under this Act. All offences under this law are cognisable and non-bailable. This law makes special provision for the safety of victims and witnesses of trafficking offences and also suggests that compensation be provided to the victims. This law also suggests the Federal Government develop awareness-raising campaigns to promote and strengthen development programmes and national and international cooperation to address the root causes of trafficking in persons and the particular vulnerabilities of women and children.

CIVIL AND ADMINISTRATIVE REMEDIES FOR SURVIVORS OF CHILD SEXUAL ABUSE

Besides the courts, judicial processes, and procedures, some non-judicial remedies can be invoked to protect children from sexual abuse and are applicable under the different national laws. It is essential to understand the functioning of these laws and authorities to relieve children in difficult situations.

NATIONAL COMMISSION ON THE RIGHTS OF CHILD ACT, 2017.

In September 2017, the National Commission on the Rights of Child Act, 2017, was passed to protect children's rights in Pakistan. The National Commission on the Rights of the Child (NCRC) will consist of a chairman, who will not be less than forty-five years of age and have at least fifteen years of experience in the field of child rights, as well as other ex-officio members from the federal 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 Commissions on Rights of

Children. It will also include six members, one from each province, ICT, and the former Federally Administered Tribal Areas (FATA), 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 15 years of age).

The Commission shall perform the following essential functions:

- Examining existing or proposed legislation, administrative instruments, and international instruments and undertake periodic review of existing policies and programmes on children's rights;
- Liaising with provincial commissions set up under provincial laws and other concerned provincial organisations;
- Reviewing laws, policies, and practices currently in force for the protection of child rights and recommending measures for their effective implementation;
- Inquiring into violations of children's rights making recommendations to the relevant agency or department to initiate proceedings in such cases; sponsoring, steering, and encouraging research and maintaining a database relating to children issues;
- Providing knowledge and awareness for national policy and strategic action for its remedy;
- Spreading awareness and promoting dialogue on children's rights;
- Advising the Federal Government to sign, ratify or accede to proposed international treaties, protocols, etc. concerning children's rights;
- Inquiring into complaints of violations of children's rights that may call for information or reports from the Federal Government, civil society organisations, and autonomous or concerned bodies. 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. May undertake such other functions as assigned by the Federal Government and as it may consider necessary to promote and protect children's rights and any other matter incidental to the above functions.

NATIONAL COMMISSION FOR HUMAN RIGHTS.

The NCHR comes into force under the National Commission for Human Rights Act, 2012, Act XVI of 2012. The Commission is fully authorised to take up complaints of human rights violations and has already taken up several inquiries, including the Faisalabad Police Torture¹²⁰ case and the Kasur Child Sexual Abuse scandal.¹²¹ The Commission is competent

¹²⁰ *NCHR begins probe into torture cases in Faisalabad*, DAWN (4 May 2018) available at <https://www.dawn.com/news/1405466> (In 2018, on the complaint of a human rights organisation Justice Project Pakistan (JPP), the National Commission for Human Rights (NCHR), initiated an inquiry under the National Commission for Human Rights Act, 2012, on allegations of widespread police torture in the district of Faisalabad. The inquiry was based on the 1,424 MLC's from the Policing as Torture report by JPP, and the three cases of torture found during the follow-up investigation in 2018).

¹²¹ *The Kasur Incident of Child Abuse: Fact Finding Report*, NATIONAL COMMISSION FOR HUMAN RIGHTS, GOVERNMENT OF PAKISTAN (2019) available at <https://nchr.gov.pk/wp-content/uploads/2019/01/Fact-finding-report-Kasur-final-draft.pdf> (In 2015, the media reported about a big scandal of child sexual abuse in the village of Hussain Khan Wala, District Kasur. Victims and parents were being blackmailed. After the discovery of hundreds of video clips

to either receive petitions or take suo-moto notice of cases or inquire into complaints of human rights abuse or abetment thereof; or negligence in the prevention of such violation, by a public servant. The Commission is empowered to investigate or inquire in respect of any violation of human rights in Pakistan.

The law provides in Sections 12 and 13 for the following procedure regarding complaints and inquires:

12. Inquiry into complaints.

(1) The Commission while inquiring into the complaints of violations of human rights may call for information or report from the Federal Government or a Provincial Government or any other authority or organization, subordinate thereto, within such time as may be specified by it:---

Provided that if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own:---Provided further that in case the complaint relates to areas that are security sensitive, the Commission shall obtain a report within fifteen days from the Federal Government and if the report is not received within thirty days the Commission may proceed to inquire into complaint on its own:--- Provided also that if on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been Initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complaint accordingly.

(2) Without prejudice to anything contained in sub-section (1), if the Commission considers necessary, having regard to nature of the complaint, it may initiate an inquiry.

(3) if at any stage of the inquiry, the Commission,---

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:---Provided that nothing in this section shall apply where the credit of a witness is being impeached.

showing children performing forced sex acts, Pakistani media reported that 280 to 300 children, most of them male, were victims of sexual abuse. NCHR inquired into the facts of the incident, and the progress of investigation by the Federal/Provincial Agencies. The NCHR fact finding committee, after thorough on ground research, concluded that both the crime prevention mechanism and social protection mechanism had failed in protecting a large number of children from sexual abuse in village Hussain Khan Wala, District Kasur. The report not only includes the alarming facts but also a set of recommendations for the Government and other stakeholders).

13. Powers relating to inquiries.

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:---

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Pakistan Penal Code (Act XLV of 1860).

(3) The Commission shall be deemed to be a civil court to the extent that it is described in sections 175, 178, 179, 180 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860). If the offence is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (Act V of 1898), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(4) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(5) The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (Act V of 1898).

THE NATIONAL COMMISSION ON THE STATUS OF WOMEN.

The NCSW is a statutory body, first established in July 2000, through a presidential order. It is an outcome of the national and international commitments of the Government of Pakistan. The mandate and composition of the NCSW were subsequently confirmed by Parliament in the National Commission on the Status of Women Act, 2012. It is formed to examine policies, programmes, and laws that affect women's development and gender equality. The Commission strives to build and maintain relationships with NGOs and other experts to effectively protect women's rights. Under Section 11 of the Act, this Commission is

empowered to handle complaints of violations of women's rights (girls under 18 years are also included). The Commission is empowered to take the following actions:

- Seek & receive information, data, and documents from any official source or entity in the course of performance of its functions;
- Enforce attendance of any person and call for the production of documents with the powers of a civil court (granted under the court of civil procedure, act V, 1908).
- Inspect any jail, sub-jail, or other places of custody with the prior permission of the provincial government; and
- Intervene in institutional procedures for the redressal of violations of women's rights.

MINISTRY OF HUMAN RIGHTS.

Federal Ministry of Human Rights (MOHR) is working with a mission statement "[to] establish and strengthen necessary institutional mechanisms for protection and promotion of human rights as enshrined in the Constitution of Pakistan, the Universal Declaration of Human Rights and the international Human Rights Conventions and Covenants ratified by the Government of Pakistan."

The MOHR has established a helpline to receive complaints from the general public or victims of human rights violations, guide the complainants to redress their issues, and provide referral services.

THE HUMAN RIGHTS RELIEF AND REVOLVING FUND.

The MOHR also regulates and administers the Human Rights Relief and Revolving Fund, established in 1995. Through these funds, financial assistance is provided to the victims and "affectees" of human rights violations, including kidnapping, rape, police encounters, arrest of women, extra-judicial deaths, and tortures. Applications are received directly from the victims as well as indirectly through NGOs and Regional Directorates of Human Rights.

Purpose and objective of the Fund: The primary purpose of this Fund, defined in its procedure, is to provide legal and financial assistance to the victims and "affectees" of human rights violations. For purposes of this Fund, "violation" means cases involving kidnapping, rape, police encounters, arrest of women, extra-judicial killing, and torture.

Procedure for Disbursement: The following procedure has been laid down to disburse the Human Rights Relief and Revolving Fund to victims and affectees of human rights violations.

- (a) One time of Maximum of Rs. 10,000 on account of medical charges to the hospitals or patients for the victims and affectees whose human rights have been violated.
- (b) One-time grant of Maximum of Rs. 20,000 to the victims of human rights violations who have been permanently incapacitated due to the injury for rehabilitation.
- (c) Expenditure to investigate the human rights violations through the human rights activists engaged by Human Rights Cell. The expenditure on this account would not exceed ten percent (10%) of the budget allocation to the Fund during one financial year.

SHAHEED BENAZIR BHUTTO CENTRE FOR WOMEN, ISLAMABAD.

The Ministry of Human Rights manages and operates the Shaheed Benazir Bhutto Human Rights Centre for Women in Islamabad. Victims of violence can share their sufferings in strict confidentiality with staff, social workers, and volunteers. The Centre provides free medical care, legal services, and shelter. The Centre's shelter home provides temporary accommodation to women and children.

The Shaheed Benazir Bhutto Human Rights Centre for Women is located in Sector H-8/1, St #04, Pitras Bukhari Road, Near City School, Ministry of Human Rights, Islamabad. 051-9101256, 9101257, 9101258.

MOHTASIB (OMBUDSMAN OFFICES).

Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, was introduced for the appointment of the Wafaqi Mohtasib (Ombudsman) to diagnose, investigate, redress, and rectify any injustice done to a person through maladministration through an inexpensive and expeditious process. Any person aggrieved by an action (decision, process, recommendation, omission, etc.) of any functionary of a Ministry/Division/Department/Commission/Corporation of the Federal Government or an institution established or controlled by the Federal Government which:

- 1) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or
- 2) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
- 3) is based on irrelevant grounds; or
- 4) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favoritism, nepotism or administrative excesses; and neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities.

The Office of the National Commissioner for Children works as an integral unit of the Federal Ombudsman's Office, especially to redress the complaints involving children and their rights in violation cases. Any person under 18 years who feels that a government agency/public organisation has treated him/her unfairly or an adult who wants to complain on behalf of a child where the child has suffered by an action or inaction of the federal government/public organisation, may register his/her complaint to the office of the National Commissioner for Children.

All four provinces and Azad Kashmir have established comparable institutions in their respective provinces; have effective complaint redressal systems against the provincial public offices and institutes in case of any violation of individual rights.

ISLAMABAD CAPITAL TERRITORY CHILD PROTECTION ACT, 2018.

This law was passed for the Islamabad Capital Territory to protect children from all forms of physical or mental violence, injury, neglect, maltreatment, exploitation, abuse, and any matters ancillary thereto.

This Act defines "child" to mean a person who has not reached 18 years of age. "Sexual abuse and exploitation" includes the inducement or coercion of a child to engage in any unlawful

sexual activity, including the use of children in audio or visual images for child pornography, child prostitution, trafficking within and between countries for sexual exploitation, and sale of children for sexual purposes.

According to Section 5 (child in need of care), a child in need of protection and care shall include a child who-

- (a) has been subjected to or is under serious threat of being subjected to child abuse or child exploitation while in the care of parents, legal guardian or any other person who has custody of the child in any manner; or
- (b) is unattended, victim of an offence, child, domestic and such other workers, found begging, imprisoned with the mother or lives in an immoral environment.

The Act establishes a 'Child Protection Advisor Board' and 'Child Protection Institutions' to protect children from abuse, maltreatment, exploitation, neglect, and mental violence with the Federal Secretary Ministry of Human Rights as its chairperson. The Child Protection Advisor Board will advise the government on matters relating to policy, legislation, and implementation of the child's rights to protection and care as contained in international laws and obligations.

Subject to the provisions of the Guardians and Wards Act, 1890 (VIII of 1890), any application to the Court for care and placement of a child or to implement a childcare plan under this Act shall be made by the Child Protection Officer. Before making any order, the Court shall order parents, legal guardians, or current caretakers, if any, of the child to make representations to the Court. The Court may make such order as it deems necessary to ensure that the child is provided with appropriate care or alternative care services as the case may be, provided that the Court shall specify the length of time for which the care and placement order is applicable.

Where a child is the subject of a "Care and Placement" order of the Court under this Act, or is missing or cannot be found, the Child Protection Officer may make an application to the Court for the production of the child before the Court. Here, "Court" means the Family Court established under the Family Courts Act, 1961. In any proceedings to be determined by the Court under this Act, the Court may make an interim order concerning the child.

Every unattended child shall be registered according to the provisions of the National Database and Registration Authority Ordinance, 2000 (VIII of 2000), or any other law for the time being in force.

CHILD MARRIAGE RESTRAINT ACT, 1929.

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. Under this law, the minimum age of marriage for males is 18 years and for females is 16 years. A child marriage is punishable with imprisonment, which may extend to one month, or with a fine which may extend to one thousand rupees, or with both, for an adult male above 18 years of age who contracts to marriage with a child, a person who solemnises a child marriage, or a parent or guardian who does not act to prevent a child marriage.

A Magistrate of the First Class shall take cognisance of or try any offence under this Act. The following procedure was laid down in Section 12 to pass the injunction order:

Sec. 12: Power to issue injunction prohibiting marriage in contravention of this Act.

(1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 9 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person and has afforded him an opportunity to show-cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader, and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both: provided that no woman shall be punishable with imprisonment.



TAHIRA BIBI Versus STATION HOUSE OFFICER and others, PLD 2020 Lahore 811

Holding that “whenever it comes to the notice of a Court that prima facie a case of breach of fundamental rights of the minor is made out, the Court, in case of failure of the Union Council in moving a complaint before the Court, while adopting a proactive role in "loco parentis" should, without any hesitation, pass an appropriate order directing the Union Council to send a requisite complaint before the competent Court that a marriage has been contracted in violation of the provisions of the Child Marriage Restraint Act, 1929.”

Activity 10
Understanding of National Laws and Remedies
(30 minutes)

Materials Required:

- Printed material (summaries of each law on 4 charts) on 2.5x 3.5 feet chart/flex.
- These charts will be fixed in the hall on four different locations at the venue.

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 for 5 minutes.

Group 1: chart/flex The Prevention of Trafficking in Persons Act, 2018 (Specific Sections)

Group 2: chart/flex The Zainab Alert Response and Recovery Act, 2020 (Specific Sections)

Group 3: chart/flex National Commission on the Rights of Child Act, 2017 (Specific Sections)

Group 4: chart/flex National Commission of Human Rights Act, 2012 (Specific Sections)

Ask each group to read the chart/flex carefully and note points in five minutes. After five 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 minutes. After 5-6 minutes each group will be asked to move to the next chart/flex in a clockwise direction.

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

Sharing by participants: (10 minutes)

Invite each group to present 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.

PROVINCIAL LEGAL FRAMEWORK AND AVAILABLE REMEDIES

The 18th constitutional amendment has empowered the provinces to address children's issues and make laws for their own jurisdictions, including the issues related to child protection, welfare, and safety. Sindh, Khyber-Pakhtunkhwa (KP), Balochistan, and Punjab have taken legislative steps in their provincial territories to handle the child protection issues.



Practice Pointer:

The Provincial child protection authorities/Bureaus and Commission can be reached through simple written application to regional or provincial offices of all provinces. In Punjab, KPK and Sindh, The Child Helpline - 1121 provides prompt assistance and support to children subjected to violence, exploitation, abuse and neglect. It is also utilized for dissemination of information and guidance in respect of child rights.

THE PUNJAB DESTITUTE AND NEGLECTED CHILDREN ACT, 2004.

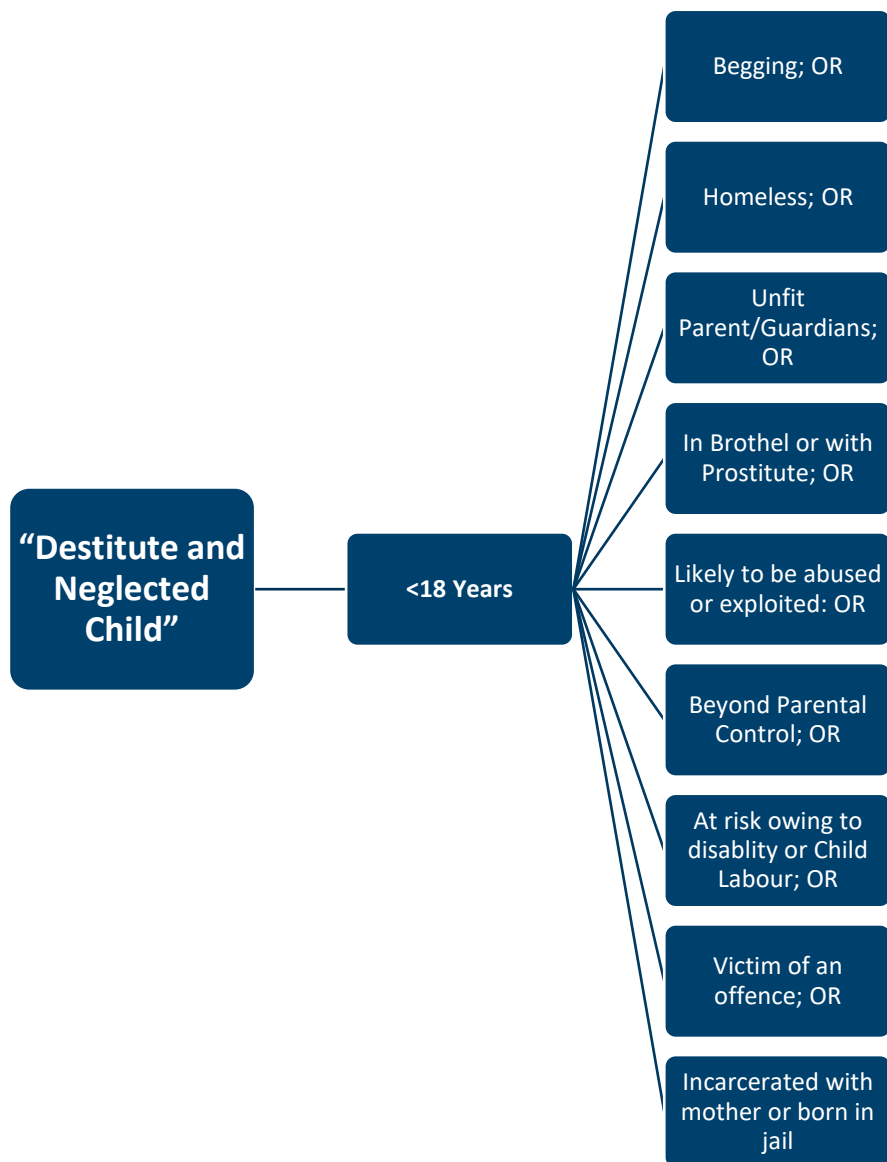
Punjab's provincial legislative assembly introduced the Punjab Destitute and Neglected Children Act (PDNCA) in 2004. It repealed and replaced the Punjab Supervision and Control of Children Homes Act, 1976 (No XVI); the Punjab Children Ordinance, 1983 (No XXII); and the Punjab Youthful Offenders Ordinance, 1983 (No XXIII). It states that it "shall take effect in such areas and from such date as the government" may notify and now its primary child protection legal mechanism in the province of Punjab.

It defines "destitute and neglected child" as a person under the age of 18 "who is found begging; or is found without having any home or settled place of abode, and without any ostensible means of subsistence; or has a parent or guardian who is unfit or incapacitated to exercise control over the child; or lives in brothel or with a prostitute"; "is being or is likely to be abused or exploited for illegal or unconscionable purpose"; "is beyond parental control"; "is at risk owing to disability or child labour"; has lost one or both parents, or has been abandoned by his parent or guardian; "is [a] victim of an offence ... his parent or guardian is convicted or accused of an offence"; or "is incarcerated with the mother or born in prison".

The law proposes to establish a bureau known as the Child Protection and Welfare Bureau. A body corporate, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire land under the law and hold properties both movable and immovable and may sue and be sued by the said name.

The Bureau shall have a Board of Governors presided over by the chief minister of the province as a patron in chief of the Board of Governors.

The law also establishes child protection institutes and a Child Welfare Fund and provides for registration of organisations with the Bureau. Under this law, residential facilities are available in Rawalpindi, Multan, Faisalabad, and Gujranwala, while some other limited facilities are available in Sialkot, Dera Ghazi Khan, and Kasur.



The child protection courts are also established with the powers to order a child to be produced in court, grant custody to a suitable person or institution, and issue search warrants for a child.¹²² Currently, only one exclusive court is working within the Child Protection and Welfare Bureau's premises in Lahore. Sessions courts in other districts were notified to act as Child Protection Courts under this law.

The child protection welfare Bureau in Punjab is currently providing the following facilities/services to destitute and neglected children in Punjab:

¹²² Mst. Nazia Tabasum vs. Taj Haider and others, Judgment, W.P. No.2098 (2 August 2017) (stating, in context of the Act, for custody of a destitute child a 'suitable person' would mean a person who can properly look after the child, who is involved in child's life, who can act in the best interest of the child, where the welfare of the child lies and the child is not at risk of suffering harm).



Child Protection Institutions managed by the Bureau for Rescue, Legal Proceedings, Family Tracing, Rehabilitation and Reunification



Help Line For Rescue 1121



Health and Psychosocial Counseling Facilities



Child Protection School & Religious Education Facility



Hostel Facility provided to the residents of Child Protection Institutes



Child Protection Courts for care, rescue and custody

AVAILABLE FACILITIES IN PUNJAB UNDER PDNCA, 2004.

The Court may issue a warrant for the child to be produced upon receiving information that a child is destitute or neglected. Custody of a destitute and neglected child is also dealt with under Section 28 of this Act. The Court may order a 'suitable person' to look after the child until the child attains 18 years of age or, in exceptional cases, for a shorter period. A "suitable person" means a person suitable for the custody of the destitute and neglected child. A Child Protection Officer appointed under the PDNCA may take a destitute and neglected child into custody and produce him within 24 hours before the Court. This law suggests the following actions for the RESCUE, CUSTODY, CARE, PROTECTION AND REHABILITATION OF DESTITUTE AND NEGLECTED CHILDREN:

- Child Protection Officer may take custody to produce the child before the Court (Sec. 24);
- The Child Protection Officer shall not take the custody from parents or guardians before making a report to the Court unless the child is found begging or the parents are alleged to have committed an offence against the child (Sec. 24);
- If the Child Protection Officer is not able to produce the child before the Court due to any reason, the child shall immediately be taken to the nearest child protection institution for temporary custody till his production before the Court (Sec. 25);

- The Court may direct production of a child by his/her parent or guardian and may order the child to be admitted in a child protection institution or, on suitable surety being offered for the safety of such child and for his being brought before it, permit the child to remain in the custody of his parent or guardian; or, if it appears to the Court that the child is likely to be removed from the jurisdiction of the Court or is concealed, may issue a search warrant for the production of the child and order his immediate admission to a child protection institution (Sec. 26);
- In the case of a destitute and neglected child whose ordinary place of residence is not within the jurisdiction of the Court, the Court may direct that the child be kept in such custody and be produced before a Court with territorial jurisdiction over the place of residence of the child or to deal with his custody in any other manner provided in the Act (Sec. 29);
- If any such child is brought before the Court and the Court is satisfied that the child is destitute and neglected, it may deal with his custody in accordance with the provisions of this Act (Sec. 28);
- If in any case in which information has been laid before a Court by any person, the Court is of the opinion that such information is false, frivolous or vexatious, the Court may, for reasons to be recorded in writing, direct that compensation, not exceeding fifty thousand rupees, be paid by such informer to the child or to an aggrieved person against whom the information was laid. Before making any order for the payment of compensation, the Court shall call upon the informer to show cause why he should not pay compensation (Sec. 31);
- Subject to any order of the Court or any direction of the Bureau, a child ordered to be admitted to a child protection institution shall be kept in such custody till he attains the age of 18 years (Sec. 32); and
- Where a child has been admitted to a child protection institution or placed in the custody of a suitable person under a Court order, the Court may direct a parent, in a suitable case, to pay maintenance of the child at such rates as may be determined by the Court (Sec. 33).

The law also penalises those who keep a child in unauthorised custody, employ children in begging or rag picking, are involved in intoxicating a child, permit a child to enter the places where liquor or narcotic drugs are sold, or abet a child to escape from custody.

All the offences are cognisable and non-bailable. For an investigation, trial, and punishment, the Code of Criminal Procedure will be applied.

SOCIAL WELFARE DEPARTMENT, PUNJAB.

The Social Welfare Department Punjab (SWDP) has sought to serve the development and rehabilitation needs of the weaker segments of society, especially the physically and socially handicapped, women and children, and the vulnerable areas of the rural and urban communities. The SWDP is the main provincial body to coordinate and ensure responsive

social protection services for the communities in general, and the poor and vulnerable in particular, by mobilising partnerships and developing organisational capacities.

DAR-UL-AMAN (WOMEN CRISES CENTRES).

The Social Welfare Department (SWD) established Dar-ul-Amans in all eight divisional headquarters to give shelter to the women victims of violence. The SWD has a network of Dar-ul-Amans in all 36 districts of Punjab which can each accommodate 20 to 50 residents at a time.

Women victims of violence, including *inter alia* domestic violence, physical violence, psychological abuse, rape, vanni and sawara cases, forced marriage, and emotional and economic abuse, can be admitted to these shelter homes.

The Dar-ul-Amans accommodate women referred by the Courts, voluntary agencies, press/media, social workers, community leaders, philanthropists, or any member of the Dar-ul-Aman Advisory Committee. Women can also request direct admission to a Dar-ul-Aman. At the time of admission, the applicant must complete the admission form, appear for medical checkups within 14 days of admission, and appear for a first psychological consultation.

The image displays two documents side-by-side. The left document is a handwritten application in Urdu, titled 'Application for the placement in Dar ul Aman'. It contains several paragraphs of text, some of which are redacted with black bars. The right document is a typed court order in English, titled 'Order of placement at Dar ul Aman'. It is from the Court of Muhammad Umar Farooq, Judicial Magistrate 1st Class, District Courts, Lahore. The order is dated 16.09.2020 and concerns Mst. Bibi D/O [redacted] Vs. The State. It states that the petitioner has requested for life threats and a safe place to stay. The court has granted the request, directing the petitioner to be sent to Dar-ul-Aman for safe custody. The order is signed by the Judicial Magistrate 1st Class, Lahore, and announced on 16.09.2020.

Female victims of violence having children are also accommodated. As the Child Protection and Welfare Bureau does not have shelters for children in all cities, a girl victim of sexual abuse in need of shelter can be accommodated in a Dar-ul-aman, and a legal aid provider may facilitate her admission by getting the order of area magistrate in this regard. Similarly, the Social Welfare department is also managing Shaheed Benazir Bhutto Human Rights Centres

for Women, which were initially established by the Federal Government but, after the 18th amendment, have been adopted by the Punjab Government. Twelve centres are working in Bahawalpur, Dera Ghazi Khan, Faisalabad, Muzaffargarh, Khushab, Lahore, Multan, Rawalpindi, Sahiwal, Mianwali, Sialkot, and Vehari. The centres are established to protect women against all forms of violence and eliminate every type of discrimination against women.

This centre includes a temporary shelter facility for victims of violence in emergencies, medical/first aid to women in distress, free legal assistance/aid to women in distress, and free social, psychological, and legal counseling for women. These centres are networked with agencies competent to redress women's grievances at individual and collective levels, especially those concerned with combating violence against women.

SHELTER FACILITIES FOR CHILDREN.

Nigheban Centre is an institution established by the Social Welfare Department for children separated from their parents and unable to get home due to incidents such as victimisation by violence or forced labour. The main objective behind these institutes is to save the unfortunate, lost or kidnapped children, or those subjected to forced labour. Today, there are eight Nigheban centres for lost and kidnapped children working in Punjab's divisional headquarters (Bahawalpur, Dera Ghazi Khan, Faisalabad, Gujranwala, Lahore, Multan, Rawalpindi, and Sargodha).

There are no hard and fast rules for admission. Children who are missing, have runaway, or are referred by a Court, NGO, government institution, semi-government institution, or by an individual can be admitted to these homes. The Nigheban Centres also serve as a reporting and contact centre for lost children and offer direct liaison with police stations and other line departments, so that the lost children would be brought to the Centre and given back to their families. Children can stay in Nigheban Centre for a short time until they are reunified with their families or guardians.

There is another facility of 11 Model Children Homes, separately for male and female children at Sargodha, Rawalpindi, Sialkot, Lahore, Gujranwala, and two each at Narowal, D.G. Khan, and Bahawalpur. Children between 6 and 10 years of age may be admitted to these homes. Male children stay in these homes until the age of 18. Female children can stay until they are rehabilitated, married, or become financially independent and are willing to leave.

PROVINCIAL COMMISSION ON THE STATUS OF WOMEN.

The Punjab Assembly created the Punjab Commission on the Status of Women¹²³ (PCSW) through the Punjab Commission on the Status of Women Act, 2014 as an oversight body to ensure that laws, policies, and programmes of the Government of Punjab promote women's empowerment; that efforts are made to expand opportunities for the socio-economic development of women; and eliminate discrimination against women in all its forms.

PCSW has a broad mandate, ranging from review of laws, rules, policies, programmes, and other government measures to monitoring implementation of laws and policies to achieve gender equality and eliminate discrimination against women. It is also mandated to facilitate and monitor implementation of the international instruments and obligations affecting

¹²³ Introduction, THE PUNJAB COMMISSION ON THE STATUS OF WOMEN, available at <https://pcsw.punjab.gov.pk/intro> (last accessed 1 October 2020).

women and girls to which Pakistan is a signatory. The PCSW advises the Government before ratification or accession to any such proposed international instrument, covenant, protocol, or treaty. A key function of the Commission is to undertake research, collect data for policy recommendations, and monitor violations of women's rights. It is expected to interact with civil society organisations, experts, and individuals and develop active associations with other similar institutions in other countries.

The commission accepts individual complaints. For this purpose, the Commission in Punjab has established the Women's Toll-Free Helpline 1043, which is available 24/7. Managed and supervised by PCSW, the helpline is staffed by -women call agents, three legal advisors, a psycho-social counselor, supervisors, and management staff to address inquiries and complaints and provide psychosocial counseling. Online and handwritten complaints can also be furnished to the Commission for redress.

CHILD MARRIAGE RESTRAINT ACT, 1929 (PUNJAB AMENDED 2015).

Initially enacted in 1929, the Punjab's provincial assembly made changes to the Child Marriage Restraint Act in 2015 to strengthen its enforcement and abolish child marriages. Child marriage in Punjab is punishable with imprisonment, which may extend to six months, with a fine up to fifty thousand rupees, or with both, for an adult male above 18 years of age who contracts marriage with a child, a person who solemnises a child marriage, or a parent or guardian who does not act to prevent the marriage of a child.

A Family Court, exercising the powers of a Judicial Magistrate of the first class, shall conduct the trial of an offence under this Act in accordance with the provisions of the Family Court Act, 1964.

12. Power to issue injunction prohibiting marriage in contravention of this Act.

(1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 9 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show-cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader, and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.

KHYBER PAKHTUNKHWA CHILD PROTECTION AND WELFARE ACT, 2010.

In 2010, the Province of Khyber Pakhtunkhwa promulgated the Khyber Pakhtunkhwa Child Protection and Welfare Act to deal with children at risk.

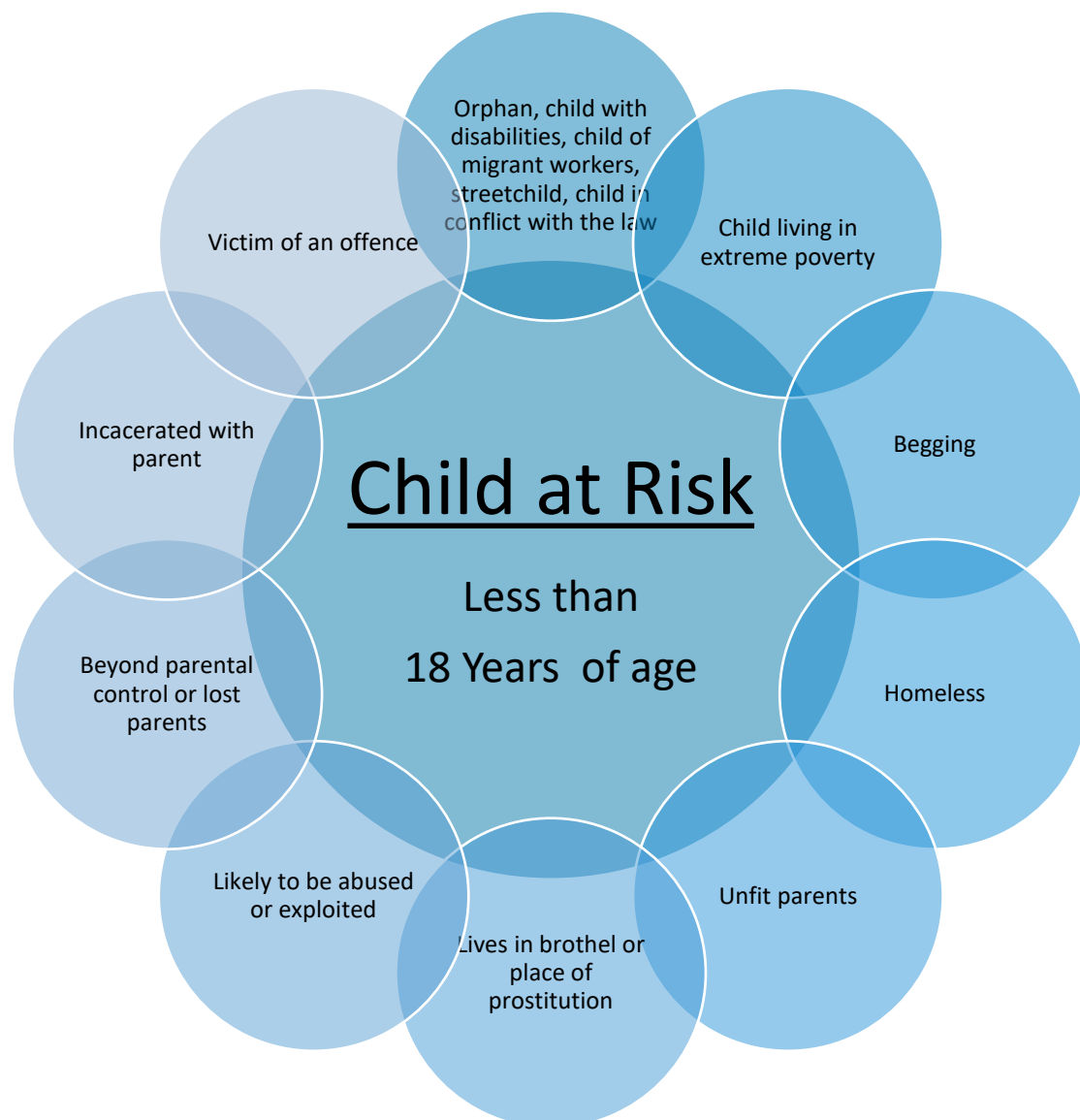
A Child at Risk, Sec. 2(e).

Under this law, child sexual abuse is defined 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 simulation of such conduct either independently or in conjunction with other acts, with or without his consent.

The law has defined Child Trafficking, Child Sexual Abuse, and Pornography in Sections 50 and 53. It also penalises 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.



KHYBER PAKHTUNKHWA CHILD PROTECTION AND WELFARE COMMISSION.

The Khyber Pakhtunkhwa Child Protection and Welfare Act also establishes a Commission known as the Khyber Pakhtunkhwa Child Protection and Welfare Commission. It's a corporate body, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire land in accordance with law and hold properties both movable and immovable and may sue and be sued by the said name. Unfortunately, since the enactment of this legislation, Peshawar is the only city in KP to have established a fully functional child protection centre under the law.

This provincial commission has many functions to perform for the protection of children's rights in the province, including to act as a focal point for adequate supervision and coordination of child rights matters at provincial and local levels, and develop and coordinate activities, programmes, and plans for the development, protection, survival, participation and rehabilitation of children at risk; to coordinate with National Commission on the Rights of Children (NCRC); to implement policies for the prevention, protection, rehabilitation, and reintegration of children at risk; to monitor the implementation and violation of laws related

to child protection, welfare, and rights, including prevention of child labour, child sexual abuse, child sexual exploitation, prostitution, child pornography, child trafficking and any form of violence against children, and to take necessary measures by enquiring into or referring individual complaints for their redressal to other appropriate Authorities or Departments or Agencies and to establish, manage, supervise, and control Child Protection Units.

ZAMUNGKOR (CHILD INSTITUTE).

The KP Government has established a Model Institute for Children (Zamung Kor) at Nasapa Payan, Peshawar, pursuant to the Child Protection and Welfare Act, 2010. Currently, the Zamungkor in Peshawar provides accommodation to children (street/state children), education, and sports facilities to residents. The Zamung Kor Model Institute has the following criteria for admission:

1. All children under the age of 18 are eligible, but, for technical capacity reasons, preference is given to children between 5 and 10 years of age.
2. The order of preference for child admission is:
 - A child who has no parents and works and lives on the streets.
 - A child who has no parents and works and lives on the streets but lives off the streets.
 - A child whose father is dead, mother is alive, and (i) & (ii) above are applicable.
 - A child whose father is dead, mother alive, but the mother's income is less than PKR 10,000/- per month.
 - A child defined in (iv) above, but the father is either:
 - Permanently incapacitated to work.
 - In prison for life.
3. The child must be physically and mentally healthy.
4. The child should not be an addict.
5. The child should not be enrolled in any school at the time of admission.

There are three referral mechanisms to admit children in Zamungkor:

- By Zamungkor Social Welfare Organisers.
- By child protection partners.
- By Child Protection & Welfare Commission/CPU/Child Protection Court.

Admissions are granted after screening and evaluation by the Admissions Committee.

KP SOCIAL WELFARE DEPARTMENT.

The Department of Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa, is mandated to look after various marginalised segments of the population, including destitute women, orphans, victims of violence, and drug addicts, through established and regular institutions of the Social Welfare Department across the Province. It also has residential and other facilities for children in difficult situations in different districts.

DAR UL AMAN (WOMEN CRISIS CENTRES).

These centres are managed and run by the Social Welfare Department and provide free shelter facilities in the Women Crisis Centre building. The needy, destitute, and women in difficult situations who benefit from the Women Crisis Centre have different psychological and social problems. The Department facilitates access to psychosocial counseling, legal support, and other residential facilities. Six funded Dar-ul-Amans have been set up in Abbottabad, Swat, Peshawar, Mardan, Haripur, and Mansehra. The courts may refer any female to these centres for their safety, security, and protection.

THE KP PROMOTION, PROTECTION, AND ENFORCEMENT OF HUMAN RIGHTS ACT, 2014.

The Khyber Pakhtunkhwa Promotion, Protection and Enforcement of Human Rights Act, 2014 was introduced to provide for the promotion, protection, and enforcement of human rights as provided for in the Constitution of the Islamic Republic of Pakistan and the various international conventions, treaties, covenants, and agreements to which Pakistan is a State Party or shall become a State Party and for any matters ancillary thereto or connected therewith. Under this law, a “child” is defined as any person under 18 years of age. The Directorate can call for information or reports from any agency or department to inquire into any matter or complaint. The Directorate may inquire, suo moto or on a petition presented by a victim or any person on the victim’s behalf, into the complaints of any incident of violation of human rights or abatement thereof or negligence in the prevention of such violation, by a public servant.

Further, subject to the provisions of this Act and in addition to and not in derogation of any other law for the time being in force, the Directorate shall take all necessary steps to preserve and promote the welfare of women and children and for this purpose, can take such action as it may deem appropriate.

CHILD MARRIAGE RESTRAINT ACT, 1929.

KP Province has no child marriage restraint law of its own; rather, the federal law applies in the province. Under this law, the minimum age of marriage is 18 years for males 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 solemnises a child marriage, or a parent or guardian who does not act to prevent a child marriage.

A Magistrate of the First Class shall take cognisance of or try any offence under this Act. The following procedure was set out in Section 12 to pass the injunction order:

12. Power to issue injunction prohibiting marriage in contravention of this Act.

(1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 9 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show-cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader, and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both; provided that no woman shall be punishable with imprisonment.

SINDH CHILDREN ACT, 1955. Sindh province was the only province having a specific law addressing children in contact and conflict with the law. Section 5 of the Sindh Children Act defines a “child” as a person below 16 years of age at the time of initiation of proceedings.

Under Section 40 of this Act, any police officer, or other person authorised by the Provincial Government, may bring a child before a Juvenile Court (or court/person authorised as such) if a child is homeless or found begging without any means of subsistence; is destitute or illegitimate with no means of subsistence and is without a parent or guardian; is known to associate or live with any prostitute or person or persons of criminal or drunken habits; is lodging or residing in or frequently going to a place or places used for prostitution, drinking or gambling; or is otherwise likely to fall into bad association or to be exposed to moral danger, or to enter upon a life of crime.

This Act deals with offences regarding children where police can take cognisance under the following sections. 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, and 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 establishing authority and dealing with children in need of special protection. Section 15 links the police with Child Protection Units at the District level to assist, and Section 15(3)A provides that a station house official shall provide appropriate police assistance to the Child Protection Officer whenever required. One of the functions of this authority is to initiate, through relevant authorities, prosecution of the offenders. When children are victims of the offence, the law provides for protective measures.

Section 17 of this Act provides the following protective measures, which a Child Protection Officer may take:

- (1) A child protection officer may, in case of a child in need of special protection measures, ask relevant authorities for an appropriate action.

(2) A child protection officer may, in consultation with the child protection committee, apply to the nearest magistrate to take into custody a child requiring special protection measures.

(3) Whenever a child is taken into custody, he shall immediately be taken to the nearest Child Protection Institution for temporary custody till appropriate orders are passed by the appropriate authorities.

SOCIAL WELFARE DEPARTMENT, SINDH.

The Social Welfare Department Sindh is a leading department with a vast network of services and programmes for the destitute and underprivileged communities, including children, women, and transgender people. The department also operates the Rehabilitation of Handicapped and Disabled Children/Adults and is responsible for registering, guiding, and supervising Voluntary Social Welfare Agencies. The Minister-in-Charge of the Social Welfare Department shall be the Chairperson of the Authority. It has an essential role to play for children in difficult situations, including the child victims of sexual abuse or sexual exploitation or need shelter or reunification.

The Social Welfare Department of Sindh has established Darul Atfal centres (Children's Centres) for orphan children in Karachi, Hyderabad, and Sukkur. The Social Welfare Department of Sindh has also established Child Protection Units (transit shelters) to facilitate homeless children or children without parental care or supervision. According to Sindh Child Protection Authority Act, children in difficult situations can be referred to these centres on court orders or through the police or Child Protection Officers' intervention.

Dar ul Aman (Shelters/Crisis Centres):

The Social Welfare Department Sindh is also managing the following crisis centres or Darul Amans, to which the police or the Court can refer victims of sexual abuse in need of shelter:

- Darul Aman, Karachi (under the control of PANAHA Trust).
- Darul Aman, Hyderabad.
- Darul Aman, Sukkur.
- Darul Aman, Larkana.
- Darul Aman, Shaheed Benazirabad.

SINDH CHILD MARRIAGE RESTRAINT ACT, 2013.

In 2014, the Sindh Assembly enacted the Sindh Child Marriage Restraint Act, 2013, to address child marriages in the province. In kidnapping and child sexual abuse cases, defendants have frequently used marriage as a defence, either by producing a marriage certificate showing the defendant is already married to the girl victim or by agreeing to register a Nikah after the fact to retroactively "legitimate" the sexual abuse. This law intends to protect children's rights according to the commitment Pakistan made by ratifying the UNCRC. This Act declares the offence of child marriage cognisable, non-bailable, and non-compoundable. Anyone can file a complaint against such a marriage with a judicial magistrate, and the court will ensure the case is decided within 90 days. Section 6 empowers the Judicial Magistrate of First Class to take cognisance of or try any offence under this Act.

Section 7 gives power to the Court to issue injunction orders as follows:

(1) Notwithstanding anything to the contrary contained in any other law, the court may, if satisfied from information laid before it through an application that a child marriage in contravention of this Act is going to be arranged or is about to be solemnised, issue an injunction prohibiting such marriage.

(2) No injunction under subsection (1) shall be issued against any person unless the Court has previously given notice to such person, and has allowed him to show cause against the issue of the injunction. The Court may dispense with notice if deemed necessary.

(3) The Court may, either on its own motion or an application of any person, rescind or alter any order made under subsection (1).

