

Pakistan's Child Protection Legislative and Policy Frameworks: A Critical Review¹

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Abstract

Pakistani children experience a wide range of protection issues including physical, sexual, emotional abuse, neglect, harmful traditional practices and the economic exploitation and abuse due to broader socio-economic and structural factors. However, the state response in the form of legislation, policy and intervention relating to child protection is sketchy. This article provides a critical review of the child protection legislative and policy framework in Pakistan. In doing so, it identifies the gaps in existing laws and policies, points out the negative impacts that these gaps have on children's safety and well being, and highlights the need for a legislative and policy framework, which corresponds with the existing reality of the issue and ensure Pakistani children's basic right to protection.

Keywords

Child Protection, Legislation, Policy, Gaps, Pakistan

Introduction

In Pakistan, children experience a variety of potential and actual risks to their safety and well-being in a wide range of situations. These situations may include, but are not limited to, physical abuse of a child at the hand of an adult care-giver, sexual abuse, emotional abuse, neglect, harmful traditional practices injurious to children, and economic exploitation and abuse of children due to broader socioeconomic and structural factors (Child Protection and Welfare Bureau, 2008; Ministry of Social Welfare and Special Education 2005; Save the Children, Sweden, 2010). However, the recognition of child protection problems, as a specific area of state policy and legislation, is a recent phenomenon. In fact, neither the constitution nor any single law directly covers child protection issue. Pakistan's first ever child protection policy was formulated in 2009, however, it is yet to be adopted. Considering the magnitude and the intensity of child protection issues, the existing legislative and policy response can, at best, be described as sketchy. Such a response has serious implications for children as well as the way any new laws and policies are formulated.

This article attempts to, first, provide a summary of the existing children-related laws and policies in Pakistan. Then, critically examines these legislative and policy provisions, the article identifies the gaps in these laws and policies. Finally, it shows how these gaps negatively impact children's safety and well being, both in the

short and the long run. In the short run, existing provisions deal partly with some of the child protection issues and completely disregard the others. In the long run, such legislative and policy responses, are only expected to accumulate and perpetuate the child protection deficit, thus, depriving Pakistani children from one of their basic rights, that is, right to protection. The article is divided into two sections, each further divided into sub-sections. The first section provides a review of Pakistan's international commitments and the existing national legislative and policy frameworks in two sub-sections. Section two comprises identification, analysis and implications of the gaps in the existing children-related laws and policies in Pakistan, followed by conclusion, highlighting the need for legislation and policy at the federal level to reduce the current level of children's vulnerability.

Section I

Pakistan's Existing Legislative and Policy Framework for Child Protection

Pakistan's existing legislative and policy framework for child protection comprises of the country's commitments as signatory to various international treaties and conventions, provisions of the national constitution, federal and provincial laws including criminal law and *shari'a* law, children-related national policies and action plans.

International Commitments

Pakistan has ratified a number of international treaties which provide children with special protections. These include the Universal Declaration of Human Rights 1948 (ratified 10 December 1948), the United Nations Convention on the Rights of the Child (UNCRC) 1989 (ratified 12 November 1990), the Convention on the Elimination of all Forms of Discrimination Against Women, 1979 (ratified 12 March 1996), the International Labour Organization's Convention 182 on the Worst Forms of Child Labour 1999 (ratified 11 October 2001), the Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography, 2000 & on the Involvement of Children in Armed Conflict, 2000 (ratified 26 September 2001), the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 (ratified 5 January 2002), the SAARC Convention on Promotion of Child Welfare, 2002 (ratified 5 January 2002), the ILO Convention 138 on Minimum Age (ratified 6 July 2006), the International Covenant on Civil and Political Rights & the International Covenant on Economic, Social and Cultural Rights, 1966 (ratified 17 April 2008) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (ratified 17 April 2008).

Amongst these international commitments, the UNCRC stands out as it also serves as the national policy guideline on children's issues. The UNCRC gives special emphasis to protection rights. Articles on protection against discrimination (Article. 2), registration after birth (Article. 7), protection against abuse, neglect and exploitation within the family or in care (Article.19), adoption (Article. 21), disability (Article. 23), protection from economic exploitation, from the illicit use of drugs, from sexual exploitation and abuse, from abduction, sale and trafficking and all other forms of exploitation, from torture and other cruel, inhuman and degrading treatment and protection in armed conflicts (Articles. 32-38), and children in conflict with law (Article. 40). All the above mentioned issues concern a child's right to protection in all kinds of difficult circumstances. The UNCRC and other commitments - being state obligations under the international law - make national governments the primary parties responsible for the protection of children through legislation and services (Bissell et al., 2007). These commitments, as pointed out by the Society for Protection of All Rights of Children (SPARC), not only bring international moral pressure, but also the financial support or lack of it in case of non-compliance (2002). However, these conventions are not enforceable in Pakistan until enabling legislation is enacted and Pakistan has yet to introduce any such legislation in regard to the UNCRC (Fayyazuddin, Jillani & Jillani, 1998; SPARC, 2009). This situation leads to concerns about the extent of influence that the international policy frameworks may have on national legislation and policy, which are examined next.

