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Violation of Children's Rights in the Area of Child Labour in Pakistan.

Remedies Available under Domestic and International Law

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Summary

Is the state fulfilling its responsibilities with regards to its ratified international instruments? This question will be examined in the next chapters that will consider the conventions and the national laws as the baseline to work on the Rights of the Child in Pakistan, with special reference to the work on the elimination of child rights. This will be carried out in the light of legal framework and laws, national and international ones. This dissertation will also analyze in detail related relevant institutions, their roles and what effective and ineffective steps they have taken for ensuring the protection of children from child labour and provide them with the most effective protection of child rights. This dissertation will conclude with the issues related to the work of these institutions that have loopholes with respect to implementation and the ambiguity that the laws have which further aggravates the problem. It will also contain suggestions in the light of existing literature on how the steps can be taken to rectify the current situation in the light of the policy measures.

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Abstract

The laws concerning child labour have been one of the most important and significant topics within the discussion of International Labour Laws and it is a problem that applies to almost all the countries around the globe. Many countries have started taking radical steps for the elimination of child labour practices and, thus have successfully reduced the ratio of working children. This pernicious cycle of children involved in the labour market makes their lifestyle and conditions worse. It hinders them from getting out of the poverty trap that their families are suffering. The employment of children results in the increase of problems that give rise to the bigger societal evil within society. This dissertation explores the issues of Child Labour internationally and in Pakistan in detail and seeks to analyze the most important issues and concerns in Pakistan in light of international and national laws and standards. After this analysis, this dissertation explains the issue related to the discrepancies within the child labour laws in Pakistan and the ones that are prevailing internationally. The loopholes identified in that discussion have been analyzed along with the provisions of local examples and cases of Child Labour within Pakistan. From an international legal perspective, international laws (treaties) are implemented by the state through the adoption of different measures, including national legislation (both at the federal and provincial level) in Pakistan. The findings in this thesis suggest that the difficulties of implementing international law related to child labour go beyond just legislative issues; they have more to do with the socio-cultural, economic and religious patterns that prevail within the society and embedded within the same system.

Abbreviations

Abbreviation	Explanation
AJ&K	Azad Jammu and Kashmir
BISP	Benazir Income Support Programme
BLSAA	Bonded Labour System (Abolition) Act
Constitution	Constitution of Islamic Republic of Pakistan
Cr. PC	Criminal Procedure Code
CRC	Convention on the Rights of the Child
ECA	Employment of Children Act
FIA	Federal Investigation Agency
GATT	General Agreement on Tariffs and Trade
GB	Gilgit-Baltistan
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMAC	Independent Monitoring Sector for Child Labour
IPEC	International Programme for Elimination of Child Labour
LFS	Pakistan Labour Force Survey
NCRCL	National Centre for Rehabilitation of Child Labourers
NGO	Non Profit Organization
NIC	National Identification Card
PKR	Pakistani Rupee
PPC	Pakistan Penal Code
SDG	Sustainable Development Goals
UN	United Nation

UNDHR	Universal Declaration of Human Rights
UNDOC	United Nation Office on Drugs and Crime
UNDP	United Nations Development Programme
UNICEF	United Nations International Children´s Emergency Fund
WTO	The World Trade Organization
ZARA	Zainib Alert Response and Recovery Agency

Chapter 1: Introduction

1.1. Statement of the problem

Child labour is a serious and widespread problem in many parts of the developing world. As an issue, every state and every region of the world has been affected by this dilemma.¹ The number of working children remains large but there still ground for hope. This thesis is an attempt to give legal voice to children, who are suffering especially and put their childhood at stake just to raise the economic conditions of their families, and who choose unintentionally to grow up /being raised under the worst from child labour damaging their childhood. Child labour has serious consequences that stay with individual and with society for far longer than the years of childhood.²

The present child labour situation in Pakistan is contradictory to the existing rules and laws of the country relating to the basic rights of the child. Importantly, Pakistan national laws declare that no child below the 14 years of age should engage in any factory or mine or other hazardous occupation or employment which prejudices his or her health and education or interferes with his or her physical mental or moral development.³ All specific enactments concerning elimination of regulation of employment of children including the Factories Act 1934, the Mines Act 1923, the Shops and Establishment Ordinance 1969, the Bonded Labour Act System (Abolition) Act 1992, and the Employment of Children Act 1991, are formulated within the framework of the Constitution of Pakistan 1973⁴ and International Conventions ratified by Pakistan.

Children in Pakistan do not enjoy basic amenities of life and are exposed to lasting physical and psychological impairment.⁵ This is a direct threat to the quality and length of their life and also damages the capability of their imagination and creativity. In addition, despite the introduction of

¹ Moeckli Daniel, Shah Sangeeta and Sivakumaran Sandesh, *Fons Coomans, Education and Work, International Human Rights Law* (Third Edition, Oxford University Press) 248.

² ILO, 'The Worst Forms of Child Labour' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/worst-forms-child-labour-convention-1999-no-182>>.

³ *Combating Child Labour (A Review of Policies)* (OECD Publications) 9.

⁴ 'The Constitution of Islamic Republic of Pakistan 1973' <https://na.gov.pk/uploads/documents/1549886415_632.pdf>.

⁵ ILO, *Communication Strategies on Child Labour: From Awareness Raising to Action* (ILO Publishing, International Labour Office, CH-1211 Geneva 22, Switzerland 2021) 9

<https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/documents/publication/wcms_820322.pdf>.

a number of local legislative initiatives, the prevalence of child labour remains high in Pakistan. Young workers not only face dangerous working conditions, they face long- term physical, intellectual and emotional stress. They face an adulthood of unemployment and illiteracy.

With the adoption of the United Nations Convention on the Rights of The Child (CRC), which entered into force in 1990, the international community created the first legally binding international instrument that aimed to protect children and their full range of human rights, civil cultural, politic, economic, and social rights.⁶ The Convention contains 54 Articles that deals with many rights such as Parental Guidance (Article 5), Registration and Nationality (Article7), Preservation of Identity (Article 8), Freedom of Expression (Article 13), Thought, Conscience and Religion (Article 21), Right to Education (Article 28) Protection from work that is dangerous (Article 32), and Protection from Sexual Abuse (Article 34) etc.⁷ The Convention is widely supported among United Nation member states, since it has been ratified by all states, with the only exceptions being South Sudan, Somalia and the United States.⁸ The CRC promotes four core Principles: non-discrimination; the right to life, survival and development (Article2); respect for the views of the child (Articles 6 and 12), and the consideration of the best interest of the child (Article 3).⁹ Different from the UN Declaration on the Rights of the Child, adopted in 1959, Article 3 of the CRC states that: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”*.

1.2. Objectives

Laws and legal remedies under international and national laws regarding child labour and its elimination will be the subject of this thesis and will be discussed in detail. The concept of the elimination of child labour has been the object of study of many scholars and has been the subject

⁶ ‘UNCRC’ <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 19 April 2022.

⁷ Daniel, Sangeeta and Sandesh, *Fons Coomans, Education and Work, International Human Rights Law* (n 1) 245.

⁸ Rachel Hodgkin, Peter Newell and UNICEF, *Implementation Handbook for the Convention on the Rights of the Child* (2007) <<https://digitallibrary.un.org/record/620060?ln=en>>.

⁹ ‘United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities’ 4.

of more academic analyses than any other concept included in CRC.¹⁰ Children welfare and protection are widely supported by the international community, because children are vulnerable and dependent therefore must be protected from harm. Even the focus of this study is on Child Labour in Pakistan, the analysis in this thesis may be relevant to other countries and for other stakeholders' that aim to develop and set up a legal mechanism and to redress the issue of child labour under national laws in the light of international laws and standards..

The aim is to broaden the understanding of the child labour problem by illuminating the various factors underlying the reasons children engage in child labour and why it is prevalent. This study does not intend to take a moral stand on the child labour, but rather provide an extended and critical analysis in order to obtain an increased contextual understanding of the child labour problem in Pakistan. It stresses that child labour is far more nuanced and complex than many policymakers portray it to be.

My research seeks to analyze the potential of the formal legal system to eliminate child labour. Legal mechanisms and the educational system are believed to be effective antidote to the problem of child labour. Its hypotheses that the lack of awareness of existing laws and children drop out schools because of their parents may be too poor to afford schooling and require the additional earning of their children for economic sustainability of the household. This decision of parents can be reversed if there are incentives circumventing income considerations behind child labour and replacing them with subsidized education and monetary support to the household. This study will be helpful as a useful reference in efforts to find out effective counterfactuals for eradication of Child Labour in Pakistan.

1.3. Relevance and Justification

Though there is a lot of research in the field of child labour in the context of Pakistan my present endeavour is a significant contribution in understanding this issue from a different perspective of law and remedies to redress this problem. My focus is to find out effective tools for sustainable discoloration of child labour and reintegration into mainstream laws and ultimately reduction in

¹⁰ Hodgkin, Newell and UNICEF (n 8) 483.

child labour. Whilst the dataset used in this study has been widely used in previous research, including in the child labour literature, it has not been used for this research objective before.

The objective of this study is to analyse national legislation which has been effective in reducing the employment of children. This study will try to identify whether the national laws implemented in Pakistan had the desirable impact of reducing child labour. Beside examining the effects of Pakistan's national laws on child labour and previous research studies, this study focuses on the remedies available under the domestic and international law which has not been done before. There has been much discussion about appropriate mechanisms to promote labour standards, including for addressing child labour in developing countries.¹¹ There is a desperate need to find effective tools for the re-integration of children especially who were trapped in Child Labour, which may be helpful for reduction of child labour and eventually may eliminate this problem by considering the prevailing socio-economic and legal conditions of the country.

1.4. Research Question

Pakistan is signatory to international conventions protecting children from child labour, which makes the question to ensure protection for children from having to work and for forcing them to do hazardous not just a domestic issue but a question of Pakistan meeting its international legal obligations. The focus of this thesis, are the labour standards protecting children in work in Pakistan¹² as well as the impact of national and provincial legislation on child labour in Pakistan. The general question is if states have a positive obligation under international law to protect and ensure the rights of child against abuse by private actors and how far such obligations could be used to make state accountable for this abuse?

The more specific sub-questions are the following:

¹¹ Moeckli Daniel, Shah Sangeeta and Sivakumaran Sandesh, *Stephen P Marks, International Human Rights Law* (Third Edition, Oxford University Press) 603.

¹² This paper will deal with the issue of individual responsibility under international law for child labour in different private sectors. It is important to note that while the positive duty to protect individuals children against the violation by other individuals, the obligation is imposed on the state parties and thus only state are accountable under international human rights instruments (as well as customary international law).

1. Do the existing laws of Pakistan against child labour to fulfill international standards?
2. What are the prevailing determinants of child labour in Pakistan?
3. In the shadow of existing international and national laws what legal factors are to be used as effective tools and what interventions can potentially reduce child labour?

1.5. Theory /Method

This study uses empirical research to analyze the anti-child labour legislation, since the impact of such laws has not been rigorously evaluated. It studies the enactment of child labour laws, compulsory enforcement of these laws, and remedies available in country. A traditional legal method will also be used in examination of this thesis. The essential material covered for this research will focus on international and national legislation and standard-setting documents concerning children's rights in relation to the elimination of child labour, with specific focus on Pakistan standard and enactments. Most of this research is based on available literature and documentation on child labour laws. The materials used, which consist of academic articles, international and country reports on current status of child labour, will provide insight of the contemporary level of child labour globally but also on the national level. Further, it consists of publications of United Nations agencies and programmes. NGO publications, guidelines and individual articles and books on child labour are also part of the sources of information used. Similar documentation will be used in order to study child labour in Pakistan and provide further insight in the development, progress and flaws in national legislation according to international standards for redress and elimination of child labour in Pakistan. This collection of data and material will be central in determining if international obligations and pressure have had any impact on national laws, as well as if there has been a reduction of child labour in the country since ratifications of relevant international instruments and the adoption of laws and standards in the national legislations. It will also discuss the available remedies in violation of the laws and international standards even if these are not included the legislation enacted in Pakistan. All relevant national and international laws, treaties and convention will be analyzed.

