

# **Protection of Children from Exploitation, Abuse and Violence through Legal Reform: The Child Protection Bill, Pakistan**

*by Riffat Sardar<sup>1</sup>*

## **Introduction:**

Sound legal frameworks are prerequisites for social development and economic growth. The process through which laws and regulations are conceptualized, drafted, enacted, publicized and enforced is the foundation of a society governed by the rule of law. It is the legal framework which guides and oversees that the process of governance is carried out according to rules stipulated in the legal framework, and which holds accountable those who are responsible for governance. Effective legal reform also promotes opportunity, security, and empowerment of the vulnerable populations, especially children and women. Along with other institutional elements, legal reform is the key to good governance.

The existing laws in Pakistan that deal with children's rights are limited in scope, outdated and often ambiguous. Therefore these laws do not support good governance. On the contrary they are a hindrance to good governance. The Constitution is applicable to all citizens and therefore, does not distinguish between children and adults. However, an analysis of domestic laws reflects the fact that there is no standard age defining the child. The concept of childhood is often defined in relation to puberty or socio-cultural contexts. Girls and boys from an early age are often forced to function as adults.<sup>2</sup> The legislation addressing child issues is predominantly provincial in scope and application. In the past, two provinces have formulated child-specific legislation, respectively the Sindh Children Act (1955) and the Punjab Children Ordinance (1983), which was later superseded by the Punjab Destitute & Neglected Children's Act (2004). Generally while these provincial laws statutorily protect children, they remain virtually ineffective in deterring child abuse, and perpetrators of criminal offences against children are seldom held accountable for their actions.

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<sup>2</sup> While no standard age limit is found for children in Pakistani legislation, the upper threshold ranges anywhere between 14-18 years or at puberty. Examples of statutorily defined age limits include: 14 under the Mines Act (1923) and Employment of Children Act (1991), 18 under the Majority Act (1875) and Juvenile Justice System Ordinance (2000), and the Punjab Destitute and Neglected Children's Act (2004), 16 for girls/18 for boys under the Child Marriage Restraint Act (1929), and 16 under the Sindh Children's Act (1955).

At the national level there is no comprehensive legislation for protecting children from abuse and exploitation. Article 11 of the 1973 Constitution prohibits employment of children under 14 years of age in any factory or mine or any other hazardous employment. The same Article also prohibits all forms of forced labour. In order to prevent exploitation of child labour and child-bonded labour in the non-formal sector, the Employment of Children Act (ECA), 1991 and the Bonded Labour System (Abolition) Act, 1992 were promulgated. However these laws too have been ineffective considering the scale of child labour in Pakistan and the evidence of bonded labour.<sup>3</sup>

## Child Labour and Exploitation

One of the most visible violations of child protection rights in Pakistan is child labour. The prevalence of child labour is high and widely accepted. The last government survey by the Federal Bureau of Statistics in 1996 reported there were around 3.3 million children under the age of 14 who were economically active<sup>4</sup>, although the survey did not include children in invisible forms of labour such as domestic service. Currently it is estimated that the number may have tripled to about nine million. Child labour is found both in the formal and informal sectors, however two of the most exploitative sectors are carpet weaving and brick kilns.



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Many child labourers, notably those working as domestic servants, are completely without protection and vulnerable to a range of abuses, including sexual abuse.<sup>5</sup> As part of the National Time Bound Programme, ILO/IPEC conducted baseline surveys on child labour. The studies identified children working in various hazardous occupations, and estimated that the highest prevalence of the worst forms of child labour for children between the ages of 5 – 17 years old was in the glass bangle industry followed by rag-pickers<sup>6</sup>. In all sectors the majority of children were found to be working full-time and did not attend school. The surveys showed the main reason for parents to send their children to work was poverty.

<sup>3</sup> A recent police raid on a farm in Sanghar district of Sindh province led to the release of more than 70 men, women and children who were held as captives in bonded labour, Geo News, 17<sup>th</sup> July 2008.

<sup>4</sup> Survey on Child Labour, 1996, Govt. of Pakistan.

<sup>5</sup> Committee on the Rights of the Child. Concluding Observations on the Second Periodic Report of Pakistan. 27 October 2003.

<sup>6</sup> Press release, “Awareness session among Youth on combating Child Labour”, 12 December 2007, UN Information Centre, Islamabad, Pakistan.

