



CRIMINAL JUSTICE MATTERS INVOLVING CHILDREN

Training Manual for Judges and Prosecutors

American Bar Association Rule of Law Initiative
Group Development Pakistan

Acknowledgments

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Introduction

Children and youth under the age of 25 make up 52.5 percent of Pakistan’s population today.¹ The special circumstances of children who come into contact with, or are in conflict with, the law were seldom considered during the development of Pakistan’s laws and justice system. Over the years, special child protection laws have been enacted at the federal and provincial levels. These laws recognize that children are not “adults in miniature” and that their biological, cognitive, and moral development is distinct from that of adults. Scientific research and international norms recognize that children’s brains and bodies are developmentally different from adults, and therefore, children require unique legal protections. These legal protections include international and national obligations to prevent executions of minors in conflict with the law, as well as obligations to provide intervention and support to children who suffer from abuse and/or neglect in their homes. Additionally, certain children who were considered “children in conflict with the law” (or offenders/violators of laws) under previous legal regimes are now often considered victims of a crime and/or children in need of protection under criminal systems. Recognizing that systems designed for adults may cause harm to children, criminal justice and administrative courts around the world, including in Pakistan, have developed distinct systems and practices for cases involving minors. The effective implementation of Pakistan’s federal and provincial laws on children in contact and in conflict with the law, however, is still under development.

In recent years, courts across Pakistan have developed specialized child courts to adjudicate cases involving children as victims, witnesses, and/or offenders. The first of these specialized courts was inaugurated in the Lahore High Court on 19 December 2017 with, then, Chief Justice Syed Mansoor Ali Shah commenting, “*The purpose of establishing the special court is to protect the innocence of children from negative impacts of litigation before traditional courts.*”² Parliament further enacted the Juvenile Justice System Act, (JJSA) 2018 to improve access to justice mechanisms for children in conflict with the law. A second specialized court was established in Peshawar in March 2019 to further adjudicate all cases related to child protection and welfare, including legal custody and reunification of destitute and neglected children and protection of moveable and immovable property of orphans, neglected children, and at-risk children.³ Finally, on 24 June 2019, the National Judicial Policy-Making Committee promoted the establishment of juvenile and child protection courts in every district of Pakistan. As a result, 12 specialized child courts have been established in Punjab, Khyber Pakhtunkhwa (KP), Sindh, and Balochistan since April 2019.

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

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

³ Waseem Ahmad Shah, *KP Gets First Child Protection Court*, DAWN, 17 March 2019, available at <https://www.dawn.com/news/1470119>.

Chart: Comparing Juvenile and Adult Criminal Courts

Juvenile Justice	Adult Criminal Justice
Emphasis on rehabilitation of minors	Emphasis on punishment for offense
Less formal	Very formal
Private proceedings to protect child's privacy	Public proceedings
Minors are detained in separate facilities/not mixed with adult population	Adult detention

The *Cruel Numbers 2021* report, published by non-governmental organization (NGO), Sahil, tallies a total of 3,852 cases of child sexual abuse (CSA), abduction, missing children, and child marriages in Pakistan.⁴ The data shows that more than 10 children were abused each day of 2021.⁵ Furthermore, cases of child abuse increased by more than 30 percent in 2021 as compared to 2020 and, of those total reported cases of child abuse, 54 percent of victims were girls while 46 percent were boys.⁶ The forms of CSA reported include rape, gang-rape, sodomy, sexual groping and fondling, sexual assault, exposure, voyeurism, trafficking for forced prostitution, and commercial sexual exploitation of children through, for example, the production and sale of child pornography.

Children involved in domestic labor and street children are especially susceptible to abuse. A report on violence against domestic workers, produced by WISE, a Lahore-based civil society organization, showed that of the total 74 incidences of violence against domestic workers reported between January 2019 and March 2021, 88 percent of cases were perpetrated against child laborers under the age of 18, and 40 percent of total cases were perpetrated against child laborers under the age of 15.⁷ Several prominent examples of this reality have further received wide-spread attention, such as the case of an 8-year-old girl domestic laborer who was murdered by her employers for freeing birds from their cage⁸ and of a 9-year-old girl domestic laborer who was severely beaten and tortured by her employers.⁹ While these particular cases were widely reported in the media, there are countless others that have not come to the attention of authorities.

The above cases demonstrate that child domestic laborers in Pakistan are often the victims of serious human rights abuses – including violations of their right to life and survival, their right to health and well-being, their right to education, and their right to safety and freedom from violence. The protection of children's rights is an obligation of all stakeholders, including the government, public agencies, and civil society.

⁴ Sahil. *Cruel Numbers 2021: A Compilation of Statistics on Child Sexual Abuse of Reported Cases in Pakistan*. Retrieved from <https://sahil.org/cruel-numbers/>.

⁵ *Id.*

⁶ *Id.*

⁷ Retrieved from <https://www.wise.pk/index.php?menuid=31&pageid=1>.

⁸ Retrieved from: <https://thewire.in/south-asia/pakistan-zohra-shah-rawalpindi-child-rights>.

⁹ Retrieved from: <https://www.bbc.com/news/world-asia-51060569>.

This training manual provides a legal framework of children’s rights and child protection as it relates to child domestic work and specifically focuses on an impermissible form of child domestic work known as “child domestic labor” (CDL). While the term “child domestic work” encapsulates any domestic work done by a child in the home of a third party or employer, including both permissible and impermissible types of work, CDL is defined as child domestic work which is impermissible under the definition of the International Labour Organization (ILO).¹⁰ For example, where children undertake household chores in the homes of neighbors or family friends, under reasonable conditions and under the supervision of known and trusted adults, this is considered permissible child domestic work. However, in cases where children are burdened with excessive workloads, or workloads which interfere with their education, health, and well-being, such children are being subjected to impermissible CDL.

This manual will serve as a resource on issues concerning CDL and will provide insights on protecting the rights of children in domestic labor situations. The following materials are intended to prepare justice sector actors to execute their functions in justice matters involving children in accordance with Pakistan’s international obligations, domestic law, and international and regional best practices. The manual is divided into four major sections:

- 1. Definition of a Child**
- 2. Legal Framework**
- 3. Victim and Child-Centric Investigations**
- 4. Standard Operating Procedures**

The content across all four sections covers two general categories of cases, which can overlap: 1) cases involving the intersection of CDL and children in conflict with the law (i.e., children accused of committing crimes), and 2) cases involving children as victims and witnesses of a crime, particularly within the context of CDL. This manual includes readings and reference materials, practical exercises, case studies, references and links to external resources, and additional reading.

This training manual provides information that demonstrates the abuses that victims of CDL face, including the many crimes they fall victim to in the context of Pakistan. It also provides guidance on the intersection of CDL and international and domestic legal principles and doctrines designed to protect children’s rights. The manual is designed to provide both doctrinal explanations of the relevant legal frameworks as well as pragmatic considerations for practicing judges and prosecutors within the context of the Pakistani legal system. The first section of this manual begins with a summary of the definition of a child under domestic and international law. The next section provides an overview of child labor and children’s rights, focusing on guiding principles for child protection under international human rights law as well as companion domestic principles and laws. The third section addresses child and victim-centric investigations and interventions. Finally, the last section highlights standard operating procedures for the investigation and adjudication of cases involving children in conflict with the law and of cases relating to child abuse and CSA. Each section includes practical considerations in application within Pakistan’s civil and criminal justice systems.

¹⁰ Retrieved from: <https://www.ilo.org/ipecc/areas/Childdomesticlabour/lang--en/index.htm>.

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Acronyms

Acronym	Definition
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
Cr.PC	Criminal Procedure Code/Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CDL	Child Domestic Labor
CSA	Child Sexual Abuse
CSO	Civil Society Organization
DNA	Deoxyribonucleic acid
FIA	Federal Investigation Agency
FIR	First Information Report
ICCPR	International Covenant on Civil and Procedural Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Islamabad Capital Territory
ILO	International Labour Organization
JJSA	Juvenile Justice System Act
KP	Khyber Pakhtunkhwa
MOHR	Ministry of Human Rights
NGO	Non-governmental organization
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
PECA	Prevention of Electronic Crimes Act
PPC	Pakistan Penal Code
SAARC	South Asian Association for Regional Cooperation
SIR	Social Investigation Report
SC	Supreme Court
SPARC	Society for the Protection of the Rights of the Child
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
ZARRA	Zainab Alert, Response, and Recovery Agency

Learning Objectives

Learning Objectives, Outcomes, and Results for Trainings of Judges and Prosecutors on Child Rights, Child Protection, and Juvenile Justice in the Context of Child Domestic Labor

Objectives

- Identify the primary provisions of domestic and international law that serve as the foundation for children's rights and the protection of children from child domestic labor (CDL) and the intersection with the child protection and juvenile justice systems.
- Know the main international guidelines on prevention, and know the cross-cutting principles of children's rights to protection which are applied throughout the manual.
- Understand how to legally define a child according to international standards and domestic law.
- Comprehend victim-centric best practices for cases of child sexual abuse (CSA) and children in conflict with the law. Understand the uses of various practices with respect to different case types and principles to increase child-sensitivity in courts and police stations.
- Know and be able to apply standard operating procedures for cases of child abuse involving CDL, including CSA cases and cases of children in conflict with the law.
- Understand the different, varied, and special psychological and physiological needs of children and the different developmental stages of a child.

Outcomes

- Judges and prosecutors use and apply domestic laws and international standards in their daily work when dealing with any child.
- Trainees utilize and implement best practices for victim-centric investigations in police stations and courts and employ measures to make these spaces more child-sensitive.
- Prosecutors and judges implement the best practices covered in this manual with regard to arrests, trial proceedings, and investigations.
- Participants demonstrate increased sensitivity and comprehension when dealing with cases involving children engaged in domestic labor, as well as the appropriate measures/methods to be taken when dealing with cases involving CSA or other types of abuse.
- Participants understand and can demonstrate how to manage cases of child perpetrators and children in conflict with the law from the stage of the initial arrest to the final trial proceedings and conclusion of the case, in addition to the investigation.
- Participants implement standard operating procedures for cases involving children, particularly cases of children engaged in domestic labor, cases of CSA, and cases of children in conflict with the law.

Results

- Increased awareness among the judicial and legal community on child rights issues and child abuse, particularly abuses perpetrated against children engaged in domestic labor.
- Increased number of cases referred to child protection structures and mechanisms, and increased number of cases brought against employers violating children's rights as defined by national law and international child safeguarding standards to which Pakistan is signatory.
- Enhanced capacity of the stakeholders to protect children engaged in domestic labor.
- Improved guidelines regarding the conduct and procedures of the judiciary and police for cases involving children.

1.0 Who is a “Child”?

Activity 1: Who Is a Child?

(10 mins)

First, ask participants to introduce themselves with their name, designation, and the district where he/she lives or works. Then, request answers to the following questions:

1. How many children do they have in their family? This is not necessarily limited to their own biological children but may include the children of their relatives.
2. How old is the youngest child?
3. What is the age of the oldest child?
4. If the oldest child has any adult siblings, what is/are his, her, or their age(s)?

1.1 Definition of a Child Under International Law

Under the United Nations Convention on the Rights of the Child (UNCRC), the most universally adopted human rights instrument in the world, a child “*means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*”¹¹

Eighteen is generally accepted as the age of majority under international standards. The age of majority is the age at which a child 1) attains adulthood, and 2) acquires full legal capacity. However, individual countries, or their internal states or principalities, may designate a younger age 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, child welfare or child protection laws. The additional terms “minor,” “youth,” or “adolescent” are not universally defined and may instead be defined by the context of usage or the terms of specific provisions. Legal capacity can also differ from the age of consent where some jurisdictions have established a younger age of consent than that of the age of legal capacity.

In its *Concluding observations on the 5th periodic report of Pakistan* on 25 and 26 May 2016, the UN Committee on the Rights of the Child adopted the following concluding observation:

“The Committee reiterates its previous recommendation that the State party should ensure the full harmonization of its legislation as regards to 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 Hudood Ordinance (1979) and the Child Marriage 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.”

UN Committee on the Rights of the Child (UNCRC), *Concluding observations on the fifth periodic report of Pakistan*, 11 July 2016, CRC/C/PAK/CO/5, available at <https://digitallibrary.un.org/record/835009?ln=en>.

¹¹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) requires States Parties to “*adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process.*”¹² Child victims include children engaged in forced labor. Although the OPSC does not define “child,” the definition of a “child” under the UNCRC applies (less than 18 years old). In the context of the criminal justice system, the OPSC specifically states in Article 8(2) that, “*States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.*”¹³ The Committee on the Rights of the Child has also consistently asked States Parties to set an age limit of 18 years for defining a child for all the offences covered by the OPSC.

1.2 Definition of a Child in Pakistan

While international human rights law defines a child as any person under the age of 18, the Pakistani legal system defines a “child” differently under different laws. Although Pakistani law has not established a single, comprehensive child protection policy or child rights law, various federal and provincial statutes do establish a domestic child protection legal framework under which the definition of a child differs from statute to statute. Provided below is an overview of the constitutional, federal, and provincial provisions which define “child” under Pakistani law. However, it is important to consider the role of international law as a persuasive authority within the context of these varied definitions.

1.3 The Constitution of Pakistan

The Constitution of the Islamic Republic of Pakistan, 1973 does not clearly define the term “child” but has established special provisions related to children, for example, Article 11 prohibits child labor under the age of 14 years, and Article 25-A grants children up to the age of 16 years the right to free and compulsory education.

The Constitution of Pakistan, while entrenching the equality of peoples within 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 as stated in Article 25(3), “*Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*”

¹² Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 16 March 2001, A/RES/54/263 (2002), available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.

¹³ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 16 March 2001, A/RES/54/263 (2002), available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.

1.4 Federal Laws

1.4.1 Pakistan Penal Code

The Pakistan Penal Code (PPC), 1860 contains numerous provisions which designate the age of either the victim or perpetrator of an offense. These provisions additionally use various terms, including minor, child, juvenile, or simply persons, when defining relevant age thresholds. The below overview of a few laws that are in force illustrates how the laws are not in conformity with one another thus requiring courts of law to consider different meanings to define terms under specific statutes.

Section 82 and Section 83 establish the minimum age of criminal responsibility stating, *“Nothing is an offence, which is done by a child under ten years of age,”* and *“Nothing is an offence which is done by a child above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”*

Section 89, while establishing a general defense in cases of corporal punishment, states, *“Nothing is an offence which is done in good faith for the benefit of a person under twelve years of age by the guardian or other person having lawful charge of that person.”*

Section 328-A establishes cruelty to children as an offense but does not specify the age at which a person is considered a child.

Section 364-A designates the kidnapping or abduction of a person under the age of 14 as punishable offenses where the necessary intent requirements of the provision are met.

Section 366-A, while criminalizing the procurement of a minor girl, defines the victim of the offense to be any minor girl under the age of 18 years.

Section 375(v) establishes that the offense of rape has been committed where the victim is under 16 years of age, regardless of the consent of the victim to the sexual intercourse.

Section 377-A establishes the offense of sexual abuse where the perpetrator commits any of the acts enumerated in the provision against a person under the age of 18, regardless of the consent of the victim to the act.

1.4.2 Majority Act, 1875

Section 3 of the Majority Act, 1875 establishes 18 as the age of majority in Pakistan.

1.4.3 The Guardians & Wards Act, 1890

Section 3(1) of the Guardians & Wards Act, 1890 establishes 18 as the age of majority, stating, *“‘minor’ means a person who, under the provisions of the Majority Act, 1875, is to be deemed not to have attained his Majority.”*

1.4.4 The Anti-Rape (Investigation and Trial Act), 2021

The Anti-Rape Act defines a child as any male or female who has not attained 18 years of age.

1.4.5 Child Marriage Restraint Act, 1929

Section 2(a) of the Child Marriage Restraint Act, 1929 defines a child as a male who is under 18 years of age or a female who is under 16 years of age. This national legislation has been adopted in provincial legislatures with modifications, including as to the definition of a child. While Punjab has also adopted a modified child marriage law, it has not changed the age of marriage which remains 18 for boys and 16 for girls.

1.4.6 Pakistan Citizenship Act, 1951

According to Section 2 of the Pakistan Citizenship Act, 1951, “minor” means, notwithstanding anything in the Majority Act, 1875, any person under the age of 21 years.

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

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

1.4.8 The Vagrancy Ordinance, 1958

According to Section 2(a) of the Vagrancy Ordinance, 1958, a child is a person under the age of 14 years.

1.4.9 The Juvenile Justice System Act, 2018

Section 2(b) of the Juvenile Justice System Act (JJSA 2018) defines a child as a person who has not attained the age of 18 years.

1.4.10 The Prevention of Trafficking in Persons Act, 2018

In Section 1(a) of the Prevention of Trafficking in Persons Act, 2018, a child is a person under 18 years of age.

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

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

1.5 Provincial Laws

1.5.1 The Employment of Children Act, 1991

In operation in the Islamabad Capital Territory (ICT), the Employment of Children Act, 1991 defines a child as any person under the age of 14 and an adolescent as any person who is 14 years old or older while being under the age of 18.

1.5.2 The Islamabad Child Protection Act, 2018

In providing for the protection and care of children in ICT from all forms of physical or mental violence, injury, neglect, maltreatment, exploitation, abuse, and matters ancillary thereto, the Islamabad Child Protection Act, 2018 defines a child as a person who has not attained 18 years of age.

1.5.3 The Islamabad Capital Territory Domestic Workers Act, 2022

Though this Act does not define the term “child,” Section 3 states, *“No child under the age of sixteen years shall be allowed to work in a household in any capacity.”*

1.5.4 The Punjab Destitute and Neglected Children Act, 2004

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

1.5.5 The Punjab Restriction on Employment of Children Act, 2016

The Punjab Restriction on Employment of Children Act, 2016 defines a child as a person who is under the age of 15 and an adolescent as a person who is 15 years or older while also under the age of 18.

1.5.6 The Punjab Domestic Workers Act, 2019

According to Section 3 of the Punjab Domestic Workers Act, 2019, a child under the age of 15 shall not be allowed to work in a household in any capacity. However, the Act does not provide a definition of the child.

1.5.7 The Child Marriage Restraint Act, 2015

The Government of Punjab adopted the federal Child Marriage Restraint Act, 1929 which was succeeded by the Child Marriage Restraint (Punjab Amendment) Ordinance, 1971 without modification as to the age of marriage. This law was further amended by the Punjab Marriage Restraint Act, 2015 which increased imprisonment and fines but did not alter the legal age of marriage from 16 years for girls and 18 years for boys.

1.5.8 The Sindh Prohibition of Employment of Children Act, 2017

According to the Sindh Prohibition of Employment of Children Act, 2017, a child is a person who has not attained 14 years of age.

1.5.9 The Sindh Child Protection Authority Act, 2011

Section 2(g) of the Sindh Child Protection Authority Act, 2011 defines a child as a person who has not attained the age of 18.

1.5.10 The Sindh Child Marriage Restraint Act, 2013

The national Child Marriage Restraint Act, 1929 has been adopted in Sindh with modifications, including as to the definition of a child. The Act adopted in Sindh defines a child as any person who is under the age of 18, irrespective of sex.

1.5.11 The Khyber Pakhtunkhwa Child Protection Welfare Act, 2010

The Khyber Pakhtunkhwa Child Protection Welfare Act, 2010 defines a child as a natural person who has not attained the age of 18.

1.5.12 The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015

Section 2(1) of the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 defines an adolescent as a person who is 14 years of age or older but not having attained 18 years of age and a child as a person who is below the age of 14. The Khyber Pakhtunkhwa Child Welfare Act is a special law which supersedes the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 in matters of child protection and therefore may present a conflict of laws in practice.

1.5.13 The Khyber Pakhtunkhwa Home Based Workers Welfare and Protection Act, 2021

The Khyber Pakhtunkhwa Home Based Workers Welfare and Protection Act, 2021 prohibits the employment of a child and defines a child as a person below the age of 14.

1.5.14 The Balochistan Child Protection Act, 2016

The Balochistan Child Protection Act, 2016 defines a child as a person below the age of 18 regardless of sex.

1.5.15 The Balochistan Employment of Children (Prohibition and Regulation) Act, 2021

Section 2(d) of the Balochistan Employment of Children (Prohibition and Regulation) Act, 2021 defines a child as a person who has not completed his or her 14th year of age.

Activity 2: Understanding Who is a “Child”

Ask participants to answer the following questions and create a chart with the results.

1. Identify three biological differences between children and adults.
2. Identify two behavioral differences between children and adults.
3. Identify one way children communicate differently than adults.

Note for facilitator: In the discussion/debrief, 1) discuss where our knowledge for these differences comes from (science, research, observation, experience), and 2) what are the implications of these differences in everyday life and in our professional practice? For example, if children’s bodies are still growing, how does trauma to the body impact them differently? If they are very young and not verbal or have linguistic limitations due to a disability, how does that impact their ability to disclose information in a legal setting?

For facilitator: Example responses/possible responses to help guide participants.

BIOLOGICAL DIFFERENCES

- Anatomy and physiology in children develop over several years to gradually assume the adult form. “They are shorter!”
- Children’s skin is thinner.
- Young children’s immune systems are not fully developed.
- Children’s bones and bodies are still growing, adults’ are not.
- Children’s brains are not fully formed.

BEHAVIORAL DIFFERENCES

- Children (especially younger children) often perceive situations with more innocence and hope.
- Adolescent children take more risks – this is a normal part of their development.
- Children rely principally on sensory experience for reflecting and acquiring knowledge; adults are more able to infer knowledge and engage in abstract thinking.

LINGUISTIC DIFFERENCES

- Younger children do not process time the way adults do – they often find it difficult to provide information in a linear, chronological format. This can impact the way they communicate their stories during interviews or intakes.
- Children’s vocabulary is more limited.
- Children are more susceptible to non-verbal and verbal cues to please an adult. For example, if you say in a stern tone, “You said he didn’t hurt you, right?”, they are more inclined to agree to please an adult.

2.0 Legal Framework of Child Protection

International Laws and Agreements Relating to Child Rights, Child Sexual Abuse (CSA), and Juvenile Justice

2.1 Introduction to International Law

International law is made up of legal obligations to which States have consented and serves to regulate the interactions between consenting States.¹⁴ Within the context of international law, “States” is a term used to refer to countries or nation-states, as opposed to non-state actors. International law, however, increasingly takes into account the behavior of non-state actors such as, but not limited to, individuals or corporations. There are three generally accepted sources of international law:

1. International conventions, whether general or particular, establishing rules expressly recognized by the consenting states
2. International custom, as evidence of a general practice accepted as law
3. The general principles of law recognized by civilized nations¹⁵

Of these, international conventions and international customary law are the most significant.¹⁶ All three are considered “hard law” or forms of international law that are legally binding on states.

“International agreements go by several names, such as ‘charter,’ ‘convention,’ ‘covenant,’ ‘pact,’ ‘protocol,’ ‘statute,’ and ‘treaty.’ ‘Convention’ typically refers to an agreement among many countries, while ‘charter’ or ‘statute’ [is] often used for the founding document of an institution, and ‘protocol’ for an agreement supplemental to a principal treaty.”¹⁷ “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).¹⁸ International agreements are binding on their States Parties. In rare instances,

¹⁴ American Society of International Law, *Benchbook on International Law* (2014), I.A-1, available at https://www.asil.org/sites/default/files/benchbook/ASIL_Benchbook_Complete.pdf.

¹⁵ See, e.g., Statute of the International Court of Justice art. 38 (San Francisco, 26 June 1945), 3 Bevans 1179, 59 Stat. 1055, T.S. No. 993, entered into force 24 Oct. 1945, available at <https://www.icj-cij.org/en/statute>.

¹⁶ American Society of International Law, *Benchbook on International Law* (2014), I.B-2.

¹⁷ American Society of International Law, *Benchbook on International Law* (2014), I.B-3.

¹⁸ American Society of International Law, *Benchbook on International Law* (2014), I.B-3.

such as the Convention on the Prevention and Punishment of the Crime of Genocide,¹⁹ international agreements may be considered binding on non-States Parties through a recognized principle of customary international law.²⁰ The following section discusses various types of international agreements, including conventions, covenants, and protocols.

The international community also recognizes a body of international documents, norms, and standards, sometimes referred to as “soft law,” which do not impose a specific, binding obligation on a State, but may nevertheless influence the behavior of States or other subjects of international law. Examples of “soft law” include documents promulgated under the auspices of an intergovernmental organization, such as the United Nations’ (UN) Guiding Principles on Business and Human Rights;²¹ international declarations, such as the Universal Declaration of Human Rights;²² and rules, guidelines, and standards promulgated by NGOs.²³ 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.

2.2 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 UN, 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 UN. Article 55 similarly states that the UN 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 the specialized*

¹⁹ United Nations Office on Genocide Prevention and the Responsibility to Protect, <https://www.un.org/en/genocideprevention/genocide.shtml> (last visited August 12, 2019) (noting that “*The International Court of Justice (ICJ) has repeatedly stated that the Convention embodies principles that are part of general customary international law. This means that whether or not States have ratified the Genocide Convention, they are all bound as a matter of law by the principle that genocide is a crime prohibited under international law.*”).

²⁰ See American Society of International Law, *Benchbook on International Law* (2014), I.B-10.

²¹ United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), available at https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf.

²² Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948), available at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

²³ See American Society of International Law, *Benchbook on International Law* (2014), I.B-13 – I.B-14.

agencies] for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.”²⁴

The UN Charter, however, does not define the terms “human rights” and “fundamental freedoms” nor does it enumerate those rights. Instead, on 10 December 1948, the recently constituted United Nations General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) as a common standard of protections for all peoples and all nations.²⁵ It sets out, for the first time, fundamental human rights to be universally protected. The Declaration consists of 30 articles affirming an individual's rights that, although not legally binding in themselves, have been elaborated in subsequent international treaties, economic transfers, regional human rights instruments, national constitutions, and other laws. As per Article 2 of the UDHR, *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

All rights proclaimed in the UDHR, save the right to marry under Article 16, apply equally to children as to adults. Two rights articulated in the Declaration are specifically targeted towards children. Article 25(2) provides that, *“Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”* Moreover, under Article 26, everyone shall have the 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 collectively known as the International Bill of Human Rights. Whereas the UDHR is a non-binding, soft law declaration, most of the rights articulated in the Declaration have been codified in the ICCPR and ICESCR, which are binding on their States Parties.

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

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

²⁵ Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948), available at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

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

In 1989, the UN 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 in keeping with the rights that other international conventions and declarations accord to adults. The UNCRC is the most significant of all international instruments addressing children's rights, including juvenile justice and child sexual abuse (CSA). The Convention operates according to 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. It is also the most universally adopted human rights instrument in the world.

The UN Committee on the Rights of the Child, in its *Concluding observations on its 5th periodic report of Pakistan* in 2016, showed very strong concerns regarding abuse and torture of working children. It stated:

“72(d) The Committee urges the State Party to develop programmes and mechanisms to identify and protect child victims of forced labour, particularly bonded labour as well as child labour in informal sectors, including domestic work.”

UN Committee on the Rights of the Child *Concluding observations on the fifth periodic report of Pakistan*, 11 July 2016, CRC/C/PAK/CO/5, <https://digitallibrary.un.org/record/835009>.

The Convention sets out these rights in 54 articles and three Optional Protocols; one restricting the involvement of children in military conflicts,²⁶ another governing communications procedure of the Committee on the Rights of the Child,²⁷ and the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography (OPSC) committing signatories' national governments to protect and ensure children's rights. As a result of the UNCRC and its associated Optional Protocols, States Parties are obligated to develop policies and undertake all actions considering the best interests of the child.

Article 19 of the UNCRC protects children from all forms of abuse, neglect, and exploitation by parents and others, including employers, and obligates States to establish prevention and treatment programs. Article 24 promotes high standards of health and access to health care services and requires effective and appropriate measures to abolish traditional practices prejudicial to the health of children. Examples of traditional practices in Pakistan that could be considered prejudicial to the health of children include child domestic labor (CDL), child marriage, giving of girls to settle disputes, and *bacha bazi*. Article 3 specifically requires States to protect children from forced labor. 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.

²⁶ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (New York, 25 May 2000), A/54/RES/263, entered into force 12 Feb. 2002, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACRC.aspx>.

²⁷ Optional Protocol to the Convention on the Rights of the Child on a communications procedure (19 December 2011), A/RES/66/138, entered into force on 14 April 2014, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICRC.aspx>.

Article 37 focuses on the detention and punishment of juveniles. This article prohibits the torture or other cruel, inhuman, or degrading treatment or punishment of a child and further prohibits the imposition of the death penalty or life imprisonment without the possibility of release for anyone under the age of 18. It also provides that children should have access to legal and other services and the right to challenge the legality of any deprivation of his or her liberty before a court or other competent, independent, and impartial authority.

Article 40(1) focuses on juvenile justice and particularly the idea that every child accused of a crime deserves to be treated with dignity and respect. It emphasizes that the justice system's treatment of an accused child should consider the child's age and development and promote his or her constructive re-integration into society, while also reinforcing his or her respect for the freedoms and human rights of others. The article goes on to list the guarantees that States Parties shall afford an accused child, such as a presumption of innocence until proven guilty, the right to be informed and made to understand the charges against him or her, and an opportunity to examine adverse witnesses or have adverse witnesses examined. Article 40 further encourages States Parties to promote the establishment of laws, procedures, institutions, and authorities that apply to children accused of having infringed the penal law, including establishing a minimum age below which children shall be presumed to lack the capacity to infringe the penal law. Finally, Article 40 highlights alternative measures to deal with children in conflict with the law without resorting to a judicial process.

The UNCRC recognizes the right of the child to be free from *all* forms of exploitation, including to be protected from economic exploitation and from performing any work that is likely to interfere with the child's education or to be hazardous or otherwise harmful to the child's health or physical, mental, spiritual, moral, or social development. In furtherance of the protections under articles 1, 11, 21, 32, 33, 34, 35, and 36 of the UNCRC, Pakistan signed and ratified the Convention in 1990. It was the sixth country overall and the first Muslim country in the world to do so.

The OPSC was created in response to grave concerns about sex tourism and the exploitation of children, including exploitation in the form of forced labor. The Optional Protocol drew inspiration from prior international human rights instruments addressing slavery and the exploitation of women and children. Pakistan signed the first Optional Protocol (on the involvement of children in armed conflict) 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 2011.²⁸

²⁸ Pakistan's status related to 18 separate treaties can be found on the Office of the High Commissioner for Human Rights Ratification Interactive Dashboard: available here <http://indicators.ohchr.org/>.

In its *Concluding observations on the 5th periodic report of Pakistan* in 2016, the UN Committee on the Rights of the Child showed serious concerns over the incidents of child sexual abuse, and urged:

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

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

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

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

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

UN Committee on the Rights of the Child *Concluding observations on the fifth periodic report of Pakistan*, 11 July 2016, CRC/C/PAK/CO/5, <https://digitallibrary.un.org/record/835009>.

As a signatory to the OPSC, Pakistan has obligations to adopt and implement laws and policies to effectuate the tenants of the Optional Protocol. The OPSC calls on States Parties to cooperate with other States to further the prevention, detection, prosecution, and punishment of child sexual exploitation and labor trafficking. Article 3(1)(a)(i)(c) provides that States will agree to pass national legislation making forced labor of children a crime subject to universal criminal jurisdiction, giving all States jurisdiction over the crime regardless of the jurisdiction in which the crime was committed, the alleged offender’s nationality, or whether committed on an individual or organized basis. The OPSC obliges States Parties to criminalize both 1) offering, delivering, or providing a child for sexual exploitation or prostitution, and 2) accepting, obtaining, or procuring a child for one of these purposes.

Child domestic labor can be a form of exploitation under the OPSC, when a child is sold for the purpose of forced labor. The OPSC defines “sale of children” as “*any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.*” Note that the “sale” can be remuneration or any kind of consideration – therefore, *anything* of value in exchange for the labor of a child may fall under this definition.²⁹ The United Nations Children’s Fund (UNICEF) has published the *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*³⁰ to promote understanding and effective implementation of the OPSC. It describes the genesis, scope, and content of the Optional Protocol and provides examples of measures taken by States Parties to fulfill their obligations under this instrument.

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

²⁹ United Nations Children’s Fund, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (2009), p.10.

³⁰ https://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf.

In accordance with Article 44 of the UNCRC, 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 2 years following the entry into force of the Convention for the State Party, with period reports due every 5 years thereafter.³¹ Pakistan submitted its *Fifth Periodic Report* to the UNCRC in January 2015. The report was reviewed in May 2016, and the Committee gave its concluding observations at its 2132nd meeting held on 3 June 2016.

2.2.2 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
- 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, including forced labor and labor trafficking.³² With a goal of creating a universal instrument that addresses all aspects of trafficking in persons, the articles under the Protocol provide a comprehensive, international approach to prevent trafficking, punish traffickers, and protect victims throughout the trafficking chain including in countries of origin, transit, and destination. The Protocol's stated purpose, as set forth in Article 2, is—

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

Article 3 of this 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, harboring, or receipt of persons, by means of the threat or use of force or other

³¹ Committee on the Rights of the Child, Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1(b), of the Convention on the Rights of the Child art. 1 (23 November 2010).

³² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000), available at <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.

forms of coercion, of abduction, of fraud, of deception, of *the abuse of power or of a position of vulnerability* [emphasis added] 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 labor or services, slavery, or practices similar to slavery, servitude or the removal of organs.

- (b) *The consent of a victim of trafficking* [emphasis added] in persons to the intended exploitation set forth in subparagraph (a) of this article *shall be irrelevant* [emphasis added] where any of the means set forth in subparagraph (a) have been used.
- (c) The recruitment, transportation, transfer, harboring 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 18 years of age.

In effect, this article provides that any victim under the age of 18 for the purpose of exploitation is a victim of trafficking in persons regardless of whether the threat or use of force or other coercive means are used. Notably, any type of coerced or forced CDL that provides any meaningful benefit to the trafficker (e.g., "employer") may be considered a form of labor trafficking. Even if the child "consents" to the work, the Palermo Protocol makes clear that this consent is irrelevant where there is evidence of "abuse of power." This is particularly relevant considering the developmental differences between adults and children and the power dynamics between adults and children. Within the context of a family, adults can easily "abuse their power" over children as children largely depend on adults for their survival. Additionally, international law and criminal law recognize that children can be victims of multiple crimes. For example, child domestic laborers can also be victims of assault, torture, and sexual abuse and exploitation.

Additional articles:

- Article 5 urges States Parties to criminalize trafficking in persons as well as attempting to commit a trafficking in persons offence, participating as an accomplice in a trafficking in persons offence, and organizing or directing another to commit the offence.
- Part II (Articles 6-8) addresses the protection of victims of trafficking and calls for the establishment of means to provide victims with information on relevant court and administrative proceedings and enable their views to be presented and considered at appropriate stages of criminal proceedings. It also calls for measures promoting the physical, psychological, and social recovery of victims, including measures providing appropriate housing; counseling and understandable information about their legal rights; medical, psychological, and material assistance; and employment, educational, and training opportunities.
- Article 9 addresses prevention efforts urging States Parties to establish comprehensive policies, programs, and other measures to prevent trafficking and protect victims. It further encourages States Parties to engage in research, develop

measures to protect the most vulnerable, particularly women and children, and discourage the demand that fosters exploitation.

- Article 10 promotes information exchange and training for law enforcement and other authorities and calls for border measures to be taken. Training should address methods used to prevent trafficking, prosecute the traffickers, and protect the rights of victims. The training should also consider human rights along with child and gender-sensitive issues and encourage cooperation with NGOs and other elements of civil society.

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

2.2.3 International Labour Organization (ILO) Conventions

In 1998, the ILO adopted a Declaration on the Fundamental Principles and Rights at Work for all the member countries. Whether or not the individual member countries have ratified the core labor conventions, they recognize that the rights contained in these conventions are universal and apply to all people in all countries, regardless of the level of economic development.

These 8 core labor conventions are:

1. C87 on freedom of association and protection of the right to organize
2. C98 on collective bargaining
3. C29 on forced labor
4. C105 on the abolition of forced labor
5. C138 on the minimum age for employment
6. C182 on the worst forms of child labor
7. C100 on equal remuneration
8. C111 on the prohibition of discrimination in employment and occupation.

