

A presentation made in a workshop on UK-PAKISTAN Child Abduction Protocol held on 11th, 12th February 2011 in collaboration with Federation Judicial Academy, British High Commission and SACH-STRUGGLE FOR CHANGE at Pearl Continental Hotel, Lahore.

Introduction to Local Laws related to Children Matters

Sohail Nasir

District & Sessions Judge/

Director General, Punjab Judicial Academy

Introduction to Local Laws related to Children Matters

1. *It was the last century, when an idea that children need safeguards and protections separate from those of adults greatly impacted both domestic and international law. Although the children's rights movement has roots as early as the eighteenth century, it wasn't until the twentieth century that children were viewed as more than a labor hand or an economic value. What began as an effort to protect children from long hours of labor and its corresponding health defects, turned into an organized and influential movement?*

2. *After each world war, international legal instruments increasingly included protection for children across the globe. The League of Nations Declaration of 1924, and the successive United Nations' Declaration of the Rights of the Child in 1959, declared that children need safeguards and protections separate from those of adults and that these protections should begin even before birth.*

3. *For each nation, the study focuses on the domestic laws and policies that affect child health and social welfare, education and special needs, child labor and exploitation, sale and trafficking of children, and juvenile justice.*

4. *Children's Rights will enable researchers, legislators, and academics to compare and contrast how children are treated and which policies and laws have had the most profound impact on the younger generations.*

5. *Children are a nation's future. The best gift we can give to the world is to ensure a safe, healthy, educated, and able future generation. Children hold our hopes for a better future. Their status has been a subject of concern for lawmakers, scholars, judges, lawyers, and common citizens. National laws and regulations as well as*

international treaties have been dedicated to children with increased interest during the last century.

6. A child of today is a result of tomorrow. At a tender age a child can be molded to grow up to be a law abiding responsible citizen. It is not to be forgotten that the children are the most important and crucial assets of the Country.

7. Nobel Laureate Gabriel Mistral had to say the following in respect of children: -

“We are guilty of many errors and many faults but our worst crime is abandoning the children neglecting the foundation of life. Many of the things we need, can wait, the child cannot. Right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer tomorrow. His name is today”.

8. Ancient civilizations entrusted heads of families with omnipotent authority over their children. The rather common underlying legal assumption was that children lack the capacity to differentiate correctly between prescribed behavior standards, a condition that made them legally comparable to property and therefore sellable.

9. There are various domestic laws to promote children’s well-being. An example can be given of Japan. Almost all children in Japan are covered by health care insurance. Families with small children which do not have a high income level can receive an allowance from the government. Local governments support pregnant women’s and infants’ health and give advice to them. Schools also provide health examinations. Parents are obliged to have their children attend primary and secondary schools for nine years. The government provides this mandatory education free of charge

10. State has the duty to promote respect for the dignity of all children and the full exercise of their rights. It also provides that

children have the right to satisfy their nutritional, health, educational, and recreational needs.

11. The responsibility for the care and protection of children is with their parents “as guardians by the law of nature, and on the state as parens patriae”. Parental responsibility is defined as “all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child and his property.

12. The Constitution of the Islamic Republic of Pakistan states that “No child below the age of fourteen, shall be engaged in any factory or mine or in any other hazardous employment.” It also describes that, “All forms of forced labour and traffic in human beings are prohibited.”

13. A uniform Juvenile law applicable to the entire country is need of the hour. A national policy on children is too a necessity for the growth of the country into a nation to be proud of.

14. Before I come to the local laws I will like to refer the case, which has been quoted by Mr. Ilyas Khan Advocate in his book “Laws Relating to Children”. It was as under: -

A strong candidate, engaged in a tough U.S Congress elections. He told his campaign manger that he would not be able to make his schedule election speech on the next day. By saying so he turned to a letter, he had received a little earlier. It was from a poor family in a nearby town for he had worked 15 years ago. His face appeared like a mountain cliff, rocky, impregnable, lonely and grim, yet lovely with gentle things that bloom.