Child labour and economic exploitation is in many cases accompanied by abuse and sexual exploitation. In Pakistan there is no specific legislation which comprehensively covers child labour and physical and sexual abuse and exploitation simultaneously, while the offences of sodomy, pornography, child trafficking, child prostitution and child marriage are covered by various legislation, including the Pakistan Penal Code (1860), Child Marriage Restraint Act (1929) and the Human Trafficking Ordinance (2002).

The majority of offenses against children, particularly child abuse and exploitation including sexual exploitation remain unreported because the existing laws are not followed by applicable procedural guidelines; the discourse of the law is not translated into institutional mechanisms and practices. Many forms of offenses and violence against children are either not recognized or are condoned by invoking religious or culture beliefs, or justified on the basis of prevailing poverty in the country. Both the aggrieved parties, and the law enforcing and judicial authorities hesitate to openly acknowledge the commission of offences against children. Within this context, there is a need for legal frameworks, which will not only provide adequate safeguards for the protection of children against exploitative child labour, physical and sexual abuse and exploitation, but which will also strengthen and promote administrative, legal and judicial institutions in the country, and provide the structures and systems required for the enforcement of laws.

### **International Treaties and Government Commitments:**

Pakistan ratified the Convention on the Rights of the Child in 1990, with a general reservation that the Convention will be interpreted in the light of the provisions of Islamic law as required by the Constitution. This reservation was later on withdrawn following the recommendation of the Ministry of Religious Affairs and the Council of Islamic Ideology and the decision of the Cabinet.

Article 32 of CRC reads:

"State Parties recognise 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".

ILO Convention 182 identifies child sexual exploitation as one of the worst forms of child labour. It requires, 'as a matter of urgency', that States prohibit and eliminate the worst forms of child labour. These include the sale and trafficking of children; the use, procuring or offering of a child for prostitution, the production of pornographic materials or for pornographic performances, and any work which is likely to harm the health, safety or morals of the child (Art 3)." Article 7 emphasizes the importance of free basic education and, where possible, appropriate vocational training, both as a preventive measure and as a means of reintegration. Pakistan ratified the ILO Convention 182 in 2001.

The Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography, 2000, calls on State Parties to prohibit the sale of children, child prostitution and child pornography. It also focuses States' attention on the disproportionate number of girls who are sexually exploited. It defines child prostitution as the use of children in sexual activities for remuneration or other consideration. State Parties are obligated to criminalize child sexual exploitation offences whether committed nationally or trans-nationally. The Government of Pakistan has signed the protocol, but did not ratify it yet.

According to the Article 4 of the Convention on the Rights of the Child: "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention."<sup>7</sup> Once a country has ratified the Convention, then it is obliged to bring its domestic law in conformity with the principles and provisions of the CRC. "The review [of legislation] needs to consider the Convention not only article by article but also holistically, recognising the inter-dependence and indivisibility of human rights".<sup>8</sup> Normally most countries engage in legal reform which addresses the international standards outlined in the treaties that a country accedes to. After ratifying the Convention on the Rights of the Child, in 1991 the Government of Pakistan revised the Resolution through which the National Commission for Child Welfare and Development was earlier established in 1980, and included in its objectives the additional task of coordinating the implementation of the CRC<sup>9</sup>. Since then, the Federal Government of Pakistan, except for the Juvenile Justice System Ordinance 2000, has not done anything in the area of legal reform to improve the situation of children with regard to their rights.

## **Law-making in Pakistan and the Case Study of the Child Protection Bill:**

According to the Constitution of Pakistan, law-making is primarily the responsibility of the Parliament. The members of the Parliament have the obligation to introduce new bills, initiate debate, and eventually vote in favour or against the new law, reform or amendment in the laws. Ever since Pakistan's independence, the country has predominantly been ruled by military-bureaucratic regimes. As a result, the culture of law-making developed in such a way that instead of the Parliamentarians initiating legislative reforms, it was mostly the Government bureaucracy through the ministries which proposed new laws, or amendments in the prevailing laws, based on Government direction, intentions and felt-need of the time.

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<sup>7</sup> UN Convention on the Rights of the Child, 1999.

<sup>8</sup> Committee on the Rights of the Child, General Comment No.5, para.1 and 18

<sup>9</sup> The Gazette of Pakistan, Part III Other Notifications, Orders, etc, Govt of Pakistan, Ministry of Health, Special Education and Social Welfare, Resolution, Islamabad, 13<sup>th</sup> June 1991.