2.2.3.1 Worst Forms of Child Labour Convention (No. 182)

The General Conference of the International Labour Organization (ILO) adopted its Worst Forms of Child Labour Convention, otherwise known as Convention No. 182, on 17 June 1999.³³ 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 labor” to include, *inter alia*—

- (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 labor*, [emphasis added] 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

³³ International Labour Organization, Worst Forms of Child Labour Convention, C182, (17 June 1999), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children

Article 7 outlines practical steps that States Parties can take:

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

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

2.2.3.2 Minimum Age Convention, 1973 (No. 138):³⁴

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

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

Pakistan ratified this Convention on 6 July 2006.

³⁴ International Labour Organization, Minimum Age Convention, C138 (26 June 1973), available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138.

2.2.3.3 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is an international human rights treaty adopted by the UN in 1966.³⁵ It is one of the two treaties that give legal force to the UDHR. The other is the International Covenant on Economic, Social and Cultural Rights (ICESCR) described below.

The ICCPR commits States Parties to protect and respect the civil and political rights of individuals. These rights are fundamental to the enjoyment of a broad range of human rights. Each article to the Covenant relates to a specific right. The specific rights implicated in justice system responses to CSA, exploitation, or trafficking would relate to those identified as freedom from slavery or forced labor, fair and equitable treatment by the judicial process, freedom of expression (e.g., victims having a voice in their cases), the rights of children, and the right to equality and non-discrimination.

UN Human Rights Committee, in its *Concluding observations to the initial report of Pakistan* 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.”

UN Human Rights Committee, *Concluding observations on the initial report of Pakistan*, 23 August 2017 CCPR/C/PAK/CO/1, available at <https://digitallibrary.un.org/record/1312182>.

The Articles implicated in CSA and juvenile justice include:

- Article 2 – States Parties agree to ensure rights without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. They are also obligated to address any claims of violations of these rights through an appropriate official remedy, determined by competent judicial, administrative, or legislative authorities. This corresponds with the UNCRC principle of non-discrimination.
- Article 8 – Right to not be enslaved. This article implicates freedom from trafficking and sexual abuse.
- Article 9 – Right to liberty and security of the person. *[Juvenile Justice]*
- Article 10 – Rights of detainees. *[Juvenile Justice]*
- Article 11 – Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation. *[Juvenile Justice]*

³⁵ International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, entered into force 23 March 1976, available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

- Article 14 – Equality before the courts and tribunals; right to a fair trial. Although this article mainly addresses the rights of the accused, its language also provides that all persons are equal before courts and tribunals. It further provides that the press and the public may be excluded from all or part of a trial for reasons of morals, public order, or national security or when the interests of the private lives of the parties requires. This may apply to CSA cases when a courtroom is closed, or the court determines publicity would prejudice the interests of justice [*Juvenile Justice and CSA*]
- Article 24 – Children’s rights. Every child has the right to protection as a minor without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth.

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

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

The UN Human Rights Committee, in its *Concluding observations to the initial report of Pakistan* in August 2017, had following observations about child protection as well as child labor:

“43. The Committee is concerned, despite the efforts made by the State party, by the low level of birth registration, which has adverse consequences for children. It is also concerned by the high number of children engaged in labour under hazardous and slavery-like conditions, particularly in the brick kiln industry and domestic settings, and the insufficient labour inspections of child labour. It is also concerned that perpetrators are rarely brought to justice and victims do not receive adequate assistance and rehabilitation services (arts. 2, 6, 7, 8, 24 and 26).”

“44. The State party should intensify its efforts to ensure that all children are registered at birth; identify children whose birth has not been registered and children without identity documents and register them; and raise awareness about the importance of birth registration. It should also take all measures necessary to put an end to child labour by rigorously enforcing the laws on child labour and strengthening labour inspection mechanisms.”

UN Human Rights Committee, *Concluding observations on the initial report of Pakistan*, 23 August 2017
CCPR/C/PAK/CO/1 available at
<https://digitallibrary.un.org/record/1312182>.

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

The ICESCR came into force in January 1976 and is the second treaty to give legal force to the UDHR. It is the global instrument dealing with the protection of what are generally called “social rights,” as distinguished from “civil and political rights.”³⁶

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

The Committee on Economic, Social and Cultural Rights, in its *Concluding observations to the initial report of Pakistan* in July 2017, had following observations about economic exploitation of children:

“63. The Committee is concerned that the minimum age for labour is set at 14 years while the Constitution guarantees free compulsory education up to 16 years of age. It is also concerned that, according to official data, over 2 million children aged between 10 and 14 years are working and that 28 per cent of them are engaged in hazardous work. Moreover, most of these children are out of school. It is further concerned at the working conditions of children, most of whom work in agriculture, with brick kilns, in coal mining, in the street and in domestic settings, and at the high risk faced by these children of exposure to sexual and economic exploitation (arts. 7, 10 and 13-14).

“64. The Committee recommends that the State party:

- (a) Strengthen its legislation prohibiting child labour and the enforcement of such legislation, including by enhancing labour inspections of child labour;***
- (b) Ensure that those persons who exploit children for labour are prosecuted and punished;***
- (c) Adopt all appropriate measures to facilitate the recovery of working children and their access to educational opportunities and provide adequate support to their families;***
- (d) Undertake a national survey on the nature and extent of child labour.”***

UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Pakistan*, 20 July 2017 E/C.12/PAK/CO/1, available at <https://digitallibrary.un.org/record/1318562/>.

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

³⁶ International Covenant on Economic, Social and Cultural Rights (New York, 16 Dec. 1966) 993 U.N.T.S. 3, entered into force 3 January 1976, available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

2.2.5 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 UN in 1979 and came into force in 1981.³⁷ It comprehensively addresses women’s rights in the political, civil, cultural, economic, and social contexts, and is monitored by the CEDAW Committee established through the Convention.

CEDAW is based on three core principles—equality, nondiscrimination, and the obligations of the State. Equality includes both equality of access and opportunity, and equality of results upon access and opportunity. There should not only be equal opportunities for women but also equal access to those opportunities. States Parties have a responsibility to ensure the practical realization of rights and are therefore obligated to show results.

The Committee on the Elimination of Discrimination of against Women, in its *Concluding observations to the 5th periodic report of Pakistan* in March 2020, raised the serious concerns on:

“33 (a) The high incidence of trafficking in women and girls for sexual exploitation and forced or bonded labour, including enslavement as domestic workers .”

UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the fifth periodic report of Pakistan*, 10 March 2020, CEDAW/C/PAK/CO/5, available at, <https://digitallibrary.un.org/record/3856608>.

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

the provision of rights through the law and ensuring the practical realization of those rights.

The Convention is implicated in the response to CSA because victims are predominantly, although not exclusively, women and girls. Article 6 explicitly addresses trafficking, requiring States Parties to “*take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.*” Article 15 also addresses equality of women before the law, including legal capacity identical to that of men and the same opportunities to exercise that capacity. These articles are particularly relevant to the discussion of nondiscrimination in the response to children as victims and witnesses before legal tribunals. Article 16(2) further specifies that the betrothal and marriage of a child shall have no legal effect, that 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.

³⁷ Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 Dec. 1979), 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980), entered into force 3 September 1981, available at <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

Pakistan acceded to CEDAW in 1996 with the declaration that “*The accession by [the] government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan*” and the reservation that “*The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention.*”³⁸

2.2.6 Convention on the Rights of Persons with Disabilities (CRPD)

Children with disabilities often face economic and social hardships and are particularly vulnerable to sexual and labor exploitation.³⁹ Their heightened vulnerability stems from a greater likelihood to be dependent on caregivers for daily needs, including while engaged into CDL; social disabilities that may result in misidentifying certain overtures as “friendly” rather than predatory; and communication challenges that abusers perceive to make disabled children unlikely to report or be believed. The World Health Organization reports that “stigma, discrimination, and ignorance” place people with disabilities at higher risk than those without disabilities. Research shows that children with any type of disability are 3.7 times more likely to experience violence than nondisabled children, and 2.9 times more likely to be victims of sexual abuse.⁴⁰

Research furthermore reveals that children with disabilities who are engaged in child labor are more likely to be denied their rights, including their right to education.⁴¹ This creates a vicious cycle of disadvantage through an accumulation of vulnerabilities, which can have lifelong and multi-generational consequences. It is within this context that the Convention on the Rights of Persons with Disabilities (CRPD) contains provisions relevant to the justice system’s response to child abuse, including abuse occurring during child labor, where the victim is a child with disabilities.⁴²

In particular, Article 7 specifies:

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

³⁸ Art. 29(1) reads: “*I. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.*”

³⁹ <https://www.unicef.org/rosa/media/13541/file/Advocacy%20Brief%20-%20Child%20Labour%20and%20Disability.pdf>.

⁴⁰ World Health Organization, *Children with disabilities more likely to experience violence* (12 July 2012), available at https://www.who.int/mediacentre/news/notes/2012/child_disabilities_violence_20120712/en/.

⁴¹ Child Labour and Disabilities, UNICEF Action Brief, UNICEF Office for South Asia, Retrieved from <https://www.unicef.org/rosa/media/13541/file/Advocacy%20Brief%20-%20Child%20Labour%20and%20Disability.pdf>.

⁴² Convention on the Rights of Persons with Disabilities, May 3, 2008 A/RES/61/106, Annex I (2008), available at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>.

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

Article 12, among other articles, provides guidance on the response to child abuse where the victim is a child with disabilities. This article recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and, therefore, directs States Parties to provide persons with disabilities with access to the support they may need to exercise their legal capacity, including by establishing necessary accommodations. Article 12 further directs States Parties to ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse.

Article 13 on the access to justice 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.”*

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

Article 23 states that:

1. 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.

2. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

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

2.2.7 South Asian Association for Regional Cooperation (SAARC) on Regional Arrangements for the Promotion of Child Welfare in South Asia

Opened for signature on 5 January 2002, the South Asian Association for Regional Cooperation (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 child. This 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 certain regional priorities for South Asia, including ensuring that appropriate legal and administrative mechanisms and social safety nets and defenses are in place to “*ensure that ... national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence*” and “*administer juvenile justice in a manner consistent with the protection of the child’s sense of dignity and worth, and with the primary objective of promoting the child’s reintegration in the family and society.*” To this end, the Convention calls on States Parties to promote alternative measures to institutional correction.

The SAARC Convention also recognizes the dangers of child labor. It calls for States Parties to ensure that legal and administrative mechanisms and social safety nets and defenses are in place to “*discourage entry of children into hazardous and harmful labour and ensure implementation of the Ninth SAARC Summit decision to eliminate the evil of child labour from the SAARC region. In doing so, States Parties shall adopt a multi-pronged strategy including the provision of opportunities at the primary level and supportive social safety nets for families that tend to provide child labourers.*”⁴³

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

The Standard Minimum Rules for the Administration of Juvenile Justice,⁴⁴ also known as the Beijing Rules, was a resolution adopted by the UN in November 1985.

⁴³ South Asian Association for Regional Cooperation (SAARC), Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, Article 4(3)(b), 5 January 2002, available at <http://www.asianlii.org/saarc/other/agrmt/scoraftpocwisa811/>.

⁴⁴ <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>.

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

Major topics on juvenile justice that the Beijing Rules address and highlight include:

- Age of criminal responsibility
- Rights of juveniles
- Scope for discretion in the judicial process
- Investigation and prosecution
- Diversion
- Adjudication and disposition
- Disposition measures
- Least possible use of institutionalization
- Non-institutional treatment and institutional treatment

2.2.9 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 Power⁴⁵ was a resolution adopted by the UN in November 1985.

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

The Declaration embraces nondiscrimination and access to justice and fair treatment with compassion and respect for dignity. It calls for judicial and administrative mechanisms to be established and strengthened to enable victims to obtain redress through formal or informal

⁴⁵ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>.

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

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

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

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

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

The Committee against Torture, in its *Concluding observations on the initial report of Pakistan* in June 2017, stated:

“32. The Committee is concerned that, despite the efforts made by the Government, consistent reports refer to high levels of trafficking in persons for sexual exploitation and forced or bonded labour, including exploitation of children as domestic workers in slave-like conditions (arts. 2, 12, 14 and 16).

“33. The Committee urges the State party to:

(a) Take measures to eradicate and combat human trafficking and forced labour, investigating all allegations of trafficking and forced labour and ensuring that perpetrators are prosecuted and convicted with sentences commensurate with the gravity of the crime;

(b) Establish mechanisms for the systematic and regular monitoring of workplaces in the formal and informal sectors, including domestic work, in order to prevent forced and bonded labour and other forms of ill-treatment, abuse and exploitation.”

UN Committee against Torture, *Concluding observations on the initial report of Pakistan*, 1 June 2017, CAT/C/PAK/CO/1, available at <https://digitallibrary.un.org/record/1306839>.

States Parties must train and educate their law enforcement personnel, civilian or military personnel, medical personnel, public officials, and other persons involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment on the prohibition against torture (Article 10). Parties must also keep interrogation rules, instructions, methods, and practices under systematic review regarding individuals who are under custody or physical control in any territory under their jurisdiction to prevent all acts of torture (Article 11).⁴⁶

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

⁴⁶ <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

2.2.11 General Comments on UN Treaties for Child Sexual Abuse

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

Treaty-based mechanisms only bind those having ratified their provisions and mostly address the suppression of trafficking and the slave trade. UN charter-based mechanisms, which bind all UN members, include the Human Rights Council, which is an inter-governmental body responsible for strengthening the promotion and protection of human rights around the world and for addressing human rights violations.⁴⁷

2.2.12 General Comments on UN Treaties for Juvenile Justice

As seen above, various UN treaties, conventions and acts emphasize and focus on methods/ways to improve the practice, institutions, laws, standards/procedures, and overall state of juvenile/child justice. Treaties like the UNCRC and ICCPR have specific articles and initiatives addressing the rights of children accused: how they should be treated by police, judges, prosecutors, and the judicial system; and the different protection, medical and assistance/support measures to which children are entitled. UN agreements cover all children who have been accused of crime. They also protect children from other forms of abuse that may lead to children coming in contact with the law. This can be seen through numerous agreements such as the CRPD, which protects the rights of children with disabilities, and Convention No. 182, which protects children against having to do dangerous and arduous work. The conventions, treaties, and acts in this section are not exhaustive, and new conventions and declarations are regularly being agreed upon on the international stage. Nonetheless, they serve as a benchmark for the agreed upon standards/norms regarding juvenile justice and, given that Pakistan has ratified most of these agreements, they should serve as a guide on how to improve the juvenile justice system domestically.

2.2.13 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 UN system made up of 47 States responsible for the promotion and protection of all human rights around the globe. The Human Rights Council is what is known in the UN system as a “Charter body” (as opposed to a “treaty body”) because it gets its mandate from the UN Charter rather than a specific human rights treaty.

The Council presides over the Universal Periodic Review (UPR), which is a unique process that involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries

⁴⁷ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

and to fulfill their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equality in the assessment of every Member State's human rights situation. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.⁴⁸

Pakistan underwent its last UPR in 2017.

2.2.14 UN Bodies' Recommendations on Child Sexual Abuse

The Committee on the Rights of the Child (CRC) is at the forefront of UN actions and recommendations on CSA. 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 CSA 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 ILO Convention No. 182 and the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC). The *United Nations Study on Violence against Children* also addressed all forms of violence in all settings, including sexual exploitation and abuse.⁴⁹

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

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

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

Sale and sexual exploitation of children in the context of sports:⁵⁰

⁴⁸ United Nations Human Rights Council, *Universal Periodic Review*, available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

⁴⁹ <https://www.ohchr.org/EN/HRBodies/CRC/Study/Pages/StudyViolenceChildren.aspx>.

⁵⁰ <https://www.ohchr.org/EN/Issues/Children/Pages/ChildrenInSports.aspx>.

- In line with the OPSC, invoke the liability of legal persons, in this case sports organizations, and ensure commensurate sanctions against actors who have directly participated in, or facilitated, the sale and sexual exploitation of children.
- In line with the Guiding Principles on Business and Human Rights,⁵¹ ensure the prevention, investigation, punishment, and redress of abuses committed by business enterprises—in this case sports institutions—through effective policies, legislation, regulations, and adjudication.
- Enact or implement legislation making it mandatory for sports institutions to undertake background checks of any individual working with children.
- Guarantee that human rights are a core component of bidding for the organization of major sporting events and that impact assessments are undertaken.
- As part of prevention efforts, ensure that States hosting major sporting events effectively engage with children and provide space for their meaningful participation.
- Consider revising codes of conduct and ethics to ensure a systematic approach to child rights violations and the use of standard terminology. Use and refer to the *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*⁵² as a seminal document providing clear standard terminology.
- Set up or implement independent reporting mechanisms for cases of sale and sexual exploitation of children that provide child-friendly support to children. 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.

Demand for the sexual exploitation of children:⁵³

- Ratify all relevant regional and international instruments and establish clear and comprehensive legal frameworks which specifically address the demand for child sexual exploitation by providing clear guidance on penalties that are commensurate with the gravity of the offence.

⁵¹ United Nations Human Rights – Office of the High Commissioner, *Guiding Principles on Business and Human Rights*, available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁵² https://www.ohchr.org/sites/default/files/TerminologyGuidelines_en.pdf

⁵³ <https://www.ohchr.org/EN/Issues/Children/Pages/TacklingTheDemand.aspx>.

- Ensure the prosecution and conviction of all intermediaries, such as procurers, traffickers and facilitators in the tourism and entertainment industries, as well as financial and technology sector staff, at every level of the supply chain in order to effectively stem the sexual exploitation of children.
- Ensure that all the proceeds and assets derived from the sexual exploitation of children are effectively seized and confiscated in order to fund care, recovery, and reintegration programs, which should include compensatory measures for the victims.
- Ensure that national legislation does not criminalize child victims of sexual abuse and exploitation and ensure that children are not placed on sex offender registers.
- Ensure that children who are required to participate in criminal justice proceedings are given appropriate support and counselling to assist them at all stages of proceedings, and that they have access to a child-sensitive legal system to avoid their revictimization.
- 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 by promoting active membership of INTERPOL, and by partaking in and effectively utilizing the Green Notice system, particularly in the identification of travelling sex offenders.⁵⁴
- Conduct research to map all levels of the demand factor in order to provide comprehensive and evidence-based data that will feed into comprehensive strategies to eradicate the sexual exploitation of children.
- Address the underlying causes of the demand factor through comprehensive awareness-raising and education of children, society at large, and professionals working with children on gender equality, non-discrimination, and the rights of the child.
- Enforce and monitor the compliance of the private sector 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 and sexual exploitation of children:⁵⁵

- Establish comprehensive legal frameworks by explicitly criminalizing specific exploitative activities. The OPSC provides a minimum standard of protection to children from sexual abuse and exploitation and should be universally ratified. Regional instruments such as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse offer additional protection, e.g., through the criminalization of exploitative activities and the provision of additional procedural rights to child victims.

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

⁵⁵ <https://www.ohchr.org/EN/Issues/Children/Pages/ICT.aspx>.

- 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.⁵⁶
- Create a global permanent multi-stakeholder body to harmonize practices and procedures, share expertise and scale up good practices, and provide technical assistance and capacity-building to States for the development of legislation, policies, and strategies to effectively combat and prevent the sexual exploitation and sale of children online.
- Empower children and youth through awareness raising and training on the safe use of new technologies and social media, and the creation of child-friendly helplines and hotlines to report online abuse and exploitation.
- Enhance corporate social responsibility involving internet service and content providers, telecommunications, financial companies, and the media in order to strengthen child safety online through prevention and protection programs.

Care and recovery of child victims:⁵⁷

- Adopt and implement clear and comprehensive legislation that criminalizes the sexual exploitation and related sale and trafficking of children; recognizes their legal status as victims to access rights and services for their care, recovery, and reintegration; and ensures child-friendly judicial proceedings and remedies, including compensation.
- Establish comprehensive, rights-based, and child-centered care, recovery, and reintegration programs 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 specialized training to personnel involved in the identification process
 - provide for awareness-raising and outreach to victims and children in vulnerable situations
- Establish centralized databases for case management to ensure that child victims are identified, linked to services, and followed up on a long-term basis.
- Ensure that child victims have access to safe and secure housing, medical, and psychological care, as well as legal assistance, education, vocational training, life skills, and socioeconomic support and access to sports and leisure activities, and religious and cultural practices by means of an individualized plan that is adapted to the child's needs as part of his or her life project.
- Empower child victims through child-sensitive procedures and accessible avenues for participation that foster a sense of agency in their care, recovery, and reintegration program. Keep child victims informed and allow them to be consulted on decisions affecting them.

⁵⁶ Pakistan is a member of the WePROTECT Global Alliance (<https://www.weprotect.org>).

⁵⁷ <https://www.ohchr.org/EN/Issues/Children/Pages/CareAndRecovery.aspx>.

- Involve the family in the care, recovery, and reintegration process whenever possible.
- Allocate consistent funding and adequate resources to provide continuous, comprehensive, high-quality assistance and ensure the sustainability of support services to child victims in the short, medium, and long term.
- Promote partnerships and cooperation in the development of programs, including awareness-raising and education programs targeted at families, communities, and society at large to change negative attitudes and address stigma and discrimination against child victims with the involvement of civil society, the private sector, academic institutions, and children.
- Provide, through the UN and other stakeholders, technical assistance, and support to States for the elaboration and implementation of comprehensive, rights-based, and child-centered care, recovery, and reintegration programs as part of effective national child protection systems.

2.3 Summary

Child sexual abuse and the treatment of juveniles are global problems that have drawn the attention and response of the international community. The international instruments described above are of particular relevance to both sexual crimes against children and the conditions of juveniles/the juvenile justice system. Many, such as the UNCRC and its Optional Protocols, speak directly to the vulnerability of children and the harms stemming from abuse. Others, such as the ICCPR, speak to the victim's right to access the courts, an opportunity to have their views heard, and equality before judicial tribunals. As a signatory to the ICCPR, ICESCR, CEDAW, UNCRC and its OPSC, the ILO's Convention No. 182, and the CRPD, Pakistan is well-positioned to use the force of these international agreements to better protect children and hold offenders accountable.

It is also important to understand that child domestic laborers are often victims of several crimes, including CSA and exploitation, assault, withholding wages, and more. It is imperative to understand all the facts in a particular case to pursue all possible legal options.

2.4 Guiding Principles Under International Law

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

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

The UNCRC recognizes that children have equal value to adults and guarantees children the necessary and special protections due to their unique vulnerabilities. These protections are implemented through four guiding principles. Together, these principles provide an ethical and conceptual dimension to the Convention.

2.4.1 The Four Guiding Principles of the UNCRC⁵⁸

1. **Non-discrimination:** Children are entitled to freedom from discrimination regardless of their own or their parent's or legal guardian's sex, gender, sexual orientation, religion, race, ethnicity, language, political or other opinion, or socioeconomic, property, disability, birth, or other status. Children deserve protection and equal treatment as victims.
2. **Best interests 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 be 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 and focus on avoiding secondary victimization at all costs.
3. **Dignity:** Every child is a unique and valuable human being and, as such, his or her individual dignity, special needs, interests, and privacy should be respected and protected. Children have the right to be treated with dignity, respect, and compassion. Children have the right to protection, including from physical and mental violence, neglect, sexual abuse and exploitation, and torture, inhuman, or degrading treatment or punishment. The State must ensure that children are provided protection and care as is necessary for their well-being, taking into account the rights and duties of parents, legal guardians, or other individuals legally responsible for them, by taking all appropriate legislative and administrative measures. The investigative and judicial process should accommodate children's special circumstances (including their potential disability) and the need to protect them throughout the length of the case.
4. **Right to participation:** Every child has, subject to national procedural law, the right to express his or her views, opinions, and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity, and evolving capacity. Children have the right to

⁵⁸ United Nations Convention on the Rights of the Child art. 2-5, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989) & United Nations Economic and Social Council Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, A/RES/2005/20 (22 July 2005).

participate in their own cases, including providing testimony as appropriate, expressing their views and ideas during investigative and other phases, and providing victim impact statements related to sentencing.

Guiding Principles under International Law

Preserving Dignity

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

Protecting Children (both Victims and Accused/Perpetrators) from all Forms of Discrimination

- a. Types of discrimination: Sex, gender, religious, ethnic, economic, disability, race, sexual orientation, and political
- b. General protections from discrimination
- c. Added protections from discrimination
- d. Age cannot be used as a discriminatory factor to stop children participating in justice proceedings
- e. Practical steps to protect children from discrimination

Best Interest of the Child

- a. Provision of effective assistance to children:
 - Financial assistance
 - Legal assistance
 - Psychological support (non-clinical and clinical) and recovery services
 - Health services
 - Social services
 - Educational services
 - Physical recovery services
 - Other services
- b. Assure the safety of children, even if children are the accused
- c. Right of the child to privacy (confidentiality)
- d. Special preventive measures:
 - Awareness raising, information, and public education
 - Programs combatting risk factors
 - Programs strengthening protective factors (child's lived environment, their mental health and wellbeing)

Children's Right to Participation

- a. Right to express their views and ideas
- b. Reparations for child victims
- c. The right to be treated with dignity and compassion
- d. The right to be protected from discrimination
- e. Victim impact statements

2.5 Introduction

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

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

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

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

2.6 Sample Jurisprudence

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



Examples of Pakistani Courts Citing to International Law

Crl.Misc No.113-B/2022 Khawar Kayani v. The State, etc.	In granting post-arrest bail for a juvenile accused in criminal proceedings, the court stated that, as a signatory of the UNCRC, Pakistan is under international obligation to take special measures for the protection and rehabilitation of the juveniles who come in conflict with law.
2022 PLD Lahore 39 Zarmeen Abid v. National Database and Registration Authority, etc.	In the matter of an orphan girl of unknown parentage seeking to secure her right to identity, the court declared that the State, having adopted and ratified the CEDAW, has a duty to ensure the dignity of women and girls.
2022 PLD Islamabad 228 Mumtaz Bibi v Qasim, etc.	In the matter of a woman petitioning for the recovery of her daughter, the Islamabad High Court relied on the UNCRC and other international instruments to declare a child marriage against the law and void. The Court stated that, where the express provisions of a municipal law of Pakistan do not contradict Pakistan's international obligations, it is to be assumed that the legislature never intended for municipal law to conflict with obligations under international law.
WP No.13537 of 2020 Sadaf Aziz, etc. v. Federation of Pakistan, etc.	The court ruled that Pakistan's international obligations established under CEDAW required the Government of Pakistan to ensure that all necessary steps are taken to prevent discrimination and specifically to prevent virginity testing.
2020 PLD SC 146 Raja Khurram Ali Khan v. Tayyaba Bibi	In the criminal appeal of a prominent case involving child domestic labor, the court relied on the United Nations Convention against Transnational Organized Crime to define slavery.
2020 PLD Lahore 534 Muhammad Suleman v. SHO etc.	In a matter involving bonded labor, the Lahore High Court discussed the importance of international instruments, such as the UDHR and broader UN and ILO conventions, in regards to slavery and forced and child labor.
2019 PLJ SC 150 National Commission of the Status of Women Chairperson, etc. v.	The court stated that the State has a duty to be conscious and vigilant of the rights it is obligated to protect under the Constitution and its international commitments.

Government of Pakistan	
2018 PLJ Lahore 481 Asghar Leghari v. Federation	The Lahore High Court relied on the Convention of the Rights of Persons with Disabilities (CRPD) which recognizes the inherent dignity, 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 court further referred to the UDHR and International Covenants on Human Rights sections which state that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind. The CRPD reaffirms universality, indivisibility, interdependence, and interrelatedness of all human rights, as well as fundamental freedoms and the need for persons with disabilities to be guaranteed full enjoyment of these rights without discrimination.
2018 PLJ Lahore 508 Asfandiyar Khan Tareen, etc. v. GOVT. OF PUNJAB	The Court relied upon the CRPD to identify Pakistan’s policy framework for ensuring the rights of persons with disabilities.
2017 PLJ Lahore 875 Amen Masih v. Federation Pakistan, etc.	The Court ruled in favor of the petitioner relying on the UNHR 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 .
2014 PLD Peshawar 199 Haji Lal Muhammad v. Pakistan	<i>“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 concerned thereof.”</i>
2014 CLD Karachi 337 Lakhra Power Generation Company v. Karadeniz Powership Kaya Bey	“[L]egal obligation,” namely that any breach of [the provisional measures recommended by the international (International Centre for Settlement of Investment Disputes, ICSID) tribunal] may be taken into consideration by the tribunal [...] the domestic courts should be cognizant that a breach or disregard of the “legal obligation” could, ultimately, result in severe consequences for their State on the international plane.

2014 PLD Karachi 349 Abdullah v. Cnan Group Spa	<i>“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.”</i>
1993 PLD Karachi 93 Najib Zarab Ltd. V. Pakistan	<i>“We are of the view that nations must march with the international community and the municipal law must respect rules of international law, even as nations respect international opinion. The comity of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with acts of Parliament.”</i>
1958 PLD SC 138 Hanover Fire Insurance Co. v. Muralidhar Banechand	<i>“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.”</i>

Activity 3

Comparison of International law and the Constitution
(45 minutes) Material

Required handouts: UNCRC, UDHR, Constitution of Pakistan

Facilitator will divide the participants into two groups for the activity and ask group one to compare the fundamental rights in the Constitution of Pakistan with those in the UDHR. Participants will identify distinctions between UDHR, UNCRC, and the Constitution of Pakistan. In presentation: Are any rights included in the Constitution, but not in the UDHR or UNCRC? Are any rights protected by UDHR and UNCRC, but not protected by the Constitution? After 30 minutes, each group will present their findings.

Activity 4

Significance of International Law (30 minutes)

Facilitator will divide the participants into four groups for the activity and ask each group to read thoroughly any case (from the 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.

DOMESTIC LEGAL FRAMEWORK

2.7 National Laws Against Child Sexual Abuse and Child Domestic Labor

In Pakistan, a diverse set of laws provide for the protection of children from different forms of abuse and exploitation. This chapter will provide descriptions of important national child protection laws, starting with a summary of pertinent constitutional provisions, then reproducing important criminal provisions in the context of child protection with notes on the applicability of the provision where necessary and, finally, detailing the operation of child protection-specific legislation.

2.7.1 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 certain clauses such as, e.g., Article 11 which prohibits all forms of slavery, forced labor, human trafficking, employment of children younger than 14 years and labor of children in hazardous places; Article 14 which promotes the right to dignity; and Article 25 which states that all citizens are entitled to equal protection by the law and empowers the State to make special provision for the protection of women and children. Article 25(1) of the Constitution states that *“all citizens are equal before the law and entitled to equal protection of law.”* Article 25(3) elaborates on positive discrimination for women and children, *“Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.”* Article 25-A provides that the State shall provide free and compulsory education to all children of the age of 5-16 years, meaning that the minimum age of employment should be at least 16 years. Article 35 provides that the State shall protect the family and the child.

2.7.2 Pakistan Penal Code (PPC)

Child domestic labor (CDL) victims are routinely subjected to crimes under the Pakistan Penal Code (PPC). The following provides a list of crimes and definitions which may be relevant when

considering CDL cases. These various crimes are important to consider from the child's perspective as the evidence or corroboration for certain crimes may be more obvious than for other crimes.

292A. Exposure to seduction. Whoever seduces a child, by any means whatsoever, with an intent to involve him/her in any sexual activity or exposes him/her to obscene and sexually explicit material, document, film, video or 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 1 year and may extend up to 7 years, or with fine which shall not be less than 100,000 rupees and may extend up to 500,000 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/her 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
- (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 stored on a computer disk or any other modern gadget, shall also be an offence under this section.

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

292C. Punishment for child pornography. Whoever commits an offence of child pornography shall be punished with imprisonment of either description for a term which shall not be less than 14 years and may extend up to 20 years, and with fine which shall not be less than 1 million rupees.

354. Assault or criminal force to a woman with the intent to outrage her modesty. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that

Note: Section 354 of the PPC protects a woman against indecent assault as well as safeguards public morality and decent behavior. This section punishes an assault, or use of criminal force, on any woman with the intention or knowledge that the woman's modesty will be outraged. In the PPC, there is no specific definition of a male child or female child. The word "woman" denotes a female human being of any age. Indeed, a girl aged 6 years has been held by courts in Pakistan to be a "woman" for purposes of Section 354 and 354-A.

he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

354A. Assault or use of criminal force to a 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.

Note: The scope of the section 354-A is limited by two conditions which must be satisfied for this provision to apply. Firstly, the perpetrator stripping off the woman's clothes, and secondly, the woman should be exposed to the public view.

365B. Kidnapping, abducting, or inducing a woman to compel her 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 a 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 a minor girl. Whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment, which may extend to 10 years and shall also be liable to fine.

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

366B. Importation of a girl from a foreign country. Whoever imports into Pakistan, from any country outside Pakistan, any girl under the age of 21 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 10 years, and shall also be liable to fine.

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

370. Buying or disposing of any person as a slave. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his/her will any

person as a slave, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to a fine.

371. Habitual dealing in slaves. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with [imprisonment for life], or with imprisonment of either description for a term not exceeding 10 years, and shall also be liable to a fine.

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
- (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
- (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
- (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

or, under the circumstances falling under any of the following seven descriptions:

- 1. against B’s will
- 2. without B’s consent
- 3. 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
- 4. 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
- 5. 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
- 6. with or without B’s consent, when B is under 16 years of age
- 7. when B is unable to communicate consent

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 10 years or more than 25 years or for imprisonment for the remainder period of his natural life and shall also be liable to a 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 a fine.

376A. Disclosure of Identity of Victim of Rape, etc.

- (1) Whoever prints or publishes the name, or any matter which may make known the identity of the victim, against whom an offence under Sections 354A, 376, 376A, 377 and 377B is alleged or found to have been committed, shall be punished with imprisonment of either description for a term which may extend to 3 years and shall also be liable to a fine.

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 2 years nor more than 10 years, and shall also be liable to a fine.

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 the age of the person is less than 18 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 14 years and may extend up to 20 years and with a fine which shall not be less than 1 million rupees.

Note: Despite amendments to this section, the legal interpretation and understanding of trial courts may remain in question as the terms used in the new sections have not been defined. This ambiguity will create challenges for the prosecution during the trial stage. However, the amended provision does now cover the different forms of sexual abuse such as fondling, stroking, caressing, exhibitionism, voyeurism, or any obscene or sexually explicit conduct or simulation of such conduct, thereby including these offenses as crimes under the PPC.

498B. Prohibition of Forced Marriage. Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term which may extend to 7 years or for a term which shall not be less than 3 years and shall be liable to fine of 500,000 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 5 years and shall be liable for a fine which may extend to 1 million rupees.

2.7.3 Prevention of Electronic Crimes Act, 2016 (PECA)

2.7.3.1 Section 22, Child Pornography⁵⁹

1. Whoever intentionally produces, offers, or makes available, distributes, or transmits through an information system or procures for him- or herself 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
- (c) realistic images representing a minor engaged in sexually explicit conduct discloses the identity of the minor

shall be punished with imprisonment for a term which may extend to 7 years, or with a fine which may extend to 5 million rupees, or with both.

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

Note: The Federal Investigation Agency (FIA) has the jurisdiction to lodge a First Information Report (FIR) 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 22A 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.

2.7.4 Juvenile Justice System Act, 2018

The Juvenile Justice System Act (JJSA), 2018 was enacted in May 2018 to replace the Juvenile Justice System Ordinance, 2000 which presented issues of unenforceability, impracticality, and vagueness.⁶⁰ The JJSA 2018 was conceived to ensure the best interests of the child and establish a separate justice system for children in conflict with the law while engaging with children in a different manner than with adults. This law now governs cases of children in conflict with the

⁵⁹ Also called Child Sexual Abuse Material (CSAM) as per international nomenclature.

⁶⁰ The text of the law is available at: http://www.senate.gov.pk/uploads/documents/1519204805_211.pdf.

law of which 1,424 are imprisoned in Pakistan's jails as of December 2019, with 1,210 children awaiting trial and only 214 having been convicted.⁶¹

This new law establishes a comprehensive definition of a juvenile, provides better relief to a child who comes into conflict with the law, and suggests an alternate system of diversion by forming the Juvenile Justice Committee to protect children from victimization. The Act has suggested the provision of free legal assistance to victims and accused children at the state's expense. It further requires that arrested juveniles be housed in observation homes and requires juveniles to be interrogated under the supervision of the superintendent of police/sub-divisional police officers by a police officer not below the rank of sub-inspector. Interrogations of juveniles must additionally be assisted by a probation officer or by a social welfare officer who has been notified by the Government and whose responsibility it is to prepare a Social Investigation Report (SIR).

