

Child Rights in Pakistan: A Critical Analysis of International Obligations and Domestic Implementation

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Abstract

This study provides a critical analysis of the status of child rights in Pakistan, focusing on the country's obligations under international conventions—particularly the United Nations Convention on the Rights of the Child (CRC)—and the degree to which these obligations have been implemented within the domestic legal system. This research analyses the statistics indicating the situation of child rights and measures adopted to protect child rights with special reference to international obligations of Pakistan. The research also discusses the jurisprudence developed by Pakistani Courts regarding relevant domestic and international laws and concludes with suitable recommendations for robust legal policy to protect child rights in consonance with international obligations of Pakistan. The study reveals that although numerous legislative reforms have been introduced over the years, a consistent gap persists between legal promises and their enforcement. The research explores how Pakistani courts began to innovate a domestic jurisprudence that internalises international child rights standards. By systematically examining landmark judicial decisions, this study demonstrates that the judiciary has emerged as an instrumental actor in bridging normative international commitments with practical domestic enforcement, often compensating for legislative and administrative shortcomings. This judicial jurisprudence represents an emergent trend in Pakistan that redefines the role of courts in safeguarding vulnerable populations. The paper concludes by offering a set of context-specific legal and policy recommendations aimed at strengthening child rights protections in line with international best practices and advancing the harmonisation of Pakistan's legal regime with its global commitments.

Keywords: child, justice, abuse, human rights, protection.

Introduction Pakistan is far behind when it comes to protection of human rights in general and in particular protection of child rights. The Convention on the Rights of the Child, 1989 (CRC), being the basic document that contains fundamental principles and standards on child rights, has also affected the domestic legal system of several countries with regard to child rights. Courts at domestic and regional levels have taken guidance, made reliance and repeatedly cited CRC in their decisions.¹ CRC is not the first document consulted and adopted for the protection of child rights, rather it remained part and parcel of various attempts during different national, regional and international legislations adopted at different times. CRC was the outcome of the first declaration adopted on child rights by the League of Nations in 1924, also called the Declaration on the Rights of the Child, which is commonly known as the Geneva Declaration.

¹ Ton Liefwaard · Jaap E. Doek, ed., *Litigating the Rights of the Child The UN Convention on the Rights of the Child in Domestic and International Jurisprudence* (New York London: Springer, 2015), 2.

However, various state parties did not consider it comprehensive enough to encompass all child rights in this document and advocated for the adoption of a more comprehensive and encompassing international instrument on child rights, which was finally materialised in 1989, by adopting CRC.² The principles adopted through CRC are still applicable, however, these principles were adopted by different countries at different times. Pakistan ratified CRC on November 12, 1990, which gave broader guidelines for the protection of the rights of children. According to CRC, every person below the age of 18 years is considered a child. According to this definition, 47% of the total population of Pakistan consists of children.³ Therefore, Pakistan needs major reforms with regard to child rights. On the contrary, according to various reports prepared by national and international institutions and organisations, the situation of child rights in Pakistan is not satisfactory. Pakistan is facing various challenges related to child rights and child protection, including cases of child abuse, child labour, forced child marriages, child illiteracy, malnutrition and child delinquency. All these challenges are faced due to a lack of proper attention by the authorities on these issues. Although various legal reforms have been introduced with the passage of time, a lot more needs to be done for the protection of child rights in compliance with the international obligations made by Pakistan. This paper attempts to focus only on the main issues while discussing the domestic legal framework to propose suitable measures for better protection of child rights in Pakistan in compliance with international obligations and best practices.