(4) Where an application is received, the Court shall afford an opportunity of appearing before it either in person or by pleader, and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever, knowing that an injunction has been issued against him under subsection (1) of this Section, disobeys such injunction, shall be punished with imprisonment of either description for a term which may extend to one year or fine or with both.

SINDH HUMAN RIGHTS COMMISSION.

The Sindh Human Rights Commission also receives reports of human rights violations within its geographical boundaries. It came into force through the enactment of the Sindh Protection of Human Rights Act, 2011. The core mandate of the Sindh Human Rights Commission is cited under Section (4) of the Sindh Protection of Human Rights Act, 2011, which empowers it to inquire into cases of “violation of human rights or abetment thereof, and negligence in the prevention of such a violation by a public servant.” The inquiries are taken up suo-moto or on the filing of complaints by the victims or their families. The Commission has powers to propose remedial measures, including action to be taken against the persons found to be in violation or in negligence of ensuring human rights.

THE BALOCHISTAN CHILD PROTECTION ACT, 2016.

The Balochistan Assembly passed a comprehensive child protection statute in November 2016, which was endorsed by the Governor of Balochistan. The purpose was to provide a law for protecting 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 to provide vision, policy guidelines, and appropriate strategies for child protection; to analyse trends; and adjust policy measures for the protection of children. This Act promises that all State bodies, agencies, and organisations; public and private social welfare institutions; and civil society organisations shall safeguard and promote the best interests of children 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. The Court may restrict the exercise of

parental custody and control of a child in need when the child is the subject of an interim or final Custody and Placement Order. This law has also defined the “use of children in audio or visual images of child sexual abuse” as sexual abuse and exploitation but does not define or criminalise child pornography.

Section 10 has assigned the Social Welfare Department the following child protection functions:

- (1) To maintain and update data on child abusers and persons convicted of offences against children;
- (2) To establish and maintain a helpline for direct complaints;
- (3) To appoint, train, supervise, control, monitor and review the performance and duties of Child Protection Officers in each District Child Protection Unit;
- (4) To regulate all providers of child protection services in the province, including alternative care providers, to ensure compliance with applicable minimum standards; and
- (5) To act as custodian of the Child Protection Referral Management Information System (MIS) in support of referral processes referenced in Section 09(4), ensuring its confidentiality and security.

SOCIAL WELFARE DEPARTMENT, BALOCHISTAN.

The Balochistan Social Welfare Department has sought to serve the development and rehabilitation needs of the weaker sections of society, especially the physically and socially handicapped, women and children, and other vulnerable populations in rural and urban areas.

The Balochistan Social Welfare Department has established two Dar-ul-Amans to provide shelter to women victims of violence in Quetta and Turbat. Women victims of violence, including domestic violence, physical violence, psychological abuse, rape, forced marriage, emotional and economic abuse, etc., may be admitted in the Dar-ul-Aman. The Dar-ul-Aman will admit women referred by the court or on the recommendation of a voluntary agency, press/media, social workers, community leaders, philanthropists, or any member of the Dar-ul-Aman advisory committee. Women victims of violence can also request direct admission to the Dar-ul-Aman.

Although the Department is striving through its different child protection programmes, it has yet to perform its role by Balochistan Child Protection Act, 2016.

CHILD MARRIAGE RESTRAINT ACT, 1929.

Balochistan Province does not have its own child marriage restraint law; instead, like KP Province, it uses the federal Child Marriage Restraint Act. For further information on this law's provisions, see the discussion of the federal law beginning on page 82.

Activity 11
Understanding of Provincial and Local Laws and Remedies
(45 minutes)
Ambassadors Game

Print the information from this module and provide the handbooks/copies of the provinces' child protection laws listed below. Divide participants into five groups (either named for a province (Punjab, KP, Sindh, Balochistan) or ICT).

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, Child Marriage Restraint Act, 1929

Islamabad Capital Territory: The ICT Child Protection Act, 2018 & Child Marriages Restraint Act, 1929

Allow groups 5-10 minutes to read about their respective provincial laws and make the summary of the major points on the page/Chart. Focusing on "Defintiions" "Organisational Structure" "Courts and their Jurisdiction" and the "Penalties".

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.

POLICE ROLE IN INVESTIGATIONS OF CHILD SEXUAL ABUSE CASES

Chapter 25 of the Police Rules, 1934, specifies that an officer-in-charge of a police station is empowered by Section 156, Criminal Procedure Code, to investigate any cognisable offence within the limits of his jurisdiction.

Further, he is also empowered under Section 157(1) of the Criminal Procedure Code to deputise 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 deputised under this Section. However, where a police officer under the rank of assistant sub-inspector is deputised, 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, complainants/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 offence.¹²⁴ After its registration, the investigating officer collects evidence to unearth facts. The accused has a right to be heard and lead his defence to prove his innocence if he has been falsely implicated.¹²⁵ He also has the right to be dealt with in accordance with the law. The prosecution carries the burden to prove the charge. If proved in court beyond any shadow of a doubt, the accused will be convicted and sentenced to a prison sentence with or without a fine.

If information is received about the commission of a cognisable 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 deputising 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.

A Police Officer must summon a witness or an accused to record their statements during the investigation of a case (Section 160 Cr.P.C). An investigating officer investigating a cognisable offence can examine any person who is presumed to be acquainted with the facts and circumstances of the case. Such a person is bound to answer all the questions relating to the case other than those which would tend to expose him/her to a criminal charge. The police officer is required to reduce in writing any statement made to him during an examination.

The State has the responsibility to protect the citizens against crime. The Police Order, 2002 and the Khyber Pakhtunkhwa Police Act, 2017 explain, regarding 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 children;¹²⁶
- Prevent harassment of women and children in public places;¹²⁷
- A police officer shall make every effort to (a) afford relief to people in distress situations, particularly in respect of women and children;¹²⁸ 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.¹²⁹

A victim of crime has the right to the protection of the law; to be treated according to 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

¹²⁴ 1992 P Cr.LJ 1989.

¹²⁵ Mst. Haseena Bibi. Vs. Justice of Peace etc., Order, 2005 YLR 1545 (9 May 2013).

¹²⁶ The Police Order 2002, S.2(d).

¹²⁷ The Police Order 2002, S.3(r).

¹²⁸ The Police Order 2002, S.4(2a).

¹²⁹ Khyber Pakhtunkhwa Police Act, S.3(c) (2017).

get an F.I.R. registered if a cognisable 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 must be kept informed of the investigation's progress and protected against any threat to his person (Article 9 of the Constitution). A witness to an offence is entitled to the protection of the law (Article 4 of the Constitution) and to confidentiality of information. He plays an essential role in the criminal justice system and facilitates justice by the Courts. When an accused has been arrested, and *prima 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, to record the evidence and thereafter to grant such detention or remand under the provisions of Sections 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 investigating officers to explain in all cases where the provisions of this rule were disregarded.¹³⁰



Practice Pointer:

As the attorney for the child victim, it is your role to ensure that your client is being treated as a victim of a crime and is not interrogated or treated unjustly by law enforcement. If your client is being requested to participate in an interview: 1. First, assess if it is in their best interest to do so? Do they require other assistance (medical, food, other immediate needs) first? Is it possible to postpone such an interview until the child's immediate needs are met? 2. Accompany your client to all interviews with law enforcement. If you are not physically present, you will not be able to advocate for their rights. Your client has a right to have an attorney present during all law enforcement interviews. 3) Remind your client that information they share is not privileged during such interviews.

¹³⁰ Police Rules 1934, Rule 25.56(3).



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 a 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 Sections 376, 377 and 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 (Sections 336B, 354, 354A, 376, or 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 offenses 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 criminal and civil cases from law enforcement agencies, provide timely and accurate forensic analysis, and testify in courts of law on its analytical findings. The agency is providing 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:¹³¹

Step 1: Immediately respond (within 72 hours). Victims of sexual abuse should be examined within 72 hours by an experienced medical professional.

Step 2: Examine the victim. Engage the following guidelines for medical examination.

- Ask the victim not to go to the washroom. If she needs to use the washroom, she should not wash or clean the vaginal area.
- Ask the victim to provide a full account of the incident. 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 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 any physical evidence available.
- Collect at least 2-3 vaginal swabs (internal and external), the victim's clothes, and bedsheets.
- Ask the victim if the offender sodomized her; if yes, collect 1-2 anal swabs.
- If the accused is in custody, ask him if he washed himself. If not, obtain a penile swab.
- If the victim has bleeding from her vaginal area during the examination, try to avoid too much blood coating 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, “do you know the suspect?” If yes, ask, “what is the relationship?”

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

Step 3: Collect evidence. Items to be collected include:

- ✓ 2-3 vaginal swabs.
- ✓ 2-3 Rectal/anal swabs in case of anal contact.
- ✓ 2-3 oral swabs in case of oral contact.
- ✓ Buccal swabs of the victim(s).
- ✓ Buccal swabs of the suspect(s).
- ✓ Clothes and bedsheets of the victim(s).
- ✓ Documents including,
 - Request letter,
 - F.I.R. copy,
 - Medico-Legal Certificate copy,
 - Road certificate (chain of custody),
 - Answers to questions asked from the victim,

¹³¹ *Introductory Booklet*, PUNJAB FORENSIC SCIENCE AGENCY (2012), available at <https://pfsa.punjab.gov.pk/system/files/PFSAGuidelinesEnglish.pdf> (last accessed 1 October 2020).

- Cover letter with a complete description of items sent, and
- Any other supporting documents.
- ✓ Photographs of the suspect(s)/victim(s) taken at the time of sample collection.

Note: The agency will collect buccal swabs of the suspect(s)/victim(s).

Step 4: Seal the evidence. Packing of the evidence should adhere to the following steps:

Dry the swabs at room temperature and pack them in a paper/manila envelope made from thick paper labeled with:

- ✓ the case number (F.I.R. and Medico Legal Certificate No.),
- ✓ victim's name,
- ✓ signature, and
- ✓ seal.

Activity 12

Mst. Nadra, a 15-year-old domestic worker, was arrested by area police in a matter of theft. During lockup in the police station, one police official threatened Nadra, saying that he could make her stay at the lockup very 'unpleasant' and that she wouldn't be able to see her parents again if she did not have sex with him. Then, he committed sexual abuse with her. The next day, Nadra was released on bail with the help of a local charity/organisation. Nadra disclosed to a social worker about the incident in lockup, they tried to lodge an F.I.R against policemen but she was mocked by the police and they said she was already involved in immoral activities and had bad character. They also said that the court will have the same view.

Discuss with the participants the following points:

- What are the remedies to get an F.I.R lodged?
- What possible charges can be brought against the policemen and what is the punishment of these offences under PPC?
- Can Nadra be said to have consented to the sexual act?
- What evidence, including medical evidence, could be used to support the charges?
- Discuss in detail the important point (to preserve the evidence) from the guidelines of the Punjab Forensic Agency in the cases of abuse.
- What services can you offer, and what referral services can you make available to Nadra?

2.0 ROLES AND RESPONSIBILITIES OF LEGAL AID LAWYERS

ROLE OF LEGAL AID LAWYERS WITH CHILDREN IN THE JUSTICE SYSTEM

INTRODUCTION

Legal aid lawyers serve a vital function in protecting and pursuing a child victim's legal rights and remedies. These rights may include the opportunity to be heard before a judicial tribunal when matters affecting their status and rights are decided. Remedies may include orders of protection from an abuser or restitution for harms suffered due to child sexual abuse.

Even when there are rights established for children who suffer harm due to sexual abuse, these rights do not have meaning unless effective remedies are available and accessible through all available courts and complaint mechanisms established to enforce those rights.¹³²

BASIC PRINCIPLES ON THE ROLE OF LAWYERS.



Most countries have federal and/or local laws defining the role of lawyers, governing their conduct and duties and responsibilities to their clients and the justice system, and prescribing disciplinary measures for lawyers who fail to live up to their professional responsibilities. The duties, responsibilities, and conduct of lawyers may also be regulated by local and national licensing bodies or professional associations, which oversee the practice of law within a particular jurisdiction. Notwithstanding the diversity of the world's legal systems and regulations on the practice of law, the United Nations have recognised certain universal principles that apply to the legal profession regardless of where it is practiced.

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, from 27 August to 7 September 1990, the United Nations Basic Principles on the Role of Lawyers were formulated to assist UN Member States in their task of promoting and ensuring the proper role of lawyers. Derived from the UN Charter and international human rights law, the Basic Principles should be respected and considered by Governments within the framework of their national legislation and practice. They should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general.

¹³² UN Committee on the Rights of the Child (CRC), General comment no. 5, para. 24 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, U.N. Doc. CRC/GC/2003/5.

UN Basic Principles on the Role of Lawyers

The following table summarises the Basic Principles on the Role of Lawyers alongside examples of Pakistani laws and regulations that give effect to each principle. A complete copy of the UN Basic Principles is attached as an annex.

 Basic Principle	 Applicable Pakistani Laws
<p>Access to lawyers and legal services</p> <p>All persons are entitled to the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings without distinction of any kind. Governments and professional associations of lawyers shall cooperate to ensure funding and other resources for the provision of legal services to the poor and disadvantaged and promote programs to inform the public about their rights and duties under the law and the role of lawyers in protecting fundamental freedoms</p>	<p>To acquire legal aid is considered a fundamental right under Article 4 (due process) and Article 10-A (right to a fair trial) of Pakistan's Constitution.</p> <p>-The Legal Practitioners and Bar Council Act, 1973 Sec. 13(1-a) "The Pakistan Bar Council Free Legal Aid Rules, 1999."</p> <p>- Criminal Procedure Code, 1898, Sec. 161A. If the victim of a sexual offence requires free legal aid, the police officer shall provide a list of lawyers maintained by the provincial bar councils for this purpose.</p> <p>-Sec. 340 of the Code of Criminal Procedure, 1898 providing counsel at State expense.</p> <p>-The High Court Rules (Vol. V, Ch. 4-E) also provide legal assistance at State expense for an accused person.</p> <p>-The District Legal Empowerment Committees (Constitution & Functions) Rules, 2011. Under the Law and Justice Commission of Pakistan Ordinance, 1979 <i>Establishment of 'District Legal Empowerment Committees'</i> provides legal aid to deserving litigants. http://www.ljcp.gov.pk/R_P/DLECs/index.html</p> <p>-The Code of Civil Procedure, 1908 (Order 33) provides the procedure for appointment of counsel for a litigant who is found to be a 'pauper.'</p> <p>-According to the Punjab Legal Aid Act, 2018, the Punjab Legal Aid Agency will provide legal aid to the persons in need.</p> <p>- Under the Khyber Pakhtunkhwa Legal Aid Act, 2019, the Khyber Pakhtunkhwa Legal Aid Agency to provide legal aid to the persons in need.</p> <p>-Under the Sindh Empowerment of 'Persons with Disabilities' Act, 2018, Sec. 8 and Sec. 18, free legal aid shall be provided for persons with disabilities in case of exploitation, violence, and abuse.</p>

<p>Special safeguards in criminal justice matters Governments shall ensure that those arrested or detained are immediately informed of their right to have a lawyer of their choice and have access to a lawyer within 48 hours of their arrest or detention. All arrested or detained persons shall be given adequate opportunities, time, and facilities to consult a lawyer. Those who do not have a lawyer and cannot afford one will be entitled to a lawyer with experience commensurate with the offence charged at no cost to themselves.</p>	<p>-Constitution of Pakistan, Art. 10(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.”</p> <p>-Juvenile Justice System Act, 2018, Sec. 3: Legal aid at State expense for both juvenile offender and juvenile victim of an offence by a lawyer who shall have at least seven years standing at the Bar.</p> <p>-The Juvenile Justice System Act, Sec. 3(2): “A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty-four hours of taking him into custody.”</p>
<p>Qualifications and training Governments, professional associations of lawyers, and educational institutions shall ensure education and training for lawyers, including on ethics, human rights, and fundamental freedoms, without discrimination of any kind, except in the case of a requirement that lawyers be nationals of the country in question. Special provisions shall be made to provide legal training and education opportunities to candidates from communities whose legal needs are not met.</p>	<p>-Legal Practitioners and Bar Councils Act, 1973 Chapter VI is about the Enrolment as an Advocate, Right to Practice, Seniority, Pre-Audience, Etc.</p> <p>-Pakistan Bar Council Legal Education Rules, 2015 regarding the qualification and capacity to become a law practitioner.</p>
<p>Duties and responsibilities Lawyers shall act per the profession's ethics, seek to uphold human rights and fundamental freedom, and respect their clients' interests. Lawyers duties to their clients shall include:</p> <p>(a) Advising clients of their legal rights and obligations, and the working of the legal system as it is relevant to the legal rights and obligations of the clients;</p> <p>(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;</p> <p>(c) Assisting clients before courts, tribunals, or administrative authorities, where appropriate.</p>	<p>-The Legal Practitioner and Bar Councils Act, 1973 Chapter-VII and Chapter-X of Legal Practitioners and Bar Councils Rules, 1976, deal with the Code of Conduct of Advocates and punishments, disciplinary actions against the misconduct of advocates.</p>
<p>Guarantees for the functioning of lawyers Governments shall respect the confidentiality of attorney-client communications and ensure that lawyers can perform their professional duties without interference, can travel and consult with their clients, and are not subjected to or threatened with prosecution or other sanctions for acting under their professional duties. Lawyers shall not be identified with their clients' causes and shall enjoy civil and penal immunity for statements made in good faith in written or oral pleadings or their professional appearances.</p>	<p>The Legal Practitioner and Bar Councils Act, 1973, and the Legal Practitioners and Bar Councils Rules, 1976, guarantee lawyers and law practitioners' functioning to represent their clients in competent courts of jurisdiction, tribunals, and legal forums.</p>

Competent authorities shall ensure that lawyers have access to relevant documents and files in sufficient time to provide effective legal assistance to their clients. No court or administrative authority shall deny a lawyer's right to appear on behalf of a client unless he/she has been disqualified under law.	
Freedom of expression and association Like other citizens, lawyers are entitled to freedom of expression, belief, association, and assembly. In particular, they shall have the right to participate in public discussion of matters concerning the law, the administration of justice, and the promotion and protection of human rights and participate in organisations without suffering professional consequences.	-Constitution of Pakistan, Articles 17 (Freedom of Association), 19 (Freedom of Speech, etc.), 20 (Freedom to profess religion and to manage religious institutions)
Professional associations of lawyers Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training, and protect their professional integrity. Lawyers associations shall cooperate with governments to ensure everyone has adequate and equal access to legal services.	-Chapter XII-A of Legal Practitioners and Bar Councils Rules, 1976, deal with the Bar Associations at the District level, Provincial High Court levels, and Supreme Court Bar Association at the National level. It regulates their functioning and formation, etc. It plays a powerful role in the rule of law and to ensure justice in society.
Disciplinary proceedings The legal profession shall establish the Codes of Professional Conduct for lawyers. All disciplinary proceedings shall be determined following the Code and other recognised standards and ethics of the legal profession. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have a right to a fair hearing in disciplinary proceedings, the right to be assisted by counsel, and independent judicial review of disciplinary decisions.	-The Pakistan Legal Practitioners and Bar Councils Rules, 1976, Chapter X, prescribes the procedure for filing complaints against and discipline of an Advocate of the Supreme Court of Pakistan.

ACCESS TO JUSTICE.

As noted above, possessing rights does not have full meaning without the ability to enforce those rights through legal and administrative proceedings. The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime identify those rights, particularly based on and contained in the Convention on the Rights of the Child, including

The right to,

- (a) be treated with dignity and compassion;
- (b) be protected from discrimination;
- (c) be informed;
- (d) be heard and to express views and concerns;

- (e) effective assistance;
- (f) privacy;
- (g) be protected from hardship during the justice process;
- (h) safety;
- (i) special preventive measures; and
- (j) reparation.

Access to justice requires establishing legal procedures to enforce those rights and seek remedies for their violation. Especially for children, this access requires legal representation and assistance navigating the justice system and accessing judicial tribunals.

THE RIGHT TO REPRESENTATION.

In Pakistan, children and their representatives are entitled to bring civil cases to challenge violations of their rights.¹³³ The Pakistani Constitution provides for proceedings to enforce these rights before the High or Supreme Courts. In addition, any person may file a complaint against the government administration related to abuse of power or failure to fulfill public duties with the Federal Ombudsman.

Children may bring civil cases in their own name with the assistance of a “next friend.”¹³⁴ The next friend must be a competent, consenting adult who does not have interests in opposition to the child’s interests. The next friend may take all legal actions on behalf of the child. The Court may approve agreements and settlements made by a next friend. Next friends cannot withdraw without finding an appropriate replacement, although courts may order the removal of a next friend if their interests become adverse to the child’s interests.¹³⁵ After reaching the age of majority, a child victim may continue a suit that has already been filed without the assistance of a next friend.¹³⁶

In criminal cases, the child defendant (accused on bail) or victim child may appear in the Court proceedings through a pleader. The pleader is appointed with the permission of the Court under the Criminal Code of Pakistan.¹³⁷

ACCESS TO LEGAL REPRESENTATION.

Children and their families often do not have the resources to pursue legal action. The Pakistan Bar Council provides legal assistance to those who cannot afford it in certain civil matters, including litigation initiated in the public interest and cases filed to challenge

¹³³ Code of Civil Procedure, 1908, *available at*

<https://www.wipo.int/edocs/lexdocs/laws/en/in/in056en.pdf>; *See also, Access to Justice: Pakistan*, CHILD RIGHTS INTERNATIONAL NETWORK (2013); *Rights, Remedies & Representation: GLOBAL REPORT ON ACCESS TO JUSTICE FOR CHILDREN*, CHILD RIGHTS INTERNATIONAL NETWORK (2016).

¹³⁴ *Rights, Remedies & Representation: Global Report on Access to Justice for Children*, CHILD RIGHTS INTERNATIONAL NETWORK (2016).

¹³⁵ *Id.* at 36.

¹³⁶ *Id.* at 31.

¹³⁷ Cr.P.C. Sec.4(r) ('Pleader', when used with reference to any proceeding in any Court, means, a pleader or a mukhtar authorized under any law for the time being in force to practice in such Court, and includes (1) an advocate, (2) a vakil and an attorney of a High Court so authorized, and (3) any other person appointed with the permission of the Court to act in such proceeding); 1991 P.Cr.L.J. 2425 (The discretion of the Court in permitting person to appear as 'pleader' must be exercised judicially with due regard to the interest of the party engaging him).

government abuses of power or neglect of public duties. Child sexual abuse complainants or their representatives may apply for legal aid with the Pakistan Bar Council, which can also cover the cost of court and other administrative fees. The Bar Council's Central Free Legal Aid Committee is responsible for legal aid at the federal level and may also assist with filing complaints with the Federal Ombudsman. Applications for free legal aid are submitted directly to the Committee for review and must include information about income and assets.

The Free Legal Aid Committees of the Bar Council maintain lists of lawyers prepared to take cases, either without charge or at a reduced fee. Lawyers cannot base their fees on the outcome of a case (contingency), but civil courts can allocate costs between the parties, thus allowing complainants to seek the recovery of fees and other expenses from the defending party. In addition, civil courts also allow those without the means to pay court fees to file cases and appeals. Such complainants must generally apply to do so in person and provide evidence of their financial status. If the application and lawsuit are ultimately successful, however, the plaintiff would be expected to reimburse court fees from any proceeds resulting from the case.

Children may also apply to the new Legal Aid and Justice Authority for legal and financial assistance in their cases. Published in the official Gazette on March 24, 2020, the Legal Aid and Justice Authority Act, 2020 established the Legal Aid and Justice Authority to provide legal, financial and other assistance for access to justice to the poor and vulnerable segments of the society in criminal cases and for matters ancillary thereto. The Legal Aid and Justice Authority is responsible for making provision for legal aid, financial or other assistance to an applicant who is charged with a criminal offence and is unable to afford legal, financial or other assistance, representation and access to justice in such manner and to such extent as may be prescribed.¹³⁸ The Act further provides in Section 9(5) that, "In prescribing the criteria for and in extending the legal, financial or other assistance, preference shall be given to disadvantaged women and children, especially in relation to matters of sexual offences."¹³⁹ The Act establishes a new Legal Aid and Justice Authority Fund to finance the activities of the Authority.¹⁴⁰

PRO BONO/FIRMS.

Child sexual victims or their representatives may secure legal assistance from practicing lawyers on a pro bono basis. The Pakistan Bar Council maintains a list of attorneys who make take a case pro bono, and the Free Legal Aid Committees may request that any lawyer take up to one case per year on a pro bono basis. Children and their representatives may also pursue pro bono representation through children's rights organisations.

ORGANISATIONS LINKING CLIENTS TO LAWYERS.

Pro bono legal services, legal aid, and other case support may also be available from several organisations working in human and children's rights. These include, but are not limited to:

- AGHS Legal Aid
- The Human Rights Commission of Pakistan
- Lawyers for Human Rights and Legal Aid

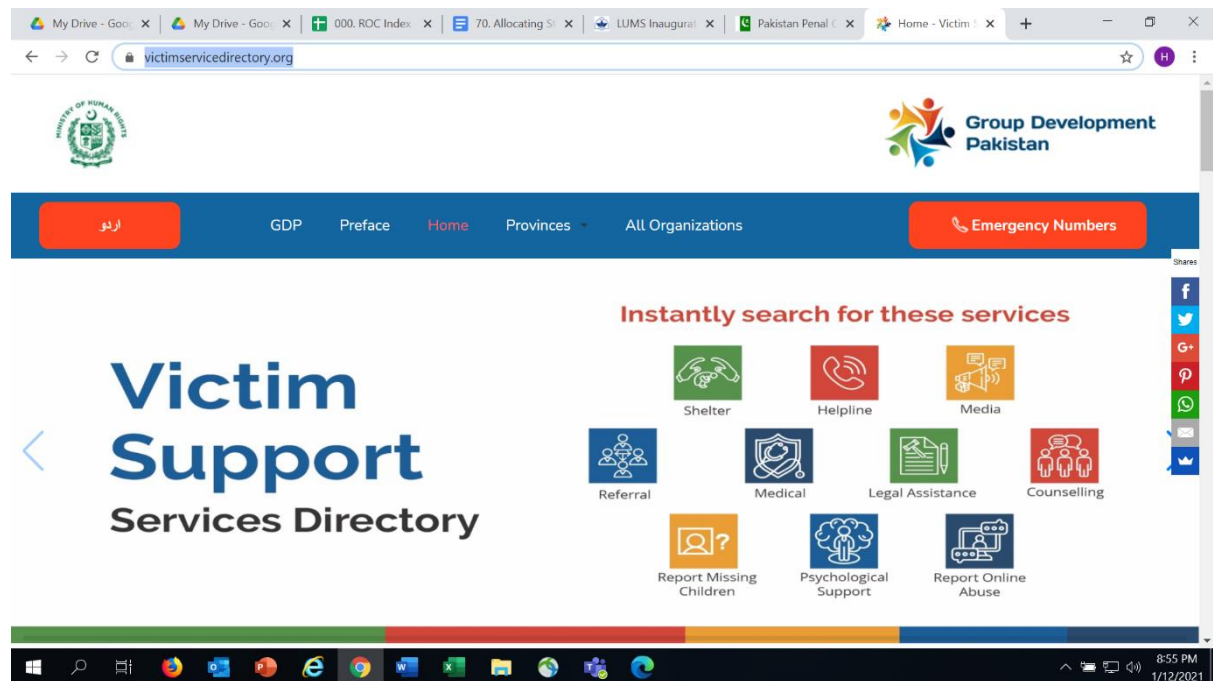
¹³⁸ *The Legal Aid and Justice Authority Act [Pakistan], Act No. XVI, Section 9(1) (24 March 2020).*

¹³⁹ *The Legal Aid and Justice Authority Act [Pakistan], Act No. XVI, Section 9(5) (24 March 2020).*

¹⁴⁰ *The Legal Aid and Justice Authority Act [Pakistan], Act No. XVI, Section 17 (24 March 2020).*

- The Pakistan International Human Rights Organization
- The Pakistan Lawyers Foundation
- Sahil
- The Society for the Protection of the Rights of the Child (SPARC).
- Legal Aid Society
- Asma Jahangir Foundation
- Legal Rights Forum
- Digital Rights Foundation
- Acid Survivors Foundation
- Child Rights Movement (An advocacy network)

Additional legal service providers can be found using the Victim Support Services Directory launched by GDP and the Ministry of Human Rights in June 2020. The online Directory, which allows users to search and browse assistance providers by province, district, and/or service type, can be found at <https://victimservicedirectory.org/>.



WHO IS REPRESENTED?

CHILD AS SURVIVOR/VICTIM OF ABUSE OR EXPLOITATION.

Civil attorneys, including legal aid and pro bono counsel, may represent child sexual abuse or exploitation survivors and their “next friend” or representative, who may be family members or other eligible persons. They may also represent a family/complainant seeking redress for a child victim killed during sexual abuse or exploitation (e.g., Zainab case).

Lawyers representing child victims may take on a case during various stages of involvement with the justice system. There are several ways in which you can assist child victims through the process.

Child Victim Legal Representation

Children who are identified as child victim-witnesses as part of an active criminal or civil investigation:	Children whose criminal cases have been determined and now seek redress for rights violations based on a verdict in the criminal court.	Children who are victims/survivors who have NOT yet come into contact with law enforcement (and who may need legal representation to ensure they receive appropriate protections as crime victims).	Children in conflict with the law who were previously sexually abused (and therefore may be entitled to some redress) or are exposed to sexual abuse or exploitation in the juvenile and criminal justice system.
<ul style="list-style-type: none"> <input type="checkbox"/> Ensuring appropriate procedures are followed during the investigation: <ul style="list-style-type: none"> ✓ Evidence is handled appropriately; ✓ Maintaining confidentiality and confidential information is not shared inappropriately; ✓ Ensuring safety of the victim; ✓ Ensuring the victim is treated with dignity and respect; ✓ Protection of the child victim's rights as she progresses through the trial process (e.g., ensuring confidentiality, advocating for accommodations in testimony). <input type="checkbox"/> Identification of any rights violations, including the governing instruments and specific remedies and procedures to follow; and <input type="checkbox"/> Pursuit of civil remedies, including orders of protection or restitution, whether directly from an offender or through government sources and funds, and ensuring all required procedures are followed to maintain eligibility for relief. 	<ul style="list-style-type: none"> <input type="checkbox"/> Identification of any rights violations, including the governing instruments and specific remedies and procedures to follow; and <input type="checkbox"/> Pursuit of civil remedies, including: <ul style="list-style-type: none"> ✓ Orders of protection or restitution, whether directly from an offender or through government sources and funds, ✓ Determining whether required procedures are followed to maintain eligibility for relief. <input type="checkbox"/> Acquisition of all documents/documentation supporting rights violations; and <input type="checkbox"/> Filing complaints before the appropriate tribunal. 	<ul style="list-style-type: none"> <input type="checkbox"/> Assistance with navigating what may be an unfamiliar and complex system; <input type="checkbox"/> Support in filing the appropriate complaints with law enforcement (e.g., F.I.R.); <input type="checkbox"/> Ensuring the protection and confidentiality of the child victim and any other witnesses to avoid undue influence or intimidation (either from the defence side (defendant, witnesses, counsel) or prosecutors seeking information about your child client or demanding interviews or court appearance); <input type="checkbox"/> Protection of the child victim's rights as she progresses through the trial process: <ul style="list-style-type: none"> ✓ Protecting child from harassment by perpetrator/abuser (or accomplices) ✓ ensuring confidentiality, ✓ advocating for accommodations in testimony, ✓ preventing child from seeing perpetrator <input type="checkbox"/> Protection of the child victim's civil claims. 	<ul style="list-style-type: none"> <input type="checkbox"/> Ensuring child victims of abuse or exploitation involved in other justice systems are not misidentified as children in conflict with the law; <input type="checkbox"/> Ensuring protections are in place to prevent abuse or exploitation while in the system; <ul style="list-style-type: none"> <input type="checkbox"/> Ensuring victims receive the services and support they need to address abuse that may have precipitated their involvement in the juvenile justice system (e.g., prostitution, trafficking, collateral activities such as theft or drug-related offences).

STATUTORY GUIDANCE & RESOURCES

[UN Guidelines](#) on Justice in Matters Involving Child Victims and Witnesses of Crime [Punjab Witness Protection Act, 2018](#)

[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](#)

Ethical issues such as standards for competent representation, conflicts of interest, and confidentiality present unique challenges when representing young victims or witnesses of sexual abuse. Pakistan has Canons of Professional Conduct and Etiquettes of Advocate that provide guidance on the ethical obligations of attorneys.¹⁴¹ Canons 145-158 address the duties owed to clients, including confidentiality and avoidance of conflicts of interest, which are particularly relevant to representing children and are discussed in greater depth below.

CONFIDENTIALITY.

Confidentiality applies not only to information communicated in confidence by a client but to all information relating to your representation of the client, whatever its source. There is also a distinction between lawyer/client confidentiality and information subject to lawyer/client privilege. Confidentiality is particularly important when representing children and is often needed to protect their identity and ensure their safety. At the same time, candor toward the judicial tribunal is also necessary. A lawyer choosing whether to reveal confidential information (e.g., information that has been put forth but is known to be false) should consider the consequences of revealing that information. Even if the disclosure is permitted, you must weigh the consequences of that choice.

Can a balance be struck between nondisclosure to protect the lawyer/client relationship and disclosure to protect the integrity of the judicial process? Strengthening confidentiality protections within the lawyer/client relationship encourages open communication and helps develop the facts fully, allowing more effective representation, and protecting the sanctity of the lawyer/client relationship. Loosening restrictions on confidentiality holds lawyers more accountable, is consistent with public policy, and maintains public confidence in the legal profession.

CONFLICTS OF INTEREST.

Loyalty, independent judgment, and zealous pursuit of client objectives are essential elements of an attorney-client relationship. However, conflicts of interest can arise from a lawyer's responsibilities to another client, a former client, a third person (nonparty), or the lawyer's own interests. You should consider whether pursuing your child client's objectives will prevent you from pursuing another client's objectives and whether confidentiality may thereby be compromised. You should not represent a client if that client's interests are in direct opposition to another client, even if the matters are unrelated or if your responsibilities would, in some way, limit your representation of another client.

A child client or next friend may feel betrayed by the revelation of a conflict that materially affected their case. Children traumatised by their victimisation may experience this perceived betrayal as another trauma.

Questions you can ask to determine whether a conflict exists:¹⁴²

- Does representing one client foreclose alternatives for the other?

¹⁴¹ Pakistan Legal Practitioners & Bar Councils Rules, 1976, Canons of Professional Conduct and Etiquettes of Advocates, Chapter XII, *available at* <http://pakistanbarcouncil.org/wp-content/uploads/2019/12/054-133-...-Rules.doc>.

¹⁴² JENNIFER L. RENNE, *LEGAL ETHICS IN CHILD WELFARE CASES* (American Bar Association, 2004).

- Will confidential information from Client A be compromised in representing Client B?
- Can you comply with the duties owed to each client, including the duty to pursue each client's position?
- Will the client reasonably fear you will pursue that client's case less effectively out of deference to the other client?
- Can you disclose the conflict and ask for consent?

If you determine a conflict of interest exists, withdrawal from the case is necessary, with few exceptions, to preserve the client's interests.

Activity 13 Attorney Ethics Case Scenario

You are representing a 15-year-old girl Alya who was sexually abused by her teacher. It is discovered other children at Alya's school were sexually abused by the same teacher. At least one additional victim wants you to represent her in legal actions against the school.

What duty do you owe to Alya?

Can you represent more than one of the victims?

What happens if you learn information from a second victim that could help Alya in her case? Can you use that information in both cases?

What happens when there is a conflict between what Alya wants and what another victim might want? Between what Alya wants and what you believe is in her best interest?

RESEARCH

Cases involving children can involve complex areas of law, with many special considerations and provisions applying to children's status. Advocates owe a duty to be fully educated on all aspects of their client's case, so thorough research into the law and other information sources is essential. Legal research is essential to understanding and analysing a case to identify the relevant facts and legal issues. Legal research aims to find solutions and supporting precedent on a given issue that the court can rely on as authoritative. Several sources of online resources are provided below.

NATIONAL AND PROVINCIAL RESOURCES.

Online Resources for Legal Research:

Pakistan Law Site

→ (<https://www.pakistanlawsite.com/Login/Check>)

PLJLAWSITE.COM

→ (<https://www.pljlawsite.com/>)

Ministry of Law and Justice: Pakistan Code

→ (<http://pakistancode.gov.pk/>)

Supreme Court of Pakistan

→ (<https://www.supremecourt.gov.pk/>)

Lahore High Court

→ (<https://www.lhc.gov.pk/>)

Sindh High Court

→ (<https://www.sindhhighcourt.gov.pk/>; <https://www.sindhhighcourt.gov.pk/>)

Peshawar High Court

→ (<https://peshawarhighcourt.gov.pk/app/site/>)

Balochistan High Court

→ (<https://bhc.gov.pk/>)

Islamabad High Court

→ (<http://www.ihc.gov.pk/>)

Punjab Code

→ (<https://punjabcode.punjab.gov.pk/>; <https://punjablaws.punjab.gov.pk/>)

Sindh Code

→ (<http://sindhlaws.gov.pk/SindhIndex.aspx>)

Khyber Pakhtunkhwa Code

→ (<http://kpcode.kp.gov.pk/>)

Balochistan Acts & Laws

→ (<http://balochistan.gov.pk/acts-rules-and-regulation/>)

INTERNATIONAL RESOURCES.

UN Resources:

Global March Against Child Labour

→ (<https://globalmarch.org>)

UN Office of the High Commissioner for Human Rights

→ (<https://www.ohchr.org/EN/pages/home.aspx>)

UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime

→ (https://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf)

UNICEF Policy Advocacy and Partnerships for Children's Rights

→ (https://www.unicef.org/policyanalysis/index_46884.html)

UNICEF Legislative Reform Initiative

→ (https://www.unicef.org/policyanalysis/rights/index_51859.html)

Harmonizing National Legislation with International Human Rights Instruments

→ (<https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/Harmonizedguidelinesonreportingundertheinternationalhumanrightstreatiesincludingguidelinesonacommoncoredocumentandtreaty-.aspx>)

Resources from Regional Intergovernmental Organisations:

South Asian Association for Regional Cooperation (SAARC)

→ (<http://www.saarc-sec.org/>)

The Colombo Plan

→ (<https://colombo-plan.org/>)

International NGO and Bar Association Resources:

American Bar Association Center on Children and the Law (legal representation and trauma-related resources)

→ (https://www.americanbar.org/groups/public_interest/child_law/)

ABA Center for Human Rights

→ (https://www.americanbar.org/groups/human_rights/)

WePROTECT Global Alliance (WPGA)

→ (<https://www.weprotect.org/>)

International Society for the Prevention of Child Abuse and Neglect (ISPCAN)

→ (<https://www.ispcan.org/learn/>)

CRIN Child Rights International Network

→ (<https://home.crin.org/>)

International Juvenile Justice Observatory

→ (<http://oijj.org/en>)

INTRODUCTION

Representing children who are victims of crime is both one of the most rewarding and challenging areas of legal practice. “Victim” is a legal term used to describe a wronged party. Many child advocates, however, use the term “survivor” to refer to someone who has survived the crime and gone through the recovery process. The term “survivor” can be a more empowering term and acknowledges the resiliency and perseverance of children who have experienced abuse, violence, and/or exploitation. The most successful child advocates put their client’s goals and needs first, thus the terms “victim-centred” or “survivor-centred” legal representation.

International, federal, and provincial laws recognise and address crimes against children. This creates not only a larger pool of children *identified* as victims of crime, but also children engaged as active *victim-witnesses* within criminal justice proceedings. Criminal justice proceedings involve the investigation, and possibly the prosecution, of a child’s perpetrators (a.k.a. “the defendant(s)”). A victim-witness is an individual harmed by a crime who serves as a witness against the accused person. A child victim-witness is under the age of majority, and due to their age and vulnerability, requires additional protections.

Both international and Pakistani law recognise that child victim-witnesses require specific advocacy and protections distinct from those need by adults because participation in legal proceedings exposes children to a risk of harm.¹⁴³ For example, interviews with law enforcement agents, describing the crimes against them, can be re-traumatising for a child, as can serving as a victim-witness during court proceedings. Court proceedings may require a child to testify against their perpetrator and be cross-examined by defence counsel, both of which can be highly traumatising to a child.

Any criminal justice process against perpetrators, including both investigations and prosecutions, should ideally empower the victim and facilitate their healing process so that they see the crimes committed against them are condemned, and the people who harmed them are punished.

As the child’s attorney, it is your professional responsibility to ensure your client’s rights are being protected by all stakeholders in the legal process, including investigators, prosecutors, judges, and media. More details regarding “how” will be provided in the subsequent sections.

BEFORE MEETING YOUR CLIENT - CONSIDERATIONS

Before we address the initial meeting and representation of a child victim of sexual abuse, it is essential to first understand the impact the sexual abuse had on the child, and the impact this abuse may have on your initial meeting and relationship with your client.

¹⁴³Mike Dottridge, *Reference guide on protecting the rights of child victims of trafficking in Europe*, UNICEF (2003), available at <https://www.refworld.org/pdfid/49997af7d.pdf>.

TRAUMA AND RISK OF RE-TRAUMATISATION.

A traumatic event is one that threatens the life or physical integrity of a child or someone important to that child, such as a parent, grandparent, or sibling. A traumatic event is a frightening, dangerous, or violent event that poses a threat to a child's life or bodily integrity. Traumatic events can be an act of nature, such as an earthquake or flood, or other singular acts, such as an act of terrorism or vehicle accident. Traumatic events can also be an act against the body, such as physical beating/assault, extreme neglect, sexual abuse, sexual exploitation, and other forms of violence or maltreatment. Witnessing a traumatic event that threatens a loved one's life or physical security, such as domestic violence, can also be traumatic. This is particularly important for young children as their sense of safety depends on the perceived safety of their adult caregivers.

Children who experience an inability to protect themselves from a traumatic event or who lacked protection from others may feel overwhelmed by the intensity of physical and emotional responses. Traumatic events can cause an overwhelming sense of terror or helplessness and produce immediate physiological reactions such as heart pounding, rapid breathing, vomiting, or loss of bowel or bladder control.¹⁴⁴ Trauma may affect the behavior, development, and reactions of children.

There is ample scientific literature and research to support the negative psycho-social, behavioral, and physical effects of trauma on children. These symptoms can be amplified when there are

multiple instances of trauma in a child's life. This could be ongoing sexual abuse, child sex trafficking, where a child is raped frequently on an ongoing basis, or ongoing sexual harassment.

Therefore, scientists have developed different typologies of trauma based on the frequency of these traumatic events in a child's life:

Children lacking the ability to adapt and handle traumatic events may display the following symptoms of childhood traumatic stress:⁶

- Intense and ongoing emotional upset
- Depression
- Anxiety
- Behavioral changes
- Difficulties at school
- Problems maintaining relationships
- Difficulty eating and sleeping
- Aches and pains
- Withdrawal
- Substance abuse, dangerous behaviors, or unhealthy sexual activity among older children

https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/september-2014/understanding-trauma-and-its-impact-on-child-clients/

¹⁴⁴ Eva Klain, *Understanding Trauma and Its Impact on Children*, ABA CENTER ON CHILDREN AND THE LAW (1 September 2014), available at https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/september-2014/understanding-trauma-and-its-impact-on-child-clients/.

Acute trauma is a short-lived experience tied to a particular place or time.⁷ Examples of acute trauma include natural disasters, serious accidents, shootings, school violence, or the loss of a loved one.⁸ In response to these traumatic events, children may experience feelings of helplessness and distress.⁹

Chronic trauma is prolonged exposure to traumatic situations over a long period. Examples of chronic trauma involve prolonged physical or sexual abuse, exposure to family violence, or war.¹⁰ Child traumatic stress resulting from this type of exposure may include intense distrust, fear for personal safety, guilt, and shame.¹¹

Complex trauma involves exposure to multiple or prolonged forms of trauma and describes “both children’s exposure to multiple traumatic events, often of an invasive, interpersonal nature, and the wide-ranging, long-term impact of this exposure.” The events leading to complex trauma are “severe and pervasive,” usually beginning early in life. They can disrupt a child’s development and the ability to form a secure attachment bond since they often occur in the context of the child’s relationship with a caregiver.¹²

The symptoms of trauma on children are often misunderstood or mischaracterised by adults as “bad” or defiant behavior. It is important to understand that these symptoms are natural, biological responses to traumatic events. You may need to remind other stakeholders, including criminal justice professionals, about this fact during your client's representation.