The JJSA 2018 is now the main law with regards to child/juvenile justice in Pakistan. All relevant laws and domestic agreements that pertain to juvenile justice, such as the PPC, the Constitution of Pakistan, and any provincial/regional laws, have been referenced within the JJSA 2018. Therefore, the Act is the primary legal authority in matters relating to children accused of crimes or in conflict with law and should be the main reference for practitioners and justice sector actors.

While the JJSA 2018 has developed a comprehensive legal framework for children in conflict with the law, the enforcement and implementation of the law is still under development. The

Activity 5 **Quiz Game for the Juvenile Justice System Act (JJSA), 2018**

Organize participants into three teams. After a brief presentation on the topic of CSA, including its definition, give the handout/material.

Give 15 minutes to the groups for reading and understanding the information provided in the handouts. The facilitator will go to each group to help if they have any difficulties understanding 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 the 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 passed to the next group as a bonus question. Then, the same group will answer its own question too. If this group provides a wrong answer or fails to answer its own or bonus question, it would be passed to the next team with the same principle.
- Each question will be asked once, then be repeated, to allow participants to understand the question. After that, the question will not be repeated, even if the question is carried forward as a bonus question.

For each correct answer, note 1 point for the respective team on a flip chart to keep score.

⁶¹ <https://www.sparepk.org/TA-JJ.html>.

provinces are yet to develop rules for the implementation of the law and the infrastructure required for the establishment of observation homes for accused children. The provinces must further develop child and gender-sensitive mechanisms and clear standard operating procedures (SOP) for notifying juvenile justice committees, executing diversion programs, setting up separate courts and rehabilitation centers, and providing free legal assistance.

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

In September 2017, the National Commission on the Rights of the Child Act, 2017 was passed to establish the dedicated commission with a mandate to protect child rights in Pakistan. By law, the National Commission on the Rights of the Child (NCRC) shall be composed of members including a chairman with no less than 15 years of work experience in the field of child rights; the chairperson of the National Commission on Human Rights; the chairperson of the National Commission on Status of Women, the chairpersons of provincial commissions on rights of children, and other ex officio members from the law division, foreign affairs division, and interior division. The NCRC shall also include six members, one from each province, the Islamabad Capital Territory (ICT), and the Federally Administered Tribal Areas, out of which two members shall be women and one from a minority group, all having no less than 10 years of work experience in the field of child rights. The Commission shall also have two child members (one boy and one girl, not below the age of 15 years).

The Commission shall perform the following functions:

- Examine existing or proposed legislation and administrative instruments, examine international instruments, and periodically review existing policies and programs on child rights.
- Liaise with provincial commissions set up under provincial laws and other concerned provincial organizations.
- Review law or policy, or practice, currently in force for the protection of child rights and recommend measures for their effective implementation.
- Inquire into violations of child rights and recommend the initiation of proceedings to the relevant agency or department.
- Sponsor, steer, and encourage research, and maintain a database relating to children.
- Provide knowledge and awareness for national policy and strategic action for its remedy; spread awareness and promote dialogue on child rights.
- Advise the Federal Government to sign, ratify or accede to any such proposed international treaty, protocol, etc.
- Inquire 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. 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.

This Act requires the Government to constitute the Commission within 6 months of the enactment of the law, but the Government has not yet done so.

2.7.6 The Prevention of Trafficking in Persons Act, 2018

The purpose of the Prevention of Trafficking in Persons Act, 2018 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.”*

This law has also penalized abetment and criminal conspiracy in relation to trafficking crimes. A major strength of this legislation is that it does not impose criminal liability on the victim or his/her parents or guardians. It has empowered the police to recognize the issue and investigate, under this Act, where it is concerned with internal trafficking. Where a case extends beyond the geographical boundaries of Pakistan, the FIA will take the lead on the matter. Under this law, a magistrate of the first class shall try the offense punishable under this Act. All the offenses under this law are cognizable and non bailable. This law provides special provision for the safety of victims and witnesses of the relevant offenses and suggests compensation to the victims.

This law also suggests that the 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.

2.7.7 Zainab Alert, Response and Recovery Act, 2020

The Zainab Alert, Response and Recovery Act, 2020 was enacted in 2020 to make provision for raising alert, response, and recovery of missing and abducted children. The idea was to prevent CSA through the implementation of an expedient response mechanism, based on the observation that the delayed response of the State mechanism in previous cases of CSA had put the child’s safety and life at risk. This law will help reduce these risks by issuing alerts to elicit quick responses from law enforcement resulting in swift recovery and rehabilitation of the missing child and improving 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 the establishment of a Zainab Alert, Response, and Recovery Agency (ZARRA), headed by a director general to be appointed by the Prime Minister. The management staff of ZARRA should be suitably equipped with skills of managing databases, conducting

planning, and monitoring of programs, analyzing data, preparing reports, and coordinating with all other officers. It 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 2 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 the ZARRA mobile application. The police shall further update ZARRA as to the latest status of the missing child's case and all available details on a daily basis. 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 may help in the child's identification so as to inform the public-at-large and all concerned agencies.

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 a 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 in a timely manner to a complaint involving a missing or abducted child, or of a public official who willfully delays or hinders an investigation. After the enactment of this law, police shall, on receipt of information, take immediate action to launch an investigation and search, rescue, and recovery operations. Police will be bound to register a First Information Report (FIR) within 2 hours of a child being reported missing by his/her parents. The police will inform ZARRA immediately and keep providing ZARRA with the latest status of the case and all available details on a daily basis. The police officer shall ensure that the mandatory information about the whereabouts of the missing child, as required in the 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 2 years and a fine of 100,000 rupees.

The law recommends concluding cases of sexual abuse, rape, kidnapping, and murder involving children within 3 months. Child sexual abusers are to be sentenced under the relevant sections of the PPC.

2.8 National Laws Addressing Child Labor

To protect the rights of the public as per the Constitution, there are different laws and legal remedies available at the national and provincial level, with almost all territories and provinces having introduced their own laws addressing child labor. Below is the available legal framework for child protection and CDL.

2.8.1 Constitutional Provisions

- Article 3: The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of fundamental principle, from each according to his/her ability and to each according to his/her work.
- Article 11(3): No child below the age of 14 years shall be engaged in any factory or mine or any other hazardous employment.
- Article 25-A: The State shall provide free and compulsory education to all children of the age of 5 to 16 years in such manner as determined by law.
- Article 37I: The State shall make provision for securing just and humane conditions of work, ensuring that women and children are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

The Constitution of Pakistan contains provisions for the economic and social well-being of the people and for the promotion of social justice. Fundamental rights with regard to the security of life or liberty, prohibition of slavery and forced labor, and the right to form associations or unions, among others, are enshrined in the Constitution. Article 11 of the Constitution guarantees that *“no child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.”* Realizing the crucial role of education in the eradication of child labor, Article 25-A was added to the Constitution under the 18th Constitutional Amendment, 2010, requiring the State to provide free and compulsory education to all children aged five 5 to 16. Education is one of the most effective means of controlling and combating child labor. Similarly, Article 37(e) of the Constitution requires the State to make provision for securing just and humane conditions of work and ensuring that children and women are not employed in vocations unsuited to their age or sex.

2.8.2 Minimum Age for Admission to Work

The minimum age for admission to work is set under the Mines Act, 1923 (15 years), the Factories Act, 1934 as well as its provincial variants enacted after their devolution (14 years), the Shops & Establishments Ordinance, 1969 and its provincial variants enacted in Sindh and Khyber Pakhtunkhwa (KP) (14 years), and the Road Transport Workers Ordinance, 1961 (18 years). The minimum age for starting work is 14 years under the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 and the Sindh Prohibition of Employment of Children Act, 2017. The minimum age for admission to work was raised to 15 years under the Punjab Restriction on Employment of Children Act, 2016.

2.8.3 Minimum Age for Light Work

The minimum age for light work, in line with ILO Convention 138, is prescribed under the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 which states as follows: Section 3. Prohibition of employment. (1) No child shall be employed or permitted to work in any establishment:

“Provided that a child not below the age of 12 years may be engaged in the light work, alongside his family member, for a maximum of two hours per day mainly for the purpose of

acquiring skills, in a private undertaking, or in any school established, assisted or recognized by Government for such purpose.”

The provisions on light work are also found in legislation of the Sindh province prohibiting employment of children.

2.8.4 Minimum Age for Hazardous Work

The minimum age for hazardous work is set at 14 years under the Employment of Children Act, 1991 (applicable currently in ICT, Balochistan, and Sindh). After their devolution, the KP, Punjab, and Sindh provinces have enacted necessary legislation raising the minimum age for hazardous work to 18 years, in line with ILO Convention 138. There are also Hazardous Occupations Rules, framed under the Factories Act, which prohibit the employment of children in certain hazardous occupations (lead, rubber, sand blasting, chromium, etc.). In ICT and Balochistan, CDL is designated as a hazardous occupation.

2.8.5 Worst Forms of Child Labour

The worst forms of child labor, as described under ILO Convention 182, are regulated and prohibited under various Acts, including the PPC and the Prevention of Trafficking in Persons Act, 2018. The Punjab Restriction on Employment of Children Act, 2016, the Sindh Prohibition of Employment of Children Act, 2017, and other child labor laws also prohibit worst forms of child labor, as specified under ILO Convention 182, and prescribe stringent penalties.

2.9 Provincial Laws to Ensure the Protection of Children

The 18th Constitutional Amendment has empowered the provinces to address issues relating to children and make laws for their own jurisdictions. Sindh, KP, Balochistan, and Punjab have thus taken legislative steps in their provincial territories.

Along with the PPC, some local laws also apply in cases of CSA, for example:

2.9.1 Islamabad Capital Territory

2.9.1.1 Islamabad Capital Territory Child Protection Act, 2018

The Islamabad Capital Territory Child Protection Act, 2018 was passed for ICT to provide children protection from all forms of physical or mental violence, injury, neglect, maltreatment, exploitation, abuse, and matters ancillary thereto. According to the clauses of this legislation, the word “child” means a person who has not reached the age of 1. “Sexual abuse and exploitation” include 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, or trafficking within and between countries for sexual exploitation and sale of children for sexual purposes.

According to Section of 5 of this law (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
- (b) is unattended, the victim of an offence, a child, domestic and such other workers, found begging, imprisoned with the mother, or lives in an immoral environment.

Where a child is the subject of care and the child is missing or cannot be found, the child protection officer may make an application to the court for the child to be presented 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 with respect to the child concerned. Every unattended child shall be registered in accordance with the provisions of the National Database and Registration Authority Ordinance, 2000 (VIII of 2000), or any other law for the time being in force.

2.9.1.2 Employment of Children Act, 1991

As per the preamble of the Employment of Children Act, 1991, this Act is meant to prohibit the employment of children in certain occupations and to regulate the work conditions of children. It is applicable only in the ICT. Section 2(iii) defines a child as a person who has not completed his 14th year of age. This is the lowest age limit provided under Article 2(4) of the Minimum Age Convention, 1973 (ILO Convention No. 138). Under this Section 2(v) of the Employment of Children Act, 1991, the definition of the word “establishment” does not include the domestic setting. Section 3 of the Act, however, prohibits employment of children (14 years of age) in 14 processes and 7 occupations, including CDL.

Section 3 relaxes these prohibitions in cases where the processes mentioned above are carried out in an establishment run by the occupier with the help of his family, including children. Section 4 gives power to the federal government to amend the banned occupation and processes list through a notification in the official Gazette, using the same power the federal government used when issuing the notification to ban CDL. On 30 July 2020, the Ministry of Human Rights (MOHR) proscribed CDL and included it in the list of hazardous work.

2.9.1.3 The Islamabad Capital Territory Domestic Workers Act, 2022

Section 3 of the Islamabad Capital Territory Domestic Workers Act prohibits the involvement of children in domestic labor and clearly states that, “*No child under the age of sixteen years shall be allowed to work in a household in any capacity.*” Whoever knowingly contravenes the provisions of Section 3, shall be liable to punishment with imprisonment for a term which may extend to 1 month if he/she employs a child under the age of 12 years, and by fine which may extend up to 50,000 rupees in the case of a child under 16 years, but which shall not be less than 10,000 rupees.

2.9.2 Punjab

2.9.2.1 The Punjab Destitute & Neglected Children Act, 2004

The Punjab Destitute & Neglected Children Act, 2004 covers CSA in the following section:

“40. Exposure to seduction. – Whoever secures custody of a child ostensibly for any purpose but exposes such a child to the risk of seduction, sodomy, prostitution or other immoral conditions shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.”

Due to a lack of awareness and training on child protection issues, the cases that fall under this Act are often not registered under these local laws in the first instance. Although this Act was passed in 2004, with amendments passed in 2007 and 2017, implementation has been hindered as the rules, regulations, and SOPs required to implement this law have not been prepared. Implementation is further hindered by ambiguity within the Act, as this law defines some crimes against children as “heinous in nature” makes such crimes punishable, but Section 23(3) bars the court from applying the Qanun-e-Shahadat Order, 1984 (P.O. No. X of 1984).

2.9.2.2 The Punjab Restriction on Employment of Children Act, 2016

In 2016, the Province of Punjab introduced the Punjab Restriction on Employment of Children Act, 2016. While this new legislation enhanced the list of hazardous occupations from 34 to 38, with a few details and deliberations, the Act again failed to ban CDL in Punjab until the enactment of the Punjab Domestic Workers Act, 2019.

2.9.2.3 The Punjab Domestic Workers Act, 2019

The Punjab Domestic Workers Act, 2019 bans the employment of a child under the age of 15 years in a household in any manner and allows a child under the age of 18 years to engage in light work in a domestic setting. Light work has also been defined in the Act under Section 3 as *“domestic work which is part-time in nature and is not likely to harm health, safety and education.”* Section 25 of the 2019 Act constitutes a Dispute Resolution Committee for all disputes or complaints arising out of, and in connection with, enforcement under the Act. It further establishes that inspection of households by labor officers can only be carried out on receipt of a complaint and on the direction of a Dispute Resolution Committee. According to Section 25(3), “all disputes or complaints under the Act shall be heard and resolved through an award by a Dispute Resolution Committee. For the violation of this law to employ a child as a worker, punishment can be imprisonment for a term which may extend to 1 month if he/she employs a child under the age of 12 years, and in the case of a child under 15 years by fine which may extend to 50,000 rupees but which shall not be less than 10,000 rupees.”

2.9.2.4 Punjab Prohibition of Child Labour at Brick Kilns Act, 2016

Under Section 3, the Punjab Prohibition of Child Labour at Brick Kilns Act, 2016 regulates child labor by requiring written contracts which must specify the wages, advanced pay, and the payback schedule for any monetary advance.

2.9.2.5 Punjab Bonded Labour System (Abolition) (Amendment) Act, 2018

The Punjab Bonded Labour System (Abolition) (Amendment) Act, 2018 prohibits bonded labor, abolishes the bonded labor system and associated practices, extinguishes the practice of monetary advances, and addresses forced labor. It contains provisions for the recovery of advances in a prescribed manner. Compelling anyone into bonded labor is punishable by imprisonment for a term of 2–5 years, a fine of 50,000–200,000 rupees, or both.

2.9.3 Khyber Pakhtunkhwa

2.9.3.1 Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010

In 2010, the province of KP promulgated within the jurisdiction of the province a comprehensive law related to child protection. The Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 defines CSA in Section 2(y) with “sexual abuse” meaning employing, using, forcing, persuading, inducing, enticing, or coercing any child to engage in, or assisting any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism, or any obscene or sexually explicit conduct or stimulation of such conduct, either independently or in conjunction with other acts, with or without his/her consent. In Sections 50 and 53, it penalizes the culprits of seduction and sexual abuse:

In 2022, the Act was amended to expand the definition of “child at risk” to include “*any other circumstances that entitles of child to be considered a child at risk.*” It also increased penalties for those engaged in trafficking of children and created special procedures for how to respond to cases of sexual abuse and sex trafficking. Through this amendment, the law established a register of sexual offenders and details the maintenance of the register and the prohibitions and restrictions on those registered offenders. The amendment further enhanced punishment of exposure to seduction, punishment for child trafficking, and for 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 ten years or liable to fine which may extend to two million rupees.

“52 Child trafficking. – Whoever involves himself in child trafficking within Pakistan shall be punished with imprisonment for life or a term which may extend to twenty-five years but which shall not be less than fourteen years and shall also be liable to fine which may extend to five million rupees.

“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.”

The law also establishes special procedures in cases of offences related to children with harsher punishment of imprisonment for the remainder period of natural life without any chance of probation or parole and imprisonment without the chances of remission. The law also suggests the use of DNA evidence and modern devices in cases of child abuse.⁶²

2.9.3.2 Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015

The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 law was passed in 2015 to deal with the issue of child labor. The law prohibits the employment of a child under 14 years of age, but children aged between 12–13 years are allowed to engage in light work with family members for a maximum of 2 hours. The violation of this Act, in employing a child as a laborer, may result in a penalty of 6 months of imprisonment or 50,000 rupees in fine. Further, engaging a child in hazardous work may result in imprisonment for up to 3 years and a fine. The law has identified 4 occupations and 35 processes as hazardous, but CDL is not included in the list of hazardous labor under this law.

2.9.3.3 Khyber Pakhtunkhwa Bonded Labour System (Abolition) Act, 2015

The Khyber Pakhtunkhwa Bonded Labour System (Abolition) Act outlaws the bonded labor system and *“extinguishes all monetary advances outstanding due to the bonded labour system.”* The law allows advances up to three times the prescribed minimum wage and specifies that no second advance can be extended or taken until the first advance is fulfilled. The law does not, however, cover forced labor.

2.9.4 Sindh

2.9.4.1 Sindh Children Act, 1955

The Sindh province is the only province with a special law addressing children. The Sindh Children Act, 1955 deals with both categories of children: children in contact and in conflict with the law. This Act deals with special offenses with respect to children where police can take cognizance under the following sections. Section 48 deals with punishment for cruelty to children; Section 49 deals with employing children for begging; Section 50 deals with intoxication while being 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.

2.9.4.2 Sindh Child Protection Authority Act, 2011

⁶² <https://www.pakp.gov.pk/wp-content/uploads/The-Khyber-Pakhtunkhwa-Child-protection-and-WelfareAmendment-Act2022-No.-XIII-of-2022-Gazzatted.pdf>

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

2.9.4.3 The Sindh Prohibition of Employment of Children Act, 2017

The Sindh Prohibition Employment of Children Act, 2017 defines a “child” as a person who has not attained 14 years of age. This law further states that children under 14 years of age are not allowed to be employed as laborers, except under specific working conditions. The Act provides for harsher penalties in situations where a child is involved in any hazardous work, forced labor, or slavery-like situation. This law does not cover CDL.

2.9.4.4 The Sindh Bonded Labour System (Abolition) Act, 2015

The Sindh Bonded Labour System (Abolition) Act, 2015 prohibits bonded labor and establishes a vigilance committee system to ensure the implementation of the prohibition under this law.

2.9.4.5 Sindh Home-Based Workers Act, 2018

The Sindh Home-Based Workers Act, 2018 protects the rights of home-based workers. This legislation makes it mandatory for home-based workers to be registered in order to access the same benefits available to other workers under labor laws, including social, medical, and maternity benefits; compensation; and marriage and death grants. The Act specifies that home-based workers are entitled to the same minimum wage as any other worker. It discourages child labor and urges the provincial government to allocate funds, conduct a survey of home-based workers, and establish district based mobile health counters to provide health facilities to home-based workers at their doorsteps.

2.9.5 Balochistan

2.9.5.1 The Balochistan Child Protection Act, 2016

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

The Act 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. It 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 criminalize child pornography.

2.9.5.2 Balochistan Forced and Bonded Labour System (Abolition) Act, 2021

The Balochistan Forced and Bonded Labour System (Abolition) Act, 2021 was introduced to abolish forced labor and bonded labor, and to prevent the economic and physical exploitation of workers in the province. According to this Act, compelling any person to render any bonded or forced labor shall be punishable with imprisonment for more than 2 years but less than 5 years, with a fine of up to 200,000 rupees but not less than 50,000 rupees, or with both imprisonment and fine.

2.9.5.3 The Balochistan Employment of Children (Prohibition & Regulation), 2021

The Balochistan Provincial Assembly passed the Employment of Children (Prohibition & Regulation) Act, 2021, and the Government of Balochistan notified it on 5 May 2021 with the consent of the Governor. The law defines a “child” as a person who has not attained 14 years of age. It further prohibits the involvement of children in 4 occupations and about 38 processes, including CDL. Any person, police officer, or inspector may file a complaint of the commission of an offence under this Act.

Activity 6

Provincial Law, Part 1

Divide participants into groups of 3-4 members from the same province and read the following statements:

1. Identify provincial criminal charges that the Haroons may have violated?
2. What types of evidence would you need to support these charges?
3. What is the most likely outcome in this case?

Ayesha is 13 years old. She was recruited from her stepfather to work for the Haroon residence in Lahore.

1. Upon arriving at the Haroon residence, Ayesha was told by Mrs. Haroon that she had to feed and care for her 3-year-old child who resided in the home and do other household chores.
2. Ayesha began working on household chores at the Haroon residence. She usually went to bed at 1:30 a.m. and would wake up at 5:30 a.m. Mr Haroon and his wife would usually wake up between 9am-11am and would go to bed at midnight. During the hours they were awake, the Haroons would periodically check on Ayesha to ensure she was working – cleaning the home, doing laundry, cooking, and caring for the toddler.
3. In the beginning, when she first arrived at the Haroon residence, Ayesha said that she was not permitted to eat by the Haroons because she never had time – she was too busy working. When she was making food for the family, Ayesha was not allowed to eat the food she made because that would make the Haroons angry. The Haroons fought often, and, in Ayesha's opinion, they would take out their anger on Ayesha.
4. The Haroons rarely left the house, but when they did go out, they would take their 3-year-old child with them. They would always leave Ayesha with a list of chores to complete while they were gone. Ayesha would never eat or sleep while the family was gone for fear they would be angry with her. Oftentimes, the Haroons verbally abused Ayesha when her list of chores was not completed. On one occasion, Mrs. Haroon told Ayesha that if Ayesha was not working fast enough and if she did not do a better job with the chores, Mrs. Haroon was going to throw hot water on Ayesha.
5. For the 14 days she remained at the Haroon residence, Ayesha ate rice once per day and drank coffee that she brought with her, or water. One time when Ayesha drank some juice, Mrs. Haroon became angry and told Ayesha there would not be enough for her, Mrs. Haroon, to drink.
6. During her stay at the Haroon residence, Ayesha never left the house and spoke to only one person on the telephone: her husband. Since Ayesha's cellphone died shortly after her arrival, Mr. Haroon allowed Ayesha to make one phone call a day to her mother and limited the call to 2 minutes. Mrs. Haroon would stand next to Ayesha and listen to the entire conversation.
7. On the last night Ayesha stayed at the Haroon residence, Mrs. Haroon spoke to her husband, with Ayesha nearby. Mrs. Haroon spoke to her husband in a different language, hoping that Ayesha would not understand what was being said. Mrs. Haroon's husband told Ayesha that she could not leave the residence because it was too dangerous to leave. Once the conversation was over, Mrs. Haroon told Ayesha that if she left, she would follow her and she would not be able to get work anywhere else. Mr. Haroon told Ayesha she owed him money if she wanted to leave.
8. The next morning, Ayesha left and took a bus to the local police department and filed a police report.
9. Police investigators arrived at the Haroon house. The Haroons provided law enforcement personnel with false information about Ayesha, including her identity and how she got the job, and the circumstances of her leaving. They also told law enforcement officials that Ayesha stole jewelry and other items from them and stated they would file charges against her.

(Note: the above case scenario is a modified version of a successful criminal case prosecuted in the US by the US Dept of Justice. Charges were conspiracy to obtain forced labor and two counts of obtaining forced labor. See <https://www.justice.gov/opa/pr/former-resident-stockton-california-sentenced-more-15-years-prison-human-trafficking> and <https://4patientsafety.org/documents/Barai,%20Sharmistha%202016-10-21%20Criminal%20Complaint.pdf>. This is important for the debrief to demonstrate that these cases can be successfully prosecuted.)

Activity 6

Part 2

Part 1. For the previous activity with Ayesha's case scenario, Ayesha is a minor with nowhere to go. Who should the case be reported to?

- *Child Protection?*
 - *What are the pros and cons? Likely outcomes?*
- *Local Law Enforcement?*
 - *What are the pros and cons? Likely outcomes?*

Part 2. Divide the room into groups representing each province. Have each group read the below case scenario (Minah) and ask participants to address the following questions:

- a) What are the aspects of power and control the employers in this scenario are using to compel domestic labor? (Encourage participants to think about the first exercise, and the differences between adults and children)
- b) What respective law(s) could be invoked in this case? Provincial laws? National laws? International human rights laws?
- c) What is the likely outcome for Minah in your province?

Minah was 11 years old when she was recruited to live with and work for a local family - a husband, wife, and two children, aged 3 and 5. Both the husband and wife are physicians with busy schedules. Minah was promised access to school and a modest income in exchange for household work and childcare for the 3- and 5-year-olds. Minah attended the local school, but after a few months, her employers told her she was falling too far behind in her household duties and that she needed to stay home. Minah was taken out of school. Minah was told her income was being deposited in a special bank account for her. Each day, Minah would wake at 5am and would not be able to sleep until midnight, after all of her work was completed. She cooked, cleaned, and took care of the small children, as well as the shopping and errands for the family. If Minah did not work fast enough, she would be yelled at and often slapped across the face. Her employers told Minah that if she worked harder, they could afford to send her to school. They also threatened to withhold her income, which she never physically saw. The physical abuse became worse over time. Once she was kicked by her employer, and she was limping for days. Minah had no access to a physician, even though her employers were doctors. The husband began sexually abusing Minah, and she became even more despondent and felt hopeless. The husband took nude photos of Minah and told her if she told anyone or complained, he would share them with the neighbors and his friends and cause her much shame. Minah was also starving as she was not allowed to eat with the family, and often had to eat leftovers from family meals she cooked. One day, the wife caught her husband sexually abusing Minah. To punish Minah, the wife called the police and reported that Minah stole money and jewelry from the family. The police arrived and charged Minah with theft and placed her in juvenile justice proceedings.

What is likely to happen next? What should happen?

Part 3. Minah's case is brought to your attention by a member of the community.

- As an investigator – what do you do?
- As a prosecutor – what do you do?
- As a judge – what do you do?
- What is the role of child protection in this case?
- What is the role of labor inspectors in this case?

As part of the discussion, identify areas where there may be gaps/deficiencies in the a) relevant laws or b) implementation of law, policy, or practice to protect the child.

Part 4: Minah is referred to the local child protection institute. The case worker interviews Minah, and states that because it was Minah's employer, and not a family member who harmed Minah, they do not have the legal authority to intervene.

What do you do?

2.10 What Constitutes Child Labor in Domestic Work?

Several international and domestic legal concepts related to child work, various types of labor, the levels of harm that occur to children engaged in labor, and corresponding remedies to each form of labor all come together to define and describe the function and impact of CDL. These concepts, and the terms and definitions associated with these concepts, overlap in a manner which can lead to confusion. For analysis of individual cases of CDL, the main factor to consider is the impact of the purported CDL on the child. This chapter will first provide relevant terms and definitions which serve to distinguish between various intersecting terms related to CDL. This chapter will then explain the various hazards and risks faced by child domestic laborers and the negative impacts which distinguishes CDL from other forms of child work or domestic work. Finally, this chapter will cover the obligations of the State with respect to preventing CDL and rectifying CDL's negative impacts.

2.10.1 Understanding Terms and Terminologies

Domestic work – Following ILO Convention No. 189, “domestic work” means work performed in or for a household or households.

Domestic worker – is any person engaged in domestic work within an employment relationship (as opposed to familial relationship).

Bonded Labor – is when an individual's labor is demanded as a means of repayment for a loan, or borrowed money, or advance money.

Light Work – is defined by ILO Convention No.138 in Article 7 as work that should—

- (a) not be harmful to a child's health and development
- (b) not impede a child's attendance at school, his or her participation in vocational orientation or training programs approved by the competent authority, or his or her capacity to benefit from the instruction received

According to Punjab Domestic Workers Act, 2019, “Light work” means domestic work which is part-time in nature and is not likely to harm the health, safety, and education of a domestic worker.

The term “*child labor*” is defined by the ILO as work that deprives children of their childhood, their potential, and their dignity and that is harmful to their physical and mental development. It refers to work that—

- is mentally, physically, socially, or morally dangerous and harmful to children
- interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely, or requiring them to attempt to combine school attendance with excessively long and heavy work⁶³

⁶³ <https://www.ilo.org/ipec/facts/lang--en/index.htm>.

Hazardous⁶⁴ child labor – or hazardous work, is the 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. Guidance for governments on some hazardous work activities which should be prohibited is given by Article 3 of ILO Recommendation No. 190:

- Work which exposes children to physical, psychological, or sexual abuse
- Work underground, under water, at dangerous heights, or in confined spaces
- Work with dangerous machinery, equipment, and tools or which involves the manual handling or transport of heavy loads
- Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents, or processes, or to temperatures, noise levels, or vibrations damaging to their health
- Work under particularly difficult conditions such as work for long hours or during the night, or work where the child is unreasonably confined to the premises of the employer

The worst forms of child labor – Article 3 of ILO Convention No. 182 defines the worst forms of child labor as:

- 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 labor, including forced or compulsory recruitment of children for use in armed conflict
- The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances
- 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
- 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 (Note: “hazardous work”)

Whether or not particular forms of “work” can be called “child labor” depends on the child’s age, the type and hours of work performed, the conditions under which it is performed, and the objectives pursued by individual countries.

As mentioned above, following ILO Convention No. 189, “domestic work” means work performed in or for a household or households, and “domestic worker” or “domestic laborer” means any person engaged in domestic work within an employment relationship.⁶⁵ Child domestic work is a general reference to children’s work in the domestic work sector in the home of a third party or employer. This general concept encapsulates both permissible and non-permissible situations. Child labor in domestic work refers to situations where domestic work is

⁶⁴ “Hazard” and “risk” are two terms used frequently in association with this type of child labor. A “hazard” is anything with the potential to do harm. A “risk” is the likelihood of potential harm from that hazard being realized. For example, the hazard associated with power-driven machinery might be getting trapped or entangled by moving parts. The risk will be high if guards are not fitted, and workers are in close proximity to the machine. If, however, the machine is properly guarded, regularly maintained, and repaired by competent staff, the risk will be lower.

⁶⁵ <https://www.ilo.org/ipecc/areas/Childdomesticlabour/lang--en/index.htm>.

performed by children below the relevant minimum age (for light work or full-time non-hazardous work), in hazardous conditions, or in a slavery-like situation.⁶⁶

Question: Are children performing household chores in their own home considered child domestic laborers?

Answer: Generally, no. Household chores undertaken by children in their own homes, in reasonable conditions, are an important part of family life and of growing up, therefore something positive. However, in some situations, where workloads might interfere with the children's education or be excessive, they might be tantamount to child labor.

Children doing chores in their own home, and children in domestic work (in a third-party household) might perform similar work. However, in the first case, the employment element is missing; therefore, it is not considered domestic work.

Children doing household chores in their *own* home and children in domestic work (in a third-party household) might perform similar tasks. However, in the first case, the employment element is missing; therefore, we should avoid referring to those situations as child domestic work or labor unless it is excessive.

2.10.2 What Child Domestic Labor Looks Like, and the Impact on Children Engaged in Child Domestic Labor

Children become engaged in CDL under a variety of different circumstances and in response to a diverse range of forces, including socio-economic disparities and exploitative normative structures. Engagement of a child in CDL can represent a household survival strategy, an attempt to pursue an educational opportunity, a kinship relationship or obligation, or a result of gender discrimination. Research shows that restrictive gender norms, particularly for girls, are prominent drivers of girls' entry into domestic labor. This includes parents' beliefs that domestic work is a more suitable option for a daughter versus attending school or that a daughter is less important than a son, and thus sending the daughter to work in another household solves the (financial or other) "burden" of having a daughter.⁶⁷ For some girls from rural areas, moving to an urban area to work may serve a socio-economic purpose. Children may be fleeing abusive situations at home only to later be recruited from the streets to engage in domestic labor. In many contexts, domestic work or labor performed by children is characterized as "safe" or "beneficial" for children as a means to escape poverty in comparison to more hazardous forms of work and economic opportunity. Similarly, child domestic work is often recharacterized as adults "fostering" or "helping" a child, even though the relationship of the child worker is not biological, and the children are treated differently from other children or family members. Child domestic workers work in private households, and their isolation prevents the effective enforcement of labor laws and rights of a child.⁶⁸

⁶⁶ Id.

⁶⁷ Jones N., Presler-Marshall E., Emirie G., Tefera B. *Rethinking the future-seeking narrative of child migration: The case of Ethiopian adolescent domestic workers in the Middle East*. Afri. Black Diaspora. 2018;11:20–32.

⁶⁸ "Child Domestic Work, Violence, and Health Outcomes: A Rapid Systematic Review" [IJERPH | Free Full-Text | Child Domestic Work, Violence, and Health Outcomes: A Rapid Systematic Review | HTML \(mdpi.com\)](#)

The ILO and local researchers have identified several hazards to which domestic workers are particularly vulnerable. These hazards are the reason why CDL may be considered, in some cases, among the worst forms of child labor. Some of the most common harmful conditions children face in domestic service include: long and tiring work days; use of toxic chemicals; carrying heavy loads; handling dangerous items such as knives, axes, and hot pans; insufficient or inadequate food and accommodation; physical, verbal, and sexual abuse; and sexual exploitation.⁶⁹ Under these circumstances, children are subject to potentially irreversible and negative physical, psychological, and moral outcomes which may impact their development, health, and well-being. Evidence from around the world indicates that exposure to adverse childhood experiences is associated with physical and mental illnesses, criminality,⁷⁰ and social problems throughout adulthood.⁷¹

As the domestic setting is often characterized as a “private sphere” and outside of the oversight of the government or any outside systems or actors, children who live in the homes where they are employed are at greater risk to the above identified hazards. Further, child laborers are more vulnerable to harm due to two main factors: 1) the outsized power adult employers wield compared to children and the abuse of that power, and 2) the denial of children’s fundamental rights to education and health care; to rest, leisure, play, and recreation; and to the care and company of their parents and peers.

Advocates and researchers have further identified that one of the main barriers to protecting the rights of child domestic laborers has little to do with laws or justice systems.⁷² The issue is simply denial. Despite the documented and widespread nature of the abuses mentioned above, many government and law enforcement officials deny that child domestic workers are exploited or abused and, therefore, fail to enforce existing laws, implement policies, and empower systems designed to protect these children. In the context of Pakistan, CDL is often wrongly portrayed as an example of a “good deed” that could somehow exonerate the employer from exploiting and possibly abusing a child.

Children engaged in domestic labor may also be misidentified or mischaracterized as children “in conflict with the law” or delinquents and be referred to the juvenile justice systems of the respective province or territory instead of receiving protection as victims of crime. Legal systems may fail to account for the power and authority difference between children and adults.⁷³ Specifically, children are more likely to do what an adult says because they do not think they have any other option. Additionally, because of a child’s vulnerability and age, the child domestic laborer is likely wholly dependent on his/her employer for survival, especially if the employer is a caretaker, a family member, or an influential community member.

⁶⁹ Id.

⁷⁰ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2771618/>

⁷¹ <https://www.dcfp.org.uk/child-abuse/radicalisation-and-extremism/>
https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/208552.pdf?height=921.6&q=psychology-of-terrorism%3FTB_iframe%3Dtrue&width=921.

⁷² <https://www.hrw.org/report/2009/02/11/workers-shadows/abuse-and-exploitation-child-domestic-workers-indonesia>.

⁷³ Debra Wolfe et al., “*Human Trafficking Prevalence and Child Welfare Risk Factors among Homeless Youth*,” Field Center, January 2018, 37. <https://www.covenanthouse.org/sites/default/files/inline-files/Field%20Center%20Full%20Report%20on%20Human%20Trafficking%20Prevalence.pdf>.

