

## **Child Abuse in Pakistan: The Response of the Criminal Justice System**

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### **Abstract**

*This research study sheds light on child abuse in Pakistan with special emphasis on response of the criminal justice system. Child abuse is a matter-of-fact and grave issue in Pakistan as well as in the world. Its consequences in various crimes for instance child labour, child trafficking, pornography and sexual abuse and so on. Child abuse is also a lawful, gender, socio-economic, educational and health problem. The key outcomes of this research article are that how to identify and elucidate the nature, concept and different manifestations of child abuse. What is the role of criminal justice system to prevent child abuse in Pakistan? This article is examined to understand the phenomena and issue of child abuse through descriptive and analytical approach. It is of great importance to take attentive steps and implement rules to overcome this problem.*

**Keywords:** *child abuse, domestic violence, human rights, criminal justice, Pakistan*

### **Introduction**

When it comes to the child abuse there is pressure on the criminal justice system because of the very nature of the abuse. Children are weak section of society and hence the response which such abuse is justified when the moral values of society are taken into account. In this regard, the criminal justice system must play an effective role to prevent the child abuse to allay pressure on them besides providing a conducive environment for the growth of child and their social development. The UN Convention on the Rights of the Child 1989 and various relevant provisions demand that children are to be protected in society and their human rights protected. According to the Human Rights Report of 2018 of name agency here, the most disadvantaged groups in society including children are at the receiving-end of various kind of discrimination and exploitation.

In Pakistan, there are various institutions and various laws which can go a long way for the elimination of the discrimination against and exploitation of the children. In the first instances, children are abused in society in the forms of lack of access to education, child labour, and prevalence of domestic works etc. Children are also abused when they commit crime and are abused in the criminal justice system. In the former

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case, various constitutional provisions like article 25A and article 11, can provide guidance. In 2018, Islamabad Capital Protection bill was passed. Recently, the parliament of Pakistan also provided for a new law known as “Zainab Alert, Response and Recovery Act of 2019” which specifically aims to bring about the mechanism of child protection in the capital. These laws, when properly implemented, will go long way for the prevention of child abuse in Pakistan and bring down the menace of child abuse in the country (Situation of Children in Pakistan: UNICEF Report).

#### *Statement of the Research Problem*

In recent years, the ratio of crimes involving child abuse has been on the rise in the country. Such an increase has been the offshoot of the confluence of various factors like moral degenerations, change in the culture, the arrival of new technologies like information technology and most importantly the dereliction of the criminal justice system. Children constitute the core of society and their proper upbringing and the protection of their rights in the long run result in the creation of a stable society. Failing doing so creates various problems for the society.

#### *Objectives of the Research*

The objective of the research is to highlight the issue of child abuse in Pakistan. Child abuse is the by-product of various factors. The research intended to bring to light those factors and the various manifestations of child abuse in Pakistan. The objective of the research is also to bring to light the various laws as pertain to the prevention of child in Pakistan and the role which the criminal justice system of Pakistan is playing to prevent child abuse in Pakistan.

#### *Theoretical and Conceptual Framework*

The research has been riveting subject in recent times given that the number of child abuse has been on the rise in the country. The theory utilizes a litany of various theories and concepts to bring about the phenomenon in Pakistan and how the criminal justice system is responding to arrest the phenomenon of the child abuse in Pakistan in proper perspective. In this regard, following theories are of immense theoretical significance.

First, there is the theory of the social contract. The theory posits that the ultimate purpose of the state and authority thereof is driven by the urge to protect people and provided them security. As long as state is capable to provide the needed security from different danger, citizens have obligation to respect the authority exercised in the state. If the state fails in this core duty, the state forfeits its status to be respected and obeyed.

Hence, the protection which the state provides leads to the obligation of citizens to obey it.

Secondly, the theory posits that prior to the state came into being, people were characterized by extreme equality and liberty and this in turn led to the war of all against all. According to John Lock, in the state of nature, there were no legislative, executive and judicial organs. Once the state comes into being, the three organs of the government also comes into being. Hence, in the state three organs has gotten the power to make, enforce and interpret the laws of the state (Fairlie, 1923).