DISTRUST OF AUTHORITY.

It is not uncommon for child victims of crime and children in conflict with the law to distrust authority figures. Such figures include law enforcement, prosecutors, judges, and even “helping” adults, such as teachers, caseworkers, and child attorneys, such as yourself. It is important to remember that the sexual abuse and/or exploitation that the child endured was often by another adult. Children from marginalised communities, such as street children, orphans, and minorities, may have had several negative experiences with adults (even “helping” adults) who treated them poorly.

Perpetrators also coach child victims of sexual abuse and exploitation to distrust outsiders, including law enforcement and other “helping” adults. They have a sense of fear and/or distrust toward the government and police because they are afraid they will be punished. Sometimes they feel that it is their fault that they are in this situation. As a coping or survival skill, they may develop loyalties and positive feelings toward their perpetrator or even try to protect them from authorities. Such protection is common in sex trafficking cases where children are “groomed” by their perpetrator, which includes an initial romantic relationship before commercial sexual activity.

FEAR OF REPRISAL.

Research shows that many child sexual abuse and exploitation victims fear reprisal and retribution if they disclose the abuser and the abuse they experienced. Children may fear for their safety and that of siblings or other family members if the abuser is a family member. Many abusers threaten harm if the child discloses what has occurred to them. In sex trafficking cases, traffickers often threaten to harm not only the victim, but also the victim’s family if the victim reports their situation to, or cooperates with, law enforcement.

Child victims have a right to protection under the CRC, OPSC, and national laws.



Practice Pointer

If you think reprisal or retribution is a possibility for your client, talk to them about it. Be honest about what may happen and provide your client concrete tools and action steps about what to do if their perpetrator tries to contact them or harm them. For example, you might say, “it is common for children in your situation to have the perpetrator call you and threaten you with harm if you cooperate with law enforcement or talk to an attorney. If that happens, hang up immediately, and call me. We will speak with law enforcement about this. You have a right to be safe and protected.” Or, “it is common for children who have been harmed to fear harm or reprisal by the person that hurt them. This is normal. But you need to know that you have a right to be free from harm, and a right to protection.”

If your client’s abuser tries to reach your client, document each attempt and share this with law enforcement official working on your client’s case. They may be able to use this as evidence of “obstruction of justice” as part of the case. You may also consider civil remedies such as a restraining order against the perpetrator.

COMMUNICATION BARRIERS

Attorneys for child victims have an opportunity and a responsibility to advocate for victims in the aftermath of a crime and throughout their involvement in the criminal or juvenile justice system. Attorneys must be able to communicate effectively with child crime victims and survivors. Child attorneys who practice good communication skills can help victims move forward and reclaim the control they have lost as a result of their victimisation. Poor communication can further traumatise and victimise the victim. A child's age and developmental capacity will have a significant bearing on their ability to communicate clearly. Younger children, for example, may be more challenging to communicate with due to their linguistic limitations and unfamiliarity with certain people, places, or activities. The impact of trauma may also impact the ability of your client to share and disclose information.

Five Tips for Successfully Interviewing Your Child Client

By Cathy Krebs

Interviewing our child clients is foundational to legal representation, but it can be challenging. Below are some quick tips to help you improve this essential skill.

- **Build a trusting relationship:** Be friendly, empathetic, honest, and never make a promise that you cannot keep. Have multiple client meetings to help build the relationship.
- **Use clear language:** Avoid negatives, use simple sentence structure and language, avoid sarcasm, use the present tense, ask your client to use her own words to repeat what you just said, and be clear about your role.
- **Explain what is happening in your client's case:** Often the lawyer can be the best source of information for their client about what is going on in a case. Be sure to explain the court process, the roles of others within the court system, the timing of a case, and the various possible outcomes in your client's particular case.
- **Be respectful:** Listen actively, notice non-verbal communication, and take your cues from your client whether it is paying attention to the language he uses or not forcing eye contact if it makes him uncomfortable. Also ask permission to take notes and explain why notes might be important. Importantly, understand that what you feel is most important might not be most important to your client.
- **Pay attention to what matters to your client:** Ask her who are the important people in her life. Who would she call if she got into trouble? What does she need? You should avoid assumptions. Listen actively so that you are better able to identify what is most important to your client and why. Often our clients are the best source of information about their cases and can identify what they need; we just need to listen.

<https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2018/five-tips-for-successfully-interviewing-your-child-client/>

TODDLERS/VERY YOUNG CHILDREN.

Children as young as two and three years old can accurately recall and report past experiences, and children as young as three have testified competently and credibly in court. Children this young, however, do not process language in the same way as adults. Children in this age group:

- Use and interpret language very literally.
- Do not handle abstractions well. They are particularly ill-equipped to discuss with you the difference between truth and lies. They do better with concrete examples that ask them to demonstrate rather than articulate their awareness of these two very abstract concepts.
- Are not good at collecting things into adult-like categories.
- Use words for time, distance, kinship, and size long before they understand their meaning.
- Define words only in the simplest, action-oriented ways.
- Have difficulty with pronoun reference.
- Have difficulty with negatives.
- May supply a response to questions about which they have no knowledge.
- Do best with simple sentences: subject, verb, object.
- Tend to focus on only one aspect of a situation or question at a time. Asking complicated questions that contain numbers of ideas is fruitless.
- Do not organise events in their minds in an adult way.
- Are still in the process of acquiring language.

- Often do not know or won't tell you that they don't understand something.
- Believe in general that adults speak the truth, are sincere, and would not trick them.¹⁴⁵

SCHOOL-AGE, ROUGHLY 7-10.

- Still may have difficulty in handling abstract concepts.
- Still have problems processing complex questions and complex verb phrases that express, for instance, the future, as seen from a perspective in the past.
- Still make errors with passives, the difference between "ask" and "tell", and with pronoun reference.
- Are still easily confused by complex negation.
- Are still not mature at organising in an adult-satisfactory way the details of narratives.
- Are still unequipped to deal with adult insincerity such as sarcasm and irony.
- May still believe that adults, in general, speak the truth.¹⁴⁶

ADOLESCENTS, ROUGHLY 11-18.

- May or may not have acquired adult narrative skills.
- Do not understand time as both a historical concept (one that goes on and on without them) and a day-to-day concept that affects their lives. For most adolescents, what concerns them is the here-and-now.
- Still have difficulty with complex negation.
- Are often confused by linguistic ambiguity such as is found in newspaper headlines, some ads, metaphors, idioms, proverbs, and jokes.
- Are likely to lose track of long, complex questions.
- Are reluctant to ask for clarification of a question or acknowledge that they don't understand.
- Many teens, particularly the under-educated, under-parented, unattached (and developmentally delayed) children, remain stuck in the School-Age stage.¹⁴⁷

¹⁴⁵ ANNE GRAFFAM WALKER, PH.D., *supra* note 8, at 3-4.

¹⁴⁶ *Id.* at 5.

¹⁴⁷ *Id.* at 5-6.



Practice Pointer

When questioning your client:

- **DO** use simple, common, everyday words and phrases. “Attorney”, “Court”, “deny”, “subsequent”, “take the witness stand”, “at that point in time” and the like do not fall into that category.
- **DO** put names and places back in where pronouns once lived. Ask, “What did Umar say?” instead of “What did he say?”. Ask, “Were there a lot of people in the kitchen?” instead of “Were there a lot of people in there?”.
- **DO** stay away from negatives. Phrase your questions positively, whenever possible.
- **DO** use questions and comments that keep the number of ideas in them to a minimum. The younger the child, the smaller the number. One main idea is good.
- **DO** start your questions and comments off with the main idea. “Did the bell ring when you were eating?” instead of “When you were eating, did the bell ring?”
- **DO** remember: This is a child. Children are not short adults. Try to listen to the proceedings with a child’s ears. You might be surprised at what you hear.

Anne Graffam Walker, Ph.D., *Handbook on Questioning Children: a Linguistic Perspective 3rd Edition*, American Bar Association (2013), pg. 7.

INTERVIEWING CHILDREN VIDEO.

The following video demonstrates how an attorney introduces themselves to a child and offers examples of successful techniques for interviewing a child. It includes expert input from not just attorneys but child development experts. It provides examples of techniques to help the attorney with relationship building, addressing roles and responsibilities, and successful interview techniques.



<https://www.youtube.com/watch?v=OYLWkVHvgOM&t=8s>

(Closed captioning/text is available for the video by clicking on the CC button.)

OTHER IMMEDIATE NEEDS

If a child has been the victim of sexual abuse, sexual exploitation, or sexual violence, they will likely have experienced both physical and mental trauma. As a result, they will also have non-legal, immediate needs that will require attention. 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 Pakistan's laws and policies.¹⁴⁸ You may be required to coordinate legal services with other experts/practitioners providing these other essential services. It is important to ensure the confidentiality and privacy of information shared between the different agencies and service providers working with the child. It is also important to frequently remind the child of the different roles and responsibilities of the “helping” adults have with the child.

Rozan, a Pakistani service provider and advocacy organisation provides some of these services to child victims of certain crimes. They may also be a resource for you and help identify other organisations in your client's province/location. See <https://rozan.org/childrens-program-aangan/>.

¹⁴⁸ ECOSOC Res. 2005/20; G.A. Res. A/RES/40/34; G.A. Res. A/RES/67/187, Principles 4-5, Guidelines 7-8.

COMMUNICATION AND ADVOCACY

The following section provides considerations and practical tips for an attorney representing a child victim-witness in any open investigation or criminal justice proceedings.

HOW CHILDREN EXPERIENCE ABUSE: THE CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME, ROLAND SUMMIT'S CSAAS (THE CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME):¹⁴⁹

When children disclose abuse, they are often met with skepticism, alienation, and lack of credibility or acceptance. The child sexual abuse accommodation syndrome attempts to provide context and increase understanding and acceptance of the child's allegations within the complex dynamics of sexual victimisation in most 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.¹⁵⁰

Understanding the Child Sexual Abuse Syndrome 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 often happens in secrecy; no one else is around, and no one is to know. Rozan noted in its study that, "[i]n 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."¹⁵¹

- 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 is usually done by way of threats and intimidation:
 - "If you tell, I will go to jail."

¹⁴⁹ Roland C. Summit, M.D., *The Child Sexual Abuse Accommodation Syndrome*, CHILD ABUSE AND NEGLECT, 7, 177-193 (1983), available at <https://www.abusewatch.net/Child%20Sexual%20Abuse%20Accommodation%20Syndrome.pdf>.

¹⁵⁰ Rozan, *supra* note 17, at 7.

¹⁵¹ *Id.* at 12.

- “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.¹⁵²);
- “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 to groom the child and lower his/her inhibitions.)
- The child learns early in the abusive relationship that the family’s safety and security depend on the child keeping this secret.

Helplessness.

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 helplessness sets in, the child needs to learn how to live with the secret, the abuse, and her/himself.

UNDERSTAND THE IMPACT TRAUMA HAS ON YOUR CLIENT’S ABILITY TO DISCLOSE INFORMATION AND COMMUNICATE WITH YOU.

Successful attorneys representing child victims apply a philosophy of “establishing trust” versus expecting it. Much like adults, most children will be wary of meeting with a new person, particularly an adult in a position of authority, and disclosing private information. Your client’s history of trauma will likely impact their ability to participate in an interview. Pain and terror associated with specific traumatic experiences may be so difficult that the child exhibits symptoms of “Post Traumatic Stress Disorder.”

Symptoms of post-traumatic stress disorder include:

- ☐ Denial
- ☐ Avoidance
- ☐ Minimizing events
- ☐ Confusion
- ☐ Dissociation – manifested by blank looks or stares; losing track of questions or train of thought

These symptoms may present themselves as denial, crying, aggressive behavior, withdrawal, or lethargy. It is important to understand that these symptoms are *coping* mechanisms and natural, biological responses to trauma triggers.

It is useful to employ a “trauma-informed” approach to interviewing a child who is a victim of a crime. To establish a trauma-informed lawyer-client relationship, researchers Kraemer &

¹⁵² *Id.*

Patten¹⁵³ described six components of a trauma-informed stance. These components are also harmonious with the rights articulated for crime victim-witnesses in the UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime (2009):

- Transparency
- Predictability
- Client Control
- Reliability
- Proactive Support
- Patience

Transparency.

Transparency promotes trust and minimises an individual's feelings of powerlessness. There are several tactics an attorney can use to promote transparency. First, talk to your client about their case in age/developmentally appropriate terms. Do not use legal jargon. Second, have a candid conversation about notetaking. A child may misunderstand why you are taking notes and want to know who else will read what you write. Tell the child that he or she is your client, and they can review your notes at any time. You may invite your client to take their own notes.

Predictability.

Children who have experienced trauma struggle with unpredictability and transitions. When possible, inform your client in advance about the timing, location, and intended substance of any interview – whether with you or with criminal justice officials. Discuss with your client in advance about any legal process in which they engage. Provide your client a “road map” or orientation of what will happen during not just your meetings but also meetings with criminal justice officials. You may want to discuss any meetings or interviews between criminal justice officials and your client with officials in advance so that you can prepare your client beforehand. Discuss the goals of each meeting. Provide an estimate of how long the meeting will take. Set up routine and regular communication. Avoid showing up unexpectedly or pulling children out of a preferred activity. Predictability and routine can help children feel safe.

Client Control.

Give your clients a voice in decisions that can affect them. You can set the agenda for your meetings together with your client, and ask, “before we start, is there anything you would like to discuss today during our meeting?” You can mitigate any perceived hierarchy between you, the lawyer, and your client by talking about your legal experience, but how the child is the “expert” about his/her own experiences and needs. Discuss your client's goals, which might include “safety,” “normalcy,” and “justice”. You can empower your client by validating their strengths. For example, “I have observed that you have been very patient” or “I see that you have strong opinions about what you think is the right next step. Let's discuss this more.” Give the child as much control over whether and how to use his/her trauma history to counteract feelings of powerlessness.

¹⁵³ Talia Kraemer, Eliza Patten, *Establishing a Trauma-Informed Lawyer-Client Relationship*, AMERICAN BAR ASSOCIATION CHILD LAW PRACTICE, Vol. 33 No. 10 (October 2014), available at https://www.lsc-sf.org/wp-content/uploads/2015/10/Article_Establishing-a-Trauma-Informed-Lawyer-Client-Relationship.pdf.

Reliability:

Always follow through on responsibilities, commitments, and appointments you make with your client. You may consider meeting at a regular time to develop a consistent, reliable schedule. Never make a promise you might break, such as “if you help me fill in some of these details, I promise you’ll be able to join your family sooner.”

Proactive Support:

Support your client by anticipating issues that may arise during the case that may distress your client. You may also consider consulting with mental health professionals or trusted adults in the child’s life to identify what may be triggering for him or her. For example, if you are working on a human trafficking case, you might say, “[i]t is common in these cases for the perpetrator to try to reach out to the victim (you) or their family and threaten them to prevent them from cooperating with law enforcement. If your abuser or any of their associates tries to contact you, here is what you should do....”

Patience:

Patience may be the most challenging part of representing a child crime victim. Many attorneys are trained to be fact-driven and work primarily with adults. It is easy to grow impatient if they cannot extract information from their clients immediately. Working with children, especially crime victims who have undergone traumatic events, will require different legal skills. You will likely need to manage your expectations about how much time it will take to elicit details and information about the crime from your client. You will likely need more than one session. Because your client was likely abused by an adult, they may not trust any adults, and it will take time. Your client may become angry at you or dismissive. It is important to show you are a safe, engaged person who can tolerate these behaviors - remain calm, patient, and available to your client.

EXPLANATION OF ROLES AND RESPONSIBILITIES.

Many child victim-witnesses will not understand the distinction between the roles and responsibilities of various adults involved. For example, children may not fully comprehend the difference between a prosecutor, who describes themselves as an attorney, and you, the child’s victim-attorney. For many children and youth, these roles are often blurred. Child victim-witnesses require clear and frequent reminders of your role as their attorney as distinct from other adults they encounter. It is important to share how your role is different and that you are the *child’s* attorney/work for the child. For example, as the child’s attorney, the child will have a right to attorney-client privilege, meaning everything he or she shares with you, their attorney, is confidential. This confidentiality does not apply to prosecutors or stakeholders in the criminal justice setting.

Moreover, your client may rely on you to describe (again, frequently) the roles and responsibilities of other adults the child encounters in the justice system, as well as their rights. The child must understand it is their right to have their own attorney advocating for their interest, and that this is a right enshrined in international law. A child may be empowered by knowing their legal rights, especially if they feel their rights have been violated through sexual abuse.

Equally as important is understanding who “represents” whom in criminal justice proceedings. While a prosecutor will be concerned about their victim-witness, and there may be a shared goal of seeking justice against the perpetrator, the child victim is not the

prosecutor's "client," per se. Children need to understand how these processes overlap (shared goal of achieving justice on behalf of the child) and sometimes diverge. For example, a child will enjoy attorney-client privilege with you, their attorney. But this does not apply to the information they share with a prosecutor, which is mostly public record.

Your role as the child's attorney is to ensure that his or her rights are being protected at every step of any legal process – civil or criminal. This includes accompanying your client to law enforcement interviews, advocating on behalf of your client during these interviews, accompanying your client to court, or other administrative or judicial proceedings to ensure their rights are protected. Your client has a right to have you, their attorney, and/or advocate present with them during all civil or criminal justice proceedings.



Practice pointer:

Prosecutors and investigators may also need guidance in understanding the roles and responsibilities between them and the child's attorney. For example, if an investigator asks you, the child's attorney, to ask your client, "what they know" about certain aspects of the case, it is important for them to understand that their requests violate your professional role and attorney-client privilege.

You can emphasize the shared goals you have and explain how child victim-witnesses have a right to their own attorney/counsel to advocate for their rights as a victim-witness. While this may be frustrating for law enforcement/criminal justice stakeholders, children who receive additional support services such as their own attorney often make stronger victim-witnesses, serving the goals of all parties.



Practice pointer:

A shared goal between the child's attorney and prosecutor(s) is to prepare the child for any formal proceedings and to ensure their rights as a victim-witness are protected. Additionally, as a crime victim-witness, children have a right to be informed about their case, and to participate in the case as appropriate. For example, children have a right to be informed about the status of the case and privy to any publicly available information, including whether or not their perpetrator is arrested, what charges have been made, and the status of the case. Being informed about the case can empower a child victim, and therefore, it is important for both the child's attorney and the prosecutor to share information with the child that does not compromise the open investigation or case.

An investigator or prosecutor may be eager to move a case forward quickly and may ask the child to participate in lengthy interviews. This may be traumatizing or harmful for the child. In extreme cases, investigators or prosecutors may become frustrated, and threaten the child victim-witness with legal retribution if the child does not participate on their terms. This is wrong and violates the rights of the child victim-witness. It is important to advocate for child-centred treatment during the entire criminal justice process – including the investigation.

As the child's attorney, it is also important you share your client's rights with him/her so that they understand what protections are afforded to them. For example, the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crimes (2005)¹⁵⁴ provides a child-friendly version of a child's rights. It also provides developmentally-informed, simple descriptions and explanations of legal terms, such as "testify," "witness," "reparations," "best interests," and other terms that may be useful for younger children. Review these guidelines with your client, as they provide explicit examples of what their rights as a crime victim or witness are. Discuss your role in protecting and enforcing these rights with your client. (See Annex document)

CHILD VICTIM RIGHTS

It is my right that:

- ☐ I am dealt with dignity, without discrimination and prejudice.
- ☐ I am provided with a private, secure, and comfortable place to share my case.
- ☐ I receive immediate help when I am in crisis. Confidentiality is maintained regarding my case and only relevant staff accesses my files.
- ☐ All information pertaining to my situation is shared with me.
- ☐ I will not be influenced or pressurized to take certain decisions.
- ☐ My consent is part of the future decisions taken. I am not used for publicity of some specific organisation.
- ☐ I have access to all my records.
- ☐ I am prepared and informed for the services that I am being referred to.

¹⁵⁴ United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crimes (2005), available at https://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf.

AT A HEARING, THE LAWYER SHOULD...

- Identify all relevant issues regarding the best interests of the child;
- Ensure that the Court is informed of any information relevant to the child's welfare, security, and best interests that is material to the Court's decision making;
- Where necessary and appropriate, call evidence (other than any Court's witness), such as from psychologists, medical professionals, rescue team members, child protection officers, teachers, etc.;
- During cross-examination, ensure all relevant issues are thoroughly explored, and nothing is against the best interests of the child;
- Make submissions on behalf of the child; and
- Communicate and explain any order or application during the course of the trial.
- If during the trial, a conflict arises between a child's views and information relevant to the welfare and best interests of the child, the lawyer should:
 - Discuss in detail the problem and the lawyer's obligations with the child and its impact on the trial;
 - If not convinced, attempt to resolve the conflict with the child or his/her Parent/Guardian/Next friend; and
 - If feasible, advise the Court of the lawyer's position, and if the conflict cannot be resolved, request the Court to appoint Amicus Curiae/expert/other lawyer.

CHILD-FRIENDLY COURTROOMS AND WAITING AREAS.

Many children find the courtroom experience intimidating, and this atmosphere can be potentially traumatising to child victims. Under these circumstances, a child cannot be proved a competent witness, and the process of navigating the criminal justice system can compound a child's trauma. In Pakistan, many child courts are working with a child-friendly atmosphere and trained judges. A child victim-witness lawyer may request a child-friendly courtroom for his/her client or, in certain situations, a child-friendly waiting area for the victim-witness. To maintain a child-friendly court environment, the Accused's rights, such as the right to cross-examine a child victim-witness, should be balanced against the rights and needs of the child victim.

Ways to ensure the child's comfort include testimony through closed-circuit cameras, video recording, and use of screens, which are permanently in place in the special child courts for the witness children.

AFTER THE CONCLUSION OF THE TRIAL.

- Communicate and explain Court orders, decisions, or judgments to your child-client in a child-friendly language. Explain possible measures that could be taken, such as an appeal against the decision, a contest of appeal from another aggrieved party, or any other mechanisms for complaints as well as compensation.
- The child should be informed through his/her lawyer of available remedies either through non-judicial mechanisms or access to justice.
- The child's lawyer, guardian, or legal representative should take all necessary steps to claim compensation for the child.

Activity 14

Meeting Your Client Role-Play

Identify two volunteers to role-play in front of the other participants. One volunteer will play the child's attorney, and another volunteer will role-play the child. Seat them in front of each other and ask them to follow the scripts below and ask each volunteer to improve their role to the best of their ability. The rest of the participants observe. The following role-play should take 5 minutes. Spend another 10 minutes debriefing the role-play.

Facilitator: "We are now going to observe a meeting between a child's attorney and child victim of abuse/their client. It is their first time meeting each other.

Attorney:

Posture: All-knowing, authoritative, impatient. Sometimes stands up and paces around child. You are meeting the child for the first time and trying to elicit information from the child about the person who abused them. You believe that children who do not look adults in the eye are likely lying/hiding something. You begin the interview. The following are statements you make (you may improvise):

- "You know, you're lucky I am helping you. I am an important attorney and I am very busy. The faster you tell me what happened to you, the easier it will be for both of us."
- "I spoke to the prosecutor and police working on your case. They told me what happened to you, so no need to be shy – just tell me who did it."
- "It's OK, you can trust me. I'm not going to tell anyone what happened, but you need to talk to me, or nothing will happen. Justice must be served!"
- "I promise if you talk to me, you will feel better."
- "I promise, if you talk to me, your abuser will never hurt you again."

Child:

Posture: You are a 9-year-old child. You are demure and are traumatized by the abuse. You were recently interviewed by investigators, who yelled at you and also asked many personal and embarrassing questions. You do not understand the difference between the attorney in front of you and the other adults questioning you during the recent days, including the police. You are afraid of your abuser, who you believe has more power than any other adults. You are feeling scared and ashamed.

After observing the interaction between the child and the adult/attorney, ask participants how the attorney could have improved their approach to the first meeting. Ask the person role-playing the child how they felt with each statement/question. Ask participants to offer alternative strategies/approaches. You may even ask them to participate in a new role-play as the attorney.

Group Questions:

- What would you change or say differently in this scenario if you were the attorney?
- Why do you think the child was reluctant to answer questions? OR why do you think the child said "yes" so much?
[Here, be attentive to condemnatory language – the child did not "refuse" – they "declined" to speak]

GROUP ACTIVITY – IDENTIFY STRATEGIES TO BUILD RAPPORT WITH CHILD CLIENT (EMPHASISING FIRST MEETING).

- Sitting with a child – think about physical space and presence.
- Calmly explain your role and responsibilities and how your role is to advocate for the child and their needs.
- Tell the child about their rights – empowering them in this process.
- Explain confidentiality.
- Check in to make sure the child understands you.
- Avoid making promises you can't keep.

Do not assume the child does not want to see the abuser or views the abuser negatively – it might be a close family member. Discuss other ways to build trust and rapport with a child. Talk about other things - not just the case/abuse but also other interests the child may have.

Activity 15

This is a simple activity. The trainer should stand in front of the group and state, "We have all spent [insert # of hours in the same room so far] hours together. I am a trained attorney. I hope that at the very least, you are comfortable with me. Now, how many of you are willing to share your most intimate, embarrassing, or shameful experiences with me? If you agree to do this, please raise your hand."

Debrief: The purpose of this exercise is to demonstrate what we expect from children, particularly child clients of abuse, during a first interview, or even subsequent interviews. How does that compare to how willing, trained, adults feel about speaking about their personal details with a stranger or 'expert'?

Activity 16, Part 1

You are accompanying your client, a 13-year-old victim of sexual abuse by her teacher, to her first law enforcement interview with local detectives. When you arrive, the detectives ask you to wait outside the conference room so that they can speak to your client privately.

What do you do?

- ☐ *You assert your client's legal right to have you present during the interview*
- ☐ *You acquiesce and ask if you can sit outside the conference room*
- ☐ *You leave with your client*

Activity 16, Part 2

You are now in the conference room with your client and two detectives. After asking your client a few basic demographic questions, one of the detectives looks at your client and says, "You don't look like you are 13 – you look much older. I can see why the teacher likes you."

What do you do?

Discuss possible scenarios/responses.

REPRESENTING CHILD VICTIMS DURING COVID-19

The COVID-19 pandemic has made advocating for children's rights more important than ever before. The economic impacts of the crisis will affect children and families globally. UNICEF recently estimated that 170 million children might be missing out on receiving life-saving medical services due to disruption in services. Vulnerable and hard to reach children will not come back to school or receive essential services. Moreover, with widespread school closures and physical distancing measures, children and their families turn to digital platforms and solutions to support learning, socialisation, and play. While digital solutions provide huge opportunities for sustaining and promoting children's rights, these same tools may increase children's exposure to online risks, including exploitation.¹⁵⁵

Due to shelter in place and social distancing orders, child sexual abuse victims and child sexual abuse will have increased barriers in obtaining protections and services. The frequency of abuse will likely increase in this context. Those who are most vulnerable – children in residential care (incarcerated, orphan and vulnerable children, refugee/migrant children), children with disabilities, and those on the streets, are at acute risk of COVID-19 and other harms attributed to lack of social support networks.

This comes at a time when children are less visible to a range of professions who regularly engage with children, including teachers, pediatricians, community members, and faith leaders. Data from Digital Rights Foundation Pakistan's online harassment helpline suggests that cases of cyber harassment increased by 189% during Pakistan's COVID-19 lockdown during the months of March and April 2020.¹⁵⁶ In the United States, the National Center on Missing and Exploited Children estimates a 60% increase in child sexual exploitation. The Child Helpline in India reported receiving a 50% increase in calls during the first few weeks after the shelter in place orders in India. At the same time, there have been decreases in reports of child abuse to child protection agencies. This does not mean there is less abuse, only that there is less reporting of abuse due to more isolation. It is estimated that there will be an increase in reported cases once shelter-in-place and social distancing rules change.

There may be no more important time for attorneys for children to ensure that children's rights are protected than during a public health pandemic. COVID-19 should never be accepted as justification for why children should not have access to their counsel and protections afforded to them under local, provincial, and international crime victim laws. Below are considerations for attorneys representing children in the time of COVID-19.

REPRESENTING CHILD VICTIMS OF SEXUAL ABUSE UNDER COVID-19

During the COVID-19 pandemic, you may be required to conduct client interviews and advocacy via telephone or virtually. The following sections contain guidance on conducting virtual communications with your child client.

¹⁵⁵ *COVID-19 and its implications for protecting children online*, UNICEF (April 2020, available at <https://www.unicef.org/media/67396/file/COVID-19%20and%20Its%20Implications%20for%20Protecting%20Children%20Online.pdf>).

¹⁵⁶ *COVID-19 and Cyber Harassment*, DIGITAL RIGHTS FOUNDATION, available at <https://digitalrightsfoundation.pk/wp-content/uploads/2020/06/Covid-19.pdf> (last accessed 1 October 2020).

SECURITY AND CONFIDENTIALITY.

It is important to understand the security of the platforms you use to communicate with your client and maintain your client files. Different virtual tools to communicate with our client – Zoom, Google Meets, Skype, Facetime, WhatsApp, among others, have different levels of security and encryption. Attorneys must consider what platforms maintain client confidentiality. If you are not using a secure platform, the communication between you and your client may compromise attorney-client privilege. Involve experts at your organisation to ensure that the communication methods you use maintain the highest level of security to protect your client. To protect attorney-client privilege and the confidentiality and privacy of information shared between you and your client, you must evaluate the security and encryption of all the online platforms you use to communicate with your client. Share these policies and information with your client so that they understand the mechanisms in place to protect their privacy and confidentiality.

You should also talk to your client (and their caregiver) about the importance of speaking to you from a place of privacy. Your client must have a private, designated place to speak to you where others cannot hear your conversation. This may be challenging if there is no private place in the home or because the child is incarcerated or living in a congregate care setting. You may need to address confidentiality concerns and stress the importance of private communication with the administrators of a congregate-care setting or caregivers of the child (if in the home). Additionally, caregivers of children may not join your meetings; attorney-client privilege will be compromised. You should speak to your client and their caregiver(s) about this in advance and create a private communication plan. This may require transporting the child to another location, or for other accommodations to be made. Remind both your client and their caregiver as often as possible about the legal and ethical protections of attorney-client privilege.

CLIENT INTERVIEWS AND MEETINGS.

Given the limited social interactions children will have with adults during the COVID-19 pandemic, children will depend on their attorneys even more than before. Child crime victims must continue to access their legal rights during this time — particularly their right to counsel. Access to counsel may be complicated by facility policies for children in congregate care, shelter-in-place rules, and personal health circumstances. At a minimum, youth want to hear from their attorneys regularly and frequently. Depending on you and your client's health and local policies, you may be required to conduct client interviews and advocacy via telephone or virtually. Building rapport and gaining trust with child victims is challenging under any circumstances but doing so virtually will present additional challenges. It may be more challenging to read body language and subtle shifts in the conversation. It will be especially challenging for children who have difficulty looking at adults in the eye when spoken to. It may also be challenging to contact clients who are placed in congregate care facilities. Speak frankly about these challenges when speaking with your client.

In some cases, however, children may welcome and perhaps even find it easier to conduct interviews and meetings with you virtually. Flexibility will be key. Establish parameters for communication - a WhatsApp, Zoom, Skype or other platform meeting, on a regular basis. Similar to in-person client meetings create reliable, regular check-ins for consistency. You may even consider more frequent communication, given the limitations of in-person contact. This will help build rapport and trust with your client. Encourage your client to take breaks and ask questions.

Example of a first meeting: “Under normal circumstances, we would be meeting in my office in person. However, due to the coronavirus, we can’t meet in person to be safe. Even though we are speaking over a computer, everything we talk about is private. That means that I cannot share anything you tell me with anyone else without your permission.” “Do you have any questions? If at any point you need to stop or need a break, please let me know. If you want to ask a question, just raise your hand, or feel free to interrupt me (if via phone).”

Practice pointer for younger children: Some children, especially those who are younger or have developmental disabilities, may need additional tools to feel empowered during the interview. Consider non-verbal cues to help your client communicate virtually.



Example: Thumbs Up/Thumbs Down

“If I am saying something that you are not sure you understand or upsets you, you can tell me, or just show me a “thumbs down,” OK? Let’s practice. If you’re OK moving forward to the next question, you can show me a “thumbs up.” What do you think? Can we practice that now?”

Practice Pointer/Activities for Young Children: For younger children, you may want to begin the meeting with a game as an icebreaker to engage the child with you, especially for the first meeting. You can also ask the child to participate in the meeting with their favorite toy. Below are two activities you can use to begin an interview with a younger child.

Activity 1: Ask your client (or their caregiver) to have coloured pencils or crayons and paper with them during the interview (you should also have paper and crayons in front of you). Ask the child to identify a colour for feeling “scared,” (or “anxious” or “nervous” or “worried”) a colour for feeling “happy” and a colour for feeling “angry.” Ask them to fill a piece of paper with the colours that best represent how they feel. You do the same thing (colour a piece of paper with the same colours) at the same time and discuss the results. Ask to see their paper and show your client yours. Discuss the results and your client’s feelings. You can then segue/transition the conversation to the interview. “I can see that you are feeling mostly scared and angry. Tell me why you are feeling scared...”



Activity 2: In the United States, there is a common childhood game called “Simon Says,” which is a mimicking game that involves a “leader” named “Simon.” People take turns being the leader. When “Simon” says “raise your hands” (and “Simon” raises his/her hand), the others playing mimic Simon’s actions and raise their hands. If “Simon” says “touch your nose,” the other players must touch their nose, mimicking Simon. This game can help break the monotony of sitting in front of a screen and encourage play. It can also empower your client to take turns being the “leader” or “Simon.” Please feel free to modify this exercise as you see fit for your client, such as “Tipu Says.” Share the rules about “Tipu Says” (whatever I do, you do the same thing), and tell your client they will have a turn after you to be “Tipu.” “Tipu says, ‘Raise your hand.’ Tipu says, ‘touch your nose.’ ‘Tipu says, raise both hands.’” Then ask

your client/the child to be Tipu. This provides him/her an opportunity to be in control for some time, during a playful activity. Ask them if they liked the game and how they feel. Tell them you can play the game again at the end of the interview.

However, there may be situations where you need to see your client in person. Explore creative, safe, and confidential ways of seeing your client, including outdoor locations, or through a window or plexiglass, or other means.

Attorneys should also keep in mind that children have developmentally different concepts of time, and this should be a consideration when determining the frequency of your communication. Weeks of social isolation, lack of family contact, and/or quarantine will be experienced differently by a child versus an adult.¹⁵⁷ These developmentally different concepts of time are compounded by the stress of the unknown of how long these measures may last. Consider more frequent communication with your client to address these differences. Attorneys should ensure that children are connected to someone (the attorney or another trusted adult) who can help answer their questions about COVID-19, discuss the emotions they are experiencing, and help them sort fact from fiction. See local resources below.

COURT APPEARANCES.

Courts may have reduced and delayed schedules as a result of COVID-19. In some countries, there is no universal policy in how different court systems are treating cases. For example, in the United States, some are issuing blanket court closures, while others are prioritising essential services and moving to online platforms. It is advisable you consult with your local courts to identify their policies and practices under COVID-19. As possible, encourage courts to make individualised, case-by-case determinations, balancing public health considerations along with the safety and health of your client.

It is also important to know that your client's protections are not wholly dependent on a case moving forward within the criminal justice system against the perpetrator. Discuss options for safety planning, protections, and other remedies with your client and law enforcement partners. Currently, courts are working in difficult situations; lawyers should follow the instructions, SOPs, and directives issued periodically by the respective High Courts and Government to ensure the best interest and safety of the child.

SAFETY PLANNING WITH YOUR CLIENT.

Safety planning is thinking about things you can do to be safer when living with violence or abuse. It is important to help your client feel empowered to protect themselves online and in this new environment. Children should be informed about and feel empowered to seek help and support if they do not feel safe. Attorneys for child victims should consult with law enforcement and social service providers about creating a safety plan for the child.

Children at the Margins.

For child victim clients residing in congregate care (orphanage, residential facility, juvenile justice facility, facility for migrants) you should contact the congregate care staff to ensure

¹⁵⁷ DONALD N. DUQUETTE & ANN HARALAMBIE. CHAPTER 31: REPRESENTING CHILDREN AND YOUTH; IDENTIFYING PERMANENCY NEEDS AND PROTECTING IMPORTANT AFFILIATIONS, IN CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES, §31.6.1 (National Association of Counsel for Children, 3d ed. 2016).

children have access to the technology to have their needs met, as well as the ability to speak to you in private. Emphasise the legal rights your client has and your role in protecting them. Safety Planning Quick Tips.

- ✓ Identify and follow secure communication protocols. Ensure that your client communication is confidential and cannot be compromised.
- ✓ As the attorney, become familiar with local community support systems that may be available to your child – law enforcement, social service providers, community members, and family members. Talk to your client about these support systems, organisations, and individuals. Make sure your client knows how to contact these individuals as necessary.
- ✓ Empower your client to connect with positive social support networks. Ask your client to identify at least two adults they feel safe and comfortable with. Ensure that your client has a way to contact them/reach them if they feel unsafe.
- ✓ Create a “safe word” for the child to text to you and their social support network if they do not feel safe and need immediate assistance.
- ✓ Talk to your client (and their caregiver) about online safety and how to mitigate online risk. Increased online activity may expose children to age-inappropriate and potentially harmful content.



Practice Pointer For working with younger children:

You can use a similar exercise to the “Colouring Game” above to help your client identify people your client feels safe with for safety planning – “Pick a colour for one person you feel safe with. Write down their name in that colour. Now show me the name...” and do this again for another person.

BE SMART ONLINE



S

SAFE

Keep your personal information safe. When chatting or posting online don't give away things like your full name, password or home address. Remember personal information can be seen in images and videos you share too. Keep them safe to keep yourself safe.



M

MEET

Meeting up with someone you only know online, even a friend of a friend, can be dangerous as this person is still a stranger. If someone you only know online ever asks you to meet up, for personal information or for photos/videos of you then tell an adult straight away and report them together on www.thinkuknow.co.uk



A

ACCEPTING

Think carefully before you click on or open something online (e.g. links, adverts, friend requests, photos) as you never know where they may lead to or they may contain viruses. Do not accept something if you are unsure of who the person is or what they've sent you.



R

RELIABLE

You cannot trust everything you see online as some things can be out of date, inaccurate or not entirely true. To find reliable information compare at least three different websites, check in books and talk to someone about what you have found.



T

TELL

Tell a trusted adult if something or someone ever makes you feel upset, worried or confused. This could be if you or someone you know is being bullied online. There are lots of people who will be able to help you like your teachers, parents, carers or contact Childline – 0800 11 11 or www.childline.org.uk



BE SMART WITH A HEART

Remember to always be smart with a heart by being kind and respectful to others online. Make the internet a better place by helping your friends if they are worried or upset by anything that happens online.



WWW.CHILDNET.COM

LOCAL RESOURCES AVAILABLE IN RESPONSE TO COVID-19

- Child Helpline 1211. The Child Helpline – 1121 (accessible in Punjab, Sindh, and KP) provides prompt assistance and support to children subjected to violence, exploitation, abuse, and neglect, managed by the provincial child protection authorities. It is also utilised for the dissemination of information and guidance in respect of child rights.
- Ministry of Human Rights 1099. The Ministry of Human Rights operates the 1099 helpline to receive complaints regarding human rights violations in the country. The same helpline could be contacted by children or women who feel unsafe, face violence, or witness violence during lockdown or quarantine.
- Federal Investigation Helpline 9911. In the case of cybercrimes or child pornography, the Federal Investigation Agency can be contacted through its 9911 helpline or via email at helpdesk@nr3c.gov.pk.
<http://www.nr3c.gov.pk/rescue9911.html>
- Rozan Counseling Helpline. A free-of-cost telephonic, email, and in-person counseling service. The mission of Rozan is to raise awareness among the general population to reduce stigma associated with Mental Health Concerns and to reach out nationwide to individuals of every age, gender, or ethnic background facing any psychosocial complication in their life.

Rozan Helpline –0304-111-1741

<https://rozan.org/rozan-counseling-helpline/>
- Digital Rights Foundation Cyber Harassment Helpline 0800-39393. This Helpline aims to provide legal advice, digital security support, psychological counseling, and referral for online harassment victims. The Helpline will provide a judgment-free, private, and gender-sensitive environment for all its callers. <https://digitalrightsfoundation.pk>
- Sahil. Has launched an online self-help stress management program: <http://sahil.org/>
Direct Line for Counseling: +92-51-2850574

Other children’s support services, including emergency phone numbers, can be found through the new Victim Support Service Directory managed by the Ministry of Human Rights and Group Development Pakistan. <https://victimservicedirectory.org/>

INTERNATIONAL AND NATIONAL RESOURCES FOR ATTORNEYS REPRESENTING CHILDREN DURING COVID-19

- National Association of Counsel for Children, United States, COVID-19 Resource Hub: <https://www.naccchildlaw.org/page/CoronavirusCOVID-19>
- ABA Webinar, COVID-19 and Child Welfare Cases, April 9, 2020: https://www.americanbar.org/groups/crsj/events_cle/program-archive/covid-child-welfare/

PROMOTING STRONGER LAWS AND INSTITUTIONS

Through experience with direct legal representation of child sexual abuse victims, lawyers may identify ways in which the current laws and policies affecting the rights and protections of children, as well as the institutions tasked with implementing or enforcing them, may be lacking. Law enforcement or social services policies may inadvertently traumatise children further, or court procedures may be difficult for child sexual abuse victims and their families to navigate. Your first-hand knowledge of how the system works, what remedies are available, and whom the stakeholders are present opportunities to make meaningful changes on a broader scale.

Lawyers have several avenues outside of direct representation through which they can influence public policy. These include partnering with NGOs, advocating for improved legislation, conducting or participating in research, and collaborating with other advocacy and stakeholder groups or task forces on behalf of abused children.

PARTNERING WITH NGOS.

Nongovernmental organisations often have improvement of public policies within their missions. Child-focused NGOs can make strategic partners in elevating issues affecting the rights of sexually abused children. Lawyers can partner with NGOs to identify legal mandates and push for compliance with those mandates. For example, lawyers can partner with NGOs to advocate for compliance with the mandate to establish provincial Commissions for Children to monitor children's rights. NGOs can be strategic partners in compelling provincial decisionmakers to staff and resource the Commissions. Lawyers can also consult with and advise the Commissions to support their roles in addressing individual complaints, studying and advising on systemic issues related to children's rights, monitoring implementation of the Commission's recommendations, raising public awareness of violations of children's rights, or raising children's voice in policy deliberations. Child Rights Movement is a network of NGOs working on Child Rights Issues for collective advocacy.

LEGISLATIVE ADVOCACY.

Based on practical court experience, lawyers representing children also have a unique insight into needed changes in legislation. You can directly advocate for amendments to ensure sound public policies on issues affecting the rights of child victims and children's well-being. Lawyers can also partner with others to help draft language for suggested legislation so that solutions are legally sound and effective. In Pakistan, legislative advocacy has produced the recently passed Domestic Workers Act, 2019 in Punjab, notification by the Punjab Government to address the issue of corporal punishment in Punjab, the Transgender Persons (Protection of Rights) Act, 2018, and a Criminal Law Amendment to protect the rights of sexual assault victims, which was guided by the Supreme Court of Pakistan's judgment in response to the *Silman Akram Raja* writ petition.

RESEARCH.

Lawyers can participate in various efforts to study, develop, and change public policies. Universities often undertake studies of social issues such as the protection of children's rights and may examine the role of legal representation in protecting and promoting those rights. Other entities may also engage in similar research and welcome the guidance and participation of practicing attorneys in identifying the root causes of failures to protect those rights.