The Federal Bureau of Statistics found in 2020 that 19 million children below 14 years of age were working as laborers across Pakistan.⁷⁴ Studies show that child domestic laborers in Pakistan are deprived of their right to free and compulsory education, forced to work long hours for little pay and without days off, and subject to poor living conditions and other types of abuse. According to the first *Child Labour Survey* carried out in Pakistan in 1996, an estimated 3.3 million children were engaged in labor. Poverty was cited as the main reason for Pakistani children not attending school and instead engaging in child labor. The statistics of any new survey on child labor are yet to be published, and the latest statistics can be drawn from the *Pakistan Labour Force Survey* (2017–18). According to this survey, child labor between the ages of 10–14 is at 8.2 percent, with 9.8 percent for boys and 6.4 for percent girls. Children in the 15–19 age group comprise 32.6 percent of overall child labor, with 47.6 percent for boys and 15.6 percent for girls.⁷⁵ Additionally, data on CDL is not available at the national or sub-national levels in Pakistan, but considerable anecdotal evidence suggests that CDL is prevalent across Pakistan’s provinces and involves more girls than boys.⁷⁶

2.10.3 Obligations of the State with Respect to Preventing and Rectifying Child Domestic Labor

Article 32 of the UN Convention on the Rights of the Child (UNCRC) stipulates that:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.
2. States Parties shall take legislative, administrative, social, and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular—
 - a) provide for a minimum age or for minimum ages for admission to employment
 - b) provide for appropriate regulation of the hours and conditions of employment
 - c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article

According to Article 39 of the UNCRC, “*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading punishment(...) Such recovery and reintegration shall take place in an environment which fosters the health, self-respect, and dignity of the child.*”

Article 4 of the UNCRC states that “*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regards to economic, social, and cultural rights, States Parties shall undertake*

⁷⁴ <https://www.urdupoint.com/en/pakistan/declaration-of-domestic-labour-as-hazardous-953755.html>.

⁷⁵ <https://www.pbs.gov.pk/publication/labour-force-survey-2017-18-annual-report>.

⁷⁶ https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-islamabad/documents/publication/wcms_851153.pdf.

such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

Activity 7 Identification Case Study

Please refer to National and Provincial Laws Referenced Above

Meher is 12 years old and lives in Sindh. She and her siblings are frequently physically assaulted by her father. Her father decides to send Meher to work as a household servant for his employer, citing it was “one less mouth to feed.” In this new role, Meher does not attend school, and spends her day cooking, cleaning, and minding her employer’s two smallest children, aged 2 and 4. She wakes up at 5:30 am and goes to bed at 11 pm with one 15-minute break for lunch. She is exhausted and not allowed to go to school. She is allotted one bowl of rice in the morning and one at night, and some water to sustain herself. Within the first month of employment, she lost 10 pounds. In exchange for her work, her employer sends Meher’s father 20,000 rupees. She is frequently in the kitchen cooking meals, cleaning with various chemicals and supplies, and runs errands and shopping for the family. Meher’s employer’s 16-year-old son began groping her and verbally assaulting her after 2 months of Meher living in the home. He has told Meher that if she isn’t a “good girl” to him soon, he will find a way to have her fired and send her back to her father.

1. *What are the possible crimes that have been committed? National? Provincial?*
2. *What are the facts that correspond with the legal definition of the crime?*
3. *What vulnerabilities led to Meher’s current situation?*

2.11 Age Determination and the Pakistani Judicial System

“How do I know if this is a child?” This is an important question, especially for older children whose age may be less obvious. Legal systems treat a child differently to an adult, and thus, the answer to “Is this a child?” is a critical component in protecting the rights of children.

Determining age is a complex issue with evolving policies and scientific standards being applied across the globe. The most prevalent standard of age determination is registration at birth. Article 7 of the UNCRC specifies that every child has the right to be registered at birth without any discrimination. Birth registration is the first legal acknowledgement of a child’s existence and is central to ensuring that children are not treated as adults when they are brought into contact with the criminal justice system as accused parties.

Pakistan has one of the lowest rates of birth registration in the world.⁷⁷ According to a report by the National Institute of Population Studies, only 34 percent of children in Pakistan under the age of 5 have been registered.⁷⁸ Rates of registration vary drastically between the different provinces, with 74 percent of children in ICT, 46 percent in Punjab, 25 percent in Sindh, 23 percent in Gilgit Baltistan, 10 percent in KP, and less than 8 percent in Balochistan being registered.⁷⁹ Birth registration is also linked to economic status, with only 5 percent of registration for children in the lowest wealth quintile.⁸⁰ As a result, when a child comes into conflict with the law or in *any*

⁷⁷ <https://www.jpp.org.pk/wp-content/uploads/2017/10/Death-Rows-Children.pdf> at page 21

⁷⁸ National Institute of Population Studies, Pakistan: Demographic and Health Survey: 2012-2013 (2013), p.19-22, available at <https://dhsprogram.com/pubs/pdf/FR290/FR290.pdf>.

⁷⁹ Id.

⁸⁰ Id.

contact with legal systems, they are unlikely to possess any form of evidence to prove their juvenile status. Therefore, these children are at risk of being tried and sentenced as adult offenders or of failing to obtain justice in accordance with the special provisions of the law.

Due to the low rate of birth registration, combined with defective implementation of age determination protocols, the police tend to record the ages of accused persons based on observation of the accused's physical appearance in a high number of cases. In practice—despite some noticeable improvements since the enactment of the JJSA 2018 and a countrywide capacity building program for the police, the legal fraternity, and the judiciary—police are too often inclined to record the age of the accused as much higher than the actual age. Based on the experience of NGOs dealing with cases of juvenile offenders, in cases where the appearance of the accused leaves little doubt of his/her juvenile status, the police often record his/her age as “16/17” whereas, where an accused's physical appearance does not make his/her age obvious, the police record it as “22/23.”⁸¹ As a result, children in conflict with the law, who have no form of evidence to prove their status as a minor, are at risk of being tried and sentenced as adult offenders. Studies show that minors who belong to impoverished socio-economic backgrounds are more likely to be at risk of wrongfully being treated as adults.⁸²

In the absence of birth registration, practices for age determination include consideration of the following types of evidence: statement in the court under Section 342 of the Code of Criminal Procedure (Cr.PC), birth certificate/B-form, school leaving certificate, and medical evidence where judges had placed reliance on each or rejected otherwise, or the provision of any other “pertinent document” such as a prize winning certificate, or the certificate or proof of age of another family member, etc.

According to Section 10 of the Employment of Children Act, 1991 entitled Disputes as to Age, *“If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.”* Almost the same is defined in Section 8 of the Restriction on Employment of Children Act, 2016, *“Any dispute about the age of the child or adolescent employed or is permitted to work in an establishment shall be decided on the basis of the registration certificate (Form-B) issued by the National Database and Registration Authority or the birth certificate issued by the competent authority, but, in the absence of such a document, the Inspector shall refer the matter to the prescribed medical authority for determination of the age and the decision of such authority shall be conclusive proof of the age of the child or adolescent.”* The same process is explained in Section 10 of the Sindh Prohibition of Employment of Children Act, 2017; The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015; and in Section 13 of the Balochistan Employment of Children (Prohibition and Regulation) Act, 2021.

⁸¹ Justice Project Pakistan, *Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders* (2017), available at <https://www.jpp.org.pk/wp-content/uploads/2017/10/Death-Rows-Children.pdf>.

⁸² Id.

The JJSA 2018 has mandated that the police officer, or the investigation officer, make an inquiry to determine the age of any alleged offender who physically appears or claims to be a juvenile. Age shall be determined on the basis of an accused person's birth certificate, educational certificates, or "any other pertinent document" (Section 8(1)). In absence of such documents, age of such

The image shows a form titled "Arrest, Escape and Custody" with the number "1181" in the top right corner. Below this, it says "FORM No. 26.7 (1)." and "CERTIFICATE REGARDING IDENTITY OF AN ACCUSED." The form has several lines for text entry, including "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 _____", "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 _____", "the questions written on reverse of this certificate." There is a line for "Signature of Station House Officer." at the bottom right.

accused person may be determined on the basis of a medical examination report by a medical officer. Form No. 26.7(1), titled 'Certificate Regarding Identity of an Accused' prescribed in the Police Rules, 1934 also has a column regarding the age of the accused person.

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

Activity 8 (20 minutes)

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

Ask one group to argue that "Children should be held accountable for crimes the same as adults because the actions of children have the same impact on the victims and on society." Ask the second group to prepare the argument "Children should not go through the formal judicial system. Age determination is necessary to ensure children their right to be tried and sentenced according to their age."

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

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

In July 2016, the Committee on the Rights of the Child adopted Concluding Observations on the 5th Periodic Report of Pakistan on the UNCRC. The Committee made 85 observations and recommendations, including the relevant recommendations on CDL below:

80. The Committee welcomes the legislative acts passed in Punjab and Khyber Pakhtunkhwa provinces that prohibit the employment of children in certain hazardous occupations. However, the Committee remains seriously concerned about:

- (a) The extremely high number of children involved in child labor, including in hazardous and slavery-like conditions in domestic servitude and prostitution
- (b) Reports of abuse and torture of working children, including child domestic workers, in some cases leading to the deaths of such children, mainly girls
- (c) The continuing practice of bonded and forced labor affecting children from poor and vulnerable backgrounds, including Dalit children
- (d) The absence of nationwide or provincial studies on the extent of child labor
- (e) Insufficient programs and mechanisms to identify and protect child victims of forced labor, particularly bonded labor and child labor in the informal sector, including domestic work
- (f) The low minimum age for hazardous work, namely 14 years
- (g) The inadequate number of sufficiently trained inspectors, their vulnerability to corruption and a lack of resources to inspect workplaces

72. The Committee urges the State Party to:

- (a) Take appropriate measures to eradicate child labor, in particular the worst forms of child labor, by addressing its root causes, including poverty
- (b) Establish mechanisms for the systematic and regular monitoring of workplaces that employ children, in order to prevent ill-treatment, abuse and exploitation
- (c) Eradicate all forms of bonded and forced labor of children, in particular those from marginalized and disadvantaged groups, such as Dalit children, and bring those responsible, in particular employers, to justice
- (d) Conduct a survey or study to assess the prevalence of child labor, including the worst forms of child labor such as bonded and forced labor, and inform the Committee about the findings in its next periodic report
- (e) Develop programs and mechanisms to identify and protect child victims of forced labor, particularly bonded labor, and child labor in the informal sector, including domestic work
- (f) Strengthen the labor inspectorate by eradicating corruption and providing labor inspectors with all the support necessary, including child labor expertise, to enable them to monitor effectively, at the national and local levels, the implementation of labor law standards and to receive, investigate and address complaints of alleged violations
- (g) Expedite the harmonization of the labor laws in order to establish minimum ages for employment in accordance with international standards, notably the International Labour Organization Minimum Age Convention, 1973 (No. 138), and vigorously pursue the enforcement of minimum age standards, including by requiring employers to possess, and to produce on demand, proof of the age of all children working on their premises
- (h) Seek technical assistance from the International Programme on the Elimination of Child Labour of the International Labour Organization in this regard

UN Committee on the Rights of the Child (UNCRC), *Concluding observations on the 5th periodic report of Pakistan*, 11 July 2016, CRC/C/PAK/CO/5, available at <https://digitallibrary.un.org/record/835009?ln=en>.

Activity 9

Discussion Questions

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

- Compare the definition of a “child” under Pakistan’s domestic laws to the definition used in the international conventions that Pakistan has ratified. Is Pakistan’s domestic legislation consistent with its international obligations? If not, where are the gaps?
- Is “child domestic labor” adequately defined in Pakistani domestic law?
- What are examples of different crimes that child domestic laborers are often vulnerable to?
- In your role as (judge, prosecutor, investigator, etc.) please suggest something you can do to promote the “Participation” of a child victim in criminal justice proceedings in their case?

Chart: Laws Directly Relating to Child Labor

National and Provincial Laws	Relevant Provision	Child Labor or Child Domestic Labor (CDL)	Punishment and Complaint
National			
Constitution of Pakistan	Article 11 prohibits all forms of slavery, forced labor, human trafficking, employment of children younger than 14 years, and the working of children in hazardous places.	Prohibits all forms of slavery and slavery-like practices and work in hazardous places.	Constitutional provision
ICT			
Domestic Workers Act, 2021	Prohibits employment of children below the age of 16 in any capacity in a household.	Prohibits child domestic work.	Liable to punishment with imprisonment for a term of 1 month if employing a child under 12 years of age, and in case of a child under 16 years of age, a fine which may extend to 50,000 rupees, but which shall not be less than 10,000 rupees.
Employment of Children Act, 1991	Prohibits the employment of children below the age of 14 in certain occupations and processes including CDL.	Prohibits CDL.	Any person, police officer or inspector may file a complaint under Section 16. Liable to punishment with imprisonment which may extend up to 1 year and 20,000 rupees fine, Sec.14
Employment of Children Act, 1991	Prohibits the employment of children below the age of 14 in certain occupations and processes including CDL.	Prohibits CDL.	Any person, police officer or inspector may file a complaint under Section 16. Liable to punishment with imprisonment which may extend up to 1 year and 20,000 rupees fine, Sec.14
Punjab			
Punjab Domestic Workers Act, 2019	Section 3 of the Punjab Domestic Workers Act, 2019 states that no child below the age of 15 can be employed as a domestic worker.	Prohibits child domestic work.	All disputes or complaints under the Act shall be heard and resolved through an award by Dispute Resolution Committee, Sec.25(3). Liable to punishment with imprisonment for a term which

			may extend to 1 month if he/she employs a child under the age of 12 years, and in case of a child under 15 years by fine which may extend to 50,000 rupees but which shall not be less than 10,000 rupees, Sec.31.
Punjab Prohibition of Child Labour at Brick Kilns Act, 2016	Prohibits child labor at brick kilns under the age of 14 years.	Does not address CDL.	Inspector can make a complaint to police to take cognizance of the offence, Sec.12(c). Imprisonment which may extend to 5 months and a fine which may extend to 500,000 rupees, Sec.13.
Punjab Restriction on Employment of Children Act, 2016	Prohibits the employment of children below the age of 15 years, Sec. 3(1).	Does not address CDL.	Police may take cognizance on the complaint in writing made by the inspector and shall be non-bailable, Sec.17. Liable to punishment with imprisonment for a term which may extend to 6 months, but which shall not be less than 7 days, and with a fine which may extend to 50,000 rupees, but which shall not be less than 10,000 rupees, Sec.11.
KP			
Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015	No child below the age of 14 shall be employed or permitted to work in any establishment.	Does not address CDL.	Any person, police officer or inspector may file a complaint in a court of competent jurisdiction, Sec.16. Punishable with imprisonment for a term which may extend to 6 months or with a fine which may extend to 50,000 rupees, or with both. Liable to 1 year of imprisonment and 75,000 rupees in cases of hazardous labor, Sec.15.
Sindh			
Sindh Prohibition of Child Labour Act, 2017	No child below the age of 14 shall be employed or permitted to work in any establishment.	Does not address CDL.	Any person, police officer or labor inspector may file a complaint to the commission of an offense under this Act in any court of competent

			<p>jurisdiction.</p> <p>Liable to imprisonment for a term which may extend to 6 months, or with a fine of up to 50,000 rupees, or with both.</p> <p>If the child is employed in any hazardous work, the fine may extend to 100,000 rupees, but no less than 10,000 rupees, and imprisonment which may extend to 3 years.</p>
Balochistan			
Balochistan Employment of Children (Prohibition and Regulation) Act, 2021	No person below the age of 18 years shall be employed or permitted to work in any hazardous occupations and in any of forms of labor that are of the worst kind in nature.	Prohibits CDL.	<p>Any person, police officer or labor inspector may bring a complaint to a court of competent jurisdiction, Sec.19.</p> <p>Punishable with imprisonment for a term which may extend to 1 year or with a fine which may extend to 100,000 rupees or with both, Sec.17.</p>

Activity 10

Brainstorming to understand CDL—general discussion

- (a) Trainer explains the aim of the activity before dividing the participants into two groups.
- (b) Provide each group the same list of 10 different statements and let participants brainstorm on each statement and come up with group point of view.
- (c) After the 10 minutes, the group representative reads aloud the statements one by one and presents whether they, as a group, agree or disagree with the statements., and does the other group have a different point of view or have the same opinion.
- (d) Co-facilitator notes key points of the discussion.
- (e) Facilitator elaborates on the statements where needed.

Sample Statements

Group 1	Agree/Not
1. Child domestic workers are better off living with their employers as their living conditions are better than in their own homes.	
2. CDL is a form of modern slavery.	
3. Domestic work is vastly undervalued as it is considered low-skilled and mostly done by women and girls and persons from the lower castes/classes, and/or minorities (racial, tribal, ethnic, religious, etc.).	
4. Child domestic workers should have time to go to school.	
5. Most children consider domestic work easier than work in their homes in the rural areas.	
6. Working as domestic workers is safe for children as they are under the protection of their family employers.	
7. Adult domestic workers should protect and look after the children who are working with them in the same household.	
8. It is good for children to go out to work at an early age so that they are better prepared for adult life.	
9. In almost all provinces there are laws to deal with the child domestic labor	
10. Most child domestic workers are cared for by their employers who treat them as family members. So CDL is not, as such, harmful.	
Group 2	
1. Going to school is not necessarily a guarantee to a better life, even for a child of a poor family.	
2. CDL provides financial assistance to the family of the child.	
3. CDL is considered light work.	
4. In general, children have fewer workplace accidents because they do lighter work.	
5. Sending a child into domestic work is an easy solution for poor parents.	
6. Children from the age of 5 can work as domestic workers in other people's houses if they do only light work.	
7. Community members do not have the legal right to report on or interfere in incidents of CDL.	
8. We have an adequate legal system and provisions to deal with CDL.	
9. Children working in other people's homes as servants are not really child laborers if they are going to school.	
10. Child domestic workers should be paid the same as adult domestic workers.	

Activity 11 Ambassadors Game

- 1. Legislation related to child labor in Punjab:**
Punjab Restriction on Employment of Children Act, 2016; Punjab Prohibition of Child Labour at Brick Kilns Act, 2016; Punjab Bonded Labour System (Abolition) (Amendment) Act, 2018; Punjab Domestic Workers Act, 2019.
- 2. Legislation related to child labor in Sindh:**
Sindh Prohibition of Employment of Children Act, 2017.
- 3. Legislation related to child labor in Balochistan:**
Balochistan Employment of Children (Prohibition and Regulation) Act, 2021.
- 4. Legislation related to child labor in Khyber Pakhtunkhwa:**
Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015.
- 5. Legislation related to child protection in ICT:**
The Employment of children Act, 1991.

Allow the groups 15 minutes to read about their respective provincial laws (Abstracts) and make the summary of the major points on the page/chart. Ask groups to nominate an Ambassador and a 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 same information, until they return 'home'. In this process, each Ambassador will visit the other four 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 to all the participants.

When the activity is over, clap for all successful and talented Ambassadors.

Assess your gender dynamics and the possibilities of movement for differently abled persons when you organize this activity. Ensure that you provide the necessary assistance and build the group in a conducive manner.

Activity 12 Understanding Federal Laws

Materials required:

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

The facilitator will briefly share the laws from this module (may be through a PowerPoint presentation). After the brief presentation, the facilitator will divide the participants into four groups for the 'gallery walk'.

Assign the topics to each group and make them stand before one chart/flex each for 5 minutes.

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

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

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

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

2.12 Police Role in Investigations of Child Domestic Labor Cases

Chapter 25 of the Police Rules, 1934 specifies that an officer in charge of a police station is empowered by Section 156 of the Cr.PC to investigate any cognizable offence which occurs within the limits of his/her jurisdiction.

He/she is also empowered, under Section 157(1) of the Cr.PC, to deputize a subordinate to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offenders. Any police officer may be so deputized under this section, but where a police officer under the rank of assistant sub-inspector is deputized, the investigation shall invariably be taken up and completed by the officer in charge of the police station or an assistant sub-inspector at the first opportunity.

In investigations, the interviewing of witnesses and 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.⁸³ After its registration, the investigating officer collects evidence to unearth true facts. The accused has a right to be heard and to lead his defense to prove his/her innocence.⁸⁴ He/she also has the right to be dealt with in accordance with the law. The onus of proof lies upon the prosecution to prove the charge, and, if proved after trial in court beyond any shadow of doubt,⁸⁵ the accused is convicted and sentenced to undergo a prison sentence with or without a fine.

If information is received about the commission of a cognizable offence in his/her jurisdiction, the officer in charge of a police station is empowered under Section 157 of the Cr.PC to initiate an investigation, either him- or herself or by deputizing a subordinate officer under intimation to the magistrate. Similarly, the officer in charge of a police station is also empowered to decline to investigate a case if sufficient grounds, in his/her view, do not exist.

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

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

⁸³ 1992 P Cr.LJ 1989

⁸⁴ 2005 YLR 1545

⁸⁵ 2015 CrL.A 39-L

- It shall be the duty of every police officer to—
 - aid individuals who are in danger of physical harm, particularly women and children⁸⁶
 - prevent harassment of women and children in public places⁸⁷
- Police officers shall make every effort to—
 - afford relief to people in distress situations, particularly in respect of women and children⁸⁸
 - 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 places⁸⁹

A victim of crime has the right to the protection of the law; to be treated in accordance with the law (Article 4 of the Constitution); and to be treated equally without discrimination (Article 25 of the Constitution). He or she is entitled to compassionate treatment; to free access to justice; and to have an FIR registered if a cognizable offence has been committed (Section 154 of the Cr.PC). It is the responsibility of the police to investigate the case and bring the perpetrators of the crime to justice. The complainant/victim must be kept informed of the progress of the investigation and is to be protected against any threat to the security of his or her person (Article 9 of the Constitution). A witness to the commission of an offence is entitled to the protection of the law (Article 4 of the Constitution) and to confidentiality of information. He or she plays an important role in the criminal justice system and facilitates the dispensation of justice by the courts.

When the accused has been arrested and *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. Witness statements should invariably accompany such challans/reports, and the court should be asked to take up the case at the earliest possible moment in accordance with High Court Rules and Orders, Chapter 3(10) Volume IV, in order to record the evidence and thereafter to grant such detention or remand under the provisions of Section 167 or 344 of the Cr.PC as may be found necessary. Evidence obtained subsequently shall be produced before the court by a subsidiary challan. Superintendents should call up investigating officers for an explanation in all cases where the provisions of this rule appear to have been disregarded.⁹⁰

⁸⁶ S.2(d), The Police Order, 2002.

⁸⁷ S.3(r), The Police Order, 2002.

⁸⁸ S.4(2a), The Police Order, 2002.

⁸⁹ S.3(c), Khyber Pakhtunkhwa Police Act, 2017.

⁹⁰ Rule 25.56(3), Police Rules, 1934.

2.12.1 Important Points of Consideration in Cases of Sexual Assault, Sodomy, and Rape

2.12.1.1 The Anti-Rape (Investigation and Trial) Act, 2021

The Anti-Rape (Investigation and Trial) Act, 2021—

- shall come into force on such date as the Federal Government may appoint (Section 1(3))
- provides for the establishment of special courts to try the scheduled offences (Section 3)
- provides for the 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 offenses (Section 7)
- provides for the establishment of a victim and witness protection program for scheduled offenses. This 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).
- tasks that investigation of offenses mentioned in Schedule 1 shall be carried out by a police officer not the below the grade of Basic Pay Scale-17, and investigation of offences mentioned in Schedule 2 shall be carried out by a joint investigation team (Section 9)
- provides for independent support advisers to accompany the victim during court proceedings in 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 offenses in-camera (Section 12)
- prohibits the use of the “two-finger virginity test” for the purpose of medico-legal examination of a victim of a scheduled offense. Under the Ordinance, the “two-finger virginity test” shall have no probative value (Section 13).
- makes evidence presenting the victim of a scheduled offense as having an immoral character inadmissible in trial (Section 13)
- protects victims from direct cross-examination by the accused (*“An opportunity to 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 offenses within 4 months with no more than two adjournments (Section 16)
- provides for compensation to the victims of scheduled offenses (Section 17)
- includes that appeals should be decided as soon as practicable and preferably within 6 months with no more than two 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 3 years’ imprisonment and a fine if: an entrusted public servant fails to carry out an investigation properly or diligently; he/she causes the conduct of false investigation; or he/she fails to pursue the case in any court of law properly and is in breach of duties (Section 22)
- includes the preparation of a national register of sex offenders (Section 24)
- prohibits the disclosure of the identify of a victim of a scheduled offense (Section 26)

Schedule A

34: Common intention
292A: Exposure to seduction
292B, 292C: Child pornography
354: Assault or use of criminal force on a woman to outrage her modesty
365,365A: Kidnaping, and kidnapping for extorting the property
368: Wrongful confinement
369: Kidnapping a child under 10 years of age
498B: Forced marriage
498C: Marriage with the Holy Quran
511: Attempt to any offence

Schedule B

34: Common intention
336A: Hurt by coercive material
336B: Punishment
354A: Stripping of the clothes
364: Kidnapping in order to murder
364A: Kidnapping under the age of 16
365B: Kidnapping for marriage
366A: Procurement of a minor girl
366B: Importation of a girl from foreign country
367A; Kidnapping for unnatural hurt
377A, 377B: Child sexual abuse

Activity 13
Matching Game
The Anti Rape (Investigation and Trial) Act, 2020

1	Establishment of designation of Anti-Rape Crisis Cells	four (4) months with no more than two (2) adjournments.	1
2	Two-finger virginity test	be carried out by the police officer not the below the grade of Basic Pay Scale-17.	2
3	Appeals should be decided	sex offenders.	3
4	To show that the immoral character of the victim of rape will be	in public hospitals to conduct medico-legal examinations and collect forensic evidence.	4
5	Investigation of offences mentioned in Schedule 1 shall	who causes or conducts false investigation or fails to pursue the case in any court of law properly.	5
6	Offences mentioned in schedule 2 shall be investigated by the	will be prohibited for the purpose of medico-legal examination of a rape victim.	6
7	Compensation may be	inadmissible during trial.	7
8	Trial of the scheduled offences shall be concluded in	as soon as practicable and preferably within six (6) months with no more than two (2) adjournments.	8
9	National register/database to maintain the record of	provided to the victims of scheduled offences.	9
10	Three (3) years' imprisonment and a fine for an entrusted public servant	joint investigation team.	10

The Punjab Forensic Science Agency (PFSA) is mandated with receiving physical evidence from law enforcement agencies on criminal and civil cases; analyze and provide accurate results of forensic analyses in a timely manner; and testify in courts of law on analytical findings for the concerned persons. The PFSA provides these services to law enforcement agencies all over Pakistan. The Zainab murder case was one of the successes credited to the PFSA. The agency has issued the following guidelines regarding the collection of biological evidence in sexual abuse cases:⁹¹

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

The following guidelines should be observed during the medical examination:

- Ask the victim not to go to the washroom, and if she must, then she should be directed not to wash or clean the vaginal area.
- Ask the victim to recount the entire incident and try to obtain any biological material from any area where biological evidence may be found.
- 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 if the offender used tissue, cloth, or anything else to clean himself. If yes, it must be collected.
- Collect at least 2-3 vaginal swabs (internal and external), as well as swabs from the clothes and bedsheets belonging to the victim.
- Ask the victim if the offender raped her in the anal area. If yes, collect 1-2 anal swabs.
- If the accused is in custody, ask him if he washed himself. If not, a penile swab must be obtained.
- If the victim suffers vaginal bleeding during the examination, excessive coating of blood on the swab must be avoided. The swab must be taken while prioritizing the presence of seminal material on the swab and not the blood of the victim.
- Ask the victim if she already knew the suspect. If yes, ask her what their relationship was.
- Avoid contaminating the evidence material by wearing clean gloves, face masks, and disposable caps.

Items to be collected:

- 2-3 vaginal swabs
- 2-3 rectal/anal swabs in case of anal sex
- 2-3 oral swabs in case of oral sex
- Clothes and bed sheets belonging to the victim
- Swabs from the kissed area
- Buccal swabs from the victim

⁹¹ Punjab Forensic Science Agency, Introductory Booklet (2012), available at <https://pfsa.punjab.gov.pk/system/files/PFSAGuidelinesEnglish.pdf>.

- Buccal swabs from the suspect(s)
- Documents including the request letter, FIR copy, medico-legal certificate copy, road certificate (chain of custody), answers to questions asked of the victim, covering letter with a complete description of items sent, any other supporting document, etc.
- Photographs of the suspect(s)/victim(s) taken at the time of sample collection.

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

Packing: Dry swabs must be at room temperature packed in a paper/manila envelope made from thick paper and labeled with the appropriate case number (FIR and medico-legal-certificate No.), the victim's name and signature, and subsequently sealed.

Activity 14 Identification of crimes

Case scenario:

Atfah is 10 years old. She lived with her parents in poverty, in a rural town in the province of Punjab. Atfah's aunt told her parents about a job as a babysitter and caretaker with acquaintances of Atfah's aunt, the Ansari family, in a wealthy suburb of Lahore. Atfah's aunt promised that she would look after her. Atfah's aunt also received compensation for recruiting Atfah to work for the Anjaris. The Anjaris were busy professionals with two teenage boys. Atfah was scared about moving, but her parents encouraged her to seek a better education and economic opportunity for her family. When Atfah moved in with the Ansaris, they were critical of her clothes and mannerisms, and often referred to her as the "stupid girl" or "stupid country girl." The boys made fun of her clothes and often ridiculed her. Mr. and Mrs. Anjari told Atfah they would wait to enroll her in school until after they "tested" her work skills. Every day, Atfah washed clothes, cooked, cleaned the home, washed the dishes, cleaned the bathrooms, dusted, swept the courtyard, and took care of the household pets. She used strong chemicals to clean the bathrooms and Mr. Anjari's medical equipment (he was an ophthalmologist). She woke up at 5am to begin making breakfast and ironing clothes for her employers and did not finish until 10pm every day. She was not allowed to eat with the family, and only received a bowl of rice and some milk at dinner, eating alone in a pantry. If Atfah did not complete a task to her employers' satisfaction, she was beaten and verbally abused. When she accompanied Mrs. Anjari to the market or on errands, she heard her tell her friends that she was doing Atfah's aunt a "favor" and "looking after her" since she came from a poor village.

Atfah's parents received a small monthly stipend for her labor – the equivalent of \$100 USD. After several months, the oldest son began showing Atfah pornography and molesting her. He raped her repeatedly and told her if she told anyone, no one would believe her. Sometimes, when his friends were over, he would take Atfah downstairs to the basement and let his friends have "turns" with her for a fee, which he pocketed. She was incredibly ashamed and exhausted and did not know what to do. When she was allowed to speak to her parents via telephone, the Anjaris were always present. Her parents told her to be a "good girl" and to listen to the Anjaris.

1. Identify three crimes that have taken place under international, Pakistani, or provincial laws in the above scenario.

Example: minimum age for admission of work, labor trafficking, sale of children for the purpose of forced labor (OPSC), assault, rape, commercial sexual exploitation, other labor laws.

2. Identify one of the crimes and list out each of the statutory elements necessary to prove the crime. What are the facts of this case scenario that support each element?

Example: Human trafficking —Any person who recruits, harbors, transports, provides, or obtains another person, or attempts to do so, for compelled labor or commercial sex acts through the use of force, fraud, or coercion, commits human trafficking.

Any evidence of:

- recruiting; OR
- harboring OR
- transporting, OR
- providing; OR
- obtaining a person



By:

- Force; OR
- Fraud; OR
- Coercion;



For the purpose of

- Commercial Sex Act; OR
- Labor or services

3. What evidence can be identified to support elements of the crime?
4. What may be some barriers/obstacles for Atfah's cooperation with law enforcement?

Activity 15

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

- What are the duties of an officer in charge of a police station for the investigation of the crime?
- What are the police laws Punjab and KP have suggested for women and children?
- What are the rights of an accused provided in the Constitution?
- Discuss in detail the important point (to preserve the evidence) from the guidelines of the Punjab Forensic Agency in the cases of abuse.

3.0 Victim-Centric Investigations

Victim-Centric Investigation Practices for Crimes Related to Child Domestic Labor (CDL)

Child abuse occurs in various forms and at multiple levels. It robs children of their childhood; physical, mental, and emotional health; education; and future livelihood opportunities.⁹² In an analysis of 200 letters collected by the NGO, Rozan, from survivors of child sexual abuse (CSA) in Pakistan, they found that children were especially likely to experience feelings of guilt, depression, fear, lack of confidence, and guilty feelings about masturbation.⁹³ At the same time, crimes against children are often shrouded in silence, either due to traditional tacit cultural approval or taboos associated with the topic. This taboo nature allows perpetrators to continue to abuse vulnerable children with impunity and without fear of legal repercussions.⁹⁴

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

3.1 Trauma-Informed Investigations and Interventions

Often, children who are victims of crime have experienced multiple levels of trauma, which may inhibit their cooperation as a victim-witness in a crime. A childhood traumatic event refers to a scary, dangerous, violent, or life-threatening event that happens to a child, i.e., a person below 18 years of age. This type of event may either happen directly to a child or may be experienced indirectly by the child by something she or he saw, heard, or witnessed, e.g., a child may be impacted by seeing or hearing another person hurt or injured.

⁹² Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan's Children 2018: Violence against Children* (2018), available at <https://www.sparcpk.org/images/sopc18/violence.pdf>.

⁹³ Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.11, available at <https://rozan.org/the-bitter-truth/>.

⁹⁴ Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan's Children 2018: Violence against Children* (2018), available at <https://www.sparcpk.org/images/sopc18/violence.pdf>.

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

- 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/

Cases involving children and victims of trauma can be more challenging to pursue as the victim-witness may be reluctant or incapable of participating in interviews or assisting with the investigation. This is a normal response to trauma. There are successful strategies to overcome this:

- Provide non-judgmental assistance with an emphasis on empowering victims.
- Prioritize the victims' feelings of safety.
- Review and revise policies and practices that may inadvertently re-traumatize victims with the partnership of non-governmental experts and experts in child and adolescent development.
- Ensure victims have enough support services via assistance from civil society members – child protection, shelters, mental health services, education, social support, housing, etc. Victims who have more stability in their lives are usually more capable of participating in the criminal legal system.

If a victim is not able to provide a testimony, there are other sources of evidence available. Cases should not be built on victim testimony alone. Often, there is compelling physical evidence or testimonies of other witnesses that can help advance a case forward.

3.2 How Children Experience Abuse

3.2.1 How Children Experience Abuse: The Child Sexual Abuse Accommodation Syndrome⁹⁵

When a child discloses abuse, he or she is often met with skepticism, alienation, and lack of credibility or acceptance. Child sexual abuse accommodation syndrome is an attempt to provide context and increase understanding and acceptance of the child's allegations within the complex dynamics of sexual victimization, when, as in the majority of cases, the perpetrator is kin or in a trusted relationship with the child victim. For example, in an analysis of 200 letters written by survivors of CSA in Pakistan, the NGO, Rozan, found that 92 percent of perpetrators were known to the victims; in 49 percent of cases the perpetrator was a relative of the victim, and in 43 percent of cases he/she was an acquaintance. Only 7 percent of perpetrators were strangers to their victims.⁹⁶

Understanding the child sexual abuse accommodation syndrome challenges myths and prejudices and allows for acceptance of, 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/retraction⁹⁷

3.2.1.1 Secrecy

The child's experience of sexual abuse is often linked to secrecy, in that no one else is around and no one is to know. Rozan noted in its study that, *"In Pakistani society females are brought up in such a way where they have few opportunities to disclose their abuse, which makes them silent, further internalizing the anger, shame and guilt, which can lead to depression."*⁹⁸

- 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."
- Secrecy is usually achieved by way of threats and intimidation:
 - "If you tell, I will go to jail."

⁹⁵ R. C. Summit, *The Child Sexual Abuse Accommodation Syndrome* (1983), 7 Child Abuse and Neglect, p. 177, available at <https://www.sciencedirect.com/science/article/abs/pii/0145213483900704?via%3Dihub>

⁹⁶ Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.7, available at <https://rozan.org/the-bitter-truth/>

⁹⁷ R. C. Summit, *The Child Sexual Abuse Accommodation Syndrome* (1983), 7 Child Abuse and Neglect, 177, available at: <https://www.abusewatch.net/Child%20Sexual%20Abuse%20Accommodation%20Syndrome.pdf>.