National Legislative & Policy Frameworks

Pakistan's children-related national legislative framework is comparatively new. It was instituted in 1989 when the United Nations Children's Fund (UNICEF) commissioned a study on the laws of Pakistan with reference to the UNCRC, just before the draft Convention was due to be presented to the United Nations General Assembly for discussion and adoption (Jillani, 1989). While the UNICEF initiated the study, it was also motivated by the concern of internal actors that 'no provisions of the Convention come in conflict with the constitution of the Islamic republic' (Jillani, 1989, p. 2). The study highlighted a number of flaws, including those relating to: constitutional provisions and laws that protect basic human rights and which are applicable generally to all citizens but not specifically to children; laws comparable with the provisions of the Convention but with some structural changes; laws not directly comparable with the provisions of the Convention or are silent on the subjects covered in the Convention (Jillani, 1989). This review suggested, among other things, a compilation and revision of existing children-related laws in Pakistan.

Three years later, the National Commission for Child Welfare and Development (NCCWD), in collaboration with the UNICEF, started a compilation of existing legislation related to children. An eminent Pakistani legal scholar, Sardar Mohammad Iqbal Mokal, undertook a review of 31 pieces of legislation including acts, ordinances and prescribed rules enacted between 1860-1991 both at the federal and provincial levels (Mokal, 1992). This compilation was completed in 2003 and included 78 pieces of legislation categorised into those relating to the criminal justice system, cultural issues, economic matters, education, family protection, health affairs, immigration, general welfare, registration and social welfare (Ministry of Social Welfare and Special Education 2005). This review did not include *shari'a* law in its own right; however, it did cover laws relating maintenance, guardianship, custody of children, inheritance and Islamic punishments, all of which are formulated and implemented according to the provisions of Islamic *shari'a*.²

The most striking feature of these legislative reviews and compilations, which is important with regard to child protection conceptualisation, enactment and practice in Pakistan, is that neither the constitution nor any single law directly covers child protection issue. This is a fact acknowledged time and again by various stakeholders including the United Nations Committee on the Rights of the Child (in its concluding observations on Pakistan's second and combined third and fourth periodic report), by the Pakistani civil society (SPARC, 2009) and by the Government of Pakistan itself (for example, in preamble to the draft Child Protection Bill 2005-06, revised 2009, and the draft National Child Protection Policy 2009).

The Constitution of Pakistan guarantees 'every citizen, wherever he may be' (children are not mentioned separately) fundamental rights. For example, Article nine provides for the security of person has, Article 11 prohibits slavery and forced labour, article 14 ensures the dignity of man, Article 22 covers the rights of minorities and Article 25 promises equality for citizens (although, section 25(3) further provides that this equal protection clause shall not prevent the state from making special provisions for the protection of women and children). In addition, the constitution obliges the state to protect the institution of marriage, the family, the mother and the child (Article 35). However, most of these principles of policy are mere aspirations and intentions of the state (Jillani, 1989). Only a few are covered by other laws, for example, protection from exploitative labour. In addition, the use of engendered language deprives vulnerable populations, such as women and children, from having a voice and from demanding their constitutional rights. Nevertheless, commentators of Pakistan's constitution and legal system note a tendency towards legal pluralism including the international human rights, the provisions of *Qur'an*

and *sunnah* and the civil law in interpreting the constitutional commitments to equality, justice and welfare (Lau, 2006; Yilmaz, 2011). This tendency has favored underprivileged groups such as women and minorities (Yilmaz, 2011). With regard to approach to the constitutional status of children, in Alston and Tobin's (2005) categorisation of the constitutions of the countries of the world,³ the Pakistani constitution falls into the 'special protection' category with a limited range of children-related provisions.

Further, none of the 78 children-related laws defines or is directly aimed at child protection. One reason for this can be explicated in the particular background of Pakistan's legislative and justice system. Most of Pakistan's basic criminal law (as laid down in the Pakistan Penal Code 1860 (PPC), the Criminal Procedures Code 1898 (CrPC) and the Evidence Act) was framed in the late nineteenth century under British colonial rule. The main objective of these laws was the maintenance of law and order in the colony and not the provision of justice to the common people.⁴ Therefore, the first striking feature of the offences listed in the Pakistan Penal Code is their categorisation into cognizable and non-cognizable offences⁵ -- a unique incorporation by the colonial British law makers in the Indian Criminal Justice System. This incorporation reflects the colonizers' concern primarily with those offences that could upset the balance of power in society with regard to state rule. Thus, the state did not intend to get involved in disputes among citizens in order to protect the weak (Federal Investigation Agency, 2006). So, for example, a petty theft was made cognizable while hurt, wrongful confinement, forcing an abortion on a woman against her will or a child gone missing⁶ were all classified as non-cognizable.