Child Labour

UNICEF reported that “more than 12.5 million children, or nearly 16% of the child population, are known to be involved in child labour in Pakistan, with 13% to 14% of these children being aged 5 to 17” It is indeed an alarming figure. Child labour has many faces in Pakistan. It is estimated that child labourers exceed 10 million in Pakistan. Those children have been employed in different areas, including; slum restaurants, workshops, industrial factories and some are systemically employed as professional beggars.⁴

As reported Human Rights Watch in 2024, many attempts have been made to prohibit child domestic workers, however these efforts remained futile. Several cases of domestic workers torture were reported in the year 2023. For instance, an 11-year old child domestic worker namely, Qabool was beaten to death by his employer in Karachi.⁵

According to UNICEF, “about three million children under the age of 14 and 18 percent of children between the ages of 10 and 15 are working. Pakistan's Federal Bureau of Statistics places the approximate figure of child labourers at 3.5 million. Trafficking in children is another extreme form of human abuse. The Lawyers for Human Rights and Legal Aid estimate that at least 360 children were smuggled to Arab countries in 2003 for use as camel jockeys”.⁶ According to some recent studies by UNICEF, 11% of children aged 5-17 are engaged in child labour.⁷

Pakistan adopted Punjab Prohibition of Child Labour at Brick Kilns Act, 2016, Punjab Restriction of Employment of Children Act, 2016 and Factories Act, 1934. Pakistani courts

² Olga Cvejic Jancic, ed., *the Rights of the Child in a Changing World 25 Years after The UN Convention on the Rights of the Child* (New York London: Springer, 2016), 3.

³ “Child Rights/Activities of National Commissioner for Children”, available at <https://www.mohtasib.gov.pk/SiteImage/Downloads/childrights.pdf>, last accessed 07-12-2024.

⁴ UNICEF, “Baseline Study on Knowledge, Attitude and Practices Related to Child Protection in Pakistan” available at <https://www.unicef.org/pakistan/media/5271/file/Baseline%20Study%20on%20the%20Knowledge,%20Attitude,%20Beliefs,%20Social%20Norms%20&%20Practices%20Related%20to%20Child%20Protection%20in%20Pakistan.pdf>, last accessed on 21.08.2024.

⁵ Human Rights Watch, *World Report 2024* (New York: Human Rights Watch, 2024), 484.

⁶ Munir Moosa Sadruddin, “Study on the Important Issues of Child Rights in Pakistan” *The Dialogue* Volume VI (1).

⁷ Justice Project Pakistan, “Child Rights: Pakistan’s Compliance with the United Nations Convention on the Rights of the Child (UNCRC)” Policy Brief, 2023.

have repeatedly reminded the functionaries and authorities of their obligations towards implementation of these obligations. For instance, it was held in the case of *Muhammad Suleman v Station House Officer* that the authorities shall faithfully discharge their duties and perform their functions for implementation of relevant laws in letter and spirit for eradication of forced, bonded and child labour from all sectors of the economy including agriculture, brick kilns, mining, tanneries, carpet weaving, glass-bangle making, construction and fisheries.⁸ The Federal Shariat Court of Pakistan also held in the case of *Asad Khan v the State* that no child while in a Borstal institution or in custody could be compelled for labour and cannot be given any corporal punishment as the same is against the legal principles.⁹

Child Marriage

Child marriage, while affecting both boys and girls, is significantly higher among girls. The 2017-2018 Demographic Health Survey found that 29% of women were married before 18, in comparison with 5% of men. Similarly, women are significantly more likely to be married at the age of 20 as compared to men (47% compared to 14%), with 18 % of women age 20-24 years being married before reaching the age of 18.¹⁰ According to a recent study revealed by UNICEF, 18 % of women aged 20-24 were married or were in union before the age of 18. Whereas, only 42% of children under the age of 5 are registered at birth.¹¹

Although Pakistan's rates of child marriage have decreased significantly over the past three decades, the practice continues to be a significant issue across the country. In a recent judgment passed by Islamabad High Court, Islamabad, in the case of *Mumtaz Bibi v Qasim*, it has been held by the Court that a child cannot contract marriage despite his or her guardian's consent for such marriage. The Court has also provided the definition of child declaring that any person under the age of 18 years shall be treated as a child and his/her consent or consent of his/her guardian or caregiver would be immaterial and any contract executed on behalf of a child including a marriage contract would be null and void. The Court went a step further by holding that any act of sexual character performed with a child would be an offence even though the same was performed under the disguise and cloak of marriage as the contract of marriage by a child under the 18 years would be a void contract and the perpetrators behind any such contract and sexual act performed by the child in consequence would be liable under the relevant law and for the same purpose provisions of section 375 and 377-A PPC have been introduced which are in compliance of Article 9 of the constitution of Pakistan and Article 19 and 34 of Convention on the Rights of the Child (CRC).¹² Therefore, it is apparent that attempts have been made to bring the domestic law of Pakistan on child marriage in conformity with the principles set forth in the CRC.