⁹⁸ Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse*, (2007), p.12, available at <https://rozan.org/the-bitter-truth/>

- “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.⁹⁹)
- “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.”
- There can also be promises of gifts or treats:
 - “If you let me do this and don’t tell anyone, we can go for ice cream.”
- Any reality linked to the abuse is given to the child by the perpetrator:
 - “This is how fathers and daughters show love to each other.”
 - “This is normal – all kids do this.” (The perpetrator may even show the child pornography that depicts children in an effort to groom the child and lower his/her inhibitions.)
- The child learns early in the abuse relationship that the safety and security of the family depends on the child keeping this secret.

3.2.1.2 Helplessness

Often the next thing the child learns is that he/she is helpless to stop the abuse or escape the situation.

- Children will generally hide and not fight during an abuse event.
- Unspoken gestures are as powerful as words.
- As this feeling of helplessness sets in, the child will need to learn how to live with the secret, the abuse, and her/himself.

According to Rozan’s research, 7.5 percent of CSA survivors who wrote to them reported feelings of helplessness. This included 6.8 percent of boys and 8.1 percent% of girls.¹⁰⁰

3.2.1.3 Entrapment and Accommodation

- The child feels trapped in this cycle of abuse.
- The child then begins to accommodate the abuse and may actually initiate sexual encounters in an effort to take back some of the power.
- The child at this stage may begin self-harming or engaging in self-destructive behaviors.
- If the child did not seek help after the initial abuse, to him/her there is no future way out.
- The only perceived healthy thing left to do is to accommodate the continued abuse.
- The very same person who must be turned to for love and validation is the one responsible for the abuse/deceit.

⁹⁹ Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.12, available at <https://rozan.org/the-bitter-truth/>

¹⁰⁰ Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.11, available at <https://rozan.org/the-bitter-truth/>

3.2.1.4 Delayed/Unconvincing Disclosure

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

3.2.1.5 Recantation/Retraction

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

3.3 Initial Contact with a Child Victim: Brief and Compassionate Contact

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

- Minimal facts interview:
 - Determine the safety of child victim:
 - What is the makeup (composition and structure) of the family?
 - Who and where is the perpetrator?
 - What is the level of support in the home for the child victim?
 - Is there also domestic violence in the home which may affect the level of non-offending caregiver support?
- Law enforcement/first responders:
 - Remove items that may cause distress to the child (e.g., weapons, badge, hat).
- Child-friendly interaction (described below):
 - Down to child’s level
 - Short, concrete sentences
- Social services:
 - The goal is the safety of the child victim.
 - Removing the child from the home is warranted at times. (Develop a protocol for how removal issues will be addressed: First, relatives where the child will be safe and away from any abusive situations; Second, outside caregivers/child protection system) (Section 24 of the Punjab Destitute and Neglected Children Act, 2004)

and Section 16 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 address care options for child victims).¹⁰¹

3.3.1 Questions to Ask the Child Victim and Non-Offending Caregiver in a Minimal Facts Interview

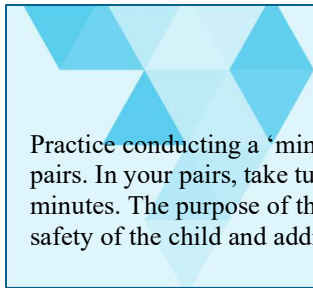
- Who lives in the home with you?
- Who do you work for? (Or, who makes the rules in the household?)
- How do you feel about them?
- Tell me about your average day (to determine hours worked, free time, or lack thereof)
- What happens if you don't follow the rules? How have you been punished?
- Is there a safe place you can go?
- Who have you felt safe to talk to about this?

3.3.2 Other Approaches

Often, children have normalized the criminal behavior. In any interview with a child, it is more effective to “follow their lead” and to not shame or emphasize the negative:

- Tell me more about your relationship with your employer? What do you call them? (Use that name/term throughout the interview.)
- If there were other children in the household, ask how they were treated differently. Do the other children attend school? Do they also work? How are they punished if rules are not followed?
- It is common for children working in someone else's home to be treated worse than other children in the household, and to be asked to things that are uncomfortable. Was this your experience? Tell me more.
- How were you paid for your work? What was given to you in exchange for the work/services you performed in the home?
- If you were tired, sick, or hurt, did you have access to medical treatment?
- What do you think would happen if you left?

¹⁰¹ According to Section 16 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 “(1) The Court may issue orders in respect of handing over the custody of a child at risk that is brought before him, either to his parents, guardian, a suitable person or a Child Protection Institution, as the case may be. (2) The Court shall, informs the child at risk of the situation and obtain his views before making an order in respect of his custody and care. (3) The Court shall, before making an order in respect of protection and care of a child at risk, consider continuity in his upbringing and take into consideration the ethnic, religious, cultural, linguistic background and all other relevant factors in the best interest of the child at risk. (4) While making the orders under this Chapter, the Court shall prefer keeping the child at risk in parental care, or extended family care, or non-kinship care than placement of a child at risk in a Child Protection Institution. (5) The Court shall monitor the status of the child at risk through reports submitted by the Child Protection Officers, any officer authorized by the Commission or through requiring the appearance of a child at risk and the person responsible for his custody and care before itself.”



Activity 15

Small group exercises(15 minutes)

Practice conducting a ‘minimal facts interview’ with your colleagues. The facilitator will divide the class into pairs. In your pairs, take turns trying to get as much information from your partner to determine safety in 5 minutes. The purpose of this contact is not to conduct a formal forensic interview, but rather to determine the safety of the child and address any safety concerns.

3.4 Delayed Follow-Up Interview and Questioning

Once the level of support for the child and the child’s safety are determined, it is time to focus on the formal investigation and formal forensic interview that will form the basis of prosecution. The purpose of this section is to recognize and understand that child victims of abuse are not ‘mini adults’. Child victims will engage in behavior that is counterintuitive to behavior we would normally expect. Most child victims of abuse will at some point recant the allegations of abuse. Delayed disclosure is a common phenomenon in child victims, as is denial in the face of definitive evidence, piecemeal disclosures, and unconvincing disclosures. Child victims of abuse will also often have a flat affect when discussing and describing incidents of abuse.

Moreover, domestic child labor victims of crime may likely have normalized their behavior for various reasons, including as a result of cultural practices.

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

- Bring the child victim to a police station or meet directly where the child resides, or another place where he/she feels comfortable (e.g., school), for a formal interview as soon as possible.
 - Within 24-48 hours if possible.
- A trained forensic interviewer should conduct the questioning. (Interviewer needs to be trained in: child development; how to talk to children—simple and concrete sentences; memory and suggestibility; as well as the protocol developed or adopted by the jurisdiction).
- Establish a protocol for use in the jurisdiction:
 - Should be recognized within the jurisdiction.
 - If you deviate from protocol, you should be able to explain why.
- Interviews should be conducted in a safe, neutral, and child-friendly environment:
 - Child-sized furniture
 - White board/flip chart as demonstrative aids
 - Noise free
 - Without any interruptions such as phone, bells, or child’s play area that may distract the child. Location should be as distraction-free as possible.

- Meet the child's physical needs as well:
 - Snack
 - Drink
 - Nap
- Interviewer should have knowledge of children's disclosure process using the research from Sorenson and Snow, cited and outlined below.
- Recognize the common counterintuitive behaviors seen in child victims:
 - Delayed disclosures
 - Recantation
 - Flat affect
 - Ambivalence towards the perpetrator

3.5 How Children Disclose

3.5.1 How Children Disclose—Sorenson & Snow Research Study, *How Children Tell: The Process of Disclosure in Child Sexual Abuse*¹⁰²

There is ample research suggesting that most children who are victims of crime do not initially disclose their victimization to authorities. If you recall the first exercise in this manual, it demonstrates the differences between children and adults. Children do not disclose victimization for various reasons, including the fact that they may be normalizing the behavior because it is “all they know,” they may be wholly depending on adults for their survival, and many other reasons.

In a legal setting, the accuracy of the children's memory is paramount. A child's development and exposure to trauma, among other factors, may influence their ability to disclose pertinent information. Research in this area is still emerging, but there is much research on the topic of CSA victims and disclosure that can inform practices and decision-making by judges, prosecutors, and police authorities.

Many child domestic laborers are also victims of sexual abuse. In an analysis of sexual abuse disclosures by 630 children from 3–17 years of age, who were eventually confirmed as credible victims, the large majority at first denied the abuse. The authors describe disclosure as a process with definable phases and characteristics—seldom the single instance that typical investigations consider disclosure to be. The study was conducted in the state of Utah in the United States by Teena Sorensen, a Licensed Psychiatric Nurse Specialist and doctoral student at the University of Utah, and Barbara Snow, D.S.W., a Licensed Clinical Social Worker. The authors retrospectively analyzed clinical notes, conversations, audio and videotapes, and reports from 630 cases of alleged CSA in which the authors had been involved as therapists or evaluators between 1985 and 1989.

¹⁰² T. Sorensen, & B. Snow, *How Children Tell: The Process Of Disclosure in Child Sexual Abuse* (1991), 70 Child Welfare: Journal of Policy, Practice, and Program, 3, available at <https://www.nccpeds.com/rotations/AFCCP/Reading-List/Child-disclosure/sorenson-and-snow-dis-closure-article.pdf>.

Their findings were:

- Disclosure is a process, not an event.
- There are two types of disclosure—Purposeful and Accidental:
 - **Purposeful** means that children CHOOSE to tell at that moment. (Adolescent and teen victims are more likely to disclose purposefully, and it is usually coupled with a triggering event in the adolescent or teen’s life.)
 - **Accidental** means that children do not CHOOSE to tell, but rather the disclosure is unintentional. (Toddlers/children under the age of 5 or 6 are more likely to disclose accidentally.)
- Children’s disclosures move from denial (the child’s initial statement that he/she has not been abused) to tentative (partial, vague, or vacillating disclosures) to active (admission by the child that he/she has been experiencing or has experienced in the past an abusive scenario).
 - **Denial:** Very common in child abuse victims. After all, they have been told or threatened not to tell. In 50–75 percent of the cases studied, children have initially denied being abused. Most of these children never truly disclose the abuse until much later in life.
 - **Tentative:** Most children will “test the waters” by making a vague or vacillating statement about the abuse. Depending on the reaction of the listener, the child will either move into active disclosure or recant the allegation. Children in the tentative disclosure phase often appear confused, uncertain, and inaccurate. Examples of tentative disclosure include:
 - Forgetting: statements that they no longer remember the event or scenario
 - Distancing: statements that indicate it happened to someone else, or that it happened a long time ago
 - Empowerment: statements like “he tried to do that to me, but I kicked him and ran away”
 - Minimizing: statements that indicate “it happened only once”
 - Dissociating: statements like “he touched me, and then I went into the pink forest”
 - Discounting: statements like “never mind”, or “I was only kidding”
 - **Active:** Children in active disclosure are able to give detailed, coherent, first-person accounts of the abuse.
 - **Recantation:** approximately a quarter (22%) of children in the Sorenson and Snow study recanted their abuse. Of the 22 percent of children who recanted, 92 percent reaffirmed their allegations over time. The most common reasons children recant are:
 - Pressure from the perpetrator
 - Pressure from family
 - Negative personal consequences (removal from their home, etc.)
 - Having to retell multiple times (the reason why one interview by a trained forensic interviewer is best)
 - Judicial proceedings

- Investigative agencies or departments charged with the protection of children (e.g., Child Protection & Welfare Bureau in Punjab and Child Protection & Welfare Commission in KP).

3.6 Memory and Suggestibility

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

Studies have shown that:

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

3.7 Interview Techniques for Child Victims

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

- Use an established protocol recognized in your jurisdiction.
- Use open-ended questions.
- Follow up with more focused questions.
- Limit use of leading and suggestive questioning.
- Use child-friendly language.
- Use the child's own words for body parts.
- Use the child's own words for how they describe their perpetrator. The child may not view the perpetrator as such, but instead, have normalized the behavior. They may refer to the perpetrator as their “employer” or their “uncle” or “auntie” or other familiar terms. The interview is not the appropriate place to attempt to change this dynamic.
- Give the child pre-interview instructions:
 - Correct me if I make a mistake. With younger children, it may help to give an example (e.g., Question: “If I said you were 30, what would you think?” Answer:

- “I’m NOT 30! I’m 6.” Let them know that is what you want them to do—to tell you when you’re wrong and correct you.)
- Say “I don’t know.” Don’t guess. Use this question to illustrate: “If I asked you what I had for breakfast this morning, what would you say?” The child should say “I don’t know.” Follow up by saying that is what you want them to say when they don’t know the answer.
 - Say “I don’t understand.” Be clear that it is ok for the child to speak up and say he or she does not understand something. It is especially important in the court process where words are often long and have different meanings (court = place to decide legal issues AND place to play basketball).¹⁰³
 - First, get a history from the child’s caregiver (if appropriate/not the employer):
 - Why is the child being seen?
 - Who is responsible for the child’s safety?
 - What did the child tell you?
 - Second, talk to the child:
 - What happened?
 - Who did this?
 - Tell me about your average day?
 - How many hours does it take to complete your chores?
 - What fun thing are you allowed to do? What are you not allowed to do?
 - In cases of sexual or physical abuse:
 - What part of the perpetrator’s (use the same word that the child does to describe the perpetrator — “uncle”, “employer”, etc.) body touched what part of your body?
 - Did he/she use any objects?
 - Were you made to touch their body?
 - What part of your body touched what part of their body?
 - Did this happen once or multiple times?
 - Some children will only be able to answer the question: Did this happen one time or more than one time?
 - Do you know if this happened to anyone else?
 - Who else might have been present?
 - Who else did the child tell or does anyone else know about what happened?
 - When did this happen (if the child is able to give that information — if not, use the child’s experiences to narrow down a time frame, such as schooling, holidays, birthday, or the like)?
 - Where did the event or events occur (location of the scene as well as the room inside the location)?

¹⁰³ Claire Chiamulera, Representing Child Abuse Victims: Forensic Interviewing Tips (2017), American Bar Association, available at https://www.americanbar.org/groups/public_interest/child_law/resources/videos/representing-child-abuse-victims--forensic-interviewing-tips/ (quoting article by Julie Kenniston, MSW, LISW).

3.7.1 Video Recording the Interview

Whether or not to video record an interview will depend on your jurisdiction's protocol and the availability of equipment, both during the investigative phase and in the courtroom. Some considerations include:

Pros:

- Captures the child's emotions during disclosure
- Captures the child's words
- Captures the child's demeanor
- Helps establish the child's age at the time of the abuse
- Takes the pressure off note-taking
- Team members (law enforcement, prosecution) can participate via Closed-Circuit Television (CCTV) or one-way mirror

Cons:

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

The Supreme Court of Pakistan, in a landmark judgment (*Salman Akram Raja v. Government of Punjab*) has held that “*Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court.*”¹⁰⁴

3.7.2 Non-Judgmental Environment for a Child Interview by the Interviewer

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

- Use a conversational tone.
- Watch your facial expressions.
- Do not react with emotion, no matter what the child tells you.
- Use the child's own words/language for body parts.
- Use the child's own words for descriptions of people and their relationship to the child.

¹⁰⁴ PLJ 2013 SC. 107.

3.7.2.1 What to Ask a Child Sexual Abuse Victim (Interviewing)

Build rapport.

When interviewing a child, regardless of whether they are younger or adolescent, it is important to introduce yourself and describe your role and relationship with the child. Always be truthful, and do not make promises you cannot keep.

Example:

“Hi Nadia – my name is Salma, and I am a police officer. As a police officer, I have many responsibilities. One of them is to make sure that all kids are safe. I often talk to kids like you to make sure you are safe and protected. May I ask you some questions? I know you don’t know me, and you are free to interrupt me at any point to ask ME a question.” (This last part is important—you want to build rapport and trust, and you are still a stranger to the child, regardless of your position.

- “Tell me about you.”
- “What class are you in?”
- “What school do you go to?” or, if they don’t go to school:
 - “Tell me why you don’t attend school.”
- What is the best part of your day?” “What is the worst part of your day?”
- Focus on “active listening”:
 - What the child likes to do
 - School class/activities

Who lives in the house with the child?

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

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

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

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

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

What are the child's names for body parts?

Use those words during the rest of your questioning.

Is the child touched in a manner that she likes?

Ask: "Nadia, do you get touches that you like?"

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

Is the child touched in a manner that she does not like?

Ask: "Nadia, do you get touches that you don't like?"

- "What touches do you get that you don't like?"
- "Who gives you those touches?"
- "What are those touches?"
- "Who gives you those touches?"

3.7.3 Another Way to Approach the Subject of Inappropriate Touching is to Ask

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

Other details:

- Children may have special physical or mental needs or a combination of both. The engagement of an interpreter or other expert may help to understand the child's situation.
- Who?
- Where?
- What part of perpetrator's body touched what part of the child's body?
- Was the child made to touch the perpetrator's body?

- Was the child touched by anyone or anything else (alternative hypotheses: “Has anyone else”)?
- Technology, grooming materials:
 - Did the perpetrator show the child pornography?
 - Did the perpetrator contact the child through the internet/social media?
- Were any photographs or videos taken?
- How many times (one time, more than one time, depending on child’s age)?
- Under clothing/over clothing?
- Sensory detail can be a great indicator of whether there is penetration: hurt?
- Closing, safety check:
 - “If this ever happens to you again, who can you tell?”
 - Give suggestions if the child is stuck (can you tell your mom/teacher/trusted adult?).

3.7.4 What NOT to Ask a Child Sexual Abuse Victim

- DO NOT ASK anything that assigns blame to the child. Rozan’s research found that guilt was the most commonly reported psychological/emotional effect of CSA on Pakistani child victims, with 42.7 percent of the children studied reporting feelings of guilt.¹⁰⁵ Examples of questions not to ask include:
 - Why didn’t you tell anyone?
 - Did you ever say “no” or “stop”?
 - Why didn’t you leave?
- DO NOT ASK anything the child cannot answer. Remember, a child’s cognitive abilities are not the same as an adult’s, including their sense of time. Examples:
 - Why did he do these things to you?
 - How many times did it happen?
 - Specific dates and times:
 - Better to use experiences in the child’s life, e.g., birthday, holidays, school and/or class.
- Avoid correcting the child’s actions unnecessarily during the interview.
- Avoid correcting nervous behavior as it may slow down the pace of the interview or stop it from proceeding further.
- Avoid correcting the child’s terminology or description of adults/people in their lives.

3.7.5 Use of Female Investigative Officers

- Necessary in the case of a sexual abuse investigation

3.7.6 Advocates and Counselors

- Communication facilitators between child abuse professionals and the child victim’s family.

¹⁰⁵ Rozan, *The Bitter Truth: Analysis of 200 letters from victims and survivors of child sexual abuse* (2007), p.11, available at <https://rozan.org/the-bitter-truth/>

- Assist with logistical issues pertaining to investigation and prosecution.
- Provide guidance and assistance with community resources.

3.7.7 Referral to Community Resources

- Telephone helplines (counseling services, youth helplines, women helplines, etc.)¹⁰⁶
- Mental health professionals
- Counselling services¹⁰⁷
- Support groups

Activity 16

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

3.8 Importance of Conducting a Medico-Legal Examination of a Child Sex Abuse (CSA) Victim

As provided for in Pakistani law,¹⁰⁸ a medico-legal examination of a CSA victim is an essential component of the investigation. A medico-legal examination of the child is an important source of information and evidence, including possible forensic evidence.¹⁰⁹

¹⁰⁶ For example, Child Protection & Welfare Bureau, Punjab's child-helpline (1121, <https://cpwb.punjab.gov.pk/helpline>), NGO Rozan's helpline (0800-22444, <http://rozan.org/?q=contacts>), NGO Sahil's helplines (<http://sahil.org/free-counseling-services/>).

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

¹⁰⁸ See for example, Rules and Orders of the Lahore High Court, Volume 3, Chapter 18, Medico-legal Work, available at <https://www.lhc.gov.pk/system/files/volume3.pdf>.

¹⁰⁹ PLJ 2013 SC. 107, Every police station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counselling. A list of such organizations may be provided by bodies such as the National Commission on the Status of Women. Each police station is to maintain a register of such organizations. On receipt of information regarding the commission of rape, the investigating officer (IO)/station house officer (SHO) should inform such organizations at the earliest of:

- a. Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape cases.
- b. As soon as the victim is composed, her statement should be recorded under Section 164, Code of Criminal Procedure, 1898, preferably by a female magistrate.

- The purpose is to perform a physical examination and collect swabs or other samples from the body to send to a forensic lab.
- Information and evidence gathered allows the medico-legal officer to form an opinion as to what happened to this child.
- Even if no forensic evidence is found on the child, medical experts can explain why it does not exist (“It’s normal to be normal”).

Physical exam of child’s body (exterior):

- Use diagrams—all medico-legal reports come with a diagram.
- Note any bruising.
- Note any lacerations.
- Does the child identify any parts of his/her body that hurt?

Physical exam of child’s body (interior genital region):

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

“It’s normal to be normal”:

- Children heal very rapidly.
- It is very unusual to see any physical injuries, even with penetration.

-
- c. Trials for rape should be conducted in camera and after regular court hours.
 - d. During a rape trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.
 - e. Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in court.

4.0 Standard Operating Procedures (SOPs)

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

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

1. **Best interests of the child**
2. **Dignity**
3. **Right to be heard/participation**
4. **Non-discrimination**

The SOPs are designed to guide justice practitioners on how to treat children in conflict with the law ('juvenile accused') during the following phases: arrest, diversion, and trial. The aim is to enforce restorative justice in line with the existing Pakistani legal framework and international standards.¹¹⁰

4.1 Arrest

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

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

¹¹⁰ In case of any provision of the SOPs is in conflict with the domestic legislation, the provision of the law should be preferred.

- Contact with the law enforcement agencies should be managed in a manner that respects the specific legal status of a juvenile; promotes his/her well-being; avoids any harm; and always seeks the best interests of the child, as defined in the JJSA 2018.
- Information and legal advice should be provided to the child in an age-appropriate manner and via a language that the child can understand.
- Upon arrest of a child in conflict with the law, his/her parents/guardians must be immediately contacted by the law enforcement agencies and, whenever this notification is not possible, the child should be sent to an observation home¹¹¹ and the parents or guardians should be informed of the child's arrest within the shortest possible time thereafter.
- Throughout the proceedings, the juvenile should have a right to be represented by a lawyer and may request free legal aid. The legal aid provided to the child should focus on upholding the best interests of the child and be accessible, age-appropriate, gender-sensitive, multidisciplinary, effective, and responsive to the specific legal and social needs of the child (this is especially important when a child is differently able or belongs to a marginalized group).
- Any interview with a child in the absence of his/her lawyer or any other legal aid service provider and parent/guardian, should be prohibited.
- The privacy, personal data, and dignity of the child should be protected in accordance with the law.
- Members of the law enforcement agencies who frequently deal with children in conflict with the law should be specifically trained and mentored.
- Maximum efforts should be made to deal with juvenile offenders without resorting to a formal trial and using diversion options instead.
- The background and circumstances of the child in conflict with the law, and the conditions under which the offence has been committed, should be properly investigated and documented to facilitate pertinent adjudication.

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

(a) ensure the child understands and receives adequate information:

- Explain to the juvenile in simple language and in a dialect that he/she can understand why he/she is being placed in custody and the offense that he/she allegedly committed.
- Inform the juvenile of the reason for such custody and advise the juvenile of his/her constitutional rights in a language or dialect understood by him/her.
- The arresting officer should properly identify himself/herself and present proper identification to the juvenile (via a card, etc.).

¹¹¹ An observation home, according to the Juvenile Justice System Act 2018, is a place where a juvenile is kept temporarily after being apprehended by police as well as after obtaining remand from juvenile court or otherwise for conducting inquiry or investigation for the purposes of this Act. Juvenile Justice System Act 2018, Definitions Section (p).

- The probation officer should explain to the child and the child's parents or guardian the consequences of the child's act with a view towards counseling and rehabilitation, diversion from the criminal justice system, and reparation, if appropriate.

(b) ensure the child's dignity and protection:

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

(c) inform parents and guardians:

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

(d) follow an age determination protocol:

Determine the age of the child pursuant to Section 8 of the JJSA 2018 in the prescribed manner. Under Pakistani law, these are factors that must be considered in the determination of the age of a child:

- Official documents or documents attested by government institutions may be given preference unless conflicting evidence is produced, in which case the benefit of the doubt should always be given to the accused person claiming juvenility.
- Where 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 of the accused and help determine the claim of the juvenility of the accused.

- While determining the age, the Special Board (established under the JJSA 2018) should consider the social investigation report (SIR) as a relevant document for conducting the age determination examination.
- Additionally, if no substantial material is available on record to prove the age of an accused claiming juvenility, the magistrate may direct an age determination medical exam, as per Section 8(2) of the JJSA 2018, to be conducted by the Special Board. The Special Board should submit the report of its findings in writing to the magistrate or the juvenile court, as the case may be, within 7 days after the receipt of the order to conduct the age determination medical examination.

(e) ensure legal representation for the child:

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

(f) secure pre-trial assessment:

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

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

This assessment aims to gather information on the accused juvenile to assist the probation officer or social worker or child protection officer and the relevant police officer to make a recommendation to divert the case, send the child back to his/her parents/guardians, or organize a temporary placement. The assessment is also needed to ensure that the competent authority, in this case the magistrate, the Juvenile Justice Committee and later, the juvenile judge, are informed of relevant facts regarding the child, e.g., social and family background, educational history, emotional and mental health, and behavioral patterns. This assessment will basically constitute the SIR.

4.2 Diversion

Key concepts for diversion:

- The international legal framework that has been ratified by Pakistan encourages the enforcement of measures for children in conflict with the law that avoid resorting to judicial proceedings, provided human rights and legal safeguards are fully respected.¹¹²
- Maximum efforts should be made to deal with juvenile offenders without resorting to the formal trial system whenever it serves the best interests of the child.
- Any diversion must be consented to by the child or his/her parent/guardian.
- When diverted, children have a right to legal aid at every stage of the process.
- An accused juvenile should be provided with an explanation of “diversion” and informed of the non-judicial proceedings available to them and what they entail.
- A variety of dispositions that fall under the ambit of restorative justice must be available to ensure that the child in conflict with the law is dealt with in a manner which is appropriate to his/her well-being, age, and maturity as well as proportionate to the nature of the offense and the child’s circumstances.
- Diversion should be used only when there is compelling evidence that the child committed the offence, that he/she voluntarily admits responsibility without any pressure, preferably shows remorse, and that the admission will not be used against the child in any subsequent legal proceeding.
- The police, the magistrate and, more precisely, the Juvenile Justice Committee should be empowered to dispose of such cases without recourse to formal hearings.

(a) Police report on diversion:

- The investigation officer should submit a report to the juvenile court on the prescribed form along with the report under Section 173 of the Cr.PC by providing the following, but not limited to:
 - Whether the case was eligible for diversion under the JJSA 2018
 - Whether the case was referred for diversion
 - What efforts have been made to resolve the matter through diversion
 - The statements of the parties to the dispute recorded by the Juvenile Justice Committee
 - The order of the Juvenile Justice Committee

(b) Social investigation:

- Upon information about the First Information Report (FIR) registered against a juvenile or the arrest of a juvenile, whichever occurs first, the probation officer should, as soon as practicable, contact the juvenile, the juvenile’s parents or guardian, and the investigation

¹¹² United Nations Convention on the Rights of the Child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, United Nations Standard Minimum Rules for Non-custodial Measures, International Covenant on Social Economic and Cultural rights and International Covenant on Civil and Political Rights.

officer to inform the juvenile about his rights, explain the possibility of resolution of the case through diversion, and investigate the juvenile's social circumstances, if so required. The initial SIR should be submitted to the court within 24 hours.

- The comprehensive SIR may be submitted within 14 days from the date of the registration of the FIR or from the arrest of the juvenile, whichever occurs first.
- The juvenile court may order the probation officer to conduct an inquiry into the social circumstances of the juvenile, as and when so required.
- For the purposes of social investigation, the Government may notify a social welfare/child protection officer where a probation officer is not available for any reason.

(c) Diversion management via the Juvenile Justice Committee:

- The Juvenile Justice Committee should dispose of the cases through diversion upon referral from the police, prosecution, or the juvenile court, as the case may be, within a period of 1 month from the date of referral.

(d) Diversion and factors for its determination:

- If, during the conferencing, mediation, conciliation, or any other proceedings under Section 9 of the JJSA 2018, the juvenile voluntarily admits to the commission of the act, the Juvenile Justice Committee should develop an appropriate and desirable diversion program. Such admission should not be used against the juvenile in any subsequent judicial, quasi-judicial, or administrative proceedings. The diversion program should be effective and binding if accepted by the concerned parties. The acceptance should be in writing and signed by the concerned parties and the appropriate authorities. The probation officer or social welfare officer should supervise the implementation of the diversion program.
- The probation officer or social welfare officer should submit a report to the Juvenile Justice Committee on the completion of diversion program when so required by the Juvenile Justice Committee or by the juvenile court.
- In determining the appropriate and desirable diversion, the following factors should be taken into consideration:
 - The nature and circumstances of the offense charged
 - The frequency and the severity of the act
 - The circumstances of the child (e.g., age, maturity, intelligence, mental health etc.)
 - The influence of the family and environment on the growth of the juvenile
 - The reparation of injury to the victim
 - The weight of the evidence against the juvenile
 - The safety of the community
 - The best interests of the child as defined under clause (a) of Section 2 of the JJSA 2018
 - The juvenile's feelings of remorse for the offense he/she committed
 - The parents' or legal guardians' ability to guide and supervise the child
 - The victim's view on the propriety of the measures to be imposed

- The availability of community-based programs for the rehabilitation and reintegration of the child

(e) Diversion programs:

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

At the level of investigation:

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

At the level of the prosecution and the court:

Diversion programs specified under paragraphs (a), and:

- Written or oral reprimand or citation
- Fine
- Payment of the cost of the proceedings
- Institutional care and custody

The juvenile court, keeping in view the facts and circumstances of the case and after recording reasons, may pass an appropriate order as it deems fit.

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

4.3 Trial and Sentencing

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

- In all proceedings involving children, maximum efforts should be made to guarantee a speedy response while respecting rule of law.
- A juvenile accused should be dealt with by the competent authority (in Pakistan, the relevant police officer, juvenile magistrate, juvenile justice committee, juvenile judge) in accordance with the law and the principles of a fair trial and, if convicted, should be entitled to appeal to a higher authority.
- Juvenile courts should be specialized with separate tribunals that are non-intimidating, as well as child and gender sensitive.
- Juvenile judges should respect the fundamental right of the child to be heard and express his/her views and remember the motto “nothing about children, without children”.
- Children are entitled to their own legal counsel and to free legal aid provided by the State. This legal aid should be accessible, uphold the best interests of the child, be age-appropriate, gender sensitive, multidisciplinary, effective, and responsive to the various needs of the child, especially if the child is differently abled or belongs to a marginalized group.
- The right to privacy and the dignity of the child must be protected at all stages of the trial. Personal data about the child, including photographs and names, should not be made public or shared with media unless authorized by the court for very specific and extraordinary circumstances that serve the best interests of the child.
- Any reaction towards the accused juvenile should be proportionate to the offense, but also to the circumstances of the accused.
- The treatment met by the juvenile accused should primarily aim at his/her reformation, reintegration, and social rehabilitation.
- No juvenile offender should be awarded the death penalty.
- No life imprisonment without parole should be awarded to juvenile offenders.
- Institutionalization of juveniles should always be considered as a last resort.
- All personnel dealing with cases of juveniles must access specialized training and mentoring and maintain a high level of professional competence.

4.3.1 Trial

4.3.1.1 Juvenile Courts

- The juvenile court should ensure that appropriate arrangements for the juvenile are made in the courtroom, such as, but not limited to, providing elevated seats and assistance for children with disabilities, video linkage, etc.
- The courtroom layout should ensure, in so far as possible, that the juvenile should be able to sit close to his or her parents/guardian or lawyer during all proceedings, always keeping in view the best interests of the child.
- It is advised that one day prior to the trial, the juvenile, accompanied by his or her parents/guardian, legal counsel, and probation or child protection officer, should be given

a “tour of the premises” and be explained, in a simple language that the child can understand, the trial proceedings, the attendees, their role, and what to expect.

- Within the courtroom, or within another room connected to the courtroom via video linkage, the juvenile must be accompanied by his or her parents/guardian and a support person, such as the probation officer or the child protection officer.
- If the child shows signs of distress, it is the duty of the judge to let the child take a pause or even reschedule the hearing so that the child can be in a situation where he/she can present the best evidence.
- Where applicable, and with due regard for the rights of the complainant, the juvenile court should not allow the cross-examination of a juvenile by any person other than the complainant or prosecutor under the supervision of the judge. The judge has the duty to prevent the asking of any question that may expose the juvenile to intimidation, hardship, or undue distress and that may put at risk the best interests of the child.
- Ideally, questions to be asked of a juvenile should be submitted to the judge and the prosecutor in writing, and the age and child sensitivity of those questions should be assessed.
- The juvenile court, taking into account the best interests of the child, at the request of a juvenile, his/her parents or guardian, his/her lawyer, or other appropriate person designated to provide assistance or on its own motion, may order one or more of the following measures to protect the privacy as well as the physical and mental well-being of the juvenile, and to prevent undue distress and secondary victimization:
 - Expunging from the public record any names, addresses, photos, workplaces, professions, or any other information that could be used to identify the juvenile.
 - Forbidding the prosecution or defense lawyer from revealing the identity of the juvenile or disclosing any material or information that would help identify the juvenile.
 - Ordering the non-disclosure of any records that may enable the identification of the juvenile until such time as the court may deem appropriate.
 - Holding closed sessions.
 - Efforts to conceal the features or physical description of the child giving their testimony or to prevent distress or harm to the juvenile, including testifying—
 - behind an opaque shield
 - using image or voice altering devices
 - through examination in another child-sensitive place, transmitted to the courtroom by means of closed-circuit television and video linkage
 - by way of videotaped examination of the juvenile prior to the hearing, in which case the counsel for the accused should attend the examination and be given the opportunity to examine the child witness or victim
 - through a qualified and suitable intermediary, such as, but not limited to, an interpreter for children with hearing, sight, or speech impairments or other disabilities
- At any stage of proceedings, the juvenile court may, in the best interests of a child’s decency or morality, direct any person to withdraw from court for such period as the court may direct.

- If at any stage of proceedings, the juvenile court is satisfied that the attendance of the juvenile is not essential for the purposes of the trial, the juvenile court may proceed with the case in the absence of the juvenile.
- When a juvenile who has been brought before the juvenile court is found to be suffering from a serious illness, whether physical or mental, requiring treatment, the court should send such juvenile to a hospital or a relevant medical institution where treatment should be given to the juvenile at the expense of the State.

4.3.1.2 Legal Assistance

- The juvenile court should ensure that each child avails legal assistance.
- Where it appears to a juvenile court or to the juvenile that a legal practitioner appointed by the State to conduct the case of a juvenile is not competent or diligent, or not child and/or gender-sensitive, the court may order the engagement of any other legal practitioner, for reasons to be recorded by the court, for the purpose at State expense.
- A panel of legal practitioners trained in the rights of the child should be constituted by the sessions judge for the purpose of providing legal assistance to the juvenile at State expense, whereas a legal practitioner should not be appointed for more than two cases of juveniles at the same time.
- The legal practitioner appointed to defend the case of a juvenile is entitled to receive a fee determined by the session judge subject to the minimum limit of 10,000 rupees and not exceeding 20,000 rupees.
- The case of a juvenile should not be dealt with by the same legal practitioner successively at State expense unless otherwise requested by the juvenile court.

4.3.2 Sentencing

4.3.2.1 Proportionality

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

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

4.3.2.2 Adjudicating and Disposing of Cases

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

In general, adjudication should always ensure that:

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

4.3.2.3 Provision of Assistance

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

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

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

4.3.2.4 Implementation of Disposition

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

the parents/guardian, to motivate the child and make him/her the agent of his/her own rehabilitation.