After independence, some amendments regarding offences against women and some special laws for the protection of children in specific situations were introduced. However, their effective use is still under question (Waheed, 2010). In fact, one Pakistani feminist described the country's criminal justice system as a 'patriarchal system in a patriarchal society' in which 'the state's accommodation of the orthodoxy has resulted in its continuous resistance to challenging personal laws'-- an arena that most affects women and children (Bokhari, 2009, p.3). Laws having implications for the safety and protection of a child in specific situations include certain provisions of the Pakistan Penal Code such as Section 82, 83 (which sets a minimum age for criminal responsibility), section 89, 90 (which allow care-givers to employ mild to moderate punishment, which may cause harm to a child but is not considered as an offence for the act is done in good faith), section 361-369 (which makes punishable abduction of a child) and section 370-374 (which prevents slavery and selling or buying persons for prostitution, compulsory labour). It also

includes provisions under the Criminal Procedure Code such as section 29 (which provides special trial for an offense committed by a child under 15 years of age), section 382 (which postpones the execution of a pregnant woman), section 399 (which requires child offenders under 15 to be sent to Reformatory school), section 491 (habeas corpus, custody of children), section 497 (which provides bail of a child under 16 in a non-bailable offence) and section 552 (which prevents abduction or unlawful detention of a female child below 16). In order to bring these laws in line with the provisions of the UNCRC, some have been replaced by new laws, for example, the Criminal Procedure Code provisions related to juvenile offenders have been replaced with the Juvenile Justice System Ordinance 2000. Others are under consideration for amendment, for example PPC section 82 which seeks to raise the minimum age for criminal responsibility from 7 to 10 or 12 years.

In addition to the provisions of the Pakistan Penal Code and the Criminal Procedure Code, some legislation has been enacted specifically in regard to children's issues both at the federal and provincial levels.⁷ Such legislation falls in three categories. First are those laws retained as such from the colonial period, including the Majority Act 1875 (fixing age of majority at 18 years), the Guardianship and Wards Act 1890 (which provides for appointment of legal guardians for children under 18 years of age) and the Child Marriage Restraint Act 1929 (banning marriage between children and with children where a child is defined as male person under 18 and female under 16 years). The second type includes the legislation enacted in the colonial period but amended after independence, especially as part of the process of review to bring Pakistani laws in line with the provisions of the UNCRC. Most notable in this category is the Employment of Children Act 1938 (amended as the Employment of Children Act 1991), which prohibits the employment of children below 14 years of age in certain occupations,⁸ which is partly in line with the provisions of the ILO Convention 138.

In the third category come those laws enacted after the independence according to emerging needs of children. Most of these laws are based on a traditional social welfare focus on one hand, that is, on delinquents or those in need of supervision and, on the other on dependent or neglected. Examples of laws in this category include the Punjab Children Act 1952 (which deals with state custody of destitute children, and offences against children under 14 years of age), the Sindh Borstal Schools Act 1955 (which provides for detaining offenders aged 16-21 years in borstals), the Sindh Children Act 1955 (which provides for custody, protection, treatment and rehabilitation of children and youthful offenders), the West Pakistan Control of Orphanages Act 1958, the Juvenile Smoking Ordinance 1959 (which bans public smoking by children

under 16 years of age), the Pakistan Suppression of Prostitution Ordinance 1961 (which prohibits the attraction, attention by words, gestures, wilful and indecent exposure of the body for the purpose of prostitution of a girl under 16 years of age and criminalise the person buying sex), the Punjab Supervision and Control of Children Homes Act 1976 and the Punjab Children Ordinance 1983 (which provides for looking after the children under 15 in need of control, care, protection and rehabilitation). Some comparatively recent laws including the Juvenile Justice System Ordinance 2000 (JJSO) and the Prevention and Control of Human Trafficking Ordinance 2002 continued the earlier welfare focus on the most vulnerable children. However, some other laws such as those codified for provision of compulsory primary education in Punjab (1994), the Khyber Pakhtunkhwa (1996), Sindh (2001) and Islamabad Capital Territory (2002) are aimed at the overall welfare of the general child population.

Pakistan's first ever specific child protection law has only been comparatively recently developed. The Punjab Destitute and Neglected Children Act 2004, commonly known as the Child Protection Act, aims at 'consolidating the law for the rescue, protective custody, care and rehabilitation of destitute and neglected children in the province of Punjab, other than those involved in criminal litigation' (Government of Punjab, 2004, preamble of the Act). The Act provided for the establishment of the Punjab Child Protection and Welfare Bureau-- the 'first ever child protection system in Pakistan' (Ministry of Social Welfare and Special Education, 2005, p. 37). The Act and the resulting child protection system have instigated a number of protection-related initiatives that have been taken up since its enactment. Amongst these initiatives, most prominent are the efforts underway in Khyber Pakhtun Khwa and Sindh provinces to replicate the Punjab model of child protection including the legislation and the establishment of child protection services, though in modified forms.

