

Baluchistan Child Protection Act, 2016: What have we Learnt from Child Protection Legislation in Pakistan Since 2004?

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Abstract

This paper is a comparative analysis of Baluchistan Child Protection Act, 2016 with child protection legislation enactment and implementation in three other jurisdictions of Pakistan, namely; Punjab, Khyber Pakhtunkhwa (KP) and Sindh. Each province has enacted a child protection specific law followed by establishment of a formal institutional arrangement for the implementation of the law. In Punjab, the Punjab Destitute and Neglected Children Act promulgated in 2004, and revised in 2007, and Child Protection and Welfare Bureau was established in the provincial Home department to implement this law. In Khyber Pakhtunkhwa (KP), KP Child Protection and Welfare Act 2010 followed KP Child Protection and Welfare Rules 2013 while the implementation was assigned to a Child Protection and Welfare Commission within the provincial Social Welfare department. In Baluchistan, Child Welfare and Protection Act was enacted in 2016, a Child Protection Commission has been notified in 2018 within the provincial Social Welfare department which would be responsible for the implementation of the aforementioned law. The analysis reveals that despite a fairly long gap between enactment and implementation of previous three laws and the recent one there are legislative and institutional gaps which were not addressed in this new legislation, e.g, too much left to bylaws/secondary legislation which take years to follow, too narrow or too broad scope of the laws not matching with the capacity and mandate of the implementing bodies. Above all, each law acknowledges child protection to be a multidimensional and cross disciplinary endeavor, however, none chalks out clear collaboration mechanisms with other departments and organizations. It is concluded that those involved in child protection legislation and its implementation have a lot to learn from each other's experiences, especially from mistakes if we are to protect our children from violence, abuse, exploitation and neglect.

Keywords: Baluchistan, Child protection, Comparative analysis, Legislation, Lessons learnt, Pakistan

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Introduction

Every child has a right to grow up safe to their full potential. However, due to their vulnerability in terms of age, physical growth and maturity, children in almost every country and every culture are at risk of violence including physical, emotional and sexual abuse, economic and other forms of exploitation, neglect or maltreatment. Such violence, abuse, exploitation and neglect limit their chances of surviving, growing, developing and living to their full potential.

Child protection is the protection of children from violence, exploitation, abuse, neglect and maltreatment as provided in the Article 19 of the United Nations Convention on the Rights of the Child (UNCRC). It refers to both preventing and responding to violence, exploitation and abuse against children. Various levels of governments, communities, and non-government organizations can help ensure that children grow up in a protective environment – an environment that does not only respond to an incidence of abuse but also prevent such incidences from happening. There are both formal and informal mechanism and processes that create a protective environment. Child protection legislation is one such formal mechanism.

Around the world, national or provincial governments' child protection legislation authorizes certain government department/s or agency/ies to provide child protection services and to intervene in situations where children are suspected to be or actually abused, exploited, neglected or maltreated. Child protection legislation governs children's safety and wellbeing and provide child protection services.

The adoption and wide ratification of the UNCRC, which requires establishment of formal child protection mechanism (article 19) has provided an impetus to child protection legislation in many parts of the world including Pakistan. In Pakistan, first specific child protection legislation was enacted as early as in 2004 when the Punjab Destitute and Neglected Children Act was legislated, which focused on protection of the most vulnerable children as reflected in the title. This was followed by enactment of the Khyber Pakhtunkhwa Child Protection and Welfare Act in 2010 and Sindh Child Protection Authority Act in 2011. Balochistan Child Protection Act, 2016 is the latest addition to Pakistan's child protection legislation.

