

Short Essay:

**International Law and the Policing of Gender Based Violence in Pakistan**

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Despite frailties of international law at international level where it has not been able to maintain international peace and security in the wake of Russia-Ukraine episode, international law is continuing to impact national law of Pakistan. In a latest case (titled as Mumtaz Bibi Case) that came up for hearing before Justice Babar Sattar of the Islamabad High Court, the international human rights law has been used to shape an important question of law that has frustrated many an attempt to protect and police rights of children especially minor girls in gender based violence cases that take many shapes like child marriages, forced marriages, rapes (legalized as marriages) and habeas corpus litigation that have a girl's custody in question.

The judgment is now not only being picked up by civil society, lawyers, justice sector practitioners, but also by police leadership as it is remarkable and has, after a long time, settled an issue that affected many criminal prosecutions that enhanced impunity of vested groups that hid behind religion, culture, customs and gaps of law in fulfillment of their own agenda. The judgment establishes the primacy of criminal law and has provided much needed clarity on the issue of age of a minor girl in a criminal case. Earlier such cases were often framed in terms of family law and the aspects of criminal liability of an accused kidnapper were confounded and conflated leading to acquittals and cancellation of criminal cases.

The judgment, it may be noted, emanated out of a plea of mother of a minor girl (aged 14 years and 2 months old) who was seeking to meet her daughter who had reportedly married during her alleged kidnapping. The facts of the case show that a criminal case was registered at Police Station Golra, Islamabad alleging kidnapping of a minor girl. During the investigation, it transpired that the minor girl was married. The investigation followed the normal course. It noted the factum of marriage of the minor girl and without going into the circumstances of her consent and volition started treating a criminal act as a family law issue. Justice Babar Sattar did not allow this to happen and lodged the minor girl to a Dar-ul-Aman (state shelter house). He, after examining different national statutes and international law, declared that for application of criminal law, the age of a child shall be eighteen years. Based on this declaration, he granted the plea of the mother and handed over the custody of minor girl to her mother denying the accused benefit of age of victim and exposing the accused to

criminal liability as required by law. Obviously, in doing so, he charted out a different approach in contradistinction to the run of the mill adjudication.

Conclusions of the judgment were as charitable as its reasoning. Brief snapshot of reasoning is presented here. Elucidating on the constitutional foundations of the rule of law (article 4), the right to privacy and right to be treated with dignity (article 14), right to education for children (article 25-A) and principle of policy for protection of mothers and children (article 37), Justice Babar Sattar set the scene for exercise of the constitutional jurisdiction that is vested in High Courts for enforcement of fundamental rights. He neatly juxtaposed family law, contract law and criminal law alongside the United Nations Convention on the Rights of Children (UNCRC), the international human rights law on the subject, to show how different domains of national and international laws informed and supplied knowledge on the subject of age of a child. Stocktaking the case-law on family law related to validity of a child marriage, and how the Muslim Personal Law was invoked to divert the thrust of a criminal case from criminal liability to debate about validity of marriages, he held that criminal liability of an accused cannot be diminished in criminal cases. The primacy of criminal law that arms the state to use its legal power to protect children through policing was restored through the reasoning of the judgment. Re-establishing the province of criminal law, it found that there was abundant evidence in form of statutory criminal and administrative law (the Majority Act, 1875, the Child Marriage Restraint Act, 1929, the Protection of Women (Criminal Laws Amendment) Act, 2006, the Juvenile Justice System Act, 2018, the Islamabad Capital Territory Child Protection Act, 2018, the Zainab Alert, Recovery and Response Act, 2020 and the Criminal Law (Second Amendment) Act, 2016, the National Commission on the Rights of Child Act, 2017) that underlined the legislative and state intent to protect minor girls and children. The regime founded by international law through the UNCRC was reproduced in the judgment and the relationship of international law and national law was woven together by applicable jurisprudence as developed by the Supreme Court of Pakistan. In addition, the relationship of civil and criminal justice systems was also appraised. The judgment noted that in view of unequivocal legislation criminalizing child marriages, how a marriage contract with illegal object of child marriage can sustain in civil and family law. There is no doubt that the judgment is seminal in nature as it has highlighted the gaps in implementation of criminal law related to gender based violence. It directed the Cabinet Division of the Federal Government to bring the matter into the notice of the Parliament.

From the point of view of policing, prosecution, adjudication of gender based violence cases, the judgment has brought to fore the question of criminality

which was lost in the fog of debate of validity of marriages. Though the judgment has been rendered in Islamabad High Court, but it is expected to excite other courts to take note of its intellectual prowess that has clearly pointed out legal and jurisprudential gaps in the criminal justice system of Pakistan. It has also set in motion the movement to look at international law more closely as international legal obligations are turning into reality with every passing day. From Pakistan's perspective, at least for the time being, the propensity to nationalize international laws is on the horizon.