1.6. Scope and Limitations

Historically, no region has ever been completely free of the problem in focus, and there are worldwide movements for the eradication of the worst form of child labour. Countries and governments have moved from a complete denial of existence of the problem to legislation and positive action for tackling the issue. The present child labour situation in Pakistan is also contradictory to existing rules and laws of the country relating to the child labour. To the best of my knowledge, this thesis is one of the first attempts to analyze the impact of legislation on child labour at present in Pakistan after the recent movement for the eradication of child labour. The study may, however, face several limitations when it comes, for instance, to available and recent development stories concerning child labour in Pakistan as well as some recent commitments by international organizations and donors countries at a bilateral level.

1.7. Structure of the Thesis

This thesis will be structured as follows.

The first chapter of this thesis will provide a general introduction and the problem formulation. It will include the purpose, the research question, limitations and methodology used for this thesis, providing the base framework supporting the whole thesis.

The second chapter examines the definition of the dilemma of child labour, the worst form of child labour, as well as explores the characteristics, limits and root causes of child labour. It focuses on analyzing the global trend of National Regulations of children's rights as well the application of international legal framework. It further explores the links between child labour and role of the international community concerning children's rights in Pakistan.

The third chapter provides an overview of international child labour laws. This chapter firstly focuses on International Labour Laws and International Labour Standards. Secondly it focuses on the situation of child labour in Pakistan, and more specifically on child labour and hazardous work in the country. It furthermore includes a discussion on the root causes for child labour practices around the country.

Chapter four makes a cross comparison of the international laws on child labour. This chapter provides insight into and determines what international obligations apply to the State in relation to child labour. This is significant to determine, in the end, if the national legislation is compatible with international obligations. The conclusion of this chapter serves as a foundation for the legal analysis of how Pakistan is complying with international standards and to discuss if and how these are eliminating child labour.

The fifth chapter serves as the main part of this thesis since it focuses on National and International remedies to redress the current issue. This chapter presents a timeline of events. It covers the international supervision and pressure and action taken by the international community. It further focuses on the national laws and the improvements made in Pakistan in accordance with international standards, and finally it analysis the concrete outcome of the law.

The last chapter provides a critical assessment of the elimination of child labour in Pakistan and the measures taken by the government and international organizations to adopt and implement standards concerning child labour in Pakistan. It entails the conclusions and recommendations made in this thesis. It answers the general research question, and it evaluates if the elimination of child labour that the government has succeeded in eliminating child labour.

Chapter 2: Dilemmas of Safeguarding Children's Rights

2.1. Dilemmas of Safeguarding Children Against Child Labour

There is a growing realization across the globe that the process of production and the industrial organization of business have an important bearing on social welfare. In the past, the realm of social activities was concerned with and confined to the context of international trade. Indeed, the framework for international trade has undergone a significant change. The benefit or harm of products and services, their environmental impact and the procedure/ provider's relationship with the workforce and with local communities- all these aspects of business are now open to scrutiny. The recent revival of interest in improving the lives of poor working people and encouraging the use of a set of standards or a specified code of conduct for businesses is a result of the articulation of an evolving global consciousness on ethical and social concerns, particularly among partners engaged in cross-border trade. Traces of this can be seen in the discussion held during various rounds of General Agreement on Tariffs and Trade (GATT)¹³ negotiations. The formation of The World Trade Organization (WTO)¹⁴ also indicates the commitment for the reducing protectionism and tariff barriers to enable these standards are conducive to international welfare of all trade partners.

Prior to the adoption of the Convention on the Rights of the Child (CRC) children were generally invisible within the United Nation (UN) and children were passive object of concern for international law. Thus, children are viewed frequently as only victims and not capable of being in their own destiny and are vulnerable. With the adoption of the CRC, there is recognition that a

¹³ 'General Agreement on Tariffs and Trade'

<https://en.wikipedia.org/wiki/General_Agreement_on_Tariffs_and_Trade>

General Agreement on Tariffs and trade (usually abbreviated GATT) functions as the foundation of the WTO trading system, and remain in force, although the 1995 Agreement contains and updated version of it to replace the original 1947 one. The GATT, as an international agreement, is very similar to a treaty. the countries who signed GATT periodically negotiated new trade agreements were called "round". In general, each of these agreements bound the member state to reduce certain tariffs, with many special cases with exceptions and modification for each country. Pakistan Become the member of GATT in July 30 1948. Upon signing the new WTO agreement (which include the updated GATT, Known as GATT 1994), Pakistan officially became WTO member along with 128 members.

¹⁴ 'UNDERSTANDING THE WTO: BASICS The Uruguay Round'

<https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm>. Uruguay Round (1993) 123 countries. Created The World Trade Organization (WTO) to replace GATT treaty. Reduced tariffs and export subsidies reduced other important limits. As an international organization, but the General Agreement still exists as WTO's umbrella treaty for trade in goods, updated as a result of the Uruguay Round negotiations.

child- centered approach to the protection of human rights is required.¹⁵ The Convention on the Rights of the Child also outlines protections for children facing particular situations, such as the refugee child, as well as providing binding safeguards for adoption procedures.

According to the CRC, work that is likely to be hazardous or harmful to the child's health as well as physical, mental spiritual, moral or social development or that interferes with the child's education shall not be performed. Child Labour compounds social inequality and discrimination, limiting access to education and harming children both physically and mentally¹⁶ (health as well as physical, mental spiritual, moral or social development). The consequences are staggering. Child labour can result in extreme bodily and mental harm, and even death. It can also lead to slavery and sexual or economic exploitations. And nearly in every case, work cuts children off from schooling and health care, restraining their fundamental rights and threatening their future¹⁷.

Children all over the world are being exploited, physically abused and trafficked under the umbrella of child labour.¹⁸ This means not only the involvement of children in some child work, such as work by children as artists, family duties, supervised training etc., but rather involving them in high risk and vulnerable employments have risen health and physical hazards for them. These children are vulnerable to abuse. However, their families endorse the concept of child labour due to them being trapped in a poverty cycle. The interrogational cycle of poverty rises from the concept of child labour. This is because of the fact that children are impeded from learning in order to earn a respectable income from the work they are actually willing to do.

Within developing countries, poverty is not only the matter that causes child labour; illiteracy and unawareness of parents regarding the education provisions to the children marks another problem in the area. Parents are either unfamiliar with the importance of education or there are various other factors that are keeping them from getting their children enrolled in educational institutions. In most of the developing countries around the globe, the quality of education and the infrastructure

¹⁵ Geraldine Van Bueren, Children's Rights, Daniel Moeckli, Sangeeta Shah and Sandesh Shivakumaran: International Human Rights Law, Oxford University Press, third edition p 327

¹⁶ The issue of child labour, <https://ghrd.org/wp-content/uploads/2021/09/The-Issue-of-Child-Labour-in-Pakistan.pdf>

¹⁷ 'UNICEF Child Labour Protection' <<https://www.unicef.org/protection/child-labour>> accessed 3 March 2022.

¹⁸ ILO The worst forms of child Labour (IPEC), ilo.org 2020
<https://www.ilo.org/ipeccampaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm%3E%20accessed%202020%20August%202020>.

provided to the children is so low that parents do not consider it as an opportunity but rather as a waste of time¹⁹. States' unequal distribution while doing allocation of the resources both in terms of finances and human resources also play key role within national decision making that affects children.

2.2. Interaction between Various Factors Behind the Child Labour

In Pakistan, child labour is a grave issue due to the social economic, political and cultural conditions of the country. Most of the population in Pakistan is living below the poverty line and are mostly illiterate. This is the vicious poverty trap for people who are poor and illiterate. Considering all of the circumstances as their fate, while illogically explaining it in the light of religion and the Almighty as the sovereign provider makes them work the way they had been working and doing literally nothing to make their conditions better off²⁰. Their children help them in whatever work, either paid or unpaid they do and hence repeating all the same mistakes. This is an intergenerational problem of poverty cycle that has been carried on within Pakistan.

On socio-cultural patterns, people in Pakistan believe that education is secondary and getting some sort of skill is the priority. They, thus, do not send their children even to vocational institute due to their economic circumstances that bind them to their masters or bosses to learn the work from them. By doing this, they become indebted to that person and whole of their life throughout the generation, they fall prey to it. In addition, even in the case of wealthy people, the illiterate parents want their children to continue their businesses instead of getting education.²¹

The nexus of the wealth concentration capture of resources and government power by elites, and worsening inequalities is especially apparent in Pakistan. The parliament is comprised of the nation's wealthiest elites, who create economic rules specially aimed towards advancing their interests, while doing little to build the capacity of the state or enhance the economic power of the millions of citizens it is supposed to represent.²² The boundaries between gift giving and

¹⁹ ILO, Extending and improving School for children is the most effective way to eliminate child labour https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_249007/lang--en/index.htm

²⁰ ILO, Extending and improving School for children is the most effective way to eliminate child labour https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_249007/lang--en/index.htm

²¹ 'The Issue of Child Labour in Pakistan' <<https://ghrd.org/wp-content/uploads/2021/09/The-Issue-of-Child-Labour-in-Pakistan.pdf>>.

²² 'WORKING FOR THE FEW Political Capture and Economic Inequality' 14 <https://www-cdn.oxfam.org/s3fs-public/file_attachments/bp-working-for-few-political-capture-economic-inequality-200114-en_3.pdf>.

exchanging money for votes are often difficult to establish.²³ Politically, it has been seen within the cultural environment within the country that people are investing their time in politics. The politicians are giving loose hope to their populations to make their lives easier and better. The illiterate and poor people are being bribed within the electoral campaigns and the time of election for casting their votes in favour of a particular party or candidate. The bribe is in the form of wheat, rice, money or any other material things that is of need to those poor people and which is easier for the rich politician to buy. Bribing them and gaining vote makes them vulnerable to keep on in the same old lifestyle that they had. The abuse of state resources is a common problem, particularly in authoritarian states or systems with dominant parties. A significant number of Politician use government resources or public money ahead of election²⁴, and focus on much visible development projects rather than the necessities that actually can help those people to make their lives worthwhile. Spending on infrastructure development like roads, bridges, and other projects has been increased due to increased visibility of these projects, rather than spending on their healthcare and education facilities. This has led to a decrease in the literacy rate and healthcare facilities that help the people stay healthy and get aware about their rights. Similarly, children are stopped from getting education are bounded to do labour or work to make the lives of their families batter off.

2.3. The National Regulations of Children's Right

Pakistan is a federation comprising four provinces: Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan; a federal capital, Islamabad; a capital territory; and two Federally administrated areas: Gilgit-Baltistan (GB) and Azad Jammu and Kashmir (AJ&K). The Constitution of Islamic Republic of Pakistan 1973 (The Constitution) provides for provincial areas autonomy, particularly in terms of social service delivery, while the Federal Government's support of provincial efforts is a state responsibility. Key social sectors are primarily the responsibility of provincial governments including health, education, climate change, human rights, population and social welfare, food and agriculture, water supply and sanitation while the federal government is responsible for the coordination and international commitments. The federal government also exclusively retains functions related to finance, defense, natural resources and foreign affairs.²⁵

²³ Falguera Elina, Jones Samuel and Ohman Magnus, *Andreas Ufen, CH 4 Asia, Funding of Political Parties and Election Campaigns A Handbook on Political Finance* (International IDEA Publications) 88

<<https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>>.