This article is a comparative analysis of Balochistan Child Protection Act, 2016 with child protection legislation enactment and implementation in three other jurisdictions of Pakistan. The aim of this analysis is to examine whether Balochistan legislation has benefitted from the experiences, especially from the mistakes, in the enactment and implementation of the previous laws. The article is organized in such a

way that first it examines the existing context of child protection issues in Pakistan. Next, national child protection legislative and policy frameworks are examined leading to the provincial ones. Then, it provides a brief overview of child with the Balochistan context of child protection issues, provides a summary of the Balochistan Child protection Act, 2016 and finally, highlight the gaps in this law while analyzing it in the light of previous three laws from other provinces. This article concludes that legislatures, policymakers and practitioners have a lot to learn from each other's experiences, especially from past mistakes if we are to protect our children from violence, abuse, exploitation and neglect.

Pakistan: Child Protection Context

The existing context of child protection issues and child protection services in Pakistan is not clearly known for reasons including under-reporting due to the cultural stigma attached with abuse, a nascent state child protection system, and the lack of a system of collecting, compiling, and analysing child protection related data (Jabeen, 2013). In addition, regional variations between various jurisdictions, both in terms of incidence and prevalence of abuse and its response, make generalization impractical.

A few strands of child protection related issues have been identified, albeit with partial systematic evidence. Only 34% of Pakistani children under five are registered at birth; the rate plunging to 5% among the poorest, (UNICEF Pakistan, 2017). This lack of birth registration has serious implications for children and families for receiving necessary protection related services. Further, economic exploitation such as hazardous child labour, domestic child labour, bonded labour or child trafficking, including for sexual exploitation, pertains to serious concern (ILO Pakistan, 2015).

In the aftermath of Kasur child abuse case in 2015 (Pakistan Press Foundation, 2015) and Zainab case in 2018 (BBC 2018), child sexual abuse is being more openly discussed as a major social issue. Sahil, a local non-government organization, reported a total of 3,445 cases of child sexual abuse reported in 2017, collected from 91 national and regional newspapers. Overall victimization rates were 59% girls and 41% boys. These numbers may only be the tip of the iceberg, since only those cases reported in newspapers are counted. Nevertheless, the proportion of urban - rural (24% -76%) and geographic distribution (63% Punjab, 27% Sindh, 4% Balochistan, 3% Islamabad, 2% KP, 12 cases AJK and 3 cases GB) of cases may have implications for resource allocation and programming priorities (Sahil, 2018).

National Child Protection Policy and Legislative Frameworks

As far the national child protection policy and legislative frameworks are concerned, Pakistan has adopted a number of key policies that may serve as a foundation of authority and mandate for the protection of children and the establishment of a state child protection system. Since the ratification of the Convention on the Rights of the Child (CRC) in 1990, Pakistan has ratified or enacted a number of related international instruments and national laws that are relevant to establishment of a child protection system. Following table shows these international instruments and national laws by title, scope and year of ratification/enactment.

Table 1. International Instruments & National Laws Relevant to Establishment of Child Protection System

Title	Scope	Year ratified/enacted
The International Labour Organization (ILO) Convention 182	Worst forms of child labour	2001
The ILO Convention 138	Minimum age for work	2006
The Optional Protocols to the UNCRC	<ul style="list-style-type: none"> • Sale/prostitution of children, • Involving children in armed conflict 	2011 2016
The Convention Against Torture and Cruel Punishment	All persons against torture and other cruel, inhuman, or degrading treatment or punishment	2010
The Acid Control and Acid Crime Prevention Act	All persons victim of acid crimes, especially females	2011
The Second Amendment to the Criminal Law	Prohibiting child pornography, exposing of children to sexually explicit material, cruelty to children, human trafficking within Pakistan, and sexual abuse of children	2016
The Criminal Law (Amendment) (Offences related to rape) Act, 2016	Rape of a minor or a person with mental or physical disability	2016

So far, Pakistan's national policy regarding child protection has followed an uncertain path. In 2006, the federal cabinet officially adopted the National Plan of Action (NPA), which included sections on: child protection; a political strategy to increase political commitment; build capacity and networking; advocate for enhanced resources; and strengthening structures (UNICEF, 2009). However, in 2010, Pakistan entered into complete devolution with the 18th Constitutional Amendment, giving provinces the sole legislative and administrative authority on all matters relating to child protection. It is worth noting nevertheless, that while each province is to implement its own child protection policy under the devolution, the federal policy is applicable till the province is ready to implement its own laws, and the federal government remains ultimately responsible to fulfill its obligations under international law (Committee on the Rights of the Child 2015).