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

Activity 17 Mock sessions

Divide participants into six groups.

The first three groups will be given the duty to run a mock trial in 30 minutes. Each of these three groups will be given a case scenario to mock.

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

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

SOPS FOR CHILD ABUSE/CHILD SEXUAL ABUSE CASES

The SOPs presented in this document abide by four fundamental principles inherent to child justice as stated under the UNCRC:

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

The SOPs set forth best practices and legal obligations from Pakistani law, the consensus of contemporary knowledge, and relevant international and regional norms, as well as standards and principles embodied in the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. As a rule, children are vulnerable and require special protection appropriate to their age, level of maturity, and individual special needs.¹¹³ Children who suffer harm as a result of crime and abuse of power may suffer additional hardship when assisting in the justice process. *“Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical,*

¹¹³ Economic and Social Council (ECOSOC) Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, A/RES/2005/20 (22 July 2005), available at <https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/documents/2005/resolution-2005-20.pdf>.

mental and moral integrity.”¹¹⁴ These SOPs aim to guide justice practitioners in Pakistan to effectively investigate, prosecute, and adjudicate cases of child abuse, particularly CSA, and to work with child victims/witnesses of CSA during the three stages of the justice process: reporting and investigation, trial, and post-trial.

4.4 Definition of Child Abuse

While there is no clear definition of child abuse in Pakistani law, Article 328 A of the PPC does define cruelty towards a child as, “*Whoever willfully assaults, ill-treats, neglects, abandons or does an act or omission or commission, that results in or has, potential to harm or injure the child by causing physical or psychological injury to him...*”. This definition, while far from complete, does give a guideline for what can be considered child abuse which includes child domestic labor (CDL).

4.5 Definition of Child Sexual Abuse

Joint guidelines by the International Rescue Committee and UNICEF include the following definition of CSA: “*Child sexual abuse is defined as any form of sexual activity with a child by an adult or by another child who has power over the child. By this definition, it is possible for a child to be sexually abused by another child. Child sexual abuse often involves body contact. This could include sexual kissing, touching, and oral, anal or vaginal sex. Not all sexual abuse involves body contact, however. Forcing a child to witness rape and/or other acts of sexual violence, forcing children to watch pornography or show their private parts, showing a child private parts (“flashing”), verbally pressuring a child for sex, and exploiting children as prostitutes or for pornography are also acts of sexual abuse.*”¹¹⁵

According to the Pakistan Penal Code (PPC), 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.”

4.6 Other Definitions of Sexual Abuse According to Pakistani Provincial Law

Section 2(y) of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 and Section 2(w) of the Balochistan Child Protection Act, 2016 provide a definition of “sexual abuse” as well as fines and penalties for such crimes. As “sexual abuse” is defined separately under federal law in the PPC, guidance from the apex court is needed to clarify the operation of these definitions under the KP and Balochistan laws.

¹¹⁴ ECOSOC Res. 2005/20, Annex ¶10, U.N. Doc. A/RES/2005/20 (22 July 2005).

¹¹⁵ International Rescue Committee & UNICEF, *Caring for Child Survivors of Sexual Abuse: Guidelines for health and psychosocial service providers in humanitarian settings*, available at https://www.unicef.org/pacificislands/IRC_CCSGuide_FullGuide_lowres.pdf.

4.7 Key Concepts and Values¹¹⁶

- The best interests of the child and his/her safety and well-being must always prevail in any decision taken by the court that directly or indirectly impacts the child victim/witness.
- Child victims and witnesses should be enabled to freely express in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding their safety in relation to the accused, the manner in which they prefer to provide testimony, and their feelings on the conclusion of the process.¹¹⁷
- All stages of the justice process should be carried out by trained professionals¹¹⁸ who should be child and gender-sensitive, inclusive, and should focus on avoiding any form of secondary victimization. “Child-sensitive” denotes an approach that balances the child’s right to protection and takes into account the child’s individual needs and views.¹¹⁹
- Investigation of crimes involving child victims and witnesses should be expedited and trials should take place as soon as practical, unless delays are in the child’s best interests.¹²⁰
- According to the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, child victims and witnesses and their parents or guardians, from their first contact with the justice process and throughout that process, should be promptly and adequately informed to the extent feasible and appropriate, of, *inter alia*:¹²¹
 - 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.
 - The procedures for the adult and juvenile criminal justice processes, including the role of child victims and witnesses; the importance, timing, and manner of testimony; and ways in which “questioning” will be conducted during the investigation and trial.
 - The existing support mechanisms for the child when lodging a complaint and participating in the investigation and court proceedings.
 - The specific places and times of hearings and other relevant events.
 - The availability of protective measures.

¹¹⁶ Penal Reform International, *Protecting children’s rights in criminal justice systems: A training manual and reference point for professionals and policymakers* (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf>.

¹¹⁷ ECOSOC Res. 2005/20, Annex ¶21(b), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹¹⁸ ECOSOC Res. 2005/20, Annex ¶9(b), U.N. Doc. A/RES/2005/20 (22 July 2005). (The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime defines “professionals” as “persons who, within the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system and for whom these Guidelines are applicable. This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and, where appropriate, defence lawyers; diplomatic and consular staff; domestic violence programme staff; judges; court staff; law enforcement officials; medical and mental health professionals; and social workers[.]”).

¹¹⁹ ECOSOC Res. 2005/20, Annex ¶9(d), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹²⁰ ECOSOC Res. 2005/20, Annex ¶30(c), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹²¹ ECOSOC Res. 2005/20, Annex ¶19, U.N. Doc. A/RES/2005/20 (22 July 2005).

- The existing mechanisms for review of decisions affecting child victims and witnesses.
- The relevant rights for child victims and witnesses' pursuant to the UNCRC and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
- All meetings, interviews, and hearings should be conducted in a safe child and gender-sensitive environment that enables the child victim/witness to present his/her best evidence.¹²²
- Avoid unnecessary contact between the child victim/witness and the justice system, as this may contribute to secondary victimization and unwarranted trauma/stress for the child.¹²³
- No child victim/witness should experience any form of discrimination—all children are equal before the law in accordance with the Constitution of Pakistan.¹²⁴
- The child's right to privacy and dignity should be protected and ensured at every stage of the justice process.
- All child victims/witnesses, once declared competent to testify by the relevant court, should be availed of their fundamental right to participate in the judicial process, be involved in the related decision-making processes that directly impact them, and be allowed to express their views and opinions that should be taken into consideration by the competent authority.¹²⁵
- Child victims and witnesses should have access to and be availed of child, culture, and gender-sensitive legal, medical, psychological, and financial support services in line with the laws and policies of Pakistan to ensure reparation as well as their healing, rehabilitation, and reintegration.¹²⁶

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

¹²² See, e.g., ECOSOC Res. 2005/20, Annex ¶14, U.N. Doc. A/RES/2005/20 (22 July 2005) (“*All interactions ... should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands.*”).

¹²³ UN Office on Drugs and Crime (UNODC), *Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary* (2009), Article 13(2) & Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice (“*Kindness and friendliness towards children aid in their protection. Repeated interviews, intimidating settings and procedures, discrimination: a plethora of such practices augment the pain and trauma of children who may already be in great distress.*”).

¹²⁴ CONST. art. 25, sec. 1. (All citizens are equal before law and are entitled to equal protection of law.).

¹²⁵ See, e.g., United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989) & ECOSOC Res. 2005/20, Annex ¶8(d), 18, U.N. Doc. A/RES/2005/20 (22 July 2005).

¹²⁶ UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, A/RES/2005/20 (22 July 2005), available at <https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/documents/2005/resolution-2005-20pdf>; UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, (1985) available at: <https://www.refworld.org/docid/3b00f2275b.html>; and United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187, (2013) available at: <https://www.refworld.org/docid/51e6526b4.html> (Principles 4-5, Guidelines 7-8).

Free Services Available to Children in Pakistan

There are a number of government and CSO services available for free to children and their parents/guardians in Pakistan, including:

- Free legal aid and access to the victims' fund provided for through the Ministry of Human Rights (MOHR)' Human Rights Relief and Revolving Fund:
<https://mohr.gov.pk/Detail/NzhkMzJlODEtM2Q1Yi00YzY0LTlhMmQtZWY0MjEwYjBjZDY2>
- Victims can access free medical, legal, and counselling services through the Women's Center for victims of violence, Shaheed Benazir Bhutto Centers for Women:
<https://mohr.gov.pk/Detail/N2I4ZWYyYTltNzAyNC00MTcxLTlhZDEtMDY5NTQ4NGM4NmMx> (Though stated as a Women's Center, services are also accessible for children who have suffered violence, particularly young and adolescent girls who have been abused.)
- The MOHR helpline (1099) offers access to legal advice on human rights violations, including violations against children.
- The MOHR Women in Distress and Detention Fund provides financial and legal assistance to incarcerated women and those who face extreme hardship. This fund can be useful for juvenile girls falsely accused of a crime, especially a sexual crime, and those who are facing abuse within the prison environment.
(http://www.na.gov.pk/uploads/documents/1513247333_242.pdf)
- Free medico-legal and forensic examinations are available in public hospitals and labs through the MOHR.
- The Society for the Protection of the Rights of the Child (SPARC) offer extended counselling and legal aid services to victims of CSA and children accused and in prison: <http://www.sparcpk.org/ContactUs.html>
- Sahil offer free counselling to children and juveniles through their Jeet Healing Centers: <https://sahil.org/free-counseling-services/>, legal aid services: <http://sahil.org/free-legal-aid/>, and juvenile rehabilitation services: <https://sahil.org/juvenile-rehabilitation/>. Support is also available through the Sahil Direct Line for Counseling: +92-51-2850574.

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

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

4.8 Reporting and Investigation

4.8.1 Reporting

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

- Whenever possible, a support person (preferably of the same sex and gender as the child) and/or parent or guardian should reach out to, or accompany the child, after the abuse has been reported or notified to the police or investigating officer. The police should preferably be the ones to assign this support person. (This will be after the abuse has been reported and the child is going for their first interview or formal interaction with the police.)
- The first point of contact needs to use language and terminology that is easily understood by the child victim.

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

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

4.8.2 First Information Report

Any investigation into child abuse and CSA usually begins with a formal complaint/report filed with the police—the FIR. The FIR can be submitted by the guardian of the child victim, by a friend or relative, or by anyone who wants to report the abuse (NGO worker, social worker, medical professional, teacher, etc.). The referrer must first file an application for an FIR at a police station and, upon approval of the application, complete the report detailing the incident/abuse that occurred.

Contents to be included in an FIR by the investigating officer:

- Referrer's details (full name and address)
- Victim/survivor's details (full name, address, and age)
- Details of concern (date, time, and location of the abuse)
- The facts/events of the incident as they happened
- Details of any witnesses (names and addresses)
- Suspect(s)' details and names of any other person involved in the incident
- Who made the referral (police, NGO worker, social worker, reporter, victim, person victim knows, etc.)

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

4.8.3 Providing Support Services

According to the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, “*child victims and witnesses ... should have access to assistance provided by professionals... [.] This may include assistance and support services such as financial, legal, counselling, health, social and educational services necessary for the child’s reintegration. All such assistance should address the child’s needs and enable him or her to participate effectively at all stages of the justice process.*”¹²⁷

Upon notification and reporting of a crime against a child, existing helplines, relevant State institutions, and the police should take appropriate measures envisaged in the applicable laws and regulations to refer the child complainant to appropriate support services that serve the best interests of the child. In Pakistan, this assistance may consist of legal aid, placement with a family member or in a child protection institution, protection by the police, medical assistance, financial aid, or any other form of support envisaged under relevant Pakistani child protection laws.¹²⁸ For example, the Criminal Law (Amendment Offences Relating to Rape) Act, 2016 added language to the Cr.PC requiring free legal aid to be provided to victims of offenses under articles 354A, 376, 377, and 377B of the PPC with assistance from the Provincial Bar Councils.¹²⁹ Child victims are also entitled to the right to free legal aid under the JJSA 2018.¹³⁰ The police are required to inform the victim of his/her right to free legal assistance and provide the victim with a list of lawyers maintained by the Provincial Bar Council.¹³¹ It is important that the initial point of contact take into consideration the child’s views and concerns or special needs before organizing assistance for the child victim. If some of the child victim’s needs cannot be met, the initial point of contact must explain to the child victim why and what may happen next.

Relevant State institutions:

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

The child protection helpline 1121 is accessible in Punjab, Sindh, KP, and ICT.

¹²⁷ ECOSOC Res. 2005/20, Annex ¶22, U.N. Doc. A/RES/2005/20 (22 July 2005).

¹²⁸ Sec. 18,20,28,29 Punjab Destitute and Neglected Children’s Act, 2004; Sec. 10,12,13,25,26, KP Child Protection and Welfare Act, 2010; Sec. 20, 26, Sindh Children Act, 1955, Sec. 18, Sindh Child Protection Authority, 2011; Sec. 15(1), Balochistan Child Protection Act, 2016; S. 161A. Code of Criminal Procedure, 1898 (Act V of 1898), Juvenile Justice System Act, 2018; and S.3(1), ICT Child Protection Act, 2018.

¹²⁹ S. 10, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016. & S. 161A, Code of Criminal Procedure, 1898 (Act V of 1898).

¹³⁰ S.3(1), Juvenile Justice System Act, 2018.

¹³¹ S. 10, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016. & S. 161A, Code of Criminal Procedure, 1898 (Act V of 1898).

4.8.4 Instant Protection of Victim

Disclosing abuse can make the victim/child vulnerable to attack, intimidation, and further abuse, particularly if the abuser is a relative, parent, or lives with them. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to ensure the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during, and after the justice process.¹³² Police officers should assess the victim's safety needs, including during the investigation and judicial process, and implement the necessary measures for the child's protection. After reviewing the report and assessing the elements of the case, the main goal for the investigators should be the immediate safety of the victim—a child protection order may be sought with the court.

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

The police officer shall make every effort to:

- Afford relief to people in situations of distress, particularly in respect of women and children.¹³³
- Guide and assist members of the public, particularly the poor, disabled, physically weak, and children, who are either lost or find themselves helpless on the streets or other public places.

Professionals who come into contact with children should be trained in recognizing and preventing intimidation, threats, and harm to child victims and witnesses.¹³⁴

4.8.4.1 Investigating and Interviewing

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

4.8.5 Planning Meeting

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

¹³² ECOSOC Res. 2005/20, Annex ¶32, U.N. Doc. A/RES/2005/20 (22 July 2005).

¹³³ S. 4(2)(a), Police Order, 2002.

¹³⁴ ECOSOC Res. 2005/20, Annex ¶34, U.N. Doc. A/RES/2005/20 (22 July 2005).

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

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

- Safety of the victim
- Gathering evidence that may be tampered with or lost
- Arresting the suspect if there is a risk that they may escape
- Taking a forensic interview of the victim and any other witnesses, according to the established protocol
- Evaluating the information known and gathered up until this point

It is recommended that the first planning meeting be held at the start of the investigation with investigators to schedule more meetings as necessary. The meeting should be held at a time when all those involved in the investigation can stop and evaluate the information/points of the case before going forward.

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

- Getting a medico-legal report
- Taking statements of victims, witnesses, and suspects
- Collecting evidence
- Arresting or apprehending the suspects

The listed steps can proceed simultaneously or even before a meeting can be scheduled as nothing should hinder the quality, accuracy, and progress of the investigation. For example, if evidence must be collected immediately, as is the case in most sexual abuse cases, then this should be prioritized. The same is true for taking statements or any other matter deemed urgent.

4.8.6 Taking Statements of Child Victims, Witnesses, and Suspects

Taking statements is important for any police officer working on CSA cases. Interviewing victims, witnesses, and suspects, and properly recording and retaining provided information, are crucial skills which allow officers to collect sufficient evidence and understand the circumstances of the case. There are two types of statements under Pakistani law: statements before the police under Section 161 of the Cr.PC and statements before a magistrate under Section 164. Under Section 160, an investigating police officer may, by written order, summon any person who appears to be acquainted with the facts of a case under investigation and, under Section 161, may conduct an interview of any such person.¹³⁵ The summoned or interviewed witness is legally bound to answer all questions relating to such case put to him by such officer,

¹³⁵ S. 160, Code of Criminal Procedure, 1898 (Act V of 1898).

other than questions “*the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.*”¹³⁶ Under Section 164, a magistrate may “*record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.*”¹³⁷ Section 164(1A) further provides that, “*Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement.*”

4.8.7 Noting Down the Statements

The investigating officer shall make a separate record for each person whose statement he/she records.¹³⁸

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

4.8.8 Taking a Child Victim/Witness’s Statement

One of the key elements of an investigation is the child victim/witness’s interview. The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime advise that professionals “*[u]se child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location...*”¹³⁹

In the context of Pakistan, the interview will not be pre-recorded. The interview should be conducted in a child and gender-sensitive manner, and the child should be prepared for it. Ideally, the interviewer (a police officer) should conduct the interview in the presence of a support person, i.e., a child protection officer or an assigned child psychologist, preferably of the same sex and gender as the child, as well as the parent/guardian provided that doing so would not harm the child.¹⁴⁰ The interviewer should also ensure that appropriate arrangements are made to facilitate the child’s communication: the environment should be comfortable for the child, and a translator should be arranged if required. It is important to involve the child as much as possible, such as by asking for his/her views while planning the interview.

¹³⁶ S. 161(2), Code of Criminal Procedure, 1898 (Act V of 1898).

¹³⁷ S. 164(1), Code of Criminal Procedure, 1898 (Act V of 1898).

¹³⁸ S. 161(3), Code of Criminal Procedure, 1898 (Act V of 1898).

¹³⁹ ECOSOC Res. 2005/20, Annex ¶30(d), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹⁴⁰ It is different when one of the parents/guardians is the alleged, or one of the alleged, child abuser(s).

4.8.9 Location of Interview

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

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

The Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 added language to Section 154 of the Cr.PC allowing distressed victims, including child victims, of acid attacks, assaults against modesty, forced removal of a woman's clothes, rape, or sexual harassment to be interviewed by the police in their homes or in another convenient location of the victim's choosing rather than in a police station.¹⁴¹

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

Section 154 of Criminal Procedure Code of Pakistan:

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

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

¹⁴¹ S. 8, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016.

4.8.10 Personnel who Conduct the Interview (Statements During the Investigation under Section 161 of the Cr.PC)

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

4.8.10.1 Introduction & Rapport

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

- tell them if he/she does not know the answer to a question

4.8.10.2 Obtaining Information

- The interviewer should encourage the child victim/witness to share a free account of events, with no interruption.
- Details, further information, or continued free recall—once the child has stopped—should be encouraged by responses such as “and then what happened?”¹⁴²
- DO NOT ask questions that direct the child towards a certain answer (no leading questions).
- Keep questions as open ended, simple, and short as possible.
- The interviewer should avoid repeating the same questions as this can be intimidating and disturbing for the child.

Multiple interviews are not recommended and should be avoided. Special procedures for the collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, hearings, and unnecessary contact with the justice process.¹⁴³

Interviewers should include the following details in the victim’s statement:

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

The details above are age dependent. Some younger children will only be able to identify the suspect or describe the events of the offense, while being unable to identify particular dates and times. For these younger children, officers can ask other questions that would help indicate the time of year at which the events took place, i.e., hot/cold; holidays; school; or vacation/holiday time, rather than specific dates and times.

For children who are illiterate or have a disability, interviewers may verify a statement using the additional measures below:

- Take a recording/video of the victim verifying the statement.

¹⁴² Penal Reform International, *Protecting children’s rights in criminal justice systems: A training manual and reference point for professionals and policymakers* (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR1.pdf>.

¹⁴³ ECOSOC Res. 2005/20, Annex ¶31(a), U.N. Doc. A/RES/2005/20 (22 July 2005).

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

What to do in an interview with a child victim:

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

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

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

4.8.10.3 Closure¹⁴⁴

- The interviewer should thank the child victim for his/her cooperation and acknowledge his/her distress, pain, and experience.
- The interviewer should ask the child victim if there is anything else that he/she would like to add or ask.
- The interviewer should again inform the child victim/witness about how the information he/she has given will be used during the justice process and explain to the child what the next steps will be.

¹⁴⁴ Penal Reform International, *Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers* (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR1.pdf>.

- The interviewer should also inform and guide the child on available support systems and structures to report an abuse, file a complaint, access legal aid, and be involved in trial proceedings (even if this was already done during the first point of contact).¹⁴⁵

4.8.11 Statements of Witnesses

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

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

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

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

4.8.12 Interviewing Suspects

The police should take the statement of the suspect so that he/she can give their account and perspective on the events of the case. The suspect has the right to give a statement and tell his/her side of the story or to be quiet and say nothing.¹⁴⁶

Before beginning the interview, the investigating officer should caution the suspect and state to the suspect his/her rights and responsibilities:

¹⁴⁵ Since Pakistan is a federation, child protection laws vary according to provincial legislations, as do support mechanisms and structures for child victims/witnesses of CSA or any other abuse.

¹⁴⁶ See, e.g., CONST. art. 13, S. b (*"No person shall, when accused of an offence, be compelled to be a witness against himself"*); S. 161(2), Criminal Procedure Code, 1898 (Act V of 1898).

- Right to be silent and say nothing at all,¹⁴⁷ as whatever they say can be used against them in court
- Right to seek legal assistance from a lawyer during the interview, investigations, and court proceedings¹⁴⁸
- Right not to be deprived of life or liberty save in accordance with law¹⁴⁹
- Inviolability of the dignity of man:
 - The dignity of man and, subject to law, the privacy of home, shall be inviolable.
 - No person shall be subjected to torture for the purpose of extracting evidence.¹⁵⁰
- Right to be informed of the grounds for arrest¹⁵¹
- Right to be brought before a magistrate within 24 hours¹⁵²
- Right to a fair trial¹⁵³

Methods of interviewing a suspect:

- Let the suspect give an uninterrupted and open account of his/her side of the story, noting down any discrepancies in the information being provided by the suspect.
- Have a question-and-answer session to interview the suspect, asking probing and specific questions to the suspect in order to clarify any discrepancies in the information provided by the suspect.
- Do not be intimidated or threatened by suspects who are wealthy and have high position in the community.
- Do not scare, intimidate, or suggest the suspect to confess to the crime (if this is done then the suspect's statement will not be allowed in court).¹⁵⁴
- Do not make the suspect sign the statement. As per Section 162 Cr.PC, statements made to police officers in the course of an investigation do not need to be signed. Nor may these statements be used in any inquiry or trial for any offense under investigation at the time when the statement was made, other than at the request of the accused for the purpose of contradicting a witness's testimony.¹⁵⁵

If the suspect wishes to confess, he/she should be taken before a magistrate. Magistrates of the First and Second Class, who are not police officers and have been empowered by the provincial government, may record statements and confessions made by the accused. Confessions, as opposed to statements to the police, should be recorded and signed. A magistrate should only record a confession if he/she believes it was made voluntarily and should explain to the person

¹⁴⁷ See, e.g., CONST. art. 13, S. b (*"No person shall, when accused of an offence, be compelled to be a witness against himself"*); S. 161(2), Criminal Procedure Code, 1898 (Act V of 1898).

¹⁴⁸ CONST. art. 10, S. 1 (*"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice."*).

¹⁴⁹ CONST. art. 9.

¹⁵⁰ CONST. art. 14.

¹⁵¹ CONST. art. 10, S. 1.

¹⁵² CONST. art. 10, S. 2; S. 60, 61, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁵³ CONST. art. 10A.

¹⁵⁴ CONST. art. 10, S. 1 (*"No person shall be subjected to torture for the purposes of extracting evidence."*).

¹⁵⁵ See S. 162, Code of Criminal Procedure, 1898 (Act V of 1898).

making it that he/she is not bound to make a confession, and that it may be used as evidence against him/her.¹⁵⁶

4.8.13 Medical Examinations

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

- To give immediate medical assistance/help to the child victim. This includes testing and treatment or mitigation of sexually transmitted diseases, infections, broken bones, stitching, HIV/AIDs, pregnancy, or any other medical needs. Giving medical care and help should be the first priority of medical professionals.
- Collect forensic evidence. Evidence that can be collected by a medical professional includes:
 - Blood, semen, and other fluids or DNA found on the victim or his/her clothing¹⁵⁷
 - X-ray images of broken bones
 - Clothes, accessories, and undergarments the victim was wearing at time of examination (physical appearance of the victim)
 - Photos of the victim and his/her injuries, such as bruising and lacerations

Reports from medical examinations can have strong evidentiary value. According to Section 510 Cr.PC, a report from a chemical examiner or assistant chemical examiner to the Government; the chief chemist of Pakistan Security Printing Corporation, Limited; or any serologist, fingerprint expert, or fire-arm expert appointed by Government may be used as evidence in any inquiry, trial, or other proceeding without calling the report's author as a witness. The Lahore High Court rules further provide that a medical officer should be consulted as to the articles to be sent to the chemical examiner for chemical analysis.¹⁵⁸

In cases of CSA, both the victim and the accused should usually undergo a medical examination, provided the victim or his/her parent or guardian consents. Under the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, medical examinations are explicitly provided for when a person is arrested on a charge of having committed or attempted to commit rape, sexual abuse, or unnatural offences, and there is reason to believe that material evidence could be collected through a physical examination of the person. If necessary, the suspect may be

¹⁵⁶ See S. 164, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁵⁷ Vol. 3, Chapter 18, Part C of the Rules and Orders of the Lahore High Court contains instructions for transferring blood stained articles to the Serologist of the Government of Pakistan in Islamabad for analysis. The Serologist at Islamabad has been appointed by the Government of Pakistan to carry on the medico-legal work of distinguishing human blood from other blood.

¹⁵⁸ Rules and Orders of the Lahore High Court, Volume 3, Chapter 18, *Medico-legal Work*, available at <https://www.lhc.gov.pk/system/files/volume3.pdf>

forced to submit to an examination by a medical practitioner.¹⁵⁹ DNA should be collected from the arrested person as part of the medical examination and sent for analysis by a forensic laboratory as soon as possible.¹⁶⁰

Medical evidence should also be collected from the body of a victim, but unlike the accused, a victim may not be compelled to submit to a medical examination.¹⁶¹ Section 164A Cr.PC, added by the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, provides that, in cases of rape, sexual abuse, or unnatural offences, the victim shall be examined by a registered medical practitioner as soon as possible following the commission of the offence, provided that the victim or his/her parent or guardian has consented to the examination.¹⁶² If the victim is a girl, she must be examined by a female medical practitioner. In cases other than those under Sections 376, 377, or 377B of the PPC, *“Female Assistant or Sub-Assistant Surgeons in Government service shall only be required to do medico-legal work ... when the woman or girl concerned refuses to be examined by a male doctor. When a female doctor is summoned by a Court[,] she must attend.”*¹⁶³ The Police Rules, 1934 further state that, *“No examination by a medical officer [of those parts of a living woman’s body that, if exposed, would violate her modesty] shall be made without her consent and without a written order from a magistrate, addressed to the medical officer, directing him to make such examination.”*¹⁶⁴ If the victim is a woman or girl, she should, where possible, be escorted to the examination by a female police officer or a family member.¹⁶⁵ As with the medical examination of the accused, DNA should be collected during the medical examination of the victim.¹⁶⁶ When the examination is complete, the victim should be permitted to wash up using toiletries provided by the hospital. Hospitals should also have clothing for the child to put on if his/her own clothing is taken as evidence.¹⁶⁷

The police should ensure that a medico-legal report is issued by an appropriate and qualified medical professional/medico-legal officer with the necessary skills and experience to examine a child who has been sexually abused. The Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 requires that the medical examination be conducted by a “registered medical

¹⁵⁹ S. 53A, Code of Criminal Procedure, 1898 (Act V of 1898). (*“(I) When a person is arrested on a charge of committing an offence of rape, unnatural offence or sexual abuse or an attempt to commit rape, unnatural offence or sexual abuse under Section 176, Section 377, and Section 377B respectively and there are reasonable grounds for believing that an examination of the arrested person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose”*).

¹⁶⁰ S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164B, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁶¹ See S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164A (4), (7), Code of Criminal Procedure, 1898 (Act V of 1898); S. 25.19, Punjab Police Rules, 1934.

¹⁶² See S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164A (4), (7), Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁶³ S. 25.22, Punjab Police Rules, 1934.

¹⁶⁴ S. 25.22, Punjab Police Rules, 1934.

¹⁶⁵ S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164A, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁶⁶ S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016; S. 164B, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁶⁷ See PLJ 2013 SC 107 (citing guidelines issued by the Delhi High Court in the Delhi Commission of Women case).

practitioner”, which the Act defines as “*a medical practitioner who possesses any qualification recognized as such under the Pakistan Medical and Dental Council Ordinance, 1962 (XXXII of 1962) and whose name has accordingly been entered in the Register maintained in this behalf under the said Ordinance and has been authorized by the Government to conduct such examination[.]*”¹⁶⁸ The Police Rules, 1934 provide that, “*(1) When a medical opinion is required in police cases, the persons to be examined shall be produced before the highest medical authority available on the medical staff of the district.*”¹⁶⁹ Most medico-legal examinations will be conducted by dedicated staff in nominated district hospitals with the jurisdiction to conduct such examinations, but the court (trial or magisterial) may order the constitution of a special medical board, including a pediatrician, gynecologist, etc., if there is a need.

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

- Have an officer of the same sex and gender take the victim(s) to the hospital/health center for the examination.¹⁷⁰
- Explain to the victim the reason and purpose for the medical examination.
- Allow a relative/family member to come with the victim, if the victim wants them to be there.
- If the victim allows it, and with extreme discretion, witness the medical examination making sure to record any indications of penetration or sexual intercourse (semen, injuries to the genitals and surrounding body parts).
- Receive the medicolegal report.

4.8.13.1 Medical Examination Reports

Medical practitioners who examine suspects and victims in cases of rape, unnatural offences, or sexual abuse under PPC Sections 376, 377, and 377B are required to prepare reports detailing the findings and conclusions of their examinations. Once the report is complete, the medical practitioner is required to immediately transmit the report to the investigating officer, who will forward it to the magistrate.¹⁷¹

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

- Name and address of the accused and of the person by whom he was brought
- Age of the accused
- Marks of injury, if any, on person of the accused
- Description of material taken from the person of the accused for DNA profiling
- Other material particulars in reasonable detail¹⁷²

¹⁶⁸ S. 11, Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016.

¹⁶⁹ S. 25.19, Punjab Police Rules, 1934.

¹⁷⁰ This is required in the case of female victims of crimes under PPC Sections 376, 377, or 377B, also see S. 164A. Code of Criminal Procedure Code, 1898 (Act V of 1898).

¹⁷¹ S. 53A (4), 164A (6), Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁷² S. 53A, Code of Criminal Procedure, 1898 (Act V of 1898).

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

- Name and address of the victim and of the person by whom he/she was escorted
- Age of the victim
- Description of material taken from the body of the victim for DNA profiling
- Mark of injury, if any, on body of the victim
- General mental condition of the victim
- Other material particulars in reasonable detail¹⁷³

4.8.13.2 Preservation of Medical Evidence

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

Hospitals should cooperate with the police to preserve samples likely to putrefy in their pathological facility until the police are able to complete their paperwork for dispatch to the forensic lab for testing.¹⁷⁴

4.8.13.3 Special Considerations When Conducting Medical Examinations of Children in Cases of Child Sexual Abuse

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

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

- Significant anal scarring or dilation
- Bruising and lacerations of the labia
- Scarring and lacerations of the posterior fourchette not involving hymen
- Hymenal cleft extending more than 50 percent of the width of hymenal rim
- Sperm found on child's body

¹⁷³ Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁷⁴ See PLJ 2013 SC. 107 (citing guidelines issued by the Delhi High Court in the Delhi Commission of Women case).

- Intentional, blunt, and penetrating injury to the vaginal or anal openings

4.8.14 Collecting Physical Evidence

Along with taking statements from witnesses, officers should also be collecting any evidence and materials they see as relevant to the case. The evidence collection process must be aligned with forensic safeguarding procedures. Four main areas where the police can start to search and collect physical evidence are at the crime scene, on the victim, on the suspect, or in the suspect's home, office, or vehicle.

4.8.14.1 Crime Scene

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

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

- Mobile forensic lab unit for the preservation and collection of evidence from crime scenes
- Cellular forensic unit for forensic examination of mobile data
- Fingerprint unit for lifting fingerprints for identification¹⁷⁵

The investigating officer or station house officer may call on the mobile forensic lab unit to respond to a crime scene to collect and preserve evidence found at the scene. This unit shall assist the investigating officer in processing the scene of the crime, particularly in the following tasks:

- Photography of the crime scene
- Geo-tagging of the scene of crime through smart phone
- Collection of physical and trace evidence
- Packaging of physical evidence
- Lifting of fingerprints and footprints
- Any other evidence¹⁷⁶

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

¹⁷⁵ S. 25.13 A, Khyber Pakhtunkhwa Police Rules, 1934, amendments available at <http://kppolice.gov.pk/act2017/rules.php>.

¹⁷⁶ S. 25.13 B, Khyber Pakhtunkhwa Police Rules, 1934, amendments available at <http://kppolice.gov.pk/act2017/rules.php>.

*analyze and provide accurate results of forensic analysis in timely manner, and testify in COURTS OF LAW on analytical findings for the people of Punjab.”*¹⁷⁷

4.8.14.2 On the Victim

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

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

4.8.14.3 On the Suspect

If the police officer arrests the suspect quickly and immediately, they need to search the suspect in order to collect evidence on their person. As noted above, suspects arrested for sexual offences should undergo a medical examination.¹⁷⁸

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

4.8.14.4 Suspect's Home, Office, or Vehicle

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

- Anything described by the child in his/her statement
- Grooming materials
- Pornography
- Photos (print or electronic) and videos of the child victim and/or other children
- Weapons used to threaten the child
- Items left by the child, such as drawings or clothing
- Computers, flash drives, phones, and other digital devices
- Bank records
- Phone records
- Work records corroborating times available to spend with the victim
- Any other relevant evidence

¹⁷⁷ The Punjab Forensic Science Agency, Overview, <https://pfsa.punjab.gov.pk/overview>, last visited 25 August 2019.

¹⁷⁸ S. 53 A, Code of Criminal Procedure, 1898 (Act V of 1898).

4.8.15 Making an Arrest

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

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

4.8.15.1 Conditions for Immediate Arrest of Suspect

The Cr.PC has tabulated offences into "cognizable" and "non-cognizable" offences. With respect to cognizable offences, there is no need of a warrant to make an arrest. According to Schedule II of the Cr.PC: *"Tabular Statement of Offences, individuals suspected of child sexual abuse-related crimes may be arrested without a warrant."*¹⁷⁹

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

- The suspect has attempted to tamper with evidence or influence witnesses or the victim.
- The suspect is attempting to escape.
- If the crime happens in front of and in the vicinity of the police/police officers
- If the suspect is positively identified as committing a serious offense, like rape or murder
- If the police officer has reasonable cause to believe that the suspect has committed the crime or is about to carry out the crime
- If the suspect cannot be found or is declared absconder (he/she has fled the area)
- If the suspect refuses arrest and attempts to flee from the police
- If the legal representative of the suspect obstructs/stops the police from arresting their client

4.8.15.2 Rights of the Adult Suspect

- No person shall be deprived of life or liberty save in accordance with the law.¹⁸⁰
- The suspect shall be told at the time of his/her arrest why they are being arrested (reasons for the arrest).¹⁸¹

¹⁷⁹ See Schedule II: Tabular Statement of Offences, available at <https://www.punjabpolice.gov.pk/system/files/Schedule-II-Tabular-Statement-of-Offences.pdf>, indicating that arrests may be made without a warrant for offences under Sections 354, 354-A, 364-A, 366-A, 366-B, 372, 376 (unless the suspect is married to the alleged victim), and 377.

¹⁸⁰ CONST. art. 9.

¹⁸¹ CONST. art. 10, S. 1.