²⁴ Elina, Samuel and Magnus (n 23) 88.

²⁵ 'The Constitution of Islamic Republic of Pakistan 1973' (n 4).

Pakistan's Local Government system is in place to bring the government closer to the people. This is enshrined in the Constitution, which empowers each province to set up its own local governments. The local government system in Pakistan is three-tier system, integrated through a bottom-up planning approach²⁶.

There are a number of issues within child labour that need to be considered in order to understand the multidimensional issues of this problem within the context of Pakistan. This includes, but is not limited to child exploitation, abuse, bounded slavery and many more.²⁷ The international community has worked tirelessly in this regard and have made certain conventions and laws relevant to that. The question arises about the assistance that each state can be given and the steps that it can take in order to eliminate or reduce the child labour.

2.4. Child Labour and the Application of the International Legal Framework

The concept of child labour and its elimination dates back to the League of Nations. The same institution worked on children's rights and endorsed these rights in the Declaration of Geneva on the Rights of the Child (1924).²⁸ However, the Declaration of the Geneva provided a statement in the form of duties stating that the child should be protected from any sort of labour rather than providing full list of child rights. Within the Declaration of Geneva, articles 4 and 5 establish that the child must be put in the condition of earning for himself in the long run and he or she protected from any form of exploitation²⁹. Later on, the Universal Declaration of Human Rights (UNDHR),³⁰ adopted in 1948 and the International Covenant on Civil and Political Rights (ICCPR),³¹ adopted in 1966 further elaborated on those duties and considered them as rights, clearly stating that children should be able to enjoy all the rights without any discrimination all mentioned in its Article 24. Following the adoption of all these conventions and discussions of issues related to

²⁶ 'Pakistan's Implementation of the 2030 Agenda for Sustainable Development Voluntary National Review' 13 <https://sustainabledevelopment.un.org/content/documents/233812019_06_15_VNR_2019_Pakistan_latest_version.pdf>.

²⁷ Mehmood Iraqi Khalid, Akhter Muhammad Naeem and Zaheer Zaidi Syed Shahid, *Understanding Labor Problems and the Social Consequences of Child Labor in Pakistan, Public Policy and Administration Research*, vol Vol.9, No.3, 2019, p 117 <<https://iiste.org/Journals/index.php/PPAR/article/download/47172/48701>>.

²⁸ UN Documents, 'Geneva Declaration of the Rights of the Child 1924' <<http://www.un-documents.net/gdrc1924.htm>>.

²⁹ UN Documents (n 28).

³⁰ United Nations, *Article 25 (2)The Universal Declaration of Human Rights (UDHR) 1948* <<https://www.un.org/sites/un2.un.org/files/udhr.pdf>>.

³¹ United Nations, 'International Covenant on Civil and Political Rights' <<https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>>.

adding clauses and sub-articles on the rights of children, it was felt that there was a need to have a separate treaty or document to address the issue of child labour and provisions of children's rights. The International Labour Organization³² (ILO) thus mandated the abolition of child labour and the imposition of such limitation on the labour of young person's to permit the continuation of their education and assure their proper physical and psychological development as one of its major goals. Adding to this ILO initiative are some international conventions that have paved ways for states and other international bodies to work on the issue of child rights and child labour precisely: ILO Convention 138 on Minimum Age 1973, and ILO Recommendations 146 on minimum age for admission to employment 1973, ILO Convention 182 Worst forms of Child Labour 1999³³, United Nations Convention on Rights of the Child (CRC) 1990³⁴, CRC's Optional Protocol on Armed Conflict 2000³⁵, CRC's Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2002³⁶ as well as the Palermo Protocol on Trafficking in Person 2000.³⁷

2.5. The Role of the International Community concerning Child Labour

The use of child labour is widespread in Pakistan's economy and it is also accepted by the society³⁸. All of this is despite of the fact that the country has already ratified the ILO Conventions regarding

³² ILO, 'ILO Membership, Pakistan - Member since 31.10.1947'

<<https://www.ilo.org/dyn/normlex/en/f?p=1000:11003::NO::>>.

³³ Pakistan is a member of ILO Since 1947 and and ratified Minimum Age Convention 1973(No. 138) on 06 July 2006, and Worst Forms of Child Labour Convention, 1999 (No. 182) on 11 Oct 2001,

https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:103166

³⁴ United Nations, 'Convention on the Rights of the Child (CRC)1990'

<<https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>>.

³⁵ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000' <<https://www.ohchr.org/Documents/ProfessionalInterest/crc-conflict.pdf>>.

³⁶ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution A/RES/54/263 of 25 May 2000 Entered into Force on 18 January 2002'

<<https://www.ohchr.org/Documents/ProfessionalInterest/crc-sale.pdf>>.

³⁷ United Nations, 'Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 55/25 of 15 November 2000'

<<https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>>.

³⁸ United Nations, 'Committee in Rights of a Child, Concluding Observations: Pakistan Thirty-Forth Session, Convention on the Rights of the Child' 16 Para 69 <CRC_C_15_Add.217-EN.pdf>.

Child Labour³⁹ and the CRC. It is also one of the signatories of the Convention on The Rights of Childs which was ratified by Pakistan on 12th November 1990.⁴⁰

In Pakistan, the Constitution itself states that slavery is non-existent and forbidden and no law shall permit or facilitate its introduction in any form in Pakistan. Also forced and trafficked labour is banned within the country and children under the age of 14 years should not be working in any hazardous conditions⁴¹. Furthermore, after Pakistan's ratification of the CRC, it passed The Employment of Children Act 1991. This was done in order to protect the children from economic exploitation even if they are working.⁴² Pakistan has also taken other initiatives to ensure the protection of children from child labour, such as the Independent Monitoring Sector for Child Labour (IMAC)⁴³. Pakistan is a state party to the mentioned conventions relating to child labour and child work and is responsible for the welfare of children in context of healthcare, education and future development of children.

³⁹ ILO, 'ILO Conventions Ratifications for Pakistan'

<https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103166>.

⁴⁰ United Nations, 'Ratification Status for CRC - Convention on the Rights of the Child, Pakistan Is Signatories of the Declaration of The Rights of Child since 12 Nov 1990'

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en>.

⁴¹ 'The Constitution of Islamic Republic of Pakistan 1973' (n 4) Article 11.

⁴² 'Pakistan Employment of Children Act, 1991'

<<https://www.ilo.org/dyn/travail/docs/1010/Employment%20of%20Children%20Act%201991.pdf>>.

⁴³ 'Independent Monitoring Association for Child Labor (IMAC)' <<https://www.imacpak.org/>>.

Chapter 3: Existing International Laws Protecting Children’s Rights

The legislation that has been adopted at the international level provides the basic framework for taking national and international measures for the eradication and regulations of child labour. In particular, it provides a legal basis for punitive actions at the national level and for adopting measures preventing child labour in various areas, including the conditions and aspects related to work, such as minimum age and willingness to work or not (prohibition of forced labour). This chapter will examine relevant international labour law mostly in the form of treaties. It will also focus on the implementation and legislation of this law in Pakistani and the laws that are implemented in response to children’s rights in relation to work. It will thus outline the international treaties and other international instruments on child labour specifically outlined by the ILO and UNICEF along with the obligations of states that these instruments have imposed. It will also discuss the question about what child labour conventions and declarations can either be considered as international customary law or as *jus cogens* norms.

Conventions or treaties are generally considered to be legally binding for the state parties.⁴⁴ However, declarations as such are not legally binding; instead, they lay the foundation for the development of conventions or the relevant state laws that are yet to come ahead.⁴⁵

The eradication of child labour is a multi-faceted issue;⁴⁶ it cannot just be studied and understood within the limited scope of legal analysis. This is because many countries and economies have different patterns of child exploitation and labour. Considering only the legal side of the problem neglects the social, cultural and political aspects of the problem. It is, however, still important to analyze the legal responses to the issue of child labour in the light of international child labour law while scrutinizing the challenges when campaigning for the elimination of child labour. The aim of this section is to provide an overview of relevant international instruments on child labour law.

⁴⁴ ‘Vienna Convention on The Law of Treaties Signed at Veinna 23 May 1969’.

⁴⁵ Humbert Franziska, *The Challenges of Child Labour in International Law* (Cambridge Books Online cambridge University Press 2010) 193 <<https://www.cambridge.org/core/terms>>.

⁴⁶ ‘ILO- IPEC’s Strategies and Priorities for Addressing Child Labour and Its Resource Needs’ 2, 2 <IPEC_Strategy_October_2013_EN_Web.pdf>.

3.1. United Nations Conventions and Protocols

The so-called Slavery Convention or the Convention to Suppress the Slave Trade is regarded as the first ever human rights treaty which was adopted under the umbrella of League of Nations in 1926. Within the Slavery Convention, various forms of slavery are defined. It specifically mentions children since article 2(a) explicitly considers the “adoption of children with a view to their virtual enslavement, or the disposal of their persons” to be slavery. On December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the international United Nations General Assembly.⁴⁷ Article 4 of the UDHR states slavery, slave trade or servitudes in any case is prohibited in all forms (and is legal for everyone).⁴⁸ This article further defines slavery as forced labour or the exercise of power over an individual for forcing them to do what is good for them, or they do not want to do. The International Covenant on Civil and Political Rights (ICCPR) provides the fundamental legal framework for child labour and its abolition. The definition of servitude is found in article 8 of the ICCPR, which includes the abolition of child labour. However, the same Covenant also added an article 24(1) which had been worded as follows:

“Every child shall have, without any discrimination as to race, color, sex, language, national, religion, social origin, property or birth, the right to such measures of protection as are required by his status as a minor on the part of his family, society and state”.⁴⁹

According to this statement, all sorts of child labour and work that is hazardous must be banned by national authorities. This article obliges all the stakeholders including states, the family and the society to ensure that the children be given their ascribed status and rights.⁵⁰ Under this article, states are also provided with the obligation for the provisions of educational and rehabilitation measures for the elimination of child labour. This article would thus assist in the elimination of child labour and the provision of child rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) states in its Article 10(3) that young people and children should have protection from all types of social and economic exploitation, including physical abuse,

⁴⁷ United Nations, ‘Universal Declaration of Human Rights’
<https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf>.

⁴⁸ United Nations, ‘UDHR’ (n 47) 10.

⁴⁹ United Nations, ‘International Covenant on Civil and Political Rights’
<<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>>.

⁵⁰ Franziska, *UN and ILO Implementation Mechanisms for the Prohibition of Child Labour* (n 45) 127.

forced movement, labour and many other practices. It also obliges the state to ensure that if there is any work that children do that is hazardous for them, using children for that work must be banned. This provision also laid the foundation for the requirement of minimum wage, stating that a state should define a minimum age for paid employment and should be punishable by law.⁵¹ There are two relevant clauses that have been addressed within article 32 of the Convention on Right of the Child (CRC).