At about the same time, both the Government of Pakistan and the UNICEF agreed to make child protection one of the areas on which to collaborate in the 2004-2008 UNICEF program cycle. UNICEF then established child protection as a separate program in Pakistan and allocated resources to it (UNICEF, 2004), which created a momentum in the country with regard to child protection legislation and policy. The Government of Pakistan included child protection along with education, health, HIV/AIDS and the commercial and sexual exploitation of children as priority areas for state action in the second National Plan of Action for children, 2005. The first child protection specific federal law, the Protection of Children Act, was also drafted in 2005. The draft bill identified protection violations, prohibited child sexual abuse and exploitation, proscribed traditional harmful practices and harmful vocations

for children, described measures to prosecute perpetrators and chalked out the types of child protection services to be provided (Ministry of Social Welfare and Special Education & National Commission for Child Welfare and Development, 2006). The bill was revised three times following wider consultation with a range of stakeholders including the relevant government departments, non-governmental organizations working on children's issues, the law enforcement agencies and parents and advocacy campaigners who lobbied parliamentarians. However, finally, when the bill was submitted by the Ministry of Social Welfare in 2007 for cabinet review and approval, it was sent back to the ministry with the advice to first develop a national child protection policy (Sardar, 2008). It was also noted by the cabinet that some provisions of the bill fell under the purview of provincial governments, while others related to criminal law and procedures that came under the federal government responsibility (SPARC, 2009).

Responding to the above objections, the Ministry of Social Welfare, with the support of non-governmental organisations, decided to review the Protection of Children Bill (2005/2007) yet again. Considering the objections to the draft bill, three separate bills covering the issues given in the original bill were drafted. The first, the Protection of Children (Amendment) Bill 2009 proposed amendments to the Pakistan Penal Code on issues of minimum age for criminal responsibility, corporal punishment and criminalizing cruelty to children, child pornography and internal child trafficking. The other two included the National Commission on the Rights of Children Bill 2009 (which propose the establishment of an independent child rights commission with full authority, replacing with the NCCWD) and the Child Marriage Restraint (Amendment) Bill 2009 (which seeks to raise the minimum marriageable age for females from 16 to 18 years).

In between the second (2002) and combine third and fourth periodic report (2009) to the United Nations Committee on the Rights of the Child, the Government of Pakistan put a lot of emphasis on legislative measures that will create a protective environment for children (SPARC, 2009). However, all these efforts remained a work in progress until the 18th constitutional amendment was made in 2010, according to which social welfare including the children's issues became a provincial jurisdiction. Even before the 18th amendment was enacted, the United Nations Committee in its concluding observations on Pakistan's 2009 report raised concerns about the delays in the adoption of these laws (CRC/C/PAK/CO/3-4, para. 8,9), placing a particular emphasis on protection measures (CRC/C/PAK/CO/3-4, para. 82-101). The Committee also noted some existing legislation such as the *Shariah Nizam-e-Adl* Regulation 2009, ⁹the *Zina* (Enforcement of *Hudood*) Ordinance 1979¹⁰

and the Frontier Crimes Regulation 1901¹¹ (FCR) remain in conflict with the principles and the provisions of the Convention (CRC/C/PAK/CO/3-4, para. 10,11) and, as such, is detrimental to the protection of Pakistani children.

Alongside the revision of the draft Child Protection Bill, the Ministry of Social Welfare also started drafting the national child policy. In fact, such a policy was long since due as the Ministry of Finance refused to fund the National Plan of Action (NPA) for children 2005-06 with the observation that, in the absence of a national child policy, no financial allocation could be made to the plan. The draft National Child Protection Policy was first released in March 2009. The draft policy focused on the legislative environment which included laws on banning corporal punishment, raising the minimum age for criminal responsibility, prohibiting domestic child labour, defining a child as person under 18 for all purposes, criminalizing child sexual abuse, exploitation, pornography and child trafficking, institutional care standards and rules for the Child Protection Courts. The draft policy also provided for children-related institutional structures, child protection at community level, child participation, elimination of child labour, protection of children in emergencies, birth registration, child protection services, juvenile justice and budgeting for child protection (Ministry of Social Welfare and Special Education, 2009). The policy is yet to be adopted.