TASK FORCES AND COMMISSIONS: In addition to working with NGOs and others working on policy change, lawyers are well-positioned to sit on Task Forces and Commissions constituted by the courts or legislators, including those established by the government to inform public policy. Bringing your expertise and direct experience to bear on the discussions and inquiries undertaken by these bodies can focus their deliberations on the issues that can make the most impact for child victims of abuse. Different commissions formed by the courts on child rights, environment, and other public interest issues are a few examples of these commissions and task forces.¹⁵⁸ For example, in 2017, the Chief Justice of the Lahore High Court established a "child rights commission" to ensure protection and quality education of students with special needs.¹⁵⁹

Finally, lawyers are uniquely qualified to engage in impact litigation on behalf of children. Such strategic litigation involves taking a 'test case' to court to get a change in the law, set favorable precedent, or force a government to act. While remaining mindful of confidentiality rules and ethical obligations to individual clients, lawyers can take on cases with the potential for a broader impact on children's ability to access their rights. One such case involved protecting domestic workers brought to address violations of laws pertaining to violence against such workers. The Lahore High Court ordered the establishment of special courts and protection bodies to protect children working as household helpers and ordered strict compliance with laws prohibiting employment of children under 15.¹⁶⁰ Such public interest litigation can be a way to challenge human rights violations that affect many children and may be effective or necessary in those areas where traditional advocacy methods have failed to spur governmental action.

ENGAGING THE MEDIA

There are generally two ways children's attorneys can engage with the media on child sexual abuse issues: 1) Protecting your client's rights as a child victim-witness, and 2) Advocating for Children's Rights more broadly.

¹⁵⁸ *LHC forms eight-member smog commission*, DAWN (5 January 2018), available at <https://www.dawn.com/news/1380900>.

¹⁵⁹ *LHC forms commission on students with special needs*, THE NEWS INTERNATIONAL, available at <https://www.thenews.com.pk/print/259513-lhc-forms-commission-on-students-with-special-needs> (last accessed 1 October 2020).

¹⁶⁰ *LHC bans employment of children below 15 as domestic workers*, THE NATION (26 February 2019), available at <https://nation.com.pk/26-Feb-2019/lhc-bans-employment-of-children-below-15-as-domestic-workers>.

PROTECTING YOUR CLIENT'S RIGHTS AS A CHILD VICTIM-WITNESS.

As discussed earlier, under international and Pakistani law, child victim-witnesses have a right to privacy. Therefore, it is important that no identifying information is publicly available during the criminal justice process at any stage.

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 a video link or using screens. Information relating to trials conducted in camera cannot be printed, published, or broadcast without the Court’s permission.¹⁶¹

In addition, the child victim/witness’s privacy can be ensured via the following means enshrined in Pakistani law:¹⁶²

- Removal from any public document, release or record any information that may help people to locate/identify the child victim/witness;
- Strictly banning any lawyer (defence and prosecution), court staff, police officers, support persons, psychologists, 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;
- Issuing an order for all materials (documents, photos, addresses), which may help in identifying the child, to be strictly confidential until the Court allows otherwise;
- Taking measures to hide the physical appearance of the child victim/witness when he/she gives testimony by:
 - Using technology that changes the victim/witness’s voice and his/her image, if he/she is testifying through a video linkage;
 - Hiding the child victim/witness from people’s view using a screen, shield, or glass through which one can only see on one side;¹⁶³
 - Using another room to give the testimony and then presenting the testimony in the courtroom through a video linkage, or putting the accused and the child in two different rooms connected via video linkage;¹⁶⁴ and

¹⁶¹ Criminal Law (Amendment) (Offences Relating to Rape) Act (2016), S. 13; Code of Criminal Procedure, 1898 (Act V of 1898), S. 352; PLJ 2013 SC 107 (holding [t]rials for rape should be conducted in camera and after regular Court hours).

¹⁶² Sindh Witness Protection Act, 2013; Punjab Witness Protection Act, 2018

¹⁶³ PLJ 2013 SC 107 (holding in rape cases, “[d]uring a trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons”).

¹⁶⁴ PLJ 2013 DC 107 (holding “[e]vidence 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”).

- Ensuring hearings/sessions in the Court (hopefully a child court) are closed to the 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).



Practice pointer

As the child's attorney, consult with law enforcement (both investigators and prosecutors) immediately to ensure the child's privacy is being maintained. Advise all stakeholders to protect the child's privacy and remind them not to disclose any identifying information about the child. You should ensure that prosecutors are using pseudonyms to identify your client in any complaints or public records. Additionally, if there is a trial, advocate for a closed trial to the media. Cite to relevant laws and statutes as necessary to support your request to close the trial to the public.

You can also advise the prosecutor working on your client's case that all media inquiries about the child can be referred to you as the child's legal representative. This can be mutually beneficial – it can help offset media attention away from prosecutors so they can focus on the case and provide you more control about what is shared about your client. Generally, you should not disclose any information about your client. You can make general statements such as "it is important to protect the privacy and confidentiality of all child crime victims."

You should also protect your client from any requests for interviews or media attention, particularly during an active investigation or prosecution. While your client has a right to share their story and their voice, discussing the case with the media may compromise the criminal justice case and possibly impeach your client. Generally, child crime victims' identities and stories should be private and confidential. You may talk to your client about this in advance and prepare them for the possibility of media outlets trying to talk to them about the case. Advise them to not discuss any details, nor confirm their identity.

ADVOCATING FOR CHILDREN'S RIGHTS AND THE MEDIA.

An important role you have as a children's attorney is educating the public about children's rights. You can accomplish this in many forms – writing and publishing papers, articles, and opinion pieces on children's rights issues. You can submit reports and statements to groups and individuals appointed to protect children's rights in Pakistan, such as the Chairperson of the National Commission on the Rights of the Child. You can educate the public about specific laws and protocols (see CRC Concluding Observations on the Fifth Periodic Report of Pakistan under the Optional Protocol on the Sale of Children)¹⁶⁵ and Pakistan's obligations under them, as many individuals, including criminal and juvenile justice officials, may not be aware of these important legal instruments. As someone with experience working with child victims, you have the credibility and experience to educate the public about children's rights and advocate for their rights and protections via a public forum. You can:

¹⁶⁵ Convention on the Elimination of All Forms of Discrimination against Women, *Concluding observations on the fifth periodic report of Pakistan*, U.N. Doc. CEDAW/C/PAK/CO/5 (10 March 2020) (One of the concluding observations (or recommendation) by the UN CRC for Pakistan is to "Raise awareness of the Convention, in collaboration with the media and civil society, with particular emphasis on the concept of substantive equality").

1. Request the media not use images of children in reporting on sexual abuse or violence against children.
2. Address common stereotypes and misconceptions and promote greater awareness and advocacy on behalf of child crime victims.

Example. A local newspaper publishes an article about a sex trafficking case and refers to child victims as “prostitutes” and “juvenile prostitutes.” This characterisation violates the victim status and rights of children who are sexually trafficked and exploited. You can write to the editor and author of the article explaining why it is important to refer to children in these cases as “victims” and cite research and international and national laws and policies as support. Use simple, jargon-free language that journalists can apply to their work.

Example. A director of a local orphanage for boys is being charged with sexual abuse and neglect of its wards. A local radio station is discussing the case and is dismissive of harm occurring to any boys. They invite experts to come on later in the week to discuss the case. You volunteer to participate and discuss scientific research about how boys are also vulnerable to abuse, and it is important to protect all children. You can share that any form of child sexual abuse against any child, male or female, results in long-term physical, psychological, and social consequences for both girls or boys as well as their families and communities. This includes increased risks for illness, unwanted pregnancy, psychological distress, stigma, discrimination, and difficulties at school.

Example. A local newspaper has published a story about a local child abuse case and included a photo of the child victim they found via social media. You can contact the newspaper and advocate for them to remove the photo, asserting the child’s legal rights, under both Pakistani and international law, including privacy. This can be an opportunity also to discuss UNICEF guidelines¹⁶⁶ for reporting on children’s issues, advising that children should not be identified, either visually or by name, if they are:

- victims, or perpetrators, of sexual exploitation;
- charged or convicted of a crime;
- current or former combatants; or
- HIV positive.



Practice pointer

Remember to never use any identifying information about your clients or their cases in your media advocacy or any public format. It is confidential, privileged information.

¹⁶⁶ *Promoting Child’s Rights, Ethics of Representation*, UNICEF (2015), available at http://www.unicefinemergencies.com/downloads/eresource/docs/3.1%20Media%20and%20Communications/UNICEF_8QuickSteps_Ethical_Imagery_v2015-1.pdf.

You can also bring attention to gaps in policies and laws as they address the rights of children. In your work advocating on behalf of children, you may discover certain issues that need more attention. For example, you may discover that certain schools do not have adequate policies to respond to abuse occurring in the school. This could be an opportunity for you to report issues to local and international bodies tasked with overseeing and protecting children's rights.

Activity 17

Your client, Aamira, is a 14-year-old survivor of sex trafficking. She was found in a brothel in the city of Peshawar with several other adolescent girls and women. The brothel owner has been charged with sex trafficking and is currently detained in prison while the investigation proceeds. The case has made national headlines, as a frequent patron of the brothel is a well-known and beloved politician ("The Politician") from a neighboring province. The Politician also has a business relationship with the brothel owner and is trying to influence law enforcement to drop the charges. He claims all the girls in the brothel were "consenting adults," or that "they are all lying" to receive attention and payment from tabloids. Aamira testified in court as a victim-witness and described The Politician in detail, including unique physical traits, as well as the violence and harm he caused to the children and women in the brothel.

You receive a call from a journalist working for a national newspaper. She states, "Hello, I have been told by the prosecutor that you are the lawyer for Victim 'X' who testified against The Politician in court this morning. I'd like to speak to your client, so she has the opportunity to tell the truth about what happened."

What should you do?

The next day, you read an article in the newspaper quoting one of the investigators in the case, who names your client, Aamira, by name. Aamira immediately receives death threats and threatening phone calls and texts.

What do you do?

HANDOUTS AND ACTIVITIES

DEFINITION OF “CHILD” – ACTIVITY 18

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 labour		
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 HUDOOD) 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 BALUCHISTAN 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 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

Questions for the Activity:

- ☐ Specify any three rights from the Constitution of Pakistan, which particularly mention children.
- ☐ What section of the Pakistan Penal Code deals with child pornography, and what is child pornography?
- ☐ What is the punishment for the offence of Exposure to Seduction according to the Pakistan Penal Code?
- ☐ What acts are punishable under Section 377-A of the Pakistan Penal Code?
- ☐ What is the punishment for Child Sexual Abuse under Section 377-B?
- ☐ What section of the PPC prohibits the forced marriage of a child and non-Muslim?
- ☐ A man who has sexual intercourse with a woman under 16 years with her consent is said to commit rape. Yes or No?
- ☐ Section 366A prohibits the procurement of a girl. What is the age of a girl defined in this section?
- ☐ Under Section 365-B of PPC, what is the punishment for kidnapping, abducting, or inducing a woman to compel marriage, etc.?
- ☐ Which article of the Constitution recommends positive discrimination for women and children? Article-14, Article 25-A or Article 25-(1)?

- ☐ What section of the PPC applies to the offence of the importation of a girl from a foreign country?

- ☐ Which section of the Prevention of Electronic Crimes Act, 2016, deals with child pornography?

- ☐ Who can report for removal, destruction of, or blocking access to information prohibited under the Prevention of Electronic Crimes Act 2016?

- ☐ Who is empowered to lodge a First Information Report (F.I.R) under the Prevention of Electronic Crimes Act, 2016?

- ☐ Who has jurisdiction to lodge an F.I.R. for the offence of Child Pornographic Material under Section 292-B of the PPC? Police or FIA?

- ☐ When two or more persons commit rape in furtherance of a common intention, what is the punishment for this act? Under what section of the PPC?

- ☐ 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?

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 Sections 354A, 376, 376A, 377, or 377B PPC		Disclosure of the identity of a victim of rape is also prohibited
5	Rape of a minor or person with mental or physical disability shall be punished with		Sections 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 Sections 354A, 376, 376A, 377, or 377B PPC		Shall be concluded in 6 months
8	A DNA test is compulsory in offences		Under Sections 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 8 Handout:

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.

In May 2018, the President of Pakistan approved the Juvenile Justice System Act (JJSA), 2018. The purpose was to overcome the shortcomings in the Juvenile Justice System Ordinance, 2000, and provide a child-friendly justice system and social reintegration opportunities for juvenile offenders. The law consists of 25 important sections.

It has defined important terms as follows:

- **“Best interest of the child”** means the basis for any decision taken regarding the child to ensure fulfillment of his basic rights and needs, identity, social well-being, physical, emotional, and psychological development;
- **“Child”** means, for the purposes of this Act, a person who has not attained the age of 18 years;
- **“Diversion”** means an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, economic, psychological, and educational background without resorting to formal judicial proceedings;
- **“Heinous offence”** for the purposes of this Act means an offence which is serious, gruesome, brutal, sensational in character or shocking to public morality and which is punishable under any law for the time being in force with death or imprisonment for life or imprisonment for more than seven years with or without fine;
- **“Juvenile Rehabilitation Centre”** means a place where a juvenile may be kept and given education, vocational or technical training for his mental, moral and psychological development and includes certified institutions, juvenile training institutions, borstal institutions, vocational centres, *dar-ul-amaan*, and women crises centres established by the Government or by voluntary Organisation certified by the Government;
- **“Major offence”** for the purposes of this Act means an offence for which punishment under any law for the time being in force is more than three years and up to seven years imprisonment with or without fine;
- **“Minor offence”** for the purposes of this Act means an offence for which maximum punishment under any law for the time being in force is imprisonment up to three years with or without fine;
- **“Observation home”** means a place where a juvenile is kept temporarily after being apprehended by police as well as after obtaining remand from the Juvenile Court or otherwise for conducting inquiry or investigation for the purposes of this Act;
- **“Probation officer”** means a person appointed under the Probation of Offenders Ordinance, 1960 (XLV of 1960); and
- **“Suitable person”** means any person, trust, association, or society duly recognised by law whose object is the welfare and protection of children.

Salient features of this law include:

The JJSA 2018 guarantees every juvenile defendant or child victim a right to legal assistance at the State's expense. A juvenile shall be informed of this right to legal assistance within 24 hours of being taken into custody.

The JJSA 2018 classifies the criminal offences into three different categories: MINOR< MAJOR< HEINOUS. Section 6 prescribes different bail provisions for juveniles according to this defined classification.

- 1) **Minor offence:** 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 Bail:** A juvenile shall also be granted bail in major offences with or without surety bonds by Juvenile Court.
- 3) **Heinous offence:** A juvenile of less than 16 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. A Juvenile shall be released on bail if he has been detained for a continuous period exceeding six months and whose trial has not been completed.

Determination of age mechanism: The JJSA 2018 makes it compulsory upon the ranking officer-in-charge, or the investigation officer, to enquire as to the age of an alleged offender who physically appears or claims to be a juvenile. Age shall be determined on the basis of the accused person's birth certificate, educational certificates, or other pertinent documents. In the absence of such documents, an accused person's age may be determined based on a medical officer's examination report. When an accused person who physically appears to be or claims to be a juvenile for purposes of this Act is brought before a Court under Section 167 of the Code, the Court, before granting further detention, shall record its findings regarding age-based on available records, including the report submitted by the police or medical examination report by a medical officer.

Interrogation: A juvenile shall be interrogated by a police officer not below the rank of Sub Inspector under the supervision of Superintendent of Police/SDPO. I.O shall be assisted by a Probation Officer or a Social Welfare Officer notified by the Government to prepare a Social Investigation Report to be annexed with the report prepared under Section 173 of the Code.

Report of Probation Officer: The Probation Officer shall assist and prepare a report on the direction of the Juvenile Court within such time as may be directed by the Court at any stage regarding the juvenile's character, educational, social, and moral background. This report will be considered confidential. The court may rely on it for release of the juvenile, community service, fines, compensation to the victim or complainant, restitution of property, counseling, to be released on probation for good conduct or placement under the care of a guardian or any suitable person or such Juvenile Rehabilitation Centre.

Disposal of cases through diversion: This is an alternative process of determining a juvenile's responsibility and treatment. The complaint against a juvenile shall be referred to the Juvenile Justice Committee (at any stage trial or investigation) for disposal through diversion. All offences, either minor or major, shall be compoundable for the purpose of diversion. For major offences, diversion can only be exercised if the juvenile's age is not more than 16 years.

Juvenile Justice Committee shall dispose of cases through diversion within a period of one month from the date of the referral. The Committee shall dispose of a case with the consent of the complainant by resorting to different options, including restitution of movable property, reparation of the damage caused, written or oral apology, participation in community service, payments of fine and costs of the proceedings, placement in a juvenile rehabilitation centre; and written and oral reprimand.

The Juvenile Justice Committee consists of four members, including a serving Judicial Magistrate with powers under Section 30 (Head of Committee); District Public Prosecutor, Member of local Bar, having at least seven years experience; serving probation officer or

social welfare officer. With the Head's prior permission or on a court order, any member of the Committee may visit the Juvenile Rehabilitation Centre for the inspection purpose.

Separate Challan and Trial of Juvenile Offenders: A juvenile shall not be charged with and tried for an offence together with an adult person. But if it is in the interests of justice to hold a joint trial of a juvenile and an adult, the Juvenile Court may dispense with the physical presence of the juvenile, and they may be allowed to join the Court proceedings through audio-visual technology link.

The imposition of a penalty for disclosure of the identity of juvenile or to publish proceedings of juvenile court: The JJSA 2018 exclusively bars revealing the identity of an accused juvenile to the public without the authorisation in writing of the juvenile or their next-of-kin. The S.H.O, investigating officer, or the Juvenile Court can also grant permission in this regard. In case of violation, the punishment may be imprisonment for up to three years.

Special provisions for female juveniles: Female juveniles shall not, in any circumstances, be apprehended or investigated by a male police officer or released on probation under the supervision of a male officer. A female juvenile shall only be kept in a Juvenile Rehabilitation Centre established or certified exclusively for female inmates.

- **Removal of disqualification attached with conviction.**
- **No Preventive Detention.**

BASIC PRINCIPLES ON THE ROLE OF LAWYERS

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation, and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper

restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.”

ACCESS TO LAWYERS AND LEGAL SERVICES

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities, and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary, call upon the assistance of lawyers.

SPECIAL SAFEGUARDS IN CRIMINAL JUSTICE MATTERS

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case, not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a

lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

QUALIFICATIONS AND TRAINING

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

DUTIES AND RESPONSIBILITIES

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

- (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
- (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
- (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

GUARANTEES FOR THE FUNCTIONING OF LAWYERS

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad;

and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

FREEDOM OF EXPRESSION AND ASSOCIATION

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

PROFESSIONAL ASSOCIATIONS OF LAWYERS

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

DISCIPLINARY PROCEEDINGS

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.
26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.
27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.
28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.
29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

GUIDELINES ON JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIME

I. Objectives

1. The present Guidelines on Justice for Child Victims and Witnesses of Crime set forth good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.
2. The Guidelines should be implemented in accordance with relevant national legislation and judicial procedures as well as take into consideration legal, social, economic, cultural and geographical conditions. However, States should constantly endeavour to overcome practical difficulties in the application of the Guidelines.
3. The Guidelines provide a practical framework to achieve the following objectives:
 - (a) To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child, by parties to that Convention;
 - (b) To assist Governments, international organizations, public agencies, non-governmental and community based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;
 - (c) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
 - (d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.
4. In implementing the Guidelines, each jurisdiction should ensure that adequate training, selection and procedures are put in place to protect and meet the special needs of child victims and witnesses of crime, where the nature of the victimization affects categories of children differently, such as sexual assault of children, especially girls.
5. The Guidelines cover a field in which knowledge and practice are growing and improving. They are neither intended to be exhaustive nor to preclude further development, provided it is in harmony with their underlying objectives and principles.
6. The Guidelines could also be applied to processes in informal and customary systems of justice such as restorative justice and in noncriminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.

II. Special considerations

7. The Guidelines were developed:

- (a) Cognizant that millions of children throughout the world suffer harm as a result of crime and abuse of power and that the rights of those children have not been adequately recognized and that they may suffer additional hardship when assisting in the justice process;
- (b) Recognizing that children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs;
- (c) Recognizing that girls are particularly vulnerable and may face discrimination at all stages of the justice system;
- (d) Reaffirming that every effort must be made to prevent victimization of children, including through implementation of the Guidelines for the Prevention of Crime;
- (e) Cognizant that children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses;
- (f) Recalling that the Convention on the Rights of the Child sets forth requirements and principles to secure effective recognition of the rights of children and that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power sets forth principles to provide victims with the right to information, participation, protection, reparation and assistance;
- (g) Recalling international and regional initiatives that implement the principles of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including the *Handbook on Justice for Victims* and the *Guide for Policy Makers on the Declaration of Basic Principles*, both issued by the United Nations Office for Drug Control and Crime Prevention in 1999;
- (h) Recognizing the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice for child victims and witnesses of crime;
- (i) Considering that improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process;
- (j) Recalling that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders;
- (k) Bearing in mind the variety of legal systems and traditions, and noting that crime is increasingly transnational in nature and that there is a need to ensure that child victims and witnesses of crime receive equivalent protection in all countries.

III. Principles

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

- (a) *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;
- (b) *Non-discrimination*. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;

(c) *Best interests of the child*. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:

(i) *Protection*. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;

(ii) *Harmonious development*. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;

(d) *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.

IV. Definitions

9. Throughout these Guidelines, the following definitions apply:

(a) “Child victims and witnesses” denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders;

(b) “Professionals” refers to 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;

(c) “Justice process” encompasses detection of the crime, making of the complaint, investigation, prosecution and trial and posttrial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice;

(d) “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.

V. The right to be treated with dignity and compassion

10. 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.

11. Every child should be treated as an individual with his or her individual needs, wishes and feelings.

12. Interference in the child's private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process.

13. In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.

14. All interactions described in these Guidelines 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.

VI. The right to be protected from discrimination

15. Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child's, parent's or legal guardian's race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.

16. The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.

17. In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.

18. 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.

VII. The right to be informed

19. Child victims and witnesses, their parents or guardians and legal representatives, 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:

- (a) 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;

- (b) The procedures for the adult and juvenile criminal justice process, 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;
- (c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
- (d) The specific places and times of hearings and other relevant events;
- (e) The availability of protective measures;
- (f) The existing mechanisms for review of decisions affecting child victims and witnesses;
- (g) The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

20. In addition, child victims, their parents or guardians and legal representatives should be promptly and adequately informed, to the extent feasible and appropriate, of:

- (a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case;
- (b) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes.

VIII. The right to be heard and to express views and concerns

21. Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by:

- (a) Ensuring that child victims and where appropriate witnesses are consulted on the matters set forth in paragraph 19 above;
- (b) Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;
- (c) Giving due regard to the child’s views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

IX. The right to effective assistance

22. Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training as set out in paragraphs 40 to 42 below. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other 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.

23. In assisting child victims and witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.

24. Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.

25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:

- (a) Child victim and witness specialists to address the child's special needs;
- (b) Support persons, including specialists and appropriate family members to accompany the child during testimony;
- (c) Where appropriate, to appoint guardians to protect the child's legal interests.

X. The right to privacy

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.

27. Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.

28. Measures should 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, where permitted by national law.

XI. The right to be protected from hardship during the justice process

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.

30. Professionals should approach child victims and witnesses with sensitivity, so that they:

- (a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;
- (b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. 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 in contact with them throughout the process;
- (c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;

(d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, 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.

31. Professionals should also implement measures:

(a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;

(b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;

(c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

XII. The right to safety

32. 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 such risk before, during and after the justice process.

33. Professionals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed or is likely to be harmed.

34. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include:

(a) Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process;

(b) Using court-ordered restraining orders supported by a registry system;

(c) Ordering pre-trial detention of the accused and setting special "no contact" bail conditions;

(d) Placing the accused under house arrest;

(e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

XIII. The right to reparation

35. 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.

36. Provided the proceedings are child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.

37. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.

XIV. The right to special preventive measures

38. In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.

39. Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks that child victims may be victimized further. These strategies and interventions should take into account the nature of the victimization, including victimization related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking. The strategies may include those based on government, neighbourhood and citizen initiatives.

XV. Implementation

40. Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and witnesses.

41. Professionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services.

42. This training should include:

- (a) Relevant human rights norms, standards and principles, including the rights of the child;
- (b) Principles and ethical duties of their office;
- (c) Signs and symptoms that indicate crimes against children;
- (d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
- (e) Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;
- (f) Special measures and techniques to assist child victims and witnesses in the justice process;

- (g) Cross-cultural and age-related linguistic, religious, social and gender issues;
- (h) Appropriate adult-child communication skills;
- (i) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;
- (j) Skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner;
- (k) Methods to protect and present evidence and to question child witnesses;
- (l) Roles of, and methods used by, professionals working with child victims and witnesses.

43. Professionals should make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel working in the same location.

44. International cooperation should be enhanced between States and all sectors of society, both at the national and international levels, including mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims and witnesses.

45. Professionals should consider utilizing the present Guidelines as a basis for developing laws and written policies, standards and protocols aimed at assisting child victims and witnesses involved in the justice process.

46. Professionals should be enabled to periodically review and evaluate their role, together with other agencies in the justice process, in ensuring the protection of the rights of the child and the effective implementation of the present Guidelines.

*36th plenary meeting
22 July 2005*

CHECKLIST FOR INTERVIEWING AND QUESTIONING CHILDREN

Developed by Anne Graffam Walker, Revised February 1994, 2013.

1) FRAMING THE EVENT

- ☐ Did I tell the child my name and what my job is – in nontechnical words?
- ☐ Did I help the child become familiar with the surroundings of the interview?
- ☐ Did I tell the child the purpose of our talk, why it is important, and what will happen afterward?
- ☐ Did I give the child a chance to ask me questions about this talk?
- ☐ Did I ask the child to narrate fully on a neutral event? Did I try to establish a common vocabulary for the things we talk about? Was I listening to the kind of words and sentences the child used?

2) USING CLEAR LANGUAGE

- ☐ Did I use easy words instead of hard ones?
- ☐ Did I avoid legal words and phrases?
- ☐ Did I use words that mean one thing in everyday life but another thing in law (like “court”)?
- ☐ Did I assume that because a child uses a word, he or she understands the concept it represents?
- ☐ Was I as redundant as possible? That is, did I use specific names and places instead of pronouns?

3) ASKING THE QUESTIONS

- ☐ Did I keep my questions and sentences simple? Did I try for one main (new) thought per utterance?
- ☐ Did I void asking “DUR X” questions? (Questions that begin, “Do you remember,” followed by one or more full propositions.)
- ☐ When I shifted topics, and when I moved from the present to the past or vice versa, did I alert the child I would do so?
- ☐ Did I give the child the necessary help in organising his or her story?
- ☐ Did I avoid asking the child about abstract concepts, like, “What is the difference between truth and lies?” did I choose instead to give the child every day, concrete examples and let him or her demonstrate, rather than articulate knowledge or abstract concepts, right and wrong?

- ☐ Did I use as few negatives as possible in the questions I asked?

4) LISTENING TO THE ANSWERS

- ☐ Were the child's RESPONSES to my questions ANSWERS to my questions? Am I sure?
- ☐ If the child's answers were inconsistent, did I ask myself if:
 - I, or someone else, had asked the same question repeatedly?
 - I had changed the wording of a question I had asked before?
 - I was forgetting that children can be very literal in their interpretation of language?
 - The child's processing of language might not be as mature as mine?

5) GLOBAL CHECKS

- ☐ Did I stay in the child's world by framing my questions regarding the child's experience?
- ☐ Did I take the child's understanding of the language for granted?
- ☐ Was I listening to my OWN language, my OWN questions?
- ☐ Did I ask myself before I began: Am I gathering information, or am I doing therapy?
- ☐ Did I question my assumptions and test my hypotheses?

2020 S C M R 590**[Supreme Court of Pakistan]****Present: Qazi Faez Isa and Sardar Tariq Masood, JJ****ZAHID and another---Petitioners****Versus****The STATE---Respondent**

Jail Petition No. 712 of 2018, decided on 3rd March, 2020.

(On appeal against the judgment dated 12.09.2018 passed by the Sindh High Court, Circuit Court, Hyderabad in CrI. A. No. S-47 of 2018)

(a) Penal Code (XLV of 1860)---

----S. 376---Rape---Reappraisal of evidence---First Information Report (FIR) registered a day after the crime---Delay immaterial---Fact that the modesty of a married woman was violated by sexual assault made understandable the apprehension of the victim and her family in approaching the police immediately---Delay in reporting the crime to the police in respect of an offence involving a person's honour and reputation and which society may view unsympathetically could prey on the minds of a victim and her family and deter them to go to the police---In the present case, the delay in registering FIR could also be explained because the victim and her family had elected for her medical treatment---Conviction and sentences of accused persons were maintained---Petition for leave to appeal was dismissed.

(b) Penal Code (XLV of 1860)---

----S. 376---Rape---Reappraisal of evidence---Medical report of victim suggesting rape---Victim was examined on the day of the crime by a lady doctor, who testified that there were some marks of violence on the victim: nail marks on her right and left cheeks and swelling on her right forearm, suggesting that the victim was forced and restrained; and that, "the presence of human sperm in internal vaginal swabs constitutes the likelihood of sexual intercourse"---Victim herself testified about the sexual assault on her by the accused persons, but was not cross-examined on this part of her testimony---No suggestion was put forth to the effect that the complainant or the victim had any animosity or ill will against the accused persons---Conviction and sentences of accused persons were maintained---Petition for leave to appeal was dismissed.

(c) Penal Code (XLV of 1860)---

----S. 376---Rape---Reappraisal of evidence---DNA report, absence of---Lack of DNA report was not sufficient to secure acquittal where there was substantial corroboratory evidence to secure conviction beyond reasonable doubt.

Ms. Ayesha Tasneem, Advocate Supreme Court for Petitioner.

Mrs. Rahat Ahsan, Additional P.-G. Sindh for the State.

Date of hearing: 3rd March, 2020.

JUDGMENT

QAZI FAEZ ISA, J. FIR No. 311/2017 was registered at Police Station Taluka Tando Muhammad Khan on 28th October 2017 at 5.10 p.m. in respect of the rape of a married lady. Zahid and Riaz Ali, the petitioners herein and Muhammad Nadeem were nominated in the FIR. The learned Judge of the Trial Court convicted all three nominated accused under section 376 read with section 34 of the Pakistan Penal Code ("PPC") and sentenced them to ten years' rigorous imprisonment each and on each of them imposed a fine of fifty thousand rupees and in default of payment of fine to undergo six months' simple imprisonment; they were however extended the benefit of section 382-B of the Code of Criminal Procedure ("the Code"). The appeal preferred by the petitioners against their conviction was dismissed by the learned Judge of the High Court who maintained the conviction and sentences awarded to them. However, the appeal of Muhammad Nadeem was allowed and he was acquitted because the lady testified that he had not violated her.

2. In this jail petition the petitioners were unrepresented, therefore, on the last date of hearing, we had appointed Ms. Ayesha Tasneem, learned ASC, to represent the petitioners at State expense. The learned counsel for the petitioners states that the crime is stated to have taken place on 27th October 2017 at 12 noon but was reported to the police the following day at 5.10 pm. She further states that no DNA report was prepared and that the person who took the specimens, including the vaginal swabs taken from the victim, was not produced as a witness.

3. The learned Additional Prosecutor General ("APG") opposes the petition and states that delay in rape cases is not of much significance as victims are reluctant to come forward to report the crime to the police and in this regard places reliance upon the cases of Yasmin Butt v. Majid Baig¹ and The State v. Abdul Khaliq². The learned APG states that there was sufficient evidence against the petitioners and after careful examination of the evidence the Trial Court had convicted the petitioners and the High Court had maintained the conviction. The learned APG refers to the report of the chemical examiner (Exhibit 10/C) which confirms the presence of human sperm on the articles that were sent for chemical examination. The learned APG further contends that the medico legal certificate (Exhibit 10/D) provided by Dr. Shahida Qayyum, Women Medical Officer, supports the allegation of rape. She has also referred to the testimony of the victim (PW-3) which, according to her, fully implicated the petitioners, however, with regard to the third co-accused (Muhammad Nadeem) the victim stated that he had not violated her. The learned APG further states that during cross-examination no question with regard to the rape was put to the victim and in the statements of the petitioners recorded by the Court under section 342 of the Code, they had simply denied the allegation without alleging any animosity of the victim or the complainant of the FIR, who is the victim's husband, namely Muhammad Ali (PW-2), against them. She further states that the petitioners also elected not to testify on oath under section 340(2) of the Code.

4. We have heard the learned counsel for the parties and with their assistance examined the record.

5. Undoubtedly, the FIR was registered after a day of the crime having been committed, however, the fact that the modesty of a married woman was violated by sexual assault makes understandable the apprehension of the victim and her family in approaching the police immediately. Delay in reporting the crime to the police in respect of an offence involving a person's honour and reputation and which society may view unsympathetically could prey on the minds of a victim and her family and deter them to go to the police. In the case of Hamid Khan v. State³ a delay of three days in reporting the crime to the police was considered immaterial. In the present case the delay could also be explained because the victim and her family had elected for her medical treatment. The victim was examined on the day of the crime by Dr. Shahida Parveen (PW-4). The lady doctor (PW-4) also testified that there were some marks of violence on the victim: nail marks on her right and left cheeks and swelling on her right forearm, suggesting that the victim was forced and restrained; and that, "the presence of human sperm in internal vaginal swabs constitutes the likelihood of sexual intercourse." The victim (PW-3) herself testified about the sexual assault on her by the petitioners, but was not cross-examined on this part of her testimony. The chemical examiner's report produced by the lady doctor states that the seals of specimens sent for chemical examination were received intact and it was the chemical examiner who had broken open the seals, therefore, the contention of the petitioners' learned counsel regarding the safe transmission of the specimens is discounted both by this fact as well as by the fact that no question was put regarding tampering of the said seals. As regards the absence of DNA report, this is not sufficient to secure an acquittal because there was substantial corroboratory evidence to secure the conviction of the petitioners beyond reasonable doubt.

6. The learned Judge of the Trial Court after a careful examination of the evidence convicted the petitioners and also convicted co-accused, Muhammad Nadeem, however the learned Judge of the High Court acquitted him because the victim herself had stated that he did not rape her. However, the acquittal of co-accused Muhammad Nadeem does not bring the case of the present petitioners at par with his because they had sexually assaulted the victim but the co-accused Muhammad Nadeem had not done so. The learned Judge of the High Court was therefore correct to maintain the conviction of the petitioners. We also do not see any reason why the victim and her husband would falsely nominate the petitioners and bring upon themselves societal odium; in any event no suggestion was put forth to the effect that the complainant or the victim had any animosity or ill will against the petitioners. We are therefore satisfied that the petitioners were properly convicted. In our opinion the petitioners were dealt with leniently with regard to their sentences, but since neither the victim nor the State has sought enhancement of sentence, we are not considering this aspect of the case. Consequently, leave to appeal is declined and this petition is dismissed.

MWA/Z-5/SC Petition dismissed.

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P L D 2020 Islamabad 28**Before Mohsin Akhtar Kayani, J****Mst. ALISHBA BIBI---Petitioner****Versus****The STATE and 7 others---Respondents**

Writ Petition No.1711 of 2019, decided on 25th June, 2019.

(a) Child Marriage Restraint Act (XIX of 1929)---

---Ss. 2, 4, 5, 6 & 8---Penal Code (XLV of 1860), Ss.365-B & 109---National Commission on Status of Women Act (VIII of 2012), Chap.II, S.4 & Chap. III, S.11---Criminal Procedure Code (V of 1898), S.164---Constitution of Pakistan, Arts.36 & 199---Habeas Corpus petition---Kidnapping for compelling to marry---Age of abductee, determination of---Freewill---Proof---Magistrate, powers of---Petitioner sought recovery of her daughter who was allegedly a minor of 12 years of age and was entered into forced conversion and marriage with one of accused---Abductee in her statement under S.164, Cr.P.C. claimed that she was neither a minor nor converted and entered into marriage with accused out of her own freewill---Validity---Question of child marriage was based upon determination of age and as per report of National Commission on Status of Women correct age of abductee was not yet established---Defferent sets of dates existed firstly age in birth registration certificate submitted by petitioner was 8-9-2006, secondly, age referred in marriage certificate was 19 years and thirdly, age as given by Doctor was 16 years+/- 1.96 SD---Matter, in circumstances, required evidence which could only be settled by court of competent jurisdiction where challan was submitted under Ss.4, 5 & 6 of Child Marriage Restraint Act, 1929 by investigating officer---High Court in exercise of Constitutional jurisdiction declined to interfere in the matter as stance taken by alleged absuctee which was independently recorded by Magistrate under S.164, Cr.P.C. as well as report of National Commission on Status of Women and age of minor could only be concluded after recording evidence by competent court---High Court, to curb the evil of child marriage, issued directions to the authorities concerned.

High Court issued following directions to the authorities concerned to curb the evil of child marriages from the society as well as to ensure the protection of rights of minorities as guaranteed under the Constitution:-

(i) The District Administration/licence issuing authority of Nikah Registrar shall enlighten the Nikah Registrars about the terms of Child Marriage Restraint Act, 1929 as well as punishment for violation of terms of Child Marriage Restraint Act, 1929.

(ii) If any complaint is filed against the Nikah Registrar in terms of Child Marriage Restraint Act, 1929, who solemnizes marriage for facilitating and registering any marriage of any person against her or his wishes, the Chief Commissioner, Deputy Commissioner and the Chairman Union Council shall revoke licence of the Nikah Registrar and submit a complaint before the competent Court for criminal prosecution of the Nikah Registrar and any other person, who is involved in such kind of crime.

(iii) The Chief Commissioner, Deputy Commissioner and the Chairman Union Council are also under legal obligation not to issue any licence to any such individual as Nikah Registrar, who is involved in such type of malpractice and till conclusion of the said complaint by the competent Court, his licence shall be suspended till final judgment of the Trial Court and if the Nikah Registrar is civil servant, departmental action shall also be taken against him.

(iv) All the Nikah Registrars or other persons, who solemnize marriages are under legal obligation to scrutinize the credentials at the time of Nikah as to whether the marriage is solemnized with the free will of the parties and no child is exposed to marriage.

(v) The Family Court in terms of The Family Courts Act, 1964 are also bound to give their findings in such type of cases and if a Family Court comes to the conclusion that the marriage has been registered in violation of law, the Family Court shall refer the complaint to the concerned Magistrate to proceed in terms of Child Marriage Restraint Act, 1929 against the persons, who have solemnized and registered such marriage.

(vi) IG, Police, all the DPOs and the SHOs are under obligation to protect rights of the minorities by all means and if any complaint is filed by any of the family members or by parents of the minor that he or she has been forced to convert his or her religion, such complaint shall be taken up on priority basis and statement of the effectee shall be recorded by the Magistrate at first instance as such kind of practice will bring bad name to the state of Pakistan.

(vii) Federal Government shall fulfill its constitutional obligation to protect the minors as well as children in terms of international covenants and commitments and to establish Child Protection Bureau and Child Protection Homes to provide protection to such kind of minors, who are exposed to cruelty, inhuman behavior and infringement of child rights by family members, care givers or their employers if any.

(viii) The NADRA Authorities as well as the Registration Authorities of the Government while issuing Marriage Registration Certificate are bound to link Birth Registration Certificate to their system in order to avoid any conflicting age contents and to avoid legal complications.

(ix) Every birth entry as well as marriage certificate should be recorded in the NADRA registration record and in case of conflict of date the subsequent document shall not be registered unless valid order from the competent Court or the authority is not placed before the relevant officer.

(x) Mere submission of oral entries for the purpose of age should not be accepted unless valid documentary proof of Union Council of birth certificate is produced.

(b) Child Marriage Restraint Act (XIX of 1929)---

---Ss. 2 & 8---Child marriage---Magistrate---Jurisdiction---Provisions of S.8 of Child Marriage Restraint Act, 1929 can be invoked by Magistrate 1st Class---Where complaint reflects solemnization of marriage of minor, police officials are bound to register criminal case in terms of Child Marriage Restraint Act, 1929.

Sheraz Ahmed Ranjha for Petitioner.

Ms. Saima Naqvi, State Counsel for Respondents Nos. 1 to 3.

Shabbir Tanoli, SHO, P.S. Shalimar Islamabad/respondent No.2 in person.

Safdar Hussain ASI.

Ch. Muhammad Nawaz Gondal for Respondents Nos. 4 to 8.

Ms. Khawar Mumtaz, Chairperson NCSW.

Aamir Ali/respondent No.4 in person.

Neha Pervaiz, minor in person.

Date of hearing: 14th June, 2019.

JUDGMENT

MOHSIN AKHTAR KAYANI, J.---Through this writ petition, the petitioner has prayed for issuance of direction to respondents Nos.2 and 3 to produce the minor Neha Parvaiz (alleged abductee) before this Court and be handed over to the petitioner (mother). The petitioner has further prayed for issuance of direction to respondent No.2/SHO for initiating strict action against the accused persons/respondents Nos.4 to 8, who has allegedly abducted the minor.

2. Learned counsel for the petitioner contends that the petitioner being mother of minor Neha Parvaiz aged 12 years 07 months has prayed for action against respondents Nos. 4 to 8, who abducted the minor on 06.04.2019; that FIR No.124/19, dated 9.04.2019, under section 365-B/109 P.P.C. was registered with P.S Shalimar, Islamabad but the minor has not yet been recovered; that the respondents have taken the stance that the minor has converted her religion from Christianity to Islam and entered into Nikah with respondent No.4, which is in violation of Article 36 of the Constitution of Islamic Republic of Pakistan 1973 as well as Child Marriage Restraint Act, 1929.

3. Conversely, respondents Nos. 4 to 8 put appearance before this Court along with minor Neha Parvaiz through SHO P.S Shalimar/ respondent No.2, whereas the alleged abductee has taken specific stance that she was not abducted and has entered into Nikah with her own free will after conversion of his religion from Christianity to Islam. Learned counsel for respondents Nos.4 to 8 contend that the minor recorded her statement before the Court of Ms. Ambreen Iqbal Chaudhry, Civil Judge/Judicial Magistrate Section 30 (West), Islamabad, wherein it has been alleged that abductee is 19 years old.

4. Keeping in view above background, this Court passed direction to the National Commission on the Status of Women to interview the alleged abductee in order to verify the stance taken by the alleged abductee as to whether she has converted her faith with her own free will and whether she entered into Nikah with her own choice and what is the legal position relating to age of the minor?

5. The Chairperson National Commission on Status of Women put appearance and submitted her report, which has been placed on record, however, the same will be discussed in subsequent paras to avoid repetition.

6. I have heard the arguments and perused the record.

7. Perusal of the record reveals that the petitioner's husband lodged FIR No.124/19, dated 9.04.2019, under section 365-B/109 P.P.C. with Police Station Shalimar, Islamabad for the alleged abduction of his minor daughter Neha Pervaiz, who was allegedly abducted for the purpose of illicit intercourse. The complainant in the FIR has also alleged that Amir Ali respondent No.4 with his parents approached him for the hand of Neha Pervaiz but they refused as complainant's family is Christian by faith, whereas Amir Ali/respondent No.4 and his family members have different religion.

8. The present writ petition has been filed by the mother of the alleged abductee for the production of her daughter (alleged abductee), who on the direction of this Court has put appearance before this Court and stated that her statement under section 164, Cr.P.C was recorded, stating therein that she was not abducted by any one and she has converted her faith from Christianity to Islam and entered into Nikah with respondent No.4/Amir Ali with her free will and presently she is living with him. The statement has been acknowledged by the I.O present before the Court and certified copy of statement under section 164, Cr.P.C has been made part of the record.

9. When questioned about age of alleged abductee, the I.O contends that the alleged abductee was also produced before the doctor and as per report dated 08.05.2019 of Department of Diagnostic Imaging of PIMS, the estimated radiological bone age of Neha Pervaiz (new name Mariam) is 16 years +/- 1.96 SD, whereas the alleged abductee claims that she is 19 years old and she has written her date of birth in the Nikahnama as of 01.11.2000. On the other hand, the petitioner, mother of the alleged abductee has produced Birth Registration Certificate issued by Government of Punjab, wherein date of

birth of alleged abductee is referred as 08.09.2006 and as per said document, she was 12 years and 07 months old at the time of her alleged abduction, I have meticulously perused the certificate, which contains the date of entry in the record of Government of Punjab as 15.09.2006, which shows that the document has not been prepared later on rather the same was prepared in due course of time.

10. Contrary to the said document, the alleged abductee has also produced the Marriage Registration Certificate registered with Government of Punjab Pakistan(sic) Municipal Committee Chanab Nagar, District Chiniot, wherein the date of registration of marriage has been referred as 06.04.2019 and the certificate was issued on 27.05.2019, wherein the age referred by Neha Pervaiz is 19 years with religion Islam.