- The suspect shall have the right to consult and be defended by a legal practitioner of his/her choice.¹⁸²
- The suspect shall be produced before a magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate.¹⁸³
- No person shall be detained in custody beyond said period without the authority of a magistrate.¹⁸⁴
- The suspect shall be entitled to a fair trial and due process.¹⁸⁵

4.8.16 Bail Conditions if the Suspect is an Adult

Bail may be granted by the police or the court depending upon the nature of the offense. Police may only release an accused on bail when the suspected crime is a bailable offence as specified in the Cr.PC.¹⁸⁶ Most offences of a sexual nature are non-bailable, so only a court of competent jurisdiction can grant bail. In the case of non-bailable offenses, an accused shall not be released on bail if there are reasonable grounds to believe that he is guilty of an offense punishable by death or imprisonment for life, or imprisonment for 10 years.¹⁸⁷ In cases of CSA where bail is available, the court may consider bailing a suspect, ensuring that:

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

4.8.17 Bail Conditions if the Suspect is a Child

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

Section 6 of the JJSA 2018 sets out the conditions for release of a juvenile on bail. As with the Cr.PC, the JJSA 2018 recognizes the distinction between bailable and non-bailable offences. Under the JJSA 2018, a juvenile accused of a bailable offence shall be released on bail by the juvenile court, if not already released under Section 496 Cr.PC, unless there is reason to believe that release will bring the juvenile in association with criminals or expose him/her to any other danger.¹⁸⁸

¹⁸² CONST. art. 10, S. 1.

¹⁸³ CONST. art. 10, S. 2.

¹⁸⁴ CONST. art. 10, S. 2.

¹⁸⁵ CONST. art. 10A.

¹⁸⁶ See S. 496, Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁸⁷ See S. 497, Code of Criminal Procedure, 1898 (Act V of 1898). (“(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought-before a Court, he may be released on bail but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.”).

¹⁸⁸ S. 6(1), Juvenile Justice System Act (2018).

The JJSA 2018 further classifies criminal offences into three different categories: minor, major, and heinous.

1. Minor offense refers to an offense for which maximum punishment under the PPC is imprisonment up to 3 years, with or without fine. A juvenile is entitled to bail in minor offenses, with or without surety bonds, by the juvenile court as a matter of right.
2. Major offense refers to an offense for which punishment under the PPC is imprisonment of more than 3 years and up to 7 years, with or without fine. Bail shall also be granted in major offenses, with or without surety bonds, by the juvenile court.
3. Heinous offense refers to an offense which is serious, brutal, or shocking to public morality and which is punishable under the PPC with death, imprisonment for life, or imprisonment for more than 7 years, with or without fine. A juvenile of less than 16 years of age is entitled to bail in heinous offenses, but bail is at the discretion of the court if the juvenile is more than 16 years of age.¹⁸⁹

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

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

Investigators may also express an opinion on bail conditions.

4.8.18 Seeking Pre-Trial Advice of Prosecution

Police should immediately bring the incidence of a crime to the of attention of the prosecution by providing a copy of the FIR to the prosecutor, or by informing the prosecutor through a mutually shared IT networking system or by any available telecommunication facility, whatever is first available. In addition:

- The investigator should share his/her observations from the first visit to the crime scene with the prosecutor.
- The prosecutor should provide pre-trial advice as to the preservation and collection of evidence in accordance with crime scene preservation best practices.
- Police should seek pre-trial advice from the prosecutor on *inter alia* identification parades, remand, and pre-trial bail matters.

¹⁸⁹ S. 6(1), Juvenile Justice System Act, 2018; S. 496, 497 Code of Criminal Procedure, 1898 (Act V of 1898), (“(1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought-before a Court, he may be released on bail but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.”).

See Code of Criminal Procedure, 1898 (Act V of 1898), S. 496 to 502, which deal with all matters related to bail and conditions on bail or any limitation, if any, will be found there.

Pre-trial advice, assistance, and support minimizes the need for curing remedial and non-remedial defects in the police reports and minimizes the number of cases deemed not fit for trial.¹⁹⁰

4.8.19 Decision to Charge the Suspect

Following the investigation, the investigating officer and officer in charge of the police station should consider whether there is enough evidence to charge the suspect with a crime. The decision to charge a suspect with a crime should be evaluated based on:

- The amount and quality of evidence accumulated (Is there enough reliable evidence for the case to go to court?)
- The nature and seriousness of the crime
- The decision to charge the suspect should not be swayed by:
 - The position the perpetrator holds in society/the community
 - Intimidation and force by the suspect, his/her family and other outside forces to drop the case
 - The child victim. Once the case is reported to the police, the decision to charge the case to court should be made by the authorities. In this case, the decision to proceed to court should be taken by the police, with permission from the court.

If the officer in charge of the police station concludes that there is sufficient evidence or reasonable grounds to charge the suspect with a crime, the officer shall forward the accused under custody to a magistrate empowered to take cognizance of the offence upon a police report and to try the accused or send him for trial. If the offense in question is bailable, the officer shall take security from the suspect for his appearance before a magistrate at a later date.¹⁹¹ The officer in charge of the police station shall also, through the public prosecutor, forward to a magistrate empowered to take cognizance of the offense, a report setting forth:

- The names of the parties
- The nature of the information
- The names of the persons who appear to be acquainted with the circumstances of the case
- Whether the accused (if arrested) has been forwarded in custody or has been released on his bond and, if so, whether with or without sureties
- The action taken by him to the person, if any, by whom the information relating to the commission of the offense was first given¹⁹²

If, on the other hand, it appears to the officer in charge of the police station, or to the investigating officer, that there is not sufficient evidence or reasonable grounds to justify

¹⁹⁰ Punjab Criminal Prosecution Service and Punjab Police, Standard Operating Procedures: Effective Police Prosecutor Co-Operation in the Province of Punjab, available at <https://pg.punjab.gov.pk/system/files/Police%20Prosecution%20Cooperation.pdf>.

¹⁹¹ Code of Criminal Procedure, 1898 (Act V of 1898), S. 170.

¹⁹² Code of Criminal Procedure, 1898 (Act V of 1898), S. 173.

forwarding the accused to a magistrate, the officer shall, if the suspect is in custody, release him/her on his/her executing a bond, with or without sureties.¹⁹³

In case the officer in charge and/or prosecution decide that the case should not proceed to court (lack of evidence), it is the responsibility of the investigators to:

- Tell the victim(s) that their case will not go to court
- Tell the victim they can choose to pursue the case either through—
 - a private lawyer who takes their case on
 - being a complainant through their guardian

4.8.20 Drafting of a Police Report under Section 173

Upon completing the investigation, gathering all the relevant evidence, interviewing all witnesses, suspects, and victims, and deciding to proceed to court, the investigating officer, in consultation with the other officers and his or her superiors, should draft the police report. A police report/challan involves different components, including identifying the crime and detailing the elements of the alleged offense(s). Whatever is contained in the police report, under Section 173, as to the guilt or innocence of any accused person is a mere opinion of the investigating officer and is not binding upon the court.

A police report/challan should include:

- The exact offense with which the perpetrator is being charged
- The specific law that details the punishment/consequences for the offense
- Specifics of the offense
- Name of perpetrator(s)
- Location and date of when and where the offense occurred
- The police and judicial jurisdiction and area
- Details and particulars of the offense
- Sex, age, and name of victim(s)
- Signature of the investigating officer who decided to prosecute
- Signature of the prosecutor

The police report, under Section 173, constitutes the charge sheet and is prepared on the form prescribed by the provincial governments. Usually, the police report will take the following format as described in the Police Rules, 1934, Form No. 25.56:

¹⁹³ Code of Criminal Procedure, 1898 (Act V of 1898), S. 169.

FORM No. 25. 56 (1)
CHARGE SHEET.

District _____ Charge Sheet No. _____ dated _____ 19 ____
Police Station _____ in first Information No. _____
dated _____

1	2	3		4	5	6	7
Name, address and occupation of complainant or informant.	Name and addresses of accused persons not sent up for trial, whether arrested or not arrested, including absconders (show absconders in red ink).	NAMES AND ADDRESSES OF ACCUSED PERSONS SENT FOR TRIAL		Property (including weapons) found, with particulars of where, and by whom, found and whether forwarded to Magistrate.	Name and addresses of witnesses	Charge or information Name and offence and circumstances connected with it, in concise detail, and under what section of the law charged	
		In custody.	On bail or recognizance.				

Despatched at _____ A.M. on _____ 19 ____
P.M.

Signature of investigating officer.

FORM No. 25. 57 (2).
FINAL REPORT UNDER SECTION 173, CRIMINAL PROCEDURE CODE.

District _____ Final report No. _____ dated _____ 19 ____
Police Station _____ in first information No. _____
dated _____ 19 ____

<ol style="list-style-type: none"> 1. Name and address of complainant or informant. 2. Nature of charge or complaint. 3. Description of property stolen, if any. 4. Name and addresses of accused person, if any. 5. If arrested, date and hour of arrest. 6. Date and hour of release and whether on bail or recognizance. 7. Property (including weapons) found, with particulars of where, when and by whom, found and whether forwarded to Magistrate. 8. Brief description of information or complaint, action taken by police with result, and reasons for not proceeding further with investigation. 	
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Despatched at _____ A.M. on _____ 19 ____
P.M.

Signature of Investigating Officer

N.B.—The magistrate should record his order on the back.

The format of challan or report, under Section 173, has the following columns, as prescribed in Form No. 25.57(2) in the Police Rules, 1934:

Column No.1	Name and address of the informant/complainant
Column No.2	Nature of charge or complaint
Column No.3	Description of property if stolen, etc.
Column No.4	Name and address of the accused persons, if any
Column No.5	If arrested, details of arrest time and date
Column No.6	Date and hour of release, if released on bail
Column No.7	Property (including weapons) found, with all particulars, when, where, from whom, and whether forwarded to magistrate
Column No.8	Brief description of information or complaint, action taken by police with result, and reasons for not proceeding further with investigation

Police Report/Challan

173. Report of police officer

1. Every investigation under this Chapter shall be completed, without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall, [through the public prosecutor]
 - (a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case. and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond and, if so, whether with or without sureties, and
 - (b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given. Provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under section 154, the officer in charge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the court decides that the trial should not so commence.
2. Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.
3. Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.
4. A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial:
5. Where the officer in charge of a police-station forwards a report under sub-section (1), he shall along with the report produce the witnesses in the case, except the public servants, and the Magistrate shall bind such witnesses for appearance before him or some other court on the date fixed for trial'.

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost

When selecting the offense(s) with which to charge the perpetrator, the police officer should examine the degree and gravity of the offense. If the alleged conduct implicates more than one criminal offense, the suspect should be charged with all offenses supported by the presented evidence.

The police must mention in the FIR all offenses made out from the narrated story in the complaint. A compulsory section in the FIR defines the offense according to the penal code or any other law.

Being specific with the offenses charged avoids undue delay and holdups in trial proceedings. Failing to be sufficiently specific with the offense charged can cause the case to be dismissed by the judge or inadvertently lead to a stronger case for the defense, which may result in an acquittal or more lenient sentence(s).

The drafting of the police report, under Section 173 of the Cr.PC, is intended to be the culminating point in the investigation of the case. Its purpose is to complete the investigation without any unnecessary delay and requires the officer in charge of the police station to send a report to the area magistrate. If the investigation has not been completed within 14 days of the FIR, the officer in charge shall forward an interim report/challan to the court, which is empowered to start proceedings on the basis of the interim report, unless for the reasons to be recorded, the court decides that the trial should not be so commenced.

4.8.21 Handing Over the Case to Prosecutors

After the decision to charge has been made, the police officer should hand over the case and the charge sheet to the prosecution for them to begin prepare the child's case for court. In the handover of the case to the prosecution, the investigating officer should:

- Give a case file to the prosecution. This file should include:
 - All statements by the witnesses, suspects, and victims
 - The charge sheet
 - List any photos, videos, and exhibits
 - Any and all actions taken by the police since the time of the original complaint or report by the victim
- Go over the overall investigations conducted, the details of the case, and the special needs, wants, and requirements of the victim(s) with the prosecution.
- Assist the prosecution in going over the case and developing a strategy for court proceedings.
- Attempt to build trust and understanding between the prosecutor and the victim(s).
- If necessary, increase the prosecution's willingness towards, and belief in, prosecuting the case.
- Select a police officer as the liaison for victims and witnesses on the progress of the case during court proceedings.

- Continue investigating the case after the case has been taken to court. Police should continue to collect evidence and question people, particularly because charges can still be added or altered until the first trial session.

4.9 Trial

This stage should be conducted by specially trained justice professionals and should always be child and gender sensitive.

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime recommend that trials involving children take place as soon as practical unless delays are in the child's best interest.¹⁹⁴ Undue delay can contribute to revictimizing the child victim; prolonged breaks in the trial proceedings contribute to a child victim/witness's stress and anxiety. Prolonging the case can also damage the investigation and the prosecution. The longer the case is delayed, the more chances there are that the child will have a harder time accurately remembering the events of the crime and the details of what happened. A speedy trial allows the child to start his/her healing/recovery process earlier and, therefore, more efficiently.

In Pakistan, courts shall decide cases involving assault or use of criminal force to a woman and stripping her of her clothes; rape; unnatural offenses; or sexual abuse within 3 months of taking cognizance of the offense.¹⁹⁵ The JJSA 2018 further provides that juvenile courts shall decide any case involving juvenile defendants within 6 months of taking cognizance of an offense unless an extension is obtained from the high court.¹⁹⁶ One solution that has been applied in Pakistan so far, is to refer cases of child abuse that have been pending for a long time to specialized courts (such as child courts), or other courts, on a priority basis. This has notably been the case for the specialized child courts in Lahore and in Peshawar.

4.9.1 Pre-Trial

The pre-trial stage should start with an initial meeting between the child victim/witness and the prosecutor. In the context of Pakistan, it would be ideal to have a prosecutor of the same sex and gender as the child.

- A support person (preferably of the same sex and gender as the child) and/or parent or guardian should accompany the child for the initial meeting.
- The initial meeting should aim to make the child as comfortable as possible and avoid undue stress or anxiety. To this effect, the prosecutor may initially thank the child for coming, proceed with introductions, and ask the child general questions, such as how he/she travelled, how was the travel, where he/she comes from, ask if he/she goes to school, what he/she likes doing, etc.
- The child needs to be put at ease before he/she can answer any questions or provide information on the case. Prosecutors should ask about the child's health

¹⁹⁴ ECOSOC Res. 2005/20, Annex ¶30(c), U.N. Doc. A/RES/2005/20 (22 July 2005).

¹⁹⁵ Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, S. 12.

¹⁹⁶ Juvenile Justice System Act, 2018, S. 4(8) and 4(9).

and well-being, how he/she is feeling, and if he/she thinks he/she can answer some questions or if he/she prefers to do it at some other point in time.

- The prosecutor should use a language and terminology that is easily understood by the child. It is better to sit at the same eye level as the child.
- The initial meeting should focus on getting to know the child, his/her needs (especially if he/she is a differently abled child), and what he/she expects from the trial, what he/she is worried about. The prosecutor should also explain why he/she is here, and how he/she will help the child.
- If possible, the prosecutor should be assisted by a child psychologist or other child mental health specialist to talk with the child. The court may order a public institute to assist on a case-by-case basis.¹⁹⁷ There are examples of courts in Lahore asking for assistance from mental health professionals.
- Communication aids may be used to facilitate discussion with the child.
- The meeting between the child and the prosecutor should take place preferably where he/she feels most comfortable, with a few toys around, and with some snacks or food to put the child victim/witness at ease.

It is equally crucial to prepare the child victim/witness for court proceedings, which includes ensuring that he/she is fully informed of the justice process he/she will go through, the next steps and that he/she is supported enough to deal with a rather challenging experience.

It is again important to remember that the prosecutor should show care, empathy with and respect for the child and reassure him/her that he/she is very brave for going through this process. The prosecutor should tell the child that the prosecution is aware that it is not easy, and that the prosecutor is very thankful that the child came to the meeting, and that whatever happened to the child is not the child's fault.

The prosecutor should acknowledge the child victim/witness's distress, pain, and experience. Preparation and any meeting with the prosecutor and the child should take place in private, in a separate room, with another person (preferably of the same sex and gender as the child) sitting on the opposite side from the prosecutor whom the victim trusts, such as a parent/guardian, doctor or nurse, interpreter, or support person assigned by the government. It is better if all these adults sit at the same eye level as the child, as mentioned earlier.

The prosecutor should explain that, while giving testimony or any statement/oral evidence in court, the child should:

- Always tell the truth.
- Listen to the questions carefully and answer what is asked only.
- Say when a question confuses him/her.
- Say if he/she does not know the answer to a question. Understand that the defense attorney's role is to ask questions that can be annoying.

¹⁹⁷ See also PLJ 2013 SC 107 (holding that "Every Police Station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counseling. A list of organizations may be provided by bodies such as the National Commission on the Status of Women. Each Police Station to maintain a register of such organization.").

- Remain calm since he/she is safe in the court (hopefully a child court) and surrounded by people who are there to protect and help him/her.

Ideally, the prosecutor may ask the court for the list of questions to be asked of the child victim/witness by the defense attorney in order to examine them and make sure that they are not intentionally repetitive, harassing, intimidating or confusing. The prosecutor should then go over the envisaged questions with the child to make him/her understand:

- What each question means
- Why the defense is asking this question
- The different ways in which the child can respond to each question without telling the child what to say
- That the child may be forced to answer questions they do not like, if the answers to those questions are relevant to the case¹⁹⁸
- What to do if the child does not want to answer the question:¹⁹⁹
 - In certain situations, or in the case of an improper question, the court may stop or warn the witness that he/she is not obliged to answer.
- How to tell the prosecutor if he/she (the child) is feeling scared and wants the questioning to stop
- That there will be interruptions, objections, and some noise in the courtroom, with a few people coming in and going out. That this is normal, and the child should not be scared (note that if the trial takes place in a specific child court environment, as it is sometimes the case in Pakistan, the court environment will be more serene for the child victim/witness).

Pakistan: Qanoon e Shahadat Order 1984

Article 143: Court to decide when question shall be asked and when witness is compelled to answer

Article 144: Question not to be asked without reasonable grounds

Article 146: Indecent or scandalous questions not allowed

Article 148: Questions intended to insult or annoy not allowed

4.9.2 Privacy

Information about a child's involvement in the justice process should be protected. This can be achieved by maintaining confidentiality and restricting disclosure of information that could lead to the identification of a child victim or witness.²⁰⁰ This protection is essential since any release of information regarding a child's identity could have grave consequences, such as putting the child victim/witness (or one of his/her family members) at risk of reprisals or retaliation. Divulging the

¹⁹⁸ Qanoon-e-Shahadat Order (1984), S. 142.

¹⁹⁹ While a child victim or witness may be compelled to answer questions that are relevant to the facts in issue in the case, the Qanoon-e-Shahadat Order, 1984, witnesses may not be required to answer questions that are not relevant to the proceeding. The Court may also forbid questions that it considers scandalous or indecent or that are intended to annoy or insult or, if intended to discredit the witness, are not based on reasonable grounds to believe that the imputation is well-founded. Qanoon-e-Shahadat Order (1984), S. 143-146, 148.

²⁰⁰ ECOSOC Res. 2005/20, Annex ¶27, U.N. Doc. A/RES/2005/20 (22 July 2005).

identity of the child may also cause additional distress to the child or generate strong stigma and put the child in a situation that he/she would perceive as humiliating.

In cases of CSA, the court has a legal duty to protect the privacy of the child victim. Printing or publishing the identity of a victim of assault or use of criminal force to woman and stripping her of her clothes (PPC S. 354-A); rape (PPC S. 376); disclosure of identity of a victim of rape, etc. (PPCS. 376-A.); unnatural offences (PPC S. 377); or sexual abuse (PPC S. 377-B) is prohibited by law and punishable by up to 3 years of imprisonment, plus a fine.²⁰¹

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime recommend that, *“measures be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child’s testimony.”* In Pakistan, trials for offences under Sections 354-A, 376, 376-A, 377, and 377-B of the PPC shall be conducted in camera, and the Government may adopt appropriate measures for the protection of the victim and witnesses, such as holding the trial through video link or using screens. Information relating to trials conducted in camera cannot be printed, published, or broadcast without the permission of the court.²⁰²

In addition, the child victim/witness’s privacy can be ensured via the following means enshrined in Pakistani law:²⁰³

- Remove from any public document, release, or record any information that may help people locate/identify the child.
- Strictly ban any lawyer (defense and prosecution), court staff, police officers, support person, psychologist, etc., from mentioning or discussing the identity of the child, or releasing any information or document, etc., that may reveal the child’s identity.
- Issue an order for all materials (documents, photos, addresses), which may help in identifying the child, to be strictly confidential until the court allows otherwise.
- Take measures to hide the physical appearance of the child when he/she gives their testimony:
 - Use technology that changes the child’s voice and his/her image, if he/she is testifying through video linkage.
 - Hide the child from people’s view using a screen, shield, or a glass through which one can only see on one side.²⁰⁴

²⁰¹ Criminal Law (Amendment) (Offences Relating to Rape) Act (2016), S. 6; Pakistan Penal Code, 1860 (Act XLV of 1860), S. 376A.

²⁰² Criminal Law (Amendment) (Offences Relating to Rape) Act (2016), S. 13; Code of Criminal Procedure, 1898 (Act V of 1898), S. 352. See also PLJ 2013 SC 107 (holding that *“Trials for rape should be conducted in camera and after regular Court hours.”*).

²⁰³ Sindh Witness Protection Act, 2013 and Punjab Witness Protection Act, 2018.

²⁰⁴ PLJ 2013 SC 107 (holding that in rape case, *“During a trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.”*)

- Use another room to give the testimony and then present the testimony in the courtroom through video linkage, or put the accused and the child in two different rooms connected via video linkage.²⁰⁵
- Ensure that hearings/sessions in the court (hopefully a child court) are closed to the public and limited to individuals necessary for the proceedings (as is already the case under JJSA 2018, the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, and the Anti Rape (Investigation and Trial) Act, 2020).

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

- (1) *“Whoever prints or publishes the name or any matter which may make known the identity of the victim, against whom an offence under sections 354A, 376, 376A, 377 and 377B is alleged or found to have been committed, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.*
- (2) *“Nothing in sub-section (1), extends to any printing or publication if it is*
 - (a) *by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or*
 - (b) *by or under the order of Court; or*
 - (c) *by with the authorization in writing of the victim; or*
 - (d) *by or with the authorization in writing of natural or legal guardian of the victim, where the victim is dead or a minor or of unsound mind.”*

Explanation: Printing or publication of the judgment of any high court, the Federal Shariat Court, or the Supreme Court in law journals does not amount to an offence within the meaning of this section.

4.9.3 Arranging the Presentation of the Child Victim/Witness's Testimony in Court

“Age should not be a barrier to a child’s right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.”²⁰⁶

Pakistan’s laws also recognize the capacity of children to testify in court. According to Article 3 of the Qanoon e Shahadat Order, 1984, a child witness is a competent witness, provided that the court considers that he/she is not prevented from understanding the question put to him or from delivering rational answers to the questions put on him/her.²⁰⁷ Where the court has, by questioning the child concerned, fully satisfied itself that the child witness is capable of understanding the questions put to him/her and of giving rational answers to those questions, he/she shall not only be deemed a competent witness, but his/her evidence may also be

²⁰⁵ PLJ 2013 DC 107 (holding that “Evidence of rape victims should be recorded, and in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court.”)

²⁰⁶ ECOSOC Res. 2005/20, Annex ¶18, U.N. Doc. A/RES/2005/20 (22 July 2005).

²⁰⁷ Qanoon-e-Shahadat Order (1984), S. 3 (“All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years... [.]”).

considered as valid evidence in the eyes of the court.²⁰⁸ The Supreme Court has observed, however, that, *“In principle conviction can be based upon the testimony of an intelligent and understanding child witness yet the Courts have generally preferred to adopt the settled principle of prudence and the rule of care attached to the sole testimony of a child witness despite child's intelligent disposition.”*²⁰⁹ In other words, the testimony of a child should ideally be corroborated by other physical or testimonial evidence. The Anti Rape (Investigation and Trial) Act, 2020 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 questions to the victim.) (Section 14)

4.9.3.1 Establishing Competency

In criminal proceedings, when a child is expected to give their testimony, the competency of the child victim/witness to testify must be established. Competency requirements, however, should not serve as an obstacle to the admissibility of relevant evidence from children. A child of any age may have basic competency, i.e., the ability to perceive, remember, and communicate an event. Additional truth-lie competency refers to a child's understanding of the difference between the truth and a lie, as well as the importance of telling the truth. Asking a child to promise to tell the truth increases honesty.²¹⁰

The competency of a child witness can be established through questions that show the child is able to understand the questions put to him/her as a witness and is able to answer those questions and be understood.²¹¹

To establish basic competency, attorneys can ask questions about a benign event and show the child's ability to perceive, remember, and communicate. When legal proceedings require

²⁰⁸ It was held in PLJ 1998 Cr. C. (Karachi) 468 (DB) that, *“Witnesses of tender age if intelligent enough do not ordinarily speak lies and their evidence carries higher value than ordinary witnesses, reason being that they are generally considered to be innocent and oblivious of motives and evil considerations.”* The same views were expressed in other Supreme Court judgments about child witnesses, like Farman State vs. Hussain PLD 1995 Sc1 and Abdullah Shah vs. State 1968 SCMR 1968. In the case of Amjad Javed v. The State (2002 SCMR 1247), the court held that consistent credible, confidence inspiring and straight forward ring of truth and innocence statement of a child witness could safely become basis of conviction provided the same had been corroborated by other evidence, i.e., circumstantial, medical, recovery and reports of serologist, etc. Similarly, in the case of Muhammad Jamal vs. State (1997 SCMR 1595), confidence inspiring testimony of a child, supported by medical evidence and last seen evidence, was relied upon to maintain the conviction. Muhammad Abbas vs State, 2018 PcrLJ537 Lahore High Court, Lahore (*“Art 3 Child witness competence testimony of child witness was related to his capacity and competency to understand the questions and then address them rationally – Tender age solely was no ground to discredit the testimony of witness, if otherwise it was proved that he was mature enough to understand the consequences of his statement.”*).

²⁰⁹ PLJ 2011 SC 375

²¹⁰ Thomas Lyon, *Assessing the Competency of Child Witnesses: Best Practice Informed by Psychology and Law* (2011), available at https://www.researchgate.net/publication/229460714_Assessing_the_Competency_of_Child_Witnesses_Best_Practice_Informed_by_Psychology_and_Law.

²¹¹ A. Evans & T. Lyon, *Assessing Children's Competency to Take the Oath in Court: The Influence of Question Type on Children's Accuracy* (2012), 36 Law Human Behaviour, 195.

examination of a young child's truth–lie understanding, the best approach includes asking the child whether certain statements are the truth and getting a promise from the child that he/she will tell the truth.

During a competency determination, questions should be limited to whether the child victim or witness meets minimal requirements of competency. Questions should not relate to contested facts of the alleged abuse, but to uncontested facts that can be used to show the child's ability to recall events accurately and relate them. Questions should be chosen based on the child's age and developmental abilities. Other recommendations include avoiding philosophical questions such as, "What is the difference between right and wrong?" The questions should be sensitive to cultural and religious differences.

Examples of appropriate questions include:

- What is your name?
- How old are you?
- Do you go to school?
- What is the name of your school?
- What is the name of your teacher?
- Can you count to 20?
- Do you have any brothers or sisters?
- Do you have any grandparents?
- What street do you live on?
- If I said you were wearing [earrings, trousers, a hat, etc.] today, would that be a lie or the truth?
- Do you promise to tell the truth today?²¹²

4.9.3.2 Conditions for Testimony

Once the prosecution has decided that the child victim/witness needs to testify in court, and once they have prepared him/her, the prosecution should start making arrangements for the child's appearance in court, the presentation of evidence, as well as the post-trial assistance and care for child victims/witnesses, if and whenever needed, and in accordance with the applicable law. The victim may seek protection through the respective provincial child protection laws. A witness may get relief in Punjab under the Punjab Witness Protection Act, 2018; in Sindh under the Sindh Witness Protection Act, 2013; and in Balochistan, under the Balochistan Witness Protection Act, 2016.

Although it is a difficult moment for the child, in the context of Pakistan, he/she will usually have to testify at a minimum of one court hearing. The child's participation in hearings and trials should be planned ahead of time, and every effort should be made to ensure continuity in the relationships between children and the professionals, such as support persons, investigators, and prosecutors in contact with them.²¹³ Professionals should approach child victims/witnesses with

²¹² American Prosecutors Research Institute, *Investigation and Prosecution of Child Abuse*, (2nd ed., 1993).

²¹³ ECOSOC Res. 2005/20, Annex ¶30(b), U.N. Doc. A/RES/2005/20 (22 July 2005).

sensitivity. Child sensitive procedures can include modified court environments that take child witnesses into consideration, such as the child courts that Pakistan has established in Lahore and Peshawar; recesses during a child's testimony; hearings scheduled at times of day appropriate to the age and maturity of the child; an appropriate notification system to ensure the child goes to court only when necessary; and other appropriate measures to facilitate the child's testimony.²¹⁴

The conditions for the child victim/witness to testify should be child and gender sensitive as well as inclusive. Ideally, in the context of Pakistan, the court should be a specific child court, which is separated from other courts and child-friendly (decorated with child sensitive colors, equipped with child appropriate furniture and toys, preferably articulated around two separate entrances—one for the accused, one for the child) and with a waiting area that may have to be gender-segregated, depending on the physical structure and the cultural norms of the area.

Under Section 11 of the JJSA 2018, in cases involving children in conflict with the law, the juvenile court may, in the best interest of a child's decency or morality, direct any person to withdraw from the court for such period as the court may direct. Similarly, the JJSA 2018 provides that, if at any stage of proceedings, the court is satisfied that the attendance of the juvenile defendant is not essential for the purposes of the trial, the court may dispense with the attendance and proceed with the case in absence of the juvenile.²¹⁵ When allowable under other prevailing laws, and consistent with the rights of the accused, it is recommended that courts implement similar procedures with respect to child victims/witnesses. The JJSA 2018 further provides that, when a juvenile who has been brought before the juvenile court is found to be suffering from serious illness, whether physical or mental, and requires treatment, the court should send such child to a hospital or a medical institution where treatment should be given to the child at the expense of the State.²¹⁶ In the case of child victims/witnesses who may not come under the direct supervision of State authorities or the court, the court should inform them about the appropriate institution/places to receive the appropriate medical and psychological support.

4.9.3.3 Protective Measures

Where the safety of a child victim/witness may be at risk, appropriate measures should be taken to protect the child from such risk before, during, and after the justice process and to ensure that those risks are reported to appropriate authorities.²¹⁷

If the health and safety of the child, at any stage of the judicial process, is determined to be in danger, the court can issue specific protection procedures, according to the applicable laws.²¹⁸ These procedures may include:

²¹⁴ ECOSOC Res. 2005/20, Annex ¶30(d), U.N. Doc. A/RES/2005/20 (22 July 2005).

²¹⁵ Juvenile Justice System Act (2018), S. 11(4).

²¹⁶ Juvenile Justice System Act (2018), S. 11(5).

²¹⁷ ECOSOC Res. 2005/20, Annex ¶32, U.N. Doc. A/RES/2005/20 (22 July 2005).

²¹⁸ Punjab Destitute and Neglected Children's Act, 2004, KP Child Welfare and Protection Act, 2010, Sindh Children Act, 1955, and Sindh Child Protection Authority, 2011, Balochistan Child Protection Act, 2016 Sindh Witness Protection Act 2013, The Balochistan Witness Protection Act, 2016, The Witness Protection, Security and Benefit Act, 2017, The Punjab Protection of Venerable Persons Rules, 2015, Punjab Witness Protection Act, 2018.

- Having no direct contact between the child and the accused person at any point during the judicial process.
- Requesting the police or any other relevant law enforcement agency to protect the child and keep the location of the child confidential.
- Place the child in the custody of a family member, a foster family, or a child protection institution certified by the State.²¹⁹
- After arriving at the location of the trial, hide the whereabouts of the child and do not disclose those without permission from the child and the prosecution. In case of danger, there should preferably be a safe location where the child can stay for the duration of the trial. If this is not possible, it is paramount that the victim's safety and privacy are protected throughout the trial.²²⁰

Apart from the specific child protection laws, a child victim/witness is also protected through the special witness protection laws at both federal and provincial levels.²²¹

4.9.3.4 Support Person

In accordance with Article 3(1) of the UNCRC, which states that, *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*, it is recommended that a support person be provided for child victims/witnesses during the trial process to satisfy the best interests of the child. We recommend that the following be replicated in the Pakistani context:

- Throughout the trial, the child victim/witnesses should be with a qualified person assigned by the court, who the child can talk to and who can guide him/her through the judicial process to mitigate risk of secondary victimization and trauma. There are already support officers in the court staff who can be assigned to the child.

The support person and/or the child victim/witness should be able, at any time, to ask the court to take a break from proceedings or even postpone the hearing if the child needs to stop or cannot continue any longer. Section 11 of the Anti-Rape Act 2020 also suggests providing independent support advisers to accompany the victim during court proceedings in order to reduce the risk of duress, victimization of any nature, or any adversity inflicted, or likely to be inflicted, upon the victim.

4.9.4 Child Friendly and Conducive Environment in Courtroom

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime advise that courts adopt the following measures in cases involving child victims/witnesses: *“modified court environments that take child witnesses into consideration, recesses during a child’s*

²¹⁹ ICT Child Protection Act, 2018.

²²⁰ KP Child Protection and Welfare Act, and Juvenile Justice System Act 2018, S. 13.

²²¹ Sindh Witness Protection Act, 2013, The Balochistan Witness Protection Act 2016, The Witness Protection, Security and Benefit Act 2017, The Punjab Protection of Vulnerable Persons Rules 2015 or Punjab Witness Protection Act 2018.

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."²²² In 2009, the United Nations Office of Drugs and Crime (UNODC) promulgated a Model Law on Justice in Matters involving Children based on the UN Guidelines. The Model Law was developed by UNODC in cooperation with the United Nations Children's Fund (UNICEF) and the International Bureau for Children's Rights and was reviewed at a meeting of experts representing different legal traditions. It is intended to assist States in adapting their national legislation to the provisions contained in the Guidelines and in other relevant international instruments, and as a tool for drafting legal provisions concerning assistance to, and the protection of, child victims/witnesses of crime, particularly within the justice process.²²³

Pakistan has not yet enacted legislation based on the Model Law. However, certain provisions of the Model Law may nevertheless be instructive for judges, prosecutors, and investigators in Pakistan. For example, the Model Law contains the below provisions for child-sensitive waiting areas for child victims/witnesses and courtroom facilities, at least some of which have already been implemented in the Lahore and Peshawar child courts.

4.9.4.1 Waiting Area at Court Premises²²⁴

- The court should ensure that child victims/witnesses can wait in appropriate waiting areas equipped in a child-friendly manner, such as having toys and things for children to play with, colorful walls, etc.
- Waiting areas used by child victims/witnesses should not be visible to, or accessible to, persons accused of having committed a criminal offense.
- Where possible, the waiting areas used by a child should be separate from the waiting area for adult witnesses and the accused.
- The court may, if appropriate, order a child victim/witness to wait in a location away from the courtroom and invite the child to appear when required.
- The court should give priority to hearing the testimony of a child victim or witness in order to minimize their waiting time during the court appearance.

4.9.4.2 Courtroom Facilities

- The court should ensure that appropriate arrangements for child victims/witnesses are made in the courtroom, such as, but not limited to, providing elevated seats and assistance for children with disabilities.
- Equipment and materials for video and camera-assisted interviews/testimonies, if possible, should be arranged and workable before the child comes to the court. Materials, like screens, to protect the victim's identity and appearance from the media, public, and the accused should be set up before the trial begins.

²²² ECOSOC Res. 2005/20, Annex ¶30(d), U.N. Doc. A/RES/2005/20 (22 July 2005).

²²³ United Nations Office of Drugs and Crime, Justice in Matters involving Children: Model Law and Commentary Preface ¶3 (2009).

²²⁴ United Nations Office of Drugs and Crime, Justice in Matters involving Children: Model Law and Commentary art. 24 (2009).

- The courtroom layout should ensure, in so far as possible, that the child shall be able to sit close to his/her parents or guardian, support person, or lawyer during all proceedings.
- If permitted, the child can conduct their testimony and presentation of evidence from a different room while a video monitor allows the accused to see the victim. This way the victim is not in the same room as the accused.