In the meantime, Pakistan has been implementing a National Plan of Action for the Elimination of Child Labour 2000 and a National Policy and Plan of Action for the Elimination of Bonded Labour 2001, which both provide for protection of labour children in hazardous situations. The National Plan of Action for Women (1998) and the National Policy for the Development and Empowerment of Women (2002) promise special protections for girl children. The country has also adopted a National Policy and Plan of Action against Commercial, Sexual Exploitation of Children in 2006, which provides for the prevention, protection and recovery and rehabilitation of victims of child sexual abuse, a critical protection issue. While legislative and policy measures are important in protecting children from violence, abuse and exploitation, it is even more important that such measures respond to the specific context of child protection issues.

So far, the existing evidence suggests that Pakistani children experience a wide range of protection issues including individual incidents of violence, abuse and exploitation, and abuse and exploitation due to broader structural and institutional factors. Analysis in this article revealed that the existing legislative and policy frameworks do not deal with child protection as an issue in its own right, but, rather, tend to respond to various child protection issues on

an issue-to-issue basis, which leaves significant gaps between the existing legislative and policy frameworks in Pakistan, as examined above, correspond with the specific child protection issues that children face in Pakistan.

Section II

Gaps in Current Children-related Legislative and Policy Frameworks and their Implications for Child Protection in Pakistan

The above discussion of existing laws, policies and plans indicates that there are certain gaps in Pakistan's child protection legislative and policy frameworks. The efforts to develop a legal and institutional base for child protection seem to be issue-based and lack direction and consistency (Save the Children, Sweden, 2010). Further, these efforts are affected by popular beliefs, attitudes and practices about who is to be considered a child and how children should be treated (NCCWD & UNICEF, 2008). The following are some of the legislative and policy loopholes.

Definition of the Child

As noted earlier, Pakistan inherited some children-related laws from the colonial times. Since Independence, some new laws have been enacted and others amended. However, these laws were never synchronized with regard to a definition of the child. As a result, there is a complex range of definitions across legislation for who is to be considered a child. For example, according to the Majority Act 1875, a “minor” is a person who has not attained the age of 18 years. However, under the *Zina* (Enforcement of *Hudood*) Ordinance 1979, adult or “major” means a male person who has attained the age of 18 years and a female person who has attained the age of 16 years or who has attained puberty. Similarly, the age of consent for sexual activity and for marriage is 18 years for males and 16 years for females.

While the Pakistan Penal Code fixes the minimum age for criminal responsibility at seven years, the Criminal Procedure Code (section 497) provides special concessions such as the granting of bail in non-bailable offences when the offender is less than 16 years of age. In a further example, the Juvenile Justice System Ordinance 2000, which overrides all existing laws relating to juveniles, defines the child as a person below 18 years of age. However, in 2004 the Lahore High Court revoked the JJSO¹² with effect for the whole country on the grounds that this law unduly privileges juveniles but ignores the fact that the Constitution of Pakistan allows special provisions for the protection of women and children without diminishing the rights of others. The court also held that people have made false statements regarding the age of an accused person in order to gain the benefits of protection under the JJSO;

therefore, it was found not to be worthwhile retaining a law which is inconsistent with the Constitution and which was also impractical (Amnesty International, 2005). Since this, the appeal against the Lahore High Court judgement is pending in the Supreme Court of Pakistan (SPARC, 2009).

The issue of the definition of the child is further complicated by the fact that the Constitution of Pakistan does not directly define a child in terms of age¹³ except for Article 11 (3), which lays down that no child below 14 years shall be engaged in any factory or mine or any other hazardous employment. Arguably, it is reasonable to specify different ages for different activities and responsibilities reflecting the 'evolving capacity of the child' as per the Article 5 of the UNCRC. Therefore, the question seems to be whether the specified ages are reasonable. In answering this question, it must be noted that there are three dimensions to the concept of evolving capacity: 1) a developmental dimension, 2) a participatory or emancipatory dimension and 3) a protective dimension (Lansdown, 2005, p.15). This protective concept entitles children to certain levels of protection in recognition of their childhood status. Also, it requires determining a child's capacity for an activity or liability on certain well-defined principles such as intellect. Pakistani laws not only determine different ages for different activities and liabilities without identifying well-defined guiding principles (NCCWD & UNICEF, 2008), but they also discriminate children for the same purpose, for example, the minimum age for marriage. In fact, fixing 16 years as the minimum marriageable age for females, instead poses known maternal and child health risks due to early marriage and pregnancy, shows that this age limit is neither reasonable nor well thought at.

To further add to the complexity of the issue of the definition of the child, laws based on religious, tribal and/or traditional interpretations of justice such as the *Shariah Nizam-e-Adl* Regulation 2009 and the *Zina* (Enforcement of *Hudood*) Ordinance 1979 make no special provisions for children. Rather, these laws treat children on a par with adults. In short, the complex issue of the definition of the child in terms of age which has been raised in Pakistan due to the arbitrary fixation of age for different purposes (e.g., marriage) and to inconsistencies within and between international, national and customary laws has serious consequences for child protection policies and programs in Pakistan. Such arbitrary definitions of the child fundamentally hamper any attempt to legislate and implement a comprehensive child-related law that takes into account the level of protection that children are entitled to in recognition of their childhood.