## CONSTITUTION OF PAKISTAN

### *Legislative Procedure*

#### **Introduction and passing of Bills**

<sup>1</sup>[70. (1) A Bill with respect to any matter in the Federal Legislative List or in the Concurrent Legislative List may originate in either House and shall, if it is passed by the House in which it originated, be transmitted to the other House; and, if the Bill is passed without amendment, by the other House also, it shall be presented to the President for assent.

*The Constitution of Pakistan, 1973, page 33*

In 2005, the National Commission for Child Welfare and Development and the Ministry of Social Welfare planned to undertake legal reform in the area of Child Protection, and initiated the drafting of a comprehensive Child Protection Bill<sup>10</sup>. This was in response to the Observations by the CRC Committee which had in its report recommended changes in the laws which are in contradiction to the provisions of the Convention on the Rights of the Child (CRC)<sup>11</sup>. In the Concluding Observations, the CRC Committee noted that the existing legal provisions do not protect children sufficiently, and the implementation of laws concerning child abuse and neglect is not systematic. The Committee made specific recommendations on the following:

- Raise the minimum age of criminal responsibility to an internationally accepted level.
- Repeal Section 89 of the Penal Code (allowing corporal punishment) of 1860 and explicitly prohibit all forms of corporal punishment.
- Abolish the sentence of whipping.
- Establish standards and procedures, guaranteed in legislation, for alternative care of children.
- Clearly define sexual abuse and exploitation.
- Measures to prosecute the perpetrator

The National Commission for Child Welfare and Development (NCCWD), the Ministry of Social Welfare, organized technical assistance for the drafting of the Child Protection Bill. The basic purpose of the law is to create an enabling legal environment which is more protective of the child, and will protect the child from all forms of violence, abuse and exploitation. The law provides safeguards for the protection of children against physical abuse, sexual abuse and exploitation and deprivation of liberty. It also aims for strengthening and promoting social, legal and judicial institutions in Pakistan so that child rights

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<sup>10</sup> “Somehow Social Welfare and Special Education Minister Zobaida Jalal’s assurances that comprehensive child protection laws will be drafted within the year fail to bolster confidence that we are on our way to becoming a child-friendly society”, Editorial “Child Protection Laws”, Dawn newspaper, 18 April 2005.

<sup>11</sup> UN CRC Committee Concluding Observations on CRC Report Submitted by Pakistan, CRC/C/15/Add.217, 27 October 2003, page 2.

are protected and safeguarded. It is expected to serve as a model and an example for the two provinces (NWFP and Baluchistan) which currently do not have provincial child protection laws. The draft Child Protection Bill for the first time clearly defines protection violations and addresses the following areas:

- Clearly prohibiting child sexual abuse and sexual exploitation, and child physical abuse.
- Properly defining the terms child sexual abuse and sexual exploitation, sexual consent, and physical abuse.
- Prohibits traditional harmful practices.
- Prohibits harmful vocation for children
- Describes measures to prosecute the perpetrators.
- Stipulates the type of services to be provided to the victims.

### ***The Consultative, Engaging, and Deliberative Process:***

In order to make the law meaningful and acceptable to the stake-holders a participatory process was adopted for the drafting of the Child Protection Bill. At the outset a consultation workshop was organized by the National Commission for Child Welfare and Development (NCCWD) and the Ministry of Social Welfare, with a wide range of stakeholders (Government, NGOs, the law enforcement agencies as well as parents and other civil society members) to consult on what should be the contents of the law. The deliberations resulted in good suggestions from the participants. When the first draft of the law was prepared, it was shared with the stakeholders, and suggestions received for bringing further improvements in the bill. Then a second draft of the bill was prepared, and it was officially sent by the NCCWD to all the relevant federal ministries, and to the Provincial Governments for their comments. The relevant Federal Ministries and the Provincial Governments were slow in responding, which to some extent delayed the process, eventually provided their comments. The comments from the provinces mostly related to the implications which the federal law would have on the provincial laws. The federal ministries' comments mostly related to the practicality of the law (see below box), and protection of religious ideology in the interpretation of international standards. The draft of the Child Protection bill was also shared with International Experts on the CRC Committee, and their comments were also considered.