4.9.5 Questioning and Cross-Examination of the Victim

All child victims/witnesses of sexual abuse who come to testify in court should be treated with respect as well as child and gender sensitivity and utmost care. Judges and prosecutors should be ready and willing to intervene if they feel that a child victim/witness of sexual abuse is being treated unfairly or harassed during their testimony.

The judge should start the hearing of the child's testimony by welcoming the child, taking care of introductions, asking general questions of the child, building trust, maintaining a balance between extracting information, respecting the rights of the accused,²²⁵ and maintaining the dignity and privacy of the child.²²⁶

The judge may also allow the child to sit next to him/her (at an appropriate distance, keeping local gender norms as well as the child's feelings in mind), in order to make the child feel comfortable.

The judge should invite the prosecutor to proceed and monitor the trial and ensure that there is a respectful, child and gender-sensitive, and tolerant atmosphere in the court. Child victims/witnesses should be interviewed and examined in court out of sight of the alleged perpetrator.²²⁷

Wherever feasible and appropriate, and upholding the accused's rights, cross-examination of the child victim/witness should not be conducted by the alleged offender him/herself.²²⁸ Rather, the lawyer for the accused may conduct the cross-examination, but this examination should be monitored closely by the court (the judge) to make sure that the questioning does not scare, intimidate, humiliate, or cause additional trauma to the child. Hence, it is important that the presiding judge ensures that:

- Only relevant questions are asked
- The same questions are not asked repeatedly
- Questions that are scandalous or indecent are not asked²²⁹
- Questions that appear to be intended to insult or annoy the victim/witness are not asked²³⁰

²²⁵ S.16, Juvenile Justice System Act.2018; S.343, Criminal Procedure Code 1898

²²⁶ S.5, Punjab Witness Protection Act 2018 and Sindh Witness Protection Act.2013.

²²⁷ See ECOSOC Res. 2005/20, Annex ¶31(b), U.N. Doc. A/RES/2005/20 (22 July 2005).

²²⁸ See, e.g., ECOSOC Res. 2005/20, Annex ¶31(b), U.N. Doc. A/RES/2005/20 (22 July 2005).

²²⁹ Qanoon-e-Shahadat Order (1984), S. 146.

²³⁰ Qanoon-e-Shahadat Order (1984), S. 148.

- No visually or verbally disguised threat is directed at the child (such as yelling at the child, making gestures at the child, or looking aggressively at the child)
- Especially for cases of sexual abuse, the judge should never allow anyone to a) infer that the child has consented to the activity or b) ask about his/her sexual history before or after the abuse.²³¹

Overall, for a cross-examination, the judge should:

- Allow victims to take breaks if they are distressed. The prosecutor should push for this to happen if the child is feeling overwhelmed.
- Limit the number of people the child meets during the trial process to the ones who are absolutely required to be present in the courtroom.
- Thank the child victim/witness for sharing evidence with the court.

The prosecution should:

- Allow the child to settle into the questioning before going directly into the traumatic event of narrating/recalling sexual abuse.
- After the child has testified, have a debriefing meeting with the child and a support person to, once again, thank the child and acknowledge his/her bravery, to help reduce the victim's anxiety and fear and calm him/her down.
- Explain that they may need the child to appear in court again to provide further evidence and clarify why.
- Explain to the child what the next step will be and why.
- If possible, arrange for a toy or reward to be given to the child.

4.9.6 Circumstantial and Corroborating Evidence

4.9.6.1 Medical and DNA Evidence

A medical witness/medical professional's testimony in court is extremely important to the court and the overall case, as it provides insight into the type and severity of the abuse that the victim experienced. A medical witness can also help establish the method in which the abuse was carried out, with what objects/weapons and, judging from the severity of the injuries and from scarring or bruising on the victim, whether the abuse was repeated. Through presentation of medical evidence by professionals, the accused can also be directly linked to the crime by the presence of his/her DNA on the victim's body, clothing, vehicle, residence, etc. Medical witnesses can also corroborate other prosecution evidence that the accused was in the same vicinity or with the victim at the time of abuse. If available, medical evidence should always be presented in cases of child abuse and CSA, and the court should facilitate the presentation of this evidence by setting up exhibits, preparing digital media (like a TV) for the display of pictures

²³¹ See, e.g., Penal Reform International, Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers 69, <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR1.pdf> (last visited 7 Sept. 2019).

and reports of the medical examiner. The prosecutor should keep in mind, however, that medical evidence can mostly be used as corroborating evidence only.²³²

The medical practitioner who conducts the postmortem or medico-legal examination should, if possible, testify at trial. However, medical evidence can also be admitted without the witness having to testify. Under Section 509 of the Cr.PC, the deposition of a civil surgeon or medical witness may be given in evidence in any inquiry, trial, or other judicial proceeding, even if the deponent is not called as a witness at trial, as long as the deposition was taken and attested to in the presence of a magistrate and the accused.²³³ The court may summon and question the witness on the contents of his/her deposition if deemed necessary.²³⁴

Similarly, a medical examiner's report may be admitted as evidence at trial even if the medical examiner does not testify. Medical evidence discovered during an investigation, be that a body, a wound, or the nature of injuries, should be documented in a report of the postmortem examination and/or the medico-legal examination. Usually the medico-legal officer who conducts the postmortem or medico-legal examination should appear in court to testify to the facts, but under Section 510 of the Cr.PC, a report from a chemical examiner, serologist, fingerprint expert, or firearms expert appointed by the Government, may be used as evidence in any inquiry, trial, or other proceeding, without calling the expert as a witness.²³⁵ As with depositions, *"the Court may, [if it considers necessary in the interest of justice], summon and examine the person by whom such report has been made."*²³⁶

4.9.6.2 Expert Witnesses

Providing evidence through expert witnesses and professionals is a very important method of giving evidence in trial proceedings. These witnesses are important because they have knowledge of the different facets of sexual assault and the impact sexual assault can have on victims. Expert testimony can also help the court better understand the facts of the case or provide support for the victim's behavior after the sexual abuse. The testimony of these witnesses can be key as it can provide crucial evidence to the court and the judge to prove both physical and psychological abuse.²³⁷

An expert witness may be able to provide psychological or behavioral testimony beyond the knowledge of the trier of fact. Examples may include testimony about child development, post-traumatic stress disorder, dynamics of abuse, or behavioral characteristics of abused children.²³⁸

²³² State vs. Muhammad Sharif 1995 SCMR 635. 647.

²³³ S. 509(1), Code of Criminal Procedure, 1898 (Act V or 1898).

²³⁴ S. 509(2), Code of Criminal Procedure, 1898 (Act V or 1898) ("*(2) Power to summon medical witness. The Court may, if it thinks fit, summon and examine such deponent as to the subject matter of his deposition*").

²³⁵ S. 510, Code of Criminal Procedure, 1898 (Act V or 1898) ("*Report of Chemical Examiner, Serologist etc. Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or any Serologist, fingerprint expert or firearm expert appointed by Government, 2 [or of the Chief Chemist of the Pakistan Security Printing Corporation, Limited.] upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code.*").

²³⁶ 510, Code of Criminal Procedure, 1898 (Act V or 1898).

²³⁷ Chapter 3 Opinions of Third Person when relevant of the Qanoon-e-Shadat Order 1984.

²³⁸ American Prosecutors Research Institute, *Investigation and Prosecution of Child Abuse*, (2nd ed., 1993), 374.

When a child is disabled, an expert may be able to explain the disability and the child's behaviors or reactions to the abuse. An expert may also be able to explain a child's behavior when the defense is using it to discredit his/her testimony.

The best qualified expert should be identified for the testimony. Some considerations in choosing an expert include practical experience, education, specialized training, professional licenses, teaching experience, knowledge of relevant literature, or the ability to communicate well in court.²³⁹

4.9.6.3 Other Witnesses

Besides expert and medical witnesses, who provide professional expertise and evidence to the court, there are also public witnesses. These are people who may have seen, heard, or noticed something related to the crime or the crime itself. The testimony of this kind of witness is as crucial as expert or medical witnesses, as it aids the prosecution and the court in establishing a timeline of events and whereabouts of the victim and accused which can be corroborated and confirmed by medical evidence. These witnesses can also give insight into the behavior and mindset of the accused and victim (Were they acting differently than usual? Were they late to work? Were they where they were supposed to be? Did they seem anxious or jittery?). Thus, the testimony of public witnesses to the crime is extremely vital in the development and understanding of any particular case.

Other witnesses can provide evidence that strengthens the prosecution case. For example, a teacher's testimony may be relevant to show the chain of disclosure (if the child confided in him/her) or to show changes in the child's behavior or grades that may result from the emotional trauma of the abuse. A supportive teacher may also be able to serve as a character witness if the child's reputation for truthfulness is attacked.

If a child protection worker is involved in the case, the worker may be able to testify to the child's disclosure or what the child told the worker. A child protection worker can also be helpful if the child has recanted because he/she could describe what was said before (prior consistent or inconsistent statements), what type of pressure was exerted on the child to recant, or whether the defendant admitted or corroborated aspects of the child victim's testimony in statements to the worker.²⁴⁰ Police officers can also provide important information, especially if they spoke with the child. They can describe the investigative process and any evidence that was collected.

Preparation for these additional prosecution experts can be the same as in the SOPs for witnesses, including adequate review of their notes and other preparation for in-court testimony.

²³⁹ Id., at 384.

²⁴⁰ Id., at 397.

4.9.6.4 Physical Evidence

“Real evidence” in the legal sense means material, physical matter, such as a body, wound, fingerprint, bloodstain, etc. For example, the recovery of the dead body provides the best evidence of the death of a victim, of his/her identity, and the means by which he/she was killed. It is a most crucial part of evidence, which needs to be collected from the crime scene or any other place.

“In all cases in which articles²⁴¹ are brought up in evidence, the custody of such articles, throughout the various stages of the inquiry must be clearly traced and established. Evidence must be recorded on this point, and the evidence should never leave it doubtful as to what person or persons have had charge of the articles at any stage of the proceedings. All such articles must be distinctively marked, and any reference to them in the record must be so clear as to leave no room for doubt as to the special articles referred to.”²⁴²

4.9.6.5 Photographs, Videos, and Digital Evidence

Under Section 164 of the Qanoon e Shahadat Order, evidence that has become available because of modern devices, etc., may be admitted as evidence at trial. In such cases, as the court may consider appropriate, the court may allow evidence that may have become available because of modern devices or techniques.

4.9.6.6 Corroboration

“Corroboration” includes evidence of any kind that may tend to support the evidence of any witness in any kind of case or matter. For example, medical evidence by itself does not establish the identity of the culprit, but it can be used as corroborative evidence.²⁴³

4.9.6.7 Defense and Rebuttal Evidence

The defendant may offer a defense in support of his or her claim of innocence. For example, the defendant may totally deny the allegations, or present an alibi claiming that he/she was at a place other than where the alleged offence took place, or one of the general exceptions established under Sections 76–106 of the PPC, or any special exception which the accused can produce. Though the burden of proof rests with the prosecution, the court must also consider evidence given by the defense to one of three results:

- The court accepts the innocence of the accused.
- The evidence creates doubt in the mind of the court which may also result in acquittal.

²⁴¹ This quote has been extracted from a chapter in the High Court Rules related to References to the Chemical Examiner, and particularly post-mortem examinations of bodies. As such, in this context “articles” should largely be understood to refer to medical evidence, and particularly bodily fluids and parts.

²⁴² Rules and Orders of the Lahore High Court, Volume 3, Chapter 18 *Medico-legal Work* S. 11, available at <https://www.lhc.gov.pk/system/files/volume3.pdf>.

²⁴³ Mehmood Ahmad vs. State 1995 SCMR 127, 133.

- The evidence strengthens the prosecution's case.

Common defenses in CSA cases include claims that no offense occurred, that the child is fantasizing or lying, or that the child is mentally ill. Each of these can be addressed and overcome. If the defendant claims the child is fantasizing, the prosecution should focus on the level of detail a child may have provided that would not be within the child's sexual knowledge. Sensory detail about sounds or smells can also help dispel that the child's account is just a fantasy.

If the defendant claims that the child is lying, show how that child is not likely to have the level of sophistication required to cause a result such as a prosecution (i.e., a young child would not likely know that a report would achieve a certain result). Furthermore, given the often unpleasant experience of going through the court process, the child's motive to lie is not matched by the intended outcome. Gather and argue all the facts supporting the most plausible explanation for the child's allegation: that he/she is telling the truth.²⁴⁴

Other common defenses include claims that the child is mentally ill. If there is a likelihood that the defendant will claim this defense, the prosecution should raise any psychological or emotional issues exhibited by the child in the case in chief, especially where any emotional problems result from the abuse suffered. Expert testimony can be used to explain any mental health issues the child may have been experiencing prior to the abuse, how prior mental illness may have made the child a target for the abuse, or how these issues may affect the child's ability to provide accurate testimony.

If the abuse is raised in the context of a custody case, determine to whom the child first disclosed the event or what benefit could be gained by the accusation, and have the non-offending parent testify so that it does not appear that the prosecution is hiding a potential motive.

The defense may also raise issues such as whether the child was brainwashed by the process through leading questions or suggestive interviews. This is where the conduct of the investigation is most important to show; that all proper protocols and SOPs were followed. Additional defenses include: The child misinterpreted an innocent interaction as sexual, or the child was abused, but by someone else. Each of these defenses can be addressed; the prosecution can use the evidence or testimony of the child to show that the abusive event was not innocent (for instance, the touching was sexual or for the defendant's gratification) or to prove through scientific evidence (DNA or the presence of a sexually transmitted infection) that the accused is the only plausible abuser.

In some situations and cases, the burden of proof of a particular fact can be shifted to the accused. The elaboration of this rule can be seen in the Qanoon e Shahadat Order, 1984
CHAPTER IX "OF THE BURDEN OF PROOF."

²⁴⁴ *Id.*, at 447.

4.9.6.8 Cross-Examination of the Defendant

Before cross-examining a defendant, it is essential to not only have a theory of the case in mind, but to also know every aspect of every statement, report, and piece of evidence. The theory of the case may not rely on testimony from the defendant, but the prosecutor should know exactly what would benefit the case and have all the questions prepared in advance.

The cross-examination should be no longer than what would benefit the case, keeping in mind the defendant's demeanor and level of responsiveness. A prosecutor can use cross-examination to corroborate or confirm details or portions of a child victim's statement, confront the defendant about any attempts to flee prosecution, raise previous denials or statements when the accusations were made, or reveal any threats or bribes the defendant made.

4.9.6.9 Hearsay and other Out-of-Court Statements

Hearsay is mostly not relevant in a court of law, and the court does not usually give weight to hearsay evidence, though certain exceptions may apply. These exceptions may include out-of-court statements offered for a purpose other than the truth of their content; a prompt complaint or outcry around the time of an event; prior consistent statements made by the complainant; a statement of identification of an assailant; or statements made during the course of a medical examination for diagnosis or treatment.

In principle, evidence from a witness as to what he/she heard at the time of an incident would be admissible under the principle of *res gestae*, even if the statement is hearsay.²⁴⁵ In a sodomy case, the Federal Shariat Court held that, "*Disclosure made by victim to prosecution witnesses regarding incident being a statement made under immediate influence of transaction is admissible as res gestae under Article 19 of Qanun-e-Shahadat Order 1984.*"²⁴⁶ In short, hearsay and out-of-court statements can be relevant if corroborated by the immediate facts of the case.

4.10 Post-Trial

4.10.1 Sentencing

While no sentence can take away the pain and loss suffered by the child victim of sexual abuse, sentencing is still very important for victims of sexual abuse. Sentencing gives a sense of justice and closure to the child victims through the official recognition that a gross violation of their rights has occurred, and that they are not to blame for it. This recognition helps to restore some dignity and personal growth back to the victim and, in some cases, can actually be the impetus for victims of sexual abuse to try and move on from the abuse and continue their lives. To champion the rights of victims, courts should seriously consider during sentencing the impact of the perpetrator's actions and conduct on the victims of sexual abuse. They should also keep in mind the impact of the sentence on the child victims.

²⁴⁵ 1988 CLC 525.

²⁴⁶ PLJ 2001 FSC 46.

Furthermore, whenever possible, punishments, orders, and sentences that push the rehabilitation and re-integration of the child victim should be promoted. One example of orders or sentences that promote the rehabilitation of the victim are sentencing circles where, after the sentence is delivered, the offender is presented to a group of respected community members, the victim and his/her family, the offender's peers, and the offender's family. This is done both to make the offender realize and see the harm he/she has caused to the community and to the victim, and to allow the community to understand and accept the damage that has been done to the victim. For the victim, it gives him/her validation and acknowledgment by the community of the harm done to him/her, and a sense of justice for the victim by the community and the offender having to face the damage that has been done by them. Only through aiding the victim in overcoming their trauma and abuse can the justice system be truly effective. Although this is not currently a widespread practice in Pakistani courts, certain courts, particularly the newly established child courts, have begun to incorporate the communities of the victim and offender (which may include their friends, parents, associates, elders, etc.) into the sentencing process. More work, however, is needed for this technique to become a standard practice.

4.10.2 Keeping a Victim Informed of the Progress of their Case

The prosecution and court's role and duties to the child victims/witnesses does not end at the conclusion of the trial or the imposition of a sentence. Many victims are interested in the results of the cases in which they were involved, and the result is likely to affect their emotional state. Particularly in cases of trial decisions that go against the victim, or even in the case of harsh sentencing, the outcome could severely impact the victim's mental well-being and overall health. In an effort to minimize this negative impact, the prosecution team should:

- Prepare the child for the chance that the judge does not accept some or most of his/her testimony, and emphasize that this is not the child's fault but rather due to a lack of evidence and strength of the overall case.
- Visit the victims/witnesses to explain the outcome of the case and have a social worker or counselor with them to assist the child if necessary.
- Present all available options to the victim/witnesses to challenge the outcome of the case and steps they can take for further legal action against the perpetrator, particularly the appeal process for cases, as most people do not understand that a decision is not final after the verdict of one court. The case can still be challenged through an appeal and moved to a higher court (see Appeals Section).
- Reinforce the idea that, if the result is not what the child expected, it is not his/her fault.

Even when the decision is favorable for the victim, they might think that the sentence is either too lenient for the perpetrator or too harsh (especially if the perpetrator is a close family member or guardian to whom the child is emotionally attached) and believe that it is the victim's fault that the sentence is too lenient or too harsh. The prosecutor needs to explain that the sentencing decision has nothing to do with the victim, but rather the permissible evidence available in the case, and that there are avenues to challenge even a favorable decision through the legal process.

4.10.3 Appeal

In most cases, a person convicted of a crime at trial has a right to appeal. Acquittals may also be appealed under certain circumstances. The public prosecutor may appeal an order of acquittal when directed by the provincial government.²⁴⁷ A complainant may also appeal an order of acquittal when granted special leave to do so by the high court, and other persons aggrieved by the order of acquittal may file an appeal against such order, provided the appeal is filed within 30 days.²⁴⁸

An appeal against an order of conviction or acquittal in a case of assault or use of criminal force to a woman and stripping her of her clothes; rape; disclosure of the identity of a rape victim; unnatural offence; or sexual abuse shall be decided within 6 months.²⁴⁹ Any person convicted by a juvenile court may file an appeal in accordance with the terms of the Cr.PC. If the offender is a juvenile, his/her parents or guardians may also proffer an appeal on behalf of the juvenile. Finally, the Government or any aggrieved person may, in accordance with Section 417 of the Cr.PC, file an appeal against an order of acquittal within 30 days of the acquittal.

4.10.4 Closure

Closure is a critical part for the child victim/witness's healing process and for his/her rehabilitation and reintegration. The child should be thanked by the prosecutor/support person for his/her contribution to the justice process. If required, the child be given access to adequate support services. He/she should also be informed of the outcome of the trial, and if the outcome is not what the child was expecting, he/she should be informed about what led to the decision and reassured that people know that the child did his/her best.

4.10.5 Reparation

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime advise that, *“Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.”*²⁵⁰

Reparation is key to the child victim/witness feeling that he/she has obtained justice and that his/her pain has been recognized and redressed by the State institutions that are supposed to protect him/her and uphold the rule of law. It is a critical element for the child build and, later on, lead a healthy life. It can consist of financial reparation for material loss or damages that have occurred due to the crime, medical or psychological services, or getting recognition for the suffering that he/she has endured.²⁵¹

²⁴⁷ Code of Criminal Procedure, 1898 (Act V of 1898), S. 417(1).

²⁴⁸ Code of Criminal Procedure, 1898 (Act V of 1898), S. 417(2, 2-A).

²⁴⁹ Criminal Law (Amendment) (Offences Relating to Rape) Act (2016), S. 14; Code of Criminal Procedure, 1898 (Act V of 1898), S. 417(5).

²⁵⁰ ECOSOC Res. 2005/20, Annex ¶35, U.N. Doc. A/RES/2005/20 (22 July 2005).

²⁵¹ Penal Reform International, *Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers* (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf>.

Currently, there is no formal procedure for reparations in Pakistan. The Ministry of Human Rights (MOHR) does have a Human Rights Relief and Revolving Fund for victims of human rights violations,²⁵² and victims can apply to this fund through the MOHR's regional directorates. Certain NGOs, like Sahil and SPARC, also offer child victims legal assistance and legal aid to fight for reparations in their cases. These NGOs also lobby with legislators and the State to introduce laws regarding topics like reparations and other issues important to child rights and child protection. However, no bill or section of a bill establishes clear guidelines for reparations at this time.

Restitution processes for child victims/witnesses may also occur in Pakistan. These are usually directed towards the child victim/witness via his/her parent or guardian and may be monitored by the support person who may report to the court afterwards. Article 544A of the Cr.PC deals with one form of restitution, namely compensation (mainly financial) to the victims from the perpetrators of the crime. This is the main article that deals with any type of restitution, and it is usually given as part of the sentencing procedure.²⁵³

Lastly, restorative justice processes can be used to address the harm done to the child victim/witness when deemed appropriate and in the child's best interests.²⁵⁴ This may, for example, be the case when a family member is involved in the abuse and may avoid further trauma for the child. Restorative justice is a form of criminal justice that involves rehabilitation of the victims and offenders through dialogue and reconciliation, either with one another or with the community at large. In CSA cases, direct dialogue between the child victim and offender may prove to be too difficult, and counter-intuitive, for the victim. This does not mean restorative justice processes have no value in CSA cases, because the victim can still reconcile his/her own trauma and feelings towards the abuse, even if not directly with the offender. One way this can be done is through sharing/support circles and groups where victims of sexual abuse can communicate with other survivors and share their emotions and feelings about the abuse. Another method can be to provide/extend counselling and support services to the victim's family, particularly if the offender is a family member. This is because abuse, especially sexual abuse, does not only affect the victim; it also has a profound impact on the victim's loved ones who may be experiencing guilt, anger, and a sense of helplessness regarding the abuse. Thus, group counselling and psychological support for both the victim and his/her family are extremely important in the rehabilitation process for the victim. Sahil, through their Jeet Healing Center, offers counselling services for both the victim and the family.²⁵⁵ Providing support to the

²⁵² Human Rights Relief and Revolving Fund (http://www.mohr.gov.pk/index.php/home/pps_page/6).

²⁵³ Code of Criminal Procedure, 1898 (Act V of 1898), S. 544-A ("*Compensation of the heirs to the person killed, etc.: (1) Whenever a person is convicted of an offence in the commission whereof the death of, or hurt, injury or mental anguish or psychological damage, to any person is caused, or damage to or loss or destruction of any property is caused, the Court shall, when convicting such person, unless for reasons to be recorded in writing, it otherwise directs, order the person, convicted to pay to the heirs of the person whose death has been caused, or to the person hurt or injured, or to the person to whom mental anguish or psychological damage has been caused, or to the owner of the property damaged, lost or destroyed, as the case may be, such compensation as the Court may determine, having regard to the circumstances of the case.*").

²⁵⁴ Penal Reform International, *Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers* (2013), available at <https://cdn.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR1.pdf>.

²⁵⁵ Sahil's counselling services (<http://sahil.org/free-counseling-services/>).

family/loved ones of the victim significantly helps rehabilitation of the victim as it can enable greater communication, openness, and understanding about the victim's trauma and abuse.

Activity 18

Mock sessions

Divide participants into six groups.

The first three groups will be given the duty to run a mock trial in 30 minutes. Each of those three groups will be given a case scenario to mock.

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

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

4.11 Conclusion

The Standard Operating Procedures on Child Sexual Abuse and Child Abuse are a tool to assist judges, prosecutors, police officers/law enforcement officials, and professionals to conduct effective investigations and judicial proceedings in cases involving CSA and child abuse. These procedures put the best interests of the child in front of everything else and strive to make the investigation and judicial ordeal less stressful and trauma-inducing for the children involved in the process. The objective/goal of these SOPs is that they will be accepted, understood, and used by police and justice officials across Pakistan to improve the methodology and procedures through which they conduct investigations and judicial proceedings in cases involving CSA and child abuse and that, in conjunction with the entire training curriculum, can make a tangible difference in the status of CSA and child abuse within the Pakistani context.

5.0 Handouts

5.1 Definition of “Child” – Attachment 1

	Relevant Law	Who is a child/what is the age for adjudication under this law?	Relevant Section
1	Constitution of Pakistan, 1973: Prohibition of Child Labor		
2	Constitution of Pakistan, 1973: Right to Free and Compulsory Education		
3	The Prevention of Trafficking in Persons Act, 2018		
4	The Juvenile Justice System Act, 2018		
5	The Offence of Zina (Enforcement of 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 Balochistan Child Protection Act, 2016		
11	Pakistan Penal Code, 1860		
12	The Sindh Child Protection Authority Act, 2011		
13	The Punjab Destitute and Neglected Children Act, 2004		
14	The ICT Child Protection Act, 2018		
15	The Punjab Restriction on Employment of Children Act, 2016		

5.2 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
7.	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
8.	6.189	Djibouti	Continue efforts to combat trafficking in human beings, particularly the exploitation of children, by reinforcing the fight against traffickers	Accepted
9.	6.190	Maldives	Continue its efforts to strengthen the institutional mechanisms to combat and prevent trafficking of persons, especially that of children	Accepted
10.	6.191	(Turkey)	Continue to raise the level of protection of human rights of vulnerable groups, with particular reference to eliminate child labor	Accepted
11.	6.192	Russian Federation	Undertake the necessary steps for the effective implementation of the National Framework Programme to combat child and bonded labor	Accepted
12.	6.194	Republic of Korea	Strengthen monitoring its domestic labor condition to eliminate practice of bonded labor and unlawful child labor	Accepted

13.	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
14.	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
15.	6.215	Islamic Republic of Iran	Prioritize policies and programs on nutrition, vaccination, and health workers to reduce maternal, neonatal, and child mortality and make sufficient budgetary allocations	Accepted
16.	6.216	Kyrgyzstan	Take additional tangible steps to protect children, in particular to address the critical nutritional and healthcare needs	Accepted
17.	6.223	Georgia	Step up efforts to ensure provision of free and quality primary and secondary education	Accepted
18.	6.224	Kazakhstan	Continue current efforts to ensure that all children, without discrimination, enjoy the right to education	Accepted
19.	6.225	Kyrgyzstan	Intensify efforts to ensure that all children enjoy the right to education and protection from discrimination and violence	Accepted
20.	6.226	Norway	Implement federal and provincial laws on the right to education to ensure universal access	Accepted
21.	6.227	Bahrain	Strengthen efforts to ensure the access of children to their compulsory education	Accepted
22.	6.228	Bulgaria	Step up efforts to ensure access of all children to quality education, regardless of social status, gender, and ethnicity	Accepted
23.	6.229	Oman	Undertake more efforts to ensure equal access to elementary and secondary education for both genders	Accepted
24.	6.230	Syrian Arab Republic	Increase government spending on education to provide compulsory public and private education	Accepted
25.	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
26.	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
27.	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

28.	6.234	Spain	Ensure better and greater access for women and girls to education with the aim of empowering them	Accepted
29.	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
30.	6.237	South Sudan	Redouble its efforts to improve condition of school facilities in the rural areas	Accepted
31.	6.248	Thailand	Effectively enforce the existing and new laws to promote and protect the rights of women and children, as well as religious	Accepted
32.	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
33.	6.251	Maldives	Continue to implement additional measures to prevent discrimination against women and girls	Accepted
34.	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
35.	6.255	Bangladesh	Expedite the finalization of the National Policy on Ending Violence Against Women and Girls ()	Accepted
36.	6.256	South Africa	Speed up the finalization of its National Policy on Ending Violence against Women and Girls	Accepted
37.	6.257	Djibouti	Intensify its efforts to combat violence and discrimination against women and girls by ensuring that perpetrators are prosecuted and punished	Accepted
38.	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
39.	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
40.	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
41.	6.273	Bahrain	Work on raising the legal marriage age to 18 years	Accepted
42.	6.274	Iceland	Make 18 years the minimum age of marriage for women and men	Noted

43.	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
44.	6.276	Denmark	Amend the Child Marriage Restraint Act to include an equal minimum age of marriage of 18 years for all individuals	Noted
45.	6.277	Namibia	Take concrete steps aimed at increasing the minimum marriage age for girls from 16 to 18	Noted
46.	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
47.	6.279	Brunei Darussalam	Continue to adopt measures which would further promote and protect the rights of the child	Accepted
48.	6.280	Mongolia	Develop a Comprehensive Child Protection Policy with a view to fully reflect the realities of children in the national plans and programs	Accepted
49.	6.281	Cuba	Consider the implementation of the necessary safeguards for the protection of children against corporal punishment	Accepted
50.	6.282	Algeria	Take necessary measures to include, in the domestic judiciary systems, international standards with respect to juvenile justice	Accepted
51.	6.283	Germany	Take measures to considerably reduce the number of stunted children and out-of-school children, and end child labor by developing indicators and a timeline for the implementation of the recent legislation against child labor	Noted
52.	6.284	China	Consider the implementation of programs and policies for the empowerment of young people	Accepted

Instructions for Quiz Game for JJSA 2018

- Organize participants into three teams. After a brief presentation on the topic of child sexual abuse (CSA), including the definition, distribute the handout/material.
- Give the groups 15 minutes to read and understand the information provided in the handout. The facilitator will go to each group to check if they have any difficulty in understanding the content.
- The facilitator will then 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 the 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. The same group will then answer its own question as well. If this group answers wrong or fails to answer its own or bonus question, it will be given to the next team following the same principle.
 - Each question will be asked once and repeated once after asking the first time to allow participants to understand the question. After that, the question will not be repeated, even if the question is carried forward as a bonus question.
- For each correct answer, write “1” point for that team on a flip chart to keep score.
- Continue until the end of the questions (five to six rounds).
- The 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.

Questions: The Juvenile Justice Systems Act (JJSA), 2018

1. What does “Best interests of the child” mean?

The “**best interest of the child**” refers to the basis of any decision taken regarding the fulfilment of the child’s basic rights and needs, his identity, social well-being, physical, emotional, and psychological development.

2. The JJSA 2018 was approved/promulgated in which month of 2018?

The JJSA 2018 was approved in May 2018.

3. How is the term “diversion” defined in JJSA 2018?

JJSA 2018 defines “**diversion**” as an alternative process of determining the responsibility and treatment of a juvenile on the basis of his/her social, cultural, economic, psychological, and educational background without resorting to formal judicial proceedings.

4. What does the Juvenile Rehabilitation Center refer to? Please give examples of such centers.

A “**Juvenile Rehabilitation Center**” refers to a place where a juvenile may be detained and given educational, vocational, or technical training for his mental, moral, and psychological development. Such centers may be certified institutions, juvenile training institutions, borstal institutions, vocational centers, *Dar-ul-Aman*, and women’s crisis centers established by the government or by voluntary organizations certified by the government.

5. How does this law define “minor”, “major” and “heinous” offenses?

A “**minor offense**,” for the purposes of this Act, means an offense for which the maximum punishment under any law for the time being in force is imprisonment of up to 3 years, with or without fine.

A “**major offense**,” for the purposes of this Act, means an offense for which punishment under any law for the time being in force is more than 3 years and up to 7 years of imprisonment, with or without fine.

A “**heinous offense**,” for the purposes of this Act, means an offense 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 7 years, with or without fine.

6. Who has the primary responsibility for the age determination of a juvenile?

The ranking officer-in-charge or the investigating officer has the primary responsibility to make an enquiry to determine the age of any such alleged offender.

7. How is “Observation home” defined?

“**Observation home**” refers to a place where a juvenile is temporarily detained after being apprehended by the police, as well as after obtaining remand from the juvenile court or otherwise for conducting an inquiry or investigation for the purposes of this Act.

8. How and who will interrogate a juvenile offender?

A juvenile shall be interrogated by a police officer not below the rank of sub inspector under the supervision of a superintendent of police. The investigating officer shall be assisted by a probation officer or by a social welfare officer.

9. What is the formation of the Juvenile Justice Committee and who should head the Committee?

The Committee consists of four members, including a serving judicial magistrate with powers under Section 30 (Head of Committee), a district public prosecutor, a member of the local bar council having at least 7 years of experience, and a serving probation officer or social welfare officer.

10. How can diversion be exercised with regard to heinous offenses?

No case involving heinous offenses is to be referred for diversion.

11. Is a joint trial permissible under this law? If yes, at what point in time?

A juvenile shall not be charged with and tried for an offense together with an adult person. However, if it is in the interest 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 who may be allowed to join the court proceedings through an audio-visual technological link.

12. What is the bail procedure for the alleged offenders of minor, major, and heinous offenses?

Minor offense: A juvenile is entitled to bail in minor offenses, with or without surety bonds, by the juvenile court as a matter of right.

Major offense: Bail shall also be granted in major offenses, with or without surety bonds, by the juvenile court.

Heinous offense: A juvenile of less than 16 years of age is entitled to bail in heinous offenses, but bail may not be granted at the discretion of the court if the juvenile is more than 16 years of

age. Juveniles accused in heinous offences will also be entitled to bail if the trial is not concluded within 6 months.²⁵⁶

13. Which cases can be referred to the Juvenile Justice Committee and at what stage? Which cases will be considered compoundable?

The complaint against a juvenile may be referred to the Juvenile Justice Committee at any stage of the trial or investigation for disposal through diversion. All offences, minor or major, shall be compoundable for the purpose of diversion. For major offences, diversion can only be exercised if the age of the juvenile is not more than 16 years.

14. How is a female juvenile offender dealt under this law?

In no circumstances shall female juveniles be apprehended or investigated by a male police officer, nor released on probation under the supervision of a male officer. A female juvenile shall only be kept in a Juvenile Rehabilitation Center established or certified exclusively for female inmates.

15. On what bases shall age be determined?

Age shall be determined on the bases of the accused person's birth certificate, educational certificates, or any other pertinent documents. In absence of such documents, the age of the accused person may be determined on the basis of a medical examination report by a medical officer.

16. Who is a "suitable person" under this law?

"Suitable person" means any person, trust, association, or society duly recognized by the law whose object is the welfare and protection of children.

17. Does the probation officer prepare his social investigation report (SIR) during the trial or the investigation?

Either a probation officer or a social welfare officer notified by the Government during the course of the investigation will assist and prepare the SIR to be annexed with the report prepared under Section 173 of the Code of Criminal Procedure.

18. What options may the Juvenile Justice Committee adopt for the disposal of the case with the consent of the aggrieved party (any five)?

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,*

²⁵⁶ JJSA 2018, Section 6(1) "Where a juvenile of more than sixteen years of age is arrested or detained for a heinous offence, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence."

written or oral apology, participation in community service, payments of fine and costs of the proceedings, placement in juvenile rehabilitation centre; written and oral reprimand.

Extra Round/Optional Question

19. How does this law bar the disclosure of the identity? What are the exceptions and what is the punishment in case of violation?

The JJSA 2018 exclusively bars the revelation of the identity of an accused juvenile to the public without the written authorization of the juvenile or their next-of-kin. The station house officer, investigating officer, or juvenile court can also grant permission in this regard. Violations may be punishable with imprisonment of up to 3 years.

20. Can a juvenile convict under this law suffer from disqualification at any time?

No, he/she cannot suffer from disqualification.

21. How does this law define a “suitable person”?

“**Suitable person**” means any person, trust, association, or society duly recognized by the law whose object is the welfare and protection of children.