Once it is assumed that state is the guardian of the security of all people, it becomes evident that states ought to protect all the people. In this regard, children are also the member and citizen of the state, and state must strive to protect them from different dangers. In this regard, to provide security state also provides for different legal and institutional mechanism where children are to be protected. In the present context, the child abuse and the security of the children could be ensured when state ensure that there is an effective criminal justice system in place to protect such trends (The Convention on Rights of Child, 1989).

Secondly, there has been the doctrine "Parens Patriae". According to the doctrine of the "Parens Patriae" state is the ultimate guardian of the children. According to this concept, the state must play a proactive role as far as the child abuse is concerned. Initially, there was the concept wherein the children and adult were treated through the same yardstick. These things changed with the onset of the concept of "Parens Patriae" where it was provided that King or rulers were the guardian of the children and the most vulnerable in society. This concept was extended to the proper role of the government for the protection of children in society by institutionalizing various instruments like effective use of criminal justice system and other rehabilitation mechanism (Kumar, 2001).

The theory of Routine Activities theory could also be utilized to explain the rise of Child abuse in the country. The routine activities theory of criminology finds its origin in the classical school of criminology. According to this perspective, every crime is committed by a criminal when there is suitable environment for doing so. Criminals are rational beings who weights the cost and benefits of the crime likely to be committed by them. The routine activities theory assumes that every crime is committed when there is the lack of guardian and the presence of criminal elements in a particular environment. Contextualizing the theory in child abuse reveals that child abuse is committed whereon there is the lack of proper environment of surveillance and the presence of various subversive elements who are likely to abuse the children by taking

advantage of the propitious in which crime or such abuse is likely to be committed.

### *Significance of the Research*

The prevention of child abuse is the collective responsibility of each stakeholder including the effective role played by the criminal justice system. The objective of the research, therefore, is to bring to light that role and the various issues pertaining to the child abuse. The child abuse is particularly more pronounced in the rural areas. The research aims to highlight the menace of child abuse in the district Mardan when the rural areas have seen spike in the child abuse.

### *Research Questions*

The research undertaken strives to answer the following questions:

- What is the nature of child abuse in Pakistan?
- What are the different manifestations of child abuse in Pakistan?
- What is the role of the criminal justice system to prevent child abuse in Pakistan?

### **Research Methodology**

The research undertaken is both descriptive and analytical in nature for which qualitative data is being used. The research also utilizes the various primary and secondary sources of data collections. Various books, archives, laws journal articles, and reports by law enforcement agencies have been consulted. The primary sources of data collection have been used to ascertain the nature of child abuse as prevalent in district Mardan, Khyber Pakhtunkhwa.

### **Literature Review**

The subject of child abuse has assumed in the recent years much significance in Pakistan and particularly after the number of cases pertaining to the child abuse in the country rose. There were questions arose against the criminal justice system but also about the state's core reasonability to protect the most vulnerable. It is this context that various books and research articles have been written on this particular subject in recent years. Some of the literature pertaining to the subject is under.

As for as child abuse and various manifestation are concerned, it has been conclusively explained by Aisha Mehnaz in the research article entitled as "Child Abuse in Pakistan- Current Perspective". Published in 2018 in the National Journal of Health Sciences, the research delves deep into the nature of child abuse and various forms. According to the author, the phenomenon of the child abuse is not confined to the physical torture

only, but rather it exists in various forms. The most extreme form is the sexual abuse which left scar on the personality of the child and stunt the emotional, intellectual and moral development of the children. According to the author, the phenomenon of child abuse is not confined to a particular country, areas or community, but rather it is a global phenomenon which persists in every kind of states. Hence, the phenomenon of child abuse cannot be overlooked (Mehnaz, 2018).

Similarly, a journal article entitled as “Violence against Children: A challenge for public health in Pakistan” written by Adnan Ali Hyder and Fauzia Aman Malik and published in the Journal of Health, Population and Nutrition brings to light the violence perpetrated against the children in Pakistan. The article dilates on the various manifestation in which violence against children is perpetrated. The article focuses on the violence against children from the perspective of Public health. The article argues that more than anything else, child abuse and various kinds of violence committed against children is public health issues and must be dealt with in that manner. Violence against children poses various health issues to the children and their elimination must be top most priority for the state (Adnan and Fauzia, 2007).