The first clause states that the government should ensure that children be protected from any type of economic exploitation forcing them to hazardous or dangerous work. According to the same provision, states should also ensure children's physical and mental health and social development.⁵² The second clause concerns other protections that are relevant to regulate child labour:

- a. Establishment of a minimum age
- b. Appropriate implementation of working time and conditions, and
- c. Appropriate penalties and sanctions to ensure the enforcement of this article.⁵³

Article 34 of the CRC states that the state parties must take steps to abolish all forms of sexual abuse and exploitation. This involves the coercion of a child in any sexual activity that is deemed as unlawful, the use of children as prostitutes and exploiting them for any unlawful practices related to pornography.⁵⁴ The CRC is extremely significant with 196 signatory parties, which make the impact of this convention huge and appropriate.⁵⁵

Article 38 of the CRC states that the humanitarian law must be applicable to the children as well.⁵⁶ However, critics have argued that this article fails to protect children from dangers of armed

⁵¹ Moeckli Daniel, Shah Sangeeta and Sivakumaran Sandesh, *Fons Coomans, Education and Work, International Human Rights Law* (Third Edition, Oxford University Press) 244.

⁵² Daniel, Sangeeta and Sandesh, *Fons Coomans, Education and Work, International Human Rights Law* (n 51) 234.

⁵³ United Nations, 'Convention on the Rights of the Child (CRC)1990' (n 34) 32 b.

⁵⁴ Moeckli Daniel, Shah Sangeeta and Sivakumaran Sandesh, *Geraldine Van Bueren, Children's Rights, International Human Rights Law* (Third Edition, Oxford University Press) 334.

⁵⁵ 'Children's Rights CRC Ratifications' (*UN Child Rights Blog Post*, 27 August 2012) <<https://unchildrights.blogspot.com/2011/01/chronological-order-ratifications-crc.html?msclkid=2b0f6c69cfea11ec924d82a7e4ff0d1e>> accessed 19 April 2022.

⁵⁶ Moeckli Daniel, Shah Sangeeta and Sivakumaran Sandesh, *Sandesh, Sivkumaran, International Humanitarian Law, International Human Rights Law* (Third Edition, Oxford University Press) 507.

conflict.⁵⁷ Since this article was meant to respect the rules for the humanitarian law, it enforces to protect the children from used as instrument of war i.e. spies, as soldiers, in sporting roles as cooks, couriers and for sexual purposes by armed groups and forces, attack or occupy school, prevent girls from going to school and use rap as a weapon of war in rhetoric and act of violence, affected by armed conflicts. It is expressed in such narrow terms that it fails to describe what states must do to meet this international requirement in terms of law making and enforcement in full detail.

3.2. International Labour Organization Conventions

There are eight fundamental Conventions on Work or Employment Conditions addressed by the International Labour Organization (ILO) itself. However, the ones that are formed under the umbrella of Conventions on Work or Employment Conditions include three most important ones.

- a. Prohibition of Occupation of Children to take place at night, Night Work of Young Persons Convention (Non- Industrial Occupation) No. 79, the same was received and given the No. 90, this was important to avoid any sort of physical abuse, harassment or working under hazardous conditions, because monitoring can be reduced at nights.
- b. Medical Examination of Youngs (Non Industrial Occupations) No. 78 and for industry No. 79, this Convention worked on the medical examination and was important to ensure if the person working in any sort of industry or is involved in any non-industrial occupation, is he or she fit for the work they are subjected to.
- c. Article 20 of the Convention on Forced Labour 1930, bans all sorts of forced labour irrespective of age, race, color, society or the ethnicity involved. This was made in order to combat child labour. It had also exposed practices of forced labour in terms of bound or domestic service in brick kilns.⁵⁸ Forced labour generates a huge economic benefit for some countries specifically for businesses. Convention on Forced Labour No. 29 is thus established to ensure that forced labour is prohibited by states.

The contents of The Minimum Age Convention, 1973 (No.138) of International Labour Organization goes beyond the scope and content of the previous ILO treaties that were already in

⁵⁷ Daniel, Sangeeta and Sandesh, *Geraldine Van Bueren, Children's Rights, International Human Rights Law* (n 54) 334.

⁵⁸ ILO, 'STOPPING FORCED LABOUR' (ILO publications 2001) ISSN 0074-6681 33
<https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_publ_9221119483_en.pdf>.

place. Even in the preamble of this convention, it was mentioned it seeks the “total abolition of child labour”.⁵⁹ The basic motive was to let the child develop and grow independently. This was aimed to be drawing a line between the tolerable amount and type of work to be done by young or a child and the exploitative labour that had been in practice for so long. The Convention urges states parties to take effective steps and set up a minimum age so that the child labour is no more left for expansion in terms of practices.⁶⁰ This convention has a large scope than any of the previous treaties as it covers all the sectors and provides a general instrument across instead of only being specified to certain sector.

There are different forms of child labour which are identified as being in need for eradication and they are discussed in Convention on the Worst Forms of Child Labour No. 182, considered as follows:⁶¹

- a. Different forms of slavery, including the sale and trafficking of children, forced and compulsory labour , bonded child labour, etc.
- b. Using the children in some kind of illicit activities like production and sale of drugs, etc.
- c. Forms of work which will harm the health, safety, and the morals of children. These are known as Hazardous Forms of Child Labour.⁶² Some of the activities that are to be eradicated are:⁶³
 1. Working underground, underwater, or at great heights or in dangerous spaces and areas which can put the life at risk.
 2. Working with dangerous machinery and equipment, using heavy and sharp tools at work, involved in loading unloading of heavy metals, etc.

⁵⁹ ILO, ‘ILO Minimum Age Convention, 1973 (No. 138)’ Preamble
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO>.

⁶⁰ U.S State Department Labour, ‘ILAB Finding on the Worst Forms of Child Labour’ (Bureau of International Labour Affairs 2020) Child Labour and Forced Labour Report
<<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/pakistan?msclkid=eb2ed34fcf8811ecae846048e198328b>>.

⁶¹ ILO, ‘ILO Worst Forms of Child Labour, Convention, 1999 (No. 182)’ Article 3
<<https://www.ohchr.org/en/instruments-mechanisms/instruments/worst-forms-child-labour-convention-1999-no-182>>.

⁶² ILO, ‘Worst Forms of Child Labour Recommendation, 1999 (No.190)’ Article 3
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312528>.

⁶³ ILO, ‘The Worst Forms of Child Labour’ (n 2).

3. Working in any unhealthy environment, such as dealing in hazardous substances, loud noises at work, and different forms of vibrations which may lead to different kind of health issues.

Forcing children to work at night or for long continuous hours without breaks and proper food and water facilities causes various health problems for children.⁶⁴ This treaty also incorporates an international ban on all hazardous, illegal work, prostitution, slavery or bonded work for children to be involved in. This ban is important because of the implications of this type of work that is dangerous for the health of the child. This type of work is also contrary to international human rights law and its bans on slavery and forced labour discussed in the previous section.

3.3. International Labour Organization Child Labour Elimination Programme in Pakistan

The International Labour organization (ILO) is helping the government of Pakistan with technical assistance, more specifically, to the government's Employers' and the Workers' organization, to progressively eliminate the worst forms of child and bonded labour in the rural economy, to eradicate child labour. Pakistan has agreed to enforce laws based on the state obligations created by the ILO conventions, including the Minimum Age Convention, 1973. However, at the federal level, the minimum age of hazardous work in Pakistan still does not meet international standards.⁶⁵ The ILO has provided a basic guidance in the form of certain strategies.⁶⁶ For Pakistan to ensure that there should be a minimum age for work and hence all forms of exploitative labour in the form of exploitation of physical health, mental health or even social esteem would come within this category of measures.

Implementation of international law through the adoption of national laws and measures in Pakistan Employment of Children Act V of the 1991, the employment of children under certain age and in certain occupations has been deemed as unlawful. The Employment of Children Act, 1991 has enforced the international ban on child labour and has thus been extended throughout

⁶⁴ Humbert Franziska, *The Challenges of Child Labour in International Law* (Cambridge Books Online cambridge University Press 2010) 113 <<https://www.cambridge.org/core/terms>>.

⁶⁵ U.S State Department Labour (n 60).

⁶⁶ ILO, 'ILO Recommendations' <<https://www.ilo.org/dyn/normlex/en/f?p=1000:12010:::NO:::>>.

Pakistan.⁶⁷ Section 4, 5 and 6 of this Act ensure the prohibition of child labour in certain time schedules (like night and odd timing), occupation and processes involved within some sort of employment or labour.⁶⁸ Pakistan and its government have been legislating in light of the international legal frameworks and standards that lay the foundation for the ratification of the international treaties in the field of child labour. In what follows is an examination of what international treaties have been ratified by Pakistan.

Pakistan has ratified following International Conventions on Child Labour:⁶⁹

No.	Convention	Ratification year	In Force Status
1	ILO Convention 138, Minimum AGE 1973 (Minimum Age Specified 14 years)	06 July 2006	yes
2	ILO Convention 182, Worst Forms of Child Labour 1999	11 October 2001	yes
3	United Nations Convention on Right of Child	20September 1990	yes
4	UN CRC Optional Protocol on Armed Conflict	26 Sep 2001	yes
5	UN CRC Optional Protocol On The Sale Of Children, Child Prostitution and Child Pornography	26 Sep 2001	yes
6	Palermo Protocol on Trafficking in Persons 2000	2010	

Pakistan has not shown acceptance of individual complaint procedure in any of the above mentioned conventions.⁷⁰

Domestic laws and the regulations on child labour that are made and regulated by the government of Pakistan are both at federal level and at the provincial level after the eighteenth amendment powers are granted to provinces⁷¹ made and regulate laws in context with international laws and

⁶⁷ 'Employment of Children Act,1991 Pakistan'

<<https://www.ilo.org/dyn/natlex/docs/WEBTEXT/22707/64834/E91PAK01.htm>>.

⁶⁸ 'Employment of Children Act,1991 Pakistan' (n 67).

⁶⁹ ILO, 'ILO Conventions Ratifications for Pakistan' (n 39).

⁷⁰ OHCHR, 'UN Ratification Status for Pakistan'

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN>.

⁷¹ 'The Constitution (Eighteenth Amendment) Act, 2010'

<https://na.gov.pk/uploads/documents/1302138356_934.pdf>.

measurements. The Pakistani labour legislation falls under the concurrent list of duties and jurisdiction of the federal and provincial governments, which is stated under the 18th amendment in the constitution and is also regarded as the NFC awards within the constitution. Hence, both the governments either federal or provincial can pass laws on this matter, which means that the authority or discretion to govern and implement child labour standards lies in the hands of both federal and provincial governments. The federal and provincial laws in Pakistan can be seen as not completely consistent with international law on child labour. Within the international standards the minimum age of work or employment is for any type of employment; however, minimum age set by federal government of Pakistan does not actually extend to the informal employment. The standard-setting within the province of Sindh sets the minimum age of work, but it does not extend towards informal employment and some factories that have less than 10 persons as labour.⁷² Similarly, the minimum age for hazardous work set by international standards does not comply with the federal standards as it is below 18 years. Baluchistan Province has not established a minimum age for employment or for hazardous work, and therefore Federal Child Employment Laws apply in Baluchistan as Baluchistan adopted the national laws.⁷³ In addition, the hazardous work prohibition of the federal government and the Khyber Pakhtunkhwa, Punjab, and Sindh provinces do not cover brick making and domestic work in spite of the evidence that children are exposed to environmental health hazards in brick making and physical abuse in domestic work.⁷⁴

3.4. Conclusion

In the light of the discussion of the relevant international human rights and labour law in this chapter, it is concluded that the international basic framework for protecting children from child labour has been established. Laws have also been adopted at the national level in Pakistan, including in its constitution. The problem does not lie in the international law or national legislation but rather the implementation of these laws. These laws also have of the loopholes that have hindered their implementation keeping in mind the local sceneries and processes that are an obstacle to them. International treaties and instruments are thus important in understanding how

⁷² 'The Sindh Shops and Commercial Establishment Act, 2015. Provincial Assembly of Sindh Notification Karachi, 29 April 2016' <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102142/123388/F-1352480253/PAK102142.pdf?msclid=889a3281cfdc11ecbf751320a9dc11dd>>.