The concept of child protection

While the Constitution of Pakistan promises special provisions for the protection of women and children, and the country's legal system anchors the protection of children in both the Constitution and in family codes, it does not explicitly define 'child protection'. As is clear from the above discussion of Pakistan's legislative frameworks, the country has a number of federal as well as provincial laws related to children. With the exception of the Punjab Destitute and Neglected Children Act 2004, which is considered to be the first child protection legislation introduced in Pakistan, no laws apply either the language or express the intent of protection. The Act provided for the establishment of the Child Protection and Welfare Bureau (Government of Punjab 2004). The Bureau's stated mission is 'to work towards an environment, in which families, communities, organizations and governments ensure that children's physical, social and psychological *needs are fulfilled*, so that they grow into healthy, *contributing members of society*' (Child Protection and Welfare Bureau, 2008, p.17 emphasis mine). Clearly, according to this statement, the mission is the 'fulfillment of needs' to ensure children's potential 'contribution in society' rather than either ensuring child protection in its own right or the protection of the rights of children.

Further, the institutional mechanisms of the Bureau reflect a narrow curative and interventionist concept of child protection. For example, a core function of the Bureau's Child Protection Unit is to rescue neglected and destitute children – who are living on the streets who are involved in begging, hard manual labour and other exploitations -- and then re-unify them with their families. The Child Protection Institute of the Bureau provides the residential care arrangement for those children whose families could not be traced (Child Protection and Welfare Bureau, 2008, pp.20-51). Child victims of abuse are thus removed from the abusive situation and are either re-unified with their poor families (most likely to return to the streets and/or exploitative work) or are placed in the institutional care (Enterprise for Business Development & Management, 2009). The causes of abuse, especially the structural causes, remain and continue to manifest themselves.

It is these manifestations, rather than root causes of abuse, that have been the focus of policy, planning and intervention in Pakistan. For example, in its 2004 'Strategy and Major Lines of Action' for creating a protective environment for children in Pakistan, UNICEF noted certain manifestations of child protection issues such as child labour, children without primary caregivers, minors in conflict with the law, sexual exploitation and abuse, harmful traditional practices and discrimination (UNICEF, 2004, pp. 4-7). Based on these

manifestations, UNICEF provided a conceptual and strategic framework for the attainment of a protective environment. The conceptual framework identifies underlying and structural factors that allow a 'child's unobstructed development' as 'a protected child'. The underlying factors¹⁴ are identified as government will and capacity; legislation and enforcement of protective laws in line with international treaties and standards; capacity of social service providers; services for recovery and integration following child protection abuses; awareness, attitudes and behaviour within families and communities; children's life skills; open discussion of child protection issues and monitoring and reporting of rights violations. The structural factors include poverty, democracy and respect for human rights, rule of law and culture (UNICEF, 2004, p. 3). While the framework acknowledges that the structural factors increase children's vulnerability to different types of abuse and exploitation, the main focus is on the underlying factors as reflected in the proposed child protection program strategies.

The first strategy aims at addressing the gaps in existing child protection legislation and ensuring its implementation through policy development, legal frameworks and law enforcement. The second strategy is the provision of recovery and reintegration services for child victims of abuse and exploitation. The third includes awareness raising and community mobilization around traditional practices and social norms that lead to violations of child rights. The fourth is to empower children with life skills, such as decision making and problem solving, coping with stress and pressure, interpersonal communication, self-awareness and empathy. The fifth and final strategy aims to open public dialogue and discussion of child protection issues (UNICEF, 2004, pp. 15-19). The Government of Pakistan adopted this strategic framework in its 2005 National Plan of Action (NPA) for children and in its 2009 draft National Child Protection Policy (Ministry of Social Welfare and Special Education, 2005, 2009).

This framework suffers from a number of conceptual and practical flaws. First of all, it tends to conceptualise child protection as a set of manifestations seemingly self-contained and independent of each other. Secondly, it fails to explicitly establish a generic causality between manifestations and their root causes and to relate them to sources of response and prevention, that is, to the factors that underlie protective environments. Take for example, child labour. In Pakistan, existing research studies of child labour suggest that the labour children are vulnerable to all kinds of exploitation and abuse including economic exploitation, physical punishment, emotional and sexual abuse and trafficking for labour (Kamal, 1999; Working Group Against Child Sexual Abuse and Exploitation & Save the Children, Sweden, 2009). Further,

empirical research in Pakistan and elsewhere identifies broader structural elements such as poverty, lower budget allocations for the social sector, intensive urbanization and social beliefs and attitudes towards children and child work as the chief causes of child labour (Burra, 1998; Khan, 2007; Myers, 1991; Weiner, 1991; Weiner & Noman, 1995). According to this evidence, child labour emerges as a multidimensional phenomenon that is caused by a complex set of individual and structural factors and that generates even more complex and interdependent effects. Such a complex issue cannot be addressed by strategies such as those described above which focus on legislation relating the manifestations of protection issues in specific situations and on the recovery and reintegration services, without taking into account the root causes.