Child Education

Child education in Pakistan is in a dismal state. Inadequacies of the education system in terms of weak infrastructure, poor quality teaching, lack of qualified teachers, teacher absenteeism, corporal punishment, emotional and verbal abuse, strict conditions and lack of learning materials push children out of school.

According to Human Rights Watch World Report, over 6 million primary-school-age children and 13 million secondary-school-age children are not attending school in Pakistan and most of them are girls. According to the study conducted by Human Rights Watch, girls miss school

⁸ *Muhammad Suleman v Station House Officer*, 2020 PLD 534 Lahore.

⁹ *Asad Khan v the State*, 2004 PCrLJ 426 Federal Shariat Court.

¹⁰ UNICEF, "Baseline Study on Knowledge".

¹¹ Justice Project Pakistan, "Child Rights: Pakistan's Compliance with the United Nations Convention on the Rights of the Child (UNCRC)".

¹² 2022 PLD 228 Islamabad.

for the reasons including lack of schools, particularly in remote areas, unaffordable cost of study by destitute parents, child marriage, child labour and gender discrimination.¹³

World Bank's data of 2019 indicated literacy rate of Pakistan as 73% for the age-group 15 and above with 46% of females and 69% of males.¹⁴ poverty has severally affected the education sector, as about 23 million children in Pakistan have never been to school.¹⁵ A report published by Pakistan Institute of Development Economics (PIDE), indicates that around 22.8 million children between 5 to 16 years of age are not attending school, representing 44% of the total population in this age group.¹⁶

An interesting legislation on the right of education of the children is the Punjab Free and Compulsory Education Act, 2014 which prescribes certain obligations on the schools to provide free education to 'disadvantaged children'. However, rules of the said Act have not been framed so far. Based on the same, a case was filed before Lahore High Court, Lahore by Beaconhouse School System against Commissioner Sahiwal Division, where the petitioner challenged the orders passed by the respondents whereby the request of the petitioner to issue school registration certificate was turned down as a penal action for failure of the petitioner to provide free education to disadvantaged children. The contention of the petitioner before the Court was that no rules for implementation of the Act supra were framed and in the absence of any such rules, provisions of the Act could not be implemented for the reason that the criteria and modus operandi for implementation of the provisions contained in the Act have not been clarified. The Court agreed with the petitioner that in the absence of any such rules, the legislation could not be implemented effectively as the criteria for the determination of disadvantaged children or payment of vouchers and the manner of maintenance of records of children falling within the category of 'disadvantaged children' have yet not been prescribed.¹⁷ Therefore, robust strategies must be adopted to ensure effective implementation of the legislations made for the protection of the rights of children. Firstly, the legislation supra mandates effective implementation by making the relevant rules, regulations and guidelines. Secondly, other provinces and the federal capital should also opt similar legislations in compliance with international obligations of Pakistan.

Corporal Punishment and Child Abuse

Child abuse, particularly sexual abuse is a major problem in Pakistan. Many alarming incidents have been reported like Zainab case. According to Human Rights Watch, the situation of child sexual abuse is very dismal and child sexual abuse is very common. A child rights organisation namely, Sahil reported an average of 12 daily cases of child sexual abuse across Pakistan in the first six months of 2023.¹⁸

According to Amnesty International, children and particularly girls are vulnerable and exposed to domestic violence and abuse. The legislative body attempted to enact the Domestic Violence (Prevention and Protection) Bill 2021. However, much more effort is required in this regards. As lack of proper legal framework is causing multiple issues of domestic violence against child workers that have been reported. For instance, on 16th of August 2023, a murder case of a nine-year-old child domestic worker was filed in Hyderabad in consequence. Videos of that girl, which visibly displayed signs of physical abuse, subsequently went viral. The post-mortem report stated that, she was raped and assaulted prior to her death. another reported incident, a

¹³ Human Rights Watch, *World Report 2024*.