⁷³ 'Coal Mines in Balochistan' <<http://www.sparcpk.org/images/Pubs-Thumb/Coal-Mines-in-Balochistan.pdf>>.

⁷⁴ Zakria Zakar Muhammad and others, "'Nobody Likes a Person Whose Body Is Covered With Mud": Health Hazards Faced by Child Laborers in the Brick Kiln Sector of the Okara District, Pakistan' (2015) 47, No. 1, 21–28 Canadian Journal of Behavioural Science <<https://www.apa.org/pubs/journals/features/cbs-a0036262.pdf>>.

the governments, also in developed countries (which have successfully eliminated child labour) have managed to eliminate child labour within their economies through the implementation of those treaties and instruments.

Chapter 4: Cross Comparison of Lawmaking and Enforcement between International Laws and National Laws

Sometimes national justice systems do not provide human rights victims with the redress they need and deserve. This could be because the law itself violates human rights, remedies are inadequate or perhaps corruption levels are too high.⁷⁵

International law in the form of conventions and protocols provides the framework for the enactment of laws and regulations within different countries that are parties to these conventions and protocols.⁷⁶ International organizations, like the United Nations (UN) and the European Union (EU) are the governing bodies which ensure that the regulations are appropriate and up-to-date for compliance.⁷⁷ However, throughout the world it has been observed that the international legal standards and obligations are not being enforced and implemented to the extent that they actually have to be implemented and enforced. This is due to a number of factors that have been mentioned in the context of Pakistan within previous chapters. The factors might be different in various countries but the implementation of International law is influenced either in the similar ways or in the different ways.⁷⁸ Thus, it is extremely important for Governments to ensure that the international laws are not only rightly understood but are also enforced. Similarly, for international organizations with human rights mechanism it is also significant to understand that local requirements must be met in order to comply with international legal instruments completely. This chapter will discuss the enforcement of child labour laws, both internationally and locally for the identification of loop holes that exist within the law making and it's implementing international child labour standards through the adoption of national measures, including national legislation.

⁷⁵ Geary Patrick, 'CRC Complaint Mechanism Toolkit', 9

<<https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/60d1e364caee361e0eac4431/1624367972615/CRC+Complaints+Toolkit.pdf>>.

⁷⁶ Shaw Malcolm N, *International Law* (Sixth Edition, Cambridge University Press 2008) 94 <<http://euglobe.ru/wp-content/uploads/2017/01/Malcolm-N.-Shaw.-International-Law-6th-edition-2008.pdf>>.

⁷⁷ Shaw Malcolm N, *International Law, International Law and Municipal Law* (Sixth Edition, Cambridge University Press 2008) 129 <<http://euglobe.ru/wp-content/uploads/2017/01/Malcolm-N.-Shaw.-International-Law-6th-edition-2008.pdf>>.

⁷⁸ Franziska, *UN and ILO Implementation Mechanisms for the Prohibition of Child Labour* (n 45) 122.

4.1. Implementing International Law related to Child Labour

There are a number of international conventions that have been framed for international governance and abolition and regulation of Child Labour. These laws have been adopted within the frameworks of the UN and ILO and compliance with those laws are done by the international agencies of these international organizations⁷⁹. The previous chapter has explained the relevant conventions for the right of child to be protected from economic exploitation including;

1. Minimum Age Convention 1973 (No. 138)
2. Worst Form of Child Labour Convention, 1999 (No. 182)
3. Convention on Working and Employment Conditions of Children

The laws are not limited to the above mentioned conventions, but rather represent basic international frameworks and standards that have to be implemented and enforced by states within their own jurisdiction.

The effective implementation and enforcement of minimum age international legislation require the adoption of national sanctions for violators of minimum age laws, proper investigation to identify the existence of Child Labour and effective inspiration of work places.

According to the ILO Minimum Age Convention, minimum age provisions should be enforced through sanctions. The national legislation should:

- a. Provide for penalties and other necessary measures for violation of child labour provisions;⁸⁰
- b. Ensure that the law provides for sanctions for all persons responsible for under-age employment (e.g. employers, parents, and Guardian etc.);
- c. Ensure that the sanctions are successfully deterrent;
- d. Diversify sanctions between criminal, civil and administrative sanctions;
- e. Diversify sanctions as a function of the seriousness of the offence, e.g. heavier sanctions for the employment of children in hazardous than in non-hazardous work, heavier sanctions for repeat offence;⁸¹

⁷⁹ Franziska, *UN and ILO Implementation Mechanisms for the Prohibition of Child Labour* (n 45) 123.

⁸⁰ ILO, 'ILO Minimum Age Convention, 1973 (No. 138)' (n 59) Article 9(1).

⁸¹ ILO, 'ILO Minimum Age Convention, 1973 (No. 138)' (n 59) Article 9(1).

- f. Facilitate the access of children to legal remedies, e.g. by ensuring that children can join trade unions as soon as they are admitted to work, or by guaranteeing legal standing for trade unions (or other civil society organizations concerned with child labour) to represent children in law;
- g. Ensure that law do not subject children themselves to penalties for engaging in under-age work even if the activity is illegal;⁸²

Prioritization for the elimination of the worst forms of child labour need to be set within the national policy. The ultimate goal should be to reduce and eliminate all forms of child labour practices that are still persists in much of industry, agriculture and services and in conditions of bondage and serfdom within the country.⁸³ For both of the cases, national lawmaking or legislation lays the foundation as an instrument for the consolidation of national policy. This is obligatory according to the Convention No. 182 which requires member States to take immediate and effective measures to combat the worst forms of child labour.⁸⁴

4.2. Enforcing Pakistani Law related to Child Labour

Similar to international law, which suffers from insufficient enforcement mechanisms, Pakistani law faces similar issues of implementation. However, the victims of insufficient enforcement of national law to receive the problematic enforcement mechanisms are different and thus a significantly different issue is faced. In Pakistan, the issues arise due to the lack of acknowledgement of the work and the areas in which children have been employed. For rural areas, when it comes to factory work and many other areas within the labour market, there is no legal or written contract of employment; rather, employees at factory sites are just provided with the employee Identity Cards to ensure that they work in those factories. This creates problems for the street level bureaucrats or the local law enforcement agencies to ensure that the laws and regulations are being appropriately enforced and implemented during employment of children.

⁸² ILO, *Labour Legislation Guidelines, Substantive Provision of Labour Legislation: The Effective Abolition of Child Labour* (International Labour Organization 2001) Ch. VIII
<<https://www.ilo.org/legacy/english/dialogue/ifpdial/l1g/index.htm>>.

⁸³ ILO, *CHILD LABOUR: Targeting the Intolerable, Geneva, International Labour Office, 1996, International Labour Conference 86th Session 1998* (International Labour Organization 1996) 4
<https://www.ilo.org/public/libdoc/ilo/1996/96B09_344_engl.pdf>.

⁸⁴ ILO, *CHILD LABOUR: Targeting the Intolerable, Geneva, International Labour Office, 1996, International Labour Conference 86th Session 1998* (n 9) .

Garments and textile industries are more prone to follow these sorts of regulation and employment patterns. In recent years, these invisible works have on rare occasions been part of the national conversation, sadly, almost always for wrong and often tragic reasons.⁸⁵ An instance regarding Khaadi can be quoted here. During 2017 there had been a protest by the workers of Khaadi (which is the leading apparel brand in Pakistan) which highlighted the issue and problems within Pakistan's garment sector. This was due to the issue of firing of 32 workers (7 of them were under age), who actually demanded the fulfillment of their labour rights in the light of Pakistani law. The concerns of the workers included indiscriminate termination of some workers, unhygienic working conditions, more working hours, and a pay ranging below the minimum wage and minimum age.⁸⁶

This represents the cultural patterns of employment within Pakistan and the ways in which people are exploited even by the national brands and the multinationals. This excessively is due to the fact that the kids who are being employed are hardworking due to personal circumstances and the age, but they are illiterate. They are utilized here as a resource to handle work which young adults might not be able to complete so efficiently and cheaply as those working children do.⁸⁷ Many factories usually employ children, specifically under the age of 13 years which is done for the avoidance of paying overtime and minimum level of wages. There were 9 interviews conducted by the Human Rights Watch, all from the working kids in garment factories, which revealed that they were all producing for the domestic market; however, none of them actually had a written contract which reduces all sorts of liabilities for the organizations that they had been working in. This is feasible for these factories, because the children do not have a National Identification Card (NIC) because most of them are under the age of 18 years which is often used as a pretext for denying them official wages. In most cases, children accompany their parents, in most of the cases it is the mothers who are usually accompanied.⁸⁸

⁸⁵ “‘No Room to Bargain’ Unfair and Abusive Labor Practices in Pakistan’ (Human Rights Watch 2019) <<https://www.hrw.org/report/2019/01/24/no-room-bargain/unfair-and-abusive-labor-practices-pakistan>>.

⁸⁶ Farooq Asad, ‘Khaadi Faces Social Media Rage Amidst Allegations of Inhumane Work Conditions’ (2017) <<https://www.dawn.com/news/1336144/khaadi-faces-social-media-rage-amidst-allegations-of-inhumane-work-conditions>>.

⁸⁷ Asad (n 86).

⁸⁸ Asad (n 86).

4.3. Assessing the problems of protection and elimination of child labour in Pakistan

The laws of the Pakistan are known to be ambiguous, vague, unclear or have certain anomalies or gaps. Similarly, the laws pertaining to child employment and the enforcement of those laws inadequately, there is another issue that the law enforcement agencies and officials also face and that is that the children get exposed to this exploitation and abuse. Children are particularly vulnerable here because so often societies fail to view them as rights holder so justice is out of their reach.⁸⁹ There is yet a daunting need for the introduction of socio-economic and legal steps for the protection and safeguarding of child rights and for the improvement of their social status and lifestyle. The Pakistan Law Commission, therefore, recommends the following measures:⁹⁰

The legislative environment has remained supportive for elimination of child labour and latest development and measures relating to child labour laws regarding, hazardous occupation and other processes mentioned in the Schedule to the Employment of Children Act 1991,⁹¹ should periodically be reviewed and updated providing necessary safeguards to workers in such establishments.⁹²

Mapping the worst forms of child labour regulations the UN Convention on the Rights of Child, ILO conventions and the Constitution of Pakistan provide for an absolute prohibition of child employment in any factory or mine and any other hazardous employment/ occupation, making no exception for such work being undertaken under a family surrounding. These regulations of labour should only be for the commonly observed forms of labour such as agricultural, manufacturing industry and domestic work etc. the worst forms of labour including trafficking, bonded labour, prostitution cannot be regulated and need to be eliminated together. The Government may, therefore, devise effective steps with a view to prohibit the employment of children in professions/occupations regarded unsafe for or injurious to health or harmful to the physical/mental/social/spiritual development of children. A vast number of children are engaged in domestic service. Children, indeed, due to their manifest vulnerability to exploitation (long

⁸⁹ Patrick (n 75) 9.

⁹⁰ 'Elimination of Child Labour Report 28' (Law and Justice Commission of Pakistan) PKLJC28 <<http://www.commonlii.org/pk/other/PKLJC/reports/28.html>>.

⁹¹ 'Employment of Children Act, 1991 Pakistan' (n 67).