Some of these flaws have been addressed in the evolving conceptions of child protection. While a 1990s study by the then Secretary of the Pakistan Law Commission conceptualised child protection in terms of provisions made under the Pakistan Penal Code and the Criminal Procedure Code (Hussain, n.d.), a 2005 study commissioned by the UNICEF conceptualised child protection in five thematic areas: children without primary care-givers; child labour; child trafficking; child sexual exploitation; and violence against children outside armed conflicts (Raasta Development Consultants, 2005). In 2006, Pakistan's Federal Investigation Agency (FIA) within the Ministry of the Interior commissioned an *Analysis of Enforcement Gaps in Child Related Protection Laws*, from an independent organisation, the Community Uplift Program. Unlike earlier research, which focused on particular child protection issues, this study acknowledged that 'child protection is a vast subject that encompasses various aspects that we need to take at the societal level as well as at the law enforcement level as part of the larger strategies for prevention of crimes against children' (Federal Investigation Agency, 2006, p. 6).

In 2008, the National Commission for Child Welfare and Development (NCCWD) and UNICEF commissioned a *Knowledge, Attitudes, Practices Study on Child Protection Rights and Responsibilities*. This study was also conducted by an independent organisation. The study identified 18 manifestations of violations of the protection rights, ranging across children without primary care-givers, children who are trafficked, children who are sexually exploited to children subjected to violence ranging from corporal punishment to sexual abuse and various forms of child labour. Although the study examined the societal and structural causes of violations of children's protection rights, it did not recommend any broad structural changes such as the provision of free education or poverty reduction. Instead, the study proposed a 'seamless' service for children in need of protection, emphasizing

the need for sensitization and orientation of all those concerned including children, parents, school staff and law enforcement agencies and the establishment of child protection services (NCCWD & UNICEF, 2008, p. 10). Nevertheless, these studies show a gradual broadening of the concept of child protection in Pakistan.

UNICEF as a lead agency in all activities relating to children, too, has made considerable progress in its child protection programming and strategy. In 2007, the UNICEF's East Asia and Pacific office provided a comprehensive conceptual framework for child protection, which addressed some of the flaws of the 2004 framework, especially those relating to the relationship between problems, causes and sources of responses in a given socioeconomic, political and cultural context, a child's immediate environment and the prevention and response system (Hong & Birdle, 2007). In 2008, the UNICEF executive board adopted a child protection strategy to 'create a protective environment, where girls and boys are free from violence, exploitation, and unnecessary separation from family; and where laws, services, behaviours and practices minimize children's vulnerability, address known risk factors, and strengthen children's own resilience' (United Nations Economic and Social Council, 2008, p.1).

However, child protection policy and practice in Pakistan is still largely informed by the 2004 framework, as reflected in the 2005 National Plan of Action for children and the 2009 draft National Child Protection Policy, both of which tend to address specific manifestations of child protection problems. While child protection conceptualised in terms of the manifestation of an issue may provide immediate scope and justification for practical intervention to address that particular manifestation, it does not create protective environment. Rather, as the existing literature suggest, it leads to a narrow curative (*versus* preventive) approach, which aims at any intervention to protect children only when an incident of maltreatment has occurred, that is, when a protection issue is manifested (Calvert, 1993; Helfer, 1982). Secondly and consequently, child protection systems based on a curative approach have failed in many countries around the world in terms of cost, coverage and prevention of future abuse and exploitation, among other things (Dingwall et al., 1983; Lonne et al., 2009; Melton, 2005; Parton, 1985; Scott, 2006). In a country such as Pakistan, where protection issues are pervasive, widespread and deeply rooted in the social structures, and resources are very few, a policy aimed at curing manifestations of child protection issues may not be effective, sustainable or, indeed, able to meet the needs of all children.

Conclusion

To sum up, the above analysis reveals a situation where a plethora of laws and policies relating to children does exist, however, not a single law directly addresses the child protection issue in its own right. These legislative and policy provisions do not appropriately address some child protection issues and completely disregard others. By way of reiteration, apparently, the issue of child labour -- not only in its own right, but also as a protection issue -- has received a good deal of attention in terms of legislation and policy. However, on a deeper analysis, it is not hard to discern that legislating a minimum age for work is no solution to the problem unless poor children and their parents are offered alternatives to child work such as some social protection allowance, financial assistance and education facilities. In fact, removing children from streets or from hazardous work may push them to even more risky situations, for example, domestic work, which is beyond state intervention, thus, adding to the complexity of the problem of child labour. Such a situation implies that the sketchy legislative and policy provisions, as above, neither correspond with the existing reality of child protection issues nor are they effective in the long run. Rather, such frameworks may actually increase and perpetuate child protection problems, thus, depriving Pakistani children from one of their basic rights, that is, right to protection. Therefore, this article emphasises the need for wholesale legislation and policy at federal level to reduce the current level of vulnerability of children in Pakistan.