11. Keeping in view above background, the primary question which requires determination is as to whether the statement given by the alleged abductee regarding conversion of her faith as well as entering into Nikah is valid on the touch stone that at the time of abduction she was not minor and she converted her faith and could enter into Nikah with her free will. Therefore, the alleged abductee was directed to appear before the National Commission on Status of Women, whereby Chairperson of the said Commission has recorded her statement and submitted report.

12. The National Commission on Status of Women was established under National Commission on Status of Women Act, 2012 and notified in the Extra Ordinary Gazette dated 10.03.2012. The Chairperson of the Commission has been appointed by the Federal Government in terms of section 4 of Chapter-II. Section 11 of Chapter-III provides functions and powers of the Commission, whereby the Commission is autonomous and independent regulator, which can examine any policy and programs and can review all Federal laws, rules and regulations affecting the status and rights of women and can suggest repeal, amendment or new legislation in order to eliminate discrimination, safeguard and promote the interest of women and achieve gender equality before the law in accordance with the Constitution and to fulfill the obligations under international covenants and commitments. Even otherwise, the Commission can receive any complaint or initiate any inquiry where the rights of women have been in question, therefore, this Court directed Chairperson NCSW to record the statement of alleged abductee and submit their independent report as to whether the abductee has converted her faith with her own free will and also entered into Nikah without any fear and influence. The report submitted by the Chairperson of the Commission before this Court attains qualified status to be believed as true. The concluding portion of the report submitted by the Chairperson before this Court is reproduced as under:

"On the basis of the interview NCSW has come to the conclusion that Neha Pervaiz who comes from an underprivileged Christian household was not forced into marriage and has done so of her own free will. The reason for her conversion to Islam seems to be in order to marry him. Whether she had the capacity to enter marriage and to convert has to be determined by the Court as Neha's correct age is not yet established"

13. The above referred paragraph of the report resolves only question of conversion of faith. The other question relating to child marriage is based upon determination of age and as per report of the Commission correct age of Neha Pervaiz has not yet been established as there were different sets of dates, firstly the age in birth registration certificate submitted by mother is 08.09.2006, secondly the age referred in marriage certificate is as of 19 years and thirdly the age has been given by the doctor as 16 years +/-1.96 SC, therefore, in such eventuality the matter requires evidence, which can only be settled by the Court of competent jurisdiction, where challan has been submitted in terms of sections 4, 5 and 6 of Child Marriage Restraint Act, 1929 as stated by the I.O.

14. In order to reach at just conclusion, the relevant provisions of sections 4, 5 and 6 of Child Marriage Restraint Act, 1929 are reproduced as under:--

"S.4. Punishment for male adult above eighteen years of age marrying a child.---Whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

S.5. Punishment for solemnizing a child marriage. Whoever performs, conduct or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

S.6. Punishment for parent or guardian concerned in a child marriage.---(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful, or unlawful who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage the person having charge of such minor has negligently failed to prevent the marriage from being solemnized. "

15. The above referred provisions can be invoked by the Magistrate 1st Class in terms of section 8 of the Act, therefore, this Court is of the view that where the complaint reflects the solemnization of marriage of minor, the police officials are bound to register criminal case in terms of the said Act for the purposes of prosecution as the terms "child" and "child marriage" defined in section 2 of the said Act means a person, who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age and a marriage to which either of the contracting parties is child. Term minor has also been defined in section 2 of the Act, which means that a person of either sex who is under eighteen years of age.

16. I have also gone through the provision of The Muslim Family Laws Ordinance, 1961, where section 5 provides compulsory registration of the marriage by the Nikah Registrar and the Union Council shall grant licence to one or more persons, to be called Nikah Registrar. Similarly, it is obligation of a person, who solemnizes such marriage to report the same to the Nikah Registrar for the purposes of registration and any person, who contravenes the same shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both. The procedure for appointment of Nikah Registrar has been provided in Rule 7 of The West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 and in terms of sub-rules 2 and 3 of Rule 7, any person who contravenes any of the conditions of such licence, the licence shall be revocable and he shall also be charged under the said provisions for the purpose of criminal prosecution.

17. Keeping in view above background and the stance taken by the alleged abductee before this Court, which has also independently been recorded by the Magistrate under section 164, Cr.P.C as well as report of National Commission on Status of Woman, the instant writ petition stands disposed of as the question of age of minor can only be concluded after recording evidence by the competent Court and the same cannot be adjudicated upon by this Court in Constitutional jurisdiction.

18. The SHO/respondent No.2 has stated that four accused persons have already been granted post arrest bail and the challan will be submitted before the Trial Court as and when prepared.

19. It is pertinent to mention here that observations made hereinabove are tentative in nature and these shall not be taken into consideration during trial by learned Trial Court.

20. Before parting with the instant judgment, this Court feels it necessary to issue following directions to the authorities concerned to curb the evil of child marriages from the society as well as to ensure the protection of rights of minorities as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973:--

- (i) The District Administration/licence issuing authority of Nikah Registrar shall enlighten the Nikah Registrars about the terms of Child Marriage Restraint Act, 1929 as well as punishment for violation of terms of Child Marriage Restraint Act, 1929.
- (ii) If any complaint is filed against the Nikah Registrar in terms of Child Marriage Restraint Act, 1929, who solemnizes marriage for facilitating and registering any marriage of any person against her or his wishes, the Chief Commissioner, Islamabad Deputy Commissioner, Islamabad and the Chairnan Union Council shall revoke licence of the Nikah Registrar and submit a complaint before the competent Court for criminal prosecution of the Nikah Registrar and any other person, who is involved in such kind of crime.
- (iii) The Chief Commissioner, Islamabad, Deputy Commissioner, Islamabad and the Chairman Union Council are also under legal obligation not to issue any licence to any such individual as Nikah Registrar, who is involved in such type of mal practice and till conclusion of the said complaint by the competent Court, his licence shall be suspended till final judgment of the Trial Court and if the Nikah Registrar is civil servant, departmental action shall also be taken against him.
- (iv) All the Nikah Registrars or other persons, who solemnize marriages are under legal obligation to scrutinize the credentials at the time of Nikah as to whether the marriage is solemnized with the free will of the parties and no child is exposed to marriage.
- (v) The Family Court in terms of the West Pakistan, Family Courts Act, 1964 are also bound to give their findings in such type of cases and if a Family Court comes to the conclusion that the marriage has been registered in violation of law, the Family Court shall refer the complaint to the concerned Magistrate to proceed in terms of Child Marriage Restraint Act, 1929 against the persons, who have solemnized and registered such marriage.
- (vi) IG, Islamabad Police, all the DPOs and the SHOs are under obligation to protect rights of the minorities by all means and if any complaint is filed by any of the family members or by parents of the minor that he or she has been forced to convert his or her religion, such complaint shall be taken up on priority basis and statement of the effectee shall be recorded by the Magistrate at first instance as such kind of practice will bring bad name to the state of Pakistan.
- (vii) Federal Government shall fulfill its constitutional obligation to protect the minors as well as children in terms of international covenants and commitments and to establish Child Protection Bureau and Child Protection Homes to provide protection to such kind of minors, who are exposed to cruelty, inhuman behavior and infringement of child rights by family members, care givers or their employers if any.
- (viii) The NADRA Authorities as well as the Registration Authorities of the Government while issuing Marriage Registration Certificate are bound to link Birth Registration Certificate to their system in order to avoid any conflicting age contents and to avoid legal complications.
- (ix) Every birth entry as well as marriage certificate should be recorded in the NADRA registration record and in case of conflict of date the subsequent document shall not be registered unless valid order from the competent Court or the authority is not placed before the relevant officer.
- (x) Mere submission of oral entries for the purpose of age should not be accepted unless valid documentary proof of Union Council of birth certificate is produced.

21. Copy of this judgment be transmitted to Chief Commissioner Islamabad being head of District Administration Islamabad as well as IG, Islamabad Police for information and compliance.

MH/93/Isl. Order accordingly.

;

P L D 2020 Lahore 739**Before Muhammad Qasim Khan and Asjad Javaid Ghural, JJ****MUHAMMAD IQBAL alias BALI---Petitioner****Versus****PROVINCE OF PUNJAB through Secretary Home, Punjab and 6 others---
Respondents**

Writ Petition No. 24302 of 2019, decided on 13th March, 2020.

(a) Criminal trial---

---Policy matter---Scope---Policy has force of law---Enforcement or implication of law, especially when it favours an accused cannot be restricted at any stage on any ground.

(b) Juvenile Justice System Ordinance (XXII of 2000)---

---S.7---Penal Code (XLV of 1860), S. 302(b)---International Convention on Civil and Political Rights, 1966, Art. 6, paragraph 5---United Nations Convention on the Rights of Children, 1989, Art.37(a)---Constitution of Pakistan, Arts. 45 & 199---Death penalty to juvenile---Remissions---Applicability---Petitioner was convicted by Trial Court for committing Qatl-i-amd and was sentenced to death---Conviction and sentence was maintained up to Supreme Court and even mercy petition was also dismissed---Special remission was granted by the President of Pakistan in exercise of his powers under Art. 45 of the Constitution, whereby death sentence was converted into imprisonment for life for those convict who were juvenile at the time of commission of the offence---Authorities declined extension of such benefit of remissions to petitioner and referred the matter to the President of Pakistan to reconsider his mercy petition---Validity---After setting a proper law into motion and going through the entire exercise with regard to analysis of juvenility of petitioner, it was unjust for authorities to keep on restricting uniform benefit of law as well as law to all similarly placed persons, on one excuse or the other---Juvenile status of petitioner at the time of commission of offence was not under question and legal heirs of victim pardoned the petitioner, therefore, giving benefit of same legislative intent to other similarly placed accused was not denied---International legislation and domestic legislation imposed a clear bar on inflicting death penalty on an accused under the age of eighteen years---Claim of petitioner to seek a benefit which otherwise was fully available to him under the policy having force of law, could not have been denied by authorities at their level and no legislation could compel them to still refer the matter to the President of Pakistan for consideration merely on the ground that earlier mercy petition had been dismissed by the President---Age of juvenility was already assessed by Trial Court as required under S.7 of Juvenile Justice System Ordinance, 2000---High Court, in exercise of jurisdiction under Art. 199 of the Constitution, instead of sending the matter to Trial Court for re-examination / re-evaluation of age of petitioner, commuted death sentence into imprisonment for life---Constitutional petition was allowed in circumstances.

Ziaullah v. Najeebullah and others PLD 2003 SC 656 ref.

Barrister Sarah Belal, Orubah Sattar Ahmad, Zainab Mehboob, Sana Farrukh, Mahmood Iftikhar Ahmad Zufar, Ahmad Hassan Khan Niazi, Mehr Muhammad Iqbal and Imran Khan Kulair for Petitioner.

Sardar Jamal Sukhera, Advocate General, Malik Abdul Aziz Awan, Additional Advocate General, Zafar Hussain Ahmad, Additional Prosecutor General with Dr. Qadeer Alam, AIG (Prisons), Iqbal Hussain, Special Secretary Home, Aamir Shehzad, Assistant Superintendent Jail and Hafiz Qamar Abbas Section Officer (Home Department) for Respondents.

ORDER

Through instant Writ Petition the petitioner has challenged the order dated 04.05.2018 passed by Additional Chief Secretary (Home) with the following prayer:--

- i) Declare that the impugned order dated 04.05.2018 is illegal, void and of no legal effect;
- ii) Order immediate release of the Petitioner from jail;
- iii) Order Respondents Nos.1 to 4 to pay compensation to the Petitioner for keeping him on death row and in illegal and unlawful confinement after completion of his life imprisonment, since issuance of Presidential Notification had commuted his punishment into life imprisonment;
- iv) Direct that the execution of Petitioner during pendency of this Petition may kindly be suspended;
- v) Grant any other relief that may be deemed just and equitable in the circumstances."

2. Briefly the facts of the case are that Muhammad Iqbal alias Bali (petitioner) was arrested in case FIR No.301 dated 11.07.1998 registered under sections 302, 324, 347/34, P.P.C. Police Station Qadirabad, District Mandi Bahau Din. On conclusion of trial vide judgment dated 05.07.1999, co-accused were sentenced to imprisonment for life, whereas, the petitioner was mainly convicted under section 396, P.P.C. and sentenced to death. The petitioner challenged his conviction and sentence through Criminal Appeal No.732/99 (Murder Reference No.347-T/1999), which was dismissed vide judgment dated 26.02.2002 (announced on 20.03.2002), as such, conviction/sentence was upheld by this Court. Afterwards, the petitioner filed Criminal Petition No.301-L of 2002 for grant of leave before the august Supreme Court of Pakistan, which was declined vide order dated 11.09.2002, followed by a Criminal Review Petition No.54/2002 which was however withdrawn on the ground of compromise, the said order is reproduced here-under:--

"Learned counsel for the petitioner seeks permission to withdraw this Criminal Review Petition."

3. Subsequently, the petitioner moved an application before the learned trial court for his acquittal on the basis of compromise, but said application was

dismissed vide judgment dated 16.07.2005. The said order was assailed through Writ Petition No.15161/2005 before this Court, which was dismissed on 13.11.2006 and the order dated 13.11.2006 was challenged before the august Supreme Court of Pakistan in Civil Petition No.2441-L/2006, which too was dismissed vide order dated 21.02.2007. Civil Review Petition No.603/2016 filed against the judgment dated 21.02.2007 passed in C.P.No.2441-L/2004, was also dismissed on 28.04.2017. During this period the mercy petition of the petitioner was rejected by the President of Islamic Republic of Pakistan (Government of Punjab Home Department, Lahore Letter No.72/2002/MP/DC dated 27th March, 2015, referred).

4. Another round of litigation commenced after promulgation of Presidential Notification dated 13.12.2001, whereby, in exercise of his powers under Article 45 of the Constitution of Islamic Republic of Pakistan, 1973, the President of Pakistan granted special remissions in sentences to those condemned prisoners who were juveniles at the time of commission of offence. On the basis of said Presidential Notification the petitioner filed mercy petition before the President of Pakistan, which remains pending before him till date, as has been told to this court. In the meanwhile, a black warrants had been issued, the petitioner filed a petition before the National Commission for Human Rights, Islamabad (respondent No.5) and the respondent No.5 onwards directed Secretary Home Department, Government of Punjab (respondent No.1) to look into the matter on humanitarian grounds. Then petitioner filed another application dated 06.07.2017 before respondent No.6 (trial court/Anti-Terrorism Court-I, Gujranwala) requesting that black warrants may not be issued. After waiting for the outcome of departmental correspondences, the petitioner filed yet another Writ Petition No.163120/2018 prayed that special remissions be granted to the petitioner, said petition was disposed of vide order dated 06.03.2018 with a direction to respondent No.2 (Additional Chief Secretary (Home), Government of Punjab. The said direction was not being complied with, the petitioner filed Criminal Original No.6820-W/2009 and during those proceedings the court was informed that vide letter dated 04.05.2018 a mercy reference for commutation of death sentence of the petitioner into life imprisonment has been forwarded to the Chief Minister Punjab for its further transmission to the President of Pakistan for orders, consequently the contempt petition was disposed of vide order dated 21.02.2019. Relevant portion from the order dated 04.05.2018 passed by Additional Chief Secretary (Home), is reproduced hereunder:-

"5. The case was examined in this department at length and keeping in view the juvenility of the accused, a mercy reference for commutation of death sentence into life imprisonment in respect of subject cited condemned prisoner was forwarded to the Chief Minister Punjab for its further transmission to the Honourable President of Pakistan for orders. The outcome of the reference is still awaited.

AND WHEREAS, in compliance with the order of Hon'ble Lahore High Court, Lahore passed in Writ Petition No.163120 of 2017, an opportunity of personal hearing was granted to the petitioner's brother Muhammad Abbas along with his counsel on 09.04.2018 and Mian Mohsin Rasheed, Additional Secretary (Prisons) was appointed as hearing officer in this regard.

AND WHEREAS, Mian Mohsin Rasheed, Additional Secretary (Prisons) after hearing the petitioner's brother and his counsel submitted a report stating therein that a mercy reference for commutation of death sentence of the petitioner into life imprisonment has been forwarded to the Chief Minister Punjab for its further transmission to the Honourable President of Pakistan for orders and further proceedings will be carried out after the outcome of the reference. In the meantime execution proceedings will remain suspended."

This order dated 04.05.2018 has been challenged through the instant writ petition, with prayer reproduced above.

5. After hearing the arguments of learned counsel for the parties at full length and examining the entire record, some of the facts which remain admitted by the parties can be summarized as under:-

- a) The petitioner was booked in a criminal case (FIR No.301/1998 registered on 11.07.1998 regarding an occurrence of the same date i.e. 11.07.1998);
- b) It is a fact that vide judgment dated 05.07.1999 on his conviction the petitioner was sentenced to death, which conviction as well as sentence ultimately stands affirmed before the Hon'ble Supreme Court of Pakistan;
- b)sic There is no denying the fact that Presidential Notification dated 13.12.2001 was issued in exercise of powers under Article 45 of the Constitution of Islamic Republic of Pakistan, 1973, whereby the President of Pakistan granted special remissions in sentences to those condemned prisoners who were juveniles at the time of commission of offence;
- c) It is a fact that earlier mercy petition of the petitioner was rejected by the President of Islamic Republic of Pakistan, whereas, second mercy petition to seek benefit of above referred Presidential Notification has not yet been decided by the President;
- d) It is a fact admitted by respondent No.1 in reply to this writ petition that petitioner was a juvenile at the time of commission of the crime;
- e) Further the Home Department/respondent No.1 in reply to this writ petition in categorical terms admit that although the law barred the award of death sentence to a juvenile accused from the date of enforcement of Juvenile Justice System Ordinance, 2000, but at the same moment it has been admitted that benefit of said Ordinance was extended to the accused of those cases which were registered earlier to its promulgation but were not decided and were pending trial on the date of enforcement of this Ordinance;
- f) The respondent No.1 in written reply has come out with a clear stance that execution of death sentence in cases of juvenile accused decided some months prior to the enforcement of the Juvenile Justice System Ordinance would be unfair and such cases shall be brought at par with other cases;
- g) There is also no doubt, rather it also remains admitted position that legal heirs of the deceased have also forgiven/pardoned the accused/petitioner.

6. From the above summary of facts, it becomes almost obvious that as a matter of fact that legal heirs of the victim having forgiven the accused/petitioner have lost their interest in hanging the petitioner to gallows, whereas, departmental agencies by and large have agreed to the proposition that it will be unfair to deny the benefit of a legislation (Juvenile Justice System Ordinance or the Presidential Notification dated 13.12.2001) to the petitioner, when the same benefit has already been extended to other similarly placed accused persons.

7. In such a situation when it has been admitted by the government that petitioner was entitled to the benefit of above referred Ordinance as well as Presidential Notification, then we are afraid that irrespective of the fact that earlier mercy petition of the petitioner might have been rejected by the President of Pakistan, the respondent No.1 (Home Department) was not required at all to have still sent a reference to the President of Pakistan for considering the case of the petitioner for commutation of his death sentence. The plea taken by the Provincial Government is that under section 402-B, Cr.P.C. a restriction existed for it to exercise its powers to commute the sentence of death in case where the President has already passed an order. But, we are of the view that here in this case the petitioner was not begging for anything over and above the legal or constitutional mandate, rather he was only seeking enforcement of a government policy executed in the light of Charter of United Nations Convention on the rights of Children, 1989 (UNCRC), International Convention on Civil and Political Rights, 1966 (ICCPR) and the Presidential Notification and that too on admitted factual and legal premises. It is admitted position that the policy has the force of law. There can be no second opinion that enforcement or implication of law, especially when it favours an accused, could not be restricted at any stage on any ground.

8. In addition to our above referred legislation and Presidential Notification, we are also cognizant of the fact that Pakistan is signatory to the United Nations Convention on the Rights of Children, 1989 (UNCRC) as well as International Convention on Civil and Political Rights, 1966 (ICCPR). Article 37(a) of the UNCRC and the Article 6 paragraph 5 of the ICCPR binds all members' states not to impose death penalty for crimes committed by persons of less than eighteen years of age. The promulgation of Juvenile Justice System Ordinance, 2000 as well as the Presidential Notification dated 13.12.2001 was in fact carrying on the obligations (sic) out by above referred two treaties.

9. Another aspect of the matter is that earlier vide letter No.8/41/2001-Pins dated 13th December, 2001, the President of Pakistan in exercise of his prerogative under Article 45 of the Constitution of Islamic Republic of Pakistan, 1973 granted special remissions in sentences. The operative part of the text of the said letter is reproduced:-

"The death sentence of those condemned prisoners who were juveniles as defined in the Juvenile Justice System Ordinance, 2000 at the time of commission of offence stands commuted to life imprisonment provided that the death sentence has been awarded under Ta'zir and not Qisas or under other Haddood Laws.

The Provincial Governments shall ensure that the age as recorded by the trial court entitles the condemned prisoner to such commutation."

As it appears on the basis of above letter, the executive authorities started to consider the cases of juvenility of offenders and this issue when came before the Hon'ble Supreme Court of Pakistan, the apex Court in the case "Ziaullah v. Najeebullah and others" (PLD 2003 SC 656), settled the proposition by holding that:--

"Essentially question relating to determination of the age of such claimant in terms of section 7 of the Juvenile Justice System Ordinance, 2000 can be settled judiciously for the purpose of treating the accused to be juvenile offender. As far as Executive Authorities or any Committee constituted by them is concerned, it enjoys no power to discharge the judicial function. If they allowed to do so, it would be negation of the concept of independence of judiciary. Similarly, it would give rise to number of related complications on account of which possibility would be that in the garb of exercise of such powers the judgments of the superior courts are nullified by reducing the sentence of death to life imprisonment by the Executive Authorities on the argument that the age of the accused was below 18 years at the time of commission of offence."

In the light of above legal position, it remains a fact that here in this case the juvenility status of the petitioner was assessed by the learned trial court which was the proper and appropriate forum and no question has been put about his juvenility.

10. Therefore, after setting a proper law into motion and going through the entire exercise with regard to analysis of juvenility of the petitioner, it was totally unjust for departmental agencies to keep on restricting the uniform benefit of law as well as law to all similarly placed persons, on one excuse or the other. At the cost of repetition, we reiterate that juvenile status of the petitioner at the time of commission of the offence is not under question; the legal heirs of victim having pardoned the petitioner is beyond any doubt; giving benefit of same legislative intent to other similarly placed accused has not been denied; firstly the international legislation and secondly our domestic legislation impose a clear bar on the infliction of death penalty on an accused under the age of eighteen years, thus, the claim of the petitioner to seek a benefit which otherwise, was fully available to him under the policy, having the force of law, could not have been denied by the departmental authorities at their level and no legislation could compel them to still refer the matter to the President of Pakistan for consideration merely on the ground that some earlier mercy petition had been dismissed by the President.

11. For what has been discussed above, we declare that the order dated 04.05.2018 passed by Additional Chief Secretary (Home) sending the reference to the President of Pakistan, is nullity in the eyes of law. Consequently, as otherwise, factual as well as legal position about the claim of the petitioner has not been denied by the respondents, his age of juvenility has already been undeniably assessed by the learned trial court as required by Section 7 of the Juvenile Justice System Ordinance, 2000, therefore, instead of sending the petitioner back to learned trial court for re-examination/reevaluation of his age, in exercise of our

jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, we commute the death sentence of the petitioner to imprisonment for life, whereas, his other convictions/sentences if any under the same trial shall remain intact.

MH/M-102/L Petition allowed.

;

P L D 2020 Lahore 811**Before Anwaarul Haq Pannun, J****TAHIRA BIBI---Petitioner****Versus****STATION HOUSE OFFICER and others---Respondents**

Writ Petition No. 15567 of 2019, decided on 29th October, 2019.

(a) Islamic-law---

---Marriage---Marriage contracted for a minor by any guardian other than the father or father's father---Option to repudiate marriage by minor on attaining the puberty---Scope---Right to repudiation of marriage is lost, in case of a female, if after attaining puberty and after having been informed of the marriage and of her right to repudiate it, she does not repudiate without reasonable delay.

'Fatawa Alamgiri', Page-93 of Vol-V and Paragraph-274 of Mahomedan Law rel.

(b) Dissolution of Muslim Marriages Act (VIII of 1939)---

---S. 2 (vii)---Term 'repudiation of marriage'---Option of puberty (Khyar-ul-Bulugh), principle of---Scope---Female has been given a right under Dissolution of Muslim Marriages Act, 1939, to repudiate marriage before attaining age of eighteen years provided that marriage has not been consummated---In case of a male the right continues until he has ratified marriage either expressly or impliedly as by payment of dower or by cohabitation.

(c) Words and phrases---

---Misconduct---Defined---Even if expression 'misconduct' is not defined in statute or rules, yet it was to be interpreted by courts narrowly in the sense of an infringement of binding rule of conduct applicable.

The Province of East Pakistan v. Muhammad Sajjad Ali Mazumdar PLD 1962 SC 71 rel.

(d) Family Courts Act (XXXV of 1964)---

---S. 20---Child Marriage Restraint Act (XIX of 1929), S. 2 (a)---Constitution of Pakistan, Arts. 9 & 25-A---Child marriage---Trial, forum of---Right to life and education---Scope---Trial of offence under provisions of Child Marriage Restraint Act, 1929, is to be held by Family Court exercising powers of Judicial Magistrate of First Class in accordance with the provisions of Family Courts Act, 1964---Due to child marriage, possibility/chances/likelihood of infringement of fundamental rights of a child which have duly been guaranteed by the Constitution are enhanced---Right of life is not a mere right to exist or live, it also encompasses the idea of leading a meaningful and dignified life---Offering of an opportunity to get education by State is also a fundamental right of a minor, denial whereof may amount to denial to excel and progress in life.

(e) Constitution of Pakistan---

---Arts. 9, 14 & 35---Family matter---Jurisdiction of High Court---Scope---Petitioner, a minor, entered into marriage of her choice without consent of her parents---Grievance of petitioner was that police authorities were harassing her on the behest of her parents and other family members---Validity---Paramount consideration before Court had always been welfare and betterment of a minor---Courts always acted in loco parentis position while keeping in view a variety of considerations---Technicalities of law were not supposed to circumvent exercise of jurisdiction and powers by Courts in dealing with matters pertaining to minor/child---Courts were supposed to exercise their jurisdiction proactively to forestall any endeavor to cause a breach of fundamental rights of children, protection/provision of which essentially was also in welfare of minor/child---In view of Arts. 9, 14 & 35 of the Constitution, the State was to protect marriage, the family, the mother and the child, as the same was granted---High Court directed the authorities to remain within the four corners of law and restrained them from causing any harassment to petitioner in any manner---Constitutional petition was allowed accordingly.

Ismaeel v. The State 2010 SCMR 27; Ms. Shehla Zia and others v. WAPDA PLD 1994 SC 693; Bushra Jabeen and 367 others v. Province of Sindh through Chief Secretary and others 2018 MLD 2007; Liaqat Hussain and others v. Federation of Pakistan through Secretary, Planning and Development Division, Islamabad and others PLD 2012 SC 224 and 2019 SCMR 247 ref.

(f) Muslim Family Laws Ordinance (VIII of 1961)---

---S.5 (2A)---Registration of Nikah---Contents---Duty of Nikah Registrar---Scope---All Nikah Registrars or other persons who solemnize marriages are under legal obligation to scrutinize credentials at the time of Nikah as to whether marriage is solemnized with free will of parties and no child is exposed to marriage---Mere submission of oral entries for the purpose of age should not be accepted unless any proof of age from parties to marriage preferable which should be in shape of some authentic document either issued by National Database and Registration Authority in the form of National Identity Card, B-Form or School Leaving Certificate, Medical certificate based on ossification test issued by competent authority and Birth Certificate validly issued by Union Council etc. is produced.

Sh. Aamer Habib Siddiqui for Petitioner.

Zulfiqar Ali Sidhu, A.A.G. with M. Arshad Gopang, Director, Local Government, Multan for Respondents.

ORDER

ANWAARUL HAQ PANNUN, J.---The petitioner, by means of instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has made the following prayer:-

"In the light of above submissions, it is, respectfully prayed that the instant writ petition may very kindly be accepted by way of directing the respondents Nos.1 to 3 not to harass the petitioner, their family members and also not to interfere within the matrimonial lives of the petitioner at the instance of respondents Nos.4 to 11.

It is further humbly prayed that any other equitable relief, to which the humble petitioner may be found entitled to, be also granted".

2. As per averments of the petition, the petitioner being major and sui-juris, while exercising her free-will entered into a matrimonial bond with one Muhammad Bashir on 07.08.2019 against the wishes and without the blessing of her parents. After the solemnization of marriage, respondents Nos.1 to 3/SHOs at the behest of private respondents started harassing, intimidating and compelling the petitioner to get divorce from her husband and in the wake of this drive, on 15.08.2019, respondents Nos.1 to 3 illegally conducted a raid at her house. Upon raising hue and cry, the people of the locality attracted to the spot and rescued her from the clutches of said respondents. The petitioner has invoked the jurisdiction of this Court being aggrieved of the behaviour and conduct of the official respondents who in the aforementioned circumstances are illegally creating harassment to her.

3. Heard.

4. At the very outset, it is observed that during the judicial dispensation, it has often been noticed that as a result of registration of criminal cases in respect of offences under Chapter XVI-A, P.P.C. while waging a plea of valid marriage having duly been registered under the Muslim Family Laws Ordinance, 1961 (hereinafter to be referred as 'the MFLO') by one of the parties to the lis, generally contested by the other side or even in absence of registration of criminal cases, the grievance of illegal and undue harassment to the breach of fundamental rights of the aggrieved persons claiming valid marriage, at the hands of police at the behest of the parents, guardians or other relatives of the bride, is found to be voiced and by filing such petitions either the relief of quashing of FIR or issuance of a writ in the nature of prohibition is usually prayed for. Even, in certain cases upon a cursory inquiry it divulges that despite clear legal provisions specifying the eligibility with regard to age limit of the parties to the marriage, the acclaimed marriage is found as having been contracted by violating the provisions of the Child Marriage Restraint Act, 1929 (hereinafter to be referred as "the Act 1929").

It has further been noticed that some of the Nikah Khawans/Nikah Registrars instead of requiring any proof of age from the parties to the marriage which should be in the shape of some authentic document either issued by the NADRA in the form of National Identity Card, B-Form or School leaving Certificate, medical certificate based on ossification test issued by the competent authority and the Birth Certificate validly issued by the Union Council etc, out of their petty temptations knowingly that one of the parties to the marriage is minor, proceed to rely upon a self-declaration of the concerned party in respect of his/their age at the time of registration of their marriage.

Similarly, it has also come on surface at a number of occasions that despite a clear legal requirement of filling in each column of the Nikahnama individually, with specific answer of the parties to the marriage, the Nikah Registrar proceeds to place a single long vertical line against all or some of the columns which amounts to an offence liable to be punished under the law. Such criminal lapse/acts of the Nikah Registrar or the parties, as the case may be, despite being a source of breach of rights of the parties to the marriage are randomly ignored. The unscrupulous

elements while taking advantage of such omissions or lapses try to exploit the situation and create serious future complications for the others.

It has also been observed with concern that the relevant Authorities i.e. Director General Local Government and Community Development, Lahore or any other person authorized in this behalf have not bothered to issue specific S.O.Ps. containing mechanism or guidelines to avoid such violations to the provisions of the Act 1929 and the MFLO.

5. During the hearing of even instant case, while perusing the documents appended with this petition, it has been noticed that the Nikah Registrar has either left some of the columns of the Nikahnama blank or has not accurately filed in the same with requisite/specific reply of bride or the bridegroom, thus, in view of this criminal negligence, a notice was issued to Director, Local Government, Multan vide order dated 15.10.2019, who when confronted with the above noted criminal negligence and failure on the part of Nikah Registrar, sought time for obtaining instructions from the Director General, LG and CD, Punjab, Lahore. Learned Law Officer was also directed to establish contact with the Secretary, LG and CD, Punjab Lahore and submit his report before this Court in this regard on 29.10.2019. The Director, LG and CD Department, Multan Division, Multan in view of his correspondence with the D.G. LG and CD, Punjab Lahore, under the subject of "Issuance of Standard Operating Procedure (SOP) for taking punitive action against Nikah Registrars violating the basic law" who, vide his letter No.LG and CD/AD(CD)13/19 (CRMS Complaints)/P-II dated Lahore, 23.10.2019 clarifying the legal position and providing guidelines approved by the competent authority on the subject matter to all the Directors in the Punjab, the same has been made part of the record and shall be discussed and commented upon in the later part of the judgment.

6. Under the Muslim Law the competence of a girl to enter into a contract of marriage is dependent on the attainment of puberty. Puberty is presumed at the age of fifteen years. According to 'Fatawa Alamgiri', Page-93 of Vol-V, the lowest age of puberty according to its natural signs, is 12 years in males and 9 years in females and if signs do not appear, both sexes are held to be adult on the completion of their age of 15 years. The principle which after copying out from Fatawa Alamgiri and Hedaya can be deduced is that a girl even having not attained puberty but possessing discretion and sufficient understanding can enter into a contract of marriage however for its operation it will be dependent on the consent of the guardian, if there is one, but in the absence of any guardian it will take effect on her attaining of majority and ratifying the contract. According to Paragraph-274 of Mahomedan Law, "when a marriage is contracted for a minor by any guardian other than the father or father's father, the minor has the option to repudiate the marriage on attaining the puberty. This is technically called the "option of puberty" (Khyar-ul-bulugh). The right of repudiation of the marriage is lost, in the case of a female, if after attaining puberty and after having been informed of the marriage and of her right to repudiate it, she does not repudiate without reasonable delay. The Dissolution of Muslim Marriages Act, 1939, however, gives her the right to repudiate the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated. But in the case of a male the right continues

until he has ratified the marriage either expressly or impliedly as by payment of dower or by cohabitation."

7. I feel it expedient to observe that unfortunately due to fissiparous and rival political, social and religious forces, the resultant anarchy besides other factors also paved the way for the colonization of Sub-Continent. Despite scathing criticism, for many valid reasons for the systemic loot and plunder, of the resources of Indian Sub-continent, which at the relevant time were comprised over 1/3rd wealth of the world, initially by the barrens running the Company Bahadar and thereafter by the British Government itself. The society at the relevant time was also flowing many sordid traditions including child marriage because of certain socio-economic reasons and their education backwardness. It cannot be denied that the Indians of all colour and creed, had however benefited from the modern education system, innovative scientific research based technical knowledge which was introduced by their Colonial Masters. The modern education system brought a positive change in every sphere of life of the natives.

8. It may be necessary to express that the legislature despite being nicest one was comprised over forward looking men of wisdom. While adopting a progressive approach for relieving the society from the harmful effects of prevalent child marriage, it indeed undertook a commendable legislative business in the form of the Child Marriage Restraint Act, 1929 (Act XIX of 1929). It appears that without directly meddling with above described position discussed in para No.6 of this judgment regarding which age limit of marriage under the Muslim Personal Law, the provisions of Act 1929 have expediently and objectively been framed to hold male adult i.e. marriage contracting party about 18-years of age liable for punishment along with the other persons including the parents and guardians, who perform, arranged, conduct or direct any child marriage. A deterrence of punishment for violation of the provisions has been created. It is quite vivid that the act does not hold the minor responsible for violation of the provision of the Act 1929. It also does not invalidate the marriage itself. It only, as discussed above, holds certain categories of persons liable for the violations of the provisions of the Act 1929. Under Section 2(a) of Act 1929, child has been defined 'a person, if male, under 18 years of age and if female, under 16 years of age. In sum and substance, except the minor, the Act 1929, holds three persons accountable for violating its provisions i.e:-

- (i). Contracting party;
- (ii). Promoter of the marriage;
- (iii). Guardians

It is a matter of great concern that despite ninety years of the promulgation of the Act, 1929, its objectives could not have been achieved satisfactorily due to certain lapses or loopholes in the mechanism for its enforcement. The children are still being lured by unscrupulous elements through deceitful means to abuse their innocent souls. It is also relevant to point out that although under The Majority Act, 1875 (Act XX of 1875) (hereinafter known as 'Majority Act') a person is said to attain majority at the age of eighteen years. However, in case of appointment of his

guardian by the Court, the age of majority of such a Ward is twenty-one years. The application of the above provisions has however been excluded insofar as the operation of personal law in respect of marriage, divorce and dower is concerned. Every other person, subject to as aforesaid, domiciled in Pakistan shall be deemed to have attained his majority on completion of his age of eighteen years, and not before. A Muslim though under 18 years on attaining puberty, can bring a suit relating to marriage, dower and divorce without next friend.

Nothing is more precious in the world than human beings. Human resource is most important and valuable as compared to other sources in the universe. Child is the future asset of a family, a nation and the world at large, respectively.

9. Normally, the marriages in early age are likely to be higher in rural areas due to less development as compared to more developed urban areas. Lesser or fewer educational and economic opportunities reduce the female access to education and restrict their involvement in sales and services as compared to their urban counterparts. Poverty and cultural barriers put constraints on women from having their say regarding their marriage decisions specifically in the traditional and parochial societies. Early age marriages can have severe consequences to the life of a female and pose serious personal and social problems ranging from health issues to social mobility. Women who marry earlier in age are more likely to bear child at younger age and are more exposed to prolong domestic violence. Similarly, women marrying at younger ages tend to have less education, less economic opportunities, lower level of social mobility and poor access to health services. The denial of opportunity for an adequate education would amount to denial of opportunity to succeed in life. Early marriage does not only restrict women from socio-economic opportunities, but also affects their reproductive health status such as forced sexual relations, early and complicated pregnancies, higher fertility rate and large family size formation.

There is almost a consensus that fertility and age at the time of marriage have an inverse relationship, lower the age at marriage, higher will be the fertility rate as lower age at marriage lengthens the reproductive span of a girl. In general, early age marriage of females not only exacerbates the poor socio-economic development by depriving them of education, social freedom, good health, but also their personal development and well-being. While talking about the consequences of early age marriage at broader sense, it not only brings socio-economic underdevelopment at individual level but also hampers the development process of a region or a country. Therefore substantial part of human population, the women, remain uneducated or less educated, unemployed and underprivileged with poor health measures and no decision making power. It also increases the gender inequality and putting higher value on the boys than girls in the society.

Early marriage ensues into numerous adverse health consequences. Physically, child bride has small pelvis and are not prepared for childbearing. It results in deliveries that are too early or late. This exposes them to different complications. High mortality rates are due to postpartum hemorrhage, sepsis, obstructed labor and HIV transmission. Besides that, they are also at risk of acquiring Sexually Transmitted Infection and Cervical Cancer. To prove their fertility, they go for high

frequency and unsafe intercourse with their old age polygamous spouse. Conjointly, the adolescent mother produces less breast milk or colostrum, which makes their child susceptible to infection. After marriage, girls are brought to their husband's place, where they have to play the role of wife, domestic worker, and ultimately a mother. Their husband may also be polygamous due to which they end up in burdensome situation and feel isolated, rejected, and depressed. Literature suggests that age differences and the poor communication may lead to divorce or separation. Also, their children are more likely to report a stressful life and notably more psychiatric disorders. Socially child brides are unable to look after their families because they have less authority and control over their kids, and have less capability to become decisive about their housing management, nutrition and health care. With that most of wives have never gone to school or left school early, making them dependent on their spouses in practical life .

After the above discussion, it will be beneficial to examine certain provisions of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter to be referred as 'the Constitution'), which have a close nexus with the subject.

According to the preamble of the Constitution which inter alia says that "Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality so that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity".

Now, therefore, we, the people of Pakistan,

Do hereby, through our representative in the National Assembly, adopt, enact and give to ourselves, this Constitution.

In the case reported as "Ismaeel v. The State" (2010 SCMR 27), it has been observed as under:-

"It is settled law that preamble and object is always be kept in mind by interpreting the provisions of the Act on the well-known principle that preamble is key to understand the Act. According to the Chief Justice Dyer, preamble is the key to open the minds of the makers of the Act, and the mischief of which they intend to redress. See *Stowel v. Lord Zouch* (1965) 1 Plowd. ..It is settled principle of law that Act must be read as an organic whole while reading the Act in question as an organic whole then it casts heavy duty upon the Courts to examine the evidence on record and decide the cases keeping in view the object and mandate of the provision of the said Act. "

It may be proper to refer here Article 9 of the Constitution, which says that 'No person shall be deprived of life or liberty save in accordance with law' it has been interpreted by the Superior Courts in plethora of judgments while enlarging comprehensively the word 'life' with a variety of shades emphasized that the said Article does not merely protect the right to 'exist' or 'live' but it also encompasses the idea of leading of a meaningful and dignified life with a minimum standard of living. In Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693) it has been held that:-

"The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally. It is now well established that right to life as envisaged by Article 9 of the Constitution includes all those aspects of life which go to make a man's life meaningful, complete and worth living. In the case of Employees of Pakistan Law Commission v. Ministry of Works (1994 SCMR 1584), it has been laid down that Article 9 of the Constitution which guarantees life and liberty according to law, is not to be construed in a restrictive manner. Life has larger concept which include the right of enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights."

Article 25-A of the Constitution provides as under:-

Right to Education. The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law'.

In case of "Bushra Jabeen and 367 others v. Province of Sindh through Chief Secretary and others" (2018 MLD 2007), the co-relation between Articles 9 and 25-A of the Constitution has beautifully been maintained in the following words:-

"-----It needs no reiteration that right to life includes right to education, therefore, it is one of the Fundamental Rights of every citizen of Pakistan, whereas, in terms of Article 25-A of the Constitution of Islamic Republic of Pakistan, 1973, it has now become the duty of the State, to be performed through Government(s), to provide free and compulsory education to all the children of the age of five to sixteen years in such a manner as may be determined by law."

It will be relevant to mention that in terms of above Article, Punjab Free and Compulsory Education Act, 2014 (Act XXVI of 2014) has been promulgated.

Islam is the most progressive religion. It has laid more emphasis on the importance of learning and research than every other religion. Besides individual efforts, the atmospheric support is sine-qua-non for acquiring scholarship. The education enhances the consciousness and sharpens the vision of the humans. Being a substantial portion of population, women cannot be kept out of the main stream of the national life for the progress of any society and development of a country.

In case reported as "Liaqat Hussain and others v. Federation of Pakistan through Secretary, Planning and Development Division, Islamabad and others" (PLD 2012 Supreme Court 224) it has been held as under:-

----Art.25-A---Right to education---Education plays an important role in the successful life of an individual---Generally, education is considered to be the foundation of society which brings economic wealth, social prosperity, political stability and maintaining healthy population---Further progress of society is stopped in case of deficit of educated people---Educated people enjoy respect among their colleagues and can effectively contribute to the development of their country and society by inventing new devices and discoveries---Islam is a scientific religion emphasizing on the need of scientific inquiry---Need, purpose and kinds of education and as under the mandate of Quran and Ahadith, elucidated.

----Arts. 270AA(8), (9), 25-A, 29, 7, 37(a) & 184(3)---Constitutional petition---Right to education---Duty of State---"State"---Definition---By virtue of Art.270AA(8)(9) of the Constitution [as substituted by Constitutional (Eighteenth Amendment) Act, 2010] the Concurrent Legislative List was omitted in pursuance whereof projects being run by the Federal Government in the Provinces, including Basic Education Community Schools were decided to be wound up---While assailing the proposal of such winding up prayer of the petitioners (fathers of students and employees of the Projects) was that the proposed action on the part the authorities of closing down "Establishment and Operation of Basic Education Community Schools" be declared to be without lawful authority and of no legal effect and be also declared to be in violation of Art.25-A of the Constitution and the proposed act of winding up of the National Commission of Human Resources may be held to be entirely unconstitutional and of no legal effect so as to allow the Commission to continue to perform the positive duty of providing basic human rights to the citizens of Pakistan, under Art.7 of the Constitution, and that the State including the Federal and the Provincial Governments, therefore, under Art.25-A of the Constitution, the Parliament, in view of the definition of the 'State' had not absolved the Federal Government from conferring the Fundamental Rights upon the children---State, in terms of Art.37(a) of the Constitution, shall form such policies on the basis of which State shall promote, with special care, the educational and economic interest of backward classes or areas---Held, under Art.29 read with Art.25-A of the Constitution the Fundamental Rights were required to be enforced by the State---Especially in view of Art.25-A of the Constitution, it had been made mandatory upon the State to provide the education to the children of the age of 5 to 16 years."