⁹² 'Elimination of Child Labour Report 28' (n 90).

working hours, small wages, no paid holidays, etc), are preferred commodity for domestic service. Risks of abuse/exploitation of children in such service are therefore ever present. At present the services of domestic servants are totally unregulated. The Commission takes the view that due to the prevailing unsatisfactory situation in respect of law enforcement, there is a pressing need of the proposed draft legislation for regulating domestic servants.⁹³ Children in the urban setting are self-employed, doing odd jobs under extremely difficult conditions. Similarly, many children in the rural setting are employed in agriculture sector, where they may be exposed to chemical /toxic material, injurious to health.⁹⁴ These forms of labour needs to be mapped out by the government and The Government should, therefore, take appropriate measures aimed at resolving these problems so that reliance on child labour is minimized.

There is a need for disseminating information regarding Child labour and remedies available under international laws and constitutional provisions and other related legislation pertaining to the rights of children. A lot of private organizations, government institutions, social, cultural, educational and religious institutions, NGO's and mass media, etc. should be associated in the task of mobilizing support for the rights and welfare of the children.⁹⁵ Training to professional official such as Police, Judicial Officers, Labour Officers, Social Welfare Staff, etc. having a role in the enforcement of laws rules relating to children and legislative measures in order to be effective must be accompanied by a full-fledged mechanism for their enforcement and implementation. Accordingly, the Government should strengthen institutions for the enforcement of relevant laws such as Employment of Children Act 1991⁹⁶ and the Bonded Labour (Abolition) Act 1992.⁹⁷ The present allocation of resources towards child welfare should be enhanced so that their basic needs such as food, nutrition, health care, education etc. are fulfilled and this needs to be ensured and monitored by the Government of Pakistan. Once a generation of child labourers would be educated, the cycle of labour would automatically start to break.

⁹³ 'Elimination of Child Labour Report 28' (n 90).

⁹⁴ ILO, *Labour Legislation Guidelines, Substantive Provision of Labour Legislation: The Effective Abolition of Child Labour* (n 82) ch VIII.

⁹⁵ 'Elimination of Child Labour Report 28' (n 90).

⁹⁶ 'Employment of Children Act, 1991 Pakistan' (n 67).

⁹⁷ 'BONDED LABOUR SYSTEM (ABOLITION) ACT, 1992' <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_300690.pdf>.

4.4. Conclusion

There is a lot of discrepancy between relevant international child labour standards as well as existing national laws and the actual protection of children from having to work without protection from abuse. In Pakistan, many cultural, social and political patterns along with the economic trends, play a pivotal role and hinder the enforcement of child labour laws within the country. This chapter has discussed the laws and their enforcement strategies in detail. The next chapter further highlights the loopholes and identifies the gaps in enforcement along with some recommendations related to lawmaking strategies to improve the situation.

Chapter 5: Child Labour Practices in the Light of Child Labour Laws within Pakistan

Child labour is always an alarming issue of the legalities and the violation of the child rights throughout the world. However, throughout the previously done analysis and discussions based on facts, academic literature and reports, it has been observed that not all forms of work and task responsibilities that children tend to indulge in, can be categorized as child labour. Thus, even while working on the tasks that are not regarded as child labour, child exploitation and abuse is what needs to be taken care of by the employers. Eradication of child labour is only possible when the societal norms and economic upheavals are aligned with the tracking of the basic child rights and child labour practices and comparing and analyzing both together. Child Labour is a reflection of socio-economic vulnerabilities, institutional barriers, labour market imperfections, social inequalities and low-quality of education system.⁹⁸ Not only child labour is an issue; provisions of child labour can also be problematic when it comes to achieving children welfare in the society and the complete elimination of child labor practices within a country. ILO conventions and major international human rights instruments (as discussed) have helped in the building of a better approach towards the child labour issues. This section will address the hurdles that Pakistan has been facing in the implementation of international and national child labour laws. For a developing country like Pakistan, children involved in hazardous activities can be common and hence the actions that potentially can be taken against these activities will be assessed in more detail.

5.1. Child Labour practices in Pakistan

Pakistan had been regarded as the fifth⁹⁹ most populated country in the world with more than 80.4 million of its population aged less than 18 years.¹⁰⁰ The population of this age is basically the population that can be targeted and studied as child labour. Pakistan being a developing country has no fresh statistics available regarding child labour in Pakistan. However, Pakistan Labour Force Survey (LFS) 2020-2021 has shown a number of active child labourers in Pakistan to be

⁹⁸ Ahmad Usman, Singh Pritam and Farooq Shujaat, 'Impact of Shocks and Dynamics of Poverty on Child Labour and Schooling in Pakistan: A Panel Analysis' (2020) XI 33.

⁹⁹ 'Countries in the World by Population (2022)' <<https://www.worldometers.info/world-population/population-by-country/>>.

¹⁰⁰ 'The Situation Analysis of Children in Pakistan (SitAn)' 13

<<https://www.unicef.org/pakistan/media/596/file/Situation%20Analysis%20of%20Children%20in%20Pakistan.pdf>>

exceeding 26.32 million in total with most of these child labourers being of the age between 10 to 14 years, with a majority of these being boys and coming from a rural background.¹⁰¹

Multiple factors within Pakistan accounts for the existence of child labour in the country. Poverty cycles or poverty traps, socio economic barriers, schooling provision and quality, flexibilisation and globalization of labour across the world contributed to the existence of child labour in Pakistan and hence the cycle is continuous.

Many of the child labourers have been exploited by their masters and their employers under whose power they work. They have been engaged in risky and most clerical sort of work which includes but is not limited to the manufacturing of certain surgical instruments, soccer or sports stuff, textile, carpets, bricks, or they are forced to work some mechanical or auto mobile workshop and tanneries.¹⁰² The reason of children being forced to work in such hazardous industries and in such unhealthy conditions is the lack of basic enforcement of law, but one of the most fundamental reason is them trying to improve their economic situation and trying to enhance their living standards. Pakistan has a huge population with quite uncertain political conditions. However, if the government actually wants to eliminate the child labour in Pakistan, it needs to take progressive steps towards it. The first step among all the steps that need to be taken should be the provision of schooling and better educational standards to be accessible by all the children. The current practices of child labour narrate a daunting situation which is not under the control¹⁰³. In order to reach to a conclusive policy or decision, it is important to first understand the problem. Pakistan has been facing a lot of hardship in its census and labour force condition without which no enforcement and implementation of law can be successful.

5.2. Dealing with Child Labour in Pakistan

There are a number of problems that have contributed to the practice of child labour and the activities involving child labour. One issue is the illiteracy and lack of awareness of parents who want their children to get early knowledge about the skills that might make them employable in

¹⁰¹ 'Pakistan Labour Force Survey 2020-21' (Government of Pakistan Ministry of Planning, Development & Special Initiatives Pakistan Bureau of Statistics)

<https://www.pbs.gov.pk/sites/default/files/labour_force/publications/lfs2020_21/LFS_2020-21_Report.pdf>.

¹⁰² Ghani Faras, 'The Spiralling Debt Trapping Pakistan's Brick Kiln Workers' (Al Jazeera 2019)

<<https://www.aljazeera.com/features/2019/10/21/the-spiralling-debt-trapping-pakistans-brick-kiln-workers/>>.

¹⁰³ 'Child Protection, Multiple Indicator Survey (MICS) 2014 Final Report' (2014) MICS 2014 Final Report <https://bos.gov.pk/system/files/10.Child_Protection.pdf#overlay-context=finalreport>.

the eyes of the industrialists and hence would assist in reducing the financial pressure and burden posed on them.¹⁰⁴ Second, the issue here is the cost minimizing strategy and lack of fear of trade and labour union by the involvement of children in the labour and workforce.¹⁰⁵ Studies have also revealed that the same working conditions and the hazardous scenarios can be less harmful for adults than the children who are involved in those activities, one part of it is because of the fact that the machinery, tools and equipment are designed to be used by adults and not the children who are more vulnerable to get affected physically by them.¹⁰⁶

The child labour statistics (that are depicted below) varies in different states of Pakistan which basically is due to the fact that there are certain combinations of the labour demand and supply which is further bundled with the poverty in that region.¹⁰⁷ Some activists and NGO's are of the view that child labour should be completely banned and abolished irrespective of the types of work that they have been involved in and hence they perceive any sort of work that is done by children is actually child labour. They also lay stress upon the fact that anything that deprived the formal education for the children falls under provisions of child rights.¹⁰⁸ They have also indicated that the abolition of child labour might capacitate more adult workers to be a part of formal and informal workforce and hence by some means increase the wage as children are normally underpaid. This would thus increase adults' pay which might be enough to make child labour and work unnecessary, specifically for the financial and economic conditions of their families.¹⁰⁹

5.3. Government Implementation of Child Labour Laws in Pakistan

In Pakistan, it is illegal to employ someone who is under 16 years of age. But almost 70 percent of bonded labour in Pakistan are children, who make up over one third of the four million or so people working at brick kiln in Pakistan. Often they work all the day and denied education.¹¹⁰ There are a number of child labour laws practices that have been utilized within Pakistan. The government of Pakistan has been facing and is still facing a lot of issues in term of law enforcement. This basically is due to the fact that the government does not know have exact

¹⁰⁴ Usman, Pritam and Shujaat (n 98) 33.

¹⁰⁵ Franziska, *The Protection as a General Principle of Law* (n 64) 29.

¹⁰⁶ Humbert Franziska, *The Challenges of Child Labour in International Law* (Cambridge Books Online cambridge University Press 2010) 20 <<https://www.cambridge.org/core/terms>>.

¹⁰⁷ *Combating Child Labour (A Review of Policies)* (n 3) 25.

¹⁰⁸ *Combating Child Labour (A Review of Policies)* (n 3) 15.

¹⁰⁹ Franziska, *The Problem of Child Labour* (n 106) 31.

¹¹⁰ Faras (n 102).

statistics about the situation regarding the lack of enforcement of its laws even if it has been trying really hard to get some statistics. Understanding the issue and the underlying problem is thus extremely important for the government to lay some practical steps to overcome the challenges related to child labour.

As per the State Department of the US, bonded labor is one of the most critical problem to be dealt with in the area of Human Trafficking problem according to 2020's Trafficking in Pakistan report.¹¹¹ Bonded labour is globally recognized as a form of human trafficking and modern slavery, which is not confined to a particular age or gender. It is largely practiced across two sectors in Pakistan, i.e. brick kiln and mining. There are almost 20,000 brick kiln in Pakistan, and over 4.5 million persons work in this growing industry. On average, a person gets PKR 960 for producing of 1000 bricks, which is less than one rupee per brick.¹¹² The workers usually get half of this promised amount, and the rest remains with the owner as payable in future. This amount is less than the official wages rate fixed by the government and not enough to sustain a household. This creates a debit trap and workers are forced to work in lieu of the money owed to the owner, which was never paid to them in the first place. The extent of the problem is documented: Pakistan is rated 8th out of 167 countries on the globe slavery index.¹¹³ The majority of the brick kiln workers are from minority communities especially the Christine community. The debt trap becomes inter-generation problem and the children start working in these brick kiln as soon as they are able to walk.¹¹⁴ Another area replete with bounded labour is the mining sector. Pakistan has a relatively small mining sector, which still operates manually. The sector's contribution to GDP in 2020 was PKR 309,823 million.¹¹⁵ The sector has also the problem of bonded labour and child labour. It employs labourers on per ton excavation basis.

The advance payment system and very low wages create the debt trap and persons are forced to work incurring debts and becoming modern slaves. The wages are provided in advance and are called "*peshgi*". According to an ILO commissioned assessment of the mining sector, per ton

¹¹¹ '2020 Trafficking in Persons Report' (US Department of State 2020) 390 <<https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>>.

¹¹² Faras (n 102).