Provincial Child Protection Policy and Legislative Frameworks

Punjab

Punjab was the first province to enact a specific legislation regarding child protection, called the Punjab Destitute and Neglected Children Act in 2004, later revised in 2007. However, the Act is narrow in its scope and fraught with practical difficulties in terms of implementation. As the title suggests, it mainly addresses the protection issues of three categories of children – that is, destitute, neglected and abandoned. Established within the Home department, it has a punitive to welfarist approach to child protection. The Act is wanting in its compliance with the UNCRC and internationally validated standards of child protection. The Child Protection and Welfare Bureau, established under the Act, struggles to be self-sufficient as it lacks proper co-ordination with line departments and does not have clear referral pathways to necessary services. The Act is also missing on an exit/reintegration plan for a child who enters the child protection system.

Khyber Pakhtunkhwa

Khyber Pakhtunkhwa's (KP) Child Protection and Welfare Act was passed in 2010, followed by a set of implementation regulations—the KP Child Protection and Welfare Rules 2013. It has been noted that the law lacks clarity regarding corporal punishment and domestic violence, and does not provide a separate Child Protection court, causing a backlog on the Family Court docket (Jabeen & Akhunzada, 2017). Further, the merging of all child rights without prioritizing child protection has resulted in only five percent of the cases dealt with by the courts being protection-

related, while 95% of the cases were welfare-related, thus diluting the focus on child protection (Jabeen & Akhunzada, 2017).

Given the current international impetus to emphasize family-based care over institution-based care (Bhuvaneswari & Sibnath 2016, Fernandez 2014), surprisingly, the KP Commission is also given the power to establish, manage and ‘recognize’ Child Protection Institutions for placement and rehabilitation of children. Further, the role and mandate of NGOs, working in the area of child protection, has not been made clear under the Act.

Sindh

In Sindh, the struggle to establish policies and structures for a child protection system go as far back as 1955, when Sindh Children’s Act was passed; however, the notification was not issued until 1974, and it still remains dormant, with the exception of its enforcement with regards to remand homes and youthful offenders’ industrial schools. More recently, Sindh enacted the Child Protection Authority Act in 2011, which is mandated to ensure child protection, ‘identifying physical and psychological violence, sexual abuse, commercial sexual exploitation, worst forms of child labour and beggary, human trafficking within and outside of Pakistan and misuse for drug trafficking’ (Government of Sindh 2011) leaving the implementation to bylaws and rules. The Authority was established in late 2014, but unfortunately, the implementation rules are still awaited, and budgetary issues have thus far plagued moving the full implementation of the Act forward.

According to a 2017 report by the Office of the National Commissioner for Children and UNICEF (2017), eleven Child Protection Units (CPUs) have been established at the district level providing referral services, including Helpline 1211, protection, guidance, counseling, psychological and psycho-social support, birth registration, and referrals to health, education and financial help. Most of the Child Protection Officers are from the provincial social welfare department, double burdened with their original social welfare duties and additional child protection duties. Sindh’s range of child protection related services is limited including the lack of legal services and juvenile courts.

Punjab, Khyber Pakhtunkhwa and Sind child protection legislation has been enacted with enough gaps for one jurisdiction to learn from the experiences of others. However, from the above brief review, it does not seem to be the case. It is clear that provinces have repeated the same mistakes. Some even made new ones, despite the realization, based on experience, that how sensitive the child protection issues could be. Balochistan is the latest entry in the arena of child protection legislation and policy

in Pakistan. The remaining part of this article is focused on the analysis of Balochistan child protection legislative, policy and administrative environment with a special focus on the Balochistan Child Protection Act 2016 in an attempt to know what have we learnt from our experience of the child protection legislation and its implementation efforts.