The next morning he, travelling on foot, reached a town 20 miles from his starting point by 9’O clock. Heading for the Court house which was already in session, he set down in the last row unnoticed. The district attorney had just summoned a 15 years old boy who was facing the charge of murder. The pale faced boy and his desperately frightened parents knew no body in the town and had no money to pay for a lawyer. Their only hope

was a possible answer to a letter they had written to somebody who worked for them 15 years ago.

As the boy was put in the dock, the candidate in the back seat rose, came forward and stood before the judge. May it please your honour, I am a lawyer, I should be glad to act as counsel for defence.

The case of prosecution was short. The prisoner had worked on a farm until recently where an Irish man had been teasing him and the boy came to hate his guts. On the day of the offence, prisoner was driving a wagon when at the Barnyard he met the Irish man and two others. He asked one of the other two to open the gate but the Irish man butted in. He abused the boy, called him lazy and pushing him with a pitchfork, ordered him to open the gate himself. As the pitchfork dug into his chest muscles, the boy sprang forward, snatched it from the Irish man and ran one of the prongs in his skull with all his strength. The man died in an hour. Throughout, the defence counsel set quietly, studying the judge and the jury, as if scrutinizing their character. He made no objection and scarcely cross-examined the witnesses. At last, the prosecution closed its case.

The defence took up its case in a most unusual manner. Addressing the jury, the defence counsel said he would call no witnesses, give no arguments. In short, he said, he would not follow the conventional procedure. He said all I am going to do is to tell you a story and then leave the case in your hands”.

And he proceeded to tell the gentlemen of the jury, the story of the warm hospitality, hardworking nature, courage and fortitude of the prisoners’ impoverished family for whom he worked some 15 years ago. He spoke of the great love and affection the parents had for their children and of the miserable condition which forced the family to get their little children to work for their bread. He said: -

“Gentlemen of the jury, I was to deliver an important election’s speech this morning at a nearby town on which could rest the result of my congressional election campaign. I lay ambition, the failure of it so turns out to be gladly on the altar of this boy safety. It is for you to give him that safety. I

said when it began that I should try this case in a manner not customary. I said I had no arguments to set before you. I have told the story; you know that at an age when this boys' hands should have held school books or finishing red, they held a man's tools which was his undoing; you know how the child was hounded by a grown man till the desperation he used that tool at hand. You know these things as well as I do. All I asked is that you deal with the little fellow as you would have other one deal with little fellows of your own at home. I trust his life to that test gentleman of the jury, I rest my case”.

15. *The defence counsel was Mr. Abraham Lincoln. Half an hour later, the jury returned their verdict: NOT GUILTY.*

16. *According to Mr. Ilyas Khan Advocate this case probably relates the first ever attempt by a lawyer to treat juvenile offender and delinquency in their prospective. It brings into sharp focus the need for treating juvenile offenders not as so many criminals but as victim of circumstances of their family and social background. It was a precedent on the basis of which the first American juvenile law in the state of Illinois was made full 53 years later and which, to this day, lies at the root of all juvenile laws the world over.*

17. *Pakistan ratified the Convention on the Rights of the Child on December 12, 1990. At the time of ratification, Pakistan made a general reservation that the provisions of the CRC shall be interpreted according to the principles of Islamic Laws and values. The reservation was withdrawn on July 23, 1997. Conventions are not enforceable in Pakistan until there is enabling legislation making them law of the land. I hope that I am not wrong to say that Pakistan has not introduced any such law in regard to the CRC and therefore the Convention cannot be invoked in the Courts, like one as of UK Pakistan protocol recommendations.*

18. *Children are most commonly employed in agriculture and carpet weaving in Pakistan. The United States Department of Labor estimates that between two and 19 million children, defined in that*

country as anyone under the age of 15, are currently laboring in Pakistan.