No country can make progress without maintaining a nice balance between its population and resources. The august Supreme Court, in a Human Rights Case No. 17599 of 2018, regarding alarming high population growth rate in the country, reported as 2019 SCMR 247, has held as under:-

"As of 2017, Pakistan is ranked as the fifth most populous nation in the world, with a population of over 200 million. While all nations and economies rely

on population growth and a creation of future younger generations, such growth must be sustainable and proportionate to the resources available. Approximately 14,000 babies are born in Pakistan which is already struggling to feed, educate and provide employment for its existing population. Pakistan has experienced unchecked population growth since its creation in 1947. From 1998 (the previous comprehensive census) to 2017, Pakistan's population has increased by 57%, with the addition of approximately 76 million people to the population. Projected growth trends from the United Nations suggest that if this population growth rate does not slow considerably, Pakistan can expect to have its population increase by 50% resulting in an estimated 306 million people, surpassing the United States, Indonesia, Brazil, and Russia to become the world's third largest country in terms of population trailing behind India and China. The steadily increasing population rate in Pakistan is a ticking bomb which will certainly not wait till it is convenient for us to take note of it. What will follow this population explosion is starvation, famine and poverty, the likes of which are already visible in areas like Thar. Other indicators of overstretched resources and infrastructure are apparent in Pakistan's unemployment rate, maternal and child mortality rate, literacy and educational enrolment figures, and access to clean water and adequate food. A brief overview of the above figures reveals the extent of the resource and infrastructure shortcomings for an already large populace. Pakistan currently has a very high mortality rate for children under the ages of five years (75 deaths per 1000 live births), an above average maternal mortality rate (178 deaths per 10,000 births), and approximately 44% of the population lacks access to clean drinking water. Furthermore, Pakistan's literacy rate is 58% while over 22 million children are out-of-school. Future projections indicate the number of educational institutions to reduce in number. The above figures make it clear that Pakistan is not equipped to handle the addition of another 100 million people to its ranks.

10. Through a Proclamation on the conclusion of International Conference on Human Rights at Tehran in 1968, 'family planning' was recognized by the international community as both a right and a means of enabling other human rights. In this regard, paragraphs 16 and 17 of the Proclamation are relevant which read as under:-

- "16. The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children;
- 17. The aspirations of the younger generation for a better world, in which human rights and fundamental freedoms are fully implemented, must be given the highest encouragement. It is imperative that youth participate in shaping the future of mankind;"

As obvious from the language of the above reproduced paragraphs, the right to freely and responsibly determine the number and spacing of children involves imparting sufficient information and means to the parents to control reproduction as well as providing them with adequate knowledge regarding the advantages and disadvantages of such determination. Also apparent from the above language is the interdependence of planned births with the right of the younger generation to be afforded all fundamental and human rights recognized by the international community. Thus, the right to well-informed and controlled pregnancies is a right

that paves the path for enabling several other rights; for an overburdened economy cannot be expected to juggle with a growing population while struggling to provide better facilities and opportunities for its progeny. This right, which forms part of the international commitments of Pakistan, originates from the right to life under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution), and other fundamental rights such as the right to education, equality, speech, information and due process (Articles 4, 25, 25-A, 19, 19-A and 10-A of the Constitution respectively), which are in turn inevitably linked to the economic progress of the State expected to make such rights available to its people. Unfortunately, by failing to prioritize the provision of information and means of controlling unplanned and unwanted births, the country now faces a surplus of unskilled and unemployed manpower for whom basic human and fundamental rights are luxuries they can at best only hope for, but never attain.

11. It is maintained that in order to give effect to certain recommendations of the Commission on Marriage and Family Laws and to achieve the other objects, it has been made mandatory for the Muslim citizens of Pakistan solemnizing and contracting marriage to get their marriages registered in accordance with the provision of Section 5 of the MFLO and the Rules made thereunder i.e. West Pakistan Rules under the Muslim Family Laws Ordinance, 1961.

12. For ease of reference and better comprehension of the issues highlighted, relevant provisions of law and rules made there-under, in their chronological order are reproduced:-

5. Registration of marriage;

- (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.
- (2) For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licences to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.

Province of Punjab

For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licences to one or more persons, to be called Nikah Registrars.

- (2-A) The Nikah Registrar or the persons who solemnizes a Nikah shall accurately fill all the columns of the Nikahnama form with specific answers of the bride or the bridegroom.

(3). ...

(4). ..

Province of Punjab

- (4) If a person contravenes the provision of:

- (i) Subsection (2A), he shall be punished to simple imprisonment for a term which may extend to one Month and fine of twenty five thousand rupees; and

- (ii) Subsection (3), he shall be punished to simple imprisonment for a term which may extend to three months and fine of one hundred thousand rupees.
- (5) The form of Nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriage shall be registered and copies of Nikahnama shall be supplied to the parties, and the fees to-be charged thereof, shall be such as may be prescribed.
- (6) ...,,

13. Rule 7 of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961, deals with the issuance of a licence to the person for registration of marriages, which reads as under:-

- "7(1) Any person competent to solemnize a marriage under Muslim Law may apply to the Union Council for the grant of a licence to act as Nikah Registrar under section 5.
- (2) If the Union Council, after making such enquiries as it may consider necessary, is satisfied that the applicant is a fit and proper person for the grant of a licence, it may, subject to the conditions specified therein, grant a licence to him in Form I.
 - (3) A licence granted under this rule shall be permanent and shall be revocable only for the contravention of any of the conditions of a licence granted under this rule.
 - (4) If any person to whom a licence has been granted under this rule contravenes any of the conditions of such licence, he shall be punishable with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

The license is issued on a prescribed form i.e. Form-1 given in West Pakistan Rules.

"CONDITIONS"

- 1. The Licence is not transferable.
- 2. The licence is revocable for breach of any of the provision of MFLO, 1961, or the rules made thereunder or of any condition of this licence.
- 3.
- 4.
- 5. Such other conditions, if any, as may be specified by the Provincial Government.

On a combined reading of above provisions of MFLO and the Rules, the irresistible conclusion which can draw is that every marriage solemnized under Muslim Family Law is mandatorily registerable. The registration of the marriage shall be in accordance with the provisions of the Ordinance and the Rules. For registration of Nikah/marriage, the Union Council has been authorized to issue a

license to one or more persons who are fit and proper to solemnize the Nikah, on his/their application who are called as Nikah Registrars. The Nikah Registrar is under obligation to fill in accurately every column of the Nikahnama individually with specific answers of the bride and the bridegroom. Any violation/contravention with the provisions of the Ordinance is punishable with simple imprisonment and fine. The record of the marriage in respect of marriage registration is to be maintained by the Union Council. The copy of Nikahnama shall be supplied to the parties. It may be relevant to observe that in view of section 21 of the Pakistan Penal Code, 1860, Nikah Registrar is deemed to be a 'Public Servant' for criminal prosecution. The status of Nikah Registrar is that of a licensee. He does not fall within the definition of an employee as provided under Section 2(h) of the PEEDA (Punjab Employees, Efficiency and Discipline) Act 2006, therefore, in case of any contravention with any of the provisions of law or violation of any of conditions of the licence, subject to notice, his licence can be revoked/ cancelled by the Union Council.

14. Except a child, let me reiterate that the persons of three categories i.e. contracting party, promoters of the marriage and the guardians including the parents are liable for arranging and contracting the marriage for violating the provisions of the Child Marriage Restraint Act, 1929. It appears that qua authorization of the Union Council [under Section 9 of the Act] to make a complaint to take cognizance of an offence by a family Court is an outcome of a pragmatic legislative intent to achieve the objectives behind the Act. If marriage of a child is found to have been solemnized, Union Council is under a legal obligation to file a formal complaint against the persons violating the provisions of the Act before the Court to punish them and in this way, the efforts if any, made by the offenders/parents/guardians for screening of the violation made by them can effectively be frustrated. The prosecution of violators shall create deterrence in the society against the practice of child marriage. The legislature has, therefore, objectively given this mandate to the Union Council. The office of Union Council is a public body, created under the law. Being a statutory body, Union Council is obliged to perform its functions strictly in accordance with law. It may also be pointed out that under Section 2(v) of The Punjab Local Government Act, 2019, the 'Council' comprises over the Convenor and other councilors of a local government. Both elected councilors of the council and a convenor [Section 2(W)] are covered by the definition of a Councilor. From the date of its first meeting unless dissolved earlier [under section 233 of this Act], the term of office of the council, head of the local government, convenor and councilors shall be for a period of four years. Before assuming their office, all heads of the Local Government, conveners and councilors are required [under Section 114 of the Act] to take oath of their offices in terms of seventh, eighth and ninth Schedule of the Act respectively. They pledge to perform their duties under the Punjab Local Government Act, 2019, Rules, Bye-laws and Regulations made thereunder honestly, efficaciously and efficiently

to the best of their ability. It appears that these provisions have been legislated to inculcate in them a sense of responsibility. In case they make any breach or omission, in discharge of their functions/duties, they have been held accountable. The government is empowered [under Section 121 of the Act] to appoint administrators, on the dissolution of local governments or expiry of the term of a council [under Section 113 of this Act] or occurrence of a vacancy in the office of the head of the local government and pending the constitution of a new local government or a council, or appointment of a new head of the local government by way of elections. The Government by an order publish in the official gazette shall appoint any of its officers to perform such functions and exercise such powers and

authority of the respective local government as may be specified in that order, which have duly been mentioned/enumerated in detail in the Act. Inter alia, it is the duty of the Metropolitan Corporation, Town Committee and Tehsil Council to perform functions pertaining to "births, deaths, marriages and divorce registration" as given in item No.(j) Part I, Third Schedule, item No.(j) Part I Fourth Schedule and item No.(i) Part I Fifth Schedule of the Act respectively. It may be added that being settled proposition, even if, expression "misconduct" is not defined in the statute or the rules, yet when pointed out, it should be interpreted by the Courts narrowly in the sense of an infringement of binding rule of conduct applicable. Reliance in this regard is placed upon case titled "The Province of East Pakistan v. Muhammad Sajjad Ali Mazumdar" (PLD 1962 Supreme Court 71). However, a mechanism of accountability, oversight and responsiveness has definitely been devised through various provisions of Punjab Local Government Act, 2019. Any head of the Local Government, Convenor, Councilor, Officer or servant of the Local Government or any other person [under Section 220 of the Act] may be held guilty of misconduct if he violates any provision relating to code of conduct prescribed [under Section 219], derelicts from duty or shows gross negligence in performance of duties with manifest wrongful intent, knowingly vitiates any provision of this Act or lawful directions or orders of the government, involves in an act that results in wrongful gain to himself or to any other person, exercise powers or authority vested in him under this Act or any other law for the time being in force or fails to or refuses to exercise such powers or authority, for corrupt, unlawful or improper motives and attempts or abets any act which constitutes misconduct under this section.

15. It will be relevant to observe that the trial of the offence under the provisions of the Child Marriage Restraint Act, 1929 is to be held by a Family Court exercising the powers of a Judicial Magistrate of the first class in accordance with the provisions of Family Courts Act, 1964 (XXXV of 1964). In addition to what has been discussed in the preceding paragraph, it is observed that due to child marriage, the possibilities/ chances/likelihood of infringement of fundamental rights of a child which have duly been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973 are enhanced. As referred hereinabove, that the right of life is not a mere right to exist or live, it also encompasses the idea of leading a meaningful and dignified life. Offering of an opportunity to get education by the state is also a fundamental right of a minor, denial whereof would amount to denial to excel and progress in life. The education enlightens the soul of a human being. Besides shedding positive effects on his body, the education also refines human behavior. Examining this proposition while seeing it through the prism of rule "loco parentis" is observed that the paramount consideration before the Courts has always been the welfare and betterment of a minor. The Courts always act in loco parentis position while keeping in view a variety of considerations. A formalistic approach commonly associated with the adjudication of adversarial civil disputes may not be conducive to the exercise of parental jurisdiction by this Court. A more proactive role shall have to be adopted so as to ensure the protection of the best interest of the minor. The expression welfare shall have to be construed in a way as to include in its compass all the dominant factors essential for determining the actual welfare of the minor/child with a progressive outlook enabling him to prove as a useful entity. Technicalities of law are not supposed to circumvent the exercise of jurisdiction and powers by the Courts in dealing with the matters pertaining to the minor/child. All courts are therefore, supposed to exercise their jurisdiction proactively to forestall any endeavor to cause a breach to the fundamental rights of the children, the protection/provision of which essentially is also in the welfare of the minor/child. Therefore, I feel it appropriate to hold that whenever it comes to the notice of a Court that prima facie a case of breach of fundamental rights of the minor is made out, the Court, in case of failure of the Union Council in moving a complaint before the Court, while adopting a proactive role in "loco parentis" should, without any hesitation, pass an appropriate order directing the Union

Council to send a requisite complaint before the competent Court that a marriage has been contracted in violation of the provisions of the Child Marriage Restraint Act, 1929.

16. As referred in Para-5 of the judgment, Director Local Government and Community Development, Multan in view of his correspondence with Director General Local Government and Community Development, Lahore has issued some Standard Operating Procedure for taking punitive action against the Nikah Registrar violating the basic law to the following effect:-

- "i. That section 5(2A) of MFLO, 1961 states that at the time of solemnization of marriage, the Nikah Registrar or the person who solemnizes a Nikah shall accurately fill all columns of the Nikahnama form with specific answers of the bride or the bridegroom. And in case of contravention, a punishment is prescribed under section 5(4)(i) of the said Ordinance i.e. if a person contravenes the provisions of subsection (2A), he shall be punished to simple imprisonment for a term which may extend to one month and fine of twenty five thousand rupees.
- ii. Further, under rule 21 of the West Pakistan Rules under Muslim Family Law Ordinance, 1965 (hereinafter 'rules'), no court shall take cognizance of any offence under the Ordinance or the rules unless on a complaint in writing by the union council, stating the facts constituting the offence; therefore, ensure that every union council should lodge complaints soon after the receipt of Nikahnama forms columns of which are not accurately filled. Furthermore, prepare a report, on quarterly basis, containing the details about the complaints lodged during the quarter and furnish the same to DG office for information;
- iii. That cancel/revoke, after giving show-cause notice, the license of Nikah Registrar who breaches any of the provisions of MFLO, 1961 or rules made thereunder or any of the condition of his license.[In view of condition No.5 of the Conditions of the License, these directions may be deemed to be part of the conditions of the license.]
- iv. That ensure that no incomplete (not accurately filled) Nikahnama be registered in the UCs and if any Secretary UC or any other official registers the incomplete Nikahnama, he may, forthwith, be proceeded against under the PEEDA Act, 2006 and keep noted that no laxity in this regard shall be tolerated.

In addition to above, the following further directions are being issued

- (1) All the Nikah Registrars or other persons, who solemnize marriages are under legal obligation to scrutinize the credentials at the time of Nikah as to whether the marriage is solemnized with the free will of the parties and no child is exposed to marriage. Mere submission of oral entries for the purpose of age should not be accepted unless any proof of age from the parties to the marriage preferably which should be in the shape of some authentic document either issued by the NADRA in the form of National Identity Card, B-Form or School Leaving Certificate, Medical Certificate

based on ossification test issued by the competent authority and the Birth Certificate validly issued by the Union Council, etc. is produced.

- (2) Furthermore, after perusing the record in compliance with SOP (ii) mentioned in para 17, in case the Authority fails to take the requisite action, it will be deemed that he himself has willfully failed to perform his function/duty amounting to negligence rendering himself liable for initiation of disciplinary proceedings against him under the relevant law.

17. So far as the prayer of the petitioner as reproduced in Para-1 of the judgment is concerned, the same in view of Articles 9, 14 and 35 of the Constitution of Islamic Republic of Pakistan, 1973, 'The State shall protect the marriage, the family, the mother and the child' the same is granted and the official respondents are hereby directed to remain within the four corners of law and restrain themselves from causing any illegal harassment to the petitioner in any manner whatsoever. Resultantly, the instant writ petition is allowed and respondents Nos.1 to 4 being public functionaries are directed to remain within the four corners of law and desist from causing any harassment to the petitioner.

18. Before parting with this order, it is observed that the Secretary Local Government, Punjab, Director General Local Government and Community Development, Lahore and head of the Local Governments as mentioned in the Punjab Local Government Act, 2019 shall bring the existing SOPs in conformity with the directions issued hereinabove, copy whereof shall be submitted before this Court through Addl. Registrar (Judicial) of the Bench within two months, after receipt of copy of this order. Office is directed to transmit copy of this order to all concerned.

19. I also duly appreciate the assistance rendered by Mr. Muhammad Shafiq, Research Officer/Civil Judge 1st Class, Lahore High Court Multan Bench, Multan to deal with the issue discussed and dealt with hereinabove.

MH/T-9/L Petition allowed.

;

P L D 2020 Lahore 489**Before Tariq Saleem Sheikh, J NASIRA---Petitioner****Versus****JUDICIAL MAGISTRATE and 5 others---Respondents**

Writ Petition No. 45156 of 2019, heard on 2nd August, 2019.

(a) Constitution of Pakistan---

---Art.20(a)---International Covenant on Civil and Political Rights (ICCPR), 1966, Art.18---"Religious conversion", meaning of---Religious conversion was adoption of a set of beliefs identified with one particular religious denomination to exclusion of others and said phrase described abandoning of adherence to one denomination and affiliating with another, which might be from one to another denomination within the same religion, for example, from Baptist to Catholic Christianity or from Shi'a to Sunni Islam, etc.

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282 and Stark, Rodney and Roger Finke, "Acts of Faith : Explaining the Human side of Religion" University of California Press, 2000 p.114 rel.

(b) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction of High Court---Custody of minor---Domestic employment of minor under the age of fifteen---Forced religious conversion---Legal recognition of religious conversion, criteria---Nature of religious conversion / belief---Scope---Petitioner sought custody of minor daughter, who whilst under domestic employment of respondents, allegedly converted from Christianity to Islam and refused to see petitioner / mother---Petitioner impugned order of Judicial Magistrate whereby said minor daughter was lodged in a shelter home instead of being returned to petitioner on ground that such minor expressly stated that she had converted to Islam and did not want to go with her mother / petitioner---Validity---Minor lacked legal capacity to abjure her religion without consent of her parents or guardian---While petitioner / mother stated before Judicial Magistrate that she had no objection to minor's conversion to Islam however such statement could not be regarded as parental consent for change of religion as it was made in anxiety under a misguided belief that same would help her to get custody of her daughter---Contention that alleged forced religious conversion of minor be declared void was not tenable as concepts of valid, void and voidable could not be applied to religious rights and resulting personal law unless latter itself ordained the same, or was sanctioned by statutory law; and a person's religious belief was not tangible and could not be seen or touched---Change of religion did not, ipso facto, deprive a parent of right to custody of a child and petitioner being real mother of minor was entitled to custody and also to exercise control over minor---High Court observed that minor was not sui juris and lacked legal capacity to change religion on her own, however, since question of faith was a matter of heart and conviction, therefore no Court could declare said conversion invalid or void

and could only refuse to recognize or give effect to it for certain legal purposes---High Court directed that minor be returned to petitioner who was entitled to custody---Constitutional petition was allowed, accordingly.

Meghan G. Fischer, Anti-Conversion Laws and the International Response, 6 PENN.ST.J.L. and INT.L AFF.1(2018). Available at:<https://elibrary.law.psu.edu/jlia/vol6/iss1/5>; CCPR/C/21/Rev.1/ Add.4, General Comment No.22; Suo Motu Case SMC No.1 of 2014 PLD 2014 SC 699; Rev. Stainislaus v. State of Madhya Pradesh and others AIR 1977 SC 908; Smt. Sarla Mudgal, President, Kalyani and others v. Union of India and others AIR 1995 SC 1531; Lily Thomas and others v. Union of India and others AIR 2000 SC 1650; Interim report of the Special Rapporteur on freedom of religion or belief, 15, U.N.Doc.A/67/303(Aug.13, 2012); Pakistan Hindu Council v. Pakistan through Ministry of Law PLD 2012 SC 679; Sahih Muslim, Book 33, Hadith No.6426; Tafseer Ibn Kathir; Encyclopedia of Islam, University of the Punjab; Chapter IV of his book on Muhammadan Law, Ameer Ali; Muhammad Sadiq v. (Mrs.) Sadiq Safoora PLD 1963 (WP) Lah. 534; Eyal Ginio, Childhood, mental capacity and conversion to Islam in the Ottoman State, Byzantine and Modern Greek Studies 25(2001) 90-119; Re: Maria Huberdina Hertogh, [1951] MLJ 164; Teoh Eng Huat v. Kadhi, Pasir Mas and Anor (1990) 2 MLJ 300; Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and 7 others PLD 1997 SC 32; Reade v. Krishna (1886) I.L.R. 9 Mad. 391; Mst. Rani v. Roshan Masih and another 1986 PCr.LJ 1404; Abdul Razack v. Aga Mahomed Jaffer Bindanim [(1894) L.R. 21 I.A. 56; verse No.10 of Surah Al-Mumtahana (Chapter 28); Hakim Khan and 3 others v. Government of Pakistan through Secretary Interior and others PLD 1992 SC 595; Re: Agar Ellis, (1878) 10 Ch.D.49; Reade v. Krishna ILR 9 Mad.391; Mrs. Grace Abdul Hadi Haqani v. Abdul Hadi Haqani and others PLD 1961 (W.P.) Kar. 296; Mst. Ghulam Fatima alias Shammi Bai v. Chanoomal and another PLD 1967 Kar. 569; Helen Skinner v. Sophia Evelina Orde [(1871) 14 MIA, 309; Peggy Collin v. Muhammad Ishfaq Malik PLD 2010 Lah. 48; Sheila Umesh Tahiliani v. Soli Phirozshaw Shroff and others AIR 1981 Bombay 175 and Lekshmi and another v. Vasantha Kumari AIR 2005 Ker. 249 rel.

(c) Constitution of Pakistan---

----Art. 199---Constitutional jurisdiction of High Court---Question of religious conversion---Factual controversy---Scope---Conversion from one religion to another had far reaching legal consequences as it affected succession, marital status and right to seek elective office, etc.---Courts in certain cases, therefore, may be called upon to decide whether a conversion was bona fide, genuine, voluntary or otherwise and in such eventualities they gave findings on basis of evidence produced---Unless there existed statutory prescription about nature of proof required, subsequent conduct of a convert had immense importance and courts were to insist that declaration of conversion must be followed by adherence to cultural and spiritual tradition---High Court, under Art. 199 of the Constitution, could not undertake factual inquiry and thus question as to whether a conversion was tainted or otherwise could not be determined without recording evidence, therefore it could only be challenged through appropriate proceedings before a forum/court provided by Sub-Constitutional law.

Chapter II of the Principles of Muhammadan Law by D.F. Mullah; Moulabux v. Charuk and others PLD 1952 Sindh 54; Mst. Zarina and another v. The State PLD 1988 FSC 105; Punjabrao v. Dr. D. P. Meshram and others AIR 1965 SC 1179; Perumal Nadar v. Ponnuswami Nadar AIR 1971 SC 2352; S. Anbalagan v. B. Devarajan and others AIR 1984 SC 411; Skinner v. Skinner (1897) L.R. 25 I.A.34; Abdul Razack v. Aga Mahomed Jaffer Bindanim (1894) L.R. 21 I.A. 56; Kailash Sonkar v. Smt. Maya Devi AIR 1981 SC 600; Sapna Jacob, minor v. The State of Kerala and others AIR 1993 Kerala 75; Mst. Kaniz Fatima through Legal Heirs v. Muhammad Salim and 27 others 2001 SCMR 1493; Haji Sardar Khalid Saleem v. Muhammad Ashraf and others 2006 SCMR 1192 and Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others 2011 SCMR 1813 rel.

(d) Interpretation of statutes---

---Intention of Parliament---Most settled principle of interpretation was that a court must deduce intention of the Parliament from the words used in an Act / Statute.

Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and 7 others PLD 1997 SC 32 rel.

Malik Zeeshan Ahmad for Petitioner.

Malik Naveed Akram, Assistant Advocate General for Respondents

Shaukat Ali Mirza for Respondents Nos. 5 and 6.

Sheraz Zaka as Amicus curiae.

Muhammad Sher Abbas, Shafqat Abbas Mighiana, Muhammad Shafique and Fakhar Bashir Sial, (Lahore High Court Research Centre) Research Officers.

Date of hearing: 2nd August, 2019.

JUDGMENT

TARIQ SALEEM SHEIKH, J.---The Petitioner, Nasira, has filed this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), praying that her minor daughter Pummy Muskan be recovered from the alleged illegal custody of Respondents Nos.5 and 6 and dealt with in accordance with law.

2. Brief facts giving rise to this petition are that the Petitioner is a Christian by faith and her husband is confined in jail serving sentence in a criminal case. She is supporting a large family all by herself working in different houses. Respondents Nos.5 and 6 employed her 14-year-old daughter Pummy Muskan for household chores promising not only to pay for her needs but also provide education. After a few months when the Petitioner went to meet Pummy Muskan Respondents Nos.5 and 6 told her that she was with the sister of Respondent No.5 in another city and having embraced Islam did not want to see her any more. The Petitioner protested but they turned her out of their house. She approached the Respondent SHO but he did not help. The local Christian leader, Ch. Mushtaq Gill, then intervened and informed the Respondent SHO that the incident had hagridden his community and

urged him to recover the girl. The police officer was initially reluctant but eventually agreed to produce her before the Judicial Magistrate, Sargodha, on 5.7.2019. Respondents Nos.5 and 6 also entered appearance before the Magistrate that day. During the proceedings the Respondent SHO confirmed that Pumy Muskan had embraced Islam but, in view of her tender age, requested that she should either be handed over to the Petitioner or sent to Dar-ul-Aman (shelter home). The Magistrate recorded Pumy Muskan's statement who expressly stated that she did not want to go with the Petitioner. Accordingly, he lodged her in Dar-ul-Aman. His order dated 5.7.2019 is reproduced hereunder:

3. According to the Petitioner, she requested the Superintendent Dar-ul-Aman to allow her to see Pumy Muskan but he refused. On 8.7.2019, she learnt that the Magistrate had ordered her release and the Superintendent had once again handed her over to Respondents Nos.5 and 6. Consequent thereupon she filed the instant petition before this Court.

4. This Court directed the Respondent SHO to recover Pumy Muskan who has produced her today.

5. The learned counsel for the Petitioner contended that Pumy Muskan was a minor and Respondents Nos.5 and 6 had converted her to Islam through inducement and undue influence. The girl being of tender age could not make an informed decision to change her religion and even if she had consented to it the same was of no legal consequence. He further contended that even if Pumy Muskan's conversion was recognized and declared valid, the Petitioner being her mother could not be deprived of her custody. He argued that in their enthusiasm to support the conversion of a female of tender age Respondents Nos.1 to 4 had not only ignored the Injunctions of Islam but also the law of the land. The learned counsel prayed that the custody of Pumy Muskan with Respondents Nos.5 and 6 be declared illegal and she may be returned to the Petitioner.

6. The learned Assistant Advocate General adopted the arguments of the learned counsel for the Petitioner and supported this petition.

7. On the other hand, the learned counsel for Respondents Nos.5 and 6 vehemently opposed this petition. He contended that Pumy Muskan had converted to Islam with her own choice being impressed with its teachings. This was evident from the fact that she had learnt by heart a number of Surahs from the Holy Qur'an within a short span of time. He further contended that this Court would put her life and security at great risk if it gave her to the Petitioner. He prayed for dismissal of this petition.

8. Mr. Sheraz Zaka, Advocate, the learned amicus curiae, submitted that employment of Pumy Muskan with Respondents Nos.5 and 6 was violative of section 3 of the Punjab Domestic Workers Act, 2019, which prohibited engagement of a child below the age of 15 years for any household work. Although there was no evidence to show that it was a forced conversion, it was doubtful that the girl could make an intelligent decision about changing her religion at the age of 14. He added that even if it was assumed that she had done so freely and voluntarily, the Petitioner could not be deprived of her right of custody.

9. Arguments heard. Record perused.

10. There is no precise definition of religion. It is a matter of faith and belief in God is not essential to constitute religion. In *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (AIR 1954 SC 282), the Supreme Court of India observed:

"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion, and these forms and observances might extend even to matters of food and dress."

11. On the other hand, religious conversion is "the adoption of a set of beliefs identified with one particular religious denomination to the exclusion of others. Thus 'religious conversion' would describe the abandoning of adherence to one denomination and affiliating with another. This might be from one to another denomination within the same religion, for example, from Baptist to Catholic Christianity or from Shi'a to Sunni Islam."¹

12. Freedom of conscience and the right to profess, practice and propagate religion is reckoned as a fundamental human right. The Universal Declaration of Human Rights (1948) (UDHR), which is a seminal multilateral instrument that provides "a common standard of achievement of all people and all nations", specifically recognizes it as such. Article 18 thereof states:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others in public or private, to manifest his religion or belief in teaching, practice, worship or observance."

13. Article 18 of the International Covenant on Civil and Political Rights, (1966) (ICCPR), articulated the United Nations' aforementioned Declaration regarding religious freedom as follows:

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

14. Similar provisions are found in a host of other international instruments. In this context reference may be made to Article 9 of European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 12 of the American Convention on Human Rights (1969), Article 8 of the African Charter on Human and Peoples. Rights (1981), Universal Islamic Declaration on Human Rights (1981), and Arab Charter on Human Rights (1994).

15. ICCPR protects not just the internal components of belief, such as choosing one's religion, but also "the freedom to communicate within one's own religion or belief group, share one's conviction with others, broaden one's horizons for communicating with people of different convictions, cherish and develop contacts across State boundaries, receive and disseminate information about religion or belief issues and try to persuade others in a non-coercive manner."² The Human Rights Committee, the body charged with monitoring implementation of ICCPR, explained in General Comment No.22 that freedom to "have or to adopt" a religion or belief includes the right to change one's current religion or belief or to adopt atheistic views. Relevant excerpt from General Comment No.22 is reproduced hereunder:

"The Committee observes that the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert."³

16. Pakistan signed the ICCPR on 17.4.2008 with the following reservation:

"The Government of the Islamic Republic of Pakistan reserves its right to attach appropriate reservations, make declarations and state its understanding in respect of various provisions of the Covenant at the time of ratification."

17. On 23.6.2010 Pakistan ratified the ICCPR subject to certain reservations. However, through a subsequent communication dated 20.9.2011 the government notified the Secretary-General that it had decided to partially withdraw the reservations, made upon ratification, to Articles 3 and 25 and to Articles 6, 7, 12, 13, 18, 19 and 40.⁴

18. Our Constitution of 1973 envisages "equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality."⁵ Besides, it commits that "adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures."

19. The freedom to religion lies at the heart of our democratic enterprise. Article 20 of the Constitution of 1973 sanctifies it as a fundamental right reading as under:

20. Freedom to profess religion and to manage religious institutions.---Subject to law, public order and morality-

- (a) every citizen shall have the right to profess, practice and propagate his religion; and
- (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

20. In Suo Motu Case SMC No.1 of 2014 (PLD 2014 SC 699) the Hon'ble Supreme Court of Pakistan held that the freedom of religion must be construed liberally to include freedom of conscience, thought, expression, belief and faith. Freedom, individual autonomy and rationality characterize liberal democracies and the individual freedoms thus flowing from the freedom of religion must not be curtailed by attributing an interpretation of the right to religious belief and practice exclusively as a community-based freedom.

21. In order to reassure the above-mentioned right, Article 21 prohibits imposition of any special tax the proceeds of which are to be spent on the propagation of any religion other than a person's own. Article 22 inter alia provides safeguards as to educational institutions in respect of religion.

22. The freedom to religion is guaranteed to "every citizen" in the country irrespective of his age and whether he is a Muslim or non-Muslim. In Suo Motu Case No.1 of 2014 (PLD 2014 SC 699), supra, the Hon'ble Supreme Court of Pakistan explained:

"15. Of all the Articles relating to the minorities' rights, Article 20 is of prime significance. A close reading of this provision would indicate that the freedom to practice religion and manage religious institutions under this provision is multifaceted because:

- (a) The right to religious conscience conferred under this Article does not make any distinction between majority and minority or Muslim and Non-Muslim. It is in the nature of an Equal Religious Protection Clause conferred on every citizen, every religious denomination and every sect thereof. This equal religious protection clause is in the same nature as the equal justice under the law and equal protection under the law clauses conferred under Articles 4 and 25. In other words, every absolute equality and there is no distinction among citizens, religious denominations and sects thereof, as far as the right to religious conscience, is concerned.

- (b) The right to religious conscience is a fundamental right. It has not been subjected or subordinated to any other provision of the Constitution because it is only subject to law, public order and morality and not to any religious clauses of the Constitution. The very term law, public order and morality has been used in non-religious terms as the notion of law or public order or morality is not reducible to the Islamic meanings of these terms. Therefore, Article 20 has a certain preeminence in the Constitution being only subject to the general restrictions of law, public order and morality, which three terms cannot be interpreted or used in such a restrictive way as to curtail the basic essence and meaning of the pre-eminent right to religious conscience.
- (c) The right to profess and practice is conferred not only on religious communities but also on every citizen. What this means is that every citizen can exercise this right to profess, practice and propagate his religious views even against the prevailing or dominant views of its own religious denomination or sect. In other words, neither the majority religious denominations or sect nor the minority religious denomination or sect can impose its religious will on the citizen. Therefore, not only does it protect religious denominations and sects against each other but protects every citizen against the imposition of religious views by its own fellow co-believers. It needs to be mentioned here that every citizen would necessarily include both males and females (Article 263), which point needs emphasis considering the exclusion or subordination of women in relation to numerous forms of religious practices.
- (d) As far as every religious denomination is concerned, even sects within these religious denominations have been conferred the additional right to establish, maintain and manage its religious institutions. Therefore, even sects within these religious denominations have been protected against their own co-religious denominations.
- (e) The right of religious conscience conferred on every citizen is a right conferring three distinct rights, i.e. Right to Profess, Right to Practice and Right to Propagate. What this means is that Article 20 does not merely confer a private right to profess but confers a right to practice both privately and publicly his or her religion. Moreover, it confers the additional right not only to profess and practice his own religion but to have the right to propagate his or her religion to others. It is important to note that this propagation of religion has not been limited to Muslims having the right to propagate their religion but this right is equally conferred on Non-Muslims to propagate their religion to their own community and to other communities. This should not be seen as a right to encourage conversions but more importantly, should be seen as a right against forced conversions or imposing beliefs on others because if all citizens have the right to propagate then no citizen has the right of forced conversion or imposing beliefs on others." (emphasis added)

23. It is pertinent to note that, as the Supreme Court of Pakistan highlighted in the above-mentioned judgment, Article 20 grants right to the citizens to propagate

their faith but this right does not extend so as to allow any one to convert a person to another religion by coercion or inducement. Forced conversion or imposing beliefs on others rather constitutes infringement of the right to freedom of religion. The Supreme Court of India expressed similar view in *Rev. Stainislaus v. State of Madhya Pradesh and others* (AIR 1977 SC 908) while construing Article 25 of the Indian Constitution which is analogous to Article 20 of our Constitution. It said:

"We have no doubt that [what] the word, 'propagate' in Article 25(1) [of the Constitution of India], grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25(1) guarantees 'freedom of conscience' to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the 'freedom of conscience' guaranteed to all the citizens of the country alike. We find no justification for the view that it grants a fundamental right to convert persons to one's own religion. It has to be appreciated that the freedom of religion enshrined in the Article is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one's own religion."

The Supreme Court of India reaffirmed the above view in *Smt. Sarla Mudgal, President, Kalyani and others v. Union of India and others* (AIR 1995 SC 1531) and *Lily Thomas and others v. Union of India and others* (AIR 2000 SC 1650).

24. Heiner Bielefeldt, the United Nations Special Rapporteur on freedom of religion or belief from 2010 to 2016, reported that owing to violations of the right to convert the issue of conversion has "become a human rights problem of great concern."⁶ According to him, there are different perpetrators of, and motives for, such violations:

"For instance, abuses are perpetrated in the name of religious or ideological truth claims, in the interest of promoting national identity or protecting societal homogeneity, or under other pretexts such as maintaining political and national security. While some undue restrictions on the rights of converts or those trying non-coercively to convert others are undertaken by State agencies, other abuses, including acts of violence, stem from widespread societal prejudices. Violations in this sensitive area also include forced conversions or reconversions, again perpetrated either by the State or by non-State actors. In addition, the rights of converts or those trying non-coercively to convert others are sometimes questioned in principle."

25. Some countries, including India, Nepal, Myanmar and Bhutan, have enacted anti-conversion laws. The legislatures in Pakistan and Sri Lanka considered anti-conversion bills but did not pass them. In *Pakistan Hindu Council v. Pakistan through Ministry of Law* (PLD 2012 SC 679) the Hon'ble Supreme Court of Pakistan observed that in Pakistan it was probably not required because Article 20 of the Constitution guarantees sufficient protection to the minorities against all accesses.

26. Children have rights and liberties like adults but they are sometimes restricted because of their vulnerability. The human rights law also focuses on them, particularly in respect of religious freedom. For this reference may usefully be made to the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981) and the Convention on the Rights of the Child (1989). So far as religious freedom is concerned, Article 5 of the said Declaration of 1981 recognizes (a) the right of the parents or legal guardians to bring up the child in their religion or belief; and (b) right of the child to education in religion or belief, in accordance with the wishes of the parents and the right not to be compelled to receive education against their wishes. On the other hand, the Convention of 1989 provides:

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members

of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

27. Having discussed the law on the subject, I turn to the case before me. It involves the following moot points:

- I. Whether Pummy Muskan, who is admittedly a 14-year-old minor, could change her religion without the consent of her parents?
- II. Whether her conversion is tainted and forced?
- III. Whether the Petitioner is entitled to her custody notwithstanding the fact that she has embraced Islam?

I take up these issues seriatim.

Moot Point I

28. Prophet Muhammad (peace be upon him) said:⁷

[No babe is born but upon Fitra. It is his parents who make him a Jew or a Christian or a Polytheist.]

29. Islam teaches that everyone is Muslim at birth but the parents or society cause one to deviate from the straight path. Therefore, when someone accepts Islam he is considered to revert to his original condition. Nevertheless, Islam prohibits use of force against anybody to get him converted. The following verses of the Holy Qur'an are very instructive:

Surah 2 Verse 256:

[There is no compulsion in religion. The right direction is henceforth distinct from error. And he who rejecteth false deities and believeth in Allah hath grasped a firm handhold which will never break. Allah is Hearer, Knower.]

Surah 10 Verse 99:

[And if thy Lord willed, all who are in the earth would have believed together. Wouldst thou (Muhammad) compel men until they are believers?]

30. Hafiz Ismail Ibn Kathir (1300-1373), a great historian, exegete and scholar, has explained the above-mentioned Divine Command in his famous commentary Tafseer Ibn Kathir as under:

"Do not force anyone to become Muslim, for Islam is plain and clear, and its proofs and evidence are plain and clear. Therefore, there is no need to force anyone to embrace Islam. Muslims have a collective responsibility to share the message of Islam, but the normative way to do this has been clearly described in the Qur'an, itself i.e. "Invite all to the Way of your Lord with wisdom and kind advice, and only debate with them in the best manner (16:125)."

31. Neither any verse in the Holy Qur'an nor specific Hadith of the Prophet (peace be upon him) expressly stipulates minimum age for conversion to Islam. Hazrat Ali (R.A) was only 10 years old when he accepted it.⁸ However, Muslim jurists regard mental capacity of a child as of crucial importance when considering

the question of his conversion. Age of discernment is generally reckoned as the age when one attains puberty.

32. According to some jurists, the minimum age of puberty for boys is 12 years while for girls it is 9. After that age whenever they show signs of puberty they would be considered baligh (adults) and when they get 15, without distinction of sex, they would be considered baligh irrespective of the fact whether there are any visible signs. While discussing the subject of the "Wilayet-ul-Jabar", or the Doctrine of Patria Potestas, in Chapter IV of his book on Muhammadan Law, Ameer Ali states that:

"Puberty is presumed on the completion of the fifteenth year, according to most of the schools, unless there is evidence to the contrary. As a general rule, however, a person who completes the fifteenth year is considered, without distinction of sex, to be adult and sui juris, possessed of the capacity to enter into legal transactions (page 235)".

33. In Muhammad Sadiq v. (Mrs.) Sadiq Safoora (PLD 1963 (WP) Lahore 534), Anwar-ul-Haq, J. considered Ameer Ali's aforementioned statement and a host of other authorities on the subject and stated the law as under:

"There is consensus of opinion among Muslim jurists that when a child attains the age of discretion (Sinec Rushd) he is regarded a major or sui juris for all purposes. As a general rule, the age of discretion or majority and the age of puberty are equated. Majority is attained at the age of 15 years except in a case where the child is not of ripe discretion at that age."

34. The Qazis in the Ottoman Empire used to classify minors in three categories when dealing with conversions to Islam: children under the age of seven; children of about the age of seven to ten; and adolescents above this last age.⁹ In the first age-group the children could not convert independently of their parents as they had not yet attained the age of discretion. Their embracing Islam followed from their parents' conversion and their affiliation to them. It's validity relied on the view that the child at this stage is subject to his parent's will and it is beneficial that he should follow them. The children of seven to ten falling in the second category could convert without the permission of their parents. However, the Qazi was supposed to treat each case separately: to present the basic articles of the Islamic faith before the child and to assess his comprehension and then validate or reject his conversion. The third category comprised the young adolescents. Since Islamic law considers the first signs of sexual maturity as indicators of the termination of childhood, they were not considered as children. The Qazi would generally assume that they fully understood the meaning of their act and acknowledged their conversion without further questioning.

35. The UDHR and ICCPR do not expressly provide minimum age for religious conversion. In the absence of global consensus on this issue, jurisprudence in different States varies.

36. In Malaysia, development of law on conversion of minor to Islam is broadly classified into pre-Independence and post-Independence eras. Re: Maria Huberdina Hertogh, [1951] MLJ 164, is the leading case of the first period in which it was

held that a minor had no capacity to decide her own religion as she was subjected to the consent of her parents. The evidence was that the child, whose parents were Roman Catholics, had been brought up as a Muslim from her tender years until she was fourteen years old. The court returned her custody to the natural parents holding that she had no capacity to decide what religion she should follow and it was the right of her parents to determine it. After the independence the issue of conversion to Islam is regulated by different enactments at the federal and state level. Briefly, the process and procedural aspect of conversion under the States Administration of Enactments provides for three stages, namely, pre-conversion, conversion solemnization and, finally post-conversion registration. A non-Muslim who intends to convert must fulfill two basic requirements: he should be of sound mind and have the age qualification. Presently the States Enactments stipulate two categories of age requirement: (a) upon attaining the age of majority (baligh) in accordance with the Islamic law; and (b) upon attaining the age of 18 years. If the intending convert does not meet the age requirement, consent of his parents or guardian, as the case may be, is required. In *Teoh Eng Huat v. Kadhi, Pasir Mas and another* [(1990) 2 MLJ 300], the appellant challenged the High Court's order validating the action of Majlis Ugama Islam Kelantan converting his minor daughter without his permission. The Supreme Court held as follows:¹⁰

"It is our view that under normal circumstances, a parent or guardian (non-Muslim) has the right to decide the choice of various issues affecting an infant's life until he reaches the age of majority. Our view is fortified by the provisions of the Guardianship of Infants Act, 1961, which incorporates the rights, liabilities of infants and regulate the relationship between infants and parents. We do not find favour with the learned judge's view that the rights relating to religion is not covered by the Act on the ground that the word 'religion' is not clearly spelt out in the law. In all the circumstances, we are of the view that in the wider interest of the nation, no infant shall have the automatic right to receive instruction relating to any other religion than his own without the permission of the parent or guardian."¹¹

37. In Pakistan there is no uniform standard definition of age of majority. To this end, various laws prescribe different ages for exercising civil, political, economic, social rights or criminal liabilities. Nevertheless, for our present purposes the Majority Act, 1875 (the "Majority Act"), is relevant. Section 3 thereof stipulates that every person domiciled in Pakistan shall be deemed to have attained his majority on attaining the age of 18 years. However, where a Court has appointed or declared the guardian of the minor's person or property, or both, or where the Court of Wards has assumed superintendence of his property, he attains majority on completing his age of 21 years. These provisions are subject to Section 2 of the Act which read as under:

2. Savings.---Nothing herein contained shall affect---

- (a) the capacity of any person to act in the following matters (namely), marriage, dower, divorce and adoption;
- (b) the religion or religious rites and usages of any class of citizens of Pakistan.