¹⁴ Available at https://data.worldbank.org/indicator/SE.ADT.LITR.MA.ZS?locations=PK&most_recent_year_desc=true, last accessed on 22.08.2024.

¹⁵ Sadruddin, "Study on the Important Issues of Child Rights in Pakistan".

¹⁶ Justice Project Pakistan, "Child Rights: Pakistan's Compliance with the United Nations Convention on the Rights of the Child (UNCRC)".

¹⁷ *Beaconhouse School System, Okara v Commissioner Sahiwal Division*, 2024 PLD 451 Lahore.

¹⁸ Human Rights Watch, *World Report 2024*.

15-year-old girl employed as a domestic child worker was hospitalised due to severe physical abuse and symptoms of malnutrition.¹⁹

Another pressing issue is the persistence of domestic violence and the continued practice of corporal punishment. Corporal punishment is strictly prohibited in the government schools of Sindh since 2004. Despite the legislative measures, physical violence in government and private schools is widely prevalent and institutions failed to bring any major change in banning this detrimental practice. A study reveals that 71 children were murdered after sexual abuse in the first six months of 2005,. Hence, the physical abuse of children remained widespread.²⁰ These issues are dealt under general laws applicable in the country. However, practices of other international jurisdictions are evident that special legislation on these issues for protection of children from corporal punishment and domestic child abuse would be more effective for better protection of child rights in these areas.

Malnutrition

Further empirical evidence indicates that “nearly 40% of the total population of children under the age of 5 suffer from malnutrition. About 63% of children between 6 months and 3 years have stunted growth and 42% are anaemic or underweight. Poor nutrition leaves these children vulnerable to diseases”.²¹ , Many children across the country suffered malnutrition, illness and death due to the conditions in which they lived. UNICEF’s annual report on the State of the World’s Children for 2005 highlighted concerns regarding maternal and child health, puts Pakistan at 46th among 157 countries in terms of basic indicators for child welfare. The report further revealed that 19% of children born in the country between 1998 and 2003 had a low birth weight.²²

Pakistan lacks appropriate legislation addressing issues related to nutrition, illness and infant morbidity, and mortality. However, the legal system of Pakistan casts the obligation of maintaining children primarily on the father, while secondary responsibility assigned to other relatives, including the mother.. A settled principle has been established by the court of law that nobody can take away the right of children with regard to their maintenance in any case. For instance, it was held in the case of ‘Mst. Farida Bibi v Judge Family Court’ that any document or agreement prepared by anybody including a panchayat is not legally enforceable if the same disentitles any child from his or her right to maintenance. In this case, a document/agreement was prepared by the panchayat and was signed by the grandfather of a minor girl stating that no maintenance of the minor girl could be demanded in future. The Court held that rights of a minor cannot be waived by the mother or any other blood relation. The responsibility of maintaining a minor has been fixed by a Devine Ordinance on the father, subsequently if father is not alive then the said responsibility shifts to the mother and later to other family members, but this responsibility can neither be waived nor taken away in any case and parents and other members of the family of a minor are primarily responsible for his or her maintenance.²³ Although the right to maintenance of children has been recognised by the legal system of Pakistan, but no concrete legislation, rules, regulations or guidance are available with regard to the quantum and standard of maintenance and nutrition of children. Hence, required standards ought to be fixed in accordance with international best practices for maintenance and nutrition of children. Similarly, judicial institutions should also follow the same international standards at the time of fixation of maintenance.

Juveniles

¹⁹ Amnesty International, *the State of the World’s Human Rights* (New York: Amnesty International Ltd, 2024). 294.

²⁰ Sadruddin, “Study on the Important Issues of Child Rights in Pakistan”.

²¹ UNICEF, “Baseline Study on Knowledge”.

²² Sadruddin, “Study on the Important Issues of Child Rights in Pakistan”.

²³ *Mst. Farida Bibi v Judge Family Court*, 2024 MLD 145 Lahore.