End Notes

- ¹These include the Majority Act 1875, the Guardians and Wards Act 1890, the Child Marriage Restraint Act 1929, the Claims for Maintenance Ordinance 1959, the Muslim Family Laws Ordinance 1961, the West Pakistan Family Court Ordinance 1964 and the Hudood Ordinance 1979. Some of the Shari'a laws that form the basis and offer interpretation of these laws are non-codified and vary from sect to sect (Jillani, 1989; Fayyazuddin, Jillani & Jillani, 1998).
- ²These include the Majority Act 1875, the Guardians and Wards Act 1890, the Child Marriage Restraint Act 1929, the Claims for Maintenance Ordinance 1959, the Muslim Family Laws Ordinance 1961, the West Pakistan Family Court Ordinance 1964 and the *Hudood* Ordinance 1979. Some of the *Shari'a* laws that form the basis and offer interpretation of these laws are non-codified and vary from sect to sect (Jillani, 1989; Fayyazuddin, Jillani & Jillani, 1998).
- ³With regard to the constitutional status of children, Philip Alston and John Tobin (2005) in their study of some key legal and constitutional aspects of the impact of the UNCRC on children's well-being categorise world constitutions into three: the 'invisible child' constitution; the 'special protection' constitution and; the 'children's rights' constitution (Alston & Tobin, 2005, p. 21).
- ⁴The criminal justice system in colonial India has long been a subject of research and debate among historians, orientalist and law experts (Benton, 2002; Chatterjee, 1996; Kolsky, 2005, 2010; Singha, 1999). Almost all these experts noted the particular focus on law and order *versus*. provision of justice to citizens.
- ⁵According to the Pakistan Criminal Procedure Code, a cognizable offence is one in which the police are empowered to take immediate action on a complaint by visiting the scene of a crime, conducting an investigation and arresting an accused involved in a cognizable crime without a court warrant. A non-cognizable offence is one in which police can neither register a First Information Report (FIR) nor investigate nor effect an arrest without express permission or directions from the court. These are mostly left to the effected parties to pursue in courts.
- ⁶Following the 1999 serial killings of 100 children in Lahore, it was found that police did not register a complaint when parents of some of the victims contacted police when the child first had gone missing (Rehman et al., 2000). The police justified themselves by saying that the CrPC authorized them to register a complaint only upon the commission of a cognizable offence, which, 'missing' per se is not.

- ⁷The Criminal Law (Amendment) Act 2004 deals with exchange marriage, child marriage and traditional practices of *vani/swara* (exchange of females for settlement of disputes) and the Protection of Women (criminal laws amendment) Act 2006 deals with rape, kidnapping, inducing a woman to compel her for marriage, selling/buying a person for prostitution, deceitful cohabitation and detaining a woman with criminal intent.
- ⁸As a general rule, federal laws override provincial laws pertaining to the same issue.
- ⁹The Act is under review after Pakistan ratified the ILO Convention 138 in 2006. The convention sets the minimum age for admission to all work at 14 years.
- ¹⁰This regulation overrides all other laws, including JJSO in Malakand division (an administrative unit in Khyber Pakthunkhwa province) where children are treated on par with adults.
- ¹¹This ordinance overrides all other laws including JJSO, punishes *zina* (unlawful sexual intercourse) with whipping or stoning to death for males over 18 and females over 16 years of age or who reached puberty. Also, it does not deal with the sexual abuse of a child.
- ¹²FCR is the sole law for the Federally Administered Tribal Areas where Pakistani laws are not applicable. It was enacted in colonial times, comprising substantive and procedural law relating to criminal and civil matters while retaining elements of traditional justice. In FCR, there were no special provisions for children and children were treated on par with adults until an amendment was enacted in 2011, which provides for protection of children under 16 from collective responsibility and detention.
- ¹³*Farooq Ahmed vs. Federation of Pakistan*, PLD 2005, Lahore 15 (6 December 2004)
- ¹⁴A child is considered a citizen by birth and the constitution promises 'equality of citizens' (article 25). However, both the issuance of the national identity card and suffrage occur at 18 years of age.
- ¹⁵These underlying factors were identified in the Protective Environment Framework (PEF), set out in the 2002 UNICEF Operational Guidance Note, as broad elements that are critical to good protection.

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