Balochistan

The context

Balochistan, among all provinces, has the highest proportion of its population (71%) living in multidimensional poverty (UNDP 2016). It is geographically the largest, but, least populated province in the country. 12 million people live in Balochistan, nearly half of them estimated to be under age 18 as per national average (Pakistan Bureau of Statistics 2017). Birth registration rate in the province is lowest in the country (UNICEF 2019).

In terms of child protection issues, negative cultural practices such as child marriage, and *swara* or *vani* (giving young females in compensation to the aggrieved parties to resolve disputes) continue to take place (Sayeed, Khan, Haider and Kamran 2012a). Further, Balochistan is along a transit route for human trafficking coming from northern Pakistan and Afghanistan to Iran, the Gulf and Europe. Among trafficked persons, a sizeable proportion is that of children according to the Federal Investigation Agency (Sayeed, Khan, Haider and Kamran 2012a).

Balochistan child protection act, 2016

Balochistan enacted the Balochistan Child Protection Act as Act No. VII of 2016. It is an Act 'to provide for the protection of children in Balochistan from all forms of physical or mental violence, injury, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and matters incidental thereto' (Government of Balochistan 2016).

Summary of the act

The Act consists of 31 clauses. These clauses cover a reasonably wide range of relevant topics including definitions of child protection related concepts, their operationalization in some instances, composition and functions of various bodies involved in the child protection process, the process of child protection case management, and appointment and role of child protection workforce among others.

The Balochistan Child Protection Act, 2016 has been commended as the first piece of provincial child protection legislation fully compliant with the UNCRC

(UNICEF 2018) The Act does adhere to Article 19 of the UNCRC in defining the scope of the law, and provides more detailed explanations regarding the various forms of child abuse, neglect, exploitation and maltreatment. Probably, one of the most significant contribution of the Act is the provisions related to determination of the ‘best interest of the child’ as this can be an abstract concept, which is often only vaguely understood by child protection practitioners.

Under the Balochistan Child Protection Act (2016, formally notified in 2018), the Child Protection Commission within the Social Welfare department of the government of Balochistan, functions as an advisory, coordinating and monitoring body while each District Social Welfare Office should carry out the actual child protection work through its Child Protection Unit, under cross-supervision and orders of the Family Court.

The Act requires the government to provide child protection as a function of public services and explicitly states that the government of Balochistan should fund the work of the Commission. Case management is to be main service of the child protection system offered within the Social Welfare department. However, children and families may also be referred to specialized services they require, such as law, health, education, or mental health.

However, the Act is not without its flaws. It has legislative loopholes as well as administrative bottlenecks which make its implementation potentially difficult and less efficient. This would mean that children of Baluchistan would continue to suffer from abuse, exploitation, neglect and maltreatment. Some of the important gaps from both policy and practice perspectives are discussed as following.

Gaps in the Balochistan child protection act, 2016

First and foremost, there are no regulations for implementing the Baluchistan Child Protection Act even after two years of the passage of the Act. This will hamper the implementation, particularly where it concerns in determining the roles and responsibilities of the various line departments and agencies named in the Act. In the past, other provinces including Punjab and Sindh have suffered with the problems of co-ordination with/referrals to line departments as none had a provision in their respective law that legally bind the line department to provide the required service (Sayeed, Khan, Haider and Kamran 2012b).