¹¹³ 'Global Slavery Index, Country Data PAKISTAN' (2018) <<https://www.globalslaveryindex.org/2018/data/country-data/pakistan/>>.

¹¹⁴ Faras (n 102).

¹¹⁵ State Bank of Pakistan, 'Pakistan GDP From Mining' (Trading Economics 2019) <<https://tradingeconomics.com/pakistan/gdp-from-mining>>.

excavation rate ranges from the higher benchmark of PKR 400-500 to the lower benchmark of 100-200.¹¹⁶ The most common reason for which children are sold off as bonded labourers is that they have large families to feed.¹¹⁷ The practice was made illegal by the introduction of The Bonded Labour System (Abolition) Act (BLSAA) in 1992. Following the passing of this act, the court has freed around 1871 bonded labourers as a consequence. But in spite of the existence of this act, there has been no conviction for bonded labour issue under the BLSAA.¹¹⁸ Punjab has been regarded as the only province to introduce this statute at the provincial level; however, no such legislation had been done by the rest of three provincial governments with Sind as the top province to be affected by poverty and child labour.¹¹⁹

Pakistan signed the UN the Convention Against Transnational Organized Crime in 2000.¹²⁰ The Palermo Protocol was also ratified by Pakistan in 2010. Pakistan is thus bound to enact legislation and criminal provisions to meet the requirements under the UN Convention and Palermo protocol. Until 2018, the Prevention and Control of Human Trafficking Ordinance 2002 was the sole legal instrument to curb human trafficking. The law did not make a distinction between trafficking and smuggling and criminalized the victims. However, there have been some recent improvements. Pakistan has recently promulgated two new laws: the Prevention of Trafficking in Person Act 2018 and the Prevention of Smuggling of Migrant Act 2018.¹²¹ These two new laws were passed in the response to Pakistan's international treaty obligation as well as the placement of Pakistan on a Tier 2 status by the US State Department¹²². It took Pakistan 16 years to legislate and replace an ordinance on human trafficking. This reality also reflects the persistence a domestic lack of policy focus on this critical area of organized crime.

The difference between human trafficking and human smuggling has been recognized legally in the two new laws cited earlier. These are federal laws and the implementation agency i.e. Federal Investigation Agency (FIA). According to a review by UNDOC, these laws not only meant to

¹¹⁶ Saleem Ahmed, 'A Rapid Assessment of Bonded Labour in Pakistan's Mining Sector' (ILO Work in Freedom 2004) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_082032.pdf>.

¹¹⁷ Ahmed (n 116) 10.

¹¹⁸ 'BONDED LABOUR SYSTEM (ABOLITION) ACT, 1992' (n 97).

¹¹⁹ Muhammad and others (n 74) 21.

¹²⁰ 'Convention Against Transnational Organized Crime' <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en>.

¹²¹ 'MEASURES TO COMBAT HUMAN TRAFFICKING/SMUGGLING' <<https://www.fia.gov.pk/htsw>>.

¹²² '2020 Trafficking in Persons Report' (n 111).

safeguard the rights of victims of human trafficking and smuggling migrants, but also empower the law enforcement agencies of Pakistan to effectively prosecute the organized gangs perpetuating and benefitting from these crimes.¹²³ There has been a slew of legislation in recent years guaranteeing legal protection to the children and augmenting the power of the state to punish perpetrators, including the ICT Child Protection Act 2018 and Criminal Law (Second Amendment) Act 2016, which amended various sections of the Pakistan Penal Code to legislate for the criminalization of exposure of seduction to a child (Section 292A), child pornography (Section 292B), the offence of cruelty to a child (Section 328b) and the offence of sexual abuse of a child (Section 337A). The Zainib Alert Act 2020 is the most recent promulgation, which is named after the victim of the “Kasur” tragedy. Ironically, the law came into effect on the date when the crime happened. The law intends to create an institutional response system that will create a system of alert in case of child abduction/missing. The Act establishes an agency, Zainib Alert, Response and Recovery Agency (ZARA) of missing and abducted children as well as a helpline similar to the AMBER Alert System of United States.¹²⁴

Prostitution is not recognized legally in Pakistan for both females and males. Homosexuality is criminalized under the section 377 of the Pakistan Penal Code. Buying and selling of a person is also a criminal offence under section 371A and 371B. Adultery is the only offence retained from Zina Ordinance after its repeal. However, there is no offence specific to prostitution. This non-recognition of prostitution as an offence is a legal denial, which criminalizes the victim. Although sale and purchase are prohibited under the law yet there is no legal recognition of the status of the victim. This is major legal gap around the issue of human trafficking, which ends up in sexual exploitation. Bonded labour is also prohibited in Pakistan under the constitutional provision prohibiting slavery. Pakistan legislated and abolished bonded labour in 1992. However, it has become a provincial subject following the 18th Amendment in the Constitution of Pakistan passed in 2010¹²⁵. Since the bonded labour existed on the list, Punjab government had adopted the federal

¹²³ ‘Trafficking in Persons and Smuggling of Migrants Laws 2018’ <<https://www.unodc.org/pakistan/en/trafficking-in-persons-and-smuggling-of-migrants-laws-2018.html>>.

¹²⁴ Khan Shmyla, ‘Making Children Safer’ *The News* (2 February 2020) <<https://www.thenews.com.pk/tns/detail/606913-making-children-safer>>.

¹²⁵ ‘The Constitution (Eighteenth Amendment) Act, 2010’ <https://na.gov.pk/uploads/documents/1302138356_934.pdf>.

law under Punjab Bonded Labour (Abolition) Act in 1992¹²⁶. Other provinces have also reacted on this issue. A major law enforcement challenge, nonetheless, is that the legal regime of law enforcement on human smuggling and human rights trafficking is fractured. This legal regime creates a jurisdictional confusion hence it hampers effective and efficient implementation.

5.4. Initiatives Taken for the Elimination of Child Labour

The government together with third-party stakeholders has worked for the progressive development of the elimination of child labour within the country. Many programs and local institutions have been set up to ensure that children do not have to work; rather they are provided rights that are established by regulations under national and international laws.

5.4.1. The Child Support Programme

As per the commitment of Pakistan's Government to meet the Sustainable Development Goals (SDG) 2015, a Programme for child support has been initiated for avoiding illiteracy. The underprivileged parents are given a sum of Rs. 300 if they send their children aged between 5 years to 16 years to school. The beneficiaries, however, are selected through the internal screening of Benazir Income Support Programme (BISP). It has been stated that within the duration of a year around 85000 children had been successfully enrolled in schools¹²⁷.

5.4.2. National Policy and Plan of Action on Child Labour

According to International Programme for Elimination of Child Labour (IPEC) of International Labour Organization (ILO) survey of 1996, 3.3million children between age of 5 years to 14 years are engaged in hazardous child labour in Pakistan. The immediate illumination of worst and most hazardous forms of child labour, Pakistan Bait-ul-Mal School for Rehabilitation of Child Labour have been established countrywide since 1995 focusing under the National Policy and Plan of Action on Child Labour. Enrolled Children are provided free education, clothing, footwear and stipend as well as support has been initiated to underprivileged parents are given a sum of Rs. 300 if they send their children aged between 5 years to 14 years to school for avoiding illiteracy. It has

¹²⁶ 'THE PUNJAB BONDED LABOUR SYSTEM (ABOLITION) ACT 1992 (III of 1992)' <<http://punjablaws.gov.pk/laws/1797a.html>>.

¹²⁷ 'CHILD SUPPORT PROGRAMME (CSP)' <<http://www.pbm.gov.pk/csp.html>>.

been stated that 17871 students (male and female) are successfully benefiting from primary education in these enrolled in schools.¹²⁸

5.4.3. Pakistan Bait ul Mal's National Centre for Rehabilitation of child Labourers

Pakistan Bait ul Mal's National Centre for Rehabilitation of Child Labourers (NCRCL) centers have been created throughout Pakistan by people who have been working for the provision and guarantee of basic child rights. They seek to ensure that the parents receive financial assistance so that the basic necessities of the families are somehow met. NCRCL centers have been set up and are operational throughout the country with the most concentration in Punjab.¹²⁹

5.4.4. Child Labour Monitoring

Certain independent national agencies have been set up for monitoring child labour and reporting on measures taken (or not taken) for the elimination of child labour practices. One such example is the Independent Monitoring Association for Child Labour which has been operating in Sialkot's football stitching industry. Along with this, under EMPLOYMENT OF CHILDREN ACT (ECA) 1991, various child labour inspectors also have been recruited to ensure the effective compliance of ECA. However, these inspectors have been overtaxed by the government and the previous police workers have been delegated with more task responsibilities which have made their work more inefficient.

5.5. Does Pakistan Complying it's International Obligation in Framework

Pakistan has ratified the following convention, which makes this question to ensure protection for children from having to work and for forcing them to do hazardous not just domestic issue but a question of Pakistan meeting its international legal obligation. Pakistan's ratification of the United Nation Convention on Right of Child was done the same year as this convention entered into force in 1990 with the reservation that its ratification would be done based on the Islamic principles.¹³⁰ This reservation was withdrawn in 1997; however, due to the fact that international law is not directly enforceable in Pakistani, this convention and the obligations it creates for Pakistan was

¹²⁸ 'PAKISTAN BAIT-UL-MAL SCHOOL FOR REHABILITATION OF CHILD LABOUR'
<<http://www.pbm.gov.pk/ncrcl.html>>.

¹²⁹ {Citation}

¹³⁰ United Nations, 'Ratification Status for CRC - Convention on the Rights of the Child, Pakistan Is Signatories of the Declaration of The Rights of Child since 12 Nov 1990' (n 40).

not given much priority in terms of implementation. Hence, it only made little or no difference in the practical elimination of child labour.

According International Labour Organization Minimum Age Convention 1973, the minimum age had been set by the International Labour Organization (ILO) and was abided by the Age for completion of compulsory schooling which is 15 years. This age was setup under the Article 138 of this convention. However, the article 25A of the constitution of Islamic republic of Pakistan states the minimum age of labour till 16 years. The ILO Convention on Worst Forms of Child Labour that prohibits pornography, sexual abuse, bonded labour and trafficking or selling of the child has been ratified by the Pakistani Government as well.

5.6. The National Framework to comply with international legal obligation

Here the focus is on assessing if Pakistan complies with its international legal obligations through domestic legislation and its constitution.

5.6.1. The Constitution of Islamic Republic of Pakistan 1973

The constitution of Islamic Republic of Pakistan 1973¹³¹ is quite a comprehensive piece of legislative authority and hence includes almost all points and parts that are needed to be addressed within that constitution. However, some people criticize the constitution arguing that it is rather unclear and vague or ambiguous as per the law language and is not comprehensible by the layman.

However, in terms of labour provisions and laws, article 3 of The Constitution of Pakistan states that all types of exploitation of workers have to be abolished and also ensure the fulfillment of the fundamental principles and rights of those workers. Clause 3 of article 11 in the Constitution of Pakistan states that children below 14 should not be employed in a factory or any such hazardous setting. This ensures that all sorts of hazardous situations and work under the employment of children should be avoided for the children to kept up with. Article 17 provides for fundamental rights to exercise the freedom of association and the right to form union, article 18 proscribes the right of its citizen to entre upon any lawful profession or occupation and to conduct any lawful business and Article 25 lays down the right to equality before the law and prohibition of discrimination on the ground of sex alone. In line with this article, article 37(e) of the Constitution further elaborates that just and humane conditions of work for all are to be ensured so that people

¹³¹ 'The Constitution of Islamic Republic of Pakistan 1973' (n 4).

are not employed in vocations that are unsuited to them. These articles are a milestone for setting the baseline to ensure that the elimination of child labour practices will happen and provides the base for enforcing international standards through legislative and other measures.