The problems in the sphere of juvenile justice in Pakistan are manifold and often complex; and all are important from a child rights standpoint. As per the World Prison Brief, 1.6% of the population in detention in Pakistan comprises of juveniles.²⁴ The Juvenile Justice System Ordinance was enacted in 2000 dealing with children who come into conflict with the law. However, the after probationary implementation it was found that the Ordinance could not meet its objectives of dealing with the problems of juveniles. Hence, the Ordinance was substituted with the Juvenile Justice System Act, 2018 and the new legislation has been implemented. Various new remedies have been introduced in the Act of 2018 and relief is being given to the juveniles under the latest enactment.

Under the Act of 2018, trial of a juvenile should be proceeded separately from adults; he cannot be sentenced in prison with adults which will be violation of section 16 of the Juvenile Justice System Act, 2018; he or she cannot be awarded death sentence and cannot be ordered penal labour. All these principles have been discussed in the case of *Sanaullah v the State* and it was held by Baluchistan High Court that once it has been determined that the accused is a juvenile, all these provisions of the Act of 2018 should strictly be observed.²⁵ In the case of *Munir Ahmed v State*, Baluchistan High Court while hearing an appeal in a murder case where the accused was awarded death sentence, held that the Court shall hold an inquiry under Section 8 of the Juvenile Justice System Act, 2018 and if it was established that the accused was a juvenile at the time of commission of offence, then his trial would be proceeded under the said Act and not tried under the ordinary law.²⁶

In the case of *Muhammed Azam v State*, Peshawar High Court also held that failure to determine the age of the accused at the time of his arrest by the investigating officer and then by the Court under Section 8 of the Juvenile Justice System Act, 2018, deprived the accused from his legal rights including trial by a juvenile court. As it was presumed that at the time of commission of offence, the age of the accused was 18 years, the High Court set aside the conviction and remanded the matter back to the Child Protection Court to first determine the age of the accused at the time of commission of offence and his arrest and then to proceed in accordance with the law.²⁷ In the case of *Izharullah v State*, expeditious disposal of the trial of juveniles has been discussed. It was observed by the Court in this case that the prosecution was liable to complete the trial within six months and upon failure to comply, the juvenile would be entitled for the concession of bail under section 6 of the Juvenile Justice System Act, 2018 as provided under clause 6 of Section 497 CrPC.²⁸

In another case of *Saeedullah v Lal Sher*, Peshawar High Court also discussed that Islamic criminal justice system also prescribes a different procedure for juveniles and commands that juveniles of a certain age should be treated differently from ordinary offenders and those teachings area also required to be adopted in our legal system.²⁹ All these decisions and provisions of Juvenile Justice System Act reflect that Pakistan has adopted comprehensive legislation for protection of the rights of juveniles, but various provisions of the Act still await proper implementation. The foremost problem is the establishment of juvenile courts and separate prisons. The Judiciary in Pakistan is currently grappling with shortage of judges, which has necessitated temporary arrangements, wherein the powers of juvenile courts have been delegated to regular judicial officers. Consequently, juvenile cases are being heard alongside ordinary criminal cases. Similarly, the absence of dedicated juvenile detention facilities has resulted in minors being confined within general prisons, albeit in separate wards. However, these juveniles are transported and tried alongside adult accused. Such practice is not

²⁴ Justice Project Pakistan, "Child Rights: Pakistan's Compliance with the United Nations Convention on the Rights of the Child (UNCRC)".

²⁵ *Sanaullah v State*, 2020 MLD 659 Quetta.

²⁶ *Munir Ahmed v State*, 2024 PCrLJ 772 Quetta.

²⁷ *Muhammad Azam v State*, 2023 PCrLJ 544 Peshawar.

²⁸ *Izharullah v State*, 2023 MLD 777 Peshawar.

²⁹ *Saeedullah v Lal Sher*, 2023 PLD 110 Peshawar.

only a violation of international legal standards but also contravenes the applicable domestic law.

