



The Supreme Court Role in Pakistan for the Elimination of Child Abuse

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Abstract

According to the 2017 National census children counts 39% of the whole population; the maximum of people residing in the rural areas have a very less developed social sector, although people living in the urban areas have comparatively good facilities that are small in number. They have good service delivery in education, health, social welfare, employment opportunities, awareness; fertility rate is good while the mortality rate is less, safe sanitation facilities, clean water and other facilitations that are necessary for a sound social sector. The Human development index is very low as it stand at 147/188 in 2016; Pakistan invest a very small amount in education (2.3%), health (0.76%) and the other sectors are also in a fragile situation, more over the standard of education and health are the lowest in the world, the nutritional facilities available to the children are below standard.

Key Words: Child Abuses, Judicial Activism, Government Measures

Introduction

The constitution of 1973 have safeguarded the basic rights of the people from article 8-28 which contains the right to life, liberty, property, religion and other rights while article 9 & 14 discourages all kind of discrimination in the form of race, sect, religion, and other prejudices, article 3 states that there shall be no torture and violence in any form, article 8 demonstrate that State will refrain from legislating against the basic rights of the citizens, article 34 and 35 will make sure that interests of a woman along with children's are safe, article 11(1) discourages bonded labour, article 11(3) forbade child labour; under the 18th amendment (2010) article 25 A was inserted which focuses on the compulsory education up to 16

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years. The said amendment changed the whole course of action because many subjects transformed from the concurrent list into the provincial list; education, health, special education, labour issues, women's affairs, local governance, rural development and many more; in the post amendment a number of acts have been passed to facilitate the said department and to improve the whole scenario in the State.

There have been some children which are special prey to victimization as stated "Certain groups of children are particularly at risk of violence, including disabled children and children from some minority ethnic groups. Victimization statistics in crime surveys and other interview research provide prima facie evidence of discrimination. Racial harassment, always a form of violence and often involving physical violence, threatens many children in the community and in schools (Calouste Gulbenkian Foundation, 1995, P. 115). The said foundation has reported that boys are more vulnerable to victimization and physical torture as compared to girls who are only sexually exploited; the study has revealed that disabled children are more prone to assault as compared to normal ones (Little, 2004).

The government has devised a plan for 2025 which will focus to reduce the lack of nutritional problems from 60-30%, the mortality rate from 74-40%, the mothers' mortality rate from 276-140 per one lack, cent per cent primary education, and rate of literacy up to 90%, clean water from 48-90%, gender-related development from 24-45% and many other targets were fixed (Government of Pakistan vision, 2025).

Responding to improving the standard of children in the State, the "Protection of Breastfeeding and Young child nutrition act (2002) was enacted; but the implementation process was very poor, as its implementation started in October 2013. In the same manner "The National Health Policy 2001-10" fails to achieve the desired results in the relevant fields, because the local and provincial set-up were ignored while initiating the policy, and it couldn't improve the nutritional facilities for the children's, and thus the malnutrition remains the same in most part of the world; I light of the above discussion role of the judiciary shall be assessed.

National and International Measures and Role of Judiciary

The National Judicial policy (2009) has been devised to protect the interest of children in the State; earlier a plan has been set up for safeguarding juvenile-related issues from 2005-15, in the government of the Pakistan People's Party number of legislative measures have been taken to safeguard the interests of the women and children's in the State. These include The prevention of anti-woman act 2011, The acid and crime prevention act 2012, The protection against Harassment of working woman act 2010, the National action plan to combat Human trafficking and the Punjab Gender policy were some of them. The government established a separate

cell of human rights in the Supreme Court of Pakistan to deal with the cases of human rights and the National Commission on Human rights (2012) was set up in this regard. Another step was taken to protect the interest of the children and to look after the children's affairs in the State, "The National Commission for child welfare and development was established which shall work under the Ministry of Human Rights who will monitor the overall activities of the children. By analyzing the doctrine of rights envisaged by the government of Pakistan very less work has been done to improve the situation of children; now it is the prime duty of the judiciary to protect their interests of them as the government had to comply with International standards as described in the Universal declaration of human rights (1948), it adds that: "The child shall enjoy all the rights set forth in this Declaration. Every child without any exception whatsoever shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or another status, whether himself or his family" (UNDHR, 1948).

A step was taken for the facilitation of children in the " Convention on the Rights of Children" as reported in article 3 "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration' (emphasis added). The mention of both welfare institutions and administrative and legal institutions in the same statement is symptomatic of the felt need of treating children differently even when they are 'offenders' in the eye of the law. Young people committing highly publicized serious crimes are only a tiny fraction of the children who come into conflict with the law in some way. The majority of the children get into trouble for minor offences, or may not be guilty at all. As indicated above "A large number of the detainees implicated are awaiting trial...it is necessary to recognize the juvenile offender should not be undergoing a similar treatment..." (Emphasis added).