**GOVERNMENT OF PAKISTAN  
MINISTRY OF PARLIAMENTARY AFFAIRS**

**Subject: LEGISLATION ON CHILD PROTECTION**

Reference: Ministry of Social welfare and special education communication number 1/2005 –NCCWD dated 10<sup>th</sup> September, 2005 on the above subject.

2. The views of the Ministry of Parliamentary Affairs on the Draft Bill “The Protection of Children Act, 2005” are as follows:

- i. The proposed legislation lists prohibitions and punishments to deter would be perpetrators from acts that are harmful to the child. However the real benefits that are likely to be extended to the children especially the traumatized have not been adequately nor convincingly spelled out.
- ii. The draft bill should provide a softer, welfare oriented and reformist image to make the legislation more palatable.
- iii. The legislation appears to be alien to the prevalent societal norms, cultural values and religious beliefs. The sensibilities and sensitivities have not been taken into consideration in the phraseology of the act.

*Courtesy: Ministry of Parliamentary Affairs, Govt. of Pakistan.*

### ***Advocacy with the Parliamentarians:***

As the Child Protection Bill was initiated by the administrative branch of the Government, advocacy with the Parliamentarians for building consensus was seen as a necessary step even before the bill could be submitted to the parliament. As such the National Commission for Child Welfare and Development agreed on a strategy with the Ministry of Parliamentary Affairs for involving the Parliamentarians and getting them on board prior to the law going to the Parliament for debate. Between 2005 and 2007, six meetings were organized with the Parliamentarians through the Ministry of Parliamentary Affairs; and one Regional Seminar on Juvenile Justice with the Senate in collaboration with the International Parliamentary Union (IPU). The meetings were organized at the federal level for discussions on Child Protection<sup>12</sup>. The objectives of the Meetings were:

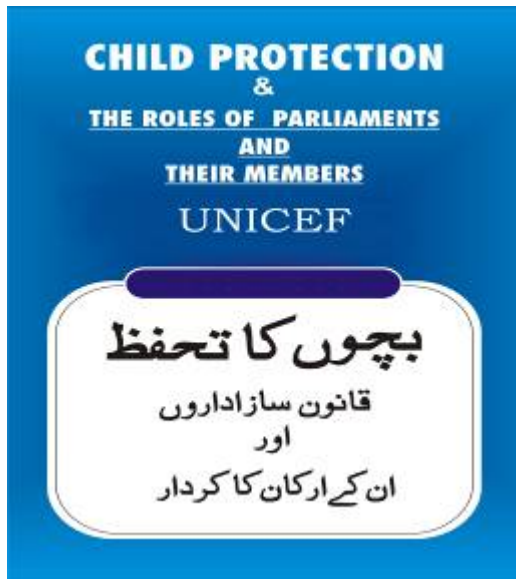
- Advocate with key Members of the Parliament (MNAs) on the need for a legal frameworks for child protection.
- Brief selected key Members of the National Assembly (MNAs) on the progress made on the legal frameworks related to child protection.
- Cultivate relations with opinion-makers from amongst the MNAs and the Senators who could assist with lobbying for child protection legal frameworks.

The Members of the Parliament (MNA) belonging to all the major political parties were invited in small groups to discuss the prevailing child protection issues and challenges, and the need for protective legal frameworks, and to thrash out the details of such frameworks. The participation level was lower than expected, however those MNAs who participated, clearly affirmed their support for the Child Protection legal frameworks. As expected many of the

<sup>12</sup> The meetings were on 23<sup>rd</sup> June 2005, 27<sup>th</sup> October 2005, 13<sup>th</sup> March 2006, and 23<sup>rd</sup> June 2006, 18 March 2007, 23<sup>th</sup> Sept. 2007, and the Senate-IPU Regional Seminar took place in June 2007.

Parliamentarians were not aware of the protection issues faced by children. They did not hesitate in showing their interest in knowing more about child protection issues, and clearly voiced their opinion in support of protecting children from abuse, violence and exploitation. Such a commitment and support is yet to be observed, whether the legal framework comes before the Parliament, or any member even in private capacity submits a bill or a request to the Speaker calling for debate and discussion on child protection issues, including child labour and exploitation, and the recent phenomenon of child suicide-bombers.