International Obligations of Pakistan

Pakistan ratified the United Nations Convention on the Rights of the Child (UNCRC) on November 12, 1990, thereby committing itself to the promotion and protection of children's rights as outlined in the Convention. The UNCRC states that every person below the age of 18 years is a child. Notably, over 47% of Pakistan's population falls within this age-bracket, underscoring the critical importance of child rights in the national context. The Convention mandates that all 'State Parties' adopt appropriate legislative, administrative and other measures for the implementation of the rights enshrined in the Convention.³⁰ In compliance with these international obligations, Pakistan has adopted a separate legal framework for the protection of child rights in various areas, in addition to making the existing constitutional and legal framework compatible. However, despite adopting these legislations, various areas including child education, child labour, child nutrition and maintenance, juvenile delinquency and rights of juveniles still demand robust legislations in fulfilment of Pakistan's international obligations under CRC and other international instruments. Pakistani judicial system acknowledged these obligations and issued directives to both provincial and federal governments for proper implementation of these international instruments. A summary of these judicial guidelines is presented hereafter.

Domestic Courts Jurisprudence:

Pakistani Courts have recognised and implemented international treaties and conventions in their judgments. For instance, in the case of *Mst. Qurat ul Ain v Station House Officer, Police Station Saddar Jalalpur Jattan, District Gujrat*, the Court held that in light of Pakistan's international obligations under the Convention on the Rights of the Child, Convention on the Elimination of all Forms of Discrimination against Woman (CEDAW) and in accordance with relevant principles of Islamic , a mother cannot be deprived of her right to the custody of her children merely on the basis that she remarries.³¹ In a distinct legal matter before the Supreme Court of Pakistan, the apex court, while analysing the provisions of CRC, observed that educational expenses of a child are included within the ambit of maintenance which constitutes a legal obligation upon the father who is duty-bound to pay those expenses till the completion of his child's education.³² As outlined earlier, in a related proceedings before Islamabad High Court, Islamabad. The Court observed that provisions of Section 375 and 377-A PPC have been enacted in compliance of Articles 19 and 34 of CRC. The purpose of this legislation is to protect the children from obscene and sexually explicit acts of anybody. The Court further observed that such act would be illegal and explicit consent of the child, if any, would also be immaterial even if the same has been obtained under the disguise and cloak of marriage.³³

In a notable case brought before Islamabad High Court, Islamabad by a local NGO, the Court was petitioned to issue guidelines concerning victims of rape and sexual abuse specifically in light of a case involving the rape of a minor girl. The Court mainly issued the following guidelines:

1. The court first observed that all the medical legal officers must observe standard operating procedures and strict action shall be taken in case of any deviation by them.
2. It was directed that ministry of foreign affairs and other governmental departments shall implement the provisions of CRC in letter and spirit and shall adopt measures regarding implementation of the same if the same has not been done so far.
3. The Court also observed that Zainab Alert, Recovery and Response Act, 2020 shall be followed in letter and spirit as the law of the land. The Court further directed that

³⁰ Available at <https://mohtasib.gov.pk/SiteImage/Downloads/childrights.pdf>, last accessed on 21.08.2024.

³¹ 2024 SCMR 486, Supreme Court.

³² *Qudratullah v Additional District Judge, Renala Khurd, District Okara*, 2024 PLD 581 Supreme Court.

³³ *Mumtaz Bibi v Qasim*, 2022 PLD 228 Islamabad.

effective implementation of Islamabad Capital Territory Child Protection Act, 2018 and Juvenile Justice System Act, 2018 shall be ensured.

4. Apart from these guidelines, certain other guidelines were also issued including that in case of a minor child, only a female police officer shall be appointed for investigation or any other person duly sensitised on the matter and any minor survivor shall not be kept in overnight police custody including that on the pretext of medical examination.³⁴

In the case of *Zafar Khizer v Federation of Pakistan and others*, Lahore High Court, Lahore has also issued certain directions to government functionaries who were acting as respondents of the case. The Court directed that the respondents shall ensure legislation on child citizens' fundamental rights in light of Federal Rules of Business, 1973 and Province of Punjab Rules of Business, 2011 and if such legislation already exists then its proper implementation should be guaranteed. The Court also observed that national policy should be formulated while keeping in view the relevant laws and after going through the data and surveys regarding malnourishment and malnutrition of child citizens and the respondents were also directed to ensure implementation of the said policy in letter and spirit.³⁵