Likewise, the research article has written by Farah Malik and published in the Journal article of International Journal of business and social science. The research article entitled as “Determinants of child abuse in Pakistani families: Parental-Acceptance-rejection and demographic variables”. The article pertains to the child abuse and the violence against children within the premises of homes. The articles bring to light the phenomenon in which child abuse is committed against the children in Pakistan. The article highlights the abuse of children on the basis of two yardsticks. First, there is the role of parents. Whether the behaviour of parents is that of acceptance or rejection determines the child abuse of the children. Secondly, the article argues that the child abuse has been also determined by demographic factors like population ratio, age, gender, etc. According to the articles, female’s children are mostly being subjected to child abuse (Farah Malik, 2010)

In the same very manner, an article has written by Child rights activists Imran in Daily times. The articles entitled as “Our children: Voiceless and Powerless” brings to light the latest statistics of child abuse in Pakistan. The article presents the data collected by Child rights Organization “Sahil” to highlights the gravity of child abuse in Pakistan. The articles focus on the Child abuse and the subsequent role played the criminal justice’s system with focus on districts of KPK. The articles argue that child abuse in committed against the children due to the fact that they are voiceless and they are powerless due to which there has been rise in

the district. The article argues that a confluence of various moral, social, legal, administrative and states flaws have resulted in the spike in the child abuse against the children in various aspects of their lives (Our Children Voiceless and Powerless, Daily Times).

### *Child Abuse in Pakistan*

Since at least the Kasur incident of 2018, there has been a spike in the incidents involving child abuse. The phenomenon of child abuses in Pakistan manifest itself in various hues like domestic violence against children, child labour, lack of access to education, childmarriage and social and associated psychological abuse. The nature of the child abuses reveals that it involves the violation of human rights; it triggers a cycle of violence and result in the moral degeneration instability of society.

### *Fundamental Rights of the Children*

The constitution of Pakistan and the various international treaties which Pakistan has approved provided for various fundamental rights of children. According to the Human Rights Commission, Pakistan report of 2018, children are the most vulnerable and disadvantaged group in society along with other category of people like women, minorities, and disabled besides others. When it is assumed, the fundamental rights of children assume much significance. It is therefore important to discuss in details the various constitutional provision and the international treaties has defined the rights of children in Pakistan. In this regard, two things are significant.

First, there are constitutional mechanisms and provisions. The constitution of Pakistan is a sacrosanct document which pertains to various aspects of the states in a comprehensive manner. The part 2 of the constitution pertains to various fundamental rights. There are also certain provisions which deal with the rights of the children. In this regard, a few fundamental rights specifically deal with children.

Likewise, there are certain international treaties which Pakistan has ratified. It is the legal obligation of Pakistan to extend those rights to children. In this regard, the Convention of the rights of children and the Sustainable Development Goals (SDG's) deal with various rights of the children. The Convention on the Rights of the Child so far is the most comprehensive documents dealing with the rights of children. It was agreed upon among the states on 1989. The treaty consists of the 54 articles. Pakistan ratified the Convention on the Rights of in 1990. The treaty has obligated Pakistan to take various measures various steps at different realms of the state to protect the rights of the children. The age of majority has been defined as 18 years in the convention. The convention

provides that these rights enshrined in the convention are to be extended to every child with any discrimination. In its different articles, various rights like the security of life, right of guardianship, protection of identity, freedom of expression, freedom from sexual abuse, freedom of thought, conscience, religions, etc. have been spelled out and recognized (Rights of Child in Pakistan: REFWORLD).

#### *Manifestation of the Child Abuse in Pakistan*

Pakistan is a democratic and sovereign country. The constitution of Pakistan is a basic document which pertains to various aspects of the states. In this regard, no one is allowed to transgress the laws set out by the constitution. Pakistan is also a sovereign country. The first manifestation of the sovereignty of the states is that no one is allowed to challenge the writ of the state. This aspect of the sovereign of the state stems from the fact that state is the guardian of the people. According to Thomas Hobbs, people have entrusted their right of ruling themselves to a sovereign body because the sovereign is entitled to protect them and provide them security from any danger.