38. For interpretation of a statute it is imperative that the Court should find out the intention of the legislature. To this end, it must consider every word used by it. In *Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and 7 others* (PLD 1997 SC 32), the Supreme Court of Pakistan held that the "most settled principle of interpretation is that the Court must deduce the intention of the parliament from the words used in the Act." The language employed in Section 2, *supra*, seeks to exclude religion and all religious issues (except guardianship matters) from the operation of the Majority Act. The purpose is to give maximum liberty to the people to follow their faith. The term "religion" is wide enough to encompass religious conversion. However, the question would be whether the age of majority for the purpose of conversion would be determined with reference to the personal law to which the intending convert is subject or the faith that he wants to embrace. According to the Madras High Court, it would be the former. Relevant excerpt from the case *Reade v. Krishna* [(1886) I.L.R. 9 Mad. 391] is reproduced hereunder:

"The construction suggested for Appellant is that when a Hindu youth of 16 changes his religion, his father's right to custody ceases; and adopting as we must do, the finding of the District Judge that the youth had completed his 16th year, he was according to Hindu law *sui juris* and therefore competent to change it; still this would not affect the right of the father to the custody and control of his minor son, and that right is not taken away by the Act; and in this suit the question with which we have to deal is, as the District Judge very properly remarks, not a question of interference with the right of a Hindu son to change his religious persuasion, but whether Hindu father is entitled to the custody of his son and to such control over him as he may lawfully be entitled to exercise." (emphasis added)

39. In contrast, Islamic jurists and even in some cases our Courts have held that where a person intends to become a Muslim, the governing law for determination of the age of majority would be Islamic Law. In this regard *Mst. Rani v. Roshan Masih and another* (1986 PCr.LJ 1404) may be referred. In the instant case, *Pumy Muskan* is admittedly 14 years old and a minor by all means. Therefore, any discussion on the aforesaid issue would be of academic interest only and should be postponed for some other time.

40. *Pumy Muskan* being a minor lacked legal capacity to abjure her religion without the consent of her parents or guardian. I have noted that in paragraph-4 of her application before the Judicial Magistrate (a copy whereof is appended with the present petition at page-19) the Petitioner stated that she had no objection to *Pumy Muskan's* conversion to Islam. I am not inclined to attach much importance to the said statement and take it as a parental consent for change of religion because, in my opinion, she made it in anxiety under a misguided belief that this would help her get custody of her daughter.

41. The learned amicus curiae, Mr. Sheraz Zaka, Advocate, urged this Court to declare *Pumy Muskan's* conversion void in view of her legal disability. I am afraid, this cannot be done. The concepts of valid, void and voidable cannot be applied to religious rights and the resulting personal law unless the latter itself ordains or the

statutory law sanctions them. For instance, in Islam marriage between certain relations is prohibited and thus void. On the statutory plane, Section 10 of the Hindu Marriage Act, 2017, empowers the Court to declare a Hindu marriage null and void on the conditions specified in clauses (c) and (d) of Section 4. To this end, clause (c) indicates any prohibited relationship between the two parties, and clause (d) relates to another living spouse at the time of marriage. The learned amicus curiae has not referred to any rule of law to support his prayer.

42. A person's religious belief is not a tangible thing and cannot be seen or touched. Thus, the Privy Council held in *Abdul Razack v. Aga Mahomed Jaffer Bindanim* [(1894) L.R. 21 I.A. 56] that "no Court can test or gauge the sincerity of religious belief." On this premise too a court cannot declare a person's conversion invalid or void -- unless he/she is of very tender age. However, it may refuse to recognize or give effect to it for certain legal purposes.

Moot Point II

43. The question as to whether Pummy Muskan's conversion is forced or otherwise has lost significance in view of my holding that she lacked the legal capacity to make such decision. Nevertheless, I would like to make a few observations.

44. Conversion from one religion to another has far reaching consequences. It affects succession, marital status and also the right to seek elective office. Divorce can be granted on the ground that the spouse has changed the religion. Upon conversion a person may be governed by a different personal law. The right to contest elections from a constituency reserved for minorities may be lost. Thus, the event of conversion is of critical importance from the point of view of rights and disabilities of a convert.

45. In Islamic Law it is a well recognized principle that a person who has read 'Kalma' even once, believes in the unity of Allah and that Prophet Muhammad (peace be upon him) is the last prophet and professes to be a Muslim, must be accepted as such. Paragraph-19 of Chapter II of the Principles of Muhammadan Law by D.F. Mullah states:

19. Who is a Muhammadan.---Any person who professes the Muhammadan religion, that is, acknowledges (1) that there is but one God, and (2) that Muhammad is His Prophet, is a Muhammadan. Such a person may be a Muhammadan by birth or he may be a Muhammadan by conversion. It is not necessary that he should observe any particular rites or ceremonies, or be an orthodox believer in that religion; no Court can test or gauge the sincerity of religious belief. It is sufficient if he professes the Muhammadan religion in the sense that he accepts the unity of God and the prophetic character of Muhammad."

46. The principle that when a person declares that he professes Islam (or has converted to it) has to be believed was reiterated in *Moulabux v. Charuk and others* (PLD 1952 Sind 54) and *Mst. Zarina and another v. The State* (PLD 1988 FSC 105).

47. Some other religions also require certain rituals --- like "Suddhi" in the case of Arya Samajists and baptism in Christianity --- for admission. However, the Supreme Court of India has ruled in a number of cases that no formal ceremony of purification or expiation is necessary to effectuate conversion. For this reference may be made to *Punjabrao v. Dr. D. P. Meshram and others* (AIR 1965 SC 1179), *Perumal Nadar v. Ponnuswami Nadar* (AIR 1971 SC 2352) and *S. Anbalagan v. B. Devarajan and others* (AIR 1984 SC 411).

48. Conversion may not always be for spiritual reasons. It can also be motivated (a disingenuous act for worldly gains) or a forced conversion. It may also be a pretense or a ruse. In *Skinner v. Skinner* [(1897) L.R. 25 I.A.34] the Privy Council held that where the sole object of conversion is to alter rights, liabilities or disabilities prescribed by law to which the parties are subject, such conversion is to be considered as fraud upon the statute and will not be permitted by the courts.

49. In view of the foregoing, in certain cases courts may be called upon to decide whether the conversion is bona fide, genuine, voluntary or otherwise. In such eventualities they give findings on the basis of evidence produced before them. Unless there is a statutory prescription about the nature of proof required, subsequent conduct of the convert has immense importance. The courts insist that declaration of conversion must be followed by adherence to cultural and spiritual traditions. The convert must take to the mode of life of his new religion. In this context, the Privy Council laid down the following dictum in *Abdul Razack v. Aga Mahomed Jaffer Bindanim* [(1894) L.R. 21 I.A. 56]:

" the question of conversion must be decided not by an enquiry into the mind of the convert but by an enquiry into the conformity of his acts to the conduct that may reasonably be expected from a person of his alleged religion."

50. In *Kailash Sonkar v. Smt. Maya Devi* (AIR 1981 SC 600), the Supreme Court of India adopted a similar approach while dealing with a case of reconversion. It ruled:

"In our opinion, the main test should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. We must hasten to add here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery."

51. Again, in *Sapna Jacob, minor v. The State of Kerala and others* (AIR 1993 Kerala 75), the Kerala High Court observed:

"In order to prove that the petitioner was a member of the Hindu community she must have established that there was a bona fide intention to be converted to the Hindu faith accompanied by conduct or unequivocally expressing that intention. It is true that no formal ceremony of purification or expiation is necessary to effectuate conversion. The petitioner is admittedly the daughter of a Jacobite Christian. So by birth she is a Christian. A convert must embrace Hinduism and follow the cultural system and tradition of that religion and should take the Hindu mode of life. It may be true that the

Court cannot test or gauge the sincerity of religious belief; or where there is no question of the genuineness of a person's belief in a certain religion, the court cannot measure its depth or determine whether it is an intelligent conviction or ignorant and superficial fancy. But a court can find the true intention of men lying behind their acts and can certainly find from the circumstances of a case whether a pretended conversion was really a means to some further end."

52. The High Courts in our country cannot undertake factual inquiry while exercising jurisdiction under Article 199 of the Constitution. Inasmuch as the question as to whether a conversion is tainted or otherwise cannot be determined without recording evidence, it can be challenged by the party concerned only through appropriate proceedings before the forum/court provided by (sub-constitutional) law. Reference in this regard may be made to *Mst. Kaniz Fatima through Legal Heirs v. Muhammad Salim and 27 others* (2001 SCMR 1493) wherein the Hon'ble Supreme Court held:

"Even otherwise such controversial questions could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan. In this regard reference can be made to case titled *State Life Insurance Corporation of Pakistan v. Pakistan Tobacco Co. Ltd.* (PLD 1983 SC 280). The superior Courts should not involve themselves into a thorough probe or an in depth investigation of disputed question of fact which necessitate taking of evidence. In our considered view this can conveniently and appropriately be done by the forums available in the hierarchy. The constitutional jurisdiction is primarily meant to provide expeditious and efficacious remedy in a case where illegality, impropriety and flagrant violation of law regarding impugned action of the authority is apparent and can be established without any comprehensive inquiry into complicated, ticklish, controversial and disputed facts."

The above view has been reiterated in a host of other cases, including *Haji Sardar Khalid Saleem v. Muhammad Ashraf and others* (2006 SCMR 1192) and *Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others* (2011 SCMR 1813).

Moot Point III

53. Admittedly, the Petitioner is the real mother and natural guardian of Pummy Muskan. The learned counsel for Respondents Nos.5 and 6 contends that she is disentitled to her custody because she has converted to Islam. In support of his contention he has relied upon both the Holy Qur'an and Tafseer Ibn Kathir. From the Book he has recited Verse No.10 of Surah Al-Mumtahana (Chapter 28) which reads as under:

[O ye who believe! When believing women come unto you as fugitives, examine them. Allah is best aware of their faith. Then, if ye know them for true believers, send them not back unto the disbelievers.]

From Tafseer Ibn Kathir the learned counsel has referred to the following excerpt:

"In Surah Al-Fath, we related the story of the treaty at Al-Hudaybiyyah that was conducted between the Messenger of Allah and the disbelievers of Quraysh. In that treaty, there were these words, "Everyman (in another narration, every person) who reverts from our side to your side should be returned to us, even if he is a follower of your religion."

This was said by Urwah, Ad-Dahhak, Abdur-Rahman bin Zayd, Az-Zuhri, Muqatil bin Hayyan and As-Suddi.

So according to this narration, this Ayah specifies and explains the Sunnah. And this is the best case of understanding.

Yet according to another view of some of the Salaf, it abrogates it.

Allah the Exalted and Most High ordered His faithful servants to test the faith of women who emigrate to them. When they are sure that they are faithful, they should not send them back to the disbelievers, for the disbelievers are not allowed for them and they are not allowed for the disbelievers."¹²

54. I have thoroughly studied the above citations and noted, with respect, that they speak of Muslim women who came to Madina after Prophet Muhammad's migration and have no relevance to the facts and circumstances of the instant case. Even if it is assumed otherwise, our legal framework does not permit enforcement of Islamic tenets unless they are enacted into a law through legislation. Respondents Nos.5 and 6 can at the best rely on Article 2A of the Constitution but the Hon'ble Supreme Court of Pakistan has settled long ago in *Hakim Khan and 3 others v. Government of Pakistan through Secretary Interior and others* (PLD 1992 SC 595) that it is not self-executory.

55. It is trite that in all matters relating to custody of minors the Courts act in loco parentis and it is their legal duty to ensure their welfare. The question as to what is in the interest of a minor depends on the facts of each case and we have a rich jurisprudence on this point. The principles set out in the *Guardians and Wards Act, 1890* (hereinafter called the "1890 Act"), serve as a lighthouse. Clause (b) of Section 19 of the said Act lays down the fundamental principle that no guardian can be appointed or declared in the case of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of his person. In *Re Agar Ellis*, [(1878) 10 Ch.D.49] James L.J. said:

"The right of the father to the custody and control of his children is one of the most sacred rights. No doubt the law may take away from him this right or interfere with his liberty, but it must be for some sufficient cause known to the law. He may have forfeited such parental right by moral misconduct or by the profession of immoral or irreligious opinions deemed to unfit him to have the charge of any child at all; or he may have abdicated such right by a course of conduct which would make the resumption of his authority capricious and cruel towards the children. But, in the absence of such conduct by the father entailing such forfeiture or amounting to such abdication, the court has never yet interfered with the father's legal right."

56. Clause (b) of Section 19, supra, is of vital importance in the instant case because here the contest for custody of the minor, Pummy Muskan, is not between her parents (or their close relatives) but between them and a third party/strangers (Respondents Nos.5 and 6).

57. The welfare of a minor is not restricted to the child's health, education, physical, mental, and psychological development alone; it also includes his/her spiritual and moral well being. Section 17 of the 1890 Act, which details the matters that the Court must take into consideration while appointing a guardian, gives us a cue in this regard. The said section reads as under:

17. Matters to be considered by the Court in appointing guardian.---(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.
- (2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.
- (3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.
- (4) Omitted by the Federal Laws (Revision and Declaration) Ordinance, XXVII of 1981.
- (5) The Court shall not appoint or declare any person to be a guardian against his will.

58. Generally speaking, change of religion/conversion does not ipso facto deprive a parent of his right to custody of his child. *Reade v. Krishna* (ILR 9 Mad.391) decided in 1886 is one of the earliest authorities on the point. In that case a 16-year-old Brahman boy left his father to live with a missionary and after some time embraced Christianity and was baptized. His father filed a suit for his recovery which the District Judge decreed. He held that the conversion would not affect the right of the father to the custody and control of his minor son. The High Court upheld that decision in appeal. In the post-partition era, the case reported as *Mrs. Grace Abdul Hadi Haqani v. Abdul Hadi Haqani and others* (PLD 1961 (W.P.) Kar. 296) relates to a minor girl who was born to Muslim man and a woman who had converted from Christianity. The father was convicted under the Official Secrets Act by Court Martial and sentenced to 31 years' imprisonment. Before the said conviction the father and the mother signed a declaration that the child would be brought up as a Roman Catholic and was baptized at the age of one year on the date of declaration. Mother then started living an immoral life whereupon the child's maternal grandparents (Roman Catholics) took over her care. Court held that the father had not lost right to her custody notwithstanding her baptism. The next case that may be cited is *Mst. Ghulam Fatima alias Shammi Bai v. Chanoomal and another* (PLD 1967 Kar. 569). It involved a Hindu couple which had three children.

The wife embraced Islam after the death of her husband. The Court held that mere change of religion was not sufficient for removing the minors from the lady's custody and the paramount consideration was their welfare. Relying upon the Privy Council's judgment in *Helen Skinner v. Sophia Evelina Orde* [(1871) 14 MIA, 309] it ruled that it was in the minors' interest that they should be brought up in their father's religion and handed over the custody to their uncle. In another case, reported as *Peggy Collin v. Muhammad Ishfaq Malik* (PLD 2010 Lah. 48), this Court gave custody to a French Christian mother following the principle of the welfare of the child. The Muslim father of the child was a convict and was under arrest. The Court decided that the Muslim faith of the father was not enough to establish the fact that giving custody to the father was in the "best welfare of the child."

59. The same principle obtains in India. The Bombay High Court held in *Sheila Umesh Tahiliani v. Soli Phirozshaw Shroff and others* (AIR 1981 Bombay 175) that conversion cannot be regarded as a disqualification for custody of a minor child so long as the guardian is capable of providing him a congenial, comfortable and a happy home. Similarly, in *Lekshmi and another v. Vasanth Kumari* (AIR 2005 Ker. 249) the Kerala High Court held that the mere fact that the mother has married a person practicing another faith is not by itself a reason to take away the custody of the child from her.

60. The Petitioner being the lawful guardian of Pumy Muskan is entitled to her custody and exercise control over her. The girl cannot be lodged in Dar-ul-Aman against her will.

61. The prayer of Respondents Nos.5 and 6 that they may be permitted to retain Pumy Muskan cannot be accepted for a number of reasons. Firstly, the Petitioner, her guardian, is against it. Secondly, Respondent No.6 is not related to her in the prohibited degree. Thirdly, section 3 of the Punjab Domestic Workers Act, 2019, prohibits engagement of a child below the age of 15 years for any household work. Since Pumy Muskan has not attained that age, her employment with Respondents Nos.5 and 6 was unlawful from the inception and this Court would be perpetuating that illegality if it allows them to continue with her services.

Conclusion

62. Pumy Muskan is barely 14 years old. As she is not sui juris she lacks legal capacity to change religion on her own. However, the question of faith being a matter of heart and one's conviction, no Court can declare her conversion invalid or void. It can only refuse to recognize or give effect to it for certain legal purposes. The Petitioner being the lawful guardian of Pumy Muskan is entitled to her custody. There is no reason to deprive her of that right.

Order of the Court

63. In view of the foregoing, this petition is accepted and the custody of Pumy Muskan is handed over to the Petitioner.

KMZ/N-9/L Petition accepted.

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2019 Y L R 2171

[Islamabad]

Before Athar Minallah, C J and Miangul Hassan Aurangzeb, J

The STATE---Petitioner

Versus

AAMIR HUSSAIN SHAH---Respondent

Murder Reference No. 07 of 2015, decided on 13th May, 2019.

(a) Penal Code (XLV of 1860)---

----S. 376--- Rape--- Appreciation of evidence---Accused was charged for committing rape with the victim---Victim was about ten years old at the time of the commission of offence---Accused and the victim were first cousins and victim was living with mother of accused who was her paternal aunt---Accused did not mention in his statement recorded under S.342, Cr.P.C regarding any ill will or acrimony towards him by the victim or her sister---Victim had entered the witness box and was subjected to extensive cross-examination, yet she remained consistent, credible and trustworthy---Complainant, who had no relationship with the victim or her family, was an independent witness, his statement corroborated the deposition of the victim---Un-scaled site plan of the crime scene also supported the testimony of the victim---Recoveries and depositions of other witnesses had also been found to lend support to the deposition of the victim---Medical evidence, recoveries and above all, testimonies of other uninterested witnesses lent support to and corroborated the plea of the victim---Nothing was on record to even remotely indicate that the victim or the other witnesses had any reason for falsely implicating the accused---Prosecution had succeeded in proving its case beyond a reasonable doubt, in circumstances---High Court observed that accused had indeed committed a most heinous offence and there could be no redemption or compensation for the victim because she would have to live with the worst scars that one could imagine---No mitigating circumstances were available in order to consider handing down a lesser sentence---Appeal was dismissed accordingly.

Mujeeb ur Rehman v. The State 2018 YLR 389; Mst. Nazia Anwar v. The State and others 2018 SCMR 911; Malik Sher Muhammad and another v. Malik Khair Muhammad and 4 others 2018 YLR 110; Tariq Pervez v. The State 1995 SCMR 1345; Gulfam and another v. The State 2017 SCMR 1189; Mst. Askar Jan and others v. Muhammad Daud and others 2010 SCMR 1604 and Zafar Iqbal and another v. The State 2016 YLR 1891 ref.

(b) Penal Code (XLV of 1860)---

----S. 376---Qanun-e-Shahadat (10 of 1984), Art. 3---Child witness---Rape---Appreciation of evidence---Statement of victim, a minor---Scope---Defence had objected that victim was a child witness and she could have been tutored or influenced by elders, hence it would not be safe to rely on her testimony as child witness---Validity---Article 3 of the Qanun-e-Shahadat, 1984 contemplated that all persons were competent to testify unless the court considered that they were prevented from understanding the questions put to them or from giving rational answers to those questions by tender or extreme old age, disease, whether of body or mind, or any other cause of the same nature---Child witness, in circumstances, was not barred from entering the witness box-- -Satisfaction of the trial court was of crucial importance in such cases---Child who also happened to be a victim of an offence was competent to testify as a witness and such deposition would be worthy of reliance provided the court was satisfied that he or she, as the case may be, was intelligent and understanding the significance of entering the witness box.

Muhammad Afzal v. The State PLD 1957 (WP.) Lah. 788; Sultan and another v. The State PLD 1965 Kar. 615; Abdullah Shah v. The State 1968 SCMR 852; Ameer Umar v. The State 1976 SCMR 338; State through Advocate-General Sindh, Karachi v. Farman Hussain and others PLD 1995 SC 1; Muhammad

Jamal and others v. The State 1997 SCMR 1595; Mst. Razia alias Jia v. The State 2009 SCMR 1428; Fayyaz alias Fayyazi and another v. The State 2006 SCMR 1042; Mushtaq Ahmed and another v. The State 2007 SCMR 473 and Ulfat Hussain v. The State 2010 SCMR 247 rel.

(c) Criminal trial---

---Witness---Child witness---Statement of a minor---Reliance---Scope---Conviction could be handed down placing reliance on the sole testimony of a child witness but as a rule of prudence it was generally preferred that it should be corroborated by some other evidence so as to ensure the safe administration of justice.

Barrister Ahsan Jamal Pirzada for Appellant (in Jail Appeal No.76 of 2015).

Imtiaz Ahmad Somro for the Complainant/Respondent.

Malik Awais Haider, State Counsel.

Date of hearing: 4th February, 2019.

JUDGMENT

ATHAR MINALLAH, J.- Through this consolidated judgment, we will answer the instant Murder Reference and decide Jail Appeal No. 76 of 2015 filed by Aamir Shah son of Ali Asghar Shah (hereinafter referred to as the "Appellant"). The Murder Reference has been referred for confirmation of death sentence handed down vide judgment, dated 15.04.2015, passed by the learned Additional District and Sessions Judge-V (West), Islamabad. The Appellant has been convicted and sentenced in the following terms:-

For reasons above, accused Amir Shah is hereby found guilty of the offence of rape with minor girl Mst, Hameeda Bibi as defined in section 375, P.P.C. And looking to the helplessness of the poor victim being minor girl, took shelter in the family of accused person being relatives and fell prey of the lust of the accused person who has ruined her life even before she turns to major and mature to foil such attempt and understand pretext. The sentences/punishment prescribed in Section 376, P.P.C. are to bring deterrence in the society, thus, in such circumstances, the accused person convicted and sentenced to death. He be hanged by the neck till he is dead subject to confirmation of death reference from the Honorable Islamabad High Court, Islamabad, as envisaged under Section 374 Cr.P.C. In addition to above, the accused is further ordered to pay Rs.100,000/- (Rupees one lac only) fine is also imposed upon the accused person. In case of default of payment of fine, he shall further undergo simple imprisonment for six (6) months."

2. The facts, in brief, are that at about 8.30 pm on 02-07-2011, Qari Muhammad Anwar, Khateeb of Syedena Hassan Mousque had informed Ch. Nazir Ahmad son of Muhammad Yaqoob (PW-2) that a child, namely, Hameeda Bibi (hereinafter referred to as the "Victim"), was bleeding and complains of being raped. The mother of the latter had passed away while her father appears to have abandoned her. Pursuant to the said information, Ch. Nazir Ahmad went to Roshan Basti where he met the Victim and her elder sister, namely, Zameeda Bibi. The Victim informed him that her paternal cousin i.e. the Appellant, had subjected her to rape. Ch. Nazir Ahmad took the Victim, accompanied by her elder sister and one of the neighbors, namely, Safia Bibi (PW-1), to the Pakistan Institute of Medical Sciences (hereinafter referred to as the "Hospital"). At the Hospital the Victim was medically examined and given treatment by Dr. Syeda Rana Fatima (PW-14). The latter took 4 swabs and prepared Medico Legal Report Exh-PL. The examination report Exh-PK was also prepared by her. The concerned Police Station was informed and in response Zafar Iqbal, ASI (PW-11) reached the Hospital and reduced the complaint to writing (Exh.PH), which was sent to the Police Station for registration of a criminal case. On receiving the written complaint, FIR No.285, dated 03.07.2011, Ex-PC, was registered under section 376 of the Pakistan Penal Code, 1860 (hereinafter referred to as 'P.P.C.'). Zafar Iqbal, ASI (PW-11) took into possession blood stained clothes of the Victim vide recovery memo Ex-PB. On 03-07-2011 the investigations were transferred to Ghulam

Shabbir, SI (PW-15). On 04.07.2011, the latter arrested the Appellant who volunteered to take the police officials to the house which was the crime scene. He, therefore, led the Investigating Officer, Ghulam Shabbir (PW-15) and other officials to the crime scene, where the latter prepared an un-scaled site plan Exh.PM and took into possession a blood stained bed sheet vide recovery memo Exh.PA. The Appellant also led the Investigating Officer to the recovery of the blood stained clothes worn by him at the time when the offence was committed. The clothes were taken in possession vide recovery memo Exh.PF. Other small pieces of cloth were also taken into possession vide recovery memo Exh.12. The Appellant was examined on 05.07.2011 by Dr. Muhammad Farrukh Kamal, Deputy Director (PW-9). The latter prepared a report, which was brought on record as Exh.PG. The Appellant was said to be physically fit and sexually active. The National Forensic Science Agency (DNA Laboratory) prepared a report, dated 09.03.2012, which was tendered in evidence as Exh-PJ, while the report of the Chemical Examiner, dated 11.07.2011 was brought on record as Exh.PN. According to the latter report the sample swabs were found to be stained with semen, while the DNA report Exh.P5 was negative. The charge was framed on 13-12-2011 to which the Appellant did not plead guilty. The prosecution produced 15 witnesses while the Appellant preferred not to be examined on oath and his statement under Section 342 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "Cr.P.C.") was duly recorded. After conclusion of the trial and affording an opportunity of hearing to the parties, the learned trial Court convicted and sentenced the Appellant vide the impugned judgment, dated 15.04.2015. The Jail Appeal has been preferred by the Appellant while Murder Reference No.07 of 2015 has been referred to this Court for confirmation of the conviction and sentence.

3. Barrister Ahsan Jamal Pirzada, Advocate High Court, assisted us on behalf of the Appellant. He has contended that; the evidence brought on record was not sufficient for convicting and sentencing the Appellant; the obvious contradictions in the testimonies of the prosecution witnesses raises serious doubts regarding the commission of the offence by the Appellant; the contradictions were pointed out from the record; the investigations conducted by PW-1 and later PW-15 were defective and not honest; the witnesses were not consistent and, therefore, the benefit ought to go in favour of the Appellant; reliance has been placed on "Mujeeb ur Rehman v. The State" 2018 YLR 389 "Mst. Nazia Anwar v. The State and others" 2018 SCMR 911, "Malik Sher Muhammad and another v. Malik Khair Muhammad and 4 others" 2018 YLR 110, "Tariq Pervez v. The State" 1995 SCMR 1345, and "Gulfam and another v. The State" 2017 SCMR 1189; the articles taken into possession by the Investigating Officers were in violation of section 103 of the Cr.P.C; the articles recovered vide recovery memos Exh.PA and Exh.PH cannot be relied upon; the police officials had visited the crime scene on 03.07.2011 and, therefore, the stance that they had been led there by the Appellant on 04.07.2011 is definitely a concocted story; reliance has been placed on "Mst. Askar Jan and others v. Muhammad Daud and others" 2010 SCMR 1604 and "Zafar Iqbal and another v. The State" 2016 YLR 1891; the DNA report was negative; the prosecution had failed to prove its case beyond a reasonable doubt.

4. Mr. Imtiaz Ahmed Sehra, Advocate, appeared on behalf of the complainant and argued that; the testimony of the Victim who entered the witness box as PW-3 was reliable and trustworthy; it is settled law that the testimony of a child victim of rape is sufficient to prove the case, provided the testimony is corroborated by other evidence; the testimony of the Victim stood corroborated; the Appellant had led the Investigating Officer to the crime scene; the prosecution proved the case beyond reasonable doubt.

5. The learned State Counsel adopted the arguments advanced by the learned counsel for the respondent Complainant. He argued that the prosecution had established the guilt of the Appellant beyond reasonable doubt.

6. The learned counsel for the parties and the learned State Counsel have been heard and we have gone through the record with their able assistance.

7. The age of the Victim was about ten years at the time of the commission of the offence. The Appellant and the Victim are related as first cousins i.e. the formers mother is the Victim's paternal aunt. The elder sister of the Victim, namely, Zameeda Bibi is married to the younger brother of the Appellant. The Victim, who had lost her mother and had been abandoned by her father, was living with her paternal aunt i.e. Ms. Nasreen Bibi, mother of the Appellant. They were living in Roshan Basti at the time of the commission of the offence and before that they used to live in the house where the offence

was committed. The Appellant did not mention in his statement recorded under Section 342, Cr.P.C. regarding any ill will or acrimony towards him by the Victim or her sister. However, he referred to some vague incident in the past, which had no nexus with the Victim or her sister. The Victim had entered the witness box as PW-3 and she was subjected to extensive cross-examination, yet she remained consistent, credible and trustworthy. Ch. Nazir Ahmad (PW-2), who had no relationship with the Victim or her family, was informed about the occurrence and, pursuant thereto, he had met the Victim and her sister at the mosque. As an independent witness, his statement corroborated the deposition of the Victim. Moreover, the un-scaled site plan of the crime scene Exh.PM also supports the testimony of the victim. The recoveries and depositions of other witnesses have also been found to lend support to the deposition of the Victim.

8. The learned counsel, who assisted us on behalf of the Appellant, has laid great stress on the reliability of the Victim's testimony because, as argued by him, she was a child witness and she could have been tutored or influenced by elders. He has strenuously argued that it would not be safe to rely on the testimony of a child witness. By now the law relating to the competence of a child witness to depose in a criminal case and its evidentiary value is well settled. It would, therefore, be relevant to discuss the precedent law in this regard. Article 3 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as the "Order of 1984") contemplates that all persons are 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 or extreme old age, disease, whether of body or mind, or any other cause of the same nature. The said Article contains three provisos. The Lahore High Court in the case titled "Muhammad Afzal v. The State" PLD 1957 (WP.) Lahore 788 has observed and held that each case depends upon its particular facts and circumstances and that no general rule of universal application could be laid down that in no case should the evidence of a child witness be believed. It was further observed and held that the evidence of a child witness, before it is acted upon should, however, be subjected to close and careful scrutiny. The learned Court referred to two judgments from the Indian jurisdiction and held them to be distinguishable. The learned Sindh High Court, in the case titled "Sultan and another v. The State" PLD 1965 Karachi 615 observed and held that it was unsafe to base the conviction upon the sole testimony of a young child. In the case titled "Abdullah Shah v. The State" 1968 SCMR 852 the august Supreme Court was considering a conviction based on the solitary evidence of a child aged 7 or 8 years who happened to be the convicted accused's daughter. The august Supreme Court, while interpreting Section 118 of the Evidence Act, 1872 held and observed as follows:-

"We have no hesitation in saying that there is no substance in either of these contentions. Section 118 of the Evidence Act, as rightly pointed out by the High Court, makes all persons competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving a rational answer to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. In the present case the Court had, by questioning the child concerned, fully satisfied itself that she was capable of understanding the questions put to her and of giving rational answers to those questions. Indeed, the trial Court had remarked that she also stood the cross-examination well and her evidence was in no way shaken by such cross-examination. In the circumstances she was a fully competent witness. Whether she was to be believed or not, was for the Courts below to consider. Both the Courts below have believed her testimony because she was a natural witness and her version found corroboration from the medical evidence and the other circumstances of the case."

9. In the case titled "Ameer Umar v. The State" 1976 SCMR 338, the august Supreme Court, in the context of a child witness, observed and held that a trial Court was required to satisfy itself that the child witness was capable of giving rational answers to the questions put to him or her. In the case titled "State through Advocate-General Sindh, Karachi v. Farman Hussain and others" PLD 1995 SC 1, the august Supreme Court observed and held that the evidence of a child witness was required to be assessed with care and caution. It was further observed and held as follows:-

"Evidence of child witness is a delicate matter and normally it is not safe to rely upon it unless corroborated as rule of prudence. Great care is to be taken that in the evidence of child element of coaching is not involved. Evidence of child came up for examination before Division Bench of the High Court in the case of Amir Khan and others v. The State PLD 1985 Lah. 18 in which after consideration of the relevant case-law on the

subject, Abdul Shakurul Salam, J. (as he then was) as author of the judgment observed that 'children are a most untrustworthy class of witnesses, for, when of tender age, as our common experience teaches us, they often mistake dreams for reality, repeat glibly as of their own knowledge what they have heard from others and are greatly influenced by fear of punishment, by hope of reward and the desire of notoriety. In any case the rule of prudence requires that the testimony of child witness should not be relied upon unless it is corroborated by some evidence on the record.'

10. In the case titled "Muhammad Jamal and others v. The State" 1997 SCMR 1595, the apex Court found the testimony of the child witness as inspiring and credible and upheld the conviction because it was supported by medical evidence. In the case titled "Mst. Razia alias Jia v. The State" 2009 SCMR 1428, the august Supreme Court upheld the conviction handed down, inter alia, on the basis of ocular testimony of two child witnesses. The apex Court had observed that the trial Court had taken all possible and due steps to judge the level of intelligence and maturity of the child witnesses before recording their statements because they had given consistent accounts of the occurrence and the participation of their mother i.e. the convicted accused. It was further observed that this ocular evidence had derived strength and corroboration from other evidence. The august Supreme Court, exercising its Shariat appellate jurisdiction, has observed and held in the case titled "Fayyaz alias Fayyazi and another v. The State" 2006 SCMR 1042 as follows:-

"It has also been rightly observed by the learned Federal Shariat Court that conviction could be based on the solitary statement of the victim provided the same is capable of implicit reliance and is corroborated by any other piece of evidence if so available in the case."

11. In the case titled "Mushtaq Ahmed and another v. The State" 2007 SCMR 473, the august Supreme Court, exercising its Shariat appellate jurisdiction, has observed and held as follows:-

"It is consistent view of this Court that in rape cases mere statement of the victim is sufficient to connect the petitioners with the commission of offence in case the statement of the victim inspires confidence."

12. In the case titled "Ulfat Hussain v. The State" 2010 SCMR 247 the apex Court held that although in principle a conviction could be based on the testimony of an intelligent and understanding child witness but it is always preferred to adopt the settled principle of prudence and rule of care attached to the sole testimony of a child witness despite the latter's understanding and intelligence.

13. It is, therefore, obvious from the above discussion relating to the precedent law, that a child witness is not barred from entering the witness box. It is the satisfaction of the trial Court which is of crucial importance. A child who also happens to be a victim of an offence is competent to testify as a witness and the deposition would be worthy of reliance provided the Court is satisfied that he or she, as the case may be, is intelligent and understands the significance of entering the witness box. A conviction can also be handed down placing reliance on the sole testimony of a child witness but as a rule of prudence it is generally preferred that it should be corroborated by some other evidence so as to ensure the safe administration of justice.

14. In the facts and circumstances of the appeal in hand, the learned trial Court, for good reasons and after adopting precautionary measures, was satisfied that the Victim was competent to testify and that her deposition could be relied upon. Her testimony remained unshaken despite being subjected to protracted cross-examination. The medical evidence, recoveries and above all testimonies of other uninterested witnesses lent support to and corroborated the plea of the Victim. There is nothing on record to even remotely indicate that the Victim or the other witnesses had any reason for falsely implicating the Appellant. To the contrary, the credence of the deposition of the Victim and other witnesses is fortified because the former, having been abandoned by her father, was living with the Appellant's mother in her house and the latter's son was also married to the Victim's sister. There is nothing on record to even remotely suggest that there could have been a reason for falsely implicating the Appellant. The prosecution had succeeded in establishing its case beyond a reasonable doubt. The Appellant had indeed committed a most heinous offence and there can be no redemption or compensation for the Victim because she will have to live with the worst scars that one can imagine. There are no mitigating circumstances in order to consider handing down a lesser sentence.

15. In view of the above discussion, we answer the reference in the affirmative and confirm the conviction and sentence handed down by the learned trial Court. The Jail Appeal No. 76 of 2015 filed by the appellant is consequently dismissed.

JK/66/IsI. Appeal dismissed.

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2018 P Cr. L J 1538

[Balochistan (Sibi Bench)]

Before Abdullah Baloch, J

MUHAMMAD SIDDIQUE---Petitioner

Versus

The STATE---Respondent

Criminal Revision Petition No. (s) 16 of 2016, decided on 19th January, 2018.

(a) Penal Code (XLV of 1860)---

----Ss. 365, 377 & 34---Kidnapping or abducting with intent to secretly and wrongfully confine person, unnatural offence, common intention---Appreciation of evidence---Ocular account corroborated by medical evidence---Prosecution case was that the accused forcibly took away the minor son of complainant on motorcycle and then took him into a room, where another unknown person was present, where all of them committed sodomy with the minor---Ocular account of the occurrence was furnished by the complainant and the victim---Record showed that complainant of the case appeared as witness and fully reiterated the contents of FIR and narrated the entire story in line with the fard-e-bayan and the FIR---Complainant narrated the whole story with regard to non-return of his son from bazaar and his arrival on the following day and on query, the victim disclosed about the episode---Complainant without any loss of time promptly lodged the FIR by specifically nominating the accused persons and the act of abduction as well as committing unnatural offence with his son---Evidence of said witness was subjected to lengthy cross-examination, but nothing beneficial had come out on record in favour of the accused---Victim appeared and narrated the whole story with regard to his abduction on motorcycle by the accused persons and taking him towards fisheries pool and committing unnatural offence with him the whole night and setting him free on the following day---Statement of the victim was in line with his earlier statement---Said witness was cross-examined at sufficient length, but nothing fruitful had come on record in favour of defence---Nothing was on record to show that victim was tutored by his elders---Statement of the victim child had been corroborated by the circumstantial witnesses and medical evidence---Both the complainant as well as the victim remained consistent and firm in their depositions---Said witnesses accurately uttered the date, time and manner in which the accused persons took the victim and committed sodomy with him---Ocular testimony produced by the prosecution was direct in nature and the same remained unshaken, consistent and confidence inspiring on all material counts---Witnesses fully supported the case of prosecution---Case of prosecution had further been strengthened by the medical evidence produced by the Medical Officers, who opined, after complete examination of victim, that the victim had been sexually assaulted---Medical evidence had remained unshaken and unchallenged---Record transpired that prosecution had produced corroborative and confidence inspiring evidence and the defence had failed to cause any dent in the same---Circumstances established that defence had failed to point out any misreading or non-reading of evidence and major contradiction in the statements of prosecution witnesses or any material illegality or irregularity in the impugned judgment, warranting interference---Appeal was dismissed in circumstances.

Kamran alias Kami v. The State 2012 PCr.LJ 1200 and Muzammil Shah v. State 1991 MLD 1944 rel.

(b) Criminal trial---

---Witness---Interested/related witness---Testimony of interested/related witness---Scope---Related witness was as much competent witness as any other provided, he was not inimical towards accused and had no motive to implicate the accused in a false case.

(c) Penal Code (XLV of 1860)---

---Ss. 365, 377 & 34---Kidnapping or abducting with intent to secretly and wrongfully confine person, unnatural offence, common intention---Appreciation of evidence---Solitary statement of victim---In case of sodomy or zina, the solitary statement of victim was sufficient to convict the accused if it was confidence inspiring.

Fayyaz alias Fayyazi and another v. The State 2006 SCMR 1042 and Mushtaq Ahmed and another v. The State 2007 SCMR 473 rel.

(d) Penal Code (XLV of 1860)---

---Ss. 365, 377 & 34---Kidnapping or abducting with intent to secretly and wrongfully confine person, unnatural offence, common intention---Appreciation of evidence---Delay of one day in lodging FIR---Defence had objected that FIR was lodged after the delay of one day which was fatal to the prosecution case---Effect---Delay alone in lodging the FIR was not helpful for defence to claim acquittal of the accused---In the present case, FIR was lodged promptly by the complainant as and when the victim returned to his house and informed his father about the incident---In such like cases, the prestige and respect of family was involved as the child of someone was defamed---People were reluctant in filing report to the police and it was a natural course that the guardian of victim must have consulted his relatives, whether to file report or not---Delay in filing FIR, in circumstances, was natural and same was not material to the case.

Nadir Ali Chalgari for Petitioner.

Jameel Akhtar Gajani, APG for the State.

Date of hearing: 27th December, 2016.

JUDGMENT

ABDULLAH BALOCH, J.---This judgment disposes of the instant Criminal Revision Petition No.(S)16 of 2016 filed by the petitioner Muhammad Siddique son of Abdul Karim, against the judgment dated 22nd October 2015 (hereinafter referred, as "impugned judgment") passed by learned Judicial Magistrate/MFC Dera Murad Jamali (hereinafter referred as "the trial Court"), whereby the petitioner along with co-accused Ghulam Muhammad were convicted and sentenced under section 377, P.P.C. and sentenced to suffer RI for a period of three years with fine of Rs.10000/-, in default thereof to further undergo SI for four months. They were further convicted under section 365, P.P.C. and sentenced to suffer RI for a period of three years with fine of Rs.10000/- and in default thereof to further undergo SI for a period of four months. The benefit of section 382(b), Cr.P.C. was also extended in their favour, however, all the sentences shall run concurrently, and against the judgment dated 29th February 2016 passed by the learned Additional Sessions Judge, Dera Murad Jamali (hereinafter referred as "the appellate Court"), whereby the appeal filed by the petitioner and co-accused was dismissed.

2. Facts of the case are that on 14th June 2015 the complainant Khuda Bakhsh lodged FIR No.84/2015 at Police Station City Dera Murad Jamali under sections 365, 377 and 34, P.P.C. wherein he alleged that on 13th June 2015 his son Amir Khan age about 12 years went to bazar and did not return home. He searched for his son, but to no avail. However, on the following day i.e. 14th June 2015 his son arrived home and stated that yesterday at about 11:30 a.m., the accused

Ghulam Muhammad and Muhammad Siddique forcibly took away him on motorcycle from Chukhra Mohallah and taken him into a room near Fisheries Talab, where another unknown person was present, where all of them committed sodomy with him (complainant's son).

3. In pursuance of the above FIR, the investigation of the case was entrusted to PW-7 Ghulam Qadar SI, who during investigation inspected the site and prepared site plan, got conducted the medical examination of victim; arrested the petitioner and co-convict Ghulam Muhammad and got conducted their medical examination; recorded the statements of witnesses under section 161, Cr.P.C. and on completion of investigation submitted the challan in the trial Court.

4. At the trial, the prosecution produced seven (07) witnesses. The petitioner and co-convict were examined under section 342, Cr.P.C., however, neither they recorded their statements on oath under section 340(2), Cr.P.C. nor produced any witness in their defence. On conclusion of trial and hearing arguments, the trial Court awarded conviction to the petitioner as mentioned in para-1 above vide judgment 22nd October 2015. Under such circumstances, the) preferred an appeal before the appellate Court, which was dismissed, vide judgment dated 29th February 2016. Whereafter the instant petition has been filed.

5. Learned counsel for the petitioner argued that the evidence produced by the prosecution suffers from material contradictions and dishonest improvements; that the FIR was lodged after the delay of one-day of the alleged abducted without any plausible explanation; that the prosecution version is lacking independent corroboration as only interested witnesses were produced; that the medical evidence is in conflict with the ocular evidence; that the prosecution has miserably failed to prove the charge against the petitioner beyond any shadow of doubt and both the Courts below while awarding conviction and dismissing his appeal have badly erred in appreciating the evidence available on record.

6. Learned A.P.G. contended that the judgments of courts below are based on cogent and concrete evidence and the petitioner has failed to rebut the allegations; that the prosecution version was duly supported by oral as well as medical evidence; that the conviction awarded to the petitioner and co-convict was maintained by the appellate Court, based on proper appreciation of evidence by the Courts below and does not open for interference by this Court.

7. Heard the learned counsel and perused the available record. In order to substantiate the case, the prosecution has produced the evidence of seven (07) witnesses. The complainant of the case appeared as PW-1, who fully reiterated the contents of FIR and narrated the entire story in line with Fard-e-Bayan Ex.P/1-A and the FIR. PW-1 narrated the whole story with regard to non return of his son from Bazar and his arrival on the following and query the victim disclosed the entire story and the complainant without any loss of time promptly lodged the FIR by specifically nominating the accused persons and the act of abduction as well as committing unnatural offence with his son. The evidence of said witness was subjected to lengthy cross-examination, but nothing beneficial has come out on record in favour of the appellant. PW-2 is the victim with whom the petitioner and co-convict along with absconding accused committed unnatural offence. PW-2 narrated the whole story with regard to his abduction on motorcycle by the accused-petitioner along with co-convict and taking him towards Fisheries Pool and committing unnatural offence with him the whole night and on the following day he was set free. The statement of the victim is in line with his earlier statement. The said witness was cross-examined at sufficient length, but nothing fruitful has come on record in favour of defence. Both the complainant as well as the victim (PW-2) remained consistent and firm in their deposition. Both the witnesses accurately uttered the date, time and manner in which the petitioner and co-convict took the victim along with them on the motorcycle and committed sodomy with him. The ocular testimony produced by the prosecution is direct in nature and the same remained unshaken, being consistent, confidence inspiring on all material counts. The witnesses fully supported the case of prosecution.