A related problem is the lack of systematic evidence on the capacity of existing statutory social services programmes throughout the country, particularly with regards to their current scope and their capacity to support and accelerate child

protection related services. This is true for main allied ministries and line departments including health, education, interior and justice as child protection is a comparatively new concept to them (Sayeed, Khan, Haider and Kamran 2012b). It is especially concerning relating to social protection and safety nets. For example, Pakistan Bait-ul-Maal has been involved in setting up centers for rehabilitation of children involved in child labour, as a measure of child protection intervention and a prevention strategy (Pakistan Bait-ul-Maal 2019). However, child protection does not fall within the scope of other social protection interventions, such as, Benazir Income Support Program – the largest social safety net in the country. The welfare fund provided in the Khyber Pakhtunkhwa Child Protection Act has not proven sufficient to meet the protection related welfare needs of all clients (Jabeen and Akhunzada 2017), therefore, a clear and formal link with other social intervention needs to be specified in any child protection legislation which is missing from the Balochistan Child Protection Act.

Further, the Act does not spell out the minimum requirements for a number of issues related to the child protection workforce. These issues include, but, are not limited to, the minimum qualification and experience required for various cadres of child protection workforce, supervision of Child Protection Officers, or their on-going training needs. The child protection staff's capacity has been an issue in need of serious attention in other provinces too, for example, as noted by Jabeen and Akhunzada (2017) in the case of Khyber Pakhtunkhwa.

One potential issue of the Act is the law's definition of a child (under 18) compared to the Child Marriages Restraint Act of 1929 providing for minimum age for marriage at age 16, with the potential for a conflict of law regarding child marriage.² Finally, this law does not set up a separate Child Protection court, but it is believed that some of the pressure can be alleviated by having a Family Court in every district. However, family courts are established not in all districts of Balochistan. Further, experience from other provinces, such as Khyber Pakhtunkhwa, have shown that other courts including family courts and courts of session working as child protection court were not able to respond to child protection issues at a pace that is sometimes required (Jabeen 2016), for example, in the case of violence against children.

The Act describes only the types of behaviours committed by an abuser when physical abuse of a child occurs, and does not indicate the types of injuries resulting

² See §143 of the Constitution of Pakistan (federal law prevails over conflicting provincial law).

from the violence. This could be problematic practically because the offense can be denied by the abuser unless there is medical evidence such as bruises, cuts, burn marks, or hand prints on the child. It will be important to document physical signs as soon as possible, probably in the regulations/bylaws.

Children who live in institutions are often out of sight of those who have the mandate to provide protection to all children. Ample scientific evidence has shown that children separated from their parents, many of them institutionalized, suffer greatly from trauma and lag behind in physical, cognitive, and social dimensions of development (Johnson and Brown, 2006). The formal child protection systems need to view the institutionalization of children as a form of neglect of children's attachment needs and respond to it. However, the Act does not provide for the reintegration of children into a family setting (preferably their own biological family), which has already become a challenge in the case of children living in the Child Protection Institution of the Child Protection and Welfare Bureau in Punjab.

Conclusion

Above analysis reveals that in an environment full of child protection risks and challenges, the enactment of Balochistan Child Protection Act, 2016 is a milestone in the history of child welfare and protection in the province. However, when the provisions of the Act were analysed in the light of challenges faced by previous child protection legislation in other provinces, it was clear that we have not learnt much from the mistakes of the past. In the first place, there are provisions in the Act which clash with provisions of other laws as has been a case with child protection laws in other jurisdictions which makes the law less effective. Secondly, the Act needs rules/bylaws for its effective implementation and the past experience from Sindh have shown us that it is almost impossible to start implementing a child protection legislation without having rules/bylaws. Thirdly, the Act seems not to have taken into account the existing administrative capacity of the departments responsible for its implementation which has been a proven bottleneck in other provinces. A related problem is that of integrating child protection services into other social services, for example, with social protection programs. Lastly, the Act does not provide for exit from child protection system and the reintegration of children into a family setting, which has been proven to be a challenge in Punjab for the Child Protection and Welfare Bureau. In short, it is concluded that if governments, communities and other stakeholders are committed to protect Pakistani children from violence, abuse,

exploitation and neglect, they have a lot to learn from each other's experiences, especially from mistakes of the past.

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