Child are the most vulnerable section of society and they are at receiving-end of every kind of discrimination and exploitation. According to the concept of the *Parens Patriae*, state is the guardian of the children and state must intervene to protect children from abuse. The abuse of children has been a pervasive phenomenon in each society. Historically, children were abused on the name of different tradition and in various manner. The situation of girl-child is more severe. However, the criminal justice system of the developed countries is equipped with the paraphernalia necessary to prevent the child abusers while the developing countries like Pakistan are faced with various problems in the criminal justice system which has compounded the problems of the children in Pakistan (Miller-Perrin, 2012).

The child abuse in Pakistan manifests itself in different forms. The Child abuse is *sui generis* social problems in society. The child abuses present in the country are the one which could be considered social problem which is to be dealt with by the state at large. There is also child abuse which are an immediate concern of the criminal justice of Pakistan and in which the criminal justice system must play its role to prevent it.

#### *Domestic Violence*

The domestic violence which is perpetrated against children is by the by-product of the confluence of various factors, but ultimately it is the responsibility of the state to prevent such a domestic violence in the

country. According to one report, poor children are 70% more likely to be subjected to domestic violence because of their enfeebled position.

### *The Issue of Child Labour*

The constitution of Pakistan clearly prohibits according to its article-11 the phenomenon of the child labour. The menace of child labour in Pakistan has been the outcome of various socio-economic problems. The spectre of poverty, the lack of education and the presence of unemployment have resulted in the child labour metastasized into a full-fledge crisis. The International Labour Organization (ILO) clearly prohibits the child labour. The ILO defines the Child labour on the basis of two yardsticks. First, such labour is performed by the people of the age of minority. Through, the age of minorities differs from one jurisdiction to another. Secondly, such labour impacts the physical, psychological, emotional and intellectual development of the children. The menace of child labour is more severe in the developing countries like Pakistan.

### *No Access to Education*

Quiad-e-Azam once said that the future of the nation depends on the very system of education which was provided for the children. The role which education can play in various development of the state cannot be ruled out. The system of education develops the intellectual capacity of the children and helps him to be rational beings. It was in this sense Jean Jacque Rousseau posits that the purposes of education are to developed a rational human being. The constitution of the country provided that states have the obligation to provide free and compulsory education to the children.

### *Sexual Abuse of Children in Pakistan*

The phenomenon of the sexual abuse has assumed mush significance in recent years in Pakistan. Since the Kasur incident in which a girl named Zainab Ansari was sexually abused, there has been proliferation of such cases in the width and breadth of the country. The phenomenon of sexual abuse comes in two strands in Pakistan.

First, there is that the children are abused by paedophile. Secondly, children are exploited through child pornography. These two things have happened in Pakistan. In the former cases, many cases have been surfaced in the country wherein child have been sexually abused. In the latter cases, the children pornography is used for the monetary benefits. In Pakistan, pornography rings have been discovered in the city of Kasur. Hence, the most excruciating phenomenon of the child abuse in Pakistan

is the sexual abuse of children in Pakistan in its various manifestations (Is Something Wrong with Accused? DAWN Newspaper January, 2018).

*Child Abuse and the Criminal Justice System*

Though, the phenomenon of child abuse persists in different hues in the country, there certain abuses which are of direct concern of the criminal justice system of the country. The Criminal justice system must be geared towards preventing those abuses and apprehending the abusers. In this regard, following things are important.

*Child Labour*

The child labour is the labour performed by the children who are undertaken by the children which are under the age of majority. The constitution of Pakistan as per its article 11 clearly prohibits the phenomenon of child labour in the country. According to the ILO, child labour is the one which severely impacts the emotional, intellectual and moral development of the children and deprives children to have access to education, health facilities and various others. There are various laws like the Islamabad Capital Territory Child Protection Act 2018, the Employment of Children act, 1991, etc. Pakistan has also signed and ratified the Convention on the Rights of the Children-1989 (What is Child Labour?, ILO Report).