Due to the socio-economic constraints, many countries have not taken real steps to materialize the aspirations of UDHR and CRC which is not fair on their part of them; most of Pakistan's bars are full of juvenile prisoners which is against the international norms, according to 2008 record out of 1788 children prisoners, only 153 had to be convicted at the end of the court proceedings, special laws and special treatment are needed to cope with them which is missing in our State (Jahangir & Doucette, 1993, P. 44).

The first practical step taken was by the "International Covenant on Civil and Political Rights "which terms obligatory action on the part of member states to make available special procedures for juvenile justice in their own countries; adds in article 14(4) that "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation" Article 6(5) of the said convention further clarifies that there shall no capital punishment for children's in any ways. Article 9(1) states that "Everyone has the

right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention; no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” Article 37(b) reports that “The arrest, detention or imprisonment of a child only as a measure of last resort and for the shortest appropriate period of time”.

In Pakistan the Courts apply the Pakistan Penal Code 1860 and Code of criminal procedure 1898 for dealing with criminal cases; under the local rules a child under the age of seven can be dealt with according to national laws, and it can be extended up to the age of 12. In Pakistan, a juvenile justice ordinance was enacted in 2000, but in provinces, different types of procedures are being executed; in Sindh and Punjab, a boy under the age of 21 can't be tried in any court.

Pakistan has been the signatory of the Convention on the Rights of Children which states in article 4 that "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention”.

Article 2 of the said convention argues that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind”. The first practical step was initiated in 2000 by General Pervez Musharaf to comply with the international commitment to juvenile justice in Pakistan; it fixed the age of 18 for attaining the age of an adult and also abolished capital punishment for them. The implementation process has been poor when it submitted the report in 2004 as "welcomes the promulgation of the Juvenile Justice System Ordinance (JJSO, 2000), but is concerned at the poor implementation of this Ordinance and that many of the authorities in charge of its implementation, particularly within provincial governments and tribal areas, are unaware of its existence. The Committee is also deeply concerned about the high number of children in prisons, who are detained in poor conditions, often together with adult offenders and thus vulnerable to abuse and ill-treatment. The very low minimum age of criminal responsibility (7 years) is also of concern to the Committee. Further, the Committee is deeply concerned about the reports of juvenile offenders sentenced to death and executed, which have also occurred after the promulgation of the Juvenile Justice System Ordinance”. Another report was submitted in 2008 which was as “The Committee welcomes the promulgation of the Juvenile Justice System Ordinance (2000), but is concerned at its poor implementation and that many of the authorities in charge of its implementation, particularly within provincial governments and tribal areas, are unaware of its existence. The Committee is also deeply concerned at the high number of children in prisons who are detained in poor conditions, often together with adult offenders and thus vulnerable to abuse and ill-treatment...” They recommended complete enforcement of the CRC in

letter and spirit and stressed implementing articles 37, 39 and 40 of the said convention.

Constitution of 1973 protect children from inhuman treatment; Section 4 says " (1) To enjoy the protection of the law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every person for the time being within Pakistan. (2) In particular: a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law...." (Cons. Of 1973)

Section 8 declares that "(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void. (2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void...." (Emphasis added).

Section 9 talks about the security of an individual "No person shall be deprived of life or liberty save in accordance with the law." While Section 14 says that dignity must be maintained as stated "(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) No person shall be subjected to torture for the purpose of extracting evidence."

Section 25 focuses on the equal status of all citizens within the boundaries of the State, it adds that "(1) All citizens are equal before the law and are entitled to equal protection of the law. (2) There shall be no discrimination on the basis of sex alone. (3) Nothing in this Section shall prevent the State from making any special provision for the protection of women and children." Section 35 talks about the safe security of the family as argued that "The State shall protect the marriage, the family, the mother and the child." (Ibid).

Pakistan is a signatory of a number of International treaties and it has to comply with its terms and conditions accordingly. The boy below the age of 18 is a child; according to the juvenile justice rules, he is immune to the death penalty as stated in section 12 of the said ordinance, which adds that "Notwithstanding anything to the contrary contained in any law for the time being in force no child shall be (a) awarded punishment of death...." (Juvenile Justice System Ordinance, 2000).

Child criminals must be tried in the anti-terrorism and narcotics courts, Supreme Court while dealing with the case of juveniles commented and repealed the decision made by Lahore high court that a death sentence can't be given to them. Hadood laws introduced by General Zia ul Haq disturbed the uniformity of laws in the country, earlier when the Criminal laws amendment act (2006) was enacted and repealed all the prevailing laws, this was declared unconstitutional by Federal Shariat Court which opened a Pandora box for the judiciary (The Dawn, 2010). The ordinance states that a death sentence can't be given to a child offender, the said law had transformed the latter into life imprisonment; till the age of 18 the

child shall be in any institution then life imprisonment shall be given to him (UNICEF, 2006, P. 97).