In the case of *Abdul Jabbar Khan Bangash v Federation of Pakistan through Secretary Cabinet Division*, Islamabad High Court, Islamabad discussed the obligations of Pakistan under International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, Convention on the Rights of the Child and International Labour Convention. The Court observed that under the provisions of the above-mentioned Conventions, to which Pakistan is a party, the government is under an obligation to establish daycare centres in all the public and private institutions. It was also observed that under Labour Policy, 2010, Pakistan is obligated to protect the rights of employees and labourers and accordingly establish daycare centres for employees of institutions and organisations also falls within the ambit of obligations under the above-mentioned international laws.³⁶

In another case before the Court, titled *Dr. Aamna Saleem Khan v National University of Sciences and Technology, (NUST), Islamabad*, the Court observed that provision of maternity leave to the female employees of all the institutions is their fundamental right and the right incorporated in all the basic international human rights instruments particularly Universal Declaration of Human Rights and Convention on the Elimination of all Forms of Discrimination against Women. The Court reinstated the petitioner of the case by holding that maternity leave was her fundamental right and no organisation is entitled to take away the same.³⁷

The Constitution of Pakistan

Article 25(1) of the Pakistani Constitution states that “all citizens are equal before law and entitled to equal protection of law”. Article 37(e) of the Constitution states that the State shall “make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment”. Articles 11 and 25 (3) of the Constitution recognise special right of protection for children due to their vulnerability. The constitution's Article 25(A) deals with the right to education, Article 11(3) forbids employment of children) all have different upper limits for the age of children. Many social indicators give a measure of the progress achieved by the Islamic Republic of Pakistan regarding Children's Rights since its independence in 1947. Access to health services, education and life expectancy has improved as the infant

³⁴ *Legal Aid Foundation for Victims of Rape and Sexual Assault (LRSA) v Federal Government through Secretary Interior Division*, 2023 PLD 195 Islamabad.

³⁵ *Zafar Khizer v Federation of Pakistan and others*, PLD 2023 Lahore 164.

³⁶ *Abdul Jabbar Khan Bangash v Federation of Pakistan through Secretary Cabinet Division*, 2023 PLD 209 Islamabad.

³⁷ *Dr. Aamna Saleem Khan v National University of Sciences and Technology, (NUST), Islamabad*, 2021 PLC (CS) 212 Islamabad.

mortality rate and illiteracy have declined. However, despite everything, the full realisation of Children's Rights is still going to demand enormous time and effort.³⁸ Although the Constitution of Pakistan recognises and guarantees fundamental rights of children mentioned supra, but their effective implementation demands a proper legal framework. In the absence of such legal framework, the burden would be on courts to decide which right can be extended to children and in which manner and only few privileged children will be able to approach the courts for effective implementation of their rights. On the other hand, if a proper legal framework is opted, it would protect the fundamental rights of every child living in Pakistan.

Other Legal Developments

According to the Report of Human Rights Commission Pakistan 2005, "many laws meant to protect children went largely unimplemented. Growing awareness about the rights of children and the introduction of some protective measures by the government pointed towards a slight improvement in the situation."³⁹ In this regard, Pakistan has enacted multiple laws serving child rights. For instance, the Sindh Child Marriage Restraint Act, 2013 forbidding marriage for boys and girls under 18 years of age, is a landmark provincial legal reform. The enactment of the National Commission on the Rights of the Child Act, 2017 Child Protection Acts in Punjab, Baluchistan and the Islamabad Capital Territory (ICT) are also significant developments. Amendments to the Pakistan Penal Code specifically criminalising sexual abuse and exploitation of children, child pornography and cruelty to a child were part of this encouraging legislative trend. Those positive steps have been reinforced with the increase of the minimum age of criminal responsibility to 10 years and possibly 10 to 14 years (according to the judicial officer's appreciation of the child's maturity). The Juvenile Justice System Act, 2018, the Anti Trafficking in Persons Act, 2018, significantly child-centric laws against rape and other forms of sexual violence in 2021, and the ICT Domestic Workers Act, 2022 also form major legal developments. The enactment of the Torture and Custodial Death (Prevention and Punishment) Act, 2022 is also an important improvement for children in conflict or in contact with the law.⁴⁰ Previously, there were no proper public forums providing an opportunity to over 105 million Pakistani children to raise their voice in matters relating to them. Taking cognisance of the deficiency, Federal Ombudsman Secretariat, in April 2009, with the support of United Nations Children's Fund (UNICEF), took a significant initiative and the Office of National Commissioner for Children was set up. The office aims to address child rights issues currently ignored in the country. Moreover, in pursuance of the direction of the Honourable Supreme Court of Pakistan, Honourable Federal Ombudsmen constituted an "Advisory Committee with Special Reference to Children and Women Prisoners".⁴¹ The above discussion clearly reflects that proper legislation, policies and institutions are available for the protection of child rights. However, despite all these measures, the issue of uniformity and implementation of the relevant laws remains unsettled. Some landmark legislations have been opted by some provinces, whereas its enforcement is not uniform in the rest of the country. Another pressing issue is that due to the failure of implementation of the laws and policies, Courts have also intervened at times, but one should not knock the door of Courts for each issue seeking directions already contained in the law.