19. In Pakistan enactments in relations to children/minors/juveniles were made time to time. Many of those were repealed and several are alive. Every time the intention of legislatures gathered from pre-amble was found different. It is very difficult within short span of time to introduce all the laws with their salient features, except few which are operational by all force. However I will like to submit those only for reference. I tried my level best to find out all said laws. There may be possibility of over sighting any of such laws for which I may be pardoned. The table which is as under, will also show that how many laws on this sensitive global issue of children we have made till today and how many laws we adopted for a considerable time.

1	<i>Bombay Act, 1929.</i>	<i>Repealed by Sindh Borstal Act, 1955.</i>
2	<i>Bombay Borstal Schools Act, 1929.</i>	<i>Repealed by Sindh Borstal Act, 1955</i>
3	<i>Bonded labour System (Abolition), Act 1992.</i>	
4	<i>Child Marriage Restraint Act, 1929.</i>	
5	<i>Children (Pledging of labour) Act, 1933.</i>	
6	<i>Control of Orphanages Act, 1958.</i>	<i>Repealed by Punjab Supervision and Control of Children Homes Act, 1976.</i>
7	<i>Employment of Children Act, 1938.</i>	<i>Repealed by Employment of Children Act, 1991.</i>
8	<i>Employment of Children Act, 1991.</i>	
9	<i>Factories Act, 1934.</i>	
10	<i>Juvenile Smoking Act, 1918.</i>	<i>Repealed by W.P Juvenile Smoking Ordinance, 1959.</i>
11	<i>Juvenile Smoking Ordinance, 1959.</i>	
12	<i>Mines Act, 1923. (Certain provisions).</i>	
13	<i>N.W.F.P Orphanages (Supervision and Control) Act, 1976.</i>	
14	<i>N.W.F.P Orphanages (Supervision and Control) Ordinance, 1976</i>	<i>Repealed by N.W.F.P Orphanages (Supervision and Control) Act, 1976.</i>
15	<i>North West Frontier Province Juvenile Smoking Act, 1933.</i>	<i>Repealed by W.P Juvenile Smoking Ordinance, 1959.</i>
16	<i>North West Frontier Province Orphanages Act, 1974.</i>	<i>Repealed by W.P Control of Orphanages Act, 1958.</i>

Introduction to Local Laws related to Children Matters

17	<i>Probation of offenders Ordinance, 1960</i>	
18	<i>Punjab Borstal Act (No. XI of 1926).</i>	
19	<i>Punjab Children Act, 1952.</i>	<i>Repealed by Punjab Children Ordinance, 1983</i>
20	<i>Punjab Children Ordinance (XXII of 1983).</i>	<i>Repealed by The Punjab Destitute And Neglected Children Act, 2004.</i>
21	<i>Punjab Orphanages, Widows Homes and Marriage Bureau Act, 1950</i>	<i>Repealed by W.P Control of Orphanages Act, 1958.</i>
22	<i>Punjab Supervision And Control Of Children Home Act (No. XVI of 1976).</i>	<i>Repealed by The Punjab Destitute And Neglected Children Act, 2004.</i>
23	<i>Punjab Youthful Offenders Act, 1952.</i>	<i>Repealed by Punjab Youthful Offenders Ordinance, 1983.</i>
24	<i>Punjab Youthful Offenders Ordinance, (XXIII of 1983).</i>	<i>Repealed by The Punjab Destitute And Neglected Children Act, 2004.</i>
25	<i>Reformatory Schools Act (No. VIII of 1897).</i>	
26	<i>Sind Children Act, 1955.</i>	
27	<i>Sindh Act, 1929.</i>	<i>Repealed by Sindh Borstal Act, 1955.</i>
28	<i>Sindh Borstal Schools Act (No. X of 1955).</i>	
29	<i>Sindh Borstal Schools Act, 1929.</i>	<i>Repealed by Sindh Borstal Act, 1955</i>
30	<i>Sindh Children Act, 1955.</i>	
31	<i>Sindh Orphanages (Supervision and Control), Act, 1976.</i>	
32	<i>Sindh Orphanages (Supervision and Control), Ordinance, 1976.</i>	<i>Repealed by Sindh Orphanages (Supervision and Control), Act, 1976.</i>
33	<i>The Punjab Compulsory Education Act, 1994.</i>	
34	<i>The Punjab Destitute And Neglected Children Act, 2004.</i>	
35	<i>West Pakistan Shops and Establishment Ordinance, 1969.</i>	
36	<i>Workers Children Education Ordinance, 1972.</i>	
37	<i>Local Government Laws (Certain provisions)</i>	