After the enactment of the ordinance when the president announced to transform the death penalty into life imprisonment, the government of Punjab while complying with the said law converted 74 child offenders who had been awarded the death penalty into life imprisonment in 2002, but despite all these things there were some juvenile criminals who were in jails for death penalties, the ordinance couldn't be implemented in the whole country in letter and spirit. (The Daily News Letter, 2002, p. 28) Unclear policy regarding juvenile justice continued till the government of the Pakistan People's Party; who wanted to enact a law in this regard, some recommendations were demanded from the provincial governments, and an ordinance was announced for it (Amnesty International, 2009).

Supreme Court while dealing with the case of a child whose age was below 18 was awarded the death sentence; the court commended that at the time of trial this issue was not raised, the court further add that "Learned Advocate Supreme Court on behalf of the appellant has laid much stress on the factum of "tender age" in the oblivion of the fact that the tender age itself would not mean that an accused should not be awarded the death penalty" (PLD, 2010).

The Society for the Protection of Rights of the Child (SPARC) reported that ordinance has not been accorded in the country; there have been two prisoners at "Mach jail", another offender Mr Mewal Shah had been sentenced to death by Mastung anti-terrorism court, at the time of offence his age was 13 years, while another prisoner Mr Sarfaraz Shah aged 17 at the time of crime who was awarded death sentence; these figures state that the law was not implemented in the true sense, the same issues continued till 2011 when the representatives of the said Society met with other juvenile cases in the province of Baluchistan, they were facing the same problems.

Apart from these things, there have been issues of child labour in Pakistan; once Secretary General of the United Nation declared that "There is no duty more important than ensuring that children's rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace." SPARC in a report had stated that 70 thousand cases of child labour have been reported in the country, International Labor Organization in a report states that child labour in Pakistan has crossed alarming degrees, it has touched the figures of 12.5 million, UNICEF has reported that they are 10 million, bonded labour is on the rise in the country, it included 2.6 million working in the homes, as a result, inhuman treatment has been accorded with them, the maximum number of reports have been in the province of Punjab. Since the decision of Darshan Maseeh V. The State (1990), the government enacted a number of laws for child protection and Bonded Labor in the country, it was the second case of Public Interest Litigation in the State and the first one in the matters of bonded labour in

Pakistan, although the first case was registered by a wealthy landlord and ex-prime minister Miss Benazir Bhutto in 1988 it laid the foundation for public interest litigation in Pakistan.

According to the Labor Policy (2010), those children who are aged between 14-18 will not be engaged in perilous activities in the industries; the government shall manage the education environment for them, the policy in section 21 states that those children who are serving in these industries must withdraw i.e. the bricks, mining, glass, and all those factories which are a high source of dangerous chemicals. In spite of the said policy juvenile issues are uncontrollable in the country; millions of children are working under bonded labour which caused serious damage to the prestige of the nation.

In the last decade the abduction of children has been the daily routine in developing countries like Pakistan; Through electronic and print media and now social media is the big source to create awareness regarding these issues in society, in the most recent times Zainab from district Kasur whose age was five was abducted and killed, created a widespread discussion all over the country. As a result " The Zainab Alert, Responsive and Recovery act 2020" has been enacted by the parliament; the procedure for criminal law has been changed, although it is applicable to the capital city only through article 142 of the constitution, it can be applied to all the four provinces latter on, it established a helpline 1099 which will coordinate the police and the director General office for communicating regarding various issues faced by the children's, it will work according to the guidelines set in the National Commission on the rights of child's (2017). The said act shall speed up the punishment process for those involved in the abduction of the children, Mr Imran who had sexually assaulted Zainab in Kasur was hanged to death by the judiciary, it has set a very good example to discourage in future such inhuman acts in the country.

Conclusion

The unequal distribution of wealth has created two classes; the rich and the poor, the latter families in order to survive compelled their children to work for their livelihood; due to the fragile social sector millions of children have no access to education, health and other facilities to develop their personalities, as a result, children's in Pakistan are prone to violence in many shapes, like child labour, deprivation of basic facilities, no nutritional access, sexual abuses, bonded labour, begging, child marriages, and many more problems; there has been no genuine commitment on the part of government improve the situation, even the political establishment role in this regard is quite miserable. The federal and provincial government is not on the same page to redress the issue.

Recommendations

It is high time that we should implement The National Plans of Action in letter and spirit, and save the future of 86 million children in Pakistan, it is the prime duty of the policymakers to focus on compulsory education of children and to provide them with a good healthy environment in which they can groom for the future. Judiciary through Public Interest Litigation can set examples for the think tanks to devise a plan that can improve the precarious situation of children in Pakistan.

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