Conclusion

Pakistan as party state to the CRC is bound to implement the standards enshrined therein within its domestic legal system. Although various legislative measures have been taken by Pakistan for effective protection of child rights and various laws have also been adopted, a persistent challenge remains in the effective implementation of these laws. Certain legislations still lack

³⁸ Available at <https://mohtasib.gov.pk/SiteImage/Downloads/childrights.pdf>, last accessed on 21.08.2024.

³⁹ Sadruddin, "Study on the Important Issues of Child Rights in Pakistan".

⁴⁰ Available at <https://mohtasib.gov.pk/SiteImage/Downloads/childrights.pdf>, last accessed on 21.08.2024.

⁴¹ *Ibid.*

the requisite rules and guidelines for their effective implementation mechanisms, while others are not consistently applied across all provinces, resulting in a fragmented legal and administrative landscape. Whereas, globally, various countries have prioritised child rights as one of the key areas for their legal and administrative reforms agenda. While in Pakistan, this urgency is underscored by statistical realities, as nearly 47% of the total population of Pakistan consists of children as they are below 18 years of age. Despite this, child protection has never remained a due policy priority. In the context of child delinquency, Pakistan recently replaced the outdated Juvenile Justice System Ordinance, 2000 with the Juvenile Justice System Act, 2018. However, aside from a few provisions concerning grant of bail and police custody, the Act has not been operationalised in its true spirit. Juvenile Committees which were envisioned under the Act remained unfunctional, hence, there appear to be absence of considerable cases decisions reported by Juvenile Committees, the primary purpose of which was to protect the children from the effects of ordinary incarceration. Another problem with regard to juvenile delinquency appears to be that no separate prisons have been established for juveniles, hence they are kept in the same prisons with adults though in different wards which adversely affects their delinquency and generates their tendency for further crimes. Separate trial of juveniles also remains a major issue to be resolved. Similarly, although the legislative efforts suggest that issue of child labour has been formally addressed, in practice its prevalence remains evident across various sectors of society including slum restaurants, workshops and small industry. One of the key social problems for failure to eliminate child labour appears to be that in some cases these children are the only breadwinners for their families, therefore, administrative measures are required for arranging their livelihood. Child education is an area which needs major legislation for compulsory basic education. Although steps have been taken at provincial level, but there should be uniform national policy for a state sponsored compulsory basic education for children. Likewise, child marriage seems to be covered by legislation, however, the judiciary has also addressed this issue through interpretative rulings on the relevant legal provisions, and the consistent and effective implementation of these judicial principles across all jurisdictions would significantly enhance the protection of child rights in cases involving forced child marriages. Child abuse has been criminalised under various laws, but special strategies are still awaited for effective implementation of these laws in a manner comparable to the attention and procedural diligence observed in high-profile and strategically prioritised cases. In short, a few areas with regard to child protection still require legislative reforms whereas few others require administrative measures for implementation of these laws. Without earnest and systematic implementation of these measures, the realisation of child rights in alignment with international norms will remain unattainable.