20. Right now the most important local laws in relations to children matters are the Juvenile Justice System Ordinance, 2000 and Guardian and Wards Act, 1890. Apart from these legislations, which are special laws on the subject, rights of children have also been protected under the General Laws e.g. Civil Procedure Code and Pakistan Penal Code.

21. The Juvenile Justice System Ordinance was promulgated in 2000. Its purpose was for protection of children involved in criminal

litigation, their rehabilitation in society, re-organization of Juvenile Courts and matters connected therewith and incidental thereto. On enforcement of this law all cases of juvenile pending in Courts of ordinary jurisdiction were stood transferred forthwith to Special Courts by operation of law. Its relevant features are as follows: -

- I.** It provides protection to children in criminal litigation.
- II.** It is for children rehabilitation in society.
- III.** Establishment and maintenance of borstal institutions to keep and accommodate the juveniles with all arrangements to impart education and training for their mental, physical, moral and psychological development within the borstal institution.
- IV.** Courts are under obligations to ensure the proper process for the determination of age, which is most crucial point before commencement of trial.
- V.** Juvenile Courts have been specially set up with exclusive jurisdiction to try cases in which a child is accused of commission of any offence.
- VI.** It contemplates certain privileges and rights for a juvenile under-trial.
- VII.** Moving of an application by a juvenile under-trial is not a condition precedent for conferring jurisdiction upon the Court to take cognizance of the element of age under this law. As and when the Court is informed that the accused is or was a child at the time of commission of the offence, the trial Court is bound to adopt the procedure prescribed under the Juvenile Justice System Ordinance. (See. Sultan Ahmad vs. Additional Sessions Judge, Mianwali PLD-2004-SC-758 & Mohammad Aslam & others vs. the State & another PLD-2009-SC-777)
- VIII.** It does not give any discretion to the Court to ignore mandatory provisions.
- IX.** It is a beneficial legislation for the welfare of the children involved in criminal offences.
- X.** It has to be given a liberal interpretation to achieve its objects to create conditions and environment so that children may be provided an opportunity to become useful and honorable members of the society.
- XI.** Child cannot be charged with or tried for an offence together with an adult.
- XII.** Every child shall have the right of legal assistance at the expense of the State by an Advocate of at least five years standing at the Bar.
- XIII.** Presence of general public except specified persons shall be excluded from trial.

- XIV.** *Proceedings shall not be published in any newspaper, magazine or journal in any form which may directly or indirectly lead to the identification of such child.*
- XV.** *Child shall in the ordinary course be released on bail or placed under the custody of a Probation Officer and no punishment of death be awarded to him and he shall not be handcuffed, put in fetters or given any corporal punishment.*

22. *The question of custody of children is dealt with by the Guardians and Wards Act of 1890. Its salient features are as under: -*

- a.** *Welfare of the child is a paramount consideration.*
- b.** *Welfare is very broadly defined, including many factors, like, age, sex and religion of the minor.*
- c.** *The character and capacity of the proposed guardian.*
- d.** *Any existing or previous relations of the proposed guardian with the minor's.*
- e.** *The minor's preference.*
- f.** *It does not state the age of child for preferences of his consent.*
- g.** *Unity of children.*
- h.** *Although mother's remarriage to someone who is not the children's close blood-relative often means the court will not grant her custody, however this rule is not strictly followed. Although the father's remarriage usually denies him custody, sometimes the courts agree to grant him custody especially when the children's step-mother cannot or will not have her own children.*
- i.** *The child's comfort, health, material, intellectual, moral and spiritual welfare.*
- j.** *Mother economically weak no hurdle because maintenance is the father's responsibility.*
- k.** *Impact of a change in guardians and the child's reaction to this change.*
- l.** *All parties interested in the welfare of the child can participate in these proceedings and be heard.*
- m.** *No matter what customs or personal law rules the parents' community or sect follows regarding custody.*
- n.** *Custody is not an automatic transfer. Any parent who wants custody and does not presently have keeping has to seek charge of minor from Guardian Court.*
- o.** *Guardian's obligation with reference to child.*
- p.** *Removal of a guardian by suo-moto proceedings or on application of any party, on the following causes, namely: -*