5.6.2. Pakistan Penal Code, 1860

Pakistan Penal Code, 1860¹³² is also one of important legal obligation which enforced criminal liabilities on the child labour. Different section of Pakistan Penal Code, 1860¹³³ prescribes the definition and punishment for the offence falling under the provisions, the Section 367,370, 371A 371 B &374 for prohibition of forced labour, sections 366A-366B for Prohibition of child trafficking, Section 292(B),292(C), 366 (A),366(B), 371(A) and 371(B) for Prohibition of Commercial Sexual Exploitation of Children. Pakistan Criminal Procedure code, 1898¹³⁴ deals with the procedure and there are different amendments are made to complying with international legal obligations. Amendments in Criminal Procedure Code in 2016 with regards to section 377(A) and 292 (B) are now the part of the criminal procedure code.¹³⁵

The criminal liability for the offences under the Hadood Ordinance for the minor children of age seven are responsible and can be tried under the Hadood laws and anti terrorism act¹³⁶ is imposed.

5.6.3. Prohibition of Forced Labour and Child Trafficking

Federal laws relating to The Prevention of Trafficking in Person Act 2018,¹³⁷ Section 3&7 for prohibition of forced labour and Prohibition of child trafficking, The Prevention and Control of Human Trafficking 2002,¹³⁸ Section 2(g)&3 for Prohibition of child trafficking, Section 7 for Prohibition of Commercial Sexual Exploitation of Children.

¹³² Government of Pakistan, 'THE PAKISTAN PENAL CODE,1860 Last Amended on 2017-02-16'
<<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64050/88951/F1412088581/PAK64050%202017.pdf>>.

¹³³ Government of Pakistan (n 33).

¹³⁴ 'Pakistan Criminal Procedure Code, 1898'
<https://www.fmu.gov.pk/docs/laws/Code_of_criminal_procedure_1898.pdf>.

¹³⁵ 'Criminal Law (Amendment) (Offences Related to Rape) Act 2016 [No. F. 9(37)/2016- Legis. (Act No. XLIV of 2016)]' <https://na.gov.pk/uploads/documents/1463738605_158.pdf>.

¹³⁶ 'Labour Related Legislation in Pakistan'
<https://www.itacec.org/document/2020/6/Child_and_Labour_Laws.pdf>.

¹³⁷ 'The Prevention of Trafficking in Person Act, 2018'
<https://senate.gov.pk/uploads/documents/1533270017_228.pdf>.

¹³⁸ 'Prevention and Control of Human Trafficking Ordinance, 2002 (AN ORDINANCE to Prevent and Control Human Trafficking)'
<https://www.fmu.gov.pk/docs/laws/Prevention_and_Control_of_Human_Trafficking_Ordinance_2002.pdf>.

The Khyber Pakhtunkhwa The Bounded Labour System (Abolition) Act 2015,¹³⁹ Section 2(I) and 3 for prohibition of forced labour, the Punjab Prohibition of Child Labour at Brick Kilns, 2016¹⁴⁰ (Section 5 Minimum Age).

1. The Punjab Destitute and Neglected Children Act {Section 40 for Prohibition of Commercial Sexual Exploitation of Children, Section 36 and 36 (A) for Prohibition of using children in illicit activities}
2. The Punjab The Bonded Labour System (Abolition) Act, 1992¹⁴¹ (Section 4 for prohibition of forced labour)
3. The Punjab The Prevention of Trafficking in Person Act, (Section 3 and 7 for Prohibition of child trafficking)
4. Prevention and control of Human Trafficking Ordinance, (Section 2(g) and 3 for and Prohibition of child trafficking)
5. The Sindh The Bounded Labour System (Abolition) Act, (Section 4 for prohibition of forced labour)
6. The Prevention of Trafficking in Person Act, (Section 3 and 7 for Prohibition of child trafficking)
7. Prevention and Control of Human Trafficking Ordinance {Section 2(g) and 3 for and Prohibition of child trafficking}

As cited above that the bounded labour and trafficking in and out of Pakistan is prohibited but practices does not cover “ORGAN” trade, forced marriages, internal trafficking and use of children for drug trafficking. It is required to amend legislation and include internal trafficking, drug trafficking, organ trade also prohibition for forced marriages¹⁴².

¹³⁹ ‘THE KHYBER PAKHTUNKHWA BONDED LABOUR SYSTEM (ABOLITION) ACT, 2015. (KHYBER PAKHTUNKHWA ACT NO. XIV OF 2015)’
<https://kpcode.kp.gov.pk/uploads/2015_14_THE_KHYBER_PAKHTUNKHWA_BONDED_LABOUR_SYSTE_M_ABOLITION_ACT_2015.pdf>.

¹⁴⁰ ‘The Punjab Prohibition of Child Labour at Brick Kilns, 2016, (Act XXXVII of 2016)’
<<http://punjablaws.gov.pk/laws/2475.html>>.

¹⁴¹ ‘THE PUNJAB BONDED LABOUR SYSTEM (ABOLITION) ACT 1992 (III of 1992)’ (n 126).

¹⁴² ‘Labour Related Legislation in Pakistan’ (n 136).

5.6.4. Employment of children Act 1991

Within this act, a schedule had been issued that provides an overview of the prohibited occupations for child labour. Employment or involvement in any of those occupations results in the imprisonment for a year or fine of Rs. 20,000.

In Pakistan, following the 18th amendment of the Constitution of Pakistan, child labour has been delegated to the level of the provinces. In lieu of that, the province of Balochistan enacted on 17th November 2016 The Balochistan Child Protection Act, 2016¹⁴³, the province of Khyber Pakhtunkhwa assembly on 4th May 2015 has passed The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015¹⁴⁴. Province of Sindh has passed The Sindh Prohibition of Employment of Children Act, 2017¹⁴⁵ and the provincial government of Punjab has opted for passing the Punjab Restriction on Employment of Children Act, 2016¹⁴⁶ which includes a specification involved in the Pakistan Employment of Children Act of 1991¹⁴⁷ and have been remained entirely intact. The amended version of this act in force in Punjab increases the fine for enforcing bonded labour on a person. It has also increased the daily payment due to bonded labour from 10 to 100 but this law remains largely unused.

There is a contradiction between Minimum Age prescribed in ILO minimum age Convention which requires it to be greater than or equal to age at which compulsory education ends and i.e. for Pakistan is 16 years. It does not cover the domestic and home based labour or children engaged in agricultural apart from cinder farming. The standards and working conditions for the children and list of occupations is also there, not allowing the children below the age of fourteen years to engage in the different jobs. Practices of contradiction between ILO standards and domestic performance are prevailing and does not cover domestic and home based child labour.¹⁴⁸

¹⁴³ 'The Balochistan Child Protection Act (Act No. VII of 2016).'

<<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104968/128213/F-16922082/PAK104968.pdf>>.

¹⁴⁴ 'The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, Khyber Pakhtunkhwa Act No. XIX of 2015' <<http://www.pakp.gov.pk/2013/acts/the-khyber-pakhtunkhwa-prohibition-of-employment-of-children-act-2015/>>.

¹⁴⁵ 'THE SINDH PROHIBITION OF EMPLOYMENT OF CHILDREN ACT, 2017. SINDH ACT NO.III OF 2017' <http://sindhlaws.gov.pk/setup/publications_SindhCode/PUB-NEW-18-000183.pdf>.

¹⁴⁶ 'The Punjab Restriction on Employment of Children Act, 2016'

<<http://punjablaws.gov.pk/laws/2668.html#:~:text=3.->

,Prohibition%20on%20employment.,hazardous%20work%20in%20the%20establishment.>.

¹⁴⁷ 'Elimination of Child Labour Report 28' (n 90).

¹⁴⁸ 'Labour Related Legislation in Pakistan' (n 136).

5.7. Conclusions

To conclude this chapter, the government of Pakistan has been taking a number of steps to respond and counter the problem of child labour and to eliminate any factor which is the source of child labour or which deprive the children from enjoying their basic rights. The socio-economic conditions and the difficulties for the government to reach the vulnerable population are the major causes that have been recognized as the basis of the issue and concern of child labour elimination.

Chapter 6: Conclusion and recommendations

As per the discussion carried out throughout the dissertation, the government of Pakistan should ban the procurement by the public and prohibit purchase from the factories where there is child labour is being utilized for the manufacturing of goods under the Ordinance of Public Procurement Regularity 2002 ¹ and under the rules of Public Procurement 2004.²

Under the sections 370 and 371 of the Pakistani Penal Code of 1860, the people who are involved in employing bonded child labour should be prosecuted; moreover, as per law, the trafficking of children in order to make him or her a slave should be punished with a penalty for the terms of 10 years along with fine or should be imposed with a penalty of life time.³ According to the Pakistani Penal Code, forcing a person to work is also unlawful, and hence it is a punishable deed in the eyes of law. Under section 374 of the Pakistani Penal Code, forcing a person to work should be punishable either by a fine, a term of five years imprisonment or both.⁴

There is much discrepancy between the legislation that has been established, including in criminal law, and the enforcement of this legislation. In Pakistan, many cultural, social and political patterns along with the economic trends, affect the enforcement of child labour laws within the country and influence their proper enforcement and legislation.⁵

The issues like bonded labour or child labour or child slavery should be banned effectively and the historically weak Pakistan's labour unions can play a huge role. They can work for the negotiation for some better terms and conditions for children who are victim of practices of child labour and slavery. This way child labour and slavery can progress towards its complete eradication within the country. The laws are there to prevent any form of child labour and related crime but these laws must be implemented and enforced in order to eliminate such harsh practices. This is important to save the future generation from starving and working under hazardous conditions which can further reduce the chance of our future generations to be out of the poverty trap and work for the betterment of their own lifestyle and life conditions.⁶

Increased awareness translated into political agendas and strategies by the politicians and local law enforcement officials is further required. This is to ensure that illiterate people do not fall in the trap of politicians who are just working to gain their own individual benefits rather than working

for the welfare of the population. Providing education in this regard and awareness campaigns are important for the elimination of poverty, economic barriers and other factors that are contributing to child labour and hindering the progress of children in any of the domains.⁷

Pakistan has been surrounded by a number of issues that has hindered the progress specifically of the poor people and the children which make the most of the country's population. Considering all the factors that have been discussed above, child labour is a fundamental issue that needs to be addressed. This is because of the fact that child labour is the foundation for many others and greater social concerns. More specifically, it might give rise to street crimes as the children who initially had been involved in labour would remain poor and thus are more prone to be involved in unethical and unlawful behaviors. Not only would these children, but also their families be rebellious towards the government and society which could have devastating effects for them and the society itself at large. The Government of Pakistan, thus, should take rapid and immediate actions ensuring that existing laws and bans are effective, with the support of international bodies so that this evil might be ended within Pakistan. Youth constitutes the largest chunk of the population within the country and giving priority to the difficulties they are facing would be a huge advantage for the government and the country.

It can thus be easily understood that one of the most potential ways to eliminate and fight against child labour is through the provision of education to all children. Educating the masses would help make people aware of their rights and the responsibilities that have been reciprocated on them in the lieu of those rights. The elimination of child labour can enhance the adult's wages and increase employment, on the one hand, and create a better prospect for the children by securing jobs for them when they are grownups. Child trafficking is also a problem which is aggravated due to the fact that the children forced to work and their illiterate families fall prey to the recruiter who usually give these people dreams for a better lifestyle and future, but recruit them for other purposes. The basic legal and administrative infrastructure is already in place; however, it must be implemented properly if Pakistan has a hope of combating this evil.

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