8. The case of prosecution has further been strengthened by the medical evidence produced by PW-3 Dr. Talib Hussain. PW-4 Dr. Atta Muhammad and PW-5 Dr. Ayaz Jamali. PW-3 examined the victim/PW-2 and issued MLC Ex.P/2-A. perusal of which reflects that PW-3 after complete examination of victim has opined that the victim has sexually been assaulted. The medical evidence has remained unshaken and unchallenged.

9. PW-4 Dr. Atta Muhammad has examined the co-convict Ghulam Muhammad, while PW-5 Dr. Ayaz Jamali examined the petitioner Muhammad Siddique and found them potent and able to perform sexual act. After examination MLCs were issued as Ex.P/4-A and Ex.P/5-A, perusal of which confirms the unnatural offence committed by the petitioner and co-convict along with their absconding accomplices with the minor Amir Khan.

10. As far as non-production of an independent witness in the trial Court is concerned, suffice to state here that the statements of prosecution witnesses are confidence-inspiring and ring true. As regards the argument of the counsel for the petitioners that related witnesses are not reliable. It is not worth consideration, because none of the relatives has shown to be the eye-witness of the occurrence. It may be observed that a related witness is as much as competent witness, as any other provided he is not inimical towards accused and has a motive to implicate the accused in a false case. It may be observed that in case of sodomy or zina the solitary statement of victim is sufficient to convict the accused if it is confidence-inspiring. Reliance in this regard is placed on the case of Fayyaz alias Fayyazi and another v. The State 2006 SCMR 1042, the relevant portion reads as under:

"... It has also been rightly observed by the learned Federal Shariat Court that conviction could be based on the solitary statement of the victim provided the same is capable to implicit reliance and is corroborated by any other piece of evidence if so available in the case. Undisputedly victim of the offence namely Khadim Hussain at the time of commission of offence was aged about 10 years and a school going boy, who did not carry any ill will, grudge or malice against the appellants to falsely implicate them in the case. It has also been not disputed or challenged at the trial that Khadim Hussain was school going boy, who in his deposition before the Court stated that after attending the class he was on his way for the home through pavement where wheat crop was standing. He was ambushed by accused persons out of whom accused Abbas caught hold of his arms while accused Fayyaz committed sodomy upon him and thereafter accused Fayyaz caught hold of him and sodomy was committed upon him by accused Abbas. He also stated that accused was armed with a pistol who threatened him of serious consequences. The testimony of the victim could not be impeached or discredited though subjected to test of cross-examination by the learned defence counsel. Dr. Atta Muhammad Zafar the Medical Officer appeared as P.W.4 who stated that on 24-4-1998 he medically examined Khadim Hussain aged about 10 years was brought to him by Constable Munir Ahmed as a case of sexual assault. The victim was allegedly subjected to unnatural lust on 23-4-1998 and the matter was promptly reported to the police which was entered as Roznamcha Rappet No.3 on 23-4-1998 at about 2-30 p.m. and subsequently on 25-4-1998 at 9-30 p.m. FIR was registered against the nominated accused persons most probably in view of the MLR of the victim produced by the complainant. The findings noted in the MLR after the examination by the Medical Officer mentioned above clearly indicate that the injuries were caused by insertion of some blunt object within a duration of 20 to 40 hours. The Medical Officer was subjected to cross-examination by the learned defence counsel and it was not even suggested to him that the noted injuries could be result of any insensate object, therefore, in absence of any other indication or material available on record it could not be said that the same were not caused by penetration in respect whereof the victim expressly stated that he was subjected to sexual intercourse one after the other by the accused persons. Also, no suggestion was given to the Medical Officer in cross-examination that no injury of the like nature as noted in the MLR could be noticed on examination if conducted after 20 to 40 hours approximately on the person of the victim if so caused or inflicted. Hence, it could not be said that any symptom or injury on the person of a victim of unnatural offence could not have been noticed during the medical examination after 20 hours subsequent to the commission of the act. The Medical Officer admittedly was an independent person having no reason to issue a false certificate favouring the victim, therefore, this piece of evidence in view of the contentions raised on behalf of the appellants could not have been discarded and rightly so believed by the learned Federal Shariat Court."

Similar view has also been taken in the case Mushtaq Ahmed and another v. The State, reported in 2007 SCMR 473, wherein it has been held as under:

"It is consistent view of this Court that in rape cases mere statement of the victim is sufficient to connect the petitioners with the commission of offence in case the statement of the victim inspires confidence. In the present case both the Courts below have given concurrent conclusions that statements of both the victims (P.W.9 and P.W.10) inspire confidence and connected the petitioners with the commission of offence. They had faced lengthy cross-

examination by the defence but defence had failed to shake their veracity. The statement of P.W.9 was duly corroborated by the medical evidence of Dr. Tahira Afzal Durrani who had categorically stated that her hymen was absent and she was pregnant. Her statement was also corroborated by the statement of Dr. Malik Saeed Akhtar Radiologist P. W. who had examined D.W.9 and also performed her ultra-sound according to which she was pregnant of about 18 weeks. Both the Courts below were justified to believe the statements of the aforesaid witnesses after reappraisal of evidence. The trial Court was justified to disbelieve the defence version and upheld by the learned Federal Shariat Court. It is not believed or appealed to reason to observe that a sane person would ever like to put a stake his or her family honour as well as career of young unmarried daughter for such petty disputes as alleged by the defence. Both the Courts below after proper appreciation of evidence have concurrently convicted the petitioners with cogent reasons, keeping in view all the principles laid down by this Court in the safe administration of justice. This Court, as a rule should give due weight and consideration to the opinion of the Courts below and in particular to the opinion of the Court of the first instance which had advantage of hearing the parties, witnesses and watching their demeanour." (underlines provided emphasis)

11. So far as, the delay of one day in registering the FIR is concerned, in my view mere delay alone in lodging the FIR is not helpful for defence to claim acquittal of the petitioner. Even otherwise, the FIR was lodged promptly by the complainant as and when the victim returned to his home and informed his father about the incident. Even otherwise, it has been remained the consistent view of the superior courts that in such like cases the prestige of family and respect is involved as the child of someone was defamed people were reluctant in filing report to the Police and it was a natural course that the guardian of victim must have consulted his relatives, whether to file report or not. Even otherwise, the complainant soon after receipt of information from the victim reported the matter. Hence, the delay in filing FIR in the circumstances, as natural and same was not material to the case. Where a minor child could be defamed for whole life, no father or elder brother would involve an innocent person in the false case. The prosecution has produced corroborative and confidence inspiring evidence and the defence has failed to cause any sort of dent in the evidence of prosecution, therefore, the objection so taken by the defence is without any substance. Reliance in this regard is placed on the case of Kamran alias Kami v. The State, 2012 PCr.LJ 1200. For facilitation, the relevant portion is reproduced herein below:

"Another argument of the counsel for the appellant is that the FIR is delayed by four and half hours. This delay is unexplained, therefore, the conviction cannot be passed on the basis of this FIR. We have examined the whole record. From the record it is evident that the occurrence took place on 12-00 p.m. and when the convict-appellant released the victim, he went to his home and narrated the incident to his father, who filed the report. It may be observed that in our society, such like incidents where family prestige or respect is involved and child of someone is defamed, people are reluctant in filing reports to the Police. It is a natural course that the father of victim must have consulted his relatives whether, to file report or not and after consultation he filed the report. In the matters of family honors where a child of 11 years can be defamed for whole life, no father will involve an innocent person in a false case. The delay is natural and such delay is not material to the case."

12. Admittedly, PW-2 is a minor, but at the time of his examination-in-chief the Court enquired several questions from him and found him mentally mature and fit to answer the questions correctly and even during cross-examination he replied the questions correctly, which establishes the soundness of his mind and his statement cannot be thrown aside merely on the ground of his being minor age of twelve year rather alone his statement is enough to establish the charge against the appellant. Even otherwise, there is nothing on record showing that this witness was tutored by his elders. I am conscious of the fact that the rule of prudence requires that the testimony of child witness should not be relied upon unless it is corroborated by some cogent evidence on the record. However, in the case in hand the statement of child witness has fully been corroborated by the circumstantial witnesses and medical evidence. Reliance in this regard is placed on the case of Muzammil Shah v. State, 1991 MLD 1944, wherein it has been held as under:

10. We have gone through the evidence of Mst. Irshad (P.W.5) with care. Before recording her statement, the learned trial Judge had recorded a note after putting her certain questions that he was satisfied that the witness was intelligent and was capable of making rational answers to questions put to her.

Besides, she has been subjected to fairly lengthy cross-examination which she had withstood to an astonishing degree. A perusal of her statement shows that she made the statement in a frank and straightforward manner. Curiously there was no suggestion to her in her cross examination that she did not know the appellant. Then there are no circumstances to indicate that she might have been tutored. She had seen the appellant in the course of committing sodomy over the victim with his trousers loosened. She was intelligent enough to understand as to what had been done to her brother and neither she nor her father had any motive to falsely implicate him. We see no reason whatsoever why the statement of such a child witness should not be believed though a suggestion was made to Naeem Gul (P.W.4) that there was enmity of her relatives with the appellant. Nonetheless, the appellant when examined under section 342, Cr.P.C. did not take up this plea. We have not been able to discover any valid reason to reject the testimony of Mst. Irshad (PW.5).

13. Throughout the case, the petitioner and co-convict have failed to take any specific plea with regard to their false implication. In their examination under section 342, Cr.P.C., they simply denied the allegations and even did not record their statements on oath and also not produced any witness in their defence, whereas on the other hand the prosecution has produced direct solid evidence, hence the direct evidence so produced by the prosecution cannot be brushed aside merely on the basis of bald denial of the petitioners. Both the Courts below have rightly properly appreciated the evidence in its true perspective. The learned counsel for the petitioners have failed to point out any misreading and non-reading of evidence and major contradiction in the statements of PWs or any material illegality or irregularity in the impugned judgments, warranting interference by this Court. The case laws so referred by the learned counsel for the petitioners are not helpful to the defence.

For the above reasons, the petition being devoid of merits is dismissed. The petitioner is on bail; be taken into custody and be sent to Jail to serve his remaining period of sentence.

JK/13/Bal. Revision dismissed.

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2017 P Cr. L J 1510

[Peshawar (Mingora Bench)]

Before Muhammad Younis Thaheem, J

Dr. ANWAR ZADA---Petitioner

Versus

The STATE and 2 others---Respondents

Cr. Misc. B.A. No. 514-M of 2016, decided on 2nd December, 2016.

(a) Criminal Procedure Code (V of 1898)---

----S. 497---Penal Code (XLV of 1860), Ss. 377 & 511---Khyber Pakhtunkhawa Child Protection and Welfare Act (XIII of 2010), S. 53---Sodomy, attempt to commit offences punishable with imprisonment for life, sexual abuse---Bail, refusal of---Allegation against accused, a doctor, was that while lying the victim/child on the bed for the purpose of ultrasound caught hold of him, kissed his lips and tried to enter his finger in the anus of child---Accused was directly charged in the FIR for commission of the said offence---Said offence fell in prohibitory limb of S. 497(1), Cr.P.C. as it was punishable under S. 53 of the Khyber Pakhtunkhawa Child Protection and Welfare Act, 2010 entailing punishment up to 14 years---Said offence was heinous in nature as child of 11 years of age had been allegedly put to sexual abuse and harassment by none else but a doctor, who was messiah in the society and belonged to a very prestigious profession where dignity, honour, professional ethics and confidentiality of patients especially if they were women and children were considered to be the benchmarks of the noble profession---Version of the prosecution was supported by statement of the victim recorded under S. 164, Cr.P.C., wherein he narrated the whole story put-forward in the FIR by the complainant---Sufficient material available on record which prima facie connected the accused with the commission of offence---Bail was refused.

(b) Criminal Procedure Code (V of 1898)---

----Ss. 497 & 345---Penal Code (XLV of 1860), Ss. 377 & 511---Khyber Pakhtunkhawa Child Protection and Welfare Act (XIII of 2010), S. 53---Sodomy, attempt to commit offences punishable with imprisonment for life, sexual abuse---Bail, refusal of---Compromise---Allegation against accused, a doctor, was that while lying the victim/child on the bed for the purpose of ultrasound caught hold of him, kissed his lips and tried to enter his finger in the anus of child---Grandfather of the victim submitted affidavit to the effect that he had no objection if accused was released on bail as compromise between the parties had been effected---Validity---Compromise could not be taken as an option for release of accused on bail as the offence for which the accused stood nominated was non-compoundable, besides heinous in nature---Bail was refused.

2005 PCr.LJ 1181 rel.

Abdul Halim Khan and Syed Abdul Haq for Petitioner.

Barrister Asad Hameed-ur-Rahman for the State.

Complainant in person.

Date of hearing: 2nd December, 2016.

JUDGMENT

MUHAMMAD YOUNIS THAHEEM, J.---Petitioner Dr. Anwar Zadar seeks bail in case FIR No. 620 dated 10.9.2016, under sections 377, 511, P.P.C. and section 53 of the Child Protection Act, 2010, registered at Police Station Timergara, District Dir Lower, as the concession of bail was refused to him by the learned lower Court vide its order dated 22.11.2016.

2. The allegations against the accused/petitioner as per FIR referred to above are that he on 09.9.2016 at 1030 hours at his private clinic while laying the victim/child on the bed for the purpose of ultrasound caught hold of him, kissed his lips and tried to enter his finger in the anus of child.

3. Arguments heard and record perused.

4. From perusal of the record, it reveals, that accused/petitioner has been directly charged in the FIR for commission of the above said offences. The offence with which the accused/petitioner is charged falls within the prohibitory limbs of section 497(1), Cr.P.C. as it is punishable under section 53 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 entailing punishment up to 14 years coupled with the fact that the same is heinous in nature, as a child of 11 years of age has been allegedly put to sexual abuse and harassment by none else but a doctor, who is considered to be a Messiah in our society and belonged to a very prestigious profession where dignity, honesty, professional ethics and confidentiality of patients especially if they are women and children are considered to be the benchmarks of this noble profession since ages, as allegedly on the pretext of ultrasound the accused/petitioner not only kissed the lips of 11 years old kid, but tried to put his finger in his anus and that too in his private clinic where her mother was waiting outside by entrusting his 11 years minor child at the mercy of petitioner with the confidence that he is supposed to give medical report through ultrasound and treatment to her child/patient.

5. Furthermore, the version of prosecution is supported by statement of the victim recorded under section 164, Cr.P.C., wherein he narrated the whole story put-forward in the FIR by the complainant and medical prescriptions/receipts of the victim, which clearly shows that the victim/child visited the private clinic of the doctor/petitioner on the day of occurrence i.e. 09.9.2016. Report has been lodged promptly and if any delay has been occurred, then such kind of delay is of no consequence, as upon occurrence people gathered and police reached at the spot to save the doctor from public anger and lodged the report.

6. It would not be out of place to mention here that grandfather of the victim has submitted affidavit and stated before this court that he has no objection if accused is released on bail as compromise between parties has been effected. But learned State counsel raised serious objection on release of accused on the basis of compromise by submitting that offences are heinous relating to high moral turpitude and prosecution is not bound by private settlement amongst the parties and if accused/petitioner is released on bail in such like cases on the basis of compromise particularly relating to sexual abuse of children, then it would be against the spirit of law. So, irrespective of the consent of grandfather of the victim child, compromise could not be taken as an option for release of accused on bail as the offence for which the accused/petitioner stood nominated is non-compoundable, besides heinous in nature. In this respect reliance is placed on 2005 PCr.LJ 1181 and Khadim Ali Shah and another v. The State and another cited as PLJ 2015 Cr.C (Peshawar) 504.

7. Thus, on tentative assessment of the case there is sufficient material available on record which prima facie connects the petitioner with the commission of offence and at this stage of the case, he is not entitled to the concession of bail, so, bail petition stands dismissed.

JK/69/P Petition dismissed.

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2015 P Cr. L J 1633

[Lahore]

Before Muhammad Anwaarul Haq, J

NADEEM MASOOD---Appellant

versus

The STATE---Respondent

Criminal Appeal No.2066 of 2012, heard on 1st June, 2015.

(a) Penal Code (XLV of 1860)---

----S. 376---Qanun-e-Shahadat (10 of 1984), Arts. 117 & 120---Criminal Procedure Code (V of 1898), S.340(2)---Rape---Appreciation of evidence---Commission of offence---Onus to prove---Accused committed rape with complainant which resulted into birth of a minor girl---Trial Court convicted the accused and sentenced him to imprisonment for twenty years and fine---Plea raised by accused was that it was an offence of fornication as complainant was a consenting party---Validity---Accused during trial denied to have committed rape or illicit intercourse with complainant and there was only a suggestion while cross-examining victim of her evidence that "it was incorrect that I was consenting party"---Such denied suggestion alone was not enough to hold that victim was a consenting party especially when accused did not produce any evidence in his defence and even did not opt to make his statement on oath under S.340(2), Cr.P.C. to rebut prosecution case set up against them---Even consent of victim obtained by putting her in fear of death or hurt or where the man knew that he was doing sexual intercourse with a woman who was not married to him but the woman believed herself to be married to him constituted offence of rape under S.375(iii) and (iv), P.P.C.---Prosecution was duty bound to prove its case against accused beyond any shadow of doubt---Accused who had come forward with a specific plea must bring on record some material to establish the same---Conviction and sentence awarded to accused under S.376, P.P.C. by Trial Court was based on well-stated principles of appreciation of evidence---High Court declined to interfere in conviction and sentence awarded to accused by Trial Court---Appeal was dismissed in circumstances.

(b) Criminal Procedure Code (V of 1898)---

----Ss. 544-A & 545---Penal Code (XLV of 1860), S. 376---Rape---Compensation to victim of rape---Maintenance of child born as a result of rape---Accused committed rape with complainant and as a result a minor girl was born---Trial Court convicted and sentenced the accused for imprisonment for twenty years and also awarded fine but no maintenance was awarded to the minor girl---Validity---Minor baby girl born as a result of crime committed by accused was "a person" suffering mental anguish and psychological damage for her whole life, thus she was entitled for compensation provided under the law---High Court directed the accused to pay compensation under S.544-A(5), Cr.P.C. to victim child--- If fine was realized the same would be paid to victim of rape under S.545, Cr.P.C.

The State v. Md. Moinul Haque and others (2001) 21 BLD 465; Dilip v. State of Madhya Pradesh AIR 2013 (SC) Cri) 1200; Delhi Domestic Working Women's Forum v. Union of India and others 1995 (1) R.C.R. (Criminal) 194 (1995) 1 SCC 14; Sahih Muslim (Vol.4) Hadith [4432], pp.471-472; Mst. Nusrat v. The State 1996 SCMR 973 and Mokha v. Zulfiqar and 9 others PLD 1978 SC 10 rel.

Ghulam Farid Sanotra for Appellant.

Ch. Muhammad Mustafa, Deputy Prosecutor-General for the State.

Ahsan Ullah Ranjha for the Complainant.

Date of hearing: 1st June, 2015.

JUDGMENT

MUHAMMAD ANWAARUL HAQ, J.---Appellant Muhammad Nadeem Masood was tried in case F.I.R No.214/2010 dated 23-8-2010, registered at Police Station Miani District Sargodha, in respect of an offence under section 376, P.P.C. and through the impugned judgment dated 4-12-2012 passed by the learned Additional Sessions Judge, Bhalwal, he has been convicted and sentenced as under:-

Under section 376, P.P.C:

Twenty Years R.I. with a fine of Rs.100,000 and in default of payment of fine to further undergo six months S.I.

Benefit of section 382-B, Cr.P.C. has been extended to the appellant.

2. Prosecution story in brief un-folded in the F.I.R (Exh.PC/2) recorded on the statement of Humaira Yasmeen, complainant/victim (PW-5) is that she is a young unmarried girl; about 6/7 days prior to registration of F.I.R her parents were out of the house in connection with their work and she was alone in her house; at about 4/5.00 p.m., Muhammad Nadeem (appellant), who was on visiting terms with her family, armed with pistol entered into her house while climbing over the wall, extended threats to her, she remained silent due to fear and he had committed zina bil jabr with her; Muhammad Aslam and Mazhar Hayat witnesses reached there and also saw the accused going away; the accused had also earlier committed zina bil jabr with her number of times and she was pregnant for seven months.

It is further mentioned in the FIR that on the same day she lodged an application to the learned Area Magistrate for her medical examination whereupon her medical examination was conducted by the lady doctor.

3. After registration of case, Karamat Ali Shah S.I. (PW-8) conducted investigation in this case, he has recorded statements of the PWs under section 161, Cr.P.C. and arrested the accused on 14-10-2010. Investigating Officer also produced the complainant/victim Humaria Yasmeen for DNA test and the report was received on 21-10-2010. He also got medically examined the appellant Muhammad Nadeem Masood.

4. After completion of investigation, report under section 173 Cr.P.C. was finalized and submitted before the learned trial court; charge was framed against the appellant on 15-3-2011, to which he pleaded not guilty and claimed trial.

5. To substantiate the charge, prosecution produced as many as nine witnesses; complainant/victim tendered her evidence as PW-5. Lady Dr. Lubna Pervaiz, who conducted medical examination of the victim, deposed as PW-2 and observed as under:--

"In my opinion she was also pregnant about 32 weeks. Final opinion about pregnancy will be given after ultra sound report. As per Radiologist report, uterus contained single alive fetus of 30 weeks. E.D.D. 1-11-2010. No other pelvic pathology seen.

According to DNA report No.37829 dated 11-11-2010, sample 2 was sent from my side. Samples 1 and 3 were taken from some where else. However, conclusion was that victim Humera Yasmin daughter of Allah Yar (item No.1) and Muhammad Nadeem son of Muhammad Ashraf (item No.2) are biological parents of fetus (item 3). It was also my opinion. After receipt of the above said reports which is mentioned in my Medical examination Exh.PA which is in my hand and bears my signature, I referred the victim to DHQ Hospital, Sargodha vide reference Exh.PB which also contains the opinion of the Radiologist Exh.PB/1."

6. The appellant was examined under section 342, Cr.P.C; he denied the allegations and professed his innocence. While answering to question "Why this case against you and why the PWs deposed against you?" appellant replied as under:--

"A false case has been registered against me. I am innocent and allegations in FIR are false and baseless. I have no concern with the occurrence. All the evidence and reports are fabricated by the prosecution and complainant to black-mail me with ulterior motive. No other independent witness has deposed against me."

The appellant did not make statement under section 340(2), Cr.P.C. and also did not produce any evidence in his defence. The learned trial Judge vide impugned judgment dated 4-12-2012 has convicted and sentenced the appellant as mentioned earlier.

7. Learned counsel for the appellant contends that case against the appellant regarding the rape of the victim is concocted one and the conviction and sentence passed by the learned trial court under section 376, P.P.C. is against the law and facts; that occurrence as stated in the FIR remained unproved; that the prosecution has not produced any independent witness except the alleged victim to prove allegation of rape against the appellant. Further adds that contents of FIR clearly reflect that the alleged victim of the offence was a consenting party and at the most it is a case of Fornication; that section 376, P.P.C. does not attract against the appellant and the offence if any attracted against the appellant falls under section 496-B, P.P.C. and maximum sentence provided for the said offence is five years that has already been undergone by the appellant.

8. On the other hand, learned Deputy Prosecutor General assisted by learned counsel for the complainant contends that there is sufficient evidence available on record against the appellant to prove the offence under section 376, P.P.C. in the shape of statement of victim Humaira Yasmeen as PW-5, her Medico-Legal Report (Exh.PA) and the positive report of DNA test (Exh.PK); that delay in lodging of the F.I.R in this case where offence has been admitted by the accused through a suggestion to the victim that she was a consenting party in the offence, is not a ground to discard the prosecution case and that section 375(v), P.P.C. is clear on the point that even consent given by a woman under the age of sixteen years the offence falls within the definition of rape; that the prosecution has proved its case against the appellant beyond any shadow of doubt and the learned trial court has already taken a lenient view while not awarding him death sentence, therefore, he does not deserve any further leniency.

9. Heard. Record perused.

10. I have noted that while appearing before the court as PW-5 the complainant/victim Mst. Humera Yasmeen has reiterated her version as set forth in the FIR and despite lengthy cross-examination, nothing material elicited in favour of the defence. Lady Dr. Lubna Pervaiz (PW-2) examined the complainant/victim on 23-8-2010 and as per her opinion the complainant/victim was pregnant about 32 weeks. After obtaining the reports of DNA test, she recorded her final report that Humera Yasmeen complainant/victim and Nadeem Masood (appellant) are the biological parents of fetus. Dr. Fazal Rasool (PW-4) examined the appellant Nadeem Masood and found him physically capable of performing sexual act in his Medico-Legal report (Exh.PF). The above referred medical evidence produced by the prosecution (not challenged by the appellant) furnishes sufficient corroboration to the prosecution version.

11. As far as legal question raised by the learned counsel for the appellant regarding the application of offence of Fornication against the appellant is concerned, the same is misconceived, firstly for the reason that the appellant during the trial has denied to have committed rape or illicit intercourse with the victim; there is only a suggestion while cross-examining the victim/PW-5 at Page-3 of her evidence that "It is incorrect that I was consenting party". The said denied suggestion alone is not enough to hold that victim was a consenting party especially when the appellant has not produced any evidence in his defence and even did not opt to make his statement on oath under section 340(2), Cr.P.C. to rebut the prosecution case set up against him. Secondly, clauses (iii) and (iv) of the definition of 'rape' in section 375, P.P.C. clearly reflect that even consent of the victim obtained by putting her in fear of death or hurt or where the man knows that he is doing sexual intercourse with a woman who is not married to him but the woman believes herself to be married to him constitutes an offence of rape. It is appropriate to reproduce here section 375, P.P.C. that defines the offence of rape:-

"Rape.---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."

It is a case where even till today the appellant is not claiming to be married to the victim woman who in result of his intercourse has given birth to an innocent baby girl alive to bear lifelong pain of crime of her father. Thirdly, in this case lady doctor at the time of medical examination of the victim had observed her age as 16 years with pregnancy of 32 weeks and in her cross-examination she has clarified that age given by her in MLR is based upon her 'expert estimation' and information provided by the victim and her father on 21-8-2010 i.e. after eight months of the alleged occurrence. I have noticed that at the time of recording of evidence in the court the learned trial court has mentioned the age of the victim as 14/15 years, however, during cross-examination the victim has denied the suggestion that she was 18/19 years of age on 10-3-2012 i.e. date of recording of her evidence. The accused remained fail to bring on record any material to disprove that the victim was more than 16 years of age at the time of occurrence. However, it was an application of the victim herself before the learned trial

court for exact determination of her age and on the basis of the same PW-9, Secretary Union Council, was summoned by the learned trial court to place on record birth entry record of the victim, but the record produced by him was found illegible being damaged because of flood. I am of the considered view that Medico Legal Certificate, Affidavit produced on record by the accused himself (Exh.DA), another statement of the victim brought on record by the accused (Exh.DC) and her age mentioned at the time of recording of her statement before the trial court are sufficient to prove that the victim was much less than 16 years of age at the time of the crime, thus the offence against the appellant on this score alone falls within the purview of section 376, P.P.C. It goes without saying that the prosecution is duty bound to prove its case against the accused beyond any shadow of doubt but at the same time it is equally recognized rule of criminal jurisprudence that the accused who comes forward with a specific plea must bring on record some material to establish the same. In this case, the accused remained totally fail to bring his case within the scope of section 496-B, P.P.C. by any stretch of imagination.

12. For the above reasons, I am of the considered view that conviction and sentence awarded to the appellant Muhammad Nadeem Masood under section 376, P.P.C. by the learned trial court is based upon well-settled principles of appreciation of evidence, thus the same is accordingly upheld.

13. Before parting with this judgment, I have to observe with a serious concern that the learned trial court has not passed any order under section 544-A or section 545, Cr.P.C. regarding the compensation to the victim of the offence and at the same time he has also ignored to award any compensation to the innocent girl born in result of the offence committed by the appellant.

14. The Supreme Court of Bangladesh in *The State v. Md. Moinul Haque and others* (2001) 21 BLD 465 has boldly observed that "victims of rape should be compensated by giving them half of the property of the rapist(s) as compensation in order to rehabilitate them in the society." Indian Supreme Court in the case of *Dilip v. State of Madhya Pradesh* (2013 AIR (SC) (Cri) 1200) reaffirmed the view already taken in *Delhi Domestic Working Women's Forum v. Union of India and others* 1995 (1) R.C.R. (Criminal) 194: (1995) 1 SCC 14, wherein it was found that in the cases of rape, the investigating agency as well as the subordinate Courts sometimes adopt totally an indifferent attitude towards the prosecutrix and therefore, various directions in order to render assistance to the victims of rape were issued including an instruction regarding compensation in the following words:--

"Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape."

Needless to add that under the Islamic Law a child born out of the wedlock/outcome of rape has no legal relationship with his biological father as far as his inheritance is concerned, however, said child has an undeniable right of life to be protected by the biological parents and the State. Here, I respectfully refer *Sahih Muslim* (Volume 4), Hadith [4432], Pages-471-472:--

"Then the Ghamidi woman came and said: 'O Messenger of Allah, I have committed Zina, purify me;' but he turned her away. The next day she said: 'O Messenger of Allah, why are you turning me away? Perhaps you are turning me away as you turned Ma'iz away. But by Allah, I am pregnant.' He said: 'Then no (not now), go away until you give birth.' When she gave birth, she brought the child to him wrapped in a cloth, and said: 'Here he is, I have given birth.' He said: 'Go away and breastfeed him until he is weaned.' When she had weaned him, she brought the boy to him, with a piece of bread in his hand and said: 'Here, O Prophet of Allah, I have weaned him, and he is eating food.' He handed the boy over to one of the Muslim men then he ordered that a pit be dug for her, up to her chest he ordered the people to stone her."

The Hon'ble Supreme Court of Pakistan in the case of *Mst. Nusrat v. The State* 1996 SCMR 973 has observed as under:-

"In famous case of Ghamidiyyah, our Holy Prophet Muhammad (P.B.U.H) has suspended the sentence on pregnant-woman, not only till delivery of the child but also postponed it till suckling period i.e., two years, obviously for the welfare of the child. This shows the paramount importance and significance of the right of a suckling child in Islam and the unprecedented care taken of, and the protection given to a child born or expected to be born, by our Holy Prophet Muhammad (P.B.U.H). This golden principle of administration of justice enunciated by the Holy Prophet Muhammad (P.B.U.H) must be strictly observed and followed in our country. So, respectfully following the same, I allow ad interim bail to the petitioner in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the Assistant Commissioner/Duty Magistrate, Toba Tek Singh, till the hearing of the petition for leave to appeal."

5. Before parting with the order, I would like to add that the principles of justice enunciated by Muslim Jurists/Imams/Qazis are more illuminating and full of wisdom than principles enunciated by Western Jurists and scholars. For the true and safe administration of justice in civil and criminal cases, the Courts in Pakistan must seek guidance from the decisions given and the principles of dispensation of justice enunciated by our Holy Prophet Muhammad (P.B.U.H), the four Caliphs (Razi Allah Ta'aala un Hum), Imams and eminent Qazis. These decisions and principles should be given over-riding effect over western principles of justice."

The quoted reference is an exemplary rule for the mankind that right of life must be honoured even if the same is result of a sin of biological parents.

15. From criminal law perspective in Pakistan, a Court while convicting the accused under section 376, P.P.C. or section 496-B, P.P.C. can validly pass an order in favour of a child given birth in result of the crime committed by the accused while taking full advantage of section 544-A and section 545, Cr.P.C. To understand the scope of section 544-A and section 545, Cr.P.C. reproduction of both these sections shall be beneficial:-

[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.

(2) The compensation payable under subsection (1) shall be recoverable as [an arrears of land revenue] and the Court may further order that, in default of payment [or of recovery as aforesaid] the person ordered to pay such compensation shall suffer imprisonment for a period not exceeding six months, or if it be a Court of the Magistrate of the third class, for a period not exceeding thirty days.

(3) The compensation payable under subsection (1) shall be in addition to any sentence which the Court may impose for the offence of which the person directed to pay compensation has been convicted.

(4) The provisions of subsections (2-B), (2-C) and (4) of section 250 shall, as far as may be apply to payment of compensation under this section.

(5) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.]

545. Power of Court to pay expenses or compensation out of fine.--

(1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied --

(a) in defraying expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss [injury or mental anguish or psychological damage caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser, of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made, before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal."

Under both these sections, whenever a person is convicted of an offence and in the commission whereof, mental anguish or psychological damage is caused (to any person), the court shall order the convicted person to pay such compensation as the court may determine having regard to the circumstances of the case. Plain reading of section 544-A, Cr.P.C. highlights that such compensation is not restricted to the complainant, the legal heirs of the deceased or the injured persons rather the same can be awarded to "any person" who suffers mental anguish or psychological damage and even to the owner of the property damaged, lost or destroyed, as the case may be, "in result of the crime committed" by the accused. Subsection (3) of section 544-A, Cr.P.C. further clarifies that compensation payable under subsection (1) shall be in addition to any sentence which the Court may impose for the offence.

Needless to add that an Appellate Court while examining the correctness or propriety of the sentence awarded by the learned trial court can also modify the same by invoking the provisions of sections 435, 439, 439-A and section 544-A(5), Cr.P.C. and this Court can do the same even under section 561-A, Cr.P.C. to ensure complete and safe administration of justice. Here, I respectfully refer the case of Mokha v. Zulfiqar and 9 others PLD 1978 SC 10 wherein the Apex Court has observed as under:--

"35. The trial Court had failed to award compensation under section 544-A, Cr.P.C. The Division Bench while maintaining the convictions of Zulfiqar, Azam and Rajada also did not award any compensation. Accordingly, there was no compliance with the mandatory provision. I would, therefore, direct, that the respondents shall pay a fine of Rs.1000/- each as compensation to the heirs of the two deceased in equal shares, under section 544-A, Cr.P.C. or in default, to suffer rigorous imprisonment for six months.

36. Accordingly, the appeal is allowed and the judgment of the High Court stands modified to the extent indicated above."

16. In view of all above, I am of the considered view that the minor baby girl born in result of crime committed by the appellant is "a person" suffering mental anguish and psychological damage for her whole life, thus, she is entitled for the compensation provided under the law. I, therefore under section 544-A(5), Cr.P.C. direct the appellant to pay a compensation of Rs.10,00,000 (Rupees One Million) to the victim child namely Shazia Nadeem (her name is mentioned in

Exh.PG, an application to the SHO for incorporation of fact of birth of girl child dated 7-12-2010) and in case of default of payment of such compensation the appellant shall suffer further imprisonment for a period of six months. Needless to add that the victim having her independent right to sue the appellant under the Civil Law is at liberty to do the same as and when she so desires and this order of compensation in her favour shall not prejudice her any claim on civil side. The compensation amount after realization shall be deposited in the name of the minor girl in the shape of Defence Saving Certificates and the amount so deposited shall only be payable to the minor after she attains her majority. It is important to clarify that in case of dire need of the minor, her legal Guardian can apply to the court of learned Guardian Judge for encashment of any part or the whole amount and the learned Guardian Court concerned shall pass an order keeping in view the best interest of the minor strictly in accordance with law. As far as fine of Rs.100,000 ordered by the learned trial court is concerned, the amount of fine if realized shall be paid to the victim of the rape Mst. Humaira Yasmeen under section 545 Cr.P.C.

17. Resultantly, with the modification in the sentence mentioned above, this appeal is dismissed.

MH/N-29/L Appeal dismissed.

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ACTIVITY ANSWERS

DEFINITION OF A CHILD – ACTIVITY 18 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 labour	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 2(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 Years 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 PUNJAB RESTRICTION ON EMPLOYMENT OF CHILDREN ACT, 2016	15 Years	Sec 2 (c)

DOMESTIC LEGAL FRAMEWORK - ACTIVITY 9 ANSWERS

1) SPECIFY ANY THREE RIGHTS FROM THE CONSTITUTION OF PAKISTAN THAT PARTICULARLY MENTION CHILDREN

- i. Article 11 of Pakistan's Constitution prohibits all forms of slavery, forced labour, human trafficking, employment of children younger than 14 years, and child labour in hazardous places.
- ii. Article 25 states that all citizens are entitled to equal protection of the law and empowers the state to make special provisions to protect women and children.
- iii. Article 25(1) of the Pakistani Constitution states, "all citizens are equal before [the] law and entitled to equal protection of law." Article 25-A declares that the State shall provide free and compulsory education to all children aged five to sixteen years, meaning the minimum age of employment should be at least 16 years.
- iv. 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.

"[A]ny 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?

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 the age of the person is less than 18 years, is said to commit the offence of sexual abuse.

5) WHAT IS THE PUNISHMENT FOR CHILD SEXUAL ABUSE UNDER SECTION 377-B?

Imprisonment not less than 14 years and may extend up to 20 years and with a 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?

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?

Yes.

8) SECTION 366-A PROHIBITS THE PROCURATION OF A GIRL. WHAT IS THE AGE OF A GIRL DEFINED IN THIS SECTION?

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.?

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)?

Article 25(3).

11) WHAT SECTION OF THE PPC IS APPLICABLE TO THE OFFENCE OF IMPORTATION OF A GIRL FROM A FOREIGN COUNTRY?

366 B.

12) WHICH SECTION OF THE PREVENTION OF ELECTRONIC CRIMES ACT, 2016 DEALS WITH CHILD PORNOGRAPHY?

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?

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?

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?

Police.

16) WHEN RAPE IS COMMITTED BY TWO OR MORE PERSONS IN FURTHERANCE OF A COMMON INTENTION, WHAT IS THE PUNISHMENT? UNDER WHAT SECTION OF THE PPC?

Sec. 376. 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?

Death or life imprisonment.

ACTIVITY 10 – GALLERY WALK HANDOUTS

to be printed on each law on 2.5x3.5 flex/chart

1. 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”.
- ❖ If the offence of trafficking in persons is **committed against a child or a woman**, the person who commits the offence shall be punished with imprisonment which may extend to ten years and which shall not be less than two years or with fine which may extend to one million rupees or with both.
- ❖ The Court may direct payment of **compensation** to the victim under section 545 of the Code.
- ❖ The law has also penalized the abetment and criminal conspiracy in relation to trafficking crimes. A victim shall **not be criminally liable** for an offence under this Act but may become witness in the case. It does not put criminal liability on the victim or his or her parents or guardians.
- ❖ The law empowers the police (local) to take cognizance of trafficking within the country and to investigate under this Act when the issue is **internal trafficking**.
- ❖ Whenever an offence extends beyond the geographical boundaries of Pakistan (**external trafficking**) when Pakistani borders are used as source, transit or destination, the FIA will take the lead on the matter.

- ❖ Under the law, a **magistrate of the first class** shall try offences 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.

- ❖ The law was enacted in 2020 to make provision for raising alert, response, and recovery of missing and abducted children. The idea was to prevent child sexual abuse with an **expeditious response mechanism** as it was observed that in most child sexual abuse cases, the delayed response of state machinery put the child's safety and life at risk.
- ❖ The Act has envisaged the establishment of the **Zainab Alert, Response and Recovery Agency (ZARRA)** headed by a Director-General who would be appointed by the Prime Minister.
- ❖ The law also requires from the officer in-charge of police station that, where a child is reported missing or abducted shall, **immediately and not more than two hours** after the complaint is lodged, through any available means of communication call, fax, email or ZARRA mobile App, **inform the ZARRA** of the missing child incident and keep providing the latest status of the case and all available details on a daily basis.
- ❖ If a **police official** fails to respond in a timely manner to a complaint of a missing or abducted child and the delay results in a fatality, the officer may be punished with up to two years imprisonment, not less than one year, and a fine up to 100,000/- and not less than 50,000/-.
- ❖ After the enactment of this law, police shall, on receipt of information, take immediate action and launch investigation, search, rescue and recovery operations. Police will be bound to register **an FIR within two hours** of a child being reported missing by their parents. It will **inform ZARRA** immediately and keep providing latest status of the case and all available details on a daily basis.
- ❖ Upon receiving information that a child is missing, 'the officer in-charge of the police station will reduce the same into writing in the same manner as prescribed for a cognizable offence under Section 154 of the Code of Criminal Procedure' and will be mandated to start an investigation of the case and recover the missing child. It will also **make sure the required information in schedule "A"** is made part of the FIR. The schedule contains the maximum information/details of the child including physical appearance, habits, social background and other related things.
- ❖ **ZARRA shall, wherever required, coordinate** the efforts of the concerned police stations and other federal and provincial agencies, authorities or departments. In case the ZARRA office receives a direct complaint of a missing or abducted child, it shall coordinate immediately with the local police station and other ZARRA offices.

- ❖ The law recommends concluding **cases of sexual abuse, rape, kidnapping and murder involving children within three months**. Sentences handed down to child sexual abusers will be under the relevant sections of the Pakistan Penal Code.

- ❖ The NCHR was established pursuant to the National Commission for Human Rights Act, 2012, Act XVI of 2012. The Commission is fully authorized to take up complaints of human rights violations. The Commission is competent to either receive petitions or take suo-moto notice of cases or inquire into complaints of human rights abuse or abetment thereof; or negligence in the prevention of such violation by a public servant. The Commission is empowered to investigate or inquire in respect of any violation of human rights in Pakistan.
- ❖ The law provides in Sections 12 and 13 for the following procedure regarding complaints and inquires:
 - The Commission, while inquiring into the complaints of violations of human rights, may call for information or a report from the Federal Government or a Provincial Government or any other authority or organization, subordinate thereto, within such time as may be specified by it: --- Without prejudice to anything contained in sub-section (1), if the Commission considers necessary, having regard to nature of the complaint, it may initiate an inquiry.
 - If at any stage of the inquiry, the Commission,---
 - considers it necessary to inquire into the conduct of any person; or
 - is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.
 - The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:---summoning and enforcing the attendance of witnesses and examining them on oath; (b) discovery and production of documents; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office; (e) issuing commissions for the examination of witnesses or documents; and (f) any other matter which may be prescribed.
- ❖ The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful

for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Pakistan Penal Code (Act XLV of 1860).

- ❖ Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).
- ❖ The Commission shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (Act V of 1898).

- ❖ The National Commission on the Rights of Child Act, 2017 was passed in September, 2017, 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, besides other ex-officio members from the Law Division, Foreign Affairs Division, Interior Division, Chairperson of the National Commission on Human Rights (NCHR), Chairperson of the National Commission on Status of Women (NCSW), and Chairpersons of provincial commissions on the 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 recommending measures for their effective implementation;
 - **Inquiring into violations of child rights** and **recommending** initiation of proceedings in such cases **to the relevant agencies** or departments;
 - **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.
- ❖ 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 Commission may undertake such other functions as assigned by the Federal Government and as it may consider necessary for **promotion and protection of child rights** and any other matter incidental to the above functions.
- ❖ There shall be established by the Federal Government a fund to be known as the **Child Rights Fund** and shall be used by the Commission to meet charges in connection with its functions under this Act.

DOMESTIC LEGAL FRAMEWORK – ACTIVITY 8 MATCHING GAME ANSWERS

Q. No.	Word/Phrase	Correct Match	Matching Word/Phrase
1	Criminal Law (Amendment Offenses 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 Sections 354A, 376, 376A, 377, or 377B PPC	9	Disclosure of the identity of a victim of rape is also prohibited
5	Rape of a minor or person with mental or physical disability shall be punished	8	Sections 376, 377, and 377B PPC
6	Victims of the offence of rape, unnatural offence or sexual abuse or attempt to commit these offenses shall be examined by	2	Punishment shall not be commuted.
7	Trial under Sections 354A, 376, 376A, 377, or 377B PPC	4	Shall be concluded in 6 months
8	A DNA test is compulsory in offenses	3	Under Sections 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