*Sexual Abuse*

The most pernicious manifestation of the child abuse in the country has been the presence of child predator that act with impunity and afflict severe harm upon the children, their health and their emotional, intellectual and various developments. In Pakistan, sexual abuses have existed in different form. First, child is sexually abused. Secondly, the victim child is killed or dumped into garbage and are subjected to other barbaric brutality. Hence, is this case too, the criminal justice system could prevent sexual abuses under the Pakistan Penal Code, and the recently passed “Zainab Alert and recovery bill-2019” (Beware of Predators: The NEWS September, 2015).

*Child Abuses in Prisons*

The abuse of children is no confined to outside the society. Children are abuses even within the premises of the prisons. According to the Justice Project Pakistan report, there are still significant numbers of under trial juvenile within the prisons. The criminal justice system has failed to provide segregated spaces and other facilities for the juveniles

which have resulted in the child abuse in prisons (Prison Bound: The Denial of Juvenile Justice in Pakistan: Human Rights Watch).

*Child Abuse Deprives Children of their Development*

The child abuse which happens in the life of the child left an indelible impression on the overall psychology of the children and in the long run impacts the social, intellectual and emotional development of the children. In the process of child abuse, through a number of interrelated factors, child development across various stratum of personality of children is impacted. In first place, the child abuse impacts the physically development of the children. In Pakistan, the presence of malnutrition and stunting is already high, the issue of child abuse has only exacerbated that issue (Long-Term Consequences of Child Abuse and Neglect: FACTSHEET April, 2019)

Secondly, child abuse impacts the emotional and intellectual development of children as a consequence increased of the child abuse as it deprives an individual from acquiring a quality education and the scars left by the abuse haunt them for the whole life.

*The Role of the Criminal Justice System*

The role of the criminal justice system in the prevention of the child abuses cannot be over looked. The criminal justice system and its various actors such as the police, the courts and the correctional institutions could be instrumental to prevent child abuse in the country. Pakistan inherited the criminal justice system from the British. There is also juvenile justice in the country. The criminal justices can an effective role in the prevention of child abuses. However, there are also challenges before the criminal justice system to prevent child abuse in the country.

*The Criminal Justice of Pakistan*

Every state has for its purpose the protection of its inhabitants. For the same purpose, various mechanism is utilized which could best serve that purposes. To ensure the society of the people, the criminal justice system plays an important role as it deals with various aspect of the crime and its prevention. Pakistan is a sovereign state and maintains its own criminal justice system.

The criminal justice of Pakistan as exist is the country comprises of various organs like the Police, the Court and the correctional institutions. Various laws and acts form the core of the criminal justice of Pakistan. In the is regard, the Pakistan Penal Code-1861, Criminal Procedure Code-1989, Civil Procedure Code-1901, the Prison Act, the

Police Act 1861, and the Police Order-2002 provide a legal foundation. Each of these laws pertains to important aspect of the criminal; justice system. In recent years, Pakistan also has implemented various laws which could be instrumental for the proper functioning of the criminal justice of Pakistan.

#### *Juvenile Laws in the Country*

Pakistan has also implanted the juvenile laws in the country in line with its commitments under the convention on the rights of children, 1989. It was introduced in 2000 and later on a new act through the forum of parliament was introduced in the country known as “Juvenile Justice Act, 2018”. The act pertains to the child abuse of the country while they themselves are called into question when they are involved in any kind of delinquent behaviour.

The provisions of the act stipulate for the separate trial of the children, a kind of probation for the juveniles, early release, and diversionary committees besides other. Hence, the juvenile laws in the country are meant to protect the child abuse from the abuse of the criminal justice system itself. The main purpose of the juvenile law has been to rehabilitate the children rather than punishing them.