(a) *For abuse of his trust.*

(b) For continued failure to perform the duties of his trust.

(c) For incapacity to perform the duties of his trust.

(d) For ill-treatment, or neglect to take proper care, of his ward.

23. *In general law Order XXXII of CPC deals the suits by or against minors and of unsound mind. It provides well guarded provisions for protection of rights of child/minor like that: -*

- a. Every suit by a minor shall be instituted through his next friend.*
- b. If suit is instituted without next friend, the Court may make such order in the matter as it thinks fit.*
- c. If defendant is minor, the Court shall appoint a proper person to be guardian for the suit for such minor.*
- d. Such guardian shall have no interest in the matters in controversy in the suit adverse to that of the minor.*
- e. A person appointed as guardian, unless his appointment is terminated by retirement, removal or death, continues as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.*
- f. Where there is no other person fit and willing to act as guardian, the Court may appoint any of its officers to be such guardian.*
- g. Next friend or guardian for the suit shall not, without the leave of the Court receive any money or other movable property on behalf of a minor*
- h. No next friend or guardian shall without the leave of the Court expressly recorded enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian and such agreement or compromise without leave of the Court shall be voidable.*
- i. On retirement, removal or death of next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.*
- j. A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.*

24. *In P.P.C, and Cr. PC there are many provisions for guarding the interest of children. In brief these are as under: -*

- a) Act of a child under seven years is not an offence. (Section 82 PPC).
- b) Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. (Section 83 PPC).
- c) Unless contrary appears from the context, the consent of a person under twelve years of age is no consent. (Section 90 PPC).
- d) If the convict is a woman who is pregnant, the Court may, postpone the execution of Qisas up to a period of two years after the birth of the child. (Section 314 {3} PPC).
- e) Exposure and abandonment of child under twelve years by parent or person having care of it. (an offence under section 328 PPC).
- f) Concealment of birth by secret disposal of dead body of a child. (an offence under section 329 PPC).

25. Pre birth rights of children are also protected under the general law and these are as follows: -

- a) Isqat-i-Hamal. Causing woman with child whose organs have not been formed, to miscarriage. (an offence under section 338 PPC).
- b) Isqat-i-Janin. Causing woman with child some of whose limbs or organs have been formed to miscarriage. (an offence under section 338-B, PPC).
- c) Convict of Qisas if a pregnant lady.
Postponement of execution up to a period of two years after the birth of the child. (Section. 314 {3} PPC).
- d) Postponement of capital sentence on pregnant woman. (Section 382 Cr. PC).

26. Laws in Pakistan surely give coverage to all aspects/eventualities in relations to children matters, however if recommendations of UK Pakistan judicial protocol are also brought under the umbrella of legislation then it is needless to say we can stand with heads up before our future.

26. For my this study I am benefited from research papers particularly delivered by the Honourable Ted Poe, Dr. Rubens Medina representative for the 2nd District of Texas, United States House of

Representatives, law of Children by Mr. Ilyas Khan Advocate, and the judgments delivered time to time by the August Courts of the Country.

27. At the end I cannot stop myself to say words of thanks from the core of my heart to the British High Commission and SACH (struggle for change) for arranging this knowledgeable workshop. Although I was invited as a resource person but being one of its participants for two days I, too, have learnt more. I also must confess the increase of my awareness, which will definitely help me for the administration of justice.

*Sohail Nasir,
District & Sessions Judge/
Judge Special Court (CNS),
Rawalpindi.*