Courtesy: UNICEF Advocacy materials



### ***Principles and Content of the Child Protection Bill:***

In the consultations on the law, the following were identified as the main principles which will govern the new Child Protection legal frameworks:

- Children have the right to be protected.
- Not to be physically or sexually abused or exploited.
- Not to be considered insignificant because they are children.
- Not to be discriminated against for any reason.
- Children have the right to be attended to with priority.
- Promote the best interests of the child.
- Children have the right to a family that takes care of them.
- Children have the right to confidentiality.
- Children have the right to voice their opinion.
- State has the duty to provide special protection to street children.
- State has the duty to create special programmes that keep children from being separated from their families because of poverty.

The main provisions of the bill are as follows:

- Establishes 12 years as minimum age for criminal liability
- Prohibits corporal punishment
- Criminalizes sexual abuse
- Clearly deals with violence and exploitation of children
- Prohibits traditional harmful practices including early marriage
- Establishes institutions for protection and rehabilitation of children in need of care.

## **Political Priorities and Reforms in Legal Frameworks:**

Legislation defines and deals with the relationship between the population of the country and its governments, as well as relationships among the people themselves. If welfare and social protection of the people is high on the Government agenda, it will attempt to make policies and laws in these areas. Conversely if establishing more controls on public opinion or media is a priority, the Government will legislate in these areas.

The Child Protection bill after completing three revisions was submitted by the Social Welfare Ministry to the Prime Minister on 15<sup>th</sup> September 2007 for review by the Cabinet. The then Prime Minister however sent it back to the Social Welfare Ministry with the request to first develop a Child Protection Policy. In the meantime, the Labour Ministry in collaboration with the ILO had also submitted revised legal frameworks for elimination of child labour to the then Prime Minister who had responded similarly with the request to first develop a policy on Child Labour. According to the 1973 Constitution, it is the mandate of the prime minister and cabinet to formulate national policies and govern the country in collaboration with the chief ministers of the four provinces. Apparently the Prime Minister was fulfilling his mandate and obligation by requesting policies for child protection and child labour.

Governments, when not fully committed to legal reform, adopt processes and measures which serve as delaying tactics. However the inaction of a Government in a certain area such as legal reform, may provide it temporary respite from responsibility and accountability, but in the longer term, it has serious ramifications for the state, as Pakistan is currently facing, and which has already been termed as a "failed state"<sup>13</sup>. One of the main indicators of a failed state is the inability to control criminal behaviour, which is manifest in the lack of rule of law, impunity of those who break the law, and lack of policies for proper enforcement of laws.

## **Conclusion:**

Since the draft Child Protection Law was returned by the then Prime Minister, the NCCWD and the Ministry of Social Welfare have initiated work on developing a Child Protection Policy, with a clear objective that the Government will from time to time revise and update the legal frameworks. There is a hope that if the Government approves the Child Protection Policy, it will be more committed and inclined to review and reform the legal frameworks related to child protection.

Out of the 80 million Pakistani children, 45 million live either below and on the margin of poverty; 2 million are orphaned; up to 9 million are working; only

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<sup>13</sup> 'Failed States Index 2008', "Foreign Policy", available on site: <[http://www.foreignpolicy.com/story/cms.php?story\\_id=4350](http://www.foreignpolicy.com/story/cms.php?story_id=4350)>

30% of births are registered; child marriage is as high as 30%; 50,000 children are living and working on the streets; 2,000 children are in custody; 8,356 children are institutionalized in 92 public residential institutions; 70-76% of all children have experienced corporal punishment; 7% children reported sexual abuse, and there is evidence of children being trafficked. Without legal reform there is no hope for remedying the gross violations that these children are suffering. An effective and coherent legal reform should address not only the violations taking place, but also establish structures and systems to respond to these violations. Efforts should be made to find local solutions and develop home-grown models consistent with the local context.

Considering the broad-based support that is available for legal reform in child protection area as demonstrated by the parliamentarians, the civil society and even the federal ministries, there is no reason why Pakistan should not have a child protection law. The main obstacle that is foreseen in the promulgation of child protection law is the political will to put children first above everything else. The other lingering concern is the fragile democracy, and the possibility of political instability, based on the economic and security situation that currently exists in the country. Such a situation could scrap the whole effort that has thus far been made, and may cause a serious blow to the progress of law-making for children in Pakistan. There is an urgent need to legislate the Child Protection Bill, which will help millions of Pakistani children get over their plight, and would help Pakistan be seen in the international arena as a country caring for its children and willing to do something about it.