#### *The Role of Criminal Justice System to Prevent Child Abuse in the Country*

The role of the criminal justice and as a matter of in the child abuse cannot be shrugged off. The criminal justice performs various function which are all geared towards the elimination of discord and ensuring the tranquillity and peace of society. As far as the child abuse is concerned, the criminal justice must play a proactive role. Any delay can hamper the provision of justice and in the long run can impact the over emotional status of the children. How the criminal justice can play such an important role in the prevention of child abuse can be evident form the role played at following level by the different organs of the criminal justice system.

#### *The Role of Police*

The role of the criminal justice system in the prevention of the child abuse in the country could be ascertained on the basis of the role played by one of the important institutions of the criminal justice system known as the “police”. In Pakistan, the Police act 1861 and the Police order of 2002 provide for the legal framework under which the police can perform its functions. It is in this regard that the role of the police can be studied. The Police order 2002 clearly stipulates for the police to perform

its core functions to implement the laws in the country and ensure peace and tranquillity of society.

#### *The Role of Courts*

The role which the courts can play in the dispensation of justice in the cases of juvenile and children abuse is very important. The courts can play this role in a number of ways, but two things stand out in this regard. First, it strives to provide justice to those succumbed to child abuse in the country by bringing the perpetrator to face the trial and subsequently to be held accountable for the heinous crimes they have perpetrated. Secondly, the courts must play the role of rehabilitations in the cases of child abuse and must be proactive to provide justice instantly because justice delayed is justice denied and in the cases of child abuse it has assumed much significance.

#### *The Role of Rehabilitation Centres*

At the tail-end, the most important role is being played by the correctional and rehabilitation centres where long term behaviour change is brought about in the criminals so that they could be put on the right path. The role of correctional institutions in the country is evident from two facts. First, these acts as the places where punishment is inflicted upon individual who have committed a crime of any nature pertaining to child abuse and various other crimes. In the second instance, these places acts as the places wherein the rehabilitation of criminals is being carried out.

#### *Whether the Criminal Justice System is Effective to Deal with the Rising Child Abuse in the Country?*

Preventing child abuse has been a challenge to the criminal justice system of Pakistan, society and the state at large. The elimination of child abuse from the country is the collective responsibility which could be eliminated through the responsible role played by various stakeholders at different level. First, there comes the role of the state. It has been counterintuitive argument that the state must strive to protect it people and provided them a peaceful and tranquil environment where they could prosper. The state does so through the role played by its different institutions.

The criminal justice system consists an aggregate of rules, procedures, processes and institution wherein the crime could be eliminated from society. Although, the total elimination of crime cannot be possible but it strives to keep the crime ratio at minimum. The criminal justice system in the country, therefore, ought to play an important role but it could be done when it is equipped with institutional, financial and

administrative capacity to do so. Though, there are mechanism through which it can be instrumental in the prevention of child abuse in the country, but it could not play it due role due various defects and bottlenecks in the process.

The prevention of child abuses and the crimes perpetrated against the children cannot be the precinct of the state and the criminal justice system in the country only, rather the role of society must be interjected in the process where child abuse could be prevented. In many countries, there has been the concept of the community policing where the society is involved in the process of maintaining law and order in society. Such things go a long way for the prevention of crime in society. Pakistan made the community policing as integral part of its police order of 2002, but it could not get traction due to various factors.

### **Conclusion**

To conclude, it is stated that the occurrence of child abuse has been merely existed in different manifestation in Pakistan while it became a main concern for domestic law, human rights, international law and international organizations. However, the previous criminal justice system policies, a clear comprehension of what is the nature and concept of child abuse has needed. This article focuses that how to identify and elucidate the nature, concept and different manifestations of child abuse. What is the role of criminal justice system to prevent child abuse in Pakistan? Child abuse is a notorious and concerned problem in Pakistan as well as in the globe.

In Pakistan, the P.P.C., Cr.P.C., the police orders, acts and various other laws to constitute the core criminal justice system. In recent years, Pakistan has also introduced a new kind of Juvenile Justice System pertaining to the juvenile delinquent in which there are things which need much to be desired. This includes the Juvenile Justice Ordinance of 2000 and later on was replaced by the Juvenile Justice act of 2018. Therefore, the role of the criminal justice system played an effective role by protecting their human rights and providing them rapid and affordable justice towards the rising issue of child